1630

BIBLIOTEKA RADY NARODOWEJ

THE FOURTH PART OF THE INSTITUTES OF THE Laws of England;

Concerning the Jurisdiction of Courts.

The Fifth Edition; with an Alphabetical TABLE, not heretofore Printed.

PROVERBS 22. 28.

Ne transgrediaris antiquos terminos quos posuerunt patres tui.

Terminos propriæ potestatis egressus in aliam messem perperam mittit falcem suam.

607. 450

Authore EDW. COKE *Milite.*

Hæc ego grandævus posui tibi, candide Lector.

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Cum Gratia & Privilegio Regiæ Majestatis.

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The Epilogue.

DEO, PATRIÆ, TIBI.

Proœmium.

IN the two former Parts of the *Inſtitutes* we have principally treated *De communibus placitis*, and of thoſe two great Pronouns [*Meum & Tuum.*] In the Third we have handled *Placita Coronæ*, and Criminal cauſes. But becauſe *Rerum ordo confunditur, ſi unicuique juriſdictio non ſervetur*, We in this Fourth and Laſt Part of the *Inſtitutes* are to ſpeak of the Juriſdiction of the Courts of Juſtice within this Realm.

Regula.

[a] *Juriſdictio eſt authoritas judicandi ſive jus dicendi int' partes de actionibus perſonarum & rerum ſecundum quod deducta fuerunt in judicium per authoritatem ordinariam ſeu delegatam:* And again, [b] *Juriſdictio eſt poteſtas de publico introducta cum neceſſitate juris dicendi.* It is derived of *Jus* and *ditio*, i. *poteſtas juris.*

[a] *Juriſdictio quid?* Bract. l. 5. fol. 400, 401. Brit. fol. 1. & 32. Fleta lib. 6. cap. 36. unde, &c.

[b] Lib. 10. f. 73. a. En le caſe del Marſhalſea.

[c] *Curia* hath two ſeveral ſignifications, and accordingly it is ſeverally derived. It ſignifieth the Kings Court, where his Royal Perſon, and His Honourable Houſhold do reſide, and is all one with *Palatium Regium*, and is derived ἀπὸ τῦ κυρίε, of the Lord, becauſe the Sovereign Lord reſideth there. It alſo ſignifieth a Tribunal, or Court of Juſtice, as here it doth, and then it is derived *à cura, quia eſt locus, ubi publicas curas gerebant.*

[c] *Curia quid?* Feſtus.

Of Juriſdictions ſome be Eccleſiaſtical, and ſome Civil, or Temporal; of both theſe ſome be primitive, or ordinary without Commiſſion; ſome derivative, or delegate by Commiſſion. Of all theſe, ſome be of Record, and ſome not of Record, ſome to enquire, hear, and determine, ſome to enquire onely; ſome guided by one Law, ſome by another; the bounds of all and every ſeveral Courts being moſt neceſſary to be known. For as the body of a man is beſt ordered, when every particular member exerciſeth his proper duty; ſo the body of the Commonwealth is beſt governed, when every ſeveral Court of Juſtice executeth his proper Juriſdiction. But if the eye, whoſe duty is to ſee, the hand to work, the feet to go, ſhall uſurp and encroach one upon anothers work: As for example, the hands or feet, the office of the eye to ſee, and the like: theſe ſhould aſſuredly produce diſorder, and darkneſs, and bring the whole body out of order, and in the end to deſtruction: So in the Common wealth (Juſtice being the main preſerver thereof) if one Court ſhould uſurp, or encroach upon another, it would introduce incertainty, ſubvert Juſtice, and bring all things in the end to confuſion.

Now when I conſidered how much it would tend to the honour of the Kings Majeſty, and of his Laws, to the advancement of Juſtice, the quiet of the Subject, and generally to the good of the whole Commonwealth, (no King in the Chriſtian world

having such Tribunals, and Seats of Justice, as his Majesty hath; which God willing, in this Treatise we shall make to appear) that all the high, honourable, venerable, and necessary Tribunals, and Courts of Justice within his Majesties Realms and Dominions, as well Civil as Ecclesiastical, might be drawn together, as it were, in one Map, or Table, (which hitherto was never yet done) that the admirable benefit, beauty and delectable variety thereof might be, as it were, *uno intuitu* beholden, and that the manifold Jurisdictions of the same might be distinctly understood, and observed. We having (as elsewhere we have said) collected some materials towards the raising of this great and honourable building, and fearing that they should be of little use after my decease, being very short, and not easily of others to be understood, if I should have left them as they were.

In the Preface to the First Part of the Institutes

Out of the duty that I owe to his most excellent Majesty, and my zeal and affection to the whole Commonwealth, I have adventured to break the ice herein, and to publish more at large those things which in our reading we had observed concerning Jurisdiction of Courts. I confess it is a labour of as great pains as difficulty; for as in an high and large building, he that beholds the same after it is finished, and furnished, seeth not the carriages, scaffolling, and other invisible works of labour, industry, and skill in Architecture; so he that looketh on a Book full of variety of important matter, especially concerning sacred Laws, after it is printed and fairly bound and polished, cannot see therein the carriage of the materials, the searching, finding out, perusing, and digesting of authorities in Law, Rolls of Parliament, judicial Records, Warrants in Law; and other invisible works, *tam laboris, quam* * *ingenii*: yet I was the rather encouraged thereunto, both because I have published nothing herein, but that which is grounded upon the authorities and reason of our Books, Rolls of Parliament, and other judicial Records, and especially upon the resolution of the Judges of later times upon mature deliberation in many cases never published before; wherewith I was well acquainted, and which I observed and set down in writing, while it was fresh in memory.

* *Minerva, quasi nervos minuens*

There be amongst the Kings Records divers and many Rolls, whereof you shall find little or no mention (that we remember) in our Books, viz. *Rot. Parliament. Rot. Placitorum Coronæ, Rot. Placitorum Parliament. Rot. Claus. Rot. Brevium, Finium, Inquisitionum, Liberationum, Rot. Cartarum, Escaetriæ, Pat. Rot. Ordinationum, Rot. Franciæ, Scotiæ, Vasconiæ, & Almaniæ, Rot. Romana, Rot. Judæorum, Rot. Ragman, Brangwin, Rot. Contrariensium,* (And the reason of the naming of this Roll thus, was, for that *Thomas* Earl of *Lancaster* (a man singularly beloved) taking part with the Barons against King *E.* 2. in hatred of the *Spencers*, it was not thought safe for the King, in respect of their power and greatness, to name them Rebels or Traytors, but *Contrarients*) and some others. In this and other parts of our *Institutes* we cite divers Records out of many of these Rolls: Herein, as in the rest of our Works, you shall observe, that in the course of our reading we took all in our way, and omitted little or nothing, for there is no knowledge (seemeth it at the first of never so little moment) but it will stand the diligent observer in stead at one time or other.

And thus for all our pains, wishing the benevolent Reader all the profit, we (*favente Deo, & auspice Christo*) begin with the High and most Honourable Court of Parliament.

OF

OF THE HIGH AND MOST HONOURABLE COURT OF PARLIAMENT.

CAP. I.

Of what Persons this Court consisteth.

THis Court consisteth of the Kings Majesty, sitting there as in his Royal politick capacity, and of the three Estates of the Realm: viz. Of the Lords Spiritual, Archbishops and Bishops, being in number 24. who sit there by succession in respect of their Counties, or * Baronies parcel of their Bishopricks, which they hold also in their politick capacity; And every one of these when any Parliament is to be holden, ought, ex debito justitiæ, to have a Writ of Summons. The Lords Temporal, Dukes, Marquesses, Earls, Viscounts, and Barons, who sit there by reason of their dignities which they hold by descent or creation, in number at this time 106. and likewise every one of these being of full age, ought to have a Writ of Summons ex debito justitiæ. The third estate is the Commons of the Realm, whereof there be [a] Knights of Shires or Counties, Citizens of Cities, and Burgesses of Burghs. All which are respectively elected by the Shires or Counties, Cities and Burghs, by force of the Kings Writ ex debito justitiæ, and none of them ought to be omitted; and these represent all the Commons of the whole Realm, and trusted for them, and are in number at this time 493.

See the first part of the Institutes, Sect. 164. for the ancient and latter names of Parliament, and the antiquity thereof. *Modus tenendi Parl.* cap. 2.

* All the Bishopricks of *England* be of the Kings progenitors incorporation, to have succession and foundation, *Tenendum per Comitatum seu Baroniam*, and were of ancient time donative, and these Bishops are called by Writ to the Parliament, as other Lords of Parliament be. Rot. Claus 9 H. 4. m. 1. Glanvil. lib. 7. cap. 1. vers. finem. Bract. lib. 5. fol. 412. 427. a. 10 H. 4. 6. 21 E. 3. 60. 17 E. 3. 40. 48. 73. *Dicetus* Dean of London. [a] 5 R. 2. cap. 4. stat. ult. so they are ranked. Prov. 11. 14. *Salus ubi multa consilia.* Rot. Parl. 7 H. 4. nu. 2. *Multorum consilia requiruntur in magnis.*

Of what number.

In the beginning Romulus ordained an hundred Senators for the good government of the Commonwealth; afterwards they grew to 300, and so many were of the House of Commons in Fortescue's time; who treating with what gravity Statutes are made, saith, Dum non unius, aut centum solum consultorum virorum prudentia, sed plus quam trecentorum electorum hominum, quali numero olim Senatus Romanorum regebatur, ipsa statuta edita sunt. Festus. Fortescue c. 18. fol. 40.

Erant autem Senatores majorum gentium, & Senatores minorum gentium, ex patriciis & nobilibus electi, hii ex populo. Cicero lib. 1. Epist. famil.

And it is observed, that when there is best appearance, there is the best success in Parliament. At the Parliament holden in the seventh year of the reign of H. 5. holden before the Duke of Bedford Guardian of England, of the Lords Spiritual and Temporal there appeared but thirty in all; at which Parliament Rot. Parl. 7 H. 5.

true, that of ancient time in judgments at the Common Law, in cases of difficulties either criminal, or civil, the reasons and causes of the judgment were set down in the Record, and so it continued in the reigns of E. 1. and most part of E. 2. and then there was no need of Reports; but in the reign of E. 3. (when the Law was in his height) the causes and reasons of judgments, in respect of the multitude of them, are not set down in the Record, but then the great Casuists and Reporters of Cases (certain grave and sad men) published the Cases, and the reasons and causes of the Judgments or resolutions, which from the beginning of the reign of E. 3. and since, we have in print. But these also, though of great credit, and excellent use in their kind, yet far underneath the Authority of the Parliament Rolls, reporting the Acts, Judgments and resolutions of that Highest Court.

22 E. 4. 18. per Husley. Rot. Parl. 19 E. 1. Rot. 12. Margery Weylands Case.

Nota quia optime, &c.

The Summons of Parliament.

The King de advisamento concilii, (for so be the words of the Writ of Parliament) resolving to have a Parliament, doth out of the Court of Chancery send out Writs of Summons at the least forty days before the Parliament begin: Every Lord of Parliament, either Spiritual, as Archbishops and Bishops, or Temporal, as Dukes, Marquesses, Earls, Viscounts and Barons, Pars of the Realm, and Lords of Parliament, ought to have several Writs of Summons.

Prov. 13. 16. Sapiens omnia agit cum consilio. Vide infra.

These Writs of Summons you shall find in former times in the Close Roll, for they are not in the Register; and in that Roll are the Writs *de expensis Militum, Civium & Burgensium, & Procuratorum Cleri*, and these are in the Register also.

Temporal Assistants.

And all the Judges of the Realm, Barons of the Exchequer, of the Coif, the Kings learned Council, * and the Civilians Masters of the Chancery, are called to give their assistance and attendance in the upper House of Parliament, but they have no voices in Parliament; and their Writs differ from the Writs to the Barons: for their Writs be, Quod interfitis nobiscum & cum cæteris de concilio nostro (and sometimes nobiscum only) super præmissis tractaturi, vestrumque consilium impensuri; but the Writ to the Barons is, Quod interfitis cum prælatis, magnatibus & proceribus super dictis negotiis tractaturi, vestrumque consilium impensuri.

* Regist. 261. F.N.B. 229. a. ib. called Attendants.

Spiritual Assistants. Procuratores Cleri.

And in every Writ of Summons to the Bishops, there is a clause requiring them to summon these persons to appear personally at the Parliament, which is in these words; Præmonientes Decanum & Capitulum Ecclesiæ vestræ Norvicensis, ac Archidiaconos totumque clerum vestræ Diocef. quod idem Decani & Archidiaconi in propriis personis suis, ac dictum Capitulum per unum, idemque clerus per duos procuratores idoneos plenam & sufficientem potestatem ab ipsis capitulo & clero divisim habentes prædict. die & loco personaliter interfint ad consentiendum his quæ tunc ibidem de communi consilio dicti regni nostri divina favente clementia contigerit ordinari: And the Bishop under his Seal make Certificate accordingly. And these are called Procuratores Cleri, and many times have appeared in Parliament as Spiritual Assistants, to consider, consult and consent, ut supra, but had never voices there, because they were no Lords of Parliament. Some have thought, that because the Clergy were not party to the election of the Knights, Citizens, and Burgesses, that these Procuratores Cleri were appointed to give their consent for them, but then they should have had voices, which questionless they never had. And by the words of the Writ it was to consent to those things which by the Common Council of the Realm should happen to be ordained, so as their consent was only to such things as were ordained de Communi Concilio Regni, and that there might be an Act of Parliament without them: and in many cases multitudes are bound by Acts of Parliament, which are not parties to the elections of Knights, Citizens, and Burgesses, as all they that have no freehold,

Mod. tenend. Parl. cap. 2. Rot. Claus. 8 E. 2. m. 15. dors. Ib. 5 E. 2. m. 15. Ib. 11 E. 3. part. 1. m. 1. Ib. 22 E. 3. part. 2. m. 3. Ib. 36 E. 3. m. 16. Rot. Parl. 18 E. 3. nu. 1. 3 R. 2. 11 R. 2. 21 R. 2. Procuratores Cleri. Reg. 261. a. F.N.B. 229. a. Procuratores de Clero. In fascicul. literarum procurat. &c. 13 H. 4. & 5 H. 5. See hereafter tit. Proxies.

freehold, or have freehold in Ancient demesne, and all women having freehold or no freehold, and men within the age of one and twenty years, &c. And it appeareth by the Treatise De modo tenendi Parliamentum, &c. that the Prelates of the Clergy should appear, cum præsentia eorum sit necessaria (which proveth that they were voiceless Assistants only) and having no voices, and so many learned Bishops having voices, their presence is not now holden necessary.

It is to be observed, that in the Writs of Parliaments to the Bishops, (being Lords Ecclesiastical secular) they are named by their Christian names, and name of their Office; as, Rex, &c. Reverendissimo in Christo Patri Johanni eadem gratia Archiepiscopo Cantuar. or, Rex, &c. Reverendo in Christo Patri Johanni Episcopo Norwicens. &c. But if the Sirname be added it makes not the Writ vicious. 12 E. 3. brev. 480. 31 E. 3. brev. 342. 32 E. 3. brev. 291 7 H. 6. 27. 21 E. 4. 15.

But the Abbots and Priors being Lords of Parliament, religious and regular, might be named by the name of their Office only; as, Rex dilecto sibi in Christo Abbati Sancti Edmondi de Bury, &c. For these regular Lords of Parliament, and when they ceased, see hereafter pag.

A Duke, a Marquess, an Earl, and Viscount, are regularly named by their Christian names, and the names of their dignities, and rarely (yet sometimes) by their Sirnames; nor are they named by their Knighthood, if they have any, but rarely. If a Baron be a Knight, he is regularly named by his Christian name, Sirname, and by Miles, or Chivalier, and his Barony. If he be no Knight, then he is named by his Christian name, and the name of his Barony; but if the Sirname be added, it maketh not the Writ vicious. And this holdeth as well where the Baron taketh his dignity of a place, as where he taketh it of his Sirname; but where the Sirname is dignified, there to make a formal Writ, it is good to add the place of his Barony. 7 E. 4. brev. 163. 7 H. 6. 29. 11 E. 3. brev. 473.

Of ancient time the Temporal Lords of Parliament were commanded by the Kings Writ to appear, In fide & homagio, quibus nobis tenemini; and in the reign of E. 3. in fide & ligeancia, and sometime in fide & homagio; but at this day constantly in fide & ligeancia, because at this day there are no feodal Baronies, in respect whereof homage is to be done, which in 21 E. 3. was the true cause of this alteration.

The Ecclesiastical Barons secular or regular, were commanded by the Kings Writ to be present, in fide & dilectione, quibus nobis tenemini, as the Bishops are at this day.

We find in the Rolls of Parliament a Writ in Anno 23 R. 2. and successively in every Parliament, until and in the fifth year of H. 6. amongst the Barons that came to the Parliament, it is said Magistro Thomæ de la Ware, and some say that the addition of Magister, was to distinguish him from them that were Knights: as in the Roll of 1 E. 4. amongst the Barons it is said, Johanni de Audely armigero, for that the rest of the Barons (saving himself) and the Lord Clynton, were Chivaliers. And others do hold that he was of the Clergy before the dignity descended to him, and in that respect he was called Magister.

In the Roll of 5 H. 5. and in many succeeding Rolls, we find Baro applied to the Lord of Greystock, as, Radulpho Baroni de Greystock, and Johanni Baroni de Greystock, and to few other.

In many Rolls we find the Barons that were Knights, named Chivaliers, wherein we observed, that they liked to be called Chivaliers rather then Milites after the legal word, (for Eques auratus is not used in Law.) For example, In anno 1 E. 4 Edmundo Grey de Ruthin Chivalier, &c. and under subscribed thus, Milites omnes, exceptis Johanne de Audely armigero, & Johanne domino de Clynton. And in 3 E. 4. all the Barons (saving the Lord Scales) have the additions of Chivaliers, and subscribed thus, Equites aurati omnes præter dominum Scales. And in 3 E. 4. all the Barons have the addition of Chivaliers, and therefore subscribed thus, Equites aurati omnes. Whereby and by many others it appeareth, that the Barons if they were Knights, were so named; and that they were not named Chivaliers unless they were Knights. But in the reign of H. 8. 11 E. 3. tit. brev. 473.

and

and ſince, Barons are named Chivaliers in the Writ of Summons, though they be no Knights.

De Baneretto, & unde.

Baner legally Banerium, vexillum, Banerher: unde Banerherius or Banerius, i. Baro, vexillarius major, & Banerettus a diminitive of Banerius, vexillarius minor. A Baron is called Banerherius, or Banerius, of the Baner, (being the Enſign of his honour) ſerveth for a guide and direction: ſo the Baron obſerving the end of his Nobility, ſhould be an example and guide to others as well in War as in Peace, in all notable habilities and vertues, and ſo of the Baneret: both the Baron and the Baneret hath one kind of Baner; for the Baneret is created in the field in the Kings Hoſt, and (amongſt other things) by cutting the ſharp point of his Pennon, and making it a Baner, *i.* Vexillum Baronis: ſo as the Baneret hath the Baner, but not the dignity of the Baron. And this doth notably appear by the caſe in 22 E. 3. the very words of which reſolution I will firſt ſet down, and then the effect; Un fuit challenge pur ceo que il fuit a Baner, & non allocatur: car ſil fuit a Baner, & ne tient per Barony, il ſerra in Aſſiſe. That is, one was challenged becauſe he had the Baner and was a Baneret, & non allocatur by the rule of the Court, becauſe albeit he had the Baner, yet ne tient per Barony, that is, he was no Baron of Parliament.

22 E. 3. 18. tit. Challenge, 119.

Nota ſeriem temporis, John Coupland a valiant Leader in Anno 20 E. 3 near Durham, at Nevils Caſtle, took in aperto prælio, David the ſecond, King of Scots; for which King E. 3. created him Knight Baneret, and gave him Lands and Livings, and in 22 E. 3. the caſe in Law fell out.

For this Order of Knighthood ſee Cambdens Britannia 124. and for this caſe of Sir John Coupland, Cambden in Linc. pag. 618. See 35 H. 6. fol. 46. There the challenge was, that he was a Baneret a Lord of Parliament. See 48 E. 3. 30. 48 Aſſ. pl. ultimo. Lib. 6. fol. 55. But Sir John Coupland was not the firſt Baneret that England had, as * ſome have thought, and was with us before the reign of E. 3. for in Pelle exitus anno 8 E. 2. in Scaccario, Johannes de Cromlewele Banerettus. And ex compoto Garderobæ anno 9 E. 2. Nicholaus de Gray was declared by Writ of E. 2. to be de familia regis tanquam Banerettus, both for his precedency and ſalary.

* Speed. See hereafter pag.

For ſummoning of the Commons a Writ goeth out to the Lord Warden of the Cinque Ports, for the election of the Barons of the ſame, who in Law are Burgeſſes; and to every Sheriff of 52 Counties in England and Wales for the choice and election of Knights, Citizens, and Burgeſſes within every of their Counties reſpectively.

The beginning of the Parliament.

At the return of the Writs the Parliament cannot begin but by the Royal preſence of the King, either in perſon or by repreſentation. By repreſentation two ways, either by a Guardian of England by Letters Patents under the Great Seal, when the King is in remotis out of the Realm; or by Commiſſion under the Great Seal of England to certain Lords of Parliament repreſenting the perſon of the King, he being within the Realm, in reſpect of ſome infirmity.

Rot. Parl. 3 H. 6. nu. 1. H. 6. ſate in Parliament when he was 3 or 4 years old, and ſo did he in the 6 and 8 years of his reign.

The Royal Perſon repreſented two ways.

[a] The Patent of the Office of a Guardian of England reciteth his ſpeedy going beyond Sea, or in remotis, or urgent occaſions and the cauſe thereof. Nos quòd pax noſtra tam in noſtra abſentia quam præſentia inviolabiliter obſervetur, & quòd fiat communis juſtitia ſingulis conquerentibus in ſuis actionibus & querelis, de fidelitate dilecti & fidelis noſtri Edwardi Ducis Cornubiæ, & Comitis Ceſtriæ, filii noſtri primogeniti plenarie confidentes, conſtituimus ipſum cuſtodem dicti regni noſtri ac locum noſtrum tenent' in eodem regno quamdiu in dictis tranſmarinis partibus moram fecerimus, vel donec inde aliud duxerimus; (And this is that capitalis Juſticiarius mentioned in Mag. Carta cap. 11. when the King is extra regnum) with a clauſe of aſſiſtance. But yet if any Parliament is to be holden, there muſt be a ſpecial Commiſſion to the Guardian, to begin the Parliament, and to proceed therein; but the Teſte of the Writ of Summons ſhall be in the Guardians name.

[a] Rot. Par. An. 24 E. 3. m. 18. The Patent of the Guardianſhip. See Rot. Parl. 25 E. 3. nu. 10.

A

A Parliament was holden in quinti quinto, viz. anno 5 H. 5. before John Duke of Bedford, brother and Lieutenant to the King, and Gardien of England, and was ſummoned under the Teſte of the Gardien or Lieutenant. [* It is enacted, that if the King being beyond the ſeas, cauſe to ſummon a Parliament in this Realm, by his Writ under the Teſte of his Lieutenant: and after ſuch ſummons of Parliament gone out of the Chancery, the King arriveth in this Realm: that for ſuch arrival of the ſame King ſuch Parliament ſhall not be diſſolved, but the Parliament ſhall proceed without new ſummons.]

Rot. Parl. 5 H. 5. nu. 1.

* 8 H. 5. cap. 1. in print. *Nota, Quia in præſentia majoris ceſſat poteſtas minoris.* And the Letters Patents of this office is with a *quamdiu in partibus tranſmarinis moram fecerimus, &c. ut ſup.*

[a] In 3 E. 4. a Parliament was begun in the preſence of the King and prorogued until a further day: and then William Archbiſhop of York the Kings Commiſſary by Letters Patents held the ſame Parliament and adiourned the ſame, &c. The cauſe of the ſaid prorogation was, for that the King was enforced to go in perſon to Glocеſterſhire to repreſſe a rebellion there.

Rot. Parl. 3 E. 4. [a] Rot. 1. 13, 14 Like Letters Patents to the Earl of Warw. in the ſame Parliament nu. 15.

As hath been ſaid, the Kings perſon may be repreſented by Commiſſion under the great Seal to certain Lords of Parliament authorizing them to begin the Parliament, and both the Gardien and ſuch Commiſſioners do ſit on a form placed near to the degrees that go up to the Cloath of Eſtate.

And in 28 Eliz. the Queen by her Commiſſion under the Great Seal bearing date the 28 of October anno 28, reciting that ſhe for urgent occaſions could not be preſent in her Royal perſon did authorize John Whitgift Archbiſhop of Canterbury, William Baron of Burghley Lord Treaſurer of England, and Henry Earl of Derby Lord Steward of the Houſhold then being, Ad inchoandum, &c. tenendum, &c. & ad procedendum, &c. & ad faciend. omnia & ſingula, &c. nec non ad Parliamentum adjornandum & prorogandum, &c. which Commiſſion is entred in hæc verba in the Journal Book in the Lords Houſe, and in the upper part of the page above the beginning of the Commiſſion is written Domina Regina repræſentatur per Commiſſionarios, viz. &c. The 29 day of October, the ſaid Commiſſioners ſitting on a form before the Cloath of Eſtate after the Commiſſion read, adiourned the Parliament until the 15 of February following, &c. And this Parliament began the 29 of October, and not the 15 of February, wherein the printed Book is miſtaken, for then the Parliament begun, and was prorogued.

See an excellent preſident hereof, Rot. clauſ. Anno 8 E. 2. 7. Sept. m. 26. & 1 pars pat. An. 8 E. 2. m. 26. with a commandment of attendance. Simile 10 E. 2. 2 part. pat. m. 20. 13 E. 3. nu. 1. ſtat. 2. in abſentia Gardiani Angliæ.

Thus much ſhall ſuffice, when the Kings perſon ſhall be repreſented.

But when the Parliament ſhall not begin at the day of the return, but for certain urgent cauſes then to be prorogued until another day, and then to be holden before the King, there is a ready way for the effecting thereof, and that is by Writ Patent under the whole Great Seal, reciting the Writ of Summons, and to bear Teſte before the return thereof, and ſigned above with the Kings ſign Manual, and directed Prælatis, magnatibus, proceribus hujus regni, ac militibus, civibus, & burgenſibus convocatis & electis ad hoc Parliamentum pro quibuſdam cauſis & conſiderationibus, &c. to prorogue the Parliament to a certain day, and at the return of the Summons, this Writ being read in the Upper Houſe before certain of the Lords of Parliament, and of the Commons there aſſembled, and prorogation made accordingly, the Parliament is prorogued: And this was ſo done in Anno 1 Eliz. the return of the Summons of Parliament being the 9 of October and by ſuch a Writ it was prorogued until the 25 of February following, at what time in judgment of Law the Parliament did begin, and was holden, and not on the 9 of October as it was adjudged. A like prorogation was made by the Queens like Writ of the Parliament holden Anno 5 Eliz. at both which days of prorogation, the Parliament did hold before the Queen her ſelf, untill the diſſolution of the ſame, which Writs are entred in hæc verba in the Journal Book.

Prorogued by Writ Patent.

Dier. 3 El. 203. a. And herein the printed book of ſtatutes erreth, for here the Parliament begun not.

What is to be done the firſt day of the Parliament.

On the firſt day of the Parliament, the King, or moſt commonly the Lord Chancellour or Keeper of the Great Seal, in the preſence of the Lords and Commons, do ſhew the cauſes of the calling of his High Court of Parliament, but the

22 E.3. Sir *William Thorpe* Chief Justice. [a] 17 E.3. nu. 7, 8. Sir *Bart. de Burgherst.* 25 E.3. nu. 16. 27 E.3. nu. 2. 28 E.3. nu. 1. 29 E.3. nu. 8. Sir *William Sharshull* Chief Justice. 45 E.3. nu. 8. Sir *Robert Thorpe* Chief Justice. 47 E.3. nu. 2. Sir *Jo. Knivet* Chief Justice. 50 E.3. nu. 2. Sir *Jo. Knivet* Chief Justice. 51 E.3. nu. 13. by Sir *Robert Ashton* the Kings Chamberlain. [b] Parl. 36 E.3. nu. 1. *Simon Langham* B. of Ely Chancellor. [c] And so was it done ever after. 5 R.2. nu 2. The causes of Parliament were in ancient time shewed in the Chamber de peint, or St. Edwards Chamber. [d] Parlia. 27 E.3. nu. 2.

King may appoint any other: as many times, the Chief Justice of England, and sometimes [a] some other, as may appear in the Parliament Rols, only one I will transcribe.

[b] At this day Sir Henry Green the Kings Chief Justice (although the Lord Chancellor were present) in the presence of the King, the Lords and Commons, declared the causes of the Parliament [c] in English, viz. for redresse of matters touching the Church, for observation of the peace, for the affairs of Scotland, for the inhancing of the price of Woll, &c. [d] But at the next meeting Simon Langham Bishop of Ely shewed the causes of Parliament, and in the end, he did in the Kings name require the Commons to make choice of a learned and discreet man to be their Speaker: and when a Bishop was Lord Chancellor, he took a Text of Scripture which he repeated in Latine, and discoursed upon the same. But when a Judge was Lord Chancellor, he took no text, but in manner of an Oration shewed summarily the causes of the Parliament.

The Election of the Speaker.

It is true the Commons are to chuse their Speaker: but seeing that after their choise the King may refuse him, for avoiding of expence of time and contestation, the use is (as in the Conge de eslier of a Bishop) that the King doth name a discreet and learned man whom the Commons elect: but without their election no Speaker can be appointed for them, because he is their mouth, and trusted by them, and so necessary, as the House of Commons cannot sit without him: and therefore a grievous sickness is a good cause to remove him, as in 1 H.4. John Chenye Speaker chosen and allowed, was for sickness, so as he could not serve, discharged, and Sir John Doreward chosen in his place: and so was William Sturton, after he was chosen and allowed Speaker, removed for grievous sickness, and Sir John Doreward chosen in his place. At the Paraliament holden in 15 H 6. Sir John Tirrell Knight was chosen and allowed Speaker, and for grievous sickness removed, and William Beerly Esq; chosen in his place, &c.

Sickness cause to remove the Speaker. 1 H.4. nu. 62, 63. Rot. Parl. 1 H.5. nu. 9, 10, 11. Rot. Parl. 15 H.6. nu. 10. & 27.

But sickness is no cause to remove any Knight, Citizen or Burgesse of the House of Commons: So note a diversity between the Speaker, and any other of the House of Commons; and this diversity being not observed begat an error by some opinion in 38 H. 8. tit. Parliament Brook 7. for continual experience is to the contrary.

Sickness no cause to remove a Member of the House of Commons. 38 H.8. Parl. Br. 7.

The Presentment of the Speaker.

When the Commons have chosen their Speaker, the person elected standing in his place disabling himself to undergo so weighty a charge, as in his discretion he thinks fit, desires them to proceed to a new choise: which being denied, and he set in the Chair, then he prayeth them to give him leave, that he may disable himself to the King: after this they present him to the King in the Lords House; where after he hath disabled himself to speak before the King, and for the whole body of the Realm, and made humble suit to the King, lest by his insufficiency the busines of the Realm may be hindred, to be discharged, and a more sufficient man to be chosen: if he be allowed by his Majesty, then he maketh a Protestation consisting on three parts: First, that the Commons in this Parliament may have free speech, as of right and by custome they have used, and all their ancient and just privileges and liberties allowed to them. Secondly, that in any thing he shall deliver in the name of the Commons (if he shall commit any errour) no fault may be arrected to the Commons, and that he may resort again to the Commons for declaration of their true intent, and that his errour may be pardoned. The third is, that as often as necessity for his Majesties service, and the good of the common-wealth shall require, he may by the direction of the House of Commons have accesse to his Royal Person.

What the Speaker shall do when he is chosen.

The King may allow of his excuse, & disallow him, as Sir *John Popham* was. 28 H.6. nu.6. *The Protestation of the Speaker.*

This

This is in the Parliament Rolls called a Protestation in respect of the first part, the nature whereof is to be an exclusion of a conclusion, and herein that the House of Commons be not concluded to speak only of those things which the King or Lord Chancellor, &c. hath delivered to them to be the causes of the calling of this Court of Parliament, but in a Parliamentary course of all other arduous and urgent business, which principally consist in these five Branches, as it appeareth in the Writs of Summons to the Lords Spirituall and Temporal. viz.

Rot. Par. 1 R. 2. nu. 15. &c. Rot. Parl. 2 H. 4. nu. 8. Sir *Arnold Savage* Speaker. 5 H. 4. n. 8. 7 H. 4. nu. 11. Sir *John Tiberft* Speaker. &

ibid. nu. 30. 1 H. 5. nu. 7. 2 H. 5. nu. 10. And so in succeeding times called a Protestation.

The Matters of Parliament.

1. Touching the King. 2. The state of the Kingdome of England. 3. The defence of the Kingdome. 4. * The state of the Church of England: and 5. The defence of the same Church. And this appeareth by expresse words in the Parliament Writ in these words: Pro quibusdam arduis & urgentibus negotiis, nos, statum, & defensionem regni nostri Angliæ, & Ecclesiæ Anglicanæ concernentibus quoddam Parliamentum nostrum, &c. teneri ordinavimus, &c. And these words [the state and defence of the Kingdome] are large words, and include the rest. And though the state and defence of the Church of England be last named in the Writ, yet is it first in intention, as it appeareth by the title of every Parliament: As for example, [a] To the honour of God and of holy Church, and quietnesse of the people, &c.

Rot. Parl. 9 H. 4. An Act intituled *Indemnity des Seigniors & Commons*, not printed.

*See W. 1. Anno 3 E. 1. in the Preamble, the state of the Realm, and of holy Church. And the 2. part of the Institutes, W. 1. cap. 1. & in the preamble.

[a] 36 E. 3. 50 E. 3. &c.

Now for as much as divers lawes and statutes have been enacted and provided for these ends aforesaid, and that divers mischiefs in particular, and divers grievances in general concerning the honour and safety of the King, the state and defence of the Kingdome and of the Church of England might be prevented, an excellent law was made Anno 36 E. 3. which being applied to the said Writs of Parliament doth in few and effectual words set down the true subject of a Parliament in these words. For the maintenance of the said Articles and Statutes, and redresse of divers mischiefs and grievances which daily happen, a Parliament shall be holden every year, as another time was ordained by a * Stature.

36 E. 3. cap. 10. Parliaments ought to be holden once in a year.

* 4 E. 3. cap. 14. Inc. leges Edgar cap. 5.

Before the Conquest Parliaments were to be holden twice every year, Celeberrimus autem ex omni satrapia bis quotannis Conventus agitur. King E. 1. kept a Parliament once every two year for the most part, and now it is enacted, that a Parliament shall be holden once every year.

The Romans vanquished our Ancestors the ancient Britains, for that they assembled not, they consulted not in common with them, nor Common Councels, as Tacitus in vita Agricolæ saith. Nec aliud adversus validissimas gentes pro nobis utilius, quam quod in * commune non consulunt. Rarus ad propulsandum commune periculum conventus: Ita dum singuli pugnant, universi vincuntur. But to return to the matters of Parliament.

Tacitus in vita Agricolæ, pag. 306.

* Nota, Commune consilium. Conventus.

And it is enacted and declared by Authority of Parliament in Anno 4 H. 8. That all suits, accusements, condemnations, executions, fines, amerciaments, punishments, corrections, charges, and impositions at any time from thenceforth to be put, or had upon any member, either of that present Parliament, or at any Parliament at any time after that Act to be holden, for any Bill, * speaking, reasoning, or declaring of any matter or matters concerning the Parliament, to be communed, or treated of, be utterly void and of none effect. Which latter branch is generall. Now what matter or matters concern the Parliament appear before. And this clause of the Act of 4 H. 8. is declaratory of the ancient law and custome of the Parliament.

4 H. 8. c. 8.

* Neque timida probitas, neque improba fortitudo Reipublicæ est utilis.

And this doth not only appear by the Writs directed to the Lords of Parliament, but by the Writs for election of the Commons. For example; The Writ to the Sheriffe of Norfolk for election of the Knights, Citizens, and Burgesses within that County is, Rex Vicecomiti Norff. Salutem. Quia nos de avisamento & assensu concilii nostri pro quibusdam arduis & urgentibus negotiis, nos, statum, & defensionem regni nostri Angliæ, & Ecclesiæ Anglicanæ concernentibus quoddam

The like Writ to all the other Counties, saving in Wales they have but one Knight and one Burgesse.

dam Parliamentum noſtrum apud, &c. teneri ordinaverimus, & ibidem cum Prælatis, magnatibus, & proceribus dicti Regni noſtri colloquium habere & tractatum: ipſi Vicecom. Norff. præcipimus firmiter injungend. quod facta proclamatione in proximo comitatu tuo poſt receptionem ejuſdem brevis, duos milites gladiis cinctos, &c. eligi faceret, &c. [a] ad faciendum & conſentiendum hiis quæ tunc ibidem de communi concilio noſtro Angliæ (favente Deo) contingerent ordinari [b] ſuper negotiis antedictis, ita quòd pro defectu poteſtatis hujuſmodi, ſeu propter improvidam electionem Militum, Civium & Burgenſium prædict' dicta negotia noſtra infecta non remanerent quoviſmodo. And this power extendeth equally to all Knights, Citizens, and Burgeſſes of Parliament.

[a] *Nota, ad faciendum & conſentiendum.* And every City two Citizens, and out of every Burgh two Burgeſſes.

[b] *Nota, ſuper negotiis antedictis.*

What the Speaker ſhall do after his allowance.

After the Commons with their Speaker are come from the Lords houſe, and that the Speaker is ſet in the Chair, then he deſireth the Commons, that ſeeing they have choſen him for their mouth, that they would favourably aſſiſt him in their arduous and important affairs: and that he would do them the beſt ſervice he can with all diligence and faithful readineſs, or to the like effect.

The Writs of Summons of Parliament, which are to be found in the Cloſe Roll from time to time.

Seeing the Summons of Parliament (as hath been ſaid) is by the Kings writs, which tend to the beginning of the Parliament, it ſhall be neceſſary to ſpeak ſomewhat of thoſe writs. And it is to be obſerved, that the ſubſtance of thoſe writs ought to continue in their original eſſence without any alteration, or addition, unleſſe it be by Act of Parliament. For * if original writs at the Common law can receive no alteration or addition but by Act of Parliament, à multo fortiori, the writs for the Summons of the higheſt Court of Parliament can receive no alteration, or addition, but by Act of Parliament. Where [c] the writs of Summes iſſued out of the Chancery and were returnable in the Court of Parliament, the return thereof could not be altered, and returnable into the Chancery, but by Act of Parliament. And becauſe the words of the writ for election of Knights, &c. were, [d] duos milites gladiis cinctos, &c. it required an Act of Parliament, that notable Eſquires might be eligible.

Walſingham ſaith, that in Anno Domini 1404. which was anno 6 H. 4. in the writs of the Summons of Parliament, there was added by the King a commandment in the writ, that no Lawyer ſhould be returned Knight or Burgeſſe, (but the Hiſtorian is deceived, for there is no ſuch clauſe in thoſe writs, but it was wrought by the Kings Letters by pretext of an Ordinance in the Lords Houſe, in 46 E 3.) But at the next Parliament in 7 Hen. 4. at the grievous complaint of the Commons, being interrupted of their free election by thoſe letters (which were Letters of Juſtice and right) it is, amongſt other things, enacted, That elections * ſhould be freely, and indifferently made, notwithſtanding any prayer, or commandment to the contrary, i. ſine prece, by any prayer or gift, & ſine præcepto, without commandment of the King by writ, or otherwiſe, or of any other; which was a cloſe, and prudent ſalve, not only for that time, but for all other in like caſe, and it is but an Act declaratory of the ancient law and cuſtome of Parliament.

* Bract. l. 5. f. 413. Britton. 122. 227. Fleta li. 2. ca. 12. W. 2. c. 25. 1 part of the Inſt. Sect. 101. Epiſt. ad librum.

[c] 7 H. 4. ca. 15. not. Parl. 5. R. 2. nu. 1, 2. &c. they be now returned into the Chancery, and kept in the Office of the Clerk of the Crown there.

[d] 23 H. 6. c. 15. Parl. 6 H. 3. This was called *Indoctum Parliamentum*, Lack-learning Parliament. Rot. Par. 46 E. 3. nu. 13. 5 R. 2. c. 4. 7 H. 4. cap. 15. See hereafter more of this matter, in this chapt. pa. and who be eligible, &c.

* Nota. W. 1. ca. 5. 3 E. 1.

Petitions in Parliament.

On the firſt day of the Parliament, after the Commons be departed to chooſe their Speaker, then are certain Juſtices Aſſiſtants, and Civilians Maſters of the Chancery Attendants, viz. four Juſtices, and two Attendants appointed

appointed to be receivers of the Petitions of England, Ireland, Wales, and Scotland, and that those that will deliver their petitions, are to deliver them within six dayes following. At that time there are other Justices and Civilians attendants, viz. three Justices and two Attendants appointed to be receivers of Petitions for Gascoign, and other * places beyond the Seas, and of the Isles, and that they deliver their Petitions within six dayes, &c.

Receivers of Petitions of England, Ireland, Wales, Scotland.

* Gascoign, Guyan, Poyters, Normandy, Anjou, &c.

Then are appointed of the Nobility, Lords of Parliament and Bishops, viz. six of the Nobility, and two Bishops, to be triers of the said Petitions for England, Ireland, Wales, and Scotland; they together, or four of the Prelates and Lords aforesaid, calling to them the Kings learned Counsel, attendants in Parliament when need should be, and to sit in the Chamber of the Treasury. The like appointment of the Nobility and Bishops to be triers of the Petitions for Gascoign, and other places beyond the Seas, and of the Isles, and a place appointed for their sitting, calling to them the Kings learned Counsel when need should be. For petitions to be preferred into the Lords House in Parliament for the Countries and places aforesaid, this was the ancient constant law, and custome of the Parliament continued until this day. Wherein these three things are to be observed; First, the extent of the Jurisdiction of the Parliament of England. Secondly, that for expediting of causes, there should be receivers of all Petitions, both of Judges of the Realm for their knowledge in the Laws of the Realm, and of Civilians attendants, who might prepare and inform the triers, being Lords of Parliament, of the quality of those Petitions. Thirdly, that there should be of the Lords Spiritual and Temporal triers of those Petitions, to try out whether they were reasonable, and good and necessary to be offered and propounded to the Lords.

Triers of Petitions.

Of Petitions in Parliament some be of Right, some of Grace, and some mixt of both; some preferred by the Lords Spiritual, some by the Lords Temporal, some by the Commons, some by the Lords and Commons. Extra Parliamentum nulla petitio est grata, licet necessaria; In Parliamento nulla petitio est ingrata, si necessaria. [a] All Petitions ought to contain convenient certainty and particularity, so as a direct answer may be given to them.

[a] Rot. Parl. 18 E. 1. fol. 3. & 16. 50 E. 3. nu. 125. 66. 81. 17 E. 3. nu. 55, 56. 36 E. 3. nu. 35. 43 E. 3. nu. 19. 45 E. 3. nu. 33. 47 E. 3. nu. 16. 1 R. 2. nu. 132. &c.

[b] Petitions being timely preferred (though very many) have been answered by the law and custome of Parliament before the end of the Parliament. This appeareth by the ancient Treatise, De modo tenendi Parliamentum, &c. in these words faithfully translated in a fair and ancient Manuscript, for Bills and Petitions. The Parliament ought not to be ended while any Petition dependeth undiscussed, or at the least, to which a determinate answer is not made.

[b] Rot. Parl. 17 E. 3. nu. 60. 25 E. 3. nu. 69. 50 E. 3 212. 1 R. 2. 134, &c. 2 R. 2. nu. 38. 1 H. 4. 132. 2 H. 4. 3. 25. 3 H. 4. 113. 25 E. 3. nu. 42. 25 E. 3. nu. 12. 36 E. 3. nu. 31. 50 E. 3. nu. 52.

And in the Parliament Rolls, there is a Title towards the end of the Parliament, The Petition of the Commons, &c. with their answer entred and recorded in the Roll of Parliament. [c] And one of the principal ends of calling of Parliaments, is for the redresse of the mischiefs and grievances that daily happen. * Innovations and Novelties (sometimes tearmed in Rolls of Parliament Novelties) in Parliamentary proceedings are most dangerous, and to be refused. [d] And sometime the King doth answer the Petition of the Commons by the assent of the Prelats, Counts, Barons, and Commons themselves: such unity hath been for the common good in Parliaments in former times.

[c] 36 E. 3. c. 10. 18 E. 3. ca. 1. 4. 50 E. 3. nu. 17. Lions case. Rot. Parl. 1 H. 5. nu. 17. 13 H. 4. nu. 9. 11 H. 4. c. 9.

* Innovations & Novelties.

[d] 36 E. 3. Rot. 29, &c.

Appointment of Committees of Grievances, &c.

The Commons being the general Inquisitors of the Realm, have principal care in the beginning of the Parliament to appoint days of Committees, viz. of grievances (both in the [e] Church and Common-wealth) of Courts of Justice, of priviledges and of advancement of Trade. These Committees when they meet, they elect one of them to sit in the Chair in likeness of the Speaker:

[e] Bracton. Gravius est æternam quam temporalem lædere majestatem. And it appeareth by the statute of 36 E. 3. cap. 10. That it is one of the principal ends of the Parliament, to redresse grievances. And the words of the Writ of Parliament be *De arduis & urgentibus negotiis, statum & defensionem Ecclesiæ Anglicanæ concernentibus.*

the

the Committee may examine and vote the questions handled by them, and by one, whom they appoint, report their resolution to the House, and the House, sitting the Speaker, to determine the same by question.

Absents, Proxies.

21 E. 4. 50. The ancient Record, *De modo tenend. Parl. &c. vers. finem, optime.*

Any Lord of the Parliament by license of the King upon just cause to be absent, may make a Proxy: and in the bundle of Proxies Anno 5 H. 5. it appeareth, that in those days a Spiritual Lord of Parliament might have made his Proxie to the Procurators of the Clergy, or to any other Clerk, but at this day he cannot make it but to a Lord of Parliament: but a Knight, Citizen, or Burgess of the House of Commons cannot by any means make any Proxy, because he is elected and trusted by multitudes of people.

Of the ancient Treatise called Modus tenendi Parliamentum.

See the second part of the Inst. Mag. Carta c. 2. pag. 7. 8. See the first part of the Institutes Sect. 164. f. 110. See the 2. part Inst. pa. 8. the Charter of King H. 1. at his Coronation having relation to *Modus tenendi Parl.* See also the Charter of K. Jo. anno 17 Matth. Par. 246. *per antiquum relevium*, viz. *hæres comitis pro comite integro*, 100 l. *hæres Baronis pro Baronia integra*, 100 *marc. & hæres militis de feodo militis integro*, 5. l. See Mag. Carc. cap. 2. * It is justly called *antiquum relevium*, because it is according to the proportion of this ancient Modus.

Now for Antiquity and Authority of the ancient Treatise called Modus tenendi Parliamentum, &c. whereof we make often use in this part of the Institutes; certain it is, that this Modus was rehearsed and declared before the Conquerour at the time of his Conquest, and by him approved for England, and accordingly to the Conquerour according to Modus held a Parliament for England, as it appeareth in 21 E. 3. fo. 60.

After King H. 2. had conquered Ireland, he fitted and transcribed this Modus into Ireland in a parchment Roll, for the holding of Parliaments there, which no doubt H. 2. did by advice of his Judges, being a matter of so great weight and legall. This Modus in the parchment Roll transcribed as aforesaid by H. 2. remained in Ireland, and in anno 6 H. 4. was in the custody of Sir Christopher Preston Knight, a man of great wisdome and learning, which Roll King H. 4. in the same year, De assensu Johannis Talbot Chivalier his Lieutenant there, and of his Councel of Ireland, exemplified for the better holding of the Parliaments there; and in the exemplification it expressly appeareth that H. 2. did transcribe this Modus, as is abovesaid.

This Modus was seen by the makers of the Statute of Magna Carta, Anno 9 H. 3. cap. 2. concerning the reducing of the * ancient reliefs of entire Earledoms, Baronies, and Knights fees according to such proportions as is contained in the Modus, which they could not have done so punctually, if they had not seen the same, whereof you may read more at large in the First part of the Institutes, Sect. 103. fo. 76. Verbo Relief. And some part of this Modus is cited in the Parliament Roll, Anno 11 R. 2. and other Records of Parliament, and upon diligent search we can find nothing against it. But many very ancient copies you may find of this Modus, one whereof we have seen in the reign of H. 2. which containeth the manner, form and usage Gilbert de Scrogel Marshal of England, in what manner he occupied and used the said room and office in all his time, and how he was admitted, &c. at the Coronation of H. 2. and of his Knight Marshall, and other inferiour officers, &c. and adjoyned thereunto, and of the same hand is this Modus, as fit for him to know.

But lest it may be said to me, as it was once said to an Orator, who having spoken much in commendation of Hercules: It was demanded of one that stood by, Quis vituperavit? Ad quod non fuit responsum. But now let us return to Proxies.

At the Parliament holden An. 1 Eliz.

A Lord of Parliament by license obtained of the Queen to be absent, made a Proxie to three Lords of Parliament, Conjunctim & divisim dans eis protestatem tractandi, tractatibusque auxilium & consilium impendendi, atque statutis & ordinationibus, quæ inact itat' contingerint, consentiendi, ita quod non sit melior conditio occupantis. And one of the Procurators gave consent to a Bill, and the

the two others ſaid, not content. And firſt it was by order of the Lords debated amongſt the Judges and Civilians attendants, and conceived by them that this was no voice, and the opinion was affirmed by all the Lords of Parliament ſeriatim. Another queſtion was moved at that time, that if a Lord of Parliament make a Proxy, and after come into the Lords Houſe of Parliament, and ſit there without arguing, conſenting or ſpeaking any thing: and it was conceived by the Judges and Civilians, that his ſitting there without ſaying any thing was a revocation in law of his Proxy; a Forreign, if he moved, or ſpeak to any matter there propounded, and their opinion was reſolved by the Lords ſeriatim. And theſe were the Proxies of the Biſhop of Bathe, the Lord Howard Chamberlain, and of the Lord Windeſor.

King John in the 13 year of his Reign being in extream fear of both the Pope and the French King, and eſpecially of his own ſubjects (and what is fear, ſaith Solomon, but a betraying of the ſuccours that reaſon offereth?) ſent Ambaſſadours to Admiralius Murmelinus great Emperour of Turky, Sir Thomas Herrington and Sir Ralph Nicholſon Knights, and Sir Robert of London Clerk, Nuncios ſuos ſecretiſſimos, to offer to be of his Religion, and to make his Kingdome Tributary to him, and he and his ſubjects to be his vaſſalls, and to hold his Kingdome of him. But that Infidell great Prince, as a thing unworthy of a King, to deny his Religion, and betray his Kingdome, utterly refuſed to accept. King John in the 14 year (the next year) of his reign by his Charter 15 May, by the threats and perſwaſion of the Popes Commiſſary Pandulphus ſurrendred his Kingdoms of England and Ireland to Pope Innocent the Third, cum communi conſilio Baronum, (as he inſerted therein) and that thence forward he would hold his Crown as feodary to the Pope, paying for both his kingdoms 1000. marks. Whereupon doing homage and fealty to the Pope by the hand of Pandulphus, and taking off the Crown from his head ſurrendred it to the Pope by Pandulphus, at whoſe feet he laid alſo the Royall Enſigns, his Scepter, Sword and Ring; all which was afterward accepted, approved and ratified by the Pope, by his Bull which was called Bulla aurea. Lib. Sap. 17. 12. Mat. Par. p. 233.

Gregorius Papa petiit à Rege E. 1. per literas annuum cenſum 1000 merc. Rex reſpondet ſe ſine prælatis & proceribus regni non poſſe reſpondere, & quòd Jure-jurando in Coronatione ſua fuit aſtrictus, quòd jura regni ſui ſervaret illibata, nec aliquid quod Diadema tangat regni ejuſdem abſque ipſorum requiſitum conſilio faceret. Rot. Cl. An. 3 E. 1. m. 9. in Schedula.

In anno 40 E. 3 the Pope by his Embaſſadour demanded of the King Homage for the Kingdome of England and Land of Ireland, and the arrerages of 1000. marks by the year, granted by King John to Pope Innocent the third and his ſucceſſors, and threatned that if it were not paid, the Pope was reſolved to proceed againſt the King. Whereupon the King in the ſame year calleth his Court of Parliament, and in the beginning of that Parliament (ſaith the Record) Fuit monſtre a les Prelates, Dukes, Counts, Barons, les Chivaliers des Counties, Citizens & Burgeſſes en le preſence le Roy per le Chancelor, coment ils avoient entendue les cauſes del ſummons del Parliament en generall, mes la volunte le Roy fuiſt que les cauſes feuſſent monſtres a eux en eſpeciall: lour diſoit coment le Roy avoit entendue que le Pape per force dun fait quel il dit que le Roy Johan feſoit au Pape de luy faire homage pur le realme D'engleterre & la terre D'irland, & que per cauſe du dit homage qil luy devoroit paier cheſcun an perpetuelment mille marcs, eſt en volunte de fair proces devers le Roy & ſon roialm pur le dit ſervice & cens recoverir; de qoi le Roi pria as dits Prelats, Dukes, Countes & Barons leur avys & bon conſeil, & ce qil enferroit, en caſe que le Pape vorroit proceder devers luy, ou ſon dit roialme per celle cauſe: & les Prelats requeroient au roy quils ſe purroient per eux ſoul aviſer & reſpondre lendemain, queux Prelatz ledit lendemain adeprimes per eux meſmes, & pues les autres Dukes, Counts, Barons & Gentz reſpondirent & diſoient, que le dit Roy Johan ne nul autre purra mettre lui, ne ſon roialme, ne ſon people en Rot. Par. 40 E. 3. nu. 8. An Act never yet printed.

I have thought good to tranſcribe it in propria Idiomate.

en tiele ſubjection ſanz aſſent & accorde deux: & les communes ſur ce demandez & aviſez reſpondirent en meſme le manere; ſur qui feuſt ordeine, & aſſentu per commune aſſent en manere quenſuyt. En ſe preſent Parlement tenuz a Weſtm. Lundy proſchein apres la invention de la Seinte Croice lan du reign le Roy Edward quarantiſme, tant ſur leſtat de Seinte Egliſe, come des droits de ſon roialm & de ſa Corone maintenir, entre autres choſes eſtoient monſtrez coment ad eſte parlee, & dit que le Pape per force dun fait quele il dit que le Roy Johan, jadis Roy Dengleterre feſoit au Pape au perpetuite de luy faire homage pur le Roialme Dengleterre & la terre de Irland, & per cauſe du dite homage de luy rendre un Annuel rent: ad eſte en volunte de faire proceſſe devers le Roy pur les ditz ſervices & ceus recoverit; la quele choſe monſtree as Prelats, Ducs, Countes, Barons, & la commun. pur ent avoir lour avys & bon conſeil, & demandee de eux ce qu le Roy enferra en caſe que le Papa vorroit proceder ou rien attempter devers lui ou ſon roialme per celle cauſe? Queux Prelats, Ducs, Countes, Barons & communes en ſur ce plein deliberation reſponderont & deſoient dune accorde, que le dit Roy Johan ne nul autre purra mettre luy ne ſon roialme ne ſon peoplé en tiel ſubjection ſanz aſſent de eux, & come piert per pluſeurs evidences, que ſi ce feuſt fait, ce feuſt fait ſanz leur aſſent, & encontre ſon ſerement en ſa Coronation: Et outre ce le Ducs, Countes, Barons, Gents & Communes accorderent & granterent que en caſe que le Pape ſe afforceroit ou rien attempteroit per proces, ou en auter manere de fait de conſtreindre le Roy ou ſes ſubjects de per fairce queſt dit q' il voet clamer telle partie qils reſiſtront & conſtre eſterront ove toute leur puiſſance.

This noble and prudent King took the fairest and surest way to give satisfaction, whereof the Pope being certified, the matter ever since hath rested in quiet.

* It is declared by the Lords and Commons in full Parliament, upon demand made of them on the behalf of the King, that they could not assent to any thing in Parliament, that tended to the disherison of the King and his Crown, whereunto they were sworn. See hereafter in the case of Ireland.

No King can put himself nor his Realm, nor his people, in such subjection without assent of the Lords and Commons in Parliament, & therefore if K. John had done it by the Common Councel of his Barons, as his Charter purported, yet it bound not, for that it was not done in Parliament by the King, the Lords and Commons: and albeit it might (as here it appeareth, it cannot be done without Authority of Parliament) yet it is *Contra legem & consuetudinem Parliamenti*, to do such a thing, as by the next Record in 42 E. 3 appeareth.

* Rot. Par. 42 E. 3. nu. 7.

Lex & Conſuetudo Parliamenti.

Lex & conſuetudo Parliamenti.

By the ancient law, and custome of the Parliament a proclamation ought to be made in Westminster in the beginning of the Parliament, that no man upon pain to lose all that he hath, should during the Parliament in London, Westminster, or the Suburbs, &c. wear any privy coat of plate, or go armed, or that games or other playes of men, woman, or children, or any other pastimes or strange shews should be there used during the Parliament: and the reason hereof was, that the High Court of Parliament should not thereby be disturbed, or the members thereof (which are to attend the arduous and urgent business of the Church and Common-wealth) should not be withdrawn.

7 E. 2. *Stat. De defenſione portand. arma.* 2 E. 3. ca. 3. Rot. Par. 6 E. 3. nu. 1. 13 E. 3. nu. 2. 14 E. 3. nu. 2. 15 E. 3. nu. 2. 17 E. 3. nu. 3. 18 E. 3. nu. 2. 20 E. 3. nu. 1. 25 E. 3. ſtat. 1. nu. 58. 25 E. 3. ſtat. 2. nu. 5. &c.

Privy coat or Armour.

Games or plays. Rot. Par. Anno 13 E. 3. n. 5. & 8.

* See hereafter pa.

* It is also the law, and custome of the Parliament, that when any new device is moved on the Kings behalf, in Parliament for his aid, or the like, the Commons may answer that they tender the Kings estate, and are ready to aid the same, only in this new device they dare not agree without conference with their Countries; whereby it appeareth, that such conference is warrantable by the law and custome of Parliament.

And it is to be observed, though one be chosen for one particular County, or Borough, yet when he is returned, and sits in Parliament, he serveth for the whole Realm, for the end of his comming thither, as in the writ of his election appeareth, is general, ad faciendum & conſentiendum his quæ tunc & ibidem de communi conſilio dicti regni noſtri (favente deo) contigerint ordinari ſuper negotiis prædictis. i. pro quibuſdam arduis & urgentibus negotiis nos, ſtatum, & defenſionem regni noſtri Angliæ & Eccleſiæ Anglicanæ concernentibus, which are rehearsed before in the writ.

And as every Court of Justice hath laws and customes for its direction, some by the Common law, some by the civil and Canon law, some by peculiar laws and customes

cuſtoms, &c. So the High Court of Parliament Suis propriis legibus & conſuetudinibus ſubſiſtit. It is * lex & conſuetudo Parliamenti, that all weighty matters in any Parliament moved concerning the Peers of the Realm, or Commons in Parl. aſſembled, ought to be determined, and adjudged, and diſcuſſed by the courſe of the Parl. and not by the civil Law, nor yet by the Common Laws of this Realm uſed in more inferiour Courts; which was ſo declared to be ſecundum legem & conſuetudinem Parl. concerning the Peers of the Realm, by the King and all the Lords Spiritual and Temporal; and the like pari ratione is for the Commons for any thing moved or done in the Houſe of Commons: and the rather, for that by another law and cuſtom of Parliament, the King cannot take notice of any thing ſaid or done in the Houſe of Commons, but by the report of the Houſe of Commons: and every member of the Houſe of Parl. hath a judicial place, and can be no witneſs. And this is the reaſon that Judges ought not to give any opinion of a matter of Parl. becauſe it is not to be decided by the common laws, but ſecundum legem & conſuetudinem Parl. and ſo the Judges in divers Parl. have confeſſed. And ſome hold, that every offence committed in any Court puniſhable by that Court, muſt be puniſhed (proceeding criminally) in the ſame Court, or in ſome higher, and not in any inferiour Court, and the Court of Parliament hath no higher.

Iſta lex ab omnibus eſt quærenda, à multis ignorata, à paucis cognita. Fleta lib. 2. c. 2.

* Ro. Par. 11 R. 2. nu. 7.

See the firſt part of the Inſtitutes. Sect. 3. Verb. *En la ley.*

Rot. Parl. 2 H. 4. nu. 11.

Rot. Par. 3 H. 6. In le Countee de Marſhals caſe.

Rot. Par. 27 H. 6. nu. 18. the Earl of Arundels caſe.

Upon this petition exhibited to the King, wherein the queſtion was, whether the power which he had raiſed was High Treaſon, &c. which petition (ſaith the King) let be delivered to the Juſtices by them to be conſidered. Whereupon the Lords made proteſtation, that the order thereof belonged to them, which was to them allowed, and they reſolved it to be no treaſon.

Rot. Parl. 31 H. 6. nu. 26, 27, 28. Baron Thorps caſe.

And becauſe he had a caſe in 3 E. 3. 19. concerning the law and cuſtom of Parliament, we have thought good to ſet down the Record of that caſe de verbo in verbum, and then to examine the report of the ſaid caſe, and the opinion there delivered, wherein we ſhall deſire the learned to conſider well the ſtatute of 5 R. 2. ſtat. 2. cap. 4. and thereupon to conſider what (as that ſtatute ſpeaketh) hath been done of old times, &c. And how that Act ſaith done, and not ſaid.

5 H. 4 nu. 22. The Earl of Northumberlands caſe.

Vid. Rot. Parl. 9 H. 4. *Indempnity des Seigniors & Commons.*

Paſch. 3 E. 3. coram Rege Ro. 9. in Dorſ. Southt.

Johan. Epiſc. Winton' in miſericordia pro pluribus defaltis. Idem Johan. Epiſc. attachiat' fuit ad reſpondend' Domino Regi, de eo quare cum in Parliamento Regis apud nov' Sarum nuper tent' per ipſum Dom. Regem inhibitum fuiſſet, ne quis ad dictum Parliament' ſummonitus ab eodem recederet ſine licenc' Regis: Idem Epiſc. durante Parliament' præd' ab eodem ſine licencia regis receſſit in regis contemptum manifeſtum, & contra inhibitionem regis ſupradict'. Et unde idem dom. rex per Adam de Fincham, qui ſequitur pro eo, dicit, quod præd. Johan. Epiſc' fecit ei tranſgr. & contempt. præd. &c. in contempt. regis mille librarum. Et hoc offeret verificare pro Dom. rege, &c.

Nota, that this was by Writ Original.

The Declaration.

*Et præd. Epiſcopus in propria perſona ſua venit, & defendit omnem contempt. & tranſgr' & quicquid, &c. & dicit, quod ipſe eſt unus de paribus regni, & Præl. ſacr' Eccleſ. & eis ineſt venire ad Parl. dom. regis per ſummonitionem & pro voluntate ipſius dom. regis cum ſibi placuerit, * Et dicit, quod ſi quis eorum deliquerit erga dom. regem in Parliament' aliquo, in Parl' debet corrigi & emendari, & non alibi in minor. cur' quam in Parl. per quod non intendit, quod dom. rex velit in cur' hic*

The Plea of the Biſhop to the juriſdiction of the Court.

* Nota hoc.

de hujuſmodi tranſgr. & contempt. factis in Parl. reſponderi, &c. Et ſuper hoc datus eſt eis dies coram Rege à die Sanctæ Trin. in quindecim dies ubicunque &c. ſalvis rationibus. Ad quem diem præd. Epiſc. venit in propria perſona ſua, & datus eſt ei dies coram Dom. Rege à die Sancti Mich. in 15 dies ubicunque &c. in eodem ſtatu quo nunc &c. ſalvis rationibus ſuis, &c. Ad quem diem venit præd. Adam qui ſequitur, &c. Et ſimiliter præd. Epiſc. in propria perſona ſua. Et præd. Adam pro præd. Dom. Rege dicit, quod cum placeat ei Parliament. ſuum tenere pro utilitate regni ſui de regali poteſtate ſua facit illud ſummoneri ubi & quando, &c. pro volunt. ſua, & etiam facit prohiberi exiſtent. tunc ad Parliamentum, ne quis eorum abinde recedat contra prohibitionem ſuam, &c. abſque licenc', &c. Et ſi quis eorum abinde recedat contra prohibitionem, &c. in contempt regis &c. bene liceat ipſi Dom. Regi ſumere ſectam erga hujuſmodi delinquentes in qua curia placeat ſibi, &c. Et ex quo Dom. Rex pro voluntate ſua Parliamenta ſua tenet, &c. petit judicium pro ipſo dom. rege, ſi idem dom. rex duci debeat, ſeu compelli ad proſequend' in hac parte alibi contra voluntatem ſuam, &c.

This is the Allegation of the Kings Attorny.

Et prædictus Epiſcopus dicit ut prius, quod cum aliquis deliquerit in Parl. ibidem debet corrigi & emendari, &c. & licet aliquis ſummonitus eſſet veniendi ad Parliamentum, & non veniſſet ibidem, debet puniri, per quod non intendit, quod dom' rex velit alibi reſponderi quam in Parliam. &c. Et ſuper hoc datus eſt eis dies uſque in Cra. Animarum ubicunque, &c. in eodem ſtatu quo nunc &c. Ad quem diem venit tam præd. Adam, qui ſequitur pro dom. rege quam præd. Epiſc. in propria perſona ſua. Et datus eſt eis dies coram dom. rege in Oct. Sancti Hilar. ubicunque, &c. ſalvis rationibus ſuis &c. Ad quem diem præd. Epiſcopus venit, & datus eſt ei dies ulterius coram dom. rege in Octab. Pur. beatæ Mariæ ubicunque &c. Ad quem diem venit tam præd. Epiſc. quam Johannes de Lincoln' qui ſequitur pro dom. rege, & datus eſt eis dies ulterius coram dom. rege à die Paſchæ in quinque ſeptimanas ubicunque, &c. Salvis rationibus, &c. Ad quem diem venit tam præd. Epiſc. in propria perſona ſua, quam præd. Johannes de Lincoln' qui ſequitur pro dicto dom. reg. &c. Et datus eſt eis dies ulterius à die Sancti Michaelis in 15 dies ubicunque &c. ſalvis ſibi rationibus ſuis hinc in dicend', &c.

The B. maintains his former plea to the juriſdiction.

And

And this is all that is in the Record, whereby it appeareth that the plea of the Bishop to the Jurisdiction of the Court after divers days given, did stand, and was never over-ruled agreeable to the said resolutions in former times, that Judges were not to determine matters concerning the Parliament, as is aforesaid. Touching the report of the said case, thus far forth it agreeth, that this contempt cannot be punished in any other Court than in the Kings Bench: so as the question is onely for that Court. It appeareth that the reporter never saw the said Record, onely took it by the ear of that which was spoken in Court (a dangerous kind of reporting, and subject to many mistakings, for seldom or never the right case is put) as in this case it fell out. For first, where the Record saith, that the Parliament was holden at Sarum, the report is of a Parliament holden at Salop. The report saith, that John B. of Winchester was arraigned, which implieth that he was indicted, &c. where he was sued by original Writ. 3. The Inhibition made by the King alledged in the Record, is not in the Report. 4. Concerning the sudden opinion of Scrope in this Report: By his opinion the Parliament it self could not have punished this contempt; for he saith, Ceux que sont Judges de Parliament, sont Judges de lour Piers, mes le Roy nad my pier in son terre demesn, par que il ne poet per eux estre judge, donques ailors que cy ne poet estre judge, whereas without question the Parliament might have punished this contempt: and concludeth with a rule at the Common Law, that the King may sue in what Court it pleaseth him. But matters of Parliament (as hath been often said) are not to be ruled by the Common Law; and it seemeth that the rest of the Judges were against Scrope, for the plea was never over-ruled, as by the Record it appeareth.

Vide per Indictamenta Termino Paschæ 1 & 2 Ph. & Mar. coram Rege Rot. 48. Informations preferred by the Attorney general against 39 of the House of Commons, for departing without license contrary to the Kings Inhibition in the beginning of the Parliament; whereof 6 being timorous Burgesses, ad redimendam vexationem, submitted themselves to their Fines, but whether they paid any, or very small, we have not yet found. And * Edmond Plowden the learned Lawyer pleaded, that he remained continually from the beginning to the end of the Parliament, and took a Travers full of pregnancy: and after his plea was sine die per demise le Roign.

* Mich. 3 & 4 Ph. & Mar. Rot. 36. inter Plac. Regis & Reginæ.

If offences done in Parliament might have been punished elsewhere, it shall be intended that at some time it would have been put in ure. Vid. the first Part of the Institutes, Sect. 108.

Now the said Informations Anno 1 & 2 Ph. & Mar. against 39 of the House of Commons, follow in these words.

Pasch. 1 & 2 Ph. & Mar. *Regis & Reginæ.* Midd. *ff. Memorand. quod Edw. Griffyn ar. Attornat' domin' regis & reginæ generalis, qui pro eisdem domino rege & domina regina sequitur, venit hic in Cur' dictorum dominorum regis & reginæ, coram ipsis rege & regina apud Westm' die Sabbathi proxim' post quind' Pasch' isto eodem Termino, & dat Cur' hic intelligi & informari. Quòd cum ad Parliamentum dominorum regis & reginæ nunc tent' apud Westm' annis regnorum suorum primo & secundo inhibitum fuit per ipsos dominum regem & dominam reginam in eodem Parliamento, quod nullus ad idem Parliament' summonitus, & ibidem interessens, ab eodem Parliamento absque speciali licentia dictorum dominorum regis & reginæ, & Cur' Parliament' prædict' recederet, seu seipsum aliquo modo absentaret. Quidam tamen Thomas Denton de in com' Oxon' ar' Henricus Cary de in com'*

Edw. Griffyn

Inhibitum fuit.

com' gen' Richardus Warde de in com' ar' Edmund. Plowden de Tymberſhe in com. Berks armiger, Henricus Chiverton de in com. ar. Robertus Brown de in com. Johannes Courk de in com. Johannes Pethebrige de in com. Johannes Melhewes de in com. Courtney de in com. Radulphus Michel de in com. Thomas Matthew de in com. Richardus Braſey de in com. Thomas Maſſye de in com. armig. Petrus Frechwell de in com. miles, Henricus Vernon de Sydbery in com. Derby armig. Willielmus Moore de villa Derb. in com. Derb. gen. Willielmus Banibrigge de in com. Joh. Eveleigh de in com. gen. Nich. Adamps de Dartmouth, alias Clifton Harnis in com. Devon. gen. Richardus Phelipps de in com. ar. Anthonius Dylvington de in com. Andreas Hoord de in com. Chriſtopherus Hoel de in com. Dorſ. gen. Johannes Mannock de in com. gen. Thomas Phelipps de in com. Johannes Hamond de in com. Johannes Phelipps de in com. Willielmus Randal junior, de in com. Johannes Moyne de in com. Hugo Smith de in com. gen. Rogerus Gerrard de in com. gen. Radulphus Scroop de in com. gen. Thomas Moore de Hambled. in com. Buck. gen. Willielmus Reade de in com. ar. Henricus Mannock de in com. ar. Joh. Maynard. de Villa Sancti Albani, in com. Hertf. ar. Nich. Debden de in com. gen. & Philippus Tirwhyt de in com. ar. qui ſummoniti fuerunt ad dictum Parliamentum, & in eodem Parliamento comparuerunt, ac ibidem interfuerunt mandat' & inhibitionem dominorum Regis & Reginæ ſupradict' parvi pendentes, ac ſtatum reipublicæ hujus regni Angl. minime curantes aut ponderantes poſtea ſcil. 12. die Januarii Annis regnorum dictorum dominorum regis & reginæ nunc primo & ſecundo ſupradictis & durante Parliam. prædicto ab eodem Parliamento ſine licentia dictorum dominorum reg. & reginæ & cur' ſuæ præd. contemptuoſe receſſerunt in ipſorum dom. regis & reginæ ac mandat' & inhibitionis ſuorum præd. curiæq; præd. contempt' manifeſtum, ac in magnum reipublicæ ſtatum hujus regni Angliæ detriment', nec non in pernicioſum exemplum omnium aliorum, &c. Unde idem Attornatus dominorum regis & reginæ petit adviſamentum cur' in præmiſ. & debit' legis proceſſ. verſ. eoſdem Thomam Denton, Henricum Cary, Richardum Ward, Edm. Plowden, Henricum Chiverton, Robertum Brown, Joh. Courk, Joh. Pethybridge, Joh. Melhewes, Joh. Courtney, Radulph. Michell, Tho. Mathewe, Rich.

Mandatum & Inhibitionem.

Richard. Braſey, Tho. Maſſey, Pet. Frechwell, Hen. Vernon, Will. Moore, Will. Banibrigge, Joh. Eveleigh, Nic. Adamps, Richard. Phelipps, Anth. Dilvington, Andr. Hoord, Chriſtoph. Hoell, Joh. Mannock, Tho. Phelipps, Joh. Hamond, Joh. Philips, Will. Randall, Joh. Mayne, Hugonem Smith, Rog. Gerrard, Radulph. Scroop, Tho. Moore, VVill. Read, Hen. Mannock, Joh. Maynard, Nichol. Debden, & Phil. Tirwhytt fieri ad reſpondend. domino regi, & dominæ reginæ de contempt' prædict. &c.

Et modo ſcil. die Veneris prox' poſt Craſt' animarum iſto eodem Termino coram domin' rege & dom' regina apud VVeſt' ven' præd' Edm. Plowden per Andr. Tuſſur Attornatum ſuum; & habit' audit' Informationis prædictæ dic', quod ipſe non intendit quod dom' rex & dom. regina nunc ipſum Edm' pro præmiſſis vel aliquo præmiſſorum impetere ſeu occaſionare velint aut debent; Quia dicit quod ipſe ad dict' Parliament' informatione prædict' ſpecificat' interfuit & preſens fuit, ac in eodem Parliament' continue remanſit, viz. à principio ipſius Parliamenti uſque ad finem ejuſdem. Abſque hoc quod ipſe idem Edm. Plowden dicto 12. die Jan. An. primo & ſecundo ſupradict' durant' Parl' prædict' ab eodem Parl' ſine licentia dictorum dominorum regis & reginæ, & cur' ſuæ præd. contemptuoſe receſſit in ipſorum dominorum reg. & regin' ac mandat' & inhibitionis ſuorum præd' curiæq; præd' contempt' manifeſt. ac in magnum reipub. ſtat. hujus regni Angl' detriment', nec non in perniciosum exemplum omnium aliorum modo & forma prout per informac' præd. verſ. eum ſupponitur. Et hoc paratus eſt verificare prout cur' &c. unde pet. judicium: & quod ipſe de præmiſſ. per cur' hic demitatur, &c.

Mich. 3 & 4. Ph. & Mar. Ro. 36. inter plac. regis & reginæ.

Nota, the pregnancy of this travers.

Sine die per demiſe le Royne.

Midd. *Ve. fac. Tho. Conſtable de Grimsbye in com. Lincoln. ar. Hen. Leigh de in com. Fran. Farnham de Quern in com. Lei. ar.* Li. lo. Mic. 2 & 3 Ph. Regis & Mar. Reginæ, *Joh. Holcroft. ſen. de in com. milit. VVill. Brombley de in com. ar. Tho. Somerſet de in com. ar. Georg. Ferrers de Markyat. in com. Hertf. gen. Nich. Powtrell de Exinction in com. Nott. ar.* F. Hill. 3 & 4 Ph. & Mar. *Tho. Moyle de in com. Kanc. milit. Tho. Waters de in com. ar. Will. Tylcock de civit. Oxon. gen.* Li. lo. Hill. 2 & 3 Ph. & Mar. *Tho. Balkden de Wechyngleigh in com. Sur. milit.* Li. lo. Mic. 2 & 3 Phil. & Mar. *Math. Cradock de villa Staff. gen.* Li. lo. Hil. 2 & 3 Ph. & Mar. *Georgium Lye de villa Salop. gen.* Ceſſ. proceſſ. per mandat' Attornat' dominorum regis & reginæ, quia ulterius proſequi non vult verſ. ipſum *Geo. Lye, Jo. Hoord de Bridgeworth in com. Salop. gen.* F. Mich. 5 & 6 Ph. & Mar. *Joh. Alſop*

Per de an. 1 & 2 Ph. & Mar. Rot. 48.

Alſop de villa de Ludlow in com. Salop. gen. Wil. Laurence de civ. VVinton gen. Li. lo. Mic. 2 & 3 Phil. & Mar. *Robert Hudſon de civ. Winton gen.* Li. lo. ut antea. *Edm. Rowſe de Donwich in com' Suff. mil. Ro. Coppinge de Donwich in com. Suff. ar. Joh. Harman de Hoſpicio dom. regis & dom. regin' gen. Wil. Crowch de VVellow in com. Somerſ. ar. Tho. Lewes de villa de VVells in com' Somerſ. gen.* Li. lo. Hill. 2 & 3 Phil. & Mar. *VVill. Godwyn de VVells præd' in com' Somerſ. gen.* F. Mich. 3 & 4 Ph. & Mar. *Joh. Aſhburnham de Aſhburnham in com' Suſſ. ar.* Li. lo. Mich. 2 & 3 Phil. & Mar. *VValt. Reycum de civ. Ciceſt. in com. Suſſ. gen.* Li. lo. Tr. 2 & 3 Ph. & Mar. *VVil. Moodyere de Slyndon. in com' Suſſ. gen.* F. Tr. 4 & 5 P. & M. *Joh. Roberts de in com' Suſſ. gen. utlegat. &c. VV. Pellet de Steininge in com. Suſſ. gen.* F. Paſch. 2 & 3 Phil. & Mar. *Rich. Bowyer de Arundel in com. Suſſ. gen.* Li. lo. Mich. 3 & 4 Phil. & Mar. *VVill. Danby de in com. VVeſtmerl. gen. Rob. Griffith de civ. Novæ Sarum in com. VVilts, Draper* Li. lo. ut ſupra. *Joh. Hooper de civ. Nov' Sar. in com. VVilts, gen.* Li. lo. Mich. 2 & 3 Ph. & Mar. *VVill. Clark de in com. Griff. Curtys de Bradſtock in com. VVilts gen.* Li. lo. ut ſupra, &c. *Tho. Hill de Denyſes in com' VVilts gen.* F. Hill. 2 & 3 Ph. & Mar. *Edw. Umpton de London, gen.* Li. lo. Mich. 2 & 3 Ph. & Mar. *Tho. Parker de in com' Joh. Read de Lond. gen.* F. Hill. 2 & 3 Ph. & Mar. *Arthur Allen de Civ. Briſtol Merc. Egid. Payn de civ. Briſtol gen. Wil. Hampſhire de Lond. gen.* Li. lo. Mic. 3 & 4 Ph. & Mar. *& Pet. Taler de Malborow in com' VVilts, Taylor.* Li. lo. Mich. 3 & 4 Ph. & Mar. *Reſp. Regi de quibuſdam tranſgreſſ. & contempt. unde impetit' ſunt.*

Ceſſ. proceſſ. verſ. Georg. Lye. Sine die per demiſe le Royne.

Mid. *Ve. fac' cr' Trin. Edw. Braxden de civ. Wigorn. gen. Georg. Newport. de Droitwich in com. Wigorn' gen. Will. Wigſtone de Wolſtone in com. War. mil.* Li. lo. Mic. 2 & 3 P. & M. *Radulph. Brown de Woodlows in com. War. gen.* Li. lo. Mic. 3 & 4 P. & M. *Joh. Harford de civ' Covent. gen.* Ceſſ. proceſſ. *&c. Nich. Fryſhe de in com. Rich. Raylton. de in com' Marc. Wyrley de civ. Lichfield, gen. Walt. Jobſon de villa de Kingſton ſuper Hull, Jac. Brenne de in com. gen. Joh. Payton de in com' Kanc. ar. Joh. Cheney de in com. Kanc. ar. Will. Oxenden de in com. Kanc. ar. Tho. Keys de in com. Kanc. gen. Will. Hannigton de in com. Kanc. Tho. Tyſſars de in com. Nich. Crypſe de in com. Kanc. ar. Edw. Herbert de Stawley in com' Salop. ar.* F. Hill. 4 & 5 *præd.* Ph. & Mar. &c. *Rich. Lloyd de in com. Kanc. gen. Joh. de Knylle de in com' ar. Hen. Jones de in com.*

Per cont' rot' de Annis 1 & 2 Ph. & Mar. Rot. 48.

mil.

mil. Meridith Gains de in com' gen. & Rich. Buckley de in co n' mil. Resp. reg. de quibusdam transgr' & contempt. unde impetit. sunt. Et postea, scil. Term. S. Trin. annis 4 & 5 Ph. & Mar. *pro eo quod sufficienter hic in cur' testatum est quod præd' Job. Harford habuit licentiam recedere à Parliamento &c. Ideo Edw. Griffyn. ar. Attornat. dom. regis & reginæ generalis qui pro ipsis rege & regina in hac parte sequitur, dicit quod ipse ulterius in hac parte vers. præfatum Joh. Harford prosequi non vult. Ideo cess. hic proces. vers. eum omnino, &c.*

Non prof. vers. Harford tantum

Sine per die demise le Royn.

And to deal clearly, this is all that we can find concerning this matter. Thus you may observe, that the poor Commons, Members of the Parliament, in diebus illis, had no great joy to continue in Parliament, but departed. But now to proceed.

Of Writs of Errour in Parliament.

If a Judgment be given in the Kings Bench either upon a Writ of Error, or otherwise, the party grieved may upon a Petition of Right made to the King in English or in French (which is not ex debito Justitiæ, but for decency, for that the former judgment was given Coram rege) and his answer thereunto, fiat Justitia, have a Writ of Error directed to the Chief Justice of the Kings Bench for removing of the Record in præsens Parliamentum, and thereupon the Roll it self, and a transcript in Parchment is to be brought by the Chief Justice of the Kings Bench into the Lords House in Parliament: and after the transcript is examined by the Court with the Record, the Chief Justice carrieth back the Record it self into the Kings Bench, and then the Plaintiff is to assign the Errors, and thereupon to have a Scire fac' against the adverse party, either in that Parliament or the next; and the proceeding thereupon shall be super tenorem recordi, & non super recordum. All this, and many more excellent matters of learning are contained in the Records following; whereof a light touch is hereafter given, the Records at large being too long here to be rehearsed. And the proceeding upon the Writ of Error, is onely before the Lords in the Upper House, Secundum legem & consuetudinem Parliamenti.

The House of the Lords is a distinct Court for many purposes. 22 E. 3. fo. 3. Regist. 17. Lib. Intr. Fast. 284.

Queritur Guilielmus de Valentia contra Concilium regis, i. Justic. Coram Rege, pro injusto judicio tangen. allocationem Dionisiæ filiæ Guilielmi de monte Canisio ut hæred, sed dominus Rex ratum habet eorum factum, & judicium reditum est contra Guilielmum de Valentia.

Rot. Par. Postfestum Sancti Hil. an. 18 E. 1. Rot. 8.

If a noble man had been erroneously attainted of Treason, &c. he might have had his Writ of Error in Parliament, notwithstanding the statute of 33 H. 8. c. 20. for that must be intended of lawful records of Attainder: but if the Attainder be established by Authority of Parliament, then he must exhibit his Petition in Parliament to be restored of grace. But now by the statute of 29 El. c. 2. it is ordained, that no record of Attainder of high Treason that then was, for the which the party attainted had been executed for the same Treason, should be reversed for error: but this extendeth onely to Attainders of High Treason, and not to any Attainder of High Treason after that Act, nor to any High Treason before, for the which the party was not executed.

Rot. Par. 4 E. 3. nu. 13. Rich. Earl of Arundels case.
Ib. 28 E. 3. nu. 11 12. Mortimer Earl of Marches case.
See Pasc. 28 E. 3 Coram Rege Rot. 37. Wigorn. the same case.
35 H. 8. c. 20.
29 Eliz. c. 2.

The Prior and Covent of Montague by their Petition declared, that Richard Seymour had obtained an erroneous judgment against the said Prior in the Kings Bench, upon a judgment given in the Common pleas upon a fine for the Manor of Titenhull in the County of Somerset &c. And the principal error was for denying of aid of the King where it was grantable, and that hanging a Writ of Right, the said Richard sued a Scire fac. And commandment was given to the Chancellor of England, that he should make a Writ of possession and seisin to be had, and other process upon that judgment to be made: In this Record you shall observe excellent pleading.

Rot. Par. 7 R. 2. nu. 20. 8 R. 2. nu. 14.

Error

Rot.Par. 13 R.2. nu.15. Sir Tho. Methams case.

Error in Parliament upon a judgment in an Appeal of death upon an acquittal of the Defendant, and inquiry of the Abettors, &c.

And (that we may observe it once for all) when one sueth in Parliament to reverse a Judgment in the Kings Bench, he sheweth in his bill which he exhibiteth to the Parliament some error or errors, whereupon he prayeth a Scire facias.

Rot.Par.10 E.3. nu.48.

The Bishop of Norwich sheweth that an erroneous judgment was given against him in the Common pleas for the Archdeaconry of Norwich belonging to his presentation, and prayed that those errors might be heard, and redressed there: whereunto answer was made that errors, by the law, in the Common pleas are to be corrected in the Kings Bench, and of the Kings Bench in the Parliament, and not otherwise.

1 R.2 nu.28,29. 2 R.2.nu.31. A Writ of Error in Parliament between William Mountacute Earl of Sarum, and Roger of Mortimer Earl of March of a judgment in the Kings Bench.

[a] Ro.P.15R.2. n.23.& 18 R.2. n. 11,12,13,14, 15. This Parl. of 18 R.2.is not mentioned in the printed book, because no Act passed at this Parliament. See 2 H.4.nu.40

[a] The Dean and Chapter of Lichfield recovered in the Common pleas against the Prior of Newport Pagnel: the Prior by writ of Error reverseth the judgment in the Kings Bench: the Dean and Chapter by writ of Error in Parliament reverseth the judgment in the Kings Bench, and affirmeth the judgment in the Common pleas, and a commandment given to the Chancellor, that the judgment in the Common pleas be executed by process by him to be made.

[b] John Sheppy complains of a judgment in the Kings Bench in a writ of error.

[b] Rot. Par. 15 R.2. nu. 22.

[c] Error in Parliament between William Mountacute Earl of Salisbury, and Roger de Mortimer Earl of March, for the Castle, Town and Honour of Denbiegh, &c. upon a judgment given in the Kings Bench, and had a Scire fac. returnable the next Parliament.

[c] 21 R.2 nu. 25. 2 H.4.nu.13

[d] William Seward alias Cheddre complaineth, that where he by that name was presented and inducted to the Parsonage of Motton under Egge in the County of Glouc', and thereof continued the possession by the space of four years, until the King by untrue suggestion presented Sir John Dawtry the Parsonage of Underbegge in that County, where there was no such Parsonage called Underbegge, as the said William pleaded in a Quare impedit brought by the King in the Kings Bench; upon which Writ the King recovered by the default of the Parsonage of Underbegg, and not Under Egg, whereby upon a Writ sent to the Bishop of Worcester, the said William was put from his Parsonage of Under Egge: for which mistaking and error, the judgment for the said John in full Parliament was reversed, and a writ awarded to the said Bishop for the restitution of the said William.

[d] Rot.Par.1 H. 4.nu.19.

Rot.Par.15 R.2. nu.24. & 2 H.4. nu.48.

The Record and judgment given in the Kings Bench for the King, against Edmond Basset for certain Lands, &c. was for divers errors reversed in Parliament, and restitution of the premisses with the mean profits restored to the said Edmond.

5 H.4.nu.40.

In error in Parliament between Roger Deyncourt, and Ralph de Adderley for a judgment given in the Kings Bench for the Manor of Ansley in Com. War. Sir William Gascoign Chief Justice delivered a Copy of the Record and process, word for word, under his hand, &c. to the Clerk of the Parliament, &c.

Rot. Par. 3 H.4. nu. 19.

In error in Parliament between Richard Quatermayns and William Hore, &c. upon an erroneous judgment given in the Kings Bench in an action of trespass, and the Plaintiff entred his Attorney of Record to proceed therein.

Rot.Par.10 H.6. nu.51.& 11 H.6. nu.40.

John Beauchamp Lord Abergaveny complained in Parliament upon an erroneous judgment given in the Kings Bench in a Scire fac. upon a recognisance in the Chancery for the keeping the Peace. In the Record whereof are excellent points of learning, as well touching the recognisance, as the process and issue.

Rot.Par.31 H.6.

Error in Parliament, Pasch. 31 H.6. upon a judgment given in an assise in the Kings Bench, & intratur super marginem. Rot. mittitur in Parliamentum per Johannem Forteſcue Termino Paschæ anno 31 H.6.

Rot. Par. 23 El. Dyer. 23 El.f. 373.

And to omit many others, to descend to some of later times, Richard Whalley recovered in Assise by verdict against divers tenants, who brought a Writ of Error in the Kings Bench, where the judgment in the Assise was affirmed, the tenant complained in Parliament for error in the Kings Bench.

Error

Error in Parliament upon complaint of Sir Chriſtopher Heydon Knight of a judgment in a writ of Error in the Kings Bench, between the ſaid Sir Chriſtopher Plantiffe, and Roger Godſalve and others Defendants, upon a judgment given for the ſaid Roger, &c. againſt the ſaid Sir Chriſtopher in an Aſſiſe before Juſtices of Aſſiſe, wherein the judgment in the Aſſiſe was affirmed in the Kings Bench, whereof the complaint was made, ſed non prævaluit. Rot.Par.12.Jac.

A Peer of the Realm being indicted of treaſon, or felony, or miſpriſion of treaſon, may be arraigned thereof in Parliament, a Lord Steward being appointed, and then the Lords Spiritual ſhall make a Procurator for them; and the Lords, as Peers of the Realm, during the Parliament are Judges, whether the offence be treaſon, &c. that is ſuppoſed to be committed by any Peer of the Realm, and not the Juſtices, as it appeareth in the Earl of Northumberlands caſe, Rot. Par. 5 H.4. nu.11,12. See in the Parliament holden 21 R.2. ſub titulo Pl. Coronæ in a Roll annexed, &c. before the Steward of England and other Lords Temporal, Richard Earl of Arundells caſe, Rot. Parl.31 H.6.nu.49. Thomas Earl of Devon was arraigned of High Treaſon before Humphry Duke of Buck' Steward of Englands hac vice, & was acquitted by his Peers, 10 E.4.fo.6.b. Stanf.Pl.Coron.153. b.

In caſe of treaſon, &c. the Lords Spiritual make their Proctors.

The Peers are Judges of treaſon, &c. during the Parliament, &c. Rot. Par. 5 H.4.nu.11,12. Rot.Par.21 R.2. ſub. tit. Plac. Coronæ, &c. Rot.Par.32 H.6. nu. 49.

Of Judicature.

Now order doth require to treat of other matters of Judicature in the Lords Houſe, and of matters of Judicature in the Houſe of Commons. And it is to be known that the Lords in their Houſe have power of Judicature, and the Commons in their Houſe have power of Judicature, and * both Houſes together have power of Judicature: but the handling hereof according to the worth and weight of the matter would require a whole Treatiſe of it ſelf; and to ſay the truth, it is beſt underſtood by reading the Judgments and Records of Parliament at large, and the Journals of the Houſe of the Lords, and the Book of the Clerk of the Houſe of Commons, which is a Record as it is affirmed by Act of Parliament in Parliament in anno 6 H.8. ca.16.

* Vide placita in Parliam. Anno 33 E.1. Rot. 33. Nicholaus Segrave adjuge per Prælatos, Comites, Barones & alios de concilio. At the Parliament at York anno 12 E.2. *Conſideratum eſt per Prælatos, Comites, Barones, & Communitatem Angliæ.* The Lord Awdeleys caſe. At the Parliament at Weſtm' 15 E.2. Hugh le pier adjuge per les Seignours & Commons. Rot. Parl. 42 E.3. nu.20. Sir John at Lee adjudged by the Lords and Commons. Rot. Par. 50 E.3. 2. parte, A pardon to the Lord Latimer of a Judgment in Parliament. Rot. Parl. 50 E.3. nu.34. Lo. Nevils caſe.

See Rot. Clauſ. 1 R.2. m.5,8,38,39. A treſage Councel le Roy, les Seignors & Commons, &c. Rot. Parl. 1 H.4. nu.79. it is no Act of Parliament, but an Ordinance, and therefore bindeth not in ſucceſſion. Rot.Par. 2 H.5. nu.13. Error aſſigned that the Lords gave Judgment without petition or aſſent of the Commons. Rot.P.28 H.6.nu.19. and many others in the reign of King H.6. King.E.4.

And of later times ſee divers notable judgments, at the proſecution of the Commons, by the Lords at the Parliaments holden 18 and 21 Jac. Regis againſt Sir Giles Mompeſſon, Sir John Michel, Viſcount St. Albone Lord Chancellour of England, the Earl of M. Lord Treaſurer of England, whereby the due proceeding of Judicature in ſuch caſes doth appear.

Thomas Long gave the Major of Weſtbury four pound to be elected Burgeſſe, who thereupon was elected. This matter was examined and adiudged in the Houſe of Commons, Secundum legem & conſuetudinem Parliamenti, and the Major fined and impriſoned, and Long removed: for this corrupt dealing was to poyſon the very fountain it ſelf. In the book of the Houſe of Commons at the Parliament holden 8 Eliz. Ounſloe Speaker. fol. 19.

Arthur Hall a Member of the Houſe of Commons for publiſhing and diſcovering the conferences of the Houſe, and writing a book to the diſhonour of the Houſe, was upon due examination, Secundum legem & conſuetudinem Parliamenti, adiudged by the Houſe of Commons to be committed to the Tower for ſix months, fined at five hundred Marks, and expelled the Houſe. 23 El.lib.fo.14. Popham Attorny general Speaker.

Munſton ſtroke William Johnſon a Burgeſſe of B. returned into the Chancery of Record, for which upon due examination in the Houſe of Commons, it was reſolved that ſecundum legem & conſuetudiem Parliamenti, every man muſt take notice Ib. 2 Aprilis 1 Mariæ. Vid. 11 H.6. c.11. 5 H.4.c.6.

notice of all the Members of the House returned of Record at his peril: but otherwise it is of the servant of any of the Members of the House; for there he that striketh, &c. must have notice. And the House adjudged Muncton to the Tower, &c.

See Rot. Parl. 8 H.6. nu.57.

If any Lord of Parliament, Spiritual or Temporal, have committed any oppression, bribery, extortion, or the like, the House of Commons, being the general Inquisitors of the Realm, (coming out of all the parts thereof) may examine the same, and if they find by the Vote of the House, the charge to be true, then they transmit the same to the Lords with the witnesses and proofs.

Priviledge of Parliament.

Vide inter leges Ed. Confess. c. 3.

And now after judicature, let us speak somewhat of priviledge of Parliament: Experience hath made the priviledges of Parliaments well known to Parliament men, yet will we speak somewhat thereof.

Petitions coram domino rege ad Parliament' post festum Sancti Mich. Anno 18 E.1. fol.7.

Magister militiæ Templi petit quod distringat (catalla unius de consilio) tempore Parliamenti pro redita unius domus in London: Rex respondet, non videtur honestum, quod illi de consilio suo distringantur tempore Parliamenti, sed alio tempore, &c. Whereby it appeareth that a Member of the Parliament shall have priviledge of Parliament, not only for his servants, as is aforesaid, but for his horses, &c. or other goods distreinable.

Plac' coram rege & eius concilio ad Parliam. suum post festum Sancti Hil. Anno 18 E.1. fol.1. Vide inf. 10 E.3. more hereof concerning serving of a Citation.

Querela Comitis Cornubiæ, versus Bogonem de Clare & Priorem Sanctæ Trinitatis London, quod ipsi tempore Parliamenti ipsum comitem in medio aulæ Westm. ad procurationem ipsius Bogonis citaverunt, quod compareret coram Archiepiscopo Cantuar. &c. Ipse Prior venit & Bogo similiter, & ponunt se in gratiam, misericordiam, & voluntatem Regis de alto & basso, ob quod mandantur turri London: Postea venit dictus Bogo & finem fecit domino regi pro prædicta transgressione per duas mille marcas, &c. & quoad prædict' Comitem respondeat Comiti 1000. li. pro transgressione sibi fact' &c. & prædictus Prior mittitur ibidem ad faciend. secund. quod Thesaurarius ei dicet ex parte dom. Regis.

And yet the serving of the said citation did not arrest, or restrain his body, and the same priviledge holdeth in case of Sub pœna, or other processe out of any Court of equity.

Rot. Parliam. Anno 8 E.2. in Dorso. cl. 8 E.2.

Rex mandavit Justitiariis suis ad assisas. Jurat. &c. capiend. assignat. quod supersedeant captioni eorundem ubi Comites, Barones & alii summoniti ad Parliamentum Regis sunt partes, quamdiu dictum Parl. duraverit.

Ibid. m. 33 & 22.

De non procedendo ad capiend. Assisas versus illos, qui ad Parliamentum Regis apud Eboram venerunt.

In Scacc. ex Originali de Anno 10 E.3. R.27. No.

Rex omnibus balivis & fidelibus suis ad quos, &c. Salutem. Sciatis quod cum curiæ nostræ in quibus * negotia regni nostri dedecantur ubiq; adeo liberæ sint & exemptæ, & à tempore quo non extat memoria liberæ & exemptæ fuerunt, quod nec aliqua forum ecclesiasticum concernentia in eisdem curiis nostris fieri seu exequi, nec aliqui easdem curias nostras ad aliqua forum ecclesiasticum contingentia faciendum vel exequendum ingredi debeant, vel consueverunt aliquibus temporibus retroactis, ac Magister Henricus de Harewedon clericus, Edmundus de Lukenore & Johannes de Wedlingburgh de eo quod ipsi nuper in Cancellaria nostra in præsentia venerabilis Patris I. Cantuariensis Archiepiscopi Cancellarii nostri quasdam citationes sive monitiones dilecto clerico nostro Johanni de Thoresby, nec non provocationes, appellationes & instrumenta publica super citationibus seu monitionibus prædictis in nostri contemptum & Coronæ nostræ ac Regiæ dignitatis nostræ præjudicium, & contra libertatem & exemptionem prædict' fecerunt per inquisitionem in quam se inde in curia nostra coram dilecto Cancellario nostro & aliis de consilio nostro posuerunt convicti fuissent & ea occasione prisonæ nostræ mancipati in eadem ad voluntatem nostram moraturi. Nos de gratia nostra speciali ad requisitionem Philippæ Reginæ Angliæ consortis nostræ charissimæ perdonavimus eisdem Henrico, Edmundo & Johanni imprisonamentum prædictum; Ita tamen quod nobis satisfacient de redemptione sua occasione præmissorum, & quod super citationibus, monitionibus, provocationibus

* That is, in Court of Parliament.

Citationes. This John de Thoresby was then Clerk of the Parliament.

bus, appellationibus ſeu inſtrumentis prædictis in dicta cancellaria noſtra ſic factis proceſſum aliquem non faciant, nec quicquam quod in noſtri vel juris coronæ noſtræ præjudicium cedere poſſit attemptent vel attemptare faciant de cætero quovis modo. In cujus, &c. Teſte rege apud Turrim London 15 die Aprilis ex originali de Anno 10 E. 3. Rot. 27. Not.

*Rot. Parl. anno 17 E. 4. nu. 36. Vide 21 E. 4. fol. 38, 39. Rot. Parl. Anno 8 H. 6. nu. 57. Vide infra pa.

* Priviledge of Parliament in informations for the King, generally the priviledge of Parliament do hold, unleſſe it be in three caſes, viz. Treaſon, Felony, and the Peace.

Of Statutes, or Acts of Parliament.

There is no Act of Parliament but muſt have the conſent of the Lords, the Commons and the Royal aſſent of the King, and as it appeareth by [a] Records and our [b] Books; whatſoever paſſeth in Parliament by this threefold conſent, hath the force of an Act of Parliament.

[a] Vid. 14 R. 2. nu. 15. & 13 H. 4. nu. 25.

[b] 4 H. 7. 18. b. p. touts les Juſtices. 7 H. 7. 14. & 16. 11 H. 7. 27. a.

The difference between an Act of Parliament, and an Ordinance in Parliament is, for that the [c] Ordinance wanteth the threefold conſent, and is ordained by one or two of them.

Book prerogative 134. Forteſcue fol. 20. cap. 18. Dier. 1 Mar. 92. [c] Rot. Parl. 25 E. 3. nu. 16. &c. 39 E. 3. 12. 42 E. 3. 3. 8 H. 6. cap. 29. Dier. 4 Mar. 144. 39 E. 3. 7. Thorp male erravit. Rot. Parl. 37 E. 3. nu. 39. 1 R. 2. nu. 56. diverſity between Acts of Parliament and Ordinances. 2 R. 2. ſtat. nu. 28.

[d] I have read of a reſtitution in bloud, and of lands of one William de Laſenby by the King, by the aſſent of the Lords Spiritual, and Commons, (omitting the Lords Temporal) this we hold is an Ordinance, and no Act of Parliament. And when the Clergy is omitted and the Act made by the King, the Lords Temporal, and Commons. See the Rolls of Parliament and authorities following, viz. Rot. Parl. Paſch. [e] 15 E. 2. the Caſe of the Spencers. 3 R. 2. cap. 3. in print. Our Soveraign Lord by the common conſent of all the Lords Temporal, and at the Petition of the Commons, &c. 7 R. 2. cap. 12. accord. 11 R. 2. nu. 9. 10, 11. See 1 H. 5. cap. 7. [f] 21 R. 2. nu. 9. & 10. 6 H. 6. nu. 27. 7 H. 8. Kelw. 184. the opinion of the Juſtices agreeable with the ſaid Acts of Parliament. And note the mutability in this particular caſe of the Spencers, of this High Court of Parliament. The judgment by Parliament in 15 E. 2. againſt the Spencers was in the ſame year by Act of Parliament repealed: that repeal was repealed by authority of Parliament 1 E. 3. that repeal of 1 E. 3. was repealed by Act of Parliament in 21 R. 2. and that of 21 R. 2. was repealed by authority of Parliament in 1 H. 4. And ſo the judgment againſt the Spencers ſtandeth in force.

[d] 13 H. 4. nu. 20.

[e] Repeal. 1 E. 3. cap. 2. ſtat. 1. 15 E. 3. tit. Petition F 2. See Rot. Parl. Anno 1 H. 4. part. 5. m. 36. the Iſle of Man given to the King by the Lords Temporal and Commons.

[f] Repeal 1 H. 4. cap. 3.

The diviſion of Acts of Parliament.

Of Acts of Parliament ſome be introductory of a new law, and ſome be declaratory of the ancient law, and ſome be of both kinds by addition of greater penalties or the like. Again, of Acts of Parliament, ſome be general, and ſome be private and particular. All Acts of Parliament relate to the firſt day of Parliament, if it be not otherwiſe provided by the Act.

33 H. 6. fol. 17.

The ſeveral forms of Acts of Parliament.

In antient time all Acts of Parliament were in form of Petitions. And for the ſeveral forms of Acts of Parliament, ſee the Princes caſe in the 8 Book of Reports. Now for the reading, committing, amending, ingroſſing, voting, and paſſing the Bills in either Houſe, and touching conferences with the Lords, and for the priviledge of any Member of either Houſes, and of their ſervants no more then hath been ſaid, they be ſo ordinary and well known, and in ſuch continuall practice, as it were but expence of time to treat any more of them. And for that many times the Rolls of the Parliament have not been truly ingroſſed, at

Dier. 3 Mar. 131. lib. 8. fol. 1. the Princes caſe. Concerning the ingroſſing in Rolls of Acts of Parliament. Rot. Parl. 7 H. 4. nu. 65.

the request of the Commons certain of them are to be appointed, who should be at the ingrossing of the Rolls of Parliament.

In former times Acts of Parliament were proclaimed by the Sheriffes.

When I read the case of Premunire in 39 E. 3. upon the statute of 27 E. 3. o Provisors against the Bishop of Chichester, and observing that Serjeant Cavendish of counsel with the Bishop, offered two things: First, that the Act whereupon the writ was grounded, was no statute. Secondly, that if it were a statute, it was never published in the County: whom Sir Robert Thorpe Chief Justice answered. Although Proclamation be not made in the County, every one is bound to take notice of that which is done in Parliament; for as soon as the Parliament hath concluded any thing, the law intends, that every person hath notice thereof, for the Parliament representeth the body of the whole Realm: and therefore it is not requisite that any Proclamation be made, seeing the statute took effect before. This gave me to understood, that albeit it was not required by law that statutes should be published in the County; yet seeing in those days and long after, the use of Printing came not into this Realm; the use was (as it appeareth by Cavendishes speech) that they should be published in the County, to the end that the Subiects might have expresse notice thereof, and not to be overtaken by an intendment in law, which gave me occasion to search and inquire how this usage was, and how long it continued. And in the end I found, that at every Parliament the Acts that passed were transcribed into Parchment, and by the Kings Writ directed to the Sheriffe of every County of England, and commandment given to him, that all the said statutes in all places through his whole Bailywick, as well within Franchise as without, where he should find most fit, that he should not only proclaim them, but to see that they should be firmly observed and kept. And the usage was to proclaim them at his County Court, &c. and there to keep the transcript of the Acts, that who so would, might read or take Copies thereof. And this writ was sometime in Latin and sometime in French, as in those days the statutes were enacted in Latin or in French. But an example of the one, and of the other will more illustrate this matter.

John Moore. Printing was invented in Mentzia Germany, Anno Dom. 1441. and came to us in the reign of H. 6. See Bodin De Methodo historiæ. li. 7. *Una typographia cum omnibus omnium veterum inventis certare facile potest. Polydor Virgil. de invent. rerum lib. 2. cap. 7. Cardan de varietate rerum li. 3. cap. 64.*

At the Parliament in Anno 10 E. 3.

Edwardus Dei grat. Rex Angliæ & Franciæ. & Dominus Hiberniæ Vic' Norff. Salut. Quædam statuta per nos, Prælates, Comites, Barones, & alios magnates ad Parliamentum nostrum tentum apud Eborum in Craft. Ascensionis ultim. præterit. ordinavimus & stabilivimus, prout sequitur, and recite the several statutes verbatim. And then the Writ concludeth. Et ideo tibi præcipimus, quod statuta illa & omnes articulos in eisdem contentos in singulis locis in baliva tua, tam infra libertates, quam extra, ubi expedire videris, publice proclamari & * firmiter teneri & observari facias. Teste, &c.

* Nota, that the Sheriffe that hath *Custodiam Comitatus*, should see the statutes within his County to be kept.

At the Parliament an. 1. R. 2.

Richard par la grace de Dieu Roy Dengliterre & de France, & Seignour d'Irland a nostre Viscount de Norff. Salut. Saches que al honour de Dieu, & reverence de Saint Eglise & pur nurrer peace, unite, & concord in touts parts deins nostre realme, le quel nous desirons mult entirement, del assent des Prelats, Dukes, Counts & Barons de mesme nostre realme, al instance & special request des Commons de nostre Realme assembles a nostre Parliament tenus a Westm. a la quinzim de S. Michael lan de nostre reigne primier avons fait ordeiner & stablier certaine statuts en amendment & relievement de mesme nostre Realme, & en la forme que ensuist. Primerment est assentus & establie, que saint Eglise eit en joyse touts les droitures, &c. rehearsing all the statutes that passed at that Parliament. And the Writ concluded thus. Et pur ceo vous mandons que touts les statuts facies crier & publier, & firmament tener par my vostre Baillie solonq; la forme & tenor de icel, & ceo ne lesses en ascun manner. Done par testmoignants de nostre grand seale al Westm. le primier jour de Feverer lan de nostre reigne primer. And the like Writs continued until the beginning of the reign of H. 7. long time after printing within the reign of H. 6. (as hath bin said) came unto us.

Pro-

Prorogation, Adjournment, Continuance, and what maketh a Session of Parliament.

The passing of any Bill or Bils by giving the Royal assent thereunto, or the giving any judgment in Parliament doth not make a Session, but the Session doth continue until that Session be prorogued or dissolved: and this is evident by many presidents in Parliament ancient and late.

The Parliament of 14 E. 3. began at Westminster the Wednesday after Mid-Lent: the first Monday of the Parliament, the ninth part of their Graim, Wooll and Lamb, &c. was granted to the King, on condition that the King would grant their petitions in a Schedule beginning. These be the petitions which by the Commons and Lords was drawn into a form of a Statute, and passed both Houses, and the Royal assent thereunto, and the same exemplified under the Great Seal. After this Parliament continued, and divers Acts made, and petitions granted, and in the end that Parliament was dissolved. Rot. Par. 14 E. 3. stat. primo. nu. 7. 8, 9, &c.

In the Parliament holden Anno 3 R. 2. it is declared by Act of Parliament that the killing of John Imperiall Ambassadour of Jenoa, was High Treason, crimen læsæ majestatis, and yet the Parliament continued, long after, and divers Acts of Parliament afterwards made, and petitions granted: and in the end the Parliament dissolved. Rot. Par. 3 R. 2. nu. 18, &c.

In the Parliament begun the first day of March, Anno 7 H. 4. on Saturday the 8 day of May it was enacted by the King, the Lords Spiritual and Temporal, and the Commons, that certain strangers by name, who seemed to be Officers to the Queen, should by a day depart the Realm, and proclamation thereof in kind made by Writ, by authority of Parliament, which Parliament continued, and divers other Acts of Parliament made, and petitions answered: and on the 22 day of December 8 H. 4. dissolved. Rot. Parl. 7 H. 4. nu. 29, &c.

The Parliament begun the 7 of November, on the first day of the Parliament it was resolved by all the Judges, that those that were attainted of treason, and returned Knights, Citizens or Burgesses of Parliament, that the attainders were to be reversed by authority of Parliament before they could sit in the House of Commons: and that after the attainders reversed, both the Lords and those of the House of Commons might take their places, for such as were attainted could not be lawfull Judges, so long as their attainders stood in force: and thereupon the attainders were resolved by Act of Parliament, and then they took their places in Parliament, and the Parliament continued and divers Acts made. Rot. Parl. 1 H. 7. nu. 1 H. 7. fol. 4. b.

* The Bill of Queen Katharine Howards attainder passed both Houses about the beginning of the Parliament, whereunto the King, sitting the Parliament, by his Letters Patents gave his Royal assent, and yet the Parliament continued until the first day of April, and divers acts of Parliament passed after the said Royal assent given. Divers more might be produced, but these shall suffice. So as albeit Bills passe both Houses, and the Royal assent given thereunto, there is no Session until a prorogation or a dissolution. * Rot. P. 33 H. 8. began the 16. day of Jan. and continued till the first of Apr. following. On the 12 of February the Queen was beheaded in the Tower, sitting the Parliament.

The diversity between a prorogation and an adjournment, or continuance of the Parliament, is, that by the prorogation in open Court there is a Session, and then such Bills as passed in either House, or by both Houses, and had no Royal assent to them, must at the next assembly begin again, &c. for every several Session of Parliament is in law a several Parliament: but if it be but adjourned or continued, then is there no Session: and consequently, all things continue still in the same state they were in before the adiournment or continuance. *Prorogo, à porro & rogo, unde prorogatio. Adjourner, unde adjournare, & adjournamentum, est ad diem dicere, or diem dare.* Rot. P. 23 H. 8. 24 H. 8. nu. 1. 25 H. 8. nu. 2. 26 H. 8. nu. 1. 27 H. 8. nu. 1. &c. 2 & 3 E. 6. nu. 1. 3. & 4 E. 6. nu. 1. &c.

And the title of divers Acts of Parliament be, At the Session holden by prorogation, or by adjournment and prorogation, but never by continuance or adjournment tantum. And the usual form of pleading is, ad Sessionem tentam, &c. per prorogationem.

1 Mariæ Sess. 2. 28 Eliz. nu. 1. &c. And in every of them it is said [and there continued until such a day;] and yet in them divers adjournments were. See the Journal book in the Lords House. *Ultimo junii 14 Eliz. Custos Magni Sigilli ex mandato Dominæ Reginæ adjournavit præsens Parliament' usq; in festum omnium Sanctorum.* And in the Parliament in Anno 39 Eliz. *Custos magni Sigilli ex mandato Dominæ Reginæ* (the Queen being absent.)

The

We have been the longer and more curious for the clearing of this point for two reasons, 1. For that the adjournment or continuance (as before it appeareth) is much more beneficial for the Common-wealth for expediting of causes, then a prorogation. 2. In respect of a clause in the Act of Subsidie in the Parliament holden in Anno 18. Jac. Regis, which is but declaratory of the former law, as by that which hath been said appeareth.

When a Parliament is called and doth sit, and is dissolved without any Act of Parliament passed, or judgment given, it is no Session of Parliament, but a Convention.

In the 18 year of R. 2. at a Parliament holden before the Duke of York (the King being in his passage to Ireland) the Petitions of the Commons were answered: and a Judgment given in the Kings Bench for the Priory of Newport-pannell, against the Dean and Chapter of Lichfield, was reversed, but no Act of Parliament passed, and therefore this Parliament is omitted in the Print: but it is no question but it was a Session of Parliament, for otherwise the Judgment should not be of force: and many times Judgments given in Parliament have been executed, the Parliament continuing before any Bill passed.

Rot. Par. 18 R. 2. which began 15 Hillarii.

The House of Commons is a distinct Court.

Nota, The House of Commons is to many purposes a distinct Court, and therefore is not prorogued, or adjourned by the prorogation or adjournment of the Lords House: but the Speaker upon signification of the Kings pleasure by the assent of the House of Commons, doth say: This Court doth prorogue or adjourn it self; and then it is prorogued or adjourned, and not before. But when it is dissolved, the House of Commons are sent for up to the Higher House, and there the Lord Keeper by the Kings commandment dissolveth the Parliament; and then it is dissolved, and not before. And the King at the time of the dissolution ought to be there in person, or by representation: for as it cannot begin without the presence of the King either in person or by representation, (as before it hath been said) so it cannot end or be dissolved without his presence either in person or by representation. Nihil enim tam convenens est naturali æquitati, unumquodque dissolvi eo legamine quo ligatum est.

Bracton.

33 H. 8. cap. 21. Royal assent by Letters Patents. Dier. 1 Mar. 93. *Commission au 4. Seigniors, &c. a doner royal assent, & inforcement fait.* Soit fait come est desire.

It is declared by Act of Parliament, that the Kings Letters Patents under his Great Seal, and signed with his hand, and declared and notified in his absence to the Lords Spiritual and Temporal and Commons assembled in the Higher House of Parliament, is, and ever was of as good strength and force, as if the Kings person had been there personally present, and had assented openly and publickly to the same.

Of Subsidies and Aides granted by Parliament.

Subsidie is derived of the Verb Subsidiari, which signifieth to be ready to help at need, unde subsidium, which signifieth aid and help at need, so properly called, when Souldiers were ready to help the forward of the battle: and aptly was the word so derived, as well because that which we call now subsidia, Subsidies, were anciently called auxilia, Aids, granted by Act of Parliament upon need and necessity: as also, for that originally, and principally they were granted for the defence of the Realm, and the safe keeping of the Seas, &c. Communia pericula requirunt communia auxilia.

Ph. Cominæus, Lib. 5. fo. 233.

This word [Subsidie] is common, as well to the English as to the French. Concerning Subsidies hear what a stranger truly writeth. Reges Angliæ nihil tale, nisi convocatis primis ordinibus, & assentiente populo, suscipiunt. Quæ consuetudo valde mihi laudanda videtur; interveniente enim populi voluntate & assensu crescit robur, & potentia regum, & major est ipsorum authoritas, & feliciores progressus.

Subsidies taken in their general sence for Parliamentary Aids are divided into perpetual and temporary: perpetual, into three parts. viz. into Customs

antiquæ

antiqua, ſive magna, cuſtuma nova ſive parva, and into cuſtome of Broad cloth. Temporary, whereof there are three kinds, viz. 1 of Tunnage and Poundage of ancient time granted for a year or years incertainly, and of later times for life. 2. A Subſidie after the rate of 4 s. in the pound for lands, and 2 s. 8 d. for goods. And 3. for an Aid called a Fifteenth. And of theſe in order.

Cuſtuma antiqua ſive magna.

Cuſtuma antiqua ſive magna was by Act of Parliament granted to King E. 1. his Heirs and Succeſſors for tranſportation of three things, viz. Wools, Woolfels, and Leather, viz. for every ſack of Wooll containing thirty ſix ſtone, and every ſtone fourteen pound, half a mark; and for three hundred Woolfels half a mark, and for a laſt of Leather thirteen ſhillings four pence, to be paid as well by Strangers as by Engliſh, Prælati, magnates, & tota communitas conceſſerunt quandam novam conſuetudinem nobis de lanis, pellibus & coriis dimid. marc', de 300. pellibus dimid. marc', & de laſta coriorum unam marcam. In the ſtatute called confirmationes cartarum Anno 25 E. 1. there is a ſaving in theſe words, Sava a nous, & nous heires la cuſtome des leynes, peals & quires grant. per le Comminalty du realm. See alſo the like in the Preamble: * Salva tamen nobis & hæredibus noſtris cuſtuma lanarum, pellium & coriorum per Communitatem dicti regni nobis prim. conceſſ.

[a] Note it is ſaid in divers Records, per Communitatem Angliæ nobis conceſſ. becauſe all grants of Subſidies or Aids by Parliament do begin in the Houſe of Commons, and firſt granted by them: alſo becauſe in effect the whole profit which the King reapeth doth come from the Commons.

See hereafter c. 11. Verb, de nous Cuſtomes, &c. Rot. finium An. 3 E. 1. Rot. Par. 3 E. 1. m. 1 dat. 10 Novemb. which was in the end of the year, for he began his reign 17 Nov. Confirmat. Cartarum Vet. Mag. Cart. 2 part. fol. 36. a. Int. brevia de Term Mich. 26 E. 1. In offi. remem. regis. [a] 12 H. 4. nu. 45. 6 H. 9. nu. 11. 12 E. 4. ca. 3. 7 E. 4. nu. 30. 1 E. 6. ca. 13. 1 Mar. ca. 18. 1 Eliz. ca. 19. & 3 Jac. Regis accord.

Cuſtuma parva & nova.

In the 31 year of E. 1. the Merchant ſtrangers in conſideration of certain liberties and privileges granted to them, and a releaſe to them of all priſes and takings, gave to the King and his Heirs, three ſhillings four pence, ultra antiquam cuſtumam ut prius conceſſ. So as where the Subject paid a Noble, the Stranger paid ten ſhillings, &c. See the ſtatutes of 1 H. 7. ca. 2. 11 H. 7. ca. 14. 22 H. 8. cap. 8.

Cuſtuma is derived of the French word *Couſtum*, i. tributum ſeu vectigal. Rot. Car. 31 E. 1. nu. 44.

called Car. mercatoria; This was queſtioned Rot. ordinat. Anno 5 E. 2. but allowed of in Parliament, Anno 1 E. 3. 9 E. 3. cap. 1. 27 E. 3. Stat. Stapl. ca. 26. F. N. B. 227. d. 259. a.

Cuſtome of what things, ex antiquo.

And it is to be obſerved, that of ancient time no Cuſtome was paid by Engliſh or Stranger, but for Wools, Woolfels, and Leather. Hereby it appeareth how neceſſary the knowledge of ancient Records, and of the true original of every thing is. 1 El. Dier. 165.

In the Reign of E. 3. a great part of the Wools for the which ſuch Cuſtome was granted and paid, as is aforeſaid, was draped into Broad cloth: whereupon queſtion grew, whether upon the tranſportion of the Cloth, into which the Wooll was draped, Cuſtome ſhould be proportionably paid, having regard to the quantity of the Wooll ſo converted into Cloth: and it was reſolved, that no Cuſtom ſhould in that caſe be paid, becauſe the Wooll by the labour and induſtry of man was changed into another kind of Merchandize: wherewith the King held himſelf ſatisfied, and ſo it appeareth in the Kings own Writs and Records enrolled in Exchequer. Of Wools draped into Cloth no Cuſtom was due.

The firſt Act of Parliament that gave any Subſidy of Cloth, was in Anno 21 E. 3. (not printed) viz. fourteen pence of Leiges, and one and twenty pence

of

of Strangers, for every Cloth of Aſſiſe, and two ſhillings four pence of Lieges, and three ſhillings ſix pence of Strangers for every Cloth of Scarlet, &c. Vide inter original' de Scaccario, 24 E. 3. Rot. 13. And the reaſon of granting the ſaid Subſidies of broad Cloth was, Quia jam magna pars lanæ regni noſtri in eodem regno pannificitur, de qua Cuſtuma aliqua non eſt ſoluta, per quod proficuum quod de Cuſtumis & Subſidiis lanarum, ſi extra dictum regnum ducerentur, precipere debemus, in multo diminuuntur, &c. And yet if in any caſe the King might by his Prerogative have ſet any impoſition, he might have ſet one in that caſe, for that as it appeareth by that Record, by making of Cloth the King loſt his Cuſtomes of Wool: and therefore for further ſatisfaction of the King for the Cuſtome of Wool at the Parliament held in Anno 27 E. 3. a Subſidy was granted to the King, his Heirs and Succeſſors, (* over the Cuſtomes thereof due) viz. of every whole Cloath of Aſſiſe not ingrained, four pence, and for the half of ſuch a Cloth, two pence, and of every Cloth ingrained five pence, and of the half two pence half peny, and of every Cloth of Scarlet ſix pence, and of the half three pence: and the Alnagers fee is granted to him by Act of Parliament, viz. for the meaſuring of every Cloth of Aſſiſe of the Seller a half peny, and of half a Cloth a farthing for his office, and no more, nor ſhall they take any thing for a Cloth that is leſſe: and that he take nothing of the Alnage of any Cloth but only of ſuch Cloth as is to be ſold. And both in this Act and in ſome Acts in the reign of H. 3. Conſuetudines & Cuſtumæ, which are engliſhed, Cuſtomes, are taken for the Subſidies that were granted by Parliament, for verily thoſe were ancient and right Cuſtomes or Subſidies. And in the ſtatute of 11 H. 4. Cuſtomes and Subſidies are uſed as Synonymaes.

Int. Orig. de Scaccario. 24 E. 3. Rot. 13. Ib. 27 E. 3. Rot. 4.

See the Second part of the Inſtitutes, Mag. Cart. cap. 30. pa. 60.

By 27 E. 3. ſtat. 1 & ca. 4. Cuſtome of Cloth.

* Viz. the Subſidies granted in Anno 21 E. 3.

The Alnagers fee of the ſubject granted by Parliament.

Mag. Car. c. 30. Conſuetudines. Stat. de Scaccario 51 H. 3. Cuſtoum des Leynes. 11 H. 4. cap. 7.

Butlerage.

Butlerage is a Cuſtome due to the King of two ſhillings for every Tun of Wine brought into this Realm by Strangers: but Engliſh men pay it not.

Lib rubeus in Scacc. fo. 265. Vid. 6 E. 3. fo. 5. & 6. the Archbiſhop of Yorks caſe.

In libro Rubeo in Scaccario in cuſtodia Rememoratoris Regis, fol. 265. the grant of King John to the Merchants of Aquitain trading for Wines thence into England of divers liberties, viz. De libertatibus conceſſis mercatoribus vinetariis de Ducatu Aquitanæ, reddendo regi & hæredibus ſuis 2 s. de quolibet dolio vini ducti per eoſdem infra regnum Angliæ vel poteſtate regis.

Rot. Cartarum Anno 31 E. 1. nu. 44. called Carta at mercatoria.

All Merchants Strangers in conſideration of the grant to them by the King of divers liberties and freedoms, conceſſerunt quòd de quolibet dolio vini quod adducent vel adduci facerent infra regnum, &c. ſolvent nobis & hæredibus noſtris nomine Cuſtumæ duos ſolidos, &c.

Priſage.

Fleta li. 2. c. 21. Rot. Par. 40 H. 3. Rot. Par. 28 E. 1. pro Math. de Columbar'.

Priſage is a Cuſtome due to the King, of the Wines brought in by the Merchants of England of every Ship having twenty Tuns or more, two Tuns. viz. one before the Maſt, and the other behind, paying twenty ſhillings for each Tun; and this is called certa priſa, and recta priſa, and regia priſa, as in the Record enſuing appeareth, and hereof Merchant ſtrangers are diſcharged per cartam mercatoriam, 31 E. 1. Ubi ſupra.

P. Rec. 20 R. 2. Vid. Tr. 33 E. 1. Rot. 124. Priſæ Vinorum in Hibernia.

Memorandum quod Rex habet ex antiqua conſuetudine de qualibet nave mercatoris vini 6. carcat. applican. infra aliquem portum Angliæ de viginti doliis duo dolia, & de decem doliis unum de priſa regia pro quodam certo ab antiquo conſtitut. ſolvend.

Hereby it appeareth that Priſage is due by preſcription, and that it was a certainty of ancient time ordained to be paid.

43 E. 3. ca. 3. & 1 H. 8. ca. 5. Concerning the Alnaging of new Draperies.

It is called Butlerage becauſe the Kings chief Butler doth receive it, and Priſage, becauſe it is a certain taking or purveyance for Wine to the Kings uſe.

In Hillary Tearm, Anno 2. Jac. Regis, upon a ſuit made to the King by the Duke of Lenox, queſtion was moved concerning new Draperies, as Frizadoes

does, Bayes, Northern Cottons, Northern Dozens, Cloth rash, Durances, Perpetuanoes, Fustians, Canvas, Sackcloth, Worsteads, and Stuffs made of Worstead yarn, whether the King might grant the Alnaging of them with a reasonable Fee, or whether they were within the said Statute of 27 E. 3. And these questions were by the Kings commandment in this Hilary Term referred to all the Judges of England to certifie their opinions concerning the suit to the Lords of his Privy Council; who upon often hearing of the cause, and mature deliberation, and conference amongst themselves, in the end in Trinity Term following with one unanimous consent, certified in writing in these words following, viz. To the Lords and others of His Majesties most honourable Privy Council. Our duties to your Lordships remembred. May it please the same to be advertised, that according to your Letters in that behalf, we have heard the matter touching the fearm of the Alnage, and measurage, that is sought to be granted by his Majesty of sundry kinds, as well of new made Drapery, as of other Stuffs made within this Realm. And upon hearing as well of some of the part of the Master of *Orkney*, as others; both of the behalf of the Duke of *Lenox* and Master *Shaw*, have informed our selves touching the same. And for our opinions we are resolved, that all new made Drapery made wholly of Wool, as Frizadoes, Bayes, Northern Dozens, Northern Cottons, Cloth rash, and other like Drapery, of what new name soever, for the use of mans body, are to yield Subsidy and Alnage according to the Statute of 27 E. 3. and within the office of the ancient Alnage, as may appear by several decrees in that behalf made in the Exchequer in the time of the late Queen. But as touching Fustians, Canvas, Sackcloth, and such like, made meerly of other Stuff then Wool, or being but mixed with Wool, we are of opinion that no charge can be imposed for the search or measurage thereof, but that all such Patents so made are void, as may appear by a Record of the 11 year of H. 4. wherein the reason of the judgment is particularly mentioned, which we hold not amiss to set down to your Lordships, which is thus; The same King H. 4. granted the measurage of all Woollen Cloth and Canvas that should be brought to *London* to be sold by any stranger or denizen (except he were free of *London*) taking one half penny for every piece of Cloth so measured of the Seller, and one other half penny of the Buyer, and so after the rate for a greater or lesser quantity, and one penny for the measuring of 100 els of Canvas of the Seller, and so much more of the Buyer. And although it were averred that two other had enjoyed the same office before with the like fees, *viz.* one *Shering* by the same Kings grant, and one *Clytherow* before by the grant of King R. 2. yet, amongst other reasons of the Judgment, it was set down and adjudged, that the former possession was by extortion, and coertion, and without right, and that those Patents were *in oneracionem, oppressionem & depauperationem populi Domini Regis, & non in emendationem ejusdem populi, &c.* and no benefit to the King, and therefore the Patents void. And as touching the narrow new Stuff made in *Norwich* and other places with worstead yarn, we are of opinion that it is not grantable, nor fit to be granted; for we cannot find, that there was ever any Alnage upon *Norwich* worsteads. And for these Stuffs, if after they be made and tacked up for sale by the makers thereof, they should be again opened to be viewed and measured, they will not well fall into their old plaits to be tacked up as before, which will be (as is affirmed) a great hinderance to the sales thereof in gross, for that they will not then appear to be so merchandizable, as they were upon the first making of them up. And even so we humbly take our leaves. *Serjeant Inn*, the 24 of *June*, 1605. Which Certificate being read by the Lords of the Privy Council (*J.* being then Atturney General and present) was well approved by them all, and commandment given, that it should be kept in the Council Chest to be a direction for them to give answer to all suits of that kind.

See Rot. Parl. 50 E. 3. nu. 142. Cogware Kerseys. See hereafter, cap. 67. See Rot. Parl. 9 H. 4. nu. 34. Kendal Clothes, &c. 11 H. 4. c. 2. enact. 11 H. 4. nu. 26. for remnants of cloth, &c. 11 H. 4. c. 7. Stat. 2.

And it is to be observed, * that Acts of Parliament that are made against the freedom of trade, merchandizing, handicrafts, and mysteries, never live long.

* 37 E. 3. c. 5, 6. 38 E. 3. c. 2. Lib. 11. fo. 54. de Taylers de Ipswich.

Bills, Motions.

Good Bills or Motions in Parliament ſeldom die.

8 E.2.nu. 17 E.3.nu.49. 1 R.2. nu.82. 4 R. 2. nu. 36. 9 R. 2. nu.44. 1 H. 4. nu.121. 2 H.4. nu.83. 2 H.4. nu. 70. 11 H.4. nu.47. 1 H.5. nu.23. 7 H.5. nu.18. 1 H.6.nu.41. 7 E 4.nu.20. *Acts of Parliament.* 2 E.3. cap.2. 25 E.3. cap.5. 4 H.4. c.22. 1 H.5.c.1. 15 H.6. c.14. 1 R.3.c.3. 21 H.8.c.5. 23 H.8.c.4. 26 H.8.c.3. 31 H.8.c.1. 32 H.8.c.32. 2 E.6.c.8. & 13. 1 & 2 Ph.& Mar.c.13. Vide infra c.8.pag.

It is an obſervation proved by a great number of preſidents, that never any good Bill was preferred, or good motion made in Parliament, whereof any memorial was made in the Journal book, or otherwiſe, though ſometime it ſucceeded not at the firſt, yet hath it never died, but at one time or other hath taken effect; which may be a great encouragement to worthy and induſtrious attempts, as taking ſome few examples for many, which I have quoted in the margent.

The Subſidy of Tunnage and Poundage.

By the ſubſequent Records you ſhall obſerve 13 things. 1. The grant of Poundage onely. 2. Of Tunnage and Poundage. 3. Several rates, ſometimes 6 d. 8 d. 12 d. for Poundage. 4. Sometimes 2 s. 18 d. 3 s. 5. Hac vice, 1, 2, 3, 4. years for life. 6. To Merchants &c. 7. To have intermiſſion and to vary, leſt the King ſhould claim it as a duty. 8. Expreſſed upon free gift. 9. Upon condition to keep the Seas, and for commerce. 10. That is ever the conſideration and cauſe of the Grant. 11. Granted without retroſpect. 12. Sometimes double of Strangers. 13. Cloth excepted, that it be not ſubject to Tunnage and Poundage. 31 H.6.

The Records.

[a] 47 E.3.nu.12
[b] 6 R.2.nu.13.
[c] 7 R.2.ſtat.1.

[a] Of Poundage onely, and 6 d. in the pound, for two years upon condition, &c.

[b] 6 d. for Poundage, and 2 s. for Tunnage of Wine, hac vice.

[c] 6 d. of every pound of merchandize, and 2 s. of every Tun of Wine, upon condition, &c. hac vice.

[d] 5 R.2.nu.40. 9 R.2. nu.11. 10 R.2.nu.18. 11 R.2.nu.12.

[d] Sometimes to have intermiſſion, and to vary, leſt the King ſhould claim as duties.

[e] 13 R.2.nu.20
[f] 14 R.2.nu.12
[g] 17 R.2.nu.12
[h] 2 H.4. nu.9.
[i] 4 H.4.nu.28
[k] 6 H.4.nu.9.
8 H. . nu.9.
9 H.4.nu.27.
[l] 11 H.4.n.45.
[m] 13 H.4.n.10
[n] 1 H.5.nu.17
[o] 3 H.5.nu.50

[e] For Tunnage of Wine 3 s. and 6 d. for Poundage for one year.

[f] 3 s. for Tunnage of Wine, 12 d. for Poundage, hac vice.

[g] 6 d. for Poundage, and 18 d. for Tunnage of Wine for three years.

[h] 8 d. for Poundage, and 2 s. for Tunnage of Wine.

[i] 12 d. for Poundage, and 3 s. for Tunnage of Wine for three years.

[k] 12 d. for Poundage, and 3 s. for Tunnage of Wine for ſeveral times upon condition, ſometime for one year. In theſe and moſt of the former granted upon condition for due employment [l] of their own good will, and ſo entred, and the King to have a certain ſum [m] more expreſſly.

[n] 12 d. for Poundage, and 3 s. for Tunnage of Wine for four years.

[o] The like Subſidy is granted to the King for his life upon conditions, &c. which was the firſt grant of Tunnage and Poundage for life, which was a leading Grant, as hereafter appeareth.

[p] 2 H.6.nu.14.
[q] 3 H.6.nu.17
9 H.6.nu.14.
[r] 23 H.6.n.19.
[ſ] 31 H.6.nu.8. & cap.8.
* Nota.
[t] 4 E.4.& 12 E.4.c.3.in print.

[p] The Subſidy of Poundage onely for two years.

[q] Tunnage of Wine and Poundage granted for ſeveral years.

[r] Tunnage and Poundage, ut prius of Denizens, double of Strangers.

[ſ] Tunnage of Wine and Poundage granted to H.6. for life, with an exception of all woollen * Cloth: and here Cloth was firſt excepted, and was a leading exception in all ſubſequent Acts.

[t] Tunnage of Wine and Poundage granted to E.4. for life with no retroſpect, but for the time to come.

[u] Rot.Par. 1 H.7. not printed, for he had many ſubſidies, but printed none.

[u] At the Parliament holden Anno 1 H.7. a like Act was made for the grant of the Subſidies of Tunnage and Poundage to him for his life.

[x] Rot.Parl. 1 H.8. not printed. Vide 6 H.8. cap. 14. in print.

[x] And the like Subſidy was granted to King H.8. at the Parliament holden Anno 1. of his reign for his life.

The

The like grant was made to E. 6. Queen Mary, Queen Eliz. and King James for their ſeveral lives, and in all theſe it is affirmed, that the like grants were made by Act of Parliament to King H. 7. and King H 8. 1 E. 6. c. 13. 1 Mar. cap. 18. 1 Eliz. cap. 19. 1 Jac. cap. 33.

The conſideration of the grant of theſe Subſidies of Tunnage and Poundage is ever, as is aforeſaid, expreſſed in the grant for the keeping and ſafeguard of the Seas, and for intercourſe of merchandize ſafely to come into this Realm, and ſafely to paſs out of the ſame. And this pertaineth properly to the Office of the Lord Admiral to ſee the conſideration of the Act to be performed. * They are granted of the free good will of the Subjects, and ſo expreſſly ſet down in the Parliament Roll. * Rot. Par. 11 H. 4. nu. 45. 13 H. 4. nu. 10.

In King James his reign, when I was a Commiſſioner of the Treaſury, theſe Subſidies granted for life amounted to One hundred and threeſcore thouſand pounds per annum, and ſo letten to farm. The values of the merchandize for the which the Subſidy of Poundage is paid, do appear in a book of Rates in print, whereby the Merchant knows what he is to pay. The Subſidy of Tunnage of Wine is certain in theſe Acts by the contents of the Veſſels: and none of theſe Acts do extend to any other liquid merchandize imported or exported, but unto Wines onely: and ſeeing nothing is more incertain then the continuance of the value of Merchandizes, wherefore the Subſidy of Poundage is paid, it were good at every grant of them to ſet down the rates in a ſchedule annexed to the bill. A Book of Rates or Values.

Subſidies temporary and uſual at this day.

Subſidies temporary and uſual at this day. And this is when the Commons in Parliament freely grant to the King an Aid to be levied of every Subject of his lands or goods after the rate of 4s. in the pound for lands, and 2s. 8d. for goods, and for Aliens for goods double, to ſuch ends, and for ſuch conſiderations and to be paid at ſuch times, as by the Acts thereof (which are uſual and frequent) do appear. And in former times in this kind of Subſidy, this order was obſerved, that over and above the Subſidy of Tunnage and Poundage, the Commons never gave above one Subſidy of this kind, and two Fifteens, (and ſometime leſs) one Subſidy amounting to Seventy thouſand pounds, and each Fifteen at Twenty nine thouſand pounds, or near there abouts; nor above one Subſidy, which did riſe to twenty thouſand pounds, the Clergy gave not.

At the Parliament holden in 31 Eliz. the Commons gave two Subſidies, and four Fifteens, which firſt brake the Circle.

In 35 Eliz. three Subſidies and ſix Fifteens.

In 39 Eliz. three Subſidies and ſix Fifteens.

In 43 Eliz. four Subſidies and eight Fifteens, &c.

In 21 Jac. Regis, three Subſidies and ſix Fifteens in ſhorter times then had been before.

In 3 Car. Regis, five Subſidies in ſhorteſt time of all.

And it is worthy of obſervation how quietly Subſidies granted in forms uſual and accuſtomable (though heavy) are born; ſuch a power hath uſe and cuſtom: On the other ſide, what diſcontentments and diſturbances Subſidies framed in new molds do raiſe, (ſuch an inbred hatred novelty doth hatch) is evident by examples of former times.

As that of 4 R. 2. a new invention of Subſidies of the Kings Subjects of either ſex by the poll &c. for the furniſhing of the Earl of Buckingham for his going into France, whereupon a ſtrong and a ſtrange Rebellion enſued, wherein three great and worthy Officers were by the raſcal Rebels barbarouſly and wickedly murdered, viz. Simon Sudbury, Archbiſhop of Canterbury, Chancelour of England, the Prior of St. Johns of Jeruſalem, Treaſurer of England, and Sir John Cavendiſh, Chief Juſtice of England. Rot. Par. 48. 2 nu. 15. 5 R. 2. nu. 32.

In 4 H. 7. another like new found Subſidy was granted, which raiſed a rebellion in the North, in which the noble Earl of Northumberland, a Commiſſioner in that Subſidy, was by the Rebels cruelly and cauſeleſly ſlain. Holliſh. Chron. 769.

Hollinſh. Chron. 891. In Anno 16 H.8. to furniſh the King for his going in his royal perſon into France, a new device for getting of money was ſet on foot, which made the headleſs and heedleſs multitude to riſe in rebellion, until Charles Brandon the noble Duke of Suff. quieted and diſperſed them.

Rot. Parl. 9 E.3. nu.5. At the Parliament holden in 9 E. 3. when a motion was made for a Subſidy to be granted of a new kind, the Commons anſwered, that they would have conference with thoſe of their ſeveral Countries and places, who had put them in truſt, before they treated of any ſuch matter.

9 H.6. nu.15. 10 H.6. nu.50. Vide 9 H 6. nu. 15. Every Knights fee to pay 20 s. and ſo according to the value under or over, and ſo of the Clergy for Lands purchaſed ſince 20 E.1. And all other having 20 l. Lands not holden as is aforeſaid, 20 s. &c. This whole Subſidy for certain doubts the King utterly releaſed, ſo as there is no mention made of the ſame: But hereof thus much ſhall ſuffice.

Sæpe viatorem nova, non vetus orbita fallit.

Of Fifteens, Quinzims, &c.

Fifteens, Quinzim or Task, or Quinta-decima. A Fifteen is a temporary Aid granted to the King by Parliament, which without further inquiry is certain, and therein differeth from the Subſidy, which is ever uncertain, until it be aſſeſſed.

The Fifteen of ancient time was the fifteenth part of Goods moveable, but in 8 H.3 all the Cities, Boroughs, and Towns in England were rated certainly at the fifteenth part of the value at that time generally upon the whole Town, whereof you ſhall read more at large in the Second Part of the Inſtitutes, in the laſt Chapter of Magna Charta, Verb. Quintam decimam partem bonorum mobilium.

Second Part. Inſt. Mag. Cart. cap.ult.

Of Tenths.

There is decima pars of the Laity, and for the moſt part of Cities and Boroughs by their goods, (Vide 1 R. 2. nu. 26.) which proportionably is, ſecundum decimam quintam partem. That which we call Taſk, Tallage, Tenth, and Fifteen, the Saxons called Geldinn, * we uſe the word changing g to y, for gelding, yeelding, &c.

* Doomſday. Norff. in Waneluit, i. Wayland, & ibid. in Frebringe in Maſſingham, &c.

So * Subſidy before the end of the Parliament, becauſe it is to accompany the Pardon.

* Rot. Parl. 11 R.2. nu.11. This is contained in the Act of Subſidy, and ſo an Act of Parliament: and accordingly Subſidies, &c. have been granted, as in the Book of Statutes appeareth.

Of Acts of Parliament of confirmation of Letters Patents.

Rot. Par. 2 H.5. nu.20. 1 H.6. nu.46. 3 H.7. to the Queen, 6 H. 8. to the Duke of Suff. We have read of particular Acts of confirmation of Letters Patents; but the firſt of Lands, &c. that was the more general, was the Statute of 31 H.8. c.13. of Monaſteries (to make thoſe Lands the more paſſable) but after that, general Acts of confirmation of Letters Patents have been very frequent.

How the Lords give their voices.

In the Lords Houſe, the Lords give their voices from the puiſne Lord ſeriatim, by the word of [content,] or [not content.]

Rot. Parl. 6 H.6. nu.17. A bill was preferred at the Parliament holden in Anno 6 H 6 that no man ſhould contract or marry himſelf to any Queen Dowager of England without ſpecial licenſe and aſſent of the King, on pain to loſe all his goods and Lands. The Biſhops and Clergy aſſented to this Bill, by the word of [content] as far forth as the ſame ſwarved not from the Law of God and of the Church, and ſo as the ſame imported no deadly ſin. At this time there were beſides the Archbiſhops

biſhops and Biſhops, 27 Abbots, and 2 Priors, (albeit in troth the number was many times uncertain, as in the cloſe Roll it appeareth) which ſeverally held per Baroniam, and were Lords of Parliament, and ſo continued until they were diſſolved in the reign of H. 8. The entry of the ſaid Act of 6 H. 6. in the Roll is: It is enacted by the King, Lords Temporal, and Commons, that no man ſhould contract or marry himſelf to any Queen of England, without the ſpecial licenſe and aſſent of the King, on pain to loſe all his goods and lands. The Biſhops and Clergy aſſented to this Bill, as far forth as the ſame ſwerved not from the Law of God, and of the Church, and ſo as the ſame imported no deadly ſin.

How many Lords Spiritual in former times.

This is holden to be an Act of Parliament: Firſt, for that the aſſent of the Clergy could not be conditional. Secondly, it was not againſt the Law of God nor of the Church, nor imported any deadly ſin to make this Law by authority of Parliament, as it appeareth by Magna Carta c. 7. which had by 32 Acts of Parliament been confirmed, and many others.

This Law was made after the marriage of Queen Katherine Dowager of H 5. with Owen ap Meredith ap Griffo (deſcended of the Princes of Wales) by whom ſhe had iſſue Edmond of Hadham aforeſaid, Earl of Richmond, and Jaſper of Hatfield, after Earl of Pembroke, and Duke of Bedford.

How the Commons give their voices.

The Commons give their voices upon the Queſtion, by Yea, or No; and if it be doubtful, and neither party yield, two are appointed to number them; one for the Yea, another for the No: the Yea going out, and the No ſitting: and thereof report is made to the Houſe. At a Committe, though it be of the whole Houſe, the Yeas go on one ſide of the Houſe, and the Noes on the other, whereby it will eaſily appear which is the greateſt number.

Pl.com.126. miſtaketh it, and that the Clerk number them.

How Parliaments ſucceed not well in five caſes.

It is obſerved by ancient Parliament men out of Record, that Parliaments have not ſucceeded well in five Caſes. Firſt, when the King hath been in diſpleaſure with his Lords, or with his Commons. 2. When any of the Great Lords were at variance between themſelves. 3. When there was no good correſpondence between the Lords and the Commons. 4. When there was no unitie between the Commons themſelves. 5. When there was no preparation for the Parliament before it began.

[a] For the 1. So eſſential is the Kings good will toward his Commons, that it was one of the petitions of the Commons to the King, that he would require the Archbiſhop and all other of the Clergy to pray for his eſtate, for the peace and good government of the Land, and for the continuance of the Kings good will towards his Commons: whereunto the thrice noble King aſſented with theſe effectual words, The ſame prayeth the King: and many times the like petitions for the Lords. [b] How the King in all his weighty affairs had uſed the advice of his Lords and Commons, (ſo great a truſt and confidence he had in them.) Always provided, that both Lords and Commons kep them within the circle of the Law and cuſtom of the Parliament,

[a] Rot. Parl. 37 E. 3. nu. 2. and the Writ to the Clergy, *De orando pro rege & regno*, which was uſual in thoſe days.

[b] Rot. Parl. 43 E. 3. nu. 1. 25 E. 3. nu. 15. 50 E. 3. nu. 2.

[c] For the ſecond: at the Parliament holden in 4 H. 6. what variance was there between the Duke of Gloc. and the B. of Wincheſter, and their Friends on either ſide? the ſucceſs was, that little was done in any Parliamentary courſe at that Parliament, and that little was of no moment.

[c] Rot. Par. 4 H. 6. nu. 12. See the Acts of that Parliament.

[d] At the Parliament holden in the third year of H. 6. the great controverſie was between John Earl Marſhal, and Richard Earl of Warwick, with like ſucceſs.

[d] Rot. Par. 3 H. 6. nu. 1. & 10.

[e] The like controverſie between William Earl of Arundel and Thomas Earl of Devon, for ſuperiority of place, with like event. And many more might be cited. And always in the beginning amity was made between the Grandees of the Realm by ſhaking of hands and kiſſing, and ſometime by * ſubmiſſion.

[e] Rot. Par. 27 H. 6. nu. 18.

[f] Rot. Par. 2 H. 4. nu. 14. 5 H. 4. nu. 18. 20.

* Rot. Par. 21 R. 2. by the Counte of Arundel to the D. of Lanc. 4 H. 6. nu. 12.

For the third: when it was demanded by the Lords and Commons what might be a principal motive for them to have good ſucceſs in Parliament, it was anſwered, Fratres inſuperabiles, ſi fueritis inſeparabiles. Exploſum eſt illud diverbium;

Divide,

Rot. Parl. Anno 11 H.4. nu. 10. the King desired this unity. 20. Judicum.

Divide, & impera: cum radix & vertex imperii in obedientium consensu rata sunt.

For the fourth: unity between the Commons themselves. It is most necessary in both these, and agreeable to the Parliament in the Book of Judges. Quasi homo unus, eadem mente, uno consilio.

1 Chron. cap. 28

For the fifth: the Summons of Parliament is by forty days or above before the sitting, to the end that preparations might be had for the arduous and urgent affairs of the Realm: and that both the King, according to the example of King David, and likewise the Nobles and Commons should prepare; for præparatæ meditationes sunt semper saniores & meliores quam properatæ, wherein both Houses may greatly expedite the business of the Commonwealth in Parliament, if they will pursue the ancient custom of Parliament, viz. in the beginning thereof to appoint a select Committee to consider of the Bills in the two last Parliaments that passed both Houses, or either of them, and such as had been preferred, read, or committed, and to take out of them, such as be most profitable for the Commonwealth.

The honour and antiquity of the Parliament.

7 H.6. lib. 11. fo. 14. Inter leges Edwardi Reg. c. 8.

For the honour and antiquity of the Parliament, see the First part of the Institutes, Sect. 164. Verb. Veigne les Burgesses, and in the Preface to the ninth Book of my Reports, fo. 1, 2, 3, 4, &c. whereunto you may add, Inter leges Edwardi Regis, cap. 8. De decimis Ecclesiæ reddendis, Sect. De apibus vero, &c. Hæc enim prædicavit beatus Augustinus, & concessa sunt a Rege Baronibus & populo. A grant by express Act of Parliament. Vide infra, cap. 79 pag.

The power and jurisdiction of the Parliament.

[a] See 13 Eliz. c. 1. 39 H.6. 15. Vide infra c. 79.

[a] Of the power and jurisdiction of the Parliament, for making of Laws in proceeding by Bill, it is so transcendent and absolute, as it cannot be confined either for causes or persons within any bounds. Of this Court it is truly said, [b] Si antiquitatem spectes, est vetustissima, si dignitatem, est honoratissima, si jurisdictionem, est capacissima.

[b] Fortesc. ca. 18.

[c] Virgil.

[c] Huic ego nec metas rerum, nec tempora pono.

[d] Rot. Par. 12 E.4. nu. 20, 21, 22. the case of the wives of the D. of Clarence and Gloc.

Yet some examples are desired. [d] Daughters and Heirs apparent of a man or woman, may by Act of Parliament inherit during the life of the Ancestor.

[e] 12 E.4. nu. 34. Duke of Buckingham.

[e] It may adjudge an Infant, or Minor of full age.

[f] 21 R.2. nu. 27. Sir Ro. Plesington. 31 H.6. c. 1.

[f] To attaint a man of Treason after his death.

[g] This is usual in many Parliaments.

[g] To naturalize a meer Alien, and make him a Subject born. [h] It may bastard a child that by law is legitimate, viz. begotten by an Adulterer, the husband being within the four Seas.

To legitimate one that is illegitimate, and born before marriage absolutely. And to legitimate secundum quid, but not simpliciter. As to take one example for many.

[h] Rot. Par. 5 & 6 E. 6. the L. Marq. of Winch. case.

[i] John of Gaunt Duke of Lancaster had by Katherine Swinford before marriage four illegitimate children, viz. Henry, John, Thomas and Joan. And because they were born at [k] Beaufort in France, they were vulgarly called Henry de Beaufort, &c. John before the 20 year of R. 2. was Knighted, and Henry became Priest. [l] At the Parliament holden 20 R. 2. the King by Act of Parliament in form of a Charter doth legitimate these three sons, and Joan the daughter: and the Charter beginneth thus. Rex, &c. Charissimis consanguineis nostris nobilibus viris [m] Johanni Militi: [n] Henrico Clerico: [o] Thomæ [p] domicello, ac dilectæ nobis nobili mulieri [q] Johannæ Beaufort domicellæ, Germanis præcharissimi avunculi nostri, Johannis Ducis Lancastriæ natis ligeis

[k] Beaufort came to the House of Lanc. by marriage between Blanch of Artois and Edmond first Earl of Lancast.

[l] Rot. Par. 20 R.2. membr. 7. [m] This John in Anno 21 R.2. was created Earl of Somerset. and Marq. Dorset. But in 1 H. . the Marquesship was taken away by Parliament. [n] This Henry was after Bishop of Winchester, Cardinal of St. Ewseby, and Chancellor of England. [o] This Thomas was in 21 R.2. created Earl of Dorset. [p] For *Domicellus, &c.* See *Lamb. inter leges Edw. fo. 139. b. Nos inferete domicellos de pluribus dicimus, quia Baronum filios vocamus domicellos, Angli vero nullos, nisi natos regum.* [q] Joan was first married to Ralph the first Earl of Westmerland, and after to Robert Ferrers Lo. of Owsley.

nostris

noſtris ſalutem, &c. Nos dicti avunculi noſtri genitoris veſtri precibus inclinati, vobiſcum qui (ut aſſeritur) defectum natalium patimini, ut hujuſm' defectu (quem ejuſq; qualitatis quaſcunq; præſentibus habere volumus pro ſufficienter expreſſis) non obſtante ad quæcunque honoris dignitates, (*excepta dignitate regali) præheminentias, ſtatus, gradus, & officia publica & privata tam perpetua quam temporalia, atque feudal' ac nobil' quibuſcunque nominibus nuncupantur, etiamſi ducatus, principat. comitat. Baronia, vel alia feuda fuerint, etiamſi mediate, vel immediate, vel à nobis dependeant ſeu teneantur, præfici, promoveri, eligi, aſſumi & admitti, illaque recipere, retinere, perinde libere & licite valeatis, ac ſi de legitimo thoro nati exiſteretis, quibuſcunque ſtatutis ſeu conſuetudinibus regni noſtri Angliæ in contrarium editis ſeu obſervatis (quæ hic habemus pro totaliter expreſſis) nequaquam obſtantibus; de plenitudine noſtræ regalis poteſtatis, ac de aſſenſu Parliamenti noſtri tenore præſentium diſpenſamus, voſque & veſtrum quemlibet Natalibus reſtituimus, & legitimamus. In cujus rei teſtimonium. Teſte Rege apud Weſtm' 9 die Febr. Per ipſum Regem in Parliamento.

* Nota.

In this Act are divers things worthy of obſervation. 1. The names whereby they were legitimated. 2. That this legitimation was not ſimpliciter, but ſecundum quid: for they were legitimated and made capable of all dignities except the Royal Dignity: ſo as this legitimation extended not to make them or their poſterities inheritable to the Crown, but to all other dignities. 3. That before their legitimation, they were not created to any of their dignities. 4. The brief and artificial penning of this legitimation, with general words, as if the particularity were expreſſed, and with a brief non obſtante, and with as little blemiſh as may be. 5. And hereby it appeareth, that [a] H. 7. being ſon of Edmond of Hadham E. of Richmond, and Margaret his wife, daughter and heir of John de Beaufort, D. of Somerſet: which Margaret lineally deſcended from the ſaid John de Beaufort, legitimated and made capable of all dignities, as is aforeſaid, excepta regali dignitate, that the beſt title of H. 7. to the Crown, was by Elizabeth his wife, eldeſt daughter of E. 4. Yet before this marriage the Crown was by Act of Parliament intailed to H. 7. and to the heirs of his body, the right of the Crown then being in the ſaid Elizabeth, eldeſt daughter of E. 4. 6. In this Act, the ſaid Thomas before his legitimation could not be called Eſquire, and therefore he hath this addition of * Domicello, either deriued of the French word Domoiſell, which ſignifieth a young Souldier not yet knighted, or ſignifieth noble born. And note, Johan. the daughter had the addition of de Beaufort and Domicilla, in that ſenſe alſo.

[a] Nota, pro corona. Rot. Parl. Anno 1 H. 7. not in print.
7 H. 4. c. 2. the like to H. 4. the right of the Crown being then in the deſcent from *Philip* daughter and heir of *Lionel* Duke of *Clarence*.

[b] And albeit I find an attainder by Parliament of a ſubject of High Treaſon being committed to the Tower, and forth-coming to be heard, and yet never called to anſwer in any of the Houſes of Parliament, although I queſtion not the power of the Parliament, for without queſtion the attainder ſtandeth of force in law: yet this I ſay of the manner of the proceeding, Auferat oblivio, ſi poteſt; ſi non utcunque ſilentium tegat: for the more high and abſolute the Juriſdiction of the Court is, the more juſt and honourable it ought to be in the proceeding, and to give example of juſtice to inferiour Courts. But it is demanded, ſince he was attainted by Parliament, what ſhould be the reaſon that our Hiſtorians do all agree in this, that he ſuffered death by a law which he himſelf had made? For anſwer hereof, I had it of Sir Thomas Gawdye Knight, a grave and reverend Judge of the Kings Bench, who lived at that time, that King H. 8. commanded him to attend the Chief Juſtices, and to know whether a man that was forth-comming might be attainted of High Treaſon by Parliament, and never called to his anſwer. The Judges anſwered, that it was a dangerous queſtion, and that the High Court of Parliament ought to give examples to inferiour Courts for proceeding according to Juſtice, and no inferiour Court could do the like; and they thought that the High Court of Parliament would never do it. But being by the expreſs commandment of the King, and preſſed by the ſaid Earl to give a direct anſwer: they ſaid, that if he be attainted by Parliament, it could not come in queſtion afterward, whether he were called or not called to anſwer.

[b] Rot. Parl. 32 H. 8. The attainder of *Tho. Cromwel* Earl of *Eſſex*.

And

And albeit their opinion was according to Law, yet might they have made a better answer, for by the Statutes of Mag. Cart. c. 29. 5 E. 3. c. 9. & 28 E. 3. c. 5. no man ought to be condemned without answer, &c. which they might have certified, but facta tenent multa, quæ fieri prohibentur; the Act of Attainder being passed by Parliament, did bind, as they resolved. The party against whom this was intended, was never called in question, but the first man after the said resolution, that was attainted, and never called to answer, was the said Earl of Essex: whereupon that erroneous and vulgar opinion amongst our Historians grew, that he died by the same law which he himself had made. The rehearsal of the said Attainder can work no prejudice, for that I am confidently perswaded, that such honourable and worthy members shall be from time to time of both Houses of Parliament, as never any such Attainder, where the party is forthcoming, shall be had hereafter, without hearing of him.

[a] Nunquid lex nostra judicat hominem, nisi prius audierit ab ipso, & cognoverit quid faciat? Doth our law judge any man, before it hear him and know what he doth? [b] It is not the manner of the Romans to deliver any man to die, before that he which is accused have the accusers face to face, and have license to answer for himself concerning the crime laid against him.

[c] Ait Josua ad Achan, Fili mi, da gloriam Domino Deo Israel, & confitere mihi quid feceris, ne abscondas.

[d] Interrogatus Levita maritus mulieris interfectæ quomodo tantum scelus perpetratum esset, &c. And the conclusion is after hearing and discerning the cause, Consider, consult, and then give sentence.

[e] And as evil was the proceeding in Parliament against Sir John Mortimer, third son of Edmond the second Earl of March (descended from Lionel Duke of Clarence) who was indicted of High Treason for certain words, in effect, that Edmond Earl of March should be King by right of inheritance, and that he himself was next rightful heir to the Crown after the said Earl of March, wherefore if the said Earl would not take it upon him, he would: and that he would go into Wales, and raise an Army of 20000 men, &c. which indictment (without any arraignment or pleading) being meerly feigned to blemish the title of the Mortimers, and withal being insufficient in Law, as by the same appeareth, was confirmed by Authority of Parliament: and the said Sir John being brought into the Parliament without arraignment or answer, judgment in Parliament was given against him upon the said indictment, That he should be carried to the Tower of London, and drawn through the City to Tiburn, and there hanged, drawn and quartered, his head to be set on London Bridge, and his four quarters on the four Gates of London, as by the Record of Parliament appeareth.

[a] Lex Divina. Joh. 7. v. 15. Deut. c. 17. v. 10. & c. 19. v. 15. Mat. Par. 18. Johannis 273. *Incivile videtur & contra Canones esse in hominem absentem non vocatum, non convictum nec confessum, ferre sententiam.* Hereof see *paulo postea.*

[b] Acts 25. 16. Gen. 3. 9. Dixit Dominus, Adam ubi es? Vide Gen. 18. 21. Eccles. 11. 7, 8.

[c] Praxis Sanctorum. Josua 7. 19, 22, 23, &c.

[d] Jud. 20. 3.

[e] Rot. Parl. 2 H. 6. nu. 18.

The proceeding in Parliament against Absents.

The ancient Law and Custom of the Parliament was, that when any man was to be charged in Parliament with any crime or offence, or misdemeanour, the Kings Writ was directed to the Sheriff to summon and enjoyn the party to appear before the King in the next Parliament. For example.

Placita in Parliamento dom. Regis, Anno E. 1. 33. Northampt.

Dominus Rex mandavit Vic' quod assumptis secum quatuor de discretioribus & leg' militibus Com' sui in propria persona sua accederet ad Nich. de Segrave, & ipsum in præsentia prædictorum militum summon' & ex parte dom. Regis firmiter ei injungeret quod esset coram dom. Rege in proximo Parliamento suo apud Westm' in primo adventu Domini Regis ibidem, ad audiendam voluntatem ipsius Domini Regis super his, quæ tunc ibidem proponere intenderet versus eum, & ad faciendum & recipiendum ulterius quod Curia dom. Regis consideraret in præmissis. Et Vic' modo mandavit quod assumptis secum Thoma Wale, Waltero filio Roberti

de

de Daventry, Roberto de Gray de Wollaſton, & Radulpho de Normavill quatuor milit', &c. in propria perſona ſua acceſſit apud Stowe ad manerium prædicti Nicholai, & in præſentia eorundum militum ſummon' prædictum Nicholaum, & ei firmiter injunxit quod eſſet coram Domino Rege in iſto Parliamento nunc juxta formam & tenorem mandati præd', &c.

Placita corani Domino Rege, Paſ. 33 E. 1. Rot. 19. Oxon.

Almaricus de Sancto Amando, Magiſter Johannes de Sancto Amando, Willielmus de monte acuto, Richardus Atteham conſtabularius caſtri Oxon' Ricardus de Hurle, Thomas de Carleton capellanus, Johannes de Ros, Johannes de Trenbrigg, Wilielmus Attewarde frater ejus, & Philippus de Wigenton attachiat' fuerunt per Vic' in caſtro Oxon' per præcept' Domini Regis reſponſur' eidem Domino Regi in Parliamento ſuo in Craſtino Sancti Matthæi Apoſtoli Anno regni ſui xxxiij. *ſuper quibuſdam criminibus & tranſgreſſionibus infra ſcriptis, & inde per manucaptionem ſufficient' adjornat' coram ipſo Domino Rege hic ad hunc diem, ſcilicet a die Paſchæ in* xv. *dies, &c.*

Dr a wzit might be directed to the party himſelf, when any complaint was made againſt him, De injuriis, gravaminibus, aut moleſtationibus, to appear in his pzoper perſon befoze the King and his Council. As foz example.

Dominus Rex mandavit breve ſuum Roberto de Burgherſh in hæc verba, Edwardus Dei gratia, &c. Dilecto & fideli ſuo Roberto de Burgherſh conſtabular' caſtri ſui Dover & cuſtod' quinque portuum, ſalutem. Quia dilectus nobis in Chriſto Abbas de Faveresham & Robertus de Gurne balivus ſuus ejuſdem villæ coram Concilio noſtro apud Eborum exiſtente de diverſis injuriis, gravaminibus & moleſtationibus eis per vos voluntar' & abſque cauſa rationabili multipliciter illatis graves querimonias depoſuerunt, petentes inſtanter ut eis ſuper hoc fieri faceremus remedium opportunum, propter quod dedimus eis diem coram nobis & concilio noſtro à die Paſch. in xv. *dies, &c. ad querelas ſuas prædictas tunc oſtendend' & ad faciend' ſuper præhoc ulterius & recipiend' quod Juſtitia ſuaderet: Vobis mandamus, quod in propria perſona veſtra ſitis coram nobis & concilio noſtro ad diem prædict, præfatis Abbati & balivis ſuis ſuper præmiſſis reſpons' factur' & receptur' quod curia noſtra conſideraverit in hac parte, & ab injuriis, gravaminibus, moleſtationibus & diſtrictionibus indebitis præfatis Abbati & balivis ſuis interim inferendis penitus deſiſtendo. Et habeatis ibi hoc breve. Teſte meipſo apud Linliſcum* xxx. *die Januarii, Anno regni noſtri* xxx. *Virtute cujus brevis prædictus Robertus venit, & breve illud protulit ad diem in eodem contentum. Et prædictus Abbas venit & querelas ſuas protulit in quodam rotulo ſcriptas, & quas in curia hic querelando oſtendit & legere fecit, de quibus prima eſt hæc, &c.*

Placita coram Rege apud Cant' de Term. Paſc. Anno regni Regis E. 1. 30. Conſimile breve ubi ſupra eidem Roberto de Burgherſh ad ſectam Majoris & Baronum quinque portuum.

Now they which abſent themſelves ſhall be pzoceeded withal, Vide 50 E. 3. nu. 37. Adam Buries caſe, 2 parte Patent. 21 R. 2. nu. 15, 16. Rot. Par. 17 R 2. nu. 28. 11 H. 4. nu. 37., 38. 15 H 6. nu. 4. 33 H. 6. fol. 17. Sir John Pilkingtons caſe.

And where by ozder of law a man cannot be attainted of high Treaſon, unleſſe the offence be in law high treaſon, he ought not to be attainted by general wozds of high treaſon by Authozity of Parliament (as ſometime hath been uſed) but the high treaſon ought to be ſpecially expzeſſed, ſeeing that the Court of Parliament is the higheſt and moſt honourable Court of Juſtice, and ought (as hath been ſaid) give example to inferiour Courts.

25 H. 8. ca. 1, 2. Eliz. Barton, & others. And ſee the Act of the Attainder of the Lord Cromwell, An. 32 H. 8. ubi ſupra.

There was an Act of Parliament made in the 11 year of King H. 7. which had a fair flattering pzeamble, pzetending to avoid diuers miſchiefs, which were, 1. To the high diſpleaſure of Almighty God. 2. The great let of the

A miſchievous Act with a flattering Preamble in 11 H. 7.

Common law, and 3. The great let of the wealth of this land: And the Purview of that Act tended in the execution contrary, ex diametro, viz. to the high displeasure of Almighty God, the great let, nay the utter subversion of the Common law, and the great let of the wealth of this land, as hereafter shall manifestly appear. Which Act followeth in these words:

11 H. 7. c. 3.

THe King our Soveraign Lord calling to his remembrance that many good Statutes & Ordinances be made for the punishment of riots, unlawful assemblies, reteinders in giving and receiving of liveries, signs and tokens unlawfully, extortions, maintenances, imbracery, excessive taking of wages contrary to the Statute of Labourers and Artificers, the use of unlawful games, inordinate Apparel, and many other great enormities and offences, which been committed and done daily contrary to the good Statutes, for many and divers behooveful considerations severally made and ordained, to the displeasure of Almighty God, and the great let of the Common law, and wealth of this land, notwithstanding that generally by the Justices of the Peace in every shire within this Realm in the open Sessions is given in charge to enquire of many offences committed contrary to divers of the said Statutes, and divers enquests thereupon there straitly sworn, and charged before the said Justices to enquire of the premisses, and therein to present the troth which any letted to be found by imbracery, maintenance, corruption and favour; by occasion whereof the said Statutes be not, nor cannot be put in due execution: For reformation whereof, for so much that before this time the said offences, extortions, contempts, and other the premisses might not, nor as yet may be conveniently punished by the due order of the law, except it were first found and presented by the verdict of twelve men thereto duly sworn, which for the causes afore rehearsed will not find nor yet present the truth: wherefore be it by the advice and assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by authority of the same enacted, ordained and established, that from henceforth as well the Justices of Assise in the open Sessions to be holden afore them, as the Justices of Peace in every County of the said Realm, (*a*) upon information for the King before them to be made, have full power and authority (*b*) by their discretion to hear and determine all offences and contempts committed & done by any person or persons against the form, Ordinance and effect of (*c*) any Statute made and not repealed, and that the said Justices upon the said information have full power and authority to award and make like processe against the said offenders and every of them, as they should or might make against such person or persons as been present and indicted before them of trespas done contrary to the Kings peace, and the said offender or offenders duly to punish according to the purport, form, and effect of the said Statutes. Also be it enacted by the said authority, that the person which shall give the said information for the King shall by the discretion of the said Justices content and pay to the said person or persons against whom the said information shall be so given his reasonable costs and dammages in that behalf sustained, if that it be tried or found against him.

[a] Upon information without any indictment.

[b] By their discretion, & not *secundum legem & consuetudinem Angl.* as all proceedings ought to be.

[c] Obsolete statutes and all, and specially such as time had so altered from the original cause of the making thereof, as either they could not at all, or very hardly be observed & kept.

him, that ſo giveth or maketh any ſuch information. Provided always, that any ſuch information extend not to treaſon, murder, or felony, nor to any other offence, wherefore any perſon ſhall loſe life, or member, nor to loſe by nor upon the ſame information any lands, tenements, goods or chattels to the party making the ſame information. Provided alſo, that the ſaid informations ſhall not extend to any perſon dwelling in any other ſhire, than there, as the ſaid information ſhall be given or made, ſaving to every perſon and perſons, cities, and towns, all their liberties and franchiſes to them and every of them of right belonging and appertaining.

But it extended to a Premunire, miſpriſion of treaſon, &c.

By Pretext of this law Empſon and Dudley did commit upon the Subject unſufferable perſecutions and oppreſſions, and therefore this Statute was juſtly ſoon after the deceaſe of H.7. repealed at the next Parliament after his deceaſe, by the Statute of 1 H.8. cap.6.

A good caveat to Parliaments to leave all cauſes to be meaſured by the golden and ſtreight metwand of the law, and not to the incertain and crooked cord of diſcretion. 1 H.8. ca.6.

It is not almoſt credible to foreſee, when any Maxime, or Fundamental law of this Realm is altered, (as elſewhere hath been obſerved) what dangerous inconveniences do follow; which moſt expreſly appeareth by this moſt unjuſt and ſtrange Act of 11 H.7. for hereby not only Empſon and Dudley themſelves, but ſuch Juſtices of Peace (corrupt men) as they cauſed to be authorized, committed moſt grievous and heavy oppreſſions and exactions, grinding of the face of the poor Subjects by penal laws (be they never ſo obſolete or unfit for the time) by information only without any preſentment or trial by Jury, being the ancient birthright of the Subject, but to hear and determine the ſame by their diſcretion, inflicting ſuch penalty, as the Statutes not repealed impoſed: Theſe and other like oppreſſions and exactions by or by the means of Empſon and Dudley and their inſtruments, brought infinite treaſures to the Kings Cofers, whereof the King himſelf in the end with great grief and compunction repented, as in * another place we have obſerved. See the 2. part of the Inſtitutes W.1. ca.26. See the Preface to the 4. part of the Reports. The danger enſuing by alteration of any of the Maxims of law

This Statute of 11 H.7. we have recited, and ſhewed the juſt inconveniences thereof, to the end, that the like ſhould never hereafter be attempted in any Court of Parliament. And that others might avoid the fearfull end of thoſe two time-ſervers, Empſon and Dudley. Qui eorum veſtigia inſiſtunt, eorum exitus perhorreſcant. * In the Chapter of the Court of Wards and Liveries.

See the Statute of 8 E.4. ca.2. the Statute of Liveries, an Information, &c. by the diſcretion of the Judges to ſtand as an original, &c. This Act is deſervedly repealed.

Vide 12 R.2. cap 11. Puniſhment by diſcretion, &c. Vide 5 H.4. ca.6.8. See the * Commiſſion of Sewers. Diſcretion ought to be thus deſcribed. Diſcretio eſt diſcernere per legem quid ſit juſtum. And this deſcription is proved by the Common law of the land, for when a Jury do doubt of the law, and deſire to do that which is juſt, they find the ſpecial matter, and the entry is. Et ſuper tota materia, &c. petunt diſcretionem Juſticiariorum, and ſometime, adviſamentum & diſcretionem Juſticiariorum in præmiſſis, &c. that is, they deſire that the Judges would diſcern by law what is juſt, and give judgement accordingly. * Lib.5. fo.100. Rooks caſe. Lib.10.f.128.&c Pl. Com. 348. Eamards caſe.

Acts againſt the power of the Parliament ſubſequent bind not.

1 H.4. nu. 144. 21 R.2. nu 20. repealed by 1 H.4. ca.3. 1 H.4. nu. 48. Vide 7 H. 4. nu.37.

An Article of the Statute made in 11 R.2. cap. 5. is, that no perſon ſhould attempt to revoke any Ordinance then made, is repealed, for that ſuch reſtraint is againſt the juriſdiction and power of the Parliament, the liberty of the Subject, and unreaſonable. And likewiſe the laſt Will and Teſtament of King R. 2. under the Great Seal, Privy Seal, and Privy Signet, whereby he deviſed certain money, treaſure, &c. to his ſucceſſors upon condition to obſerve all the Acts and Orders at the Parliament holden in Anno 21 of his reign, was holden unjuſt and unlawful, for that it reſtrained the Soveraign liberty of the Kings his Succeſſors.

21 R.2. ca.16. 21 R.2. nu.44.

Sundry Lords of Parliament (but no Biſhops) or ſix of them, and certain Knights of ſhires of the Commons or three of them, are authorized by Authority of Parliament to examine, anſwer and plainly determine all the Petitions exhibited in that Parliament, and the matters contained in the ſame by their good advice and diſcretion, &c. The high power of a Parliament to be committed to a few, is holden to be againſt the dignity of a Parliament, and that no ſuch Commiſſion ought to be granted.

1 H.4. nu.70.

An Act in 11 R.2. cap.3. that no man againſt whom any judgment or forfeiture was given ſhould ſue for pardon or grace, &c. was holden to be unreaſonable without example, and againſt the law and cuſtome of Parliament, and therefore that branch by Authority of Parliament was annihilated, and made void.

2 H.4. c.22. Vide 21 R.2. nu. 44. 26 H.8. ca.1. Acts of Parliament ought to be plainly, and clearly, and not cunningly and darkly penned, ſpecially in criminal cauſes.

Alſo I find that in times paſt the Houſes of Parliament have not been clearly dealt withal, but by cunning artifice of words utterly deceived, and that in caſes of greateſt moment, even in caſe of High Treaſon, as taking one example for a warning in like caſes hereafter.

King H. 8. after the Clergy of England had in their Convocations acknowledged him Supream Head of the Church of England, thought it no difficult matter to have the ſame corroborated and confirmed by Authority of Parliament, but withal ſecretly and earneſtly deſired that the impugners and deniers thereof, though it were but by word, might incur the offence of High Treaſon, and finding the one, that is, the acknowledgement of his Supremacy likely to have good paſſage, and having little hope upon that which he found to effect the other concerning High Treaſon, ſought to have it paſſe in ſome other Act by words cloſely couched, though the former Act of Supremacy had been the proper place. * And therefore in the Act of recognition of his Supremacy it is enacted, that he ſhould have annexed and united to the Crown of this Realm the Title and Stile thereof: † and afterwards towards the end of the Parliament, a bill was preferred whereby many offences be High Treaſon, and thereby it is enacted, That if any perſon or perſons by [a] word or writing, 1. practiſe or attempt any bodily harm to the King, the [b] Queen or their heirs apparant, 2. or to [c] deprive them or any of them, of their dignity, [d] title, or name of their royal eſtates, 3. or that the King ſhould be an [e] Heretique, Schiſmatique, Tyrant, Infidel or Uſurper of the Crown, &c. that every ſuch perſons ſo offending ſhould be adjudged Traytors, &c. So as now by this later Act, he that by word or writing attempts to deprive the King of the title of his royal eſtate is a Traytor, but the former Act had annexed to the Crown the title of the ſtile of Supremacy, and therefore he that ſhould by word or writing attempt to deprive the King thereof ſhould be a Traytor. And [f] upon this law of 26 H.8.c 13. for denying of the Kings Supremacy divers ſuffered death as in caſe of High Treaſon, whereas all laws, eſpecially penal, and principally thoſe that are penal in the higheſt degree [g] ought to be ſo plainly and perſpicuouſly penned, as every Member of both Houſes may underſtand the ſame, and according to his knowledge and conſcience give his voice. [h] Erit autem lex honeſta, juſta, poſſibilis, ſecundum naturam & ſecundum conſuetudinem patriæ, temporique conveniens, neceſſaria & utilis, manifeſta quoque, ne aliquid per obſcuritatem incautum captione

* 26 H.8.ca.1.
† 26 H.8. c.13.
[a] By word, &c. this by conſtruction referrs to the 2. clauſe.
[b] Shadowed with the Queen or Prince.
[c] Deprive, an obſcure word.
[d] Note this word [title] in the former Act.
[e] Parker B. of Cant. *Lib. de Antiquitate Brit. Eccleſiæ. Clerus animi teto obſtupuit, nondum enim quid ſibi hic novus vellet titulus, aut quorſum tenderet, proſpexit, &c.*
[f] But this Act lived not long, for twice it was repealed, viz. by 1 E.6.c.12. & 1 Mar. c.1.
[g] What qualities laws ought to have.
[h] Iſidor. 2. Etymol.

tione contruda', nullo privato commodo, ſed pro communi civium utilitate conſcripta, ideo in ipſa conſtitutione iſta conſideranda ſunt, quia cum leges inſtitutæ fuerint non erit liberum arbitrium judicare de ipſis, ſed oportebit judicare ſecundum ipſas, which be excellent rules for all Parliaments to follow. But the Statute of 5 Eliz. ca. 1. hath concerning the Supremacy dealt plainly and perſpicuouſly as by the ſame appeareth.

5 Eliz. cap. 1. * Exod. 4. 16. *Tu. i. Moſes eris ei, i. Aaron, in his quæ ad Deum pertinent, &c.*

Exod. 32. 15, 16. *Moſes cuſtos utriuſque tabulæ.* Numb. 10. 1, 2. *Moſes cuſtos utriuſque tubæ.* Joſhua 24. 1. *Congregavit Joſhua, &c.* 28. *dimiſit.* 1 Chron. 15. 4. 1 Chron. 16. 43. Rex David. 2 Chron. 5. 2. Rex Solomon, 2 Chro. 29. 15. &c. Ezekias. Nota. 1 Sam. 15. 17. *Et ait Samuel ad Saul, nonne cum parvulus eſſes caput in tribubus fallus es?* and the Tribe of *Levi* was one. 1 Maccab. 14. 44. See hereafter, ca. 74.

And albeit it appeareth by theſe examples & many other that might be brought, what tranſcendent power and authority this Court of Parliament hath, yet though divers Parliaments have attempted to barre, reſtrain, ſuſpend, qualifie, or make void ſubſequent Parliaments, yet could they never effect it, for the latter Parliament hath ever power to abrogate, ſuſpend, qualifie, explain, or make void the former in the whole or in any part thereof, notwithſtanding any words of reſtraint, prohibition, or penalty in the former: for it is a maxime in the law of the Parliament, quod leges poſteriores priores contrarias abrogant.

Subſequent Parliaments cannot be reſtrained by the former. 43 E. 3. ca. 1. 11 H. 7. c. 1. 28 H. 8. c. 17. 1 E. 6. ca. 11. Lib. 4. f. 46. the B. of Cant. caſe.

Acts of Parliament enrolled in other Courts.

For the better obſervation of any Act of Parliament enacted for the Common-wealth, or of a Petition of right, or Judgment in Parliament, or the like, and to incourage the Judges that the ſame may be duly executed, the ſame may be inrolled in the Courts of Juſtice in this manner. The tenor of the Record muſt be removed into the Chancery by writ of Certiorari, and delivered into the Kings Bench by the hands of the Chancelor or Lord Keeper, and ſent by Mittimus to the Court of Common pleas, and by like Mittimus into the Exchequer, and the King by his writ may command any Court to obſerve and firmly to keep ſuch an Act of Parliament, as it appeareth by theſe two precedents. *Ex Rotulo Claus. An.* 28 E. 1. m. 2. *Dorſ.* Rex Theſaurar. & Baronibus ſuis de Scaccar. ſalutem. Quia volumus quod Magna Carta Domini Henrici quondam Regis Angliæ patris noſtri de libertatibus Angliæ quam confirmavimus & etiam innovavimus in omnibus & ſingulis articulis ſuis firmiter & inviolabiliter obſervetur. Vobis mandamus quod Cartam prædictam in omnibus & ſingulis ſuis articulis quantum in vobis eſt coram vobis in dicto Scaccario obſervari faciatis firmiter & teneri. T. R. apud Dunfres 23. die Octobris.

Int. Placita Parl. 18 E. 1. Rot. 18. Ibid. 20 E. 1. Magnum Placit. int. Com. Gloc' & Com. Hereſ. & Eſſex irr. Rot. Cl. An. 28 E. 1. in Dorſ. irr. le Magna Carta. Paſch. 33 E. 1. Rot. Par. Nich. Segraves caſe, Rot. 22. Tr. 12 E. 2. Rot. 60. de irr. Petition in Parliament, *al banche le Roy.*

Rex Juſtic. ſuis de Banco ſalutem. Cum in alleviationem gravaminum quæ populus regni noſtri occaſione guerrarum hactenus toleravit, ac in emendationem ſtatus ejuſdem populi, nec non ut ex hoc ſe exhibeat ad noſtra ſervicia promptiorem, nobiſque in agendis noſtris libentius ſubſidium faciat in futurum, quoſdam articulos eidem populo plurimum (annuente Domino) profuturos de gratia noſtra ſpeciali duxerimus concedendos. Vobis mandamus quod dictos articulos quos vobis mittimus ſigillo noſtro conſignatos coram vobis in banco prædicto quantum in vobis eſt juxta vim, formam & effectum eorundem obſervari faciatis firmiter & teneri. T. R. apud Dunfres 30 die Octobris.

Every Member of the Parliament ought to come.

Every Lord Spiritual and Temporal, and every Knight, Citizen and Burgeſs ſhall upon Summons come to the Parliament, except he can reaſonably, and honeſtly excuſe himſelf, or elſe he ſhall be amerced, &c. that is, reſpectively, a Lord by the Lords, and one of the Commons by the Commons.

5 R. 2. Stat. 2. c. 4. Rot. Par. 31 H. 6. nu. 46. fines were ſet, &c.

By the Statute of 6 H. 8. ca. 16. no Knight, Citizen or Burgeſs of the Houſe of Commons ſhall depart from the Parliament without licenſe of the Speaker and Commons, the ſame to be entred of record in the book of the Clerk of the Parliament, upon pain to loſe their wages.

If any of the Lords or Commons come not, &c. they ſhall be fined.

Vid. 3 E. 18. sup. If any of the Lords or Commons depart, &c. they shall be fined, 1 & 2 Ph. & M. Rot. 48. ut supr. * 5 R. 2. stat. 2. c. 2. 4.

If a Lord depart from Parliament without licence, it is an offence done out of the Parliament, and is finable by the Lords: and so it is of a Member of the House of Commons, he may be fined by the House of Commons. Vide 1 & 2 Ph. & Mar. coram Rege Rot. 48. divers informations by the Attorney General for departing without licence, ut supra.

* The punishment of Sheriffs for their negligence in returning of Writs, or for leaving out of their returns any City or Borough which ought to send Citizens and Burgesses.

Advice concerning new and plausible projects and offers in Parliament.

See before, p. 14. Rot. Par. 13 E. 3.

When any plausible project is made in Parliament to draw the Lords and Commons to assent to any Act (especially in matters of weight and importance) if both Houses do give upon the matter projected and promised their consent, it shall be most necessary, they being trusted for the Common-wealth, to have the matter projected and promised (which moved the Houses to consent) to be established in the same Act, lest the benefit of the Act be taken, and the matter projected and promised never performed, and so the Houses of Parliament performe not the trust reposed in them. As it fell out (taking one example for many) in the reign of H. 8. On the Kings behalf the Members of both Houses were informed in Parliament, that no King nor Kingdom was safe, but where the King had three abilities. First, To live of his own, and be able to defend his Kingdom upon any sudden invasion or insurrection. 2. To aid his confederates, otherwise they would never assist him. 3. To reward his well deserving servants. Now the project was, that if the Parliament would give unto him all the Abbies, Priories, Friories, Nunneries, and other Monasteries, that for ever in time then to come, he would take order that the same should not be converted to private use: But first, that his Exchequer for the purposes aforesaid should be enriched. Secondly, the Kingdom strengthened by a continual maintenance of 40 thousand well trained Souldiers with skilful Captains and Commanders. Thirdly, for the benefit and ease of the Subject, who never afterwards (as was projected) in any time to come should be charged with Subsidies, Fifteenths, Loans, or other common aids. Fourthly, lest the honour of the Realm should receive any diminution of honour by the dissolution of the said Monasteries, there being 29 Lords of Parliament of the Abbots and Priors (that held of the King per Baroniam, whereof more in the next leaf) that the King would create a number of Nobles, which we omit. The said Monasteries were given to the King by authority of divers Acts of Parliament, but no provision was therein made for the said project, or any part thereof * only ad faciend. populum these possessions were given to the King his heirs and successors to do and use therewith his and their own wills, to the pleasure of Almighty God, and the honour and profit of the Realm.

27 H. 8. de monasteries, & 31 H. 8. c. 13. 32 H. 8. cap. 14. * 27 H. 8. c. 28.

Now observe the Catastrophe; in the same Parliament of 32 H. 8. when the great and opulent Priory of Saint Johns of Jerusalem was given to the King, he demanded and had a Subsidie both of the Clergy and Laity. And the like he had in 34 H. 8. and in 37 H. 8. he had another Subsidy. And since the dissolution of the said Monasteries he exacted divers loans, and against law received the same.

32 H. 8. ca. 23. 50. 34 H. 8. c. 16. & 27. 37 H. 8. cap. 24.

Whom the King may call to the Lords House of Parliament.

Rot. Claus. in dorso. 10 H. 7. 20. Septemb. Writs to divers *ad ordinem militiæ de Balneo suscipiend' juxta antiquam consuetudinem in creatione usitatam.*

If the King by his Writ calleth any Knight or Esquire to be a Lord of the Parliament, he cannot refuse to serve the King there *in communi illo Concilio*, for the good of his Country. But if the King had called an * Abbot, Prior, or other regular Prelate by Writ to the Parliament to the Common Council of the Realm, if he held not of the King per Baroniam, he might refuse to serve in

* of regular Prelates that hold *per Baroniam.*

Parliament

Parliament, becauſe quoad ſecularia, he was mortuus in lege, and therefore not capable to have place and voice in Parliament, unleſs he did hold per Baroniam, and were to that Common Councel called by Writ, which made him capable: and though ſuch a Prelat Regular had been often called by Writ, and had de facto had place and voice in Parliament, yet if in rei veritate he held not per Baroniam, he ought to be diſcharged of that ſervice, and to ſit in Parliament no more.

[a] For that the Abby of Leiceſter was founded by Robert Fitz-Robert Earl of Leiceſter, (albeit the patronage came to the Crown by the forfeiture of Simon de Mountford Earl of Leic.) yet being of a ſubjects foundation, it could not be holden per Baroniam, and therefore the Abbot had no capacity to be called to the Parliament, and thereupon the King did grant, quod idem Abbas & ſucceſſores ſui de veniendo ad Parliamenta & Concilia noſtra vel hæredum noſtrorum quieti ſint & exonerati imperpetuum.

[b] De jure & conſuetudine Angliæ ad Archidiaconatum Cantuarienſem, &c. Abbates, Priores, aliosq; Prælatos quoſcunque per Baroniam de Domino Rege tenentes pertinet in Parliamentis Regis quibuſcunque ut Pares regni prædicti perſonaliter intereſſe, ibique de regni negotiis ac aliis tractari conſuetis cum cæteris dicti regni Paribus ac aliis ibidem jus intereſſendi habentibus conſulere & tractare, ordinare, ſtatuere & diffinire, ac cætera facere quæ Parliamenti tempore ibid. immunient faciend.

No man ought to ſit in that High Court of Parliament, but he that hath right to ſit there: for it is not only a perſonal offence to him that ſitteth there without authority, but a publique offence to the Court of Parliament, and conſequently, to the whole Realm. But all the caſes abovеſaid, and others that might be remembred touching this point, as little Rivers do flow from the fountain of Modus tenendi Parliamentum, where it is ſaid; Ad Parliamentum ſummoneri & venire debent ratione tenuræ ſuæ omnes & ſinguli Archiepiſc', Epiſcopi, Abbates, Priores, & alii majores Cleri quæ tenent per comitatum vel baroniam ratione hujuſmodi tenuræ, & nulli minores, niſi eorum præſentia neceſſaria vel utilis reputetur', &c.

One rare and ſtrange creation of a Lord regular of Parliament we cannot paſs over, which was, That King H. 8. in the fifth year of his reign, by his Letters Patents under the Great Seal, did grant unto Richard Banham Abbot of Taveſtock in the County of Devon, being of his patronage, and to the ſucceſſors of the ſaid Abbot, ut eorum quilibet, qui pro tempore ibidem fuerit Abbas, ſit & erit unus de ſpiritualibus & religioſis dominis Parliamenti noſtri, hæredum & ſucceſſorum noſtrorum, gaudend. honore, privilegio & libertatibus ejuſdem.

By that which hath been ſaid, it appeareth that this creation of a regular Lord of Parliament was void, for that the Abbot was neither Baro, nor had Baroniam, &c. And if the King might create Abbots or Priors Lords of Parliament in this manner, by the ſame reaſon he might create Deans and Archdeacons Lords of Parliament, which without queſtion he cannot.

By the Act of Parliament of 10 H. 2. called the Aſſiſe of Clarendon, it is declared, Ut pars conſuetudinum & libertatum anteceſſorum regis, *viz.* Henrici primi & aliorum, quæ obſervari debent in regno & ab omnibus teneri, *viz.* Archiepiſcopi, Epiſcopi, & univerſæ perſonæ regni, qui de Rege tenent in capite, habeant poſſeſſiones ſuas de rege ſicut baroniam, & inde reſpondeant Juſticiariis & miniſtris regis, & ſequantur & faciant omnes conſuetudines regias, & ſicut cæteri barones debent intereſſe judiciis Curiæ regis cum baronibus, quouſque perveniatur * ad diminutionem membrorum vel ad mortem. So as by this Act a tenure of the King in chief was in equipage with a Barony.

And King John by his great Charter of liberties made Anno 17 of his reign, granteth, Quod faciemus ſummoneri Archiepiſcopos, Epiſcopos, Abbates, Comites, & Majores Barones regni ſingulatim per literas noſtras. But of this Clauſe we are to obſerve theſe things: First, that theſe Barons called here Majores, were Lords of Parliament, and called thereunto by the Kings Writs. Secondly, that they were called Majores comparatively, and that was in reſpect of

And ſo it was adjudged in the Parliament at *York*, Anno 12 E. 2. in the caſe of the Abbot of St. *James* extra *Northampt.* Stanford pl. cor. 153. a.

[a] Rot. pat. An. 26 E. 3. part 1. m. 22. See Rot. clau. in dorſ. 11 E. 3. part 2. m. 11. *Religious que teignont per Barony ſont tenus de venier au Parlement.* Vid. ib. 13 E. 3. part 2. m. 28. & 1.

[b] Rot. pat. 11 R. 2. part 1. m. 2. Artic. 34.

Modus tenendi Parl. ca. 2. This is *infra* explained by the Aſſiſe of *Clarendon.*

10 H. 2. cap. 11. Mat. Par. 97. Aſſiſa de *Clarendon.*

* Rot. Parl. 11. & 21 R. 2.

Cart. libertat. à Rege Johanne Anno 17 regni ſui conceſſ. Mat. Par. 343.

of others which were called Barones minores, or Nobiles minores, and were Freholders that * hold by Knights Service and Eſcuage, *i.* Servitium Scuti, of three ſorts, *viz.* Milites, Armigeri, & Generoſi, Knights, Eſquires, and Gentlehomes, or Gentlemen. Theſe Barones minores were Lords of Mannors, and had not the dignity of Lords, but had Courts of their Freeholders, which to this day are called Court Barons, Curiæ Baroniar'. Of this Baron it is ſaid in that law made by King Edward before the Conqueſt: Barones qui ſuam habent * Curiam de ſuis hominibus, videant ut ſic de eis agant, quatenus erga Deum rectum non incurrant, & Regem non offendant.

*Nota, a Knights fee is the ſervice of a Knight, that is of a man at Arms, or of war. Hereof ſee the ſecond part of the Inſtit. cap. de Militibus, 1 E.2. Inter leges Edw. ca.21. ib.ca.9.
* 1 Curiam Baronis Glanv.l.8. cap.11. acc' Bract.l.3.154 b. Camd.Brit.121.

Baro à Bar, Germanica lingua liberum & ſui juris ſignificat, 1. which agreeth well with that which hath been ſaid. 2. That Baro major was called Baro major regni. 3. That every greater Baron was ſeverally ſummoned by the Kings Writ, which continueth to this day.

The fees of the Knights, Citizens, and Burgeſſes of Parliament.

In dorſ. Clauſ. Anno 46 E.3. nu.4. Rot. Cl. 7 R.2. nu.1. de expenſis milit. Regiſt.fo.192.a. acc'.
Dicta. Veniendo, Morando, Redeundo, per diem 4 s.
Par. 51 E.3. nu.45. 35 H.8. cap.1.
See the antient Treatiſe, *De modo tenendi Parl.*

First, for the Knight of any County it is 4 s. per diem, and ſo it hath been time out of mind, which is particularly expreſſed in many Records, but let us take one in hæc verba. Johannes Shordich unus militum comitatus Middleſex venientium ad Parliamentum tent' apud Weſtm. in Craſt. Animar. ultimum præteriit' habet allocationem 4 li. & 4 s. pro 21 diebus pro expenſis ſuis veniendo ad Parliament' prædict' ibid' morando, & exinde ad propria redeundo, capiendo per diem 4 s. Teſte Rege apud Weſtm. 24 die Novemb. Anno 46. Every Citizen and Burgeſſe is to have 2 s. per diem, ut ſupra, mutatis mutandis.

[a] Nota the Writ De expenſis militum, &c. doth comprehend the ſumme according to the aboveſaid computation, and a commandment to the Sheriff to levy the ſame [b] De communitate comitatus prædict', tam infra libertates, quam extra (Civitatibus & Burgis de quibus cives & burgenſes ad Parliamentum noſtrum, &c. venerunt duntaxat exceptis.) The like Writs to the Sheriffs De expenſis Civium & Burgenſium, to levy the ſame in Cities and Boroughs.

[a] Regiſt. fol. 192. a.
See the Stat. of 12 R.2. ca.12. & ſee 23 H.6.c.11. how the Sheriff ſhall levy the ſame.
See 8 R.2. tit. Avowrie 160. what the Common law was.
[b] Nota de communitate. Vide ſup. pa.1. For the legal underſtanding of this word Commons.

[c] An. 1 R.2. nu.11. the Commons petitioned in Parliament, that all perſons having Lay-fee might contribute to the charge of the Knights, and to all tailages. The King anſwered [The Lords of the Realm will not loſe their old liberties,] Note the Writ is De Communitate.

[d] Alſo there is a Writ in the regiſter De expenſis militis non levandis ab hominibus de antiquo dominico, nec ab nativis. [e] Other diſcharges De expenſis militum.

[f] For the wages of the Knights of the Shire of Cambridge; ſee the Statute of 34 H.8. cap.24. Conſimile pro Inſula de Ely, &c.

[g] H.4. An.14. of his reign ſummoned a Parliament Craſtino Purificat'. and he deceaſed 20 Martii following, ſo as the Parliament was diſſolved by his deceaſe. Thereupon it was a queſtion, whether the Knights and Burgeſſes ſhould have their wages, ſeeing nothing paſſed in that Parliament. And it was reſolved, that if upon view of the Kings [h] Records any like preſidents may be found, allowances of their fees ſhall be made. [i] Alſo the Clergy were contributory by reaſon of their Benefices to the expences of the procurators of the Clergy.

[c] Rot. Parl. 1 R.2. nu.11.
[d] Regiſt.261. 7 H.6. 35. b. F.N.B. 14 E.
[e] Reg. 191, 192. 12 R.2. ca.12.

[k] But Chaplains which are Maſters of the Chancery and attendants at the Parliament, ſhall not be contributory by reaſon of their Benefices to the expences of the Clergy, as by the Regiſter ubi ſupra appears: and this was by an Act of Parliament made in * 4 E.3. which in general words is recited in the Writ directed to the Archdeacon for their diſcharge.

[f] 34 H.8.ca. 24. [g] 9 H.6. nu.46. [g] Rot. Parl. 1 H 5. nu.26. [h] Nota, for preſidents. [i] Regiſt.261, F.N.B.229.a. [k] Vide ſupra. p.4,5. * Parl. An. 4 E.3. apud Winton, whereof there is no Roll now remaining.

Who be eligible to be a Knight, Citizen, or Burgeſſe of Parliament.

See the Stat. of 1 R.2. cap 4. Vide ſup. p. 4,5. Rot. brev. 7 R.2.

A Knight Baneret being no Lord of Parliament is eligible to be Knight, Citizen, or Burgeſſe of the Houſe of Commons being under the degree of a Baron, who is of the loweſt degree of the Lords Houſe. But Thomas Camois was not only

onely a Knight Baneret, but a Baron and Lord of Parliament in Anno 7 R. 2. and ſerved in that Parliament as a Baron of the Realm, and therefore as of a thing notorious he was diſcharged. One under the age of 21 years is not eligible, neither can any Lord of Parliament ſit there until he be of the full age of 21 years. Dorſ. claus. 7 R. 2. m. 10. & 37.

An Alien cannot be elected of the Parliament, becauſe he is not the Kings liege Subject, and ſo it is albeit he be made Denizen by Letters Patents, &c. for thereby he is made quaſi, ſeu tanquam ligeus; but that will not ſerve, for he muſt be ligeus revera, and not quaſi, &c. And we have ſuch a one choſen and diſallowed by the Houſe of Commons, becauſe ſuch a perſon can hold no place of judicature: but if an Alien be naturalized by Parliament, then he is eligible to this or any other place of Judicature. Viſta. de 1 Mar. cap.

But it is objected that, Gilbert de Umphrevil Earl of Angos in Scotland, was called by the Kings Writ to the Parliament in 39 E. 3. by the name of Gilbert Earl of Angos, and in a Writ of Raviſhment of Ward brought againſt him, by the name of Gilbert Umphrevil Chivaler, he pleaded to the Writ that he was Earl of Angos not named in the Writ: and for that he was ſummoned to every Parliament by the name of the Earl of Angos, and the King ſent to him a Writ of Parliament under the Great Seal, as to a Par of the Land: by Judgment of the Court the Writ did abate. We have ſearched for the truth of this Caſe, and do find it in the Plea Rolls in this manner. 39 E. 3. 35, 36.

Richard de Umphrevil Baron of Prodhowe and Redeſdale in the County of Northumberland, had iſſue Gilbert, who after the deceaſe of his Father was a Baron of this Realm, and in the reign of H. 3. married with Mawd daughter and heir of the Earl of Angos in Scotland, who by her had iſſue Gilbert, who was Earl of Angos as heir to his mother, and Baron of Prodhowe and Redeſdale as heir to his Father: He ſate in Parliament upon ſummons by a Writ in 27 E. 1. 28 E. 1. 30 E. 1. 35 E. 1. 1 E. 2. and 2 E. 2. by the name of Gilbert Earl of Angos. Robert his Son ſate in Parliament, Anno 12 E. 2. by the ſame name of dignity, and ſo forth, all E. the Seconds reign. And Gilbert his ſon ſate in Parliament in 6 E. 3. and in every Parliament following, until and in 4 R. 2. by the ſame name. And in Gilbert his ſon (who deceaſed in Anno 15 H. 6.) the ſirname of Umphrevil ceaſed. Hereby it appeareth that the ſaid Richard Umphrevil and his poſterity, from whence ſoever they originally deſcended, were liege Engliſhmen: for if they had been Aliens, they could not have enjoyed the Lordſhips of Prodhowe, Otterborne, Hartbotle, and Redeſdale in England, nor the Barony of Kime in Lancaſhire, which the two laſt Gilberts enjoyed. And note, the Book in 39 E. 3. concludeth, that Gilbert Umphrevil was ſummoned to the Parliament under the Great Seal, Come un Pier del Realm. All this doth appear in the Rolls of Parliament in all the ſeveral times. Theſe two were commonly called the Earls of *Kime*.

A Biſhop elect may ſit in Parliament as a Lord thereof. Hil. 18 E. 1. fo. 4. nu. 105.

Of Knights, Citizens, and Burgeſſes of Parliament.

None of the Judges of the Kings Bench, or Common Pleas, or Barons of the Exchequer that have judicial places can be choſen Knight, Citizen, or Burgeſs of Parliament, as it is now holden, becauſe they be aſſiſtants in the Lords Houſe; and yet you may read in the * Parliament Roll, An. 31 H. 6. that Thorp Baron of the Exchequer was Speaker of the Parliament. But any that have judicial places in the Court of Wards, Court of Dutchy, or other Courts Eccleſiaſtical, or Civil, being no Lord of Parliament are eligible. *Ro. Pa. 31 H. 6. nu. 26, 27, 28. Note, he could not be Speaker unleſs he were Knight of the Shire, &c. in the book of Burgeſſes of the Houſe of Commons.

[a] None of the Clergy, though they be of the loweſt Order, are eligible to be Knight, Citizen or Burgeſs of Parliament, becauſe they are of another body, viz. of the Convocation. [a] *Alex. Nowels* caſe, who after was Dean of *Pauls* being a Prebend. 1 Mar.

A man attainted of Treaſon or Felony, &c. is not eligible: for concerning the election of two Knights, the words of the Writ be, Duos milites gladio cinctos magis idoneos & diſcretos eligi fac. And for the election of Citizens and Burgeſſes

the words of the Writ be, Duos, &c. de discretioribus & magis sufficientibus, which they cannot be said to be, when they are attainted of Treason or Felony, &c.

Majors and Bailiffs of Towns Corporate are eligible against the opinion in Brook. Anno 38 H.8. tit. Parliament.

Any of the profession of the Common Law, and which is in practice of the same is eligible. For he which is eligible of common right, cannot be disabled by the said Ordinance in Parliament in the Lords House in 46 E.3. unless it had been by Act of Parliament: And if it had been by Authority of Parliament, yet had the same been abrogated by the said statutes of 5 R. 2. stat. 2. cap. 2. and 7 H.4. cap. 15. which are general Laws without any exception, as hath been said.

Rot. Par. 46 E.3. nu. 10.

5 R.2. stat. 2. c. 4. 7 H.4. c. 15.

At a Parliament holden at Coventry Anno 6 H.4. the Parliament was summoned by Writ (and by colour of the said Ordinance) it was forbidden, that no Lawyer should be chosen Knight, Citizen, or Burgess, by reason whereof this Parliament was fruitless, and never a good Law made thereat, and therefore called Indoctum Parliamentum, or Lack-learning Parliament. And seeing these Writs were against Law, Lawyers ever since (for the great and good service of the Commonwealth) have been eligible: for, as it hath been said, the Writs of Parliament cannot be altered without an Act of Parliament: and albeit the prohibitory clause had been inserted in the Writ, yet being against Law, Lawyers were of right eligible, and might have been elected Knight, Citizen, or Burgess in that Parliament of 6 H.4.

Rot. Claus. Ann. 6 H.5. See before p. 10. 4 Petty Acts passed at this Parl. of little or no effect, as by the same appears.

By special order of the House of Commons the Attorney General is not eligible to be a member of the House of Commons.

Rot. Par. 50 E.3. nu. 83. an Ordinance that no Sheriff should be Justice of Peace, &c. bound not the Subject until a Statute made 1 Mar. c. 8.

At the Parliament holden 1 Caroli Regis, the Sheriff for the County of Buckingham was chosen Knight for the County of Norf. and returned into the Chancery: and having a Subpœna out of the Chancery served upon him, at the suit of the Lady C. pendente Parliamento, upon motion, he had the privilege of Parliament allowed unto him by the judgment of the whole House of Commons.

Who shall be Electors of Knights, Citizens, and Burgesses, how and when; and of Elections.

Who shall be Electors, and who shall be chosen, and the time, place, and manner of Election, and therein the duty of the Sheriff, you may read in the positive Laws of 7 H.4. c. 15. 11 H.4. c. 1. 1 H.5. c. 1. 8 H. 6. c. 7. 10 H.6. c. 2. 23 H.6. c. 15. 6 H.6. c. 4. &c. which need not here particularly to be rehearsed.

5 Eliz. cap. 1. No Knight, Citizen, or Burgess can sit in Parliament before he hath taken the Oath of Supremacy.

Vide Rot. Claus. 7 R.2. 7. Octob. in Dors. Sir Thomas Morevil elected one of the Knights for the County of Hertford, Ibid. James Berners chosen to serve in Parliament, and both of them discharged. See the Record.

No election can be made of any Knight of the Shire but between 8 and 11 of the clock in the forenoon: but if the election be begun within that time, and cannot be determined within those hours, the election may be made after.

For the election of the Knights, if the party or the Freeholders demand the Poll, the Sheriff cannot deny the scrutiny, for he cannot discern who be Freeholders by the view: and though the party would have the Poll, yet the Sheriff must proceed in the scrutiny.

If the King doth newly incorporate an ancient Borough (which sent Burgesses to the Parliament) and granteth that certain selected Burgesses shall make election of the Burgesses of Parliament, where all the Burgesses elected before, this Charter taketh not the election of the other Burgesses. And so, if a City, &c. hath power to make Ordinances, they cannot make an Ordinance that a less number shall elect Burgesses, for the Parliament then made the election

before:

before; for free elections of Members of the High Court of Parliament are pro bono publico, and not to be compared to other cases of election of Maiors, Bailiffs, &c. of Corporations, &c.

If one be duly elected Knight, Citizen, or Burgess, and the Sheriff return another, the return must be reformed, and amended by the Sheriff: and he that is duly elected must be inserted: for the election in these cases is the foundation, and not the return. Rot.Parl. 5 H.4. nu.38.

By original grant or custom, a selected number of Burgesses may elect and bind the residue.

Concerning Charters of Exemption.

The King cannot grant a Charter of exemption to any man to be freed from election of Knight, Citizen, or Burgess of the Parliament (as he may do of some inferiour Office or places) because the elections of them ought to be free, and his attendance is for the service of the whole Realm, and for the benefit of the King and his people, and the whole Common-wealth hath an interest therein: and therefore a Charter of exemption that King H. 6. had made to the Citizens of York of exemption in that case, was by Act of Parliament enacted and declared to be void. And though we find some Presidents that Lords of Parliament have sued out Charters of exemption from their service in Parliament, yet those Charters are holden to be void: for though they be not eligible, as is aforesaid, yet their service in Parliament is for the whole Realm, and for the benefit of the King and his people, of which service he cannot be exempted by any Letters Patents. And if he hath laesam phantasiam, or be extreamly sick, or the like, these be good causes of his excuse in not coming, but no cause of exemption, for he may recover his memory and health, &c. So as the said Presidents were grants de facto, not de jure: for if the King cannot grant a Charter of exemption from being of the grand Assise in a Writ of Right, or of a Jury in an Attaint for the mischief that may follow in those private actions; à fortiori, he cannot grant any exemption to a Lord of Parliament; for his service in Parliament is publick for the whole Realm. But if any Lord of Parliament be so aged, impotent, or sick, as he cannot conveniently without great danger travel to the High Court of Parliament, he may have license of the King under the Great Seal to be absent from the same during the continuance or prorogation thereof: but if the rehearsal be not true, or if he recover his health, so as he become able to travel, he must attend in Parliament. Or without any such license obtained, if he be so aged, impotent, or sick, as is aforesaid, and yet is amerced for his absence, he may reasonably and honestly excuse himself by the statute of 5 R.2. Pasch. 3 E. 3. f.19. tit. coron. F. 161. 29 H.6. cap.3. Rot. par.1.part. 11 E.3. Rot.par.4. part. 1 E.4.m.15.pro Do.Beuchamp. Rot.par. 2 E. 4. part.2.m.2. pro Dom.Vesey. 39 E.3.15. 34 H.6.29. 35 H.6.42. 5 R.2.c.4.stat.2

After the precept of the Sheriff directed to the City or Borough for making of election, there ought secundum legem & consuetudinem Parl. to be given a convenient time for the day of election: and sufficient warning given to the Citizens or Burgesses that have voices, that they may be present: otherwise the election is not good, unless such as have voices do take notice of themselves and be present at the election.

Any election or voices given before the precept be read and published, are void, and of no force: for the same electors after the precept read and published may make a new election and alter their voices, secundum legem & consuetudinem Parliamenti.

Thus much have we thought good to set down concerning Knights, Citizens and Burgesses, because much time is spent in Parliament concerning the right of elections, &c. which might more profitably be imployed pro bono publico.

Now to treat more in particular (as hath been much desired) of the Laws, Customs, Liberties, and Priviledges of this Court of Parliament (which are the very heart-strings of the Common-wealth, whereof we have remembred some: and you may see some * few other examples in the margent, too long here to be rehearsed) See before pag. 24,25. * 16 R.2.Rot. Claus. in dors. Ro.Par.11 R.2. nu.7.

1 H.4.nu.143. 2 H.4.nu.11. 2 H.4. c.1. Rot. Parl. 9 H.4. *Indemnity des Seigniurs & Commons.* 1 H. 5. nu.9.c.1. 4 H.8. c.8. vers. finem, a general Law. 6 H.8.c.6. in the Preamb.

rehearſed) would take up a whole Volume of it ſelf: certain it is, as hath been ſaid, that Curia Parliamenti ſuis propriis legibus ſubſiſtit.

[a] Rot. Pat. 5 H.4.nu.12. 23 H.6. nu.45. 27 H.6. nu.18. 31 H.6.n.26,27. Lamb. *inter leges Edw. Confeſſoris, cap.3. Ad ſynodos ad capitula venientibus, ſive ſummoniti ſunt, ſive per ſe quid agendum habuerint, ſit ſumma pax.*

All the Juſtices of England and Barons of the Exchequer are aſſiſtants to the Lords to inform them of the Common Law, and thereunto are called ſeverally by Writ. [a] Neither doth it belong to them (as hath been ſaid) to judge of any Law or cuſtom or priviledge of Parliament. And to ſay the truth, the Laws, Cuſtoms, Liberties and Priviledges of Parliament are better to be learned out of the Rolls of Parliament, and other Records, and by preſidents and continual experience, then can be expreſſed by any one mans pen.

Per varios actus legem experientia fecit.
Multa multò exercitamentis facilius, quam regulis percipies.

Conſultations in Parliament for maintenance of the Navy.

Rot. Par. 43 E.3. nu. 32. The decay of the Navy.

In many Parliaments conſultations have been had for the maintenance of the Navy of England, and remedies provided againſt decay of the ſame: as taking one example for many. In the Parliament holden in Anno 45 E. 3. the Commons amongſt their Petitions do affirm, that the decay of the Navy doth ariſe by three cauſes. Firſt, for that ſundry mens ſhips are ſeiſed for the King, long before they ſerve, whereby the owners are driven at their charges to find their Mariners, to their undoing. Secondly, for that Merchants, the nourishers of the Navy, are oft reſtrained in their ſhipping, whereby Mariners are driven to ſeek other trades and livings. Thirdly, for that the Maſters of the Kings ſhips do take up Maſters of other ſhips as good as themſelves are, whereby the moſt of thoſe ſhips do lye ſtill, and the Mariners enforced to ſeek new livings: whereof they prayed remedy. To this Petition of Right the Kings Royal anſwer was, That he would provide remedy.

The Kings Navy exceeds all others.

The Kings Navy exceeds all other in the World for three things, viz. beauty, ſtrength, and ſafety. For beauty, they are ſo many Royal Palaces: for ſtrength, (no part of the World having ſuch Iron and Timber as England hath) ſo many moving Caſtles and Barbicans: And for ſafety, they are the moſt defenſive walls of the Realm. Amongſt the ſhips of other Nations, they are like Lions amongſt ſilly Beaſts, or Falcons amongſt fearful Fowl.

In the reign of Queen Elizabeth (I then being acquainted with this buſineſs) there were 33 beſides Pinnaces; which ſo guarded and regarded the Navigation of the Merchants, as they had ſafe vent for their Commodities, and Trade and Traffique flouriſhed. A worthy Subject for Parliaments to take into conſideration, and to provide remedy as often as need ſhall require. For Navigation, ſee Gen. 6. 14. Sapient. 14. 6. * Remp. quaſi navem exiſtimare debemus, quæ omnium manibus officioq; indiget, &c. A leak in a Ship is timely to be repaired: For as it is in the natural body of Man, ſo it is in the Politick body of the Common-wealth. Non morbus in pleriſque ſed morbi neglecta curatio corpus interficit. And thus much for conſultations in Parliament concerning the Navy of England.

* Patricius, l.5. De inſtitutione Reipublicæ.

Of the Burgeſſes of Parliament.

See the Firſt Part of the Inſtitutes. Sect. 164. Verb. [Veigne les Burgeſſes al Parliament.] And there have been ſince the Conqueſt about 300 Seſſions of Parliament, whereof divers are not printed.

About 300 Seſſions of Parliament ſince the Conqueſt.

In peruſing over the Rolls of Parliament we find, Firſt, divers Acts of Parliament in print that are not of Record in the Roll of Parliament. Secondly, many Acts of Parliament that be in the Rolls of Parliament, and never yet printed. Thirdly, divers Clauſes omitted in the print which are in the Parliament Roll. Fourthly, more in the Print then in the Record. Fifthly, many variances between the Print and the Roll. Sixthly, Statutes repealed or diſaffirmed, and yet printed, &c. Seventhly, whole Parliaments omitted out of the print. Eighthly, whole Parliaments repealed or a great part.

And of every of theſe taking ſome examples; for to handle all at large would

require

require a whole Treatiſe, which (we having broken the Ice) ſome good man and lover of his Country (we hope) will undertake to wade thorow.

As to the firſt, Theſe are in print and not of Record. * 20 E.3. the oath of the Judges: 27 E.3. cap.4,5,6,7 8. concerning the Ainager and Gaſcoign Wines: 37 E.3.cap.7. touching ſilver veſſel: 37 E.3.cap.19. of Hawks: 2 R.2. cap.5. of Jewes: V.d. 11 R.2.11. 2 R. 2.cap. 3. of faigned gifts: 7 R. 2. cap.15. againſt maintenance: 9 R.2.cap.3. of Error and Attaint: 11 R. 2. cap. 4,5, & 6. not of Record: 13 R.2.cap.11. touching Cloaths: 13 R.2.c.19. concerning Salmons: 13 R.2. cap.2. touching Pilgrims: 13 R.2.cap.15. concerning the kings Caſtles, and Goals: 14 R. 2. cap. 7. concerning Tin. 17 R.2. cap.8. of unlawfull Aſſemblies: 17 R. 2. cap.9. concerning Salmons: 27 H. 6. cap. 3. touching imployments, &c. To the firſt. * See the third part of the Inſtitutes. *De corrupto Judice.*

As to the ſecond: Theſe Acts of Parliament are of Record, and not in print. An. 11 E.3 the creation of the D. of Cornwall, &c. by authority of Parliament: 3 R 2 nu..39 concerning Juſtices of Peace, a profitable law for them, 8 R. 2. nu.31. concerning the juriſdiction of the Conſtable and Marſhal: 20 R.2. concerning the legitimation of the children of John of Gaunt D. of Lanc. by Kath. Swinford: 5 H.4. nu. 24 a Commiſſion or Act of Parliament for arraying and muſtering of men: 8 H.4 nu.12. Clergy exempted from arraying and muſtering of men: 11 H.4. nu.28. againſt Bribery and Brokage in great Officers, Judges, &c. 11 H 4.nu.63. concerning Attorneys, &c. 6 H. 6. nu.27. that a Queen of England Dowager, ſhall not contract her ſelf or marry without the kings licenſe: 9 H. 6. nu.25. concerning fees of Privy Counſellours, and other head Officers. And very many others. To the ſecond. See the Princes caſe lib.8. fol.1.

As to the third: In theſe Acts of Parliament, divers clauſes are omitted out of the print, which are in the Parliament Roll: 36 E.3.cap.3. in the Act of Purveyors, in the clauſe of the penalty, the Steward, Treaſurer and Comptroller are expreſly named, but omitted in the print: 2 R. 2.ſtat.2. cap. 4. in confirmation of liberties, &c. ſaving the kings regality is omitted: 13 R. 2. cap. 1. concerning preſentations of the King, the laſt clauſe, concerning ratifications of the King, is omitted: 13 R. 2. cap. 2. touching proviſions: 14 R.2. cap.4.nu.9. concerning Regrators of Wools, high prices omitted in the print: 17 R.2.c.4. of Malt, leaveth out Hertfordſhire: 2 H.5. cap.3. nu.38. concerning Enqueſts: 2 H.5.cap.1. nu.30.concerning Juſtices of Peace: 9 H.4.c.8.nu.43.concerning proviſions: 8 H. 6. nu.5c. c.10. concerning proces during the kings will, omitted in the print. To the third.

As to the fourth: In theſe there is more in the print then in the Record: 9 H.4. c.8.nu.43 touching proviſions: 2 H.5.ſtat.2. c.3.nu.38. touching Juroꝛs, &c. To the fourth.

The fifth: In theſe the print vary from the Record in ſome material thing. Generally in all the ſtatutes made concerning proviſions, or other the uſurpations of the Pope, the biting and bitter words are left out in the print. As to take an example or two. Vid.38.E.2. in print: c.1,2,3,4. and in the Roll, nu.9.&c. 3 R.2.c.3. in print: Rot.nu.37 &c. the Biſhops being Lord Chancellors: 9 R.2.nu.1. the print miſtakes the beginning of the Parliament, viz. the Monday after St. Luke, for Friday: 9 H.4 cap.2.nu.26. concerning Attorneys, &c. A Roll of Parliament intituled 14 E.4. where it ſhould be 13 E 4. 9 H.5.cap.2. & 3. printed as perpetual in ſome Books, where they were to endure but until the next Parliament. To the fifth.

The ſixth: Statutes pretended to be enacted, and after diſaffirmed, and yet printed: 5 R.2..5.ſtat.2.touching inquiries of Hereſies: An. 6 R.2.nu.52.diſaffirmed by the Commons, for that they proteſted it was never their meaning to be juſtified, and to bind themſelves and their ſucceſſors to the Prelates, no more then their anceſtors had done before them. Robert Brabroke Biſhop of London was then Lord Chancellor. By this and that which follows, it appeareth how neceſſary it was in thoſe days to have ſome of the Commons to be (as hath been ſaid) at the ingroſſing of the Parliament Rolls, as appeareth Rot.Parl.An.6 H.4.nu.56.7 H. 4. nu 65.&c.& Modo tenend. Parl. c.8. 2 H 4.c.15. diſavowed by the Commons, and yet the pretended Act printed: 2 H.5.c.6. againſt Preachers, diſavowed the next Parliament by the Commons, for that they never aſſented, and yet the ſuppoſed Act printed. To the ſixth. Rot.Par. 11H.4. nu.12. vide 7 H.4. nu.11.

The

To the ſeventh. The ſeventh: Whole Parliaments omitted out of the print, wherein there be many notable things to be obſerved. An. 3 E.2. a Parliament holden at Weſtm. 3 Sept. Dorſ. Claus. 2 E.2. m. 14. & 22. An. 4 E. 2. apud London: 5 E. 2. apud Weſtm. 6 E.2 ib. bis: 7 E.2 ib. 8 E.2. apud Eborum: 11 E.2. apud Weſtm. 16 E.2. apud Rippon, & poſtea apud Eborum: An. 6 E.3. a Parliament holden at Weſtminſter the Monday after the Feaſt of St. Gregory: Anno 8 E. 3. a Parliament holden at York the day before the Feaſt of St. Peter, in Cathedra: Anno 11 E. 3. at Weſtm. whereat the Prince was created Duke of Cornwal, &c. Anno 13 E. 3. holden at Weſtm. in 15 Mich. 22. E. 3. at Weſtm. the Monday next after the week in the midſt of Lent: 29 E.3. a Parliament holden at Weſtm. the day after Saint Martin: 40 E.3. at Weſtm. the Monday after the Invention of the Croſs: 7 R.2. at Weſtm. the Friday after the Feaſt of St. Mark, &c.

To the eighth. The eighth: whole Parliaments repealed and made void by ſubſequent Parliaments: 1 H.4. c.3. repealed 21 R 2. which had repealed the Parliament of 11 R.2. and reviveth the ſame: By 39 H.6. cap. 1. a Parliament holden at Coventry Anno 38 H.6. is wholly repealed: Rot. Par. 12 E.4. nu. A whole Parliament holden Anno 49 H.6. & readeptionis regni ſui primo, is repealed, and reverſed. [a] Vide the Parliament of 15 E.3. repealed: Rot. Par. An. 17 E.3. nu. 23 For there it is agreed that the ſtatute of 15 E. 3. ſhall be utterly repealed, and loſe the name of a ſtatute, as contrary to the Laws and prerogative: and for that ſome Articles there made are reaſonable, it is agreed, that ſuch Articles and others agreed in this Parliament ſhall be made into a ſtatute by the advice of the Juſtices.

[a] Where the printed books ſuppoſe that there was another Parliament in Anno 15 E.3. whereby the former ſtatute was repealed, the truth is, the Parliament was holden at *Weſtm.* 15. Paſch. Ann. 17 E.3.

[b] Many Records of Parliament can hardly be underſtood, unleſs you joyn thereunto the Hiſtory of that time. For example: [c] The Cardinal of Wincheſter, Uncle to the King, declareth in open Parliament, that he being in Flanders, in his journey to Rome, returned back of his own will to purge himſelf of a bruit, that he ſhould be a Traytor to the Realm, whereof (no accuſation being againſt him) he was eaſily purged by the Duke of Gloc. Protector by the Kings commandment. But add the Hiſtory thereunto, that the Cardinal having certain of the Kings Jewels in gage, meant to have them brought after him: but theſe Jewels being arreſted and ſtayed at Sandwich by the Kings commandment, and the bruit hereof coming to the Cardinals ear (he being therewith exceedingly troubled) for the recovery of them, returned in Poſt to the Parliament. Now after he was purged of the bruit of ſuppoſed treaſon, touching the ſaid Jewels ſtayed at Sandwich to the great hinderance of the Cardinal, as he complained; It was on a motion on his behalf, ordered that the Cardinal ſhould pay to the King Six thouſand pound more for them, and lend to the King thirteen thouſand pound, which was done.

[b] Hiſtories ſometime explain Records of Parliament.

[c] Rot. Parl. 10 H.6. nu. 14.

This appeareth in the ſame Parliament, nu. 15.

And for a concluſion hereof, and of this Chapter of the High Court of Parliament, it is to be remembred, that by the Statute of 42 E.3. cap. 1. all Statutes are repealed that are againſt Magna Carta, or Carta de Foreſta.

Parliaments in Scotland. In Ireland. See hereafter cap. 75. how and in what manner Parliaments be holden in Scotland. And cap. 77. how and in what manner Parliaments be holden in Ireland, and how Bills ſhall paſs there, never before this time publiſhed, as we know.

CHAP.

CAP. II.

Of the Council Board, or Table.

THis is a moſt Noble, Honourable, and Reverend Aſſembly of the King and his Priby Council in the Kings Court or Palace: [a] With this Council the King himſelf doth ſit at his pleaſure. Theſe Counſellors, like good Centinels and Marchmen, conſult of, and for the [b] publique good, and the honour, defence, ſafety, and profit of the Realm. A conſulendo ſecundum excellentiam, it is called the Council Table. [c] Private cauſes, leſt they would hinder the publique, they leave to the Juſtices of the Kings Courts of Juſtice and meddle not with them: they are called Concilium regis privatum, concilium ſecretum, & continuum concilium regis. [d] The number of them is at the Kings will, but of ancient time there were twelve or thereabouts. Of the diverſity of the Kings ſeveral Councils, you may read in the Firſt Part of the Inſtitutes, Sect. 164.

[a] Rot. Clauſ. 12 E.3. parte 2. m.19. 39 E.3. fo.14. Rot. Par. 1 R.2. parte m.16, 8 H.4. nu.76. &c. Rot. Par. 2 H.6. nu.15.

[b] Pro bono publico.

[c] 20 E.3.c.1. 25 E.3.c.1. ſtat. 4. 42 E.3.c.3. R. Par. 1 R.2.

See Rot. Pat. 42 E.3. parte 1. m.13. de concilio Regis.

nu.87. 112. Rot. Par. 7 H.4. nu.41. 11 H.4. nu.14,23,47. [d] Rot. Par. 50 E.3. nu.10,12. 1 R.2. nu.4. Rot. Pat. 1 parte, m.10. Rot. Par. 7 H.4.31,41,66,67. Firſt Part of the Inſtitutes. Sect. 194. Rot. Clauſ. 16 E.2. m.5. in Dorſ. *Hen. De bello monte barb de magno & de ſecreto concilio regis jurat'.*

King E.3. would have his Counſellors to have four properties. 1. That he be parcus ſui, knowing that he would never be provident for him, that would not be a good husband for himſelf. 2. That he ſhould not be cupidus rei alienæ, no covetous, nor grædy man, for ei nihil turpe, cui nihil ſatis. 3. That he ſhould be avarus reipublicæ, covetous for the Kings Treaſure and Commonwealth: and 4. That he ſuper omnia ſit expertus; in what place the King ſhall employ him, that he be expert; for great Offices are never well managed by Deputy, where the Officer himſelf is but a Cipher.

To theſe Counſellors all due Honour and Reverence is to be given, for they are incorporated to the King himſelf, and bear part of his cares, they are his true Treaſurers, and the profitable inſtruments of the State. Such honour was given to Counſellors of State in ancient time, [e] that if one did ſtrike in a Senators or Counſellors houſe, or elſewhere in his preſence, he was fined.

Stanf. 72. F. *Senatores ſunt partes corporis regis.* Rot. Par. 3 H.6. nu.3.

[e] Inas cap.46.

[f] See Vet. Mag. Cart. fol.51. 2. parte Hugh Spencer the Father, Lord Spencer Earl of Winchester, and the Kings Chamberlain, and Hugh his Son Earl of Gloc' were adjudged in Parliament to be exiled, &c. amongſt other Articles, ſix were, Firſt, for that they by their evil covin would not ſuffer the Grandees of the Realm, nor the Kings good Counſellors to ſpeak with or come near the King, or to give him good Counſel, or that the King might ſpeak with them, but only in the preſence or hearing of the ſaid Hugh the Father, and Hugh the Son, or of one of them, and at their will, and according to ſuch things as pleaſed them. Secondly, for giving evil counſel to the King, not to anſwer the Petitions of the great men and others, but at their pleaſure. Thirdly, that they, to attain by their malice and covetouſneſs to the diſheritance of the great men of the Realm, and deſtruction of the people, put out good and Covenable Miniſters, which had their places by aſſent, and put in others, falſe and evil of their Covin, that they ſhould not cauſe right to be done. And Sheriffs, Eſcheators, Conſtables of Caſtles, and others in the Offices of the King, not covenable for the King, nor for the people they did make, and cauſed Juſtices to be made not Conuſants in the Laws of the Land, to hear and determine things touching the great men and people of the Realm, &c. and ſo, that which ought to be for the maintenance of the peace

[f] Alveredus c. 15. *Hugh Spenc.* the Father, and *Hugh* the Son evil Counſellors.

peace, and of good men, and punishment of evil, was turned to the disheritance of the great men, and destruction of the people. Fourthly, that they falsely and maliciously did counsel the King to raise Power and Arms, &c. in destruction of the good people, against the form of Magna Carta, and so by their evil counsel would have moved War within the Realm, to the destruction of Holy Church and of the people, for their proper quarrel. Fifthly, for defeating by their evil counsel that which the King had granted in his Parliament by his good counsel, by the assent of the Peers of the Land, to the dishonour of the King, and against right and reason. Sixthly, they would not suffer the King to take reasonable Fines, upon alienations, &c. Read the whole.

Magna Carta.

Whereby it appeareth that one or two ought not to be sole Counsellors, and to make a Monopoly thereof, for true it is that Homer saith,

Homer.

Haud quaquam poteris tu fortiter omnia solus,
Namque aliis divi bello pollere dederunt,
Huic saltandi artem, voce huic, citharaque canendi.
Inseruitque sagax alii sub pectore magnus
Jupiter ingenium, ac multis est * utilis ille.

See the Articles against Cardinal *Wolsey*, hereafter cap. Chancery, p. Art. 9, 10, 15.

* Utilis sed non solus.

[a] The duty of a Privy Counsellor appeareth by his oath, which consisteth on these Articles or parts.

[a] Rot. P. 11 H. 4. nu. 14. Nota Vid. Vet. Mag. Cart. part. 1. fo. 165. *juramentum consiliariorum.* Vide Fleta lib. 1. cap. 17. Nota, vide inf. 5.

1. That he shall as far forth as cunning and discretion sufficeth, truly, justly, and evenly counsel and advise the King in all matters to be commoned, treated, and demeaned in the Kings Counsel, or by him as the Kings Counsellor.

2. Generally in all things that may be to the Kings honour and behoof, and to the good of his Realms, Lordships and Subjects, without partiality, or exception of persons, not leaving, or eschewing so to do for affection, love, meed, doubt, or dread of any person or persons.

3. That he shall keep secret the Kings Counsel, and that all shall be commoned by way of counsel in the same, without that he shall common it, publish it, or discover it by word, writing, or in any otherwise to any person out of the same Council, or to any of the same Council, if it touch him, or if he be party thereof.

Rot. Par. 11 H. 4. nu. 28.

4. That he shall not for gift, meed, nor good, ne promise of good by him, nor by mean of any other person receive or admit for any promotion, favouring, nor for declaring, letting, or hindering of any matter or thing to be treated or done in the said Council.

Nota, supra 2.

5. That he shall with all his might and power help and strengthen the Kings said Council in all that shall be thought to the same Council for the universall good of the King and his Land, and for the peace, rest and tranquility of the same.

6. That he shall withstand any person or persons of what condition, estate or degree they be of, that would by way of feat, attempt, or intend the contrary.

7. And generally that he shall observe, keep and do all that a good and true Counsellor ought to do unto his Sovereign Lord.

By force of this oath and the custom of the Realm he is a Privy Counsellor without any Patent or Grant, during the life of the King that maketh choice of him.

Rot. Par. 9 H. 6. nu. 25.

It is enacted that all the Kings Counsellors and other head Officers there named shall have yearly out of the Exchequer such Fees by way of reward as are there expressed.

Every Privy Counsellor hath a voice and place in the Court of Star-chamber, as in the Chapter of the Court of Star-chamber appeareth.

For the better performance of which oath, King H. 8. would wish that his Counsellors would commit Simulation, Dissimulation and Partiality to the Porters Lodge when they came to sit in Council.

Of

Of the President of the Council.

There is, and of ancient time hath been a President of the Council, who was sometime called Principalis consiliarius, and sometime Capitalis consiliarius, Rot. Par. 9 E.9. Comes Lancast' 50 E.3. 1 R.2. 1 pars. Pat. nu.22. 1 H.6. nu.26,27. Dux Bedf. Rot. Pat. 1 H.6. parte 3. Dux Gloc' Rot. Parl. 10 H.6. nu.9. Dux Gloc'. See Rot. Parl. 11 H.6. nu. 19. Rot. Parl. 22 H.6. Dux Eborum. Rot. Parl. 13 E.4. part 1. Johannes Russell Episcopus Roffen. & postea Lincoln' Præsidens concilii. Int. Record. Curiæ stellat. Johannes Fisher Episcopus Roff. Præsidens concilii 12 H.7. A. 25 H.8. usque 37 H.8. Carolus Brandon Dux Suff' in libro pacis, Rot. Parl. 1 E.6. Pawlet. In the Journal book of Parliament. 5 E.6. & 7 E.6 Dux Northumb. 1 & 2 Ph. & Mar. Comes Arundel, &c.

Principalis consiliarius.
Capitalis consiliarius.
You shall have what we have observed by our own reading, of others learn that which is here wanting.

Acts of Parliament naming the Presidents of the Council, 21 H.8. cap.20. 31 H.8. cap.10. 34 H.8. cap.1.

This office was never granted but by Letters Patents under the Great Seal durante beneplacito, and is very ancient: for John Bishop of Norwich was President of the Council Anno 7 Regis Johannis, Holinsh. fol.169. Matth. Paris 205. & Matth. Westm. Dormivit tamen hoc officium regnante magna Elizabetha.

The Lord President is said in the statute of 21 H.8. cap.20. to be attending upon the Kings most royal person, and the reason of his attendance is, for that of latter times he hath used to report to the King the passages, and the state of the business at the Council Table. See 50 E.3. ubi supra.

21 H.8. ca.20.

Vide Rot. Parl. 50 E.3. nu.12.

Next to the President of the Council, (as more fully appeareth in the Chapter of Precedency) sitteth in Council, &c. the Lord Privy Seal, who besides his oath of a Privy Counsellor taketh a particular oath of the Privy Seal, which consisteth on four parts: 1. That he, as far forth as his cunning and discretion sufficeth, truly, justly, and evenly execute, and exercise the office of the Keeper of the Kings Privy Seal to him by his Highnesse committed. 2. Not leaving or eschewing so to do for affection, love, meed, doubt, or dread of any person or persons. 3. That he shall take special regard, that the said Privy Seal in all places where he shall divert unto, may be in such substantial wise used and safe kept, that no person without the Kings special commandment or his assent, or knowledge, shall move, seal or imprint any thing with the same. 4. Generally, he shall observe, fulfill, and do all and every thing, which to the office of the Keeper of the Kings Privy Seal duly belongeth and appertaineth.

¶ *Lord Privy Seal.*
See Rot. Parl. 50 E.3. nu.10. & nota bene.
The oath of the Lord Privy Seal.

This is an office of great trust and skill, that he put this Seal to no grant without good warrant, nor with warrant, if it be against law, undue, or inconvenient, but that first he acquaint the King therewith.

Upon the Lord Privy Seal are attendant four Clerks of the Privy Seal: How how, and in what wise the Kings grants, writings, and leases, shall passe the three Seals, viz. the Privy Signet, the Privy Seal, and the Great Seal, and the duties of the Clerks of the Privy Signet, and Privy Seal, and what fees shall be paid, and where none at all, &c. and many Articles concerning the passing of the Kings grant, &c. as you may read in the Statute of 27 H.8. a law worthy of observation. And of this Act you may read Lib.8. fo.18. b. in the Princes case. This officer is named in the statutes of 2 R.2. ca.5. and 12 R.2.ca.11. *Clerk of the Privy Seal. In Rot. Parl. 11 H.4. nu.28 Garden del Privy Seal: and in the Statute of 34 H.8. ca.4. Lord Privy Seal. This Seal is called by several names. By the Statute of 11 R.2. cap.10. it is provided that Letters of the Signet, nor of the Kings secret Seal shall be from henceforth sent in damage or prejudice of the Realm, nor in disturbance of the law. Vide Mirr. ca. 3. Sect. Exception al power de Judge.

27 H.8. ca.11.

27 H.8. ca.11.

*An humble name of a great Officer, and in those Acts ranked amongst the Grandees of the Kingdom.

In the Statute of Articuli super Cartas, cap.6. 28 E.1. it is called the little Seal, and likewise in the Statute of 2 E.3. ca.8. it is so called. Register. fol.186. Parvum Sigillum. 50 E.3. nu.185. F. N. B. 185. Fleta lib.2. cap. 12. Sect. Est int. &c. Custos privati Sigilli, Clerks of the Signet, Clerici Signetti are named

See the 2. part of the Instit. Artic. sup. Cart. cap.6.

F.N.B. 85. 2. See Artic. ſuper Cartas, ubi ſupra. Lib. 8. ubi ſupra.

in the ſaid Act of 27 H. 8. &c. and are four in number attendant upon the Kings principal Secretary, who always hath the keeping of this Seal, or Signet, for ſealing of the Kings Priby Letters: theſe four Clerks ſit at the Secretaries Board. He that deſireth to read more of the duty of Priby Counſellors, and how, and for what cauſes they are to be puniſhed, if they offend, let him read the Parliament Roll of the 50 year of E. 3. nu. 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, &c. 34, 35, &c.

9 R. 2. nu. 12. and 11 H. 4. nu. 28. not in print. 3 E. 6. c. 5. repealed.

Acts of Parliament concerning the Kings Priby Counſel, 25 E. 3. cap. 4. ſtat. 4. 28 E. 3. cap. 31. 42 E. 3. cap. 3. in print. 9 R. 2. nu. 12. 11 H. 4. nu. 28. 13 H. 4. cap. 7. 3 H. 7. cap. 14. 3 E. 6. cap. 5. 21 Jac. cap. 3. concerning warrants of aſſiſtance, &c. 3 Caroli cap. 1. in the Petition of right, concerning loans, &c. impriſonment, &c. martial law, ſouldiers, &c.

See hereafter pa. in the Chapter of the Chancery in the Articles againſt Cardinal Woolſey, Artic. 9, 10, 15. &c. concerning Priby Counſellors.

It appeareth by the Writs and Records of Parliament, that the high Court of Parliament is reſolved to be holden by the King per adviſamentum conſilii ſui, that is, by advice of his Priby Council.

Orders of Parliament for the Priby Counſel, and other things concerning them in the Rolls of Parliament, 50 E. 3. nu. 10. 12. 15. 21. 34. 42 E. 3. nu. 27. Sir John Lees caſe. 1 R. 2. nu. 87. 112. Rot. Pat. 1 R. 2. parte 1. m. 16. 2 R. 2. ſtat. 1. nu. 49. Rot. Parl. 1 H. 4. nu. 2. 7 H. 4. nu. 31, 32, 33, 41, 66, 67, 68, &c. 11 H. 4. nu. 14. 13 H. 4. nu. 3. 1 H. 6. nu. 30, 31, 32. 2 H. 6. nu. 15, 16, 17. 8 H. 6. nu. 27, 28. certain Articles to the number of eighteen touching the order of the Kings Council (amongſt which the eleventh is, that all offices and benefices of the Kings gift, ſuch as had ſerved him or his father, ſhould be preferred thereunto) are eſtabliſhed by the King, the Biſhops, and Lords. 9 H. 6. nu. 25. 11 H. 6. nu. 19 Six Articles, whereof the laſt was, that a Roll ſhould be made of ſuch as at any time had ſerved in the wars, or otherwiſe, to the end they ſhould be preferred to offices and benefits. 12 H. 6. nu. 4. De intendentiis conſiliariorum. 31 H. 6. nu. 30. Vide Rot. Pat. 32 H. 6. parte 1. m. 22.

Acts of Council concerning the ſame. Rot. finium. 20 E. 3. m. 8. Rot. Clauſ. 4 H. 4. in Dorſ. m. 13. Clauſ. 25 E. 3. m. 10. Pat. 19 R. 2. parte 2. m. 8. Clauſ. 20 E. 3. parte 1. m. 26. The Clerks of the Council are attendants upon the Lords and others of the Priby Council. Concerning the Clerks of the Council and their duty, ſee Rot. Parl. Anno 1 H. 6. nu. 32. 2 H. 6. nu. 17. &c.

Prov. 11. 13.

Of theſe Acts of Parliament, orders in Parliament, and Acts of Council we have referred you (for avoyding of tediouſneſſe) to the originals. Qui ambulat fraudulenter revelat arcana, qui autem fidelis eſt celat, &c.

Tobit 12. 7.

Bonum eſt abſcondere ſacramentum regis, opera autem Dei revelare honorificum.

Valerius lib. 4. Regulæ.

Nihil magis optandum, quam ut rerum gerendarum conſilia, quoad ejus fieri poterit, quam maxime occulta ſint.

Ovid.

Eximia eſt virtus præſtare ſilentia rebus,
Ac contra gravior culpa tacenda loqui.

Vegetius lib. 3. de re militari.

Nulla ſunt meliora conſilia, quam quæ ignoraverit adverſarius antequam facias, &c. Quid fieri debeat, tractato cum multis; quid facturus ſis, cum pauciſſimis ac fideliſſimis, &c. Conſilia niſi ſint abſondita, exitum raro proſpiciunt.

Eraſmus in Epi.

Conſilia callida & audacia prima fronte læta, tractatu dura, eventu triſtia.

* Curtius.

In conſiliario imprimis requiritur temperantia, quia *novandis, quam gerendis rebus aptiora ingenia illa ignea. And it is certain that men of fiery and furious ſpirits eaſily become factious.

Plinie.

In conſiliario Principis tria maximè requiruntur, libertas, fides, & veritas: libertas conſilii eſt ejus vita & eſſentia, qua erepta, conſilium evaneſcit.

Tacitus.

Privatæ res ſemper offecere, officientque publicis conſiliis, peſſimum veri affectus & judicii venenum ſua cuique utilitas.

Tu

Tu civem patremque geris, tu consule cunctis,
Non tibi, nec tua te moveant, sed publica vota.

All which, and much more are comprehended within the oath aboveſaid.

Some rules of Counſel, which in Counſel we have obſerved, we will adde. Firſt, that it is ſafeſt to give a King counſel, when he demandeth it. Secondly, the trueſt and beſt counſel is ever given to a King, when the queſtion is ſo evenly propounded, as the Counſellor knoweth not which way the King himſelf inclineth. Thirdly, that * præpropera conſilia ſunt raro proſpera: for reſolution ſhould never go before deliberation, nor execution before reſolution. Fourthly, when upon debate and deliberation it is by the Counſel Table well reſolved, the [a] change thereof upon ſome private information is neither ſafe nor honourable, [b] nor if that after reſolution timely execution be delayed. Fifthly, it is a mean of proſperous ſucceſs when the queſtion is debated with a few, not that he ſhould rely upon them, but that thereby the ſtate of the queſtion may be well underſtood, to the end the ſame may be plenarily, and fully propounded to the whole board. Sixthly, [c] good counſel is the ſoul of the State. Seventhly, when Counſellors do hide or diſguiſe the truth, it is full of danger, both to the King and to [d] themſelves. Eightly, violent courſes are like to hot waters that may do good in an extremity, but the uſe of them doth ſpoil the ſtomach, and it will require them ſtronger and ſtronger, and by little and little they will leſſen their own operation. Laſtly, ſuch fear as doth not fall, in conſtantem virum, is an enemy to good counſel: for what is fear, [e] but a betraying of ſuch ſuccours, as reaſon (and counſel) ſhould afford?

No Lord of Parliament takes any place of precedency in reſpect he is a Privy Counſellour. But under that degree ſuch place a Privy Counſellor ſhall take, as is ſet down in ſerie ordinum tempore H. 7. hereafter remembred in the Chapter of Precedency.

* Book of Judg. 19. ver. ultimo. Conſider, conſult, and then give ſentence.

[a] Seneca. Non ſemper in uno gradu, ſed in una via, non ſemitat, ſed aptat.

[b] Saluſt. Priuſquam incipias, conſulto, & ubi conſulueris mature facto opus eſt.

[c] 11 H. 4. nu. 14.

[d] Malum conſilium conſultori peſſimum. Rot. Clauſ. 18 H 3. nu. 19. Segraves caſe. Rot. Par. 50 E. 3. nu. 24. Segniot Latimers caſe.

[e] Sap. 12.

CAP. III.

Of the Power and Authority of the Protector and Defender of the Realm and Church of *England* during the Kings tender age.

SEE Rot. Parl. anno 1 H. 6. nu. 26 & 27. 2 H. 6. nu. 16. 6 H. 6. nu. 22, 23, 24. 8 H. 6. nu. 13. 11 H. 6. nu. 19. 32 H. 6. nu. 71. where you shall find his authority, place, and precedency, well expressed and described.

The surest way is to have him made by authority of the Great Council in Parliament.

See Hollinsheds Chronicle, pa. 1069. which may give you occasion to search for the Records of such Protectors as are there rehearsed.

CAP. IV.

The Court of the High Steward of *England*, intituled, *Placita Coronæ coram* Thom. *Duce* N. *Seneschallo* Angliæ.

¶ *His Stile.* ¶ *The antiquity of his Office.* Nota, then a Judge of the Peers of the Realm. 1 H. 4. 1. 13 H. 8. 13. Cust. de Norm. cap. 10.

HIS stile is Seneschallus Angliæ. This Office is very ancient, and was before the Conquest. For I read in an ancient and authentical Manuscript, intituled Authoritas Seneschalli Angliæ: where putting an example of his authority, saith: Sicut accidit Godwino Comiti Kanciæ tempore régis Edwardi antecessoris Willielmi Ducis Normandiæ pro hujusmodi male gestis & consiliis suis (*per Seneschallum Angliæ*) adjudicatus & forisfecit Comitivam suam.

In the time of the Conqueror William Fitz-Eustace was Steward of England. And in the reign of William Rufus and H. 1. Hugh Grantsemenel Baron of Hinkley held that Barony by the said Office.

Of ancient time this Office was of inheritance, and appertained to the Earldom of Leicester, as it also appeareth by the said Record: Seneschalcia Angliæ pertinet ad Comitivam de Leicester, & pertinuit ab antiquo. That is, that the Earldom of Leicester, was holden by doing of the office of Steward of England. Other Records testified that it should belong to the Barony of Hinkley. The truth is, that Hinkley was parcel of the possessions of the Earl of Leicester, for Robert Bellomont Earl of Leicester in the reign of H. 2. maried with Petronil daughter and heir of the said Hugh Grantsemenel Baron of Hinkley, and Lord Steward of England, and in her right was Steward of England. And so it continued, until by the forfeiture of Simon Monford it came to King H. 3. who in the 50 year of his reign, created Edmond his second son Earl of Leicester, Baron of Hinkley, and High Steward of England, which continued in his Line until Henry of Bullinbrooke, * son and heir of John of Gaunt Duke of Lancaster and Earl of Leicester, who was the last that had any estate of inheritance in the office of the Steward of England. Since which time it was never granted to any Subject, but onely hac vice. And the reason was, for that the power

* Rot. Par. 21. R. 2. nu. 4. Inter placita coronæ *John of Gaunt* Duke of *Lanc.* and Earl of *Leicester*, Steward of *England*.

power of the Steward of England was so transcendent, that it was not holden fit to be in any subjects hands: for the said Record saith, [b] Et sciendum est quod ejus officium est supervidere, & regulare sub Rege, & immediate post regem totum regnum Angliæ, & omnes ministros legum infra idem regnum temporibus pacis & guerrarum, &c. and proceedeth particularly with divers exceeding High powers and Authorities, which may well be omitted, because they serve for no present use.

[c] And albeit their power and authority have been since the reign of H.4. but hac vice, yet is that hac vice limited and appointed. As when a Lord of Parliament is [d] indicted of treason or felony, then the grant of this Office under the Great Seal is to a Lord of Parliament, reciting the Indictment, [e] Nos considerantes quod justitia est virtus excellens & Altissimo complacens, eaque præ omnibus uti volentes, ac pro eo quod officium Senescalli Angliæ, cujus præsentia pro administratione justitiæ & executione ejusdem in hac parte facien' requiritur, ut accepimus, jam vacat: De fidelitate, strenuitate, provida circumspectione, & industria vestris plurimum confidentes ordinavimus & constituimus vos *ex hac causa & causis* Senescallum nostrum Angliæ ad officium illud cum omnibus eidem officio in hac parte debitis & pertinentibus hac vice gerend' accipiend' & exercend', [f] dantes & concedentes vobis tenore præsentium plenam & sufficientem protestatem & authoritatem, ac mandatum speciale indictamentum prædict. &c. So that it appeareth, that this great Officer is wholly restrained to proceed only upon the recited indictment. And he to whom this Office is granted, must be a Lord of Parliament, and his proceeding is to be [g] secundum leges & consuetudines Angliæ, for so is his Commission. And hereof you may read more at large in the third part of the Institutes, cap. High Treason. [h] Also at every Coronation he hath a Commission under the Great Seal hac vice, to hear and determine the claimes for grand Serjeantries and other honourable services to be done at the Coronation for the solemnization thereof: for which purpose the High Steward doth hold his Court some convenient time before the Coronation. See a president hereof before the coronation of King R. 2. John Duke of Lancaster then Steward of England, (who in claymes before him was stiled Treshonorable Seignior Roy de Castile & Leon, & Senescal Dangliterre) and held his Court in Alba Aula apud Westm. die Jovis proxime ante coronationem. Quæ quidem coronatio habita & solemnizata fuit die Jovis sequente, *viz.* 16 Julii Anno 1 R. 2.

The first that was created hac vice for the solemnization of the coronation of H.4. was Thomas his second son. [i] And upon the arraignment of John Holland Earl of Huntingron, the first that was created Steward of England hac vice, was Edward Earl of Devon.

Rot. Parl. 37 H.6. nu. 49. Thomas Courtney Earl of Devon was arraigned of High Treason before Humphrey Duke of Gloc. hac vice Steward of England, and acquitted. And so was [k] the Lord Dacres of the North arraigned of High Treason before Thomas Duke of Norff. hac vice Steward of England, and acquitted by 20 Peers.

When he sitteth by force of his Office, he sitteth under a Cloth of estate, and such as direct their speech unto him, say, Please your Grace my Lord High Steward of England. The stile of the said John of Gaunt was Johannes filius Regis Angliæ, Rex Legionis & Castellæ, Dux Aquitaniæ & Lancastriæ, Comes Derbiæ, Lincolniæ & Leicestriæ, Senescallus Angliæ. And in respect his power before it was limited was so transcendent, I finde no mention made of this great Officer in any of our ancient Authors, the Mirror, Bracton, Britton, or Fleta. It seemeth they liked not to treat of his authority. Neither do I finde him in any Act of Parliament, nor in any Book case before 1 H.4. and very few since: which hath caused me to be the longer in another place to set forth his authority and due proceeding upon the arraignment of a Peer of the Parliament, by judicial record and resolution of the Judges, agreeable with constant experience.

For the Etymologie and signification of [Senescallus] see the first part of the Institutes,

His authority *hac vice:* & therefore he is not mentioned in the Stat. of 31 H.8.c.1.concerning the placing of great Officers.

[b] Herewith agreeth the Custom. of Norm. cap.10. fo.17. Holinsh. Chron. pa. 866.

[c] His authority (*hac vice*) limited.

[d] See the second part of the Institutes Mag. Cart.c.29. 1 H.4. cap.1.

[e] He is sole Judge by the Common law, and can make no Deputy.

[f] Stanf. pl. cor.152. 1 H.4. fo.1. 13 H.8. fo.11.b.

[g] His rule.

[h] His further authority.

[i] V. 1 H.4. fol.1. Therefore *Tho. Walsingh.* p.363. and others who affirm that he was beheaded at *Ilesly* in *Essex* by the Commons, do erre.

[k] Ter. Pasch. 26 H.8. of Justice *Spilmans* Report.

See the third part of the Institutes, cap. Treason.

First part of the Inſtit. Sect. 78.

Inſtitutes: And though it hath ſeveral derivations, yet as being applied to England, it is properly derived from Sen, that is, Juſtice, and Schale, that is, Governour or Officer, that is, Præfectus ſeu officiarius juſtitiæ. And this agreeth well with his authority and duty to proceed (as hath been ſaid) ſecundum leges & conſuetudines Angliæ.

It is to be obſerved, that as the Peers of the Realm that be Triors or Peers, are not ſworn, ſo the Lord Steward being Judge, &c. is not ſworn; yet ought he accordingly to his Letters Patents to proceed ſecundum legem & conſuetudinem Angliæ.

CAP. V.

The Honourable Court of Star-chamber,

Coram Rege & Concilio ſuo; Of ancient time, *Coram Rege in Camera*, &c.

¶ *That it is an eminent Court proved by Records and Acts of Parliament.*

In [a] the 28 year of the reign of E. 3. it appeareth, that the returns Coram nobis are in three manners. Coram nobis in Camera (which, it is ſaid, was afterwards called Camera Stellata.) 2. Coram nobis ubicunque fuerimus in Anglia, which is the Kings Bench: and Coram nobis in Cancellaria. And of all the High and Honourable Courts of Juſtices, this ought to be kept within his proper bounds and juriſdiction.

[a] 22 Lib. aſſ. pl. 52.

[b] In 38 E. 3. coram Rege & Concilio, John Redland complained of Robert Spinke for delivery of priſoners upon falſe ſuggeſtion made to the King: upon hearing the cauſe, the defendant was acquitted, the plaintiff impriſoned.

[b] Rot. pat. 1. part m. 13.

¶ *Fraud and falſehood.*

[c] In 39 E. 3. Ralph Brantingham one of the Chamberlains of the Exchequer complained before the King and his Council of Richard Ceſterfield Clerk Deputy of the Kings Treaſurer, in the receipt, for divers allowances, payments, &c. unduly made, and for raſing of Records, &c. Upon the hearing of the cauſe by the whole Council, the defendant was acquitted, and the plaintiff removed from his office, and committed to priſon.

[c] Rot. pat. 1. part m. 13.

¶ *Falſhood in an Officer and raſing of a Record.*

[d] The Abbot de Bruera, Ragge his Monk ſentenced coram Rege & Concilio, for raſing of Letters Patents, and inſerting other words: and the Letters Patents by ſentence cancelled.

[d] Rot. clauſ. 42 E. 3. m. 8. in dor. Vide Rot. par. 2 R. 2. 1 part m. *Camera Stellata*, for raſing. 12 R. 2. cap. 11. dev. le councel

[e] In Anno 41 E. 3. in a Bill of complaint exhibited to the King by Elizabeth the widow of Nicholas Awdeley plaintiff, againſt Jane Awdeley defendant, who appeared before the Kings Council, viz. the Chancellour, Treaſurer, Juſtices, and others aſſembled En la Chamber des Eſtoiels pres de la Receits.

[e] Rot. clauſ. 41 E. 3. Cambd. Brit. 130.

[f] A ſuit depending before the King and Council between the Abbot of Saint Auſten of Canterbury and others concerning Wrecks, &c. The Abbot brought his action at the Common law againſt the parties, who being thereupon arreſted and impriſoned, the Sheriff was commanded by the Kings Writ to deliver them, and to forbear to ſerve any other Proceſs againſt them, and the reaſon there yielded is notable, Quia non eſt juri conſonum, aut honeſtum, quod aliquis de his quæ coram nobis & concilio noſtro in diſcuſſione pendent, alibi inde interim placitari debeat aut apparere.

[f] Rot. clauſ. 16 R. 2. in dorſ. m. 11.

[g] A ſuit depending before the King and his Council, between W. G. of the one part, and H. S. of the other part: a Sequeſtration is ordered for the preſervation of the things in queſtion.

[g] Pat. 6 H. 5. & conſimile Anno 7 H. 5. pro manerio de Fiſherwick in Conſ. Norff.

[h] In 17 H. 6. an inrolment of a confeſſion of John Ford of Lon. Mercer before the Lord Treaſurer and others of the Kings Council in the Star-chamber for

[h] Rot. clauſ. 17 H. 6.

the

the fraudulent packing and tranſporting of Wooll, with a Writ to the Sheriff of London to ſet him on the Pillory.

The Abbot of Weſtminſter exhibited his Bill to the King againſt the Sheriffs of London for arreſting and drawing out with force a priviledged perſon out of the Sanctuary of S. Martins le grand belonging to the ſaid Abbey: which matter after due proceedings being heard in the Court of Star-chamber before the Lords and others of the Kings Council, and Hodey and Newton Chief Juſtices, which Juſtices determining, that by law the party ought to enjoy the priviledge of Sanctuary, the Sheriffs were grievouſly fined in the Star-chamber by particular name: which ſentence the Lord Dier, as he hath reported under his own hand, ſaw upon a reference to him and Juſtice Suthcote out of the Star-chamber. Trin. 11 Reginæ Eliz. concerning the Sanctuary of Weſtm. for Hampton and Whitacres being in for debt. And the Lord Dier made this Note with his own hand. Nota, pur le Star-chamber. And this is a notable proof of the Juriſdiction of the Court for fining, &c. That the Bill was exhibited to the King, and that the two Chief Juſtices then did ſit, and were Judges (amongſt others) in that Court. Anno 29 H. 6. Trin. 11 Eliz. Dier. Manuſcript not imprinted.

For divers Riots, Extortions, oppreſſions, and grievous offences by divers perſons done againſt the Kings peace and laws, to divers of his liege people, commandment hath been given by the Kings Writs under the Great Seal (which continue until this day) to appear before the King in the Chancery, or before him and his Council at certain dayes to anſwer to the premiſſes, which commandment hath been many times diſobeyed. Proviſion is made by that Act for the puniſhment of ſuch diſobedience, as by that Act appeareth. True it is, that this Act was but temporary, yet it affirmeth ſo much as before hath been ſaid. Stat. de 31 H. 6. cap. 2. Vide Rot. Parl. 1 H. 6. nu. 41.

Anno 35 H. 6. a Writ of Certiorari was directed: Thomæ Kent Clerico Concilii: Volentes certis de cauſis certiorari ſuper tenorem cujuſdam Actus Paſch. ultime præterito apud Weſtm. in camera ſtellata concernen' Johannem Ducem Norff. And ſee there proces of rebellion againſt the ſaid Duke. Ex bundello brevium Regis. 35 H. 6.

Robert Davers a Counſellor at law by bill exhibited to the King, &c. for defamation of razing a Record. And the ſaid Robert by the Kings Council in Camera ſtellata was acquited, and John Broke that made the razure ſentenced. Rot. cl. 11 H. 6.

The Kings Council aſſembled in the Star-chamber. The Lord Cromwels caſe. Rot. claus. 28 H. 6.

An order in the Star-chamber for the Duke of Yorks Council to have acceſs to him, becauſe called into the Chamber by Privy Seal, &c. Rot. pat. 32 H. 6. m. 20.

An exemplification of a complaint by Richard Heron againſt John Prout, Coram rege & conſiliariis ſuis in Camera ſtellata, for a great miſdemeanour concerning Wools. Pat. 3 E. 4. part 1.

Anno 8 E. 4. proceeding by Engliſh bill, anſwer, replication, &c. Coram Rege & Concilio. Rot. petit. 8 E. 4.

Anno 20 E. 4. a ſentence in the Star-chamber for turbulent and undue elections between the Abbot of Bury and the inhabitants. Rot. pat. 20 E. 4. part 2.

We have omitted many other Records, but becauſe they be of like nature, we have contented our ſelf with theſe. And now we will conſult with our Book caſes and Reports of law: wherein either coram Rege & Concilio, or coram Rege & concilio in camera ſtellata, is named.

39 E. 3. fo. 14 aſſ. pl. 1. 40 aſſ. 38. 13 E. 4. 9. in camera ſtellata. Vide 27 E. 3. cap. 13. 21 E. 4. 71. in camera ſtellata. 2 R. 3. fo. 2. & 11. in camera ſtelleta. 1 H. 7. 3. in camera ſtellata. This Court in ancient times ſat but rarely, for three cauſes. Firſt, for that enormous and exorbitant cauſes which this Court dealt withal only in thoſe days rarely fell out. Secondly, this Court dealt not with ſuch cauſes, as other Courts of ordinary juſtice might condignely puniſh, ne dignitas hujus curiæ vileſceret. Thirdly, it very rarely dit ſit, leſt it ſhould draw the Kings Privy Council from matters of State, pro bono publico, to hear private cauſes, and the principal Judges from their ordinary Courts of Juſtice. *Book caſes and Reports of law.*

That

That which now is next to be conſidered in ſerie temporis, is the ſtatute of
3 H.7. cap.1. 3 H.7. The Letter whereof followeth:

21 H.8. cap.20. The preſident of the Kings Council added. It is ordained that the Chancelour and Treaſurer of *England*, and the Keeper of the Kings Privy Seal, or two of them calling to them a Biſhop and a Temporal Lord of the Kings moſt honourable Privy Council, and the two Chief Juſtices of the Kings Bench and Common Pleas for the time being, or other two Juſtices in their abſence upon bill or information put to the ſaid Lord Chancelour or any other againſt any perſon for unlawful maintenance, giving of liveries, ſigns and tokens, and reteiners by Indentures, promiſes, oaths, writings or otherwiſe, imbraceries of his ſubjects, untrue demeaning of Sheriffs in making of pannels, and other untrue returnes by taking of money, by injuries, by great riots, and unlawful aſſemblies, have authority to call before them by Writ or Privy Seal the ſaid miſdoers, and they and other by their diſcretion, by whom the truth may be known to examine, and ſuch as they find therein defective, to puniſh them after their demerits, after the form and effect of Statutes thereof made in like manner and form as they ſhould, and ought to be puniſhed, if they were thereof convict after the due order of law.

Cambden Brit. *Cameræ ſtellatæ authoritatem prudentiſſimus princeps Henricus ſeptimus ita Parliamentaria adauxit & conſtabilivit, nonnulli primum inſtituiſſe falſo opinantur.*

Upon this ſtatute and that which formerly hath been ſaid, theſe Sir concluſions do follow. The firſt concluſion is, that this Act of 3 H.7. did not raiſe a new Court; for there was a Court of Star-chamber, and all the Kings Privy Council Judges of the ſame. For if the ſaid Act did eſtabliſh a new Court, then ſhould thoſe four or any two of them be only Judges, and the reſt that they ſhould call to them ſhould be but aſſiſtants, and aidants, and no Judges: for the Statute of 31 E.3. cap.12. which raiſeth a new Court, and before new Judges, is introductory of a new law, by having conuſance of error in the Exchequer, which ſhall be reverſed in the Exchequer Chamber before the Chancelour and Treaſurer, or calling to them two Judges, there the Chancelour and Treaſurer are only Judges in the Writ of Error, and ſo in the like. But it is clear that the two Juſtices in the Star-chamber are Judges, and have voices, as it hath been often reſolved, and daily experience teacheth. And further to clear this point, if the Juſtices ſhould be but aſſiſtants and no Judges in the Star-chamber, for that they are to be called, &c. then, and for the ſame reaſon ſhould neither Lord Spiritual nor Temporal, nor other of the Privy Council be Judges, nor have voices in the Court of Star-chamber. And therefore the ſudden
8 H.7.13. Plow. Com. 393. opinion in 8 H.7. and of others not obſerving the ſaid diſtinction between Acts Declaratory of proceedings in an ancient Court, and Acts Introductory of a new law in raiſing of a new Court, is both contrary to law, and continual experience.

The ſecond concluſion is, that the Act of 3 H.7. being in the affirmative is not in ſome things purſued. For where that Act directeth that the Bill or Information ſhould be put to the Lord Chancelour, &c. all bills and informations in that Court are conſtantly and continually directed to the Kings Majeſty, as they were before the ſaid Act; and it is a good rule, that where the Act of 3 H.7. is not purſued, there (if there be many judicial preſidents in another ſort) they muſt have warrant from the ancient Court; and yet it is good (as much as may be) to purſue this Act, there being no greater aſſurance of juriſdiction then an Act of Parliament. And where there be no ſuch preſidents, then the Statute as to the Judges muſt be purſued: and that was the reaſon that in

default

default of others, Sir Chriſtopher Wray Chief Juſtice of England for a time was made Lord Privie Seal to ſit in the Star-Chamber, Ne Curia deficeret in juſticia exhibenda.

Thirdly, that this Act being (as hath been ſaid) in the affirmative, and enumerating divers particular offences, albeit (injuries) is a large word, yet that Court hath juriſdiction of many other, as is manifeſt by authority, and daily experience, and this muſt of neceſſity be in reſpect of the former juriſdiction.

Fourthly, this Act in one point is introductory of a new law, which the former Court had not, viz. to examine the Defendant, which being underſtood after his anſwer made, to be upon Oath upon interrogatories, which this ancient Court proceeding in criminal cauſes had not, nor could have but by Act of Parliament, or preſcription, the want whereof eſpecially in matters of frauds and deceits (being like birds cloſely hatched in hollow trees) was a mean that truth could not be found out, but before the Statute the anſwer was upon oath.

Fifthly, where it is ſaid in this Act, And to puniſh them after their demerits after the form and effect of ſtatutes made, &c. The Plaintiff may chooſe whether he will inform upon ſuch Statutes as this Act directeth, or for the offence at the Common Law, as he might have done before this Act: which proveth that this Act taketh not away the former juriſdiction.

6. Laſtly, that the juriſdiction of this Court dealeth not with any offence, that is not malum in ſe, againſt the Common Law, or malum prohibitum, againſt ſome Statute.

It is to be obſerved, that neither the ſtatutes of 37 E.3.ca.18. 38 E.3.cap.9. 42 E.3.ca.3. 17 R.2.ca.6. nor any other ſtatute taketh away the juriſdiction of any ſetled Court of Juſtice, neither is the Court of Star-chamber named in any of them, and yet was it a Court then and before that time.

Divers ſpecial Acts of Parliament have given alſo juriſdiction to this Court, viz. 12 R.2.cap.11. 2 R.2.cap.5. 13 H.4.cap.7. 33 H.8.cap.1. 4 & 5 Ph. & Mar. cap.8. 5 Eliz.c.9,10. & cap.14. 27 Eliz.cap.4.

¶ *The Juriſdiction of this Court.*

And ſeeing the proceeding according to the Laws and Cuſtoms of this Realm cannot by one rule of law ſuffice to puniſh in every caſe the exorbitancy and enormity of ſome great horrible crimes & offences, and eſpecially of great men, this Court dealeth with them, to the end that the medicine may be according to the diſeaſe, and the puniſhment according to the offence, Ut pœna ad paucos, metus ad omnes perveniat, without reſpect of perſons, be they publick or private, great or ſmall.

As for oppreſſion, and other exorbitant offences of great men, (whom inferiour Judges and Jurors (though they ſhould not) would in reſpect of their greatneſs be afraid to offend) bribery, extortion, maintenance, champerty, imbracery, forgery, perjury, diſperſers of falſe and dangerous rumours, news, and ſcandalous libelling, falſe and partial miſdemeanours of Sheriffs and Bayliffs of Liberties, frauds, deceits, great and horrible riots, routs, and unlawful aſſemblies, ſingle combats, challenges, duels, and other hainous and extraordinary offences and miſdemeanours; but ordinary, and ſuch offences as may be ſufficiently and condignly puniſhed by the proceeding of the Common Laws, this Court leaveth to the ordinary Courts of Juſtice and dealeth not with them, ne dignitas hujus Curiæ vileſceret, as before is ſaid.

Camden Brit. 130. *In Camera ſtellata tractantur criminalia, perjuria, impoſturæ, dolus malus, exceſſus, &c.*

The proceeding in this Court is by Bill or Information, by examination of the Defendant upon Interrogatories and by examination of witneſſes, and rarely ore tenus, upon the confeſſion of the party in writing under his hand, which he again muſt freely confeſs in open Court, upon which confeſſion in open Court, the Court doth proceed. But if his Confeſſion be ſet down too ſhort, or otherwiſe than he mean, he may deny it, and then they cannot proceed againſt him but by Bill or Information, which is the fairеſt way.

For proceeding *ore tenus*, ſee before Rot. Clauſ. 17 H. 6. John Forts caſe. Rot. clauſ. 42 E.3. the Abbot of Bruerics caſe, &c. *In notariis ordo eſt ordinem juris non ſervare.*

The Informations, Bills, Anſwers, Replications, &c. and Interrogatories are in Engliſh, and ingroſſed in Parchment, and filed up. All the Writs and Proceſs of the Court are under the Great Seal: The Sentences, Decrees & Acts of

this Court are ingroſſed in a fair Book with the names of the Lords and others of the Kings Council and Juſtices that were preſent and gave their voices.

Paſc. 12 Jac. Reg. In an Information in this Court by the Attorney General againſt Sir Stephen Procter, Birkinhead and others for conſpiracy againſt, and ſcandal of the Earle of Northampton, and Edward Lord Worton two of his Majeſties Privie Council: At the hearing of which cauſe there ſat eight in Court, and four of them condemned the Defendant: and the Lord Chancellor, the two Biſhops, and the Chancellor of the Exchequer acquitted him. And the queſtion was, whether the Defendant ſhould be condemned or no: and herein it was moved by the Kings Learned Counſel, that when the voices be equal, that in that caſe, of which part the Lord Chancellor was, on that ſide it ſhould be decréd, without regard, whether it was for the Plaintiff or Defendant: And it was reſolved, that regularly, & de communi jure, in reſpect of the equality of the voices no ſentence could be given in that caſe, as it holdeth in the High Court of Parliament, and all other Courts, according to the old rule, Paribus ſententiis reus abſolvitur. Eroſius f. 122. And therefore the Preſidents of this Court were to be ſearched; for except preſidents could make a difference betwéen this Court and others, the Defendant could not be ſentenced. Whereupon the Court referred this queſtion to the two Chief Juſtices, that they calling unto them the Kings Learned Counſel to view preſidents, whether by the cuſtome of this Court the Common Rule in other Courts is altered. Before whom in the preſence of the Kings Learned Counſel two preſidents were produced for proofe of the ſaid Cuſtome, viz. one Termino Hil. Anno 39 Eliz. betwéen Gibſon Plaintiff, and Griffith and other Defendants: wherein the complaint was for a Riot. Hil. 39 Eliz. in Camera ſtellata, Gibſons caſe. And upon hearing of the Cauſe eight ſate in Court, and four gave their ſentence that the Defendants were guilty, and the other four, whereof the Lord Chancellor was one, did acquit the Defendants, and no ſentence of condemnation was ever entred. But the Juſtices took it, that that preſident tended not to prove any ſuch cuſtom, for it agréed with the rule in other Courts. Another preſident was ſhewed, Termino Hil. 45 Eliz. in an Information by the Hil. 45. El. in Camera ſtellata. Bathems caſe. Queéns Attorney General againſt Bathern and others for forging of a Will, &c. Upon the hearing of the cauſe, the preſence conſiſting of eight, whereof four gave ſentence againſt the Defendant for forgery, and to be puniſhed according to the Statute of 5 Eliz. the other four, whereof the Lord Chancellor was one, found him guilty of a Miſdemeanor, and not of the Forgery, and impoſed a fine of five hundred pound only, and impriſonment, and that was entred according to the Lord Chancellors voice. But no rule of Court was ſhewed for entring thereof in that manner: ſo as it appeared not that it was ever moved, or debated in Court, and in that caſe all concluded againſt the Defendant, and it is but one preſident. Now whether this one, being ſuch a one as it is, and ſo late, be ſufficient to alter the general Law and courſe of all other Courts, I leave to the judgement of this honourable Court: And ſentence was never given againſt Sir Stephen Procter agréeable to the general rule in other Courts. See Rot. Parl. 8 H. 6. nu. 28.

Mic. 36 & 37 El. Lawrence Hide and Henry Hide Eſquires, exhibited a Bill of complaint againſt George Cotier and others upon the Statute of 32 H. 8. cap. 9. for unlawful maintenance; and complained for three ſeveral Leaſes for certain years of the Parſonage of Dynton in the County of Wilts, whereof the Leſſor nor any of his Anceſtors were in poſſeſſion within a year before, &c. and purſued the Statute: Upon which part of the Bill (for the Bill concerned Riots and other things) the Defendant demurred in Law, and the cauſes of the demurrer were. Firſt, that by the ſaid Act this Court had no juriſdiction of this cauſe upon this Statute, becauſe that the Act which is introductory of a new law did not give Juriſdiction to this Court, but the ſuit muſt be in the Courts of the Common Law upon this Act, which (ſaid they) alſo appeared, in that in the remedy given by the Act in this clauſe. In which Action, Bill, Plaint, or Information,

tion no eſſoign, protection, wager of law or injunction ſhall be allowed, and that no eſſoign, &c. did lie in this Court. The ſecond objection was, This Court had no power to give the Plaintiff remedy to have execution in this Court of the penalty given by this Act. Whereunto upon great advizement it was anſwered and reſolved. As to the firſt, That the Statute did give juriſdiction to this Court, for it is one of the Kings Courts, &c. intended in the Act: and the ſtatute of 3 H. 7. declareth, that this Court hath juriſdiction of maintenance, and this Act of 32 H. 8. doth adde but a greater penalty: and as to the clauſe of eſſoign, &c. it muſt be conſtrued reddendo ſingula ſingulis, &c. for as no eſſoign, &c. lieth in this Court, ſo no injunction is awarded in the Court of Common Pleas, &c. As to the ſecond, It was reſolved, That this Court had power in this caſe to grant execution of the penalty inflicted by this Act, as in a like caſe had been done, in the caſe of James Taverner. And both theſe points had formerly been reſolved in this Court, 14 Mich. 27 Eliz. between Robert Bradſhaw Eſquire Plaintiff, and Robert Charnock Eſquire Defendant, upon this Statute, and the caſe decreed accordingly, and a Commiſſion awarded out of this Court, to enquire of the value, &c. And for theſe cauſes by the rule of the whole Court, the demurrer was over-ruled, and the Defendant ordered to anſwer.

Dier Mich. 6 & 7 Eliz. f. 236.

Dier 15 El. 323. in Camera ſtellat' Taverners caſe, Paſc. 27 El. in Camera ſtellata. Charnocks caſe.

This Court ſitteth twice in the week in the Term time, viz. on Wedneſdayes, and Fridayes, except either of thoſe dayes fall out to be the firſt or laſt day of the Term, and then the Court ſitteth not, but it conſtantly holdeth the next day after the Term ended: but if any cauſe be begun to be heard in the Term time, and for length or difficulty cannot be ſentenced within the Term, it may be continued and ſentenced after the Term.

¶ *The dignity of this Court.*

It is the moſt honourable Court (our Parliament excepted) that is in the Chriſtian world, both in reſpect of the Judges of the Court, and of their honourable proceeding according to their juſt Juriſdiction, and the ancient and juſt orders of the Court. For the Judges of the ſame are (as you have heard) the Grandees of the Realm, the Lord Chancellour, the Lord Treaſurer, the Lord Preſident of the Kings Councel, the Lord Privy Seal, all the Lords Spiritual, Temporal, and others of the Kings moſt honourable Privy Councel, and the principal Judges of the Realm, and ſuch other Lords of Parliament as the King ſhall name. And they judge upon confeſſion, or depoſition of witneſſes: And the Court cannot ſit for hearing of cauſes under the number of eight at the leaſt. And it is truly ſaid, Curia Cameræ ſtellatæ, ſi vetuſtatem ſpectemus, eſt antiquiſſima, ſi dignitatem, honoratiſſima. This Court, the right inſtitution and ancient orders thereof being obſerved, doth keep all England in quiet.

¶ *The Judges of this Court.*

Camd. ubi ſupr.

Albeit the ſtile of the Court be Coram Rege & Concilio, yet the Kings Councel of that Court hear and determine cauſes there, and the King in judgment of Law is alwayes in Court. As in the Kings Bench the ſtyle of the Court is Coram Rege, and yet his Juſtices who are his Councell of that Court do hear and determine, and ſo Coram Rege in Cancellaria, and the like.

So this Court being holden Coram Rege & Concilio, it is or may be compounded of [a] three ſeveral Councels. That is to ſay, of the Lords and others of his Majeſties Privy Councel, alwayes Judges without appointment, as before it appeareth. 2. [b] The Judges of either Bench and Barons of the Exchequer are of the Kings Councel for matter of Law, &c. and the two Chief Juſtices, or in their abſence other two Juſtices are ſtanding Judges of this Court. 3. The Lords of Parliament are properly De [c] magno concilio regis, but neither theſe, being not of the Kings Privy Councel, nor any of the reſt of the Judges or Barons of the Exchequer are ſtanding Judges of this Court.

[a] See the 1. part of the Inſtitutes, Sect. 164. *Verb. ſeigne les Burgeſſes al Parliament.* 4 E. 3. 2. 3. aſſ. pl. 15.

[b] 39 E. 3. 5. 19 E. 3. Judgement 174. W. 1. cap. 1.

17. E. 2. *Stat. de Templarii.* 16 R. 2. *Stat. de Præmunire.* 43 Aſſ. pl. 15. Regiſt. 124, 125, 191. 27 H. 6. 5. 2 R. 3. 10. 27 Aug. 5 H. 4. in the Exchange between the King and the Earl of *Northumberland* in Turre 37 E. 3. ca. 18. &c. Note the Parliament is called *Commune Concilium.*

¶ *The name of this Court.*

It is now, and of ancient hath been called the Chamber of the [d] Stars, the

[d] 41 E. 3. ubi ſup.

e In many of the Records before cited. f 25 H. 8. c. 1. Lambard.

Sir Tho. Smith, Lib. 2. c. 4.

¶ *The proceſs.*

¶ *Officers of the Court ſworn.*

e Star-Chamber, the f Starred Chamber, in reſpect the roof of the Court is garniſhed with golden ſtars. Some have imagined that it ſhould be called the Star-Chamber, becauſe crimina ſtellionat' are there handled: Others of this Saxon word Steeran, to ſteer or rule as doth the Pilot, becauſe this Court doth ſteer and govern the ſhip of the Commonwealth. Others, becauſe it is full of windowes: but the true cauſe of the name is, becauſe, as is aforeſaid, the roof is ſtarred. In all records in Latine it is called Camera ſtellata.

The proceſſe in this Court is Subpœna, Attachment, proceſſe of Rebellion, &c. all under the Great Seal.

In this Court there is the Clerk of the Counſel, which is an Office of great account and truſt, for he is to receive, endorſe, enter, keep, and certifie the bills, pleadings, records, orders, rules, ſentences and decrees of the Court; and I find that in former times men of great account have had that Office in this Court: as to give you a little taſt thereof: King H. 6. by his Letters Patents, 15. July Anno regni ſui 22. granted the ſame to Thomas Kent Doctor of the Law for his life, calling him Clericum conſilii noſtri, and ſon after ſwore him of his Priby Counce'. King H. 7. Anno 1. of his Reign, granted the ſame Office to John Bladeſwell Doctor of Laws for tearm of his life: But hereof this little taſte ſhall ſuffice.

Laſtly, it remaineth to be ſeen what jurisdiction this Court hath in puniſhment, and where, and in what caſes this Court may inflict puniſhment by Pillory, papers, whipping, loſſe of ears, tacking of ears, ſtigmata in the face, &c. (For it extendeth not to any offence that concerns the life of man or obtruncation of any member, the ears only excepted, and thoſe rarely and in moſt hainous and deteſtable offences.) But herein the ſureſt rule is, that ſeeing it is an ancient Court, the preſidents of the Court are to be followed, and the rather for that the Court conſiſteth of ſuch learned and honourable Judges. And novelties without warrant of preſidents are not to be allowed: generally ſome certain rules are to be followed, eſpecially where no preſidents are extant in the caſe. * Quod arbitrio Judicis relinquitur, non facile trahit ad effuſionem ſanguinis: For general Acts of Parliament which inflict puniſhment, viz. for forfeiture de corps & de avoir, &c. theſe are expounded not to extend to life, or member, but to impriſonment, &c.

Ecclesiaſticus 28. 8. *Qui poteſtatem ſibi ſumit injuſtè, odietur.*

* See *Statut. de moreta temp. E. 1. 35 E. 1. de Carliſle. 20 E. 3. ca. 4.* Vid. 13 El. ca. 2. And note where he ſhall loſe his ears for defamation of the Queen.

See the Firſt part of the Inſtitutes, Sect. 745. Verb. Felony. Majore pœna affectus, quam legibus ſtatut' eſt, non eſt infamis. Pœna gravior ultra legem poſita æſtimationem conſervat. Confeſſus in jure pro judicato habetur, cum quodammodo ſua ſententia damnatur. Cum confitente ſponte mitius eſt agendum.

In hac Curia non agitur de delictis ordinariis, ne dignitas hujus curiæ vileſceret.

Quicquid Judicis authoritati ſubjicitur, novitati non ſubjicitur.

CAP.

CAP. VI.

A Court for redreſſe of delayes of Judgements in the Kings great Courts.

This Court is raiſed by the Statute of 14 E. 3. which followeth in theſe words. 14 E. 3. cap. 5. ſtat. 1. Rot. Parl. 2 R. 2. n. 63. confirmed by Parliament.

Item, Becauſe divers miſchiefs have happened of that, that in divers places, as well in the Chancery, as in the Kings Bench, the Common Bench, and in the Exchequer, before the Juſtices aſſigned, and other Juſtices to hear and determine deputed, the judgments have been delayed, ſometimes by difficulty, ſometimes by divers opinions of the Judges, and ſometimes for ſome other cauſe: It is aſſented, eſtabliſhed, and accorded, that from henceforth at every Parliament ſhall be choſen a Prelate, two Earls, and two Barons, which ſhall have commiſſion and power of the King to hear by Petition delivered unto them the complaints of thoſe that will complain to them of ſuch delayes and grievances made, and they ſhall have power to come before them at *Weſtminſter*, or elſewhere, where the places or any of them ſhall be, the tenor of Records and Proceſſes of ſuch Judgements ſo delayed, and to cauſe the ſame Juſtices to come before them, which ſhall be then preſent, to hear their cauſe and reaſons of ſuch delayes: which cauſe and reaſons ſo heard by * good advice of themſelves, the Chancellor, Treaſurer, the Juſtices of the one Bench and of the other, and other of the Kings Councell, as many and ſuch as ſhall ſeem convenient, ſhall proceed to take a good accord, and make a good Judgement; and according to the ſame accord ſo taken, the tenor of the ſame Record, together with the Judgement which ſhall be accorded, ſhall be remanded before the Juſtices, before whom the Plea did depend; and that they ſhall give Judgement according to the ſame Record: and in caſe it ſeemeth to them that the difficulty be ſo great, that it may not well be determined without aſſent of the Parliament, that the ſaid tenor or tenors ſhall be brought by the ſaid Prelate, Earls and Barons in the next Parliament, and there ſhall be a final accord taken what judgement ought to be given in this caſe, and according to this accord it ſhall be commanded to the Judges before whom the Plea did depend, that they ſhall proceed to give Judgement without delay.

Judgement delayed.

* Nota, by good advice of the Chancellour, Treaſurer, and Juſtices.

Good accord.

Vide Regiſt. fo. 124. b. Rex Johanni de B. Militi, &c.

Before the making of this Statute, delay of Judgements was forbidden both by the Common Law, and by Acts of Parliament. By the Common Law, 1. It is required, that Plena & celeris juſtitia fiat partibus, &c. not plena alone, nor celeris alone, but both plena & celeris. All Writs of Præcipe quod reddat, are, Quod juſte & ſine dilatione reddat, &c. All judicial Writs are ſine dilatione, &c. Regiſt. 131. a. F.N.B. 23. c. And ſo upon Conuſance granted.

2. There did and yet doth lie a Writ de procedendo ad judicium, when the Juſtices or Judges of any Court of Record, or not of Record, delayed the party plaintiff or defendant, demandant or tenant, and would not give judgement: and thereupon an Alias, Plur', and an Attachment, &c. doth lie. And the words of the Writ Regiſt. fo. 22. F.N.B. 153. b. &c. Cuſt. de Norm. cap. 27.

Writ be, Quia redditio judicii loquelæ quæ eſt coram vobis, &c. de quadam tranſgreſſione eidem A. per præfat' B. illata, ut dicitur, diuturnam cepit dilationem ad grave damnum ipſius A. ſicut ex querela ſua accepimus; Vobis præcipimus quod ad judicium inde reddendum cum ea celeritate quæ ſecundum legem & conſuetudinem regni noſtri, procedas, &c.

Diuturna dilatio.

Regiſt. fo. 18. F.N.B. fo. 20.a. &c.

3. Likewiſe when Juſtices or Judges of any Court of record, or not of record, gave Judgment, and delayed the party of his execution, the party grieved may have a Writ De executione judicii; by which Writ the Juſtices or Judges are commanded, Quod executionem judicii nuper redditi, &c. de loquela quæ fuit, &c. per breve noſtrum, &c. ſine dilatione fieri fac'. And thereupon an Alias, Plur' and Attachment, &c. do lie.

See hereafter, &c. Exchequer and Exchequer Chamber.

4. By the meeting together upon adjournment of the cauſe out of the Court, where the cauſe dependeth, &c. All the Judges, &c. which now we call an Exchequer Chamber cauſe, warranted by the Common Law and ancient Preſidents before this ſtatute: and the frequent uſe of this Court of Exchequer chamber hath been the cauſe that this Court upon the Act of 14 E. 3. hath been rarely put in ure.

2 E. 3. f. 7. Ellys Callen Caſe. Bract. lib. 1 c. 3. Rot. Par. 14 E. 3. nu. ult. Sir G. ff. Stantons caſe.

5. By the Kings Writ comprehending quod ſi difficultas aliqua interſit, that the Record ſhould be certified into the Parliament, and to adjourn the parties to be there at a certain day. Si obſcurum & difficile ſit judicium, ponantur judicia in reſpect' ejus magnam curiam. An excellent Record, whereof you may read in the Parliament holden at Weſtminſter the Tueſday after the tranſlation of Becket, Anno 14 E. 3.

Mag. Cart. c. 29.

Secondly, by Acts of Parliament, Nulli vendemus, nulli negabimus, aut differemus juſtitiam vel rectum.

That it ſhall not be commanded neither by the Great Seal, nor by the Little Seal, nor by Letters, nor any other cauſe to delay right: and albeit ſuch commandement come &c. that by them the Juſtices ſurceaſe not to do right in no manner. Vide 2 E. 3. cap. 8. 14 E. 3. cap. 14. 18 E. 3. ſtat. 3. 2 R. 2. a ſtatute not in print, Rot. Parl. nu. 51. whereby it is enacted, that no Juſtice ſhall ſtay juſtice for any Writ, Letter of the Great Seal, or Privy Seal, or other commandement whatſoever againſt the laws and ſtatutes before that time made. Rot. Par. 2 H. 4. nu. 64. Anno 5 H. 4. nu. 33. all which are declaratory of the Common Law. * And upon the ſaid Act of 2 E. 3. a Writ is framed, directed to the Juſtices, by which they are commanded, Quod ad juſtitiam partibus, &c. faciend. virtute alicujus mandati de magno ſigillo, & parvo ſigillo vobis direct' ſeu diligend' nullatenus ſuperſedeatis, &c. And thus much for the Common Law and Acts of Parliament.

2 E. 3. fo. 3. per Aldham. 14 E. 3. jour. 24. 18 E. 3. 47, 17. 31 E. 3. an. 161. 39 E. 3. 37. 11 H. 4. 5. 76. 9 H. 6. 58. b. 5 E. 4. 132. Forteſc. cap. 5. F.N.B. 240. d. * Regiſt. fo. F.N.B. 240. d.

This Statute of 14 E. 3. cap. 5. conſiſteth of two general parts, viz. the Preamble and the Body of the Act. In the Preamble three things are to be obſerved. 1. That (notwithſtanding the proviſion of the Common Law) miſchiefs do happen by delay of judgments. 2. It enumerateth in what Courts theſe delayes do happen, viz. in the Chancery, in the Kings Bench, the Common Bench, and the Exchequer, the Juſtices aſſigned, and other Juſtices to hear and determine deputed. 3. It declareth how theſe delayes have grown, viz. ſometime for difficulty of the matter in law, ſometime in diverſity of opinion of the Judges, and ſometimes for ſome other cauſe, that is, by Commandements, Letters, or Meſſages of the King or Great Men, &c. In the body of the Act we have collected many obſervations. 1. That at every Parliament there ſhall be choſen a Prelate, two Earls, and two Barons, (or one Biſhop, two Earls, and two Barons,) viz. At this Parliament were choſen, 1. John Stratford Archbiſhop of Canterbury, (a man famous for learning, loyalty, and vertuous living.) 2. Rich. Fitzalan Earl of Arundell, a man of great wiſdom, prowes, and integrity. 3. William Clynton Earl of Huntingdon, and Admiral of England, a man lately before advanced for his ſingular valour, wiſdom, and vertue. 4. The Lord Wake of Lidel: and 5. Ralph Lord Baſſet of Drayton, two of the moſt renowned Barons of England. Quos omnes honoris cauſa nomino.

3. This

2. This Act doth appoint that the Prelate, two Earls, and two Barons are to have a Commiſſion and power of the King under the great Seal (and none of them can be abſent) which Commiſſion is to endure until the next Parliament.

3. This Commiſſion and power conſiſteth on ten parts. 1. Ad Audiendum, to hear the petition delivered to them, the complaints of thoſe that will complain them of ſuch delayes or grievances made. 2. Ad venire faciend, to come before them at Weſtminſter, or elſewhere, the tenor of the Records and Proceſſes of ſuch Judgements ſo delayed; and this is to be done by the Kings Writ of Certiorari. 3. Ad venire faciend, to cauſe the ſame Juſtices to come before them. 4. Ad audiend ſuas rationes & cauſas talium dilationum, to hear their Reaſons and cauſes of ſuch delayes which ought to be entred of Record. 5. Which cauſes and reaſons ſo heard. Ad procedendum, to proceed to make a good accord. 6. But this muſt be done not only by themſelves, but by the good advice of certain aſſiſtants appointed by the Act, viz. the Chancellor, Treaſurer, the Juſtices of the one Bench and the other, and other of the Kings Council, as many, and ſuch as they ſhall think convenient. 7. Ad capiendum, to take a good accord of the aſſiſtants. 8. Ad faciendum, to make a good judgement. 9. Ad remandandum, to remand before the Juſtices, before whom the plea did depend, the tenor of the ſaid Record, together with the Judgement that ſo ſhall be accorded. Laſtly, that thoſe Juſtices ſhall preſently give judgement according to the ſaid Record.

A Commiſſion granted in 18 E. 3. grounded upon this Statute, and referring to the ſame being enacted, as there it appeareth, at a Parliament holden die Mercurii proxim' poſt medium Quadrageſimæ Anno 14 E. 3. regni Angliæ & Franciæ primo, there being two Parliaments in that year, which you may read, being worthy of obſervation, for it is a good expoſition of this Act. Rot. Pat. 18 E. 3. 2 part.

4. It is further provided by the ſaid Act of 14 E. 3. that in caſe it ſeemeth to them, that the difficulty is ſo great, that it cannot well be determined without aſſent of Parliament, that the tenor or tenors ſhall be brought by the ſaid Prelate, Earls, and Barons unto the next Parliament, and there ſhall final accord be taken what judgement ſhall be given in this caſe.

[a] It is better that the demandant be delayed, than the tenant diſherited, or that the Law be altered. Shard. we cannot nor will delay any man in reſpect of our Oath.

[b] The Juſtices ought to delay no man in the name of the King where the King hath no right. The demandant ſhall not be legally delayed twice for one cauſe.

[c] Delay in a Quare impedit, though it be by eſſoine, is a diſturbance. [d] Semper ſtat eſt in mora. [e] In circuitu impii ambulant.

[f] In divers caſes the party grieved ſhall have an action for unjuſt delay.

[g] Tolle moram, ſemper nocuit differre paratis.

But ſeeing neither the Common Law, nor any of the Acts of Parliament do extend to Eccleſiaſtical Courts, it is then demanded, What if an inferiour Ordinary will refuſe, or delay to admit and inſtitute a Clerk preſented by the right Patron to a Church within his Dioceſs, or the like: Or delay, or refuſe to give ſentence in a caſe depending before him? It is anſwered, that the Archbiſhop of the Province may grant his [h] Letters under his Seal to all and ſingular Clerks of his Province, to admoniſh the Ordinary, within nine days to perform that which by Juſtice is deſired, or otherwiſe to cite him to appear before him or his Official at a day in thoſe Letters preſixed, and to cite the party that hath ſuffered ſuch delay, then and there likewiſe to appear, and further to intimate to the ſaid Ordinary, that if he neither perform that which is enjoyned, nor appear, he himſelf without further delay will perform the juſtice required. Or in the former of the ſaid caſes, the party delayed may have his Quare impedit, but that is thought not to be ſo ſpeedy a remedy.

¶ *Rules concerning Delayes.*

[a] 18 E. 3. 54. a. 13 H. 4. 4.
[b] 24 E. 3. 64. a. 4 E. 3. 2, 2. 22 H. 6. 39. per Newton. 10 E. 3. 17. 40 E. 3. 22, &c.
[c] 4 E. 3. 14. 6 E. 3. 4.
[d] Bracton.
[e] Pſal. 12. 9.
[f] 44 E. 3. 4. 18 E. 3. 12, 15. 20 H. 6. 30. 21 E. 4. 22, 23. F. N. B. 96. I. 97. b.
[g] *Ovidius.*
[h] This is called *duplex querela*: neceſſary to be known for finding of Inſtitutions, &c.

Cap.

CAP. VII.

The Court of Kings Bench, *Coram Rege*.

Lib. 3. cap. 7. fo. 105. b.

BRacton doth make in few words a notable expreſſion of this Court. Habet Rex plures Curias in quibus diverſæ actiones terminantur, & illarum curiarum habet unam propriam, ſicut Aulam regiam, & Juſticiarios capitales qui proprias cauſas Regias terminant, & aliorum omnium per querelam, vel per privilegium, ſeu libertatem. And ſoon after ſpeaking of the Juſtices of this Court ſaith: Item Juſticiariorum quidam ſunt capitales, generales, perpetui, & majores a latere Regis reſidentes, qui omnium aliorum corrigere tenentur injurias, & errores.

Fo. 108. 2.

* Nota.

And Britton ſaith: In droit des Juſtices que ſon aſſignes de nous ſuer & tener noſter lieu ou que nous ſeons en Angliterre. * Voilons que eux eiant conuſance de amender faux judgements, & de terminer appeales & auters treſpaſſes faitz enconter noſtre peace, & * enconter noſtre juriſdiction, & lour record ſe eſteant ſolonque ceo que nous manderons per noſtre breve.

* A grantet prohibitions.

Fleta in deſcribing this Court ſaith, Habet & Rex Curiam ſuam & Juſticiarios ſuos tam milites quam clericos locum ſuum tenentes in Anglia, coram quibus, & non alibi niſi coram ſemetipſo & concilio ſuo vel Auditoribus ſpecialibus falſa judicia & errores Juſticiariorum revertantur & corriguntur: ibidem etiam terminantur brevia de appellis, & alia brevia ſuper actionibus criminalibus & injuriarum contra pacem Regis illatarum impetrata, & omnia, in quibus continetur ubi tunc fuerimus in Anglia.

Lib. niger in Scaccario cap. 4.

In the Black Book of the Exchequer, it is thus ſaid of the Chief Juſtice of this Court: Capitalis Juſticia præſidet primus in regno. Out of theſe three ancient Authors we obſerve theſe ſix concluſions.

Firſt, where Bracton ſaith, Habet Rex plures curias in quibus diverſæ actiones * terminantur. Hereby, and in effect by a Britton, this concluſion followeth, that the King hath committed and diſtributed all his whole power of Judicature, to ſeveral Courts of Juſtice, and therefore the judgement muſt be, Ideo conſideratum eſt per Curiam. And herewith do agree divers Acts of Parliament and Book Caſes, ſome whereof, for illuſtration, we will briefly remember; and leave the judicious Reader to the reſt.

* Note this word.
a See Britton. f. 1. ſpeaking of the King, *Et pur ceo que nous ne ſuffiſons in noſtre proper perſon a oier & terminer touts querels del people. Avomus partie noſtre charge en pluſors parts come eſt ordeine, &c.* 20 E. 3. cap. 1.
b Stat. de Marlb. 52 H. 3. ca. 1. Vid. 4 H. 4. ca. 22.
c 24 H. 8. cap. 2. in effect.
d Brac. l. 1. ca. 5. fol. 3. b.
e 20 E. 3. cap. 1. ſpeaking in the Kings perſon.

[b] Proviſum, concordatum & conceſſum eſt, quod tam majores, quam minores juſticiam habeant & recipiant in Curia Domini Regis. [c] That the Laws Eccleſiaſtical and Temporal were and yet are adminiſtred, adjudged, and executed by ſundry Judges, &c. [d] Expedit etiam magiſtratus reipublicæ conſtitui, quia per eos qui juredicendo præſunt effectus rei accipitur; parum eſt enim jus in civitate eſſe, niſi ſint qui poſſunt jura gerere.

[e] For the pleaſure of God and quietneſs of our ſubjects, as to ſave our conſcience, and to keep our Oath, by the aſſent of our Great men, and other of our Council, we have commanded our Juſtices, that they ſhall from henceforth do even law and execution of right to all our ſubjects, rich and poor, without having regard to any perſon, without letting to do right for any Letters or Commandment which may come to them from us, or from any other, or by any other cauſe.

W. 1. A. 3 E. 1. cap. 1. Fleta lib. 1. c. 29.

Agreeable to that great Canon of the Law anno 3 E. 1. which we have tranſlated into Latine: Rex præcipit quod pax ſacroſanctæ Eccleſiæ & regni ſolidè cuſtodiatur & conſervetur in omnibus, quodq; juſticia ſingulis tam pauperibus quam

divitibus

divitibus administratur, nulla habita personarum ratione. See the Second part of the Institutes, W. 1. c. 1.

1 H. 4. The King hath committed all his power judicial, some in one Court, and some in another, so as if any would render himself to the judgement of the King in such case where the King hath committed all his power judicial to others, such a render should be to no effect. And 8 H. 6. the King doth judge by his Judges (the King having distributed his power judicial to several Courts) And the King hath wholly left matters of Judicature according to his Laws to his Judges. 8 H. 4. fol. 19. 8 H. 6. 10. & tit. Grant. F. 5.

And albeit it be enacted that the Delinquent shall be fined at the will of the King, Non Dominus Rex camera sua, nec aliter nisi per justiciarios suos (finem imponit) & hæc est voluntas regis, viz. per Justiciarios & legem suam, unum est dicere. 2 R. 3. fol. 11.

The second conclusion is, that in those days this Court of Kings Bench did follow the Court: and therefore Bracton calleth it Aulam regiam, because they sat in the Kings Hall. Britton calleth the Justices of this Court, Justices assignes de nous suer: and Fleta, ubi tunc fuerimus in Anglia.

The third is, that it is called the Kings Bench, and the Pleas thereof Coram rege: because in this Court (as Bracton saith) those Capitales justiciarii proprias regis causas terminant, and therefore the King himself cannot be Judge in propria causa.

The fourth is, that under these words [proprias causas] are included three things. First all Pleas of the Crown; as all manner of treasons, felonies, and other pleas of the Crown, which ex congruo, are aptly called propriæ causæ regis, because they are placita coronæ regis. Secondly, regularly to examine and correct all and all manner of errors in fait, and in law, of all the Judges and Justices of the * Realm in their judgements, process, and proceeding in Courts of record, and not only in pleas of the Crown but in all pleas, real, personal, and mixt, (the Court of the Exchequer excepted, as hereafter shall appear.) And this is proprium quarto modo to the King in this Court: for regularly no other Court hath the like jurisdiction, and therefore may be well called propria causa regis. And these two be of high and soveraign jurisdiction. † Thirdly, this Court hath not only Jurisdiction to correct errors in judicial proceeding, but other errors and misdemeanours extrajudicial tending to the breach of the peace, or oppression of the Subjects, or raising of faction, controversie, debate, or any other manner of misgovernment; so that no wrong or injury, either publick or private, can be done, but that this shall be reformed or punished in one Court or other by due course of Law. As if any person be committed to prison, this Court upon motion ought to grant an Habeas corpus, and upon return of the cause do justice, and relieve the party wronged. And this may be done though the party grieved hath no privilege in this Court. It granteth prohibitions to Courts Temporal and Ecclesiastical, to keep them within their proper Jurisdiction. Also this Court may bail any person for any offence whatsoever. And if a Freeman in City, Burgh, or Town Corporate be disfranchised unjustly, albeit he hath no privilege in this Court, yet this Court may relieve the party, as it appeareth in James Bagges case, ubi supra, & sic in similibus.

Of these you may read in Glanv. l. 1. cap. 2. &c. & lib. 10. cap. 18. and in the third part of the Institutes *per totum*, & Stanf. *per totum*.

* And in Ireland of errors in the Kings Bench there. Lib. 7. fol. 18. F.N.B. 22. 34 Ass. 7. 39 E. 3. Error 89. † Lib. 11. fo. 98.

Jo. Bagg's case. Vid. 10 E. 3. ca. 3. Marshalsea.

Fourthly, this Court may hold plea by Writ out of the Chancery of all trespasses done vi & armis, of Replevins, of * Quare impedit, &c.

F.N.B. 89, 92. * Trin. 19 E. 3. coram rege Rot. 56. Linc.

[b] See the Second part of the Institutes, the 11. Chapter of Magna Carta, Communia placita non sequantur curiam nostram.

[b] 2 part of the Institutes, Mag. Carta, cap. 11.

Fifthly, this Court hath power to hold plea by Bill for debt, detinue, covenant, promise, and all other personal Actions, ejectione firmæ, and the like, against any that is in custodia Mareschalli, or any Officer, Minister, or Clerk of the Court: and the reason hereof is, for that if they should be sued in any other Court they should have the privilege of this Court: and lest there should be a failer of Justice (which is so much abhorred in law) they shall be impleaded here by Bill, though these actions be common pleas, and are not restrained by the said Act

of Magna Charta, ubi ſupra. Likewiſe the Officers, Miniſters, and Clerks of this Court privileged by Law in reſpect of their neceſſary attendance in Court, may implead others by Bill in the actions aforeſaid. And all this appeareth by Bracton, who lived when Magna Charta was made, ubi ſupra: where he ſaith, Et aliorum omnium per querelam vel per privilegium ſive libertatem. And continual experience concurreth with antiquity herein.

See the ſecond part of the Inſtitutes, ubi ſupr. 27 H. 3. coram Rege, Rot. 9. *Hus* & *Haut*.

H. P. Captus per querimoniam mercatorum Flandriæ & impriſonatus offert Domino Regi *Hus* & *Haut* in plegio ad ſtandum recto, & ad reſpondendum prædictis mercatoribus, & omnibus aliis qui verſus eum loqui voluerint, &c. This plea was after the ſtatute of Magna Carta, Anno 9 H. 3. Of theſe words *Hus* & *Haut*, two French words, *Hus* ſignifying an Elder-tree, and *Haut* the ſtaff of a Halbert, &c. I leave the conjecture that ſome have made thereof to themſelves: we think it was then common Bail, changed now to Do and Ro, and the rather for this word [offert.] And it is obſervable, that then putting in Bail at one mans ſuit, he was in cuſtodia Mareſchalli to anſwer all others which would ſue him by Bill, and this continueth to this day. If any perſon be in cuſtodia Mareſcalli, &c. be it by commitment, or by Latitat, bill of Midd' or other proceſs of Law, it is ſufficient to give the Court Juriſdiction: and the rather, for that the Court of Common Pleas is not able to diſpatch all the ſubjects cauſes, if the ſaid actions ſhould be confined only to that Court. And ſeing none but Serjeants at Law can practiſe in the Court of Common Pleas, it is neceſſary that in this Court of Kings Bench Apprentices and other Councellors of law might by experience inable themſelves to be called Serjeants afterwards; otherwiſe Serjeants muſt want experience, which is the life of their profeſſion. And the proceedings in that Court for ſo long time, & under ſo many honourable Judges and reverend Sages of the Law, hath gotten ſuch a foundation, as cannot now without an Act of Parliament be ſhaken. And the errors in the Kings Bench cannot be reverſed (but in certain particular actions by the ſtatute of 27 Eliz. c. 8. wherein the juriſdiction of the Court is ſaved) but in the High Court of Parliament, as before in the Chapter of the Court of Parliament appeareth.

31 H. 6. 10. b. adjudge.

1 H. 7. 12. 14 H. 7. 14. 21 E. 3. 46. 11 H. 4. 49. in nativo habendo.]

Sirthly, if a Writ in real action be abated by judgement in the Court of Common Pleas, and in a Writ of Error the judgement is reverſed in this Court, and the Writ is adjudged good, this Court ſhall proceed upon this Writ, and is not reſtrained by Magna Charta, ubi ſupra, ne Curia Domini Regis deficeret in juſtitia exhibenda.

F. N. B. 177. 30 aſſ. 35. aſſ. de mord.

This Court may hold plea in Aſſiſe of novel diſſeiſin without any patent, for it is querela and not placitum, and ſo not within theſe words, communia placita, as it hath been expounded and warranted by continual experience.

3 H. 4. 7.

A Scire fac' to repeal a Patent of the King may be brought in this Court. And where Fleta ſaith Niſi coram ſemetipſo & concilio ſuo, vel Auditoribus ſpecialibus falſa judicia ac errores juſticiariorum revertuntur: It is to be known that all the Common Law errors in the Court of Exchequer (being the proper Court of the King for his revenue and profit) were examinable before Commiſſioners appointed by the Kings Writ under his Great Seal, which Fleta here calleth Auditores ſpeciales. But now by the ſtatute of 31 E. 3. the Chancellor and Treaſurer taking to them the Juſtices and other ſage perſons, ſuch as to them ſeemeth to be taken, ſhall examine the errors in the Exchequer, &c.

See more hereof in the Chapter of the Exchequer 31 E. 3. cap. 12.

* Rot. P. 18 E. 1. rm. 97. Placit. Int. Jo. de novo Burgo & Regman. &c.

[a] In ancient time, when Pleas were holden in Parliament, when the parties deſcended to iſſue, the Record was adjourned into the Kings Bench to be tried there.

[b] See the ſtatute of W. 1. againſt prepoſterous hearings in this Court, and the expoſition of the ſame in the Second part of the Inſtitutes.

b W. 1. c. 14. Againſt prepoſterous hearings.

[c] By the ſtatute of Artic' ſuper Cart' the Chancellour and the Juſtices of the Kings Bench were to follow the Court: but notwithſtanding both the Chancery and the Kings Bench were at this time ſetled Courts, during the ſeveral

c Art. ſuper Cart. 28 E. 1. cap. 5. Glanv. temps H. 2. l. 2. c. 6. & l. 11. c. 1. *Coram Juſtic. D. Regis in Banco ſedentibus. Vid. adjudicat' coram Rege* in every Term, from 1 E. 2. during all his reign in every ſeveral Term in the year. And in all theſe times and Terms the Court of Chancery did ſit.

Terms

Terms of the yeer, as by infinite Records, both before and after this Statute doth appear. So as at this time they did not attend at the Kings Court, but when they were called, yet were accounted as parcel of the Kings houshold as long as they followed the Court: but this cumbersome attendance wholly ceased in the reign of E. 3. and yet the Lord Chancellor would have had his purveyance, as if he had continued still as one of the Houshold, until he and all others, but those of the Kings, Queens, or Princes houshold only, were restrained by Act of Parliament, 34 E. 3. cap. 2. 34 E. 3. ca. 2.

Also upon perusal of the Records in the reign of H. 3. from the beginning of his reign until the ending of it, this Court sat in the Term time where the other Courts of Justice did sit. And the Pleas were stiled to be holden Coram Rege as to this day they are: And this appeareth by Fitzh. Abridgement, in the Titles of Corone, of Brief, of Waste, &c. and by Bracton who in many places voucheth Judgements in the reign of H. 3. in Terme Coram Rege. And this appeareth also in elder times: but hereof thus much shall suffice to prove, that at the making of the said Act of 28 E. 1. and long before this Court in Terme times sat with the Kings other Courts, & specially for Pleas of the Crown, &c. and that the said Act is to be intended, that the Chancellor and the Judges of this Court should attend the King, and follow the Court when they were required. And so did the Chancery, both of them being to seme purpoles but one Court, as it appeareth in the chapter of the Court of Chancery.

It is truly said that the Justices de Banco Regis have supream authority, the King himself sitting there, as the Law intends. They be more then Justices in Eyre. 3 El. Dier 187. 27 Ass. p. 1.

The Justices in this Court are the soveraign Justices of Oyer and Terminer, Gaol-delivery, Conservators of the Peace, &c. in the Realm. See the Books in the Margent, you shall find excellent matter of Learning concerning the supream jurisdiction of this Court. 7 E. 4. 18. 4 H. 7. 18. 14 H. 7. 21 li. 9. fo. 118, a. & b. Seignior Sanchers case.

In this Court the Kings of this Realm have sat in the High Bench, and the Judges of that Court on the lower Bench at his feet, but Jurisdicture only belongeth to the Judges of that Court, and in his presence they answer all motions, &c.

The Justices of this Court are the soveraign Coroners of the Land, & therefore where the Sheriff and Coroners may receive appeals by bill, à fortiori the Justices of this Court may do it. 17 E. 3. 13. a. Lib. 4. fol. 57. in the Sadlers case.

a So high is the Authority of this Court, that when it comes and sits in any County, the Justices of Eire, of Oier and Terminer, Gaol-delivery, b they which have conusance, &c. do cease without any writing to them. But if any Indictment of Treason or felony in a forein County be removed before certain Commissioners of Oier and Terminer in the County where this Court sits, yet they may proceed, because this Court (for that this Indictment was not removed before them) cannot proceed for that offence. But if an Indictment be taken in Midd' in the Vacation, and after this Court sit in the next Term in the same County (if this Court be adjourned) then may special Commissioners of Oier and Terminer, &c. in the interim proceed upon that Indictment, but the more usual way is by special Commission. And all this was resolved by all the Judges of England at Westminster Term, Anno 1 Jacobi Regis, in the case of Sir Everard Digby and others: and so it had been resolved, Mich. 25 & 26 Eliz. in the case of Arden and Somervile, for this kind of special Commission of Oier and Terminer: and herewith agreeth Pl. Com. in the Earl of Leic' case, Anno 1 Mar. Reginæ. Pl. Com. 262. a 21 Ass. 12. 27. Ass. 1. 28 Ass. 52. 21 H. 7. 29. b Pasch. 12 E. 3. Coram Rege. Ro. 99. Chichest. W. 1. cap. 3. Lib 9. fo. 118. ubi supra. Hil. 1 Jac. Sir Walt. Raleighs case, &c. Pl. Com. fo. 338. Count de Leic' case acc'.

And so supream is the Jurisdiction of this Court, that if any Record be removed into this Court, it cannot (being as it were in his center) be remanded back, unless it be by Act of Parliament. And this appeareth by the Judgement of the Parliament in Anno 6 H. 8. but by the Authority of that Act Indictments of Felonies and Murders removed into the Kings Bench may by the Justices of that Court be remanded, and this Court may send down as well the Bodies of all Felons and Murderers, as their Indictments into the Counties where the same murders or felonies were committed or done, &c. in such manner, &c. as if the Indictments had not been brought into the Kings Bench. 22 E. 3. 6. b. 24 E. 3. 73. 29 Ass. 52. Stanf. pl. Cor. 15. 6 H. 8. cap. 6. It extendeth only to Felonies and Murders.

See before cap. Parliam. pag. 21. when a Writ of Error is ſued of a Judgement, *Coram Rege*, they proceed *ſuper tenore recordi*, and the record it ſelf remaineth in this Court.

But the Juſtices of the Kings Bench of their own authority may grant a Niſi prius in caſe of treaſon, felony, and other pleas; for there they ſend but the tranſcript of the Record, and not the Record it ſelf, as ſhall be ſaid in the Chapter of Juſtices of Niſi prius. But if the Juſtices of the Kings Bench do perceive that any indictment is to be removed into that Court by practice or for delay, the Court may refuſe to receive the ſame, before it be entred of Record, and remand the ſame back again for juſtice to be done.

2 H. 4. cap. 10.

By the ſtatute of 2 H. 4. the Clerk of the Crown of this Court, if fourſcore or an hundred men be indicted of felony or treſpaſs, of one felony, or one treſpaſs, and they plead to an iſſue, as not guilty, the ſaid Clerk ought not to take for the Venire fac', nor for the entring of the plea but two ſhillings only, and not two ſhillings for every one, which Act is made in affirmance of the Common law. So if one man be indicted of two ſeveral felonies or treſpaſſes, and is acquitted, he ſhall pay but for one deliverance.

26 Aſſ. p. 47.

Deſignatio Juſticiariorum eſt a rege, juriſdictio vero ordinaria a lege.

Out of this Court are other Courts derived, as from one fountain ſeveral ſprings and rivers, in reſpect of the multiplicity of cauſes, which have increaſed. Juriſdictio iſtius curiæ eſt originalis ſeu ordinaria, & non delegata. The Juſtices of this Court have no Commiſſion, Letters Patents, or other means to hold pleas, &c. but their power is original and ordinary. They were called anciently, * Juſticiæ, Juſticiarii, locum tenentes Domini Regis, &c. The Chief Juſtice, Juſticia Angliæ, Juſticia prima, Juſticiarius Angliæ, Juſticiarius Angliæ capitalis, and Juſticiarius noſter capitalis ad placita coram nobis terminand. To obſerve the changes of theſe names, and the reaſon and change thereof, is worthy of obſervation.

* Glanvil lib. 1. cap. 6. 13. &c. ſæpenumero.

Before the reign of E. 1. the Chief Juſtice of this Court was created by Letters Patents, and the form thereof (taking one example for all) was in theſe words.

Never in any legal record (which we have ſeen) they were called *Summi Juſticiarii*.

Rot. Cart. 45 H. 3. 23 Aug.

Rex, &c. *Archiepiſcopis, Epiſcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Vicecomitibus, Foreſtariis, & omnibus aliis fidelibus regni Angliæ, ſalutem. Cum pro conſervatione noſtra, & tranquillitatis regni noſtri, & ad juſtitiam univerſis & ſingulis de regno noſtro exhibendam conſtituerimus dilectum & fidelem noſtrum* Philippum Baſſet *Juſticiarium Angliæ quandiu nobis placuerit capitalem: Vobis mandamus in fide qua nobis tenemini firmiter injungentes, quatenus in omnibus quæ ad officium Juſticiarii prædicti, nec non ad conſervationem pacis noſtræ & regni noſtri eidem dum in officio prædicto ſteterit, plenius ſitis intendentes. Teſte Rege*, &c.

Capitalis Juſticiarius Angliæ.

Herein ſix things are to be obſerved. 1. That the creation of his Office was by Letters Patents. 2. That this Officer was originally inſtituted for three things. 1. Pro conſervatione noſtra. 2. Tranquillitatis regni noſtri. 3. * Ad juſtitiam univerſis & ſingulis de regno noſtro exhibendam. The third thing to be obſerved is, that he was ſtiled Juſticiarius Angliæ capitalis. 4. That Philip Baſſet was conſtituted Chief Juſtice of England, and after made Knight, for he was not Knight at the making of the Letters Patents. This Philip was of Welledby in the County of Northampton, and was excellently learned in the Laws of the Realm; he was younger brother of Baron Baſſet of Drayton Baſſet in the County of Staff. 5. That he was confined quamdiu nobis placuerit. Laſtly, the clauſe of attendance, and the perſons that are to give attendance, &c. to him, are very remarkable. This Philip Baſſet was the laſt of this kind of creation by any like Letters Patents, and he died Chief Juſtice neer to the end of the reign of H. 3. King E. 1. being a wiſe and prudent Prince, knowing that Cui plus licet quam par eſt, plus vult quam licet, (as moſt of theſe ſummi Juſticiarii did) made three alterations. 1. By limitation of his Authority. 2. By changing Summus Juſticiarius, to Capitalis Juſtic'. 3. By a new kind of creation, viz. by Writ, leſt if he had continued his former manner of creation, he might

* This was the original juriſdiction of this Court.

might have had a deſire of his former Authority, which three do expreſly appear by the Writ ſtill in uſe, viz.

Rex, &c. E. C. militi ſalutem. Sciatis quod conſtituimus vos Juſticiarium noſtrum capitalem ad placita coram nobis tenenda, durante beneplacito noſtro. Teſte, &c.

Which Writ being called Breve, doth in few words comprehend the ſubſtance of the former Letters Patents: for Capitalis Juſticiarius noſter and ad placita coram nobis tenenda includes all that which was truly intended to be granted to him in the former Letters Patents, which alteration were made by Authority of Parliament, though not now extant. For it is a rule in Law, that ancient Offices muſt be granted in ſuch forms and in ſuch manner, as they have uſed to be, unleſs the alteration were by authority of Parliament. And continual experience approveth, that for many ſucceſſions of ages without intermiſſion, they have been, and yet are called by the ſaid writ, Et optimus legum interpres conſuetudo. But after the ſaid alteration, viz. in anno 25 E. 1. Reginaldus de Grey (was ſtiled) Juſticiarius Angliæ, and he was in legal proceedings called Capitalis Juſticiarius noſter, when his Patent was, Capitalis Juſticiarius Angliæ.

See in the chapt. of the Conſtable and Marſhal for this point.

Rot. Par. 25 E. 1. ſo named in the Writ of Parliament to be corrected.

We have ſeen a Fine in theſe words: Hæc eſt finalis concordia facta in curia domini Regis apud Weſtm' à die Sancti Michaelis in tres ſeptimanas, anno regni Regis Henrici filii Regis Johannis 3, coram domino Huberto de Burgo capitali Juſticiario Angliæ & aliis domini Regis fidelibus tunc ibi præſentibus.

Note, this fine was levied, *Inter Martinum Abbatem de Miſſenden querentem, & Thurſtan' Baſſet deforciantem de 3 Carucat' terræ in Lica*, before him in the Kings Bench, in 3 H. 3. before Magna Charta, and ſtiled *Capit. Juſticiar' Angliæ*. Lib. de Miſſenden f. 109. divers other fines with the ſame ſtile.

[a] In the Writ De homine replegiand', he (which was formerly called Capitalis Juſticiarius Angliæ) is called Capitalis Juſtic' noſter, and ſometime Cap' Juſtic' Regis. The title of this Court of Kings Bench is Anglia in the margent: and in divers Acts of Parliament he is called Chief Juſtice of England. 34 H. 8. c. 26. 37 H. 8. c. 12. 2 E. 6. c. 13. 5 E. 6. c. 11.

[a] Regiſt. fo. 77. 24 E. 1. Stat. de conſultat. 3 E. 3. Coron. 361. Lib. Int. Co. tit. *Action ſur le caſe*. Sect. 5.

The Chief Juſtice in Ireland is called Capitalis Juſticiar' Hiberniæ at this day. Paſch. 13 E. 1. (the pleas in this Court are Coram Rege) then were ſtiled thus, Placita coram locum domini regis tenentibus, &c. Ideo venit inde jurata coram rege vel ejus locum tenentibus, 15 Paſchæ, &c. within which words all the Judges of the Kings Bench were included.

[b] Anno domini 969. in the Abbey of Ramſey this Epitaph was ingraven, &c. D. Ailivinus inclyti regis Edgari cognatus *totius Angliæ* * *Aldermannus, &c.* who was without queſtion Chief Juſtice of all England. Inter leges Alveredi cap. 34. he is called *Cyninger Ealdorman, i.* Regis Aldermannus ſive Senator, ſive Judex. Vide cap. 3. 15. & 38. Et inter leges Edwardi cap. 35.

[b] Aldermanni Judices dicti ſunt in diebus illis.

The reſt of the Judges of the Kings Bench have their Offices by Letters Patents in theſe words. Rex omnibus ad quos præſentes literæ pervenerint, ſalutem. Sciatis quod conſtituimus dilectum & fidelem Johannem Doderidge militem unum Juſticiariorum ad Placita coram nobis tenenda durante beneplacito noſtro. Teſte, &c. [c] Theſe Juſtices of the Kings Bench are ſtiled, 1. Capitales. 2. Generales. 3. Perpetui. 4 Majores a latere regis reſidentes: But the Chief Juſtice is only called by the King, Capitalis Juſticiarius noſter. They are called 1. Capitales, in reſpect of their ſupream juriſdiction. 2. Generales, in reſpect of their general juriſdiction throughout all England, &c. 3. Perpetui, for that they ought not to be removed without juſt cauſe. 4. Majores a latere regis reſidentes, for their honour and ſafety, that they ſhould be protected by the King in adminiſtration of Juſtice, for that they are a latere Regis.

[c] Brack. l. 3. t. 109.

And where in 5 E. 4. it is holden by all the Juſtices in the Exchequer Chamber, that a man cannot be Juſtice by Writ, but by Patent or Commiſſion, it is to be underſtood of all the Judges, ſaving the Chief Juſtice of this Court. But both the Chief Juſtice, and the reſt of the Judges may be diſcharged by Writ under the Great Seal.

L. f. F. 4. 137.

None can be a Judge of this Court unleſs he be a Serjeant of the degree of the Coife; and yet in the Writ or Patent to them made, they are not named Serjeants.

If

If a Writ be retornable Coram Justiciariis nostris apud Westm', it shall be returned in the Common Pleas: but if it be retornable in this Court, it must be Coram nobis ubicunque fuerimus in Anglia. See the Second part of the Institutes, Mag. Cart. cap. 11. and the Exposition upon the same.

In former time some ill-disposed Clerks of this Court, because they could have no Original out of the Chancery for debt retornable in this Court, they would sue out an original Action of trespass (a meer feigned action) retornable into this Court, and so proceed to Exigent (where in truth the cause of action is for debt) and when the Defendant appeared, &c. all the former proceedings were waved, and a bill filed for the Defendant for debt. This is an unjust practice in derogation of the dignity and honour of this Court, and worthy of severe punishment according to the statute of W. 1. c. 29. when it is found out: Vide in the Chapter of the Court of Common Pleas in the end thereof.

W. 1. cap. 29. Vid. 30 H. 6. 37. a. 30 E. 3. 32. It is fraud where one thing is pretended, and another done.

Now that we may here say somewhat to a vulgar objection of the multiplication of suits in law both in this Court, † other of his Majesties Courts at Westm' more then hath been in the reigns of E. 3. R. 2. H. 4. H. 5. H. 6. E. 4. and R. 3. It is to be observed, that there be six causes of the increase of them, whereof two be general, and the other four particular. The general be Peace and Plenty: The particular, 1. The dissolution of so many Monasteries, Chanteries, &c. and the dispersing of them into so many several hands. 2. The swarm of Informers. 3. The number of Concealors. 4. The multitude of Attorneys.

Multiplication of suits. Peace. Plenty. Dissolution of Monasteries, &c. Informers. Concealers. Attorneys. *Si sint leges inter arma.*

For the first general: In the reigns of E. 3. R. 2. H. 4. H. 5. and part of the reign of H. 6. in respect of the Wars in France, &c. and in the residue of the reign of H. 6. and in the reign of E. 4. in respect of the bloody and intestine wars, and in almost continual alarmes within the bowels of this Kingdome, between the Houses of Lancaster and York, there could not be so many suits in law, as since this Kingdom hath enjoyed peace; which is the first general cause. Peace is the Mother of Plenty, (which is the second general cause;) and Plenty the Nurse of suits. In particular, by the dissolution of Monasteries, Chanteries, &c. and dispersing of them, &c. Upon the statutes made concerning the same (there being such a confluence of Ecclesiastical Possessions) there arose many questions and doubts, whereupon suits were greatly encreased. 2. Informers and Relators raised many suits, by Informations, Writs, &c. in the Kings Courts at Westm. upon penal Statutes, many whereof were obsolete, inconvenient, and not fit for those days, and yet remained as snares upon the subject, so as the Subject might justly say with Tacitus, Prius vitiis laboravimus, nunc legibus. 3. Concealors, Helluones, that endeavoured to swallow up Cathedral Churches, and the Ecclesiastical possessions of Churchmen, and the livings of many others of the Kings subjects. Lastly, the multitude of † Attorneys, more then is limited by law, is a great cause of increase of suits.

Concordia parvæ res crescunt, ex opulentia lites.

† See the Preambles of the Stat. of 4 H. 4. ca. 18. 33 H. 6. cap. 7.

a Diminution of suits.

b Possessions of Monast. and Chanteries, &c. 35 El. c. 3. 21 Jac. cap. 2. Concealours.

c 21 Jac. c. 4. Informers. See the Third part of the Inst. cap. against vexatious Relators, Informers, &c.

d Attorneys. Rot. Par. 20 E. 1. Rot. 4. *De Apprenticiis & Attornatis*, 15 R. 2. nu. 28. 4 H. 4. ca. 18. 33 H. 6. ca. 7. See Rot. Parl. 13 H. 4. nu. 63. not in print.

e 21 Jac. ca. 16.

a But now on the other side, to shew what great hopes there is, that suits in law shal decrease, for that in effect all the particular causes of the increase of them are taken away, which we have thought good to remember.

b For the first, the Statute of 35 Eliz. cap. 3. hath remedied part, but the Statute of 21 Jac. ca. 2. hath given a plenary salve for the whole mischief, whereof you may read at large in the Third part of the Institutes, cap. 87. against Concealours, turbidum hominum genus. c For the second, by the Statute of 21 Jac. cap. 4. Informations, &c. upon penal Statutes are to be heard and determined in their proper Counties, and not in the Courts of Westminster, whereby the veratious swarm of Informers who are best trusted where they are least known, are banished and turned again to their former occupations. d Concerning Attorneys, the number are set down, and that they ought to be learned and vertuous, and as I understand, the Judges at this time have this matter in consideration. But besides these, there are some other Statutes made for avoiding and decreasing of veratious suits. As an e Act in 21 Jac. Regis cap. 16. for limitation of actions, and avoiding suits in Law, a good and beneficial Law. Another Act at the same Parliament, cap. 13. for the further reformation of Jeofails

fails, a good law for ending of suits. Another at the same Parliament, cap. 8. to prevent and punish abuses in procuring of processe of Supersedeas of the peace and Good Behaviour, out of his Majesties Court at Westminster, &c. whereby infinite vexations, troubles and charges of the Subjects are prevented. Another at the same Parliament, ca. 23. for avoiding of vexatious delayes in causes by removing of actions and suits out of inferiour Courts, wherein the former abuse was vexatious, grievous, and chargeable to the Subject. A branch of an Act at the same Parliament, cap. 16. for pleading of tender of amends in an action of trespas, Quare claus. fregit, for a trespas by negligence, or involuntary, wherein the Defendant maketh no title, &c. an excellent and necessary Law for avoiding of trifling and vexatious suits, especially in Champion Countries. An Act at the same Parliament, cap. 2. against Monopolies and new projects, &c. a great quiet for the time to come. Anno 3 Caroli Regis nunc, cap. 1. The petition of Right concerning the Rights and Liberties of all the Subjects of this Realm for their repose and quiet. Lastly, the repeal of so many obsolete penal Statutes is a great mean of diminution of suits.

See the 3. part of the Inst. cap. against Monopolists & Projectors.
3 Car. Regis c. 1.
21 Jac. c. 28.
3 Car. c. 4.

For the aboveſaid general causes, viz. Peace and Plenty, long may they happily by the goodnes of God continue without abuse within this Realm.

The Kings Bench hath authority for great misprisions and offences, to adjudge and inflict corporal punishment, as Pillory, Papers, and the like; whereof you may read many presidents in the Third part of the Institutes, pag. 219, 220.

CAP.

CAP. VIII.

Of the Court of Chancery.

¶ *The Antiquity of this Court.*

CErtain it is, that both the Britiſh and Saxon Kings had their Chancellors and Court of Chancery, the only Court out of which Original Writs do iſſue: as taking ſome few Examples before the Conqueſt.

Edward the Confeſſor had Reinbald his Chancellor. This Edward granted many Manors, Lands, &c. and Franchiſes to the Abbot of Weſtminſter, and endeth his Charter thus; Ad ultimum, cartam iſtam ſigillari juſſi, & ipſe manu mea propria ſignū Crucis impreſſi, & idoneos teſtes annotari præcepi: and amongſt thoſe witneſſes this you ſhall find; Swardus notarius ad vicem Reinbaldi Regiæ dignitatis Cancellarii hanc cartam ſcripſi & ſubſcripſi. He had alſo Lefrick to his Chancellor.

26 E. 3. Aſſ. p. 24. and the preface to the third book of Reports. Hiſtory of Ely. *Hugo Petroburgenſis, Eland.* Fortiſc. cap. 17.

In the ſecond book of the Hiſtory of Ely, written in the reign of King Stephen ſoon after the Conqueſt.

King Etheldred alſo had a worthy name, and a worthy man to his Chancellor. Rex Etheldredus ſtatuit atque conceſſit quatenus Eccleſiam de Elye ex tunc & ſemper in Regis * curia Cancellariæ ageret dignitatem, &c. This King began his reign Anno Domini 978. which albeit it was void in law to grant the Chancelloriſhip of England in ſucceſſion, yet it proveth that then there was a Court of Chancery.

* Curia Canc' Nota.

King Edgar had Adulph: King Edred had Thurkettle: King Edmond the ſame: King Athelſtane Wolfine, their Chancellors, &c.

For further proof that there was a Court of Chancery before all theſe Kings time, out of which writs remedial iſſued, as they do to this day: hear what the Mirror ſaith, Le primer conſtitutions ordenus per les viels roys, &c. ordein fuit que cheſcun eyt del Chancery le Roy brief remedial a ſon pleint ſans difficultie. Hereby it appeareth that in the reign of King Alfred there was a Court of Chancery out of which writs remedial iſſued, which was not then inſtituted, but affirmed to be a Court then in eſſe, and enacted that out of that Court writs remedial ſhould be granted without difficulty, which Law continueth to this day. And thus much touching the Court of Chancery before the Conqueſt: and therefore * Polydor Virgil, who affirmeth this Court to come in with the Conqueror, perperam erravit.

Mirr. c. 1. ſect. 3. & vide c. 5. ſect. *Pur le enrolments de pardon le roy in le Chancery en temps le roy Alfred.* King Alfred began to reign An. Dom. 872. and was father to King Edward Senior, father of the ſaid Athelſtane.

* Error Polydori.

In a Charter to the Abbot of Weſtminſter by William the Conqueror, amongſt the witneſſes it is written thus, Ego Mauritius Regis Cancellarius favendo legi, & ſigillavi. Arfaſtus Biſhop of Northelmham in Norff. who tranſlated his See to Thetford, was alſo Chancellor to the Conqueror.

Fitz Stephen tempore *H.* 2. in the end of Stows Survey of London. Bracton fol.

Cancellarii Angliæ dignitas eſt, ut ſecundus a Rege in Regno habeatur, ut altera parte ſigilli regii, quod & ad ejus pertinet cuſtodiam, propria ſignet mandata, &c.

Omnia brevia de pace, &c. irrotulari debent in rotulo Cancellariæ.

See Glanv. l. 12. ca. 1. & 5. &c. Fleta l. 2. c. 12.

Fleta ſaith, Eſt inter cætera quoddam officium quod dicitur Cancellaria, quod uno provido & diſcreto, ut Epiſcopo vel Clerico, magnæ dignitatis debet committi ſimul cum cura magni ſigilli regni, cujus ſubſtituti ſunt Cancellar' omnes in Anglia, Hibernia, Wallia, & Scot' omneſque ſigilla regis cuſtodientes ubique præter cuſtodem ſigilli privati. Cui aſſocientur Clerici honeſti, circumſpecti Domino Regi jurati, qui in legibus & conſuetudinibus Anglicanis notitiam habeant pleniorem, quorum officium ſit ſupplicationes & querelas conquerentium audire & examinare, & eis ſuper qualitatibus injuriarum oſtenſarum debitum remedium exhibere per brevia Regis.

W. 2. 13 E. 1. c. 1. 13 E. 1. c. 23, 24.

Breve de forma donationis in revertere ſatis eſt in uſu in Cancellaria.

In Cancellaria & in regiſtro Cancellariæ,

For

For the antiquity and authority of this book of the Register of the Chancery, see the first part of the Institutes, Verb. per le Register, and in the Epistle to the ninth book of my Commentaries. 1 part Instit. Sect. 101. Epist. to 9.

But to proceed (omitting many others) Robert Parning took the state and degree of a Serjeant at law in 3 E. 3. and became the Kings Serjeant, and for his profound & excellent knowledge of the laws, in Trin. Term 14 E. 3. was 24 July by writ created Chief Justice of England: in which office he remained untill the 15 of December following, on which day he was made Lord Treasurer of England. In that office he remained until the 15 year of the reign of the same King and then was constituted Lord Chancellour. This man knowing that he that knew not the common law could never well judge in equity (which is a just correction of law in some cases) did usually sit in the Court of Common Pleas, (which Court is the lock and key of the Common law) and heard matters in law there debated, and many times would argue himself, as in the Report of 17 E. 3. it appears: Vide postea, c. 10 of the Court of Common pleas.

In the 30 year of E. 3. Sir Robert Thorpe Chief Justice of the Common Pleas (not Sir William Thorpe Chief Justice of England, convicted of foul bribery) a man of singular judgement in the laws of this Realm, was constituted Lord Chancellour of England. And in the Parliament Anno 45 E. 3. a grievous complaint was made by the Lords and Commons, that the Realm had been of long time governed by men of the Church in dishersion of the Crown, and desired that Laymen only be principal Officers, &c. Ubi non est scientia, non est conscientia. 17 E. 3. f. 11. 14. 23. 37. Rot. Parl. 45 E. 3. Rot. 22. n. 15.

After the decease of Sir Robert Thorpe 5 Julii Anno 46 E. 3. Sir John Knivet Knight, chief Justice of England, a man famous in his profession, was made Lord Chancellor of England, who deceased in Anno 50 E. 3. &c.

In perusing the Rolls of Parliament in the times of these Lord Chancellors, we find no complaint at all of any proceeding before them. But soon after when a Chancellour was no professor of the law, we finde a grievous complaint by the whole body of the Realm, and a Petition that the most wise and able men within the Realm might be chosen Chancellors, and that he seek to redresse the enormities of the Chancery. But leaving many other Records to their proper places hereafter, we will conclude this point concerning the antiquity and jurisdiction of this Court with the opinion of all the Judges of the Realm in 9 E. 4. in a suit in the Court of Exchequer against the Clerk of the Hamper in the Chancery upon his account in the Exchequer, when it was holden by all the Justices in the Exchequer Chamber, that all the Courts of the King have been time out of memory, so as a man cannot know which of them is the ancientest Court. And Justice Yong the Plaintiff demanded of the Justices, what if the Chancellour command me upon a payn, that I shall not sue him? To whom Billing the chief Justice answered, You are not bound to obey it, because that commandment is against law: But seeing that toucheth upon the jurisdiction of the Court, let us in the next place handle that point. Rot. Parl. 5 R. 2. nu. 20.

The Jurisdiction of the Court.

In the Chancery are two Courts, one ordinary, Coram Domino Rege in Cancellaria, [a] wherein the Lord Chancellour or Lord Keeper of the Great Seal proceeds according to the right line of the laws and statutes of the Realm, secundum legem & consuetudinem Angliæ, [b] Another extraordinary according to the rule of equity, secundum æquum & bonum. And first of the former Court. a 8 E. 4. 5. 9 E. 4. 15. 14 E. 4. 7. b Stam. prær. c. 20 fo. 65. b. Pl. com. fo. 72.

[c] He hath power to hold plea of Scire fac' for repeal of the Kings Letters patents, of Petitions, monstrans de droits, traverses of Offices, Partitions in Chancery, of Scire fac' upon recognisances in this Court, Writs of Audita querela, and Scire fac' in the nature of an Audita querela to avoid executions in this Court, [d] Bonds in Chancery, the Writ de dote assignanda upon offices found, execution upon the Statute Staple, or Recognisance in nature of a Statute Staple upon the Act of 23 H. 8, but the Execution upon a Statute merchant is returnable either into the Kings bench, or into the Common pleas, and all personal c Rot. Par. 8 H. 4. nu. 1 & 2 R. 3. 1. d Regist. 297. F. N. B. 263. Stam. prær. ca. Rot. Par. 18 E. 3. nu. 41, 42.

perſonal actions by or againſt any Officer or Miniſter of this Court in reſpect of their ſervice or attendance there. [a] In theſe if the parties deſcend to iſſue, this Court cannot try it by Jury, but the Lord Chancellour or Lord Keeper delivereth the Record by his proper hands into the Kings Bench to be tried there; becauſe for that purpoſe both Courts are accounted [b] but one, and after trial had to be remanded into the Chancery, and there judgement to be given. But if there be a demurrer in law, it ſhall be argued and adjudged in this Court. Nota, the legall proceedings of this Court be not inrolled in Rolls, but remain in filaciis being filed up in the Office of the Petty-bag. [c] Upon a judgement given in this Court a Writ of Error doth lye returnable into the Kings Bench: [d] The ſtile of the Court of the Kings Bench is coram Rege (as hath been ſaid) and the ſtile of this Court of Chancery is coram domino rege in Cancellaria, & additio probat minoritatem. And in this Court the Lord Chancellour or the Lord Keeper is the ſole Judge: and in the Kings Bench there are four Judges at the leaſt.

a 13 E. 2. coram Rege Rot. 51. London.

b 16 E. 3. 61. 24 E. 3. 61. 5. 73.

c 18 E. 3. 25. 17. aſſ. 24. 14 El. Dier 315 Pl. com. 393. a.

d in Par. Tr. 9 H. 6. Rot. 5. inter placita regis.

This Court is Officina Juſtitiæ, out of which all original Writs, and all Commiſſions which paſſe under the Great Seal go forth, which Great Seal is Clavis regni, and for thoſe ends this Court is ever open.

¶ *Officina Juſtitiæ.*

Of this Court Fleta ubi ſupra, ſaith, Dicuntur Brevia cum ſint formata ad ſimilitudinem regulæ juris, quæ breviter, & paucis verbis intentionem proferentis exponunt, ſicut regula juris, rem quæ eſt breviter enarrat: non tamen ita debet eſſe breve quin rationem & vim intentionis contineat. Et ſunt quædam Brevia formata ſub ſuis caſibus, & quædam de curſu quæ conſilio totius regni ſunt approbata, quæ quidem mutari non poterunt abſque eorundem contraria voluntate. Sunt & Brevia ex eis ſequentia quæ dicuntur judicialia, & ſæpius variantur ſecundum varietatem placitorum proponent' & reſpondent', petentis & excipientis & ſecundum varietatem reſponſionum. Sunt & quædam quæ dicuntur magiſtralia & ſepius variantur ſecundum diverſitatem caſuum, factorum & querelarum, & quorum quædam ſunt perſonalia, & quædam realia, & quædam mixta, ſecundum quod ſunt actiones diverſæ vel variæ, quia tot erunt formulæ brevium, quot ſunt genera actionum, quia non poteſt quis ſine brevi agere, præcipuè de libero tenemento ſuo, quia non tenetur quis reſpondere ſine brevi, niſi gratis voluerit, & cum hoc fecerit quis, ex hoc ei non injuriabitur: volenti enim & ſcienti non fit injuria. De eadem autem re, plures alicui competere poterunt actiones, ordine autem, ut convenit, obſervato. Breve quidem regis in ſe nullam debet continere falſitatem, nec aliquem errorem: apparere debet vel in prima ſui figura non vitioſum, maxime ſi fuerit patens ſive apertum, quia originalia quædam ſunt clauſa, & quædam aperta, Et ſive aperta, ſive clauſa, apparere non debent abraſa, nec abolita: & ſi inveniatur abraſio, tunc refert quo loco, à quo, & quando. Quo loco? videlicet utrum in narratione facti vel juris. Si autem in narratione facti, cadet coram Juſt' quaſi ſuſpectum. Facta enim & nomina mutari non debent, ſed jura ubique ſcribi poſſunt. A quo? utrum videlicet per Clericum Cancellar' cui authoritas data fuerit, vel auſu temerario per alium ſicut Clericum Juſtic', vel Vic' ad procurationem alicujus partis: quo caſu omnes agentes & conſentientes tanquam falſarii puniantur. Item quando? videlicet utrum hoc fiat antequam breve in curia reſuſcitatum & publicatum, vel poſt. Si autem poſt, erit breve ſuſpectum & cadet, ſi à tenente fuerit hoc calumpniatum. Fiunt autem brevia judicialia in Cancellaria ex recognitionibus & contractibus habitis & in Rotulis Cancellariæ irrotulatis & ex recordo Cancellario & Clericis ſibi aſſociatis per hanc conſtitutionem conceſſo. Quia de hiis quæ recordata ſunt coram Cancellar' domini regis, & ejus Juſtic' qui recordum habent & in rotulis eorum irrotulantur, non debet fieri proceſſus placiti per ſummonitionem, vel attachiament', eſſonia, viſus tre' & alias ſolempnitates Cur' ſicut fieri conſuevit ex contractibus, & conventionibus factis extra curiam. Obſervandum eſt de cætero quod ea quæ inveniuntur irrotulata coram hiis qui recordum habent vel in finibus contenta, cum ſint contractus ſive conventiones vel obligationes ſive ſervicia aut conſuetudines recognitæ ſive alia quæcunq; irrotulata quib⁹ Cur' regis ſine juris et conſtitutionis offenſa authoritatem præſtare poteſt, talem de cætero habeat vigorem, quod non

Fleta lib 2. c. 12. Bract. l. 5. f. 413. Britton c. 84. Fleta l. 6. ca. 35, & 36.

ſit

ſit neceſſe de hiis placitare in poſterum, ſed cum venerit querens ad curiam domini regis, ſi recens ſit cognitio, vel finis, viz. infra annum per breve levatus, ſtatim habeat breve de executione illius recognitionis factæ: et ſi forte a majore tempore tranſacto facta fuerit illa recognitio, vel finis levatus: præcipiatur Vic' quod ſcire fac' parti de qua fit querimonia, quod ſit ad certum diem, oltent. ſi quid ſciat dicere quare hujus irrotulata vel in fine contenta executionem habere non debeant. Et ſi ad diem venerit, & nihil ſciat dicere quare executio fieri non debeat, præcipiatur Vic' quod rem irrotulatam vel in fine contentam exequi fac'. Eodem modo mandetur ordinario in ſuo caſu, obſervato nihilominus quod inferius dicetur in ſtatuto de medio qui per judicium aut recognitionem eſt obligatus. Ex hac quidem conſtitutione oriuntur brevia judicialia in Cancellaria ſicut coram ipſis Juſtic'. Ipſi autem collaterales & ſocii Cancellarii eſſe dicuntur præceptores, eo quod brevia caſus examinatis remedialia fieri præcipiunt, & hoc quoque cum fine denar' ad opus domini regis, et quoque ſine fine, eo quod omnia brevia non ſunt omnia tempore æquipollentia. De brevibus autem coram Juſtic' ad primas Aſſiſas cum in partes illas venerint, fines capere non conſueverunt, eo quod ad tempus itineris Juſtic', ligat conſtitutio Magnæ Cartæ quæ talis eſt; *Nulli juſtitiam negabimus, vendemus, vel differemus*: ſed non inhibetur quin fines capiantur pro brevibus poſſeſſionum, & actionum perſonalium, pro celeriore Juſtitia habenda; qui quidem pro qualitatibus & quantitatibus portionem conceſſi in eiſdem brevibus imbreviabuntur, & in rotulis Cancellariæ irrotulantur. Qui quidem rotuli ſingulis annis ad Scaccar. liberabuntur, & fines hujus extrahantur & per ſummon' Scaccarii leventur. Clauſula vero finis talis eſt, *Et cape ſecuritatem a præfato tali de 40. ſolid. ad opus noſtrum pro hoc brevi.* Verba autem extract' de Scaccario ſunt hæc, *De A. de B. pro brevi habend', dim' marc'* vel amplius prout finis factus fuerit. Conceduntur aliquando conquerentibus ob favorem paupertatis quod ubi præſumi poteſt ſic quod plegios invenire non poſſunt de proſequend' clamorem ſuum quod ſecuritatem præſtent Vic' per fidei interpoſitionem ſuam, non tamen in actionibus perſonalibus hoc concedendum eſt. Habet & Rex Clericos in officio illo expertos & legales qui formulas brevium cognoſcunt, qui approbanda admittunt & defectiva omnino repellunt, quibus omnia brevia priuſquam ad ſigillum proveniunt cum deliberatione diſtincte & aperte in ratione, dictione, litera & ſyllaba examinare injunctum eſt. Et ſciendum quod nullum breve niſi per manus eorundem ad ſigillum debet admitti. Habet etiam ſex Clericos ſuos prænotarios in officio illo, qui cum Clericis memoratis familiares, &c. eſſe conſueverunt & præcipue ad victum & veſtitum qui ad brevia ſcribenda ſecundum diverſitates querelarum ſunt intitulati. Et qui omnes pro victu & veſtitu de proficuo ſigilli in cujuſcunque uſus pervenerit debent honeſte inveniri. Sunt etiam nihilominus Clerici juvenes et pedites quibus de gratia Cancellar' conceſſum eſt pro expeditione populi brevia facere curſoria, dum tamen ſub advocatione Clericorum ſuperiorum fuerint qui eorum facta in eorum receperint pericula. Et in quolibet brevi debet ſcribentis nomen inbreviari qui warrantizari poterint in peccatores ſi neceſſe fuerit. Et ne præfati Clerici ſuperflua perant ſtipendia pro ſcriptura ſua, conſtitutum eſt quod tam Clerici Juſtic' quam Cancellar' de ſolo denario pro ſcriptura unius brevis ſe teneant contentos.

And this Court is the rather allwayes open, for that if a man be wrongfully imprifoned in the Vacation, the Lord Chancellor may grant a Habeas Corpus and do him Juſtice according to Law, where neither the Kings Bench nor Common Pleas can grant that Writ but in the Term time; but this Court may grant it either in Term time or Vacation. So likewiſe this Court may grant Prohibitions at any time either in Term or Vacation: which Writs of Prohibition are not returnable: but if they be not obeyed, then may this Court grant an Attachment upon the Prohibition returnable either in the Kings Bench or Common Pleas.

The Author of that Book ſpeaking of the Court of Chancery, and of the juriſdiction it then had, ſaith, Curia Cancellariæ Regiæ eſt curia ordinaria pro brevibus originalibus emanandis, ſed non placitis communibus tenendis. New Tales, or *Novæ Narrationes*, written about the beginning of E. 3.

Divers Acts of Parliament give authority to the Lord Chancellour to hear

27 E.3. cap.13. 2 R.3. fo. 3. 13 E.4. Dier 12 El.298. a. resolve.

and determine divers offences and causes in the Court of Chancery, which is ever intended in this Court proceeding in Latin, secundum legem & consuetudinem Angliæ, and the Defendant shall not be sworn to his answer, nor examined upon Interrogatories, and upon issue joyned it shall be tried in the Kings Bench, Ut in similibus casibus solet. But our purpose is not to enumerate all these statutes, for our aim is principally at the general jurisdiction of this Court.

¶ *Officers and Ministers of this Court.* See the 2. part of the Inst. W.2. ca.24. *Verb. Clerici de Cancellaria.*

The Officers and Ministers of this Court of Common Law do principally attend and do their service to the Great Seal, as the † twelve Masters of the Chancery, whereof the Master of the Rolls is the chief, who by their original institution, as it is proved before, should be expert in the Common Law, to see the forming and framing of original Writs according to Law, which are not of course; whereupon such are called in our ancient Authors Brevia Magistralia. The Clerk of the Crown, the Clerk of the Hamper, the Sealer, the Chafe wax, the Controller of the Chancery, twenty four Cursitors for making writs of course or formed writs according to the Register of the Chancery, the Clerk of the presentations, the Clerk of the Faculties, the Clerk examiner of Letters Patents, the Clerks of the Pettibag, and the Six Attornies. The processe in this Court is under the Great Seal according to the course of the Common Law.

† In the Parliament Roll of 5 R.2. n. 23. they are called chief Clerks.

Having spoken of the Court of ordinary jurisdiction, it followeth according to our former division, that we speak of the extraordinary proceeding according to the rule of equity, secundum æquum & bonum, wherein we will pursue our former order.

¶ *Of the Antiquity of this Court of Equity.* Henry Beaufort son of John of Gaunt Bishop of Winch. Cardinal of St. Eusebius, Lord Chancellor in the beginning of the Reign of H.6 and in that Kings Reign John Kemp Cardinal of St Ruffeline Archbishop of York, Lord Chancellor. See Rot. Parl. 28 *H.6.* nu.10. & 35 H.6. fo.3.

Albeit our ancient Authors, the Mirror, Glanvil, Bracton, Britton and Fleta, do treat of the former Court in Chancery, and of Original Writs and Commissions issuing out of the same, yet none of them do once mention this Court of Equity. We have also considered what cases in this Court of Equity have been reported in our books, and we find none before the Reign of H. 6. and in that Kings time, and afterwards plentifully, we then turned our eyes to Acts of Parliaments, and Parliament Rolls.

[a] Some have thought that the statute of 36 E.3. gave the Chancellor his first authority for his proceeding in course of equity, by which it is enacted, That if any man think himself grieved contrary to any of the Articles above written, or others contained in divers statutes, will come to the Chancery, or any for him, and thereof make his complaint, he shall presently have there remedy by force of the said Articles and statutes, without elsewhere pursuing to have remedy. But certainly this Act giveth the Chancellor no power to proceed in course of equity, but that he grant to the party grieved original Writs which are called remedial grounded upon any statute for his relief, and there is no statute that gives the party grieved remedy in equity. Lastly, the last words of the Act, without elsewhere pursuing to have remedy, do manifest that the meaning of the matters of the Act is to direct the party to be relieved by the Common Law, by actions upon these statutes, and not elsewhere.

[a] 35 E.3. cap 9.

Rot. Par. 13 R.2. nu.30.

In the Parliament holden 13 R. 2. the Commons petitioned to the King, That neither the Chancellor nor other Counsellor do make any order against the Common Law, nor that any Judgement be given without due processe of Law. Whereunto the Kings answer was, The usages heretofore shall stand, so as the Kings royalty be saved. In the same Parliament another petition was, That no person should appear upon a Writ *De quibusdam certis de causis*, before the Chancellor or any other of the Council, where recovery is therefore given by the Common Law: Whereunto the Kings answer is, The King willeth as his Progenitors have done, saving his regalty.

17 R.2. ca.6.

In the Parliament holden in 17 R.2. it is enacted at the petition of the Commons, That forasmuch as people was compelled to come before the Kings Council, or in Chancery, by Writs grounded upon untrue suggestions, that the Chancellor for the time being presently after that such suggestions be duly found and proved untrue, shall have power to ordain and award damages according to his discretion to him

him which is ſo travelled unduly, as is aforeſaid. This Act extendeth to the Chancellor proceeding in courſe of equity, and extendeth not to a demurrer in law upon a bill, but upon hearing of the cauſe upon theſe words in the Act [duly found and proved:] and this is the firſt Parliament that I find touching this matter. 7 E. 4. fo. 14.

And in the Roll of the ſame Parliament, I find the firſt decree in Chancery that ever I obſerved, the effect whereof was; John de Windſor complaineth and requireth to be reſtored to the Mannors of Rampton, Cotenham and Weſtwick with their appurtenances in the County of Cambridge, the which were adjudged to him by the Kings award, then in the poſſeſſion of Sir John Liſley, and now withholden by Sir Richard le Scroope, who by Champerty bought the ſame: the cauſe was this; Upon a petition of Windſor againſt Liſley, they both compromitted the matter to the Kings order, the King committed the ſame to the Counſel, they after digeſting of the ſame made a decree for Windſor under the Priby Seal, they ſend warrant to the Chancellor to confirm the ſame, which was done under the Great Seal by a ſpecial Injunction to Liſley, and to write to the Sheriff to execute the ſame. After this, Liſley by petition to the King requireth that the ſame may be determined at the Common Law, notwithſtanding any former matter: the King accordingly by Priby Seal giveth Warrant to the Chancellor to make a Superſedeas, the which was done by Priby Seal, after which Sir Richard le Scroope bought the ſame. Upon the ripping of the whole matter, this ſale was thought no Champerty, whereupon it was adjudged, that the ſaid Windſor ſhould take nothing by his ſaid ſuit, but to ſtand to the Common Law, and that the ſaid Sir Richard ſhould go without day. Rot. Par. 17 R. 2. nu. 10. William Courtney ſon of Hugh Earl of Devon, was then Biſhop of Cant. and Lord Chancellor when this Decree was made. Champerty.

The Commons petitioned that no Writs or Priby Seals be ſued out of the Chancery, Exchequer or other places to any man to appear at a day upon a pain, either before the King and his Councell, or in any other place, contrary to the ordinary courſe of the Common Law: whereunto the King anſwered, That ſuch Writs ſhould not be granted without neceſſity. Rot. Par. 2 H. 4. nu. 69.

Amongſt the petitions of the Commons you ſhall find this, That all Writs of Subpœna and Certis de cauſis, going out of the Chancery and the Exchequer, may be enrolled, and not granted of matters determinable at the Common Law, on pain that the Plaintiff do pay by way of debt to the Defendant forty pounds: whereunto is anſwered, The King will be adviſed. Rot. Par. 3 H. 5. nu. 46. Edmond Stafford Arthb. of York, was Lord Chancellor at this time.

It is enacted, to endure untill the nert Parliament, That the exception (how that the party hath ſufficient remedy at the Common Law) ſhall diſcharge any matter in Chancery. At the nert Parliament you ſhall find a petition in theſe words. No man to be called by Priby Seal or Subpœna to anſwer any matters but ſuch as have no remedy by the Common Law, and that to appear ſo by the teſtimony of two Juſtices of either Bench, and by Indenture between them and the Plaintiff, which Plaintiff ſhall alwayes appear in proper perſon, and find ſurety by recognizance to proſecute with effect the matters of the Bill only, and to anſwer damages if the ſame fall out againſt the Plaintiff. Rot. Par. 9 H. 5. nu. 35. Rot. Par. 1 H. 6. nu. 41. Never good Petition in Parliament dieth, but firſt or laſt will take effect.

But in anno 15 H. 6. for a perpetual Law, and for the true juriſdiction of this Court it is enacted in theſe words, Vid. ſupr. p. 32. 15 H. 6. ca. 4.

Item, foraſmuch as divers perſons have before this time been greatly grieved by Writs of *Subpœna*, purchaſed for matters determinable by the Common Law of this Land, to the great damage of ſuch perſons ſo vexed, in ſubverſion and impediment of the Common Law aforeſaid; Our Soveraign Lord the King will, that the ſtatutes thereof made, ſhall be kept after the form and effect of the ſame. And that no Writ of *Subpœna* be granted from henceforth till ſurety be found to ſatisfie the party ſo grieved and vexed for his dammages and expences, if ſo be that the matter may not be made good, which is contained in the Bill. In Anno 31 H. 6. cap. 2. There is a Proviſo in theſe words, Provided, that no matter determinable by the Law of this 39 H. 6. fo. 26. 4 E. 4. 8. 14 E. 4. 1 16 E. 4. 9. b. 18 E. 4. 13. 6 E. 4. 10. b. 7 H. 7. 12. Forteſc. ca. 34. Rot. Par. 14 E. 4. nu. 5. William Sherfords caſe. Doct. & Stud. cap. 18, 24, 50. 31 H. 6. ca. 2.

Realm

Realm ſhall be by the ſaid Act determined in other form then after the courſe of the ſame Law in the Kings Courts having determination of the ſame law.

Trin. 2 Jac.

Tr. 2 Jac. Regis, upon ſuit made to the King for erecting of a new Office for taking of ſurety according to the ſaid Act of 15 H. 6. cap. 4. the King referred the cauſe to Popham Chief Juſtice, who upon conference with the Judges in Fleet-ſtreet, reſolved that the ſurety was by force of that Act to be by obligation, and to be made by the party grieved himſelf, becauſe it concerneth his damages and coſts, and the Court was to ſet down the form and ſumme of the obligation, and in the end the ſuit prevailed not.

† Paſc. 29 El. in Scaccar. Woods caſe. Vide 7 El. Dier 238. Seignior Shandois caſe.

† Paſch. 29 Eliz. in Scaccario, In Woods caſe adjudged upon the ſtatute of 2 E. 6. cap. 13. for the like reaſon, that the forfeiture for non-payment of tithes ſhall go to the party grieved.

¶ *Reaſons:*

1. *a majori ad minus.*

Rot. Par. 2 R. 2. nu. 18.

1. Rot. Par. 2 R. 2. nu. 18. The High Court of Parliament relieveth but ſuch as cannot have remedy but in Parliament.

Rot. Par. 13 R. 2. nu. 10.

The Parliament for matters determinable at the Common Law doth remit the parties thereunto,

2. *Regula.*

2. Nunquam decurritur ad extraordinarium, ſed ubi deficit ordinarium.

3.

3. Whereas matters of fact by the Common Law are triable by a Jury of twelve men, this Court ſhould draw the matter ad aliud examen, that is, to judge upon depoſition of witneſſes, which ſhould be but evidence to a Jury in actions real, perſonal, or mixt.

37 H. 6. 14. 27 H. 8. 19.

This Court of Equity proceeding by Engliſh Will is no Court of Record, and therefore it can bind but the perſon only, and neither the eſtate of the Defendants lands, nor property of his goods or chattels.

Trin. 3 Jac. Reg. in Scaccario. Sir Thomas Themilthorps Caſe.

Egerton Lord Chancellor impoſed a fine upon Sir Tho. Themilthorp Knight, for not performing his decree in Chancery concerning Lands of inheritance, and eſtreated the ſame into the Exchequer: and upon proceſſe the party appearing pleaded, that the fine was impoſed by the Lord Chancellor for not performance of his decree, and that he had no power to aſſeſs the ſame. The Attorney General confeſſed the plea to be true, & petiit adviſamentum curiæ, concerning the power of the Chancellor in this caſe: and upon debate of the queſtion in Court, and good adviſement taken, it was adjudged, That the Lord Chancellor had no power to aſſeſſe any ſuch fine, for then by a mean he might bind the intereſt of the Land where he had no power, but of the perſon only, and thereupon the ſaid Sir Thomas Themilthorp was diſcharged of the ſaid fine.

Willers Caſe.

Afterward the ſaid Lord Chancellor decreed againſt Waller certain Lands, and for not performance of the decree impoſed a fine upon him, and upon proceſs out of the Court of Chancery extended the Lands that Waller had in Midd. &c. whereupon Waller brought his Aſſiſe in the Court of Common Pleas, where the Opinion of the whole Court agreed in omnibus, with the Court of Exchequer.

¶ *The Judge of this Court of Equity, &c.*

The Lord Chancellor or the Lord Keeper is ſole Judge both in this Court of Equity, and in the Court concerning the Common Law; but in caſes of weight or difficulty he doth aſſiſt himſelf with ſome of the Judges of the Realm, and no greater exception can be taken hereunto then in caſe of the Lord Steward of England being ſole Judge in trial of the Nobility, who alſo is aſſiſted with ſome of the Judges.

For this Court of Equity the ancient rule is good. Three things are to be judged in Court of Conſcience: Covin, Accident, and breach of confidence.

All covins, frauds, and deceits, for the which is no remedy by the ordinary courſe of Law.

Accident, As when a ſervant an Obligor, Mortgagor, &c. is ſent to pay the money on the day, and he is robbed, &c. remedy is to be had in this Court againſt the forfeiture, and ſo in the like.

The third is breach of truſt and confidence, whereof you have plentiful authorities in our Books.

The

The caſe in the Chancery betwæn the Earle of Worceſter and other Plaintiffs, and Sir Moyl Finch and Eliz. his wife Defendants, was this. The Quæn being ſeiſed of the Manno; of Raveſton, and of certain Lands in Stokegoldington, (which the Plaintiff pretended to be a Manno; either in right o; reputation) granted by her Letters Patents the Manno;s of Raveſton and Stokegoldington to the ſaid Sir Moyl and John Awdelye, and their Heirs: but this was upon confidence, that they ſhould grant the Manno; of Raveſton to Sir Thomas Heneage and Anne his wife, and to the Heirs of Anne: and the Manno; of Stokegoldington to Sir Thomas and Anne, and the Heirs of Sir Thomas. Sir Moyle and *Awdelye* by Dæd indented and inrolled Termino Trin. 1588. 30 Eliz. in this Court fo; a thouſand pound bargained and ſold to Sir Thomas Henage and his wife the Manno;s of Raveſton and Stokegoldington, and the Scite of the P;io;y of Raveſton in the County of Buck. and all other their Lands, Tenements and Hereditaments in Raveſton, Weſton, Pedington, and Stokegoldington in the County of Buck. To have and to hold the Manno; of Ravenſton and the Scite of the ſaid P;io;y, and all the p;emiſſes in Ravenſton, Weſton, Pedington, and Stockgoldington, (other than the ſaid Manno; of Stokegoldington) to the ſaid Sir Thomas and Dame Anne, and the Heirs of the ſaid Dame Anne: and to have and to hold the ſaid Manno; of Stokeg. to the ſaid Sir Thomas and Dame Anne, and to the Heirs of Sir Thomas. Sir Thomas had iſſue by the ſaid Dame *Anne* the ſaid Elizabeth, one of the Defendants his onely childe, and afterwards the ſaid Dame Anne died: the Defendant alleaged that Sir Thomas was diſſeiſed of Stokegoldington, and the Plaintiff denied it. And after Sir Thomas by Dæd indented and inrolled, bargained and ſold the Manno; of Stokegoldington to the Plaintiff fo; payment of his Debts and died: and fo; payment of his Debts, they exhibited their Bill againſt Sir Moyl, and the ſaid Eliz. his wife, fo; the ſaid Manno; of Stokegoldington, and the Lo;d Chancellour decræd it fo; the Plaintiff. And upon a Petition p;eferred by the Defendants to Quæn Elizabeth, ſhe referred the conſideration of the whole Caſe to all the Judges of England: and after hearing of the Councell of both parts ſeveral dayes, and conference betwæn themſelves, theſe points fo; rule in equity were reſolved. Firſt, that if there were any diſſeiſon, that nothing paſſed to the Plaintiff either in right o; equity, fo; the diſſeiſo; was ſubject to no truſt, no; any Subp;ena was maintainable againſt him, not only becauſe he was in the poſt, but becauſe the right of Inheritance o; Fræhold was determinable at the Common law, and not in the Chancery, neither had Ceſti que uſe (while he had his being) any remedy in that caſe. Secondly, it was reſolved by all the Juſtices, that admitting that Sir Thomas Heneage had a truſt, yet could not he aſſign the ſame over to the Plaintiff, becauſe it was a matter in p;iority betwæn them, and was in nature of a choſe in action, fo; he had no power of the Land, but only to ſæk remedy by Subpœna, and not like to ceſti que uſe, fo; thereof there ſhould be poſſeſſio fratris, and he ſhould be ſwo;n on Juries in reſpect of the uſe, and he had power over the Land, by the Statute of 1 R. 3. cap. and if a bare truſt and confidence might be aſſigned over, great inconvenience might thereof follow by granting of the ſame to Great men, &c. Thirdly, when the Land deſcended to Elizabeth, one of the Defendants, as Heir to her Mother, and the truſt deſcended to her from her Father, the truſt was drowned and extinguiſhed. Fourthly, when any Title of Fræhold o; other matter determinable by the Common law comes incidently in queſtion in this Court, the ſame cannot be decided in Chancery, but ought to be referred to the trial of the Common law where the party grieved may be relieved by erro;, attaint, o; by action of higher nature. And when the Suit is fo; evidences, the certainty whereof the Plaintiff ſurmiſeth he knoweth not, and without them he ſuppoſeth that he cannot ſue at the Common law: It was reſolved that if the Defendant make no title to the Land, then the Court hath juſt juriſdiction to p;oceed fo; the evidence; but if he make title to the Land by his Anſwer, then the Plaintiff ought not to p;oceed, fo; otherwiſe by ſuch a ſurmiſe, inheritances, fræholds, and matters determinable by

Mich. 42 & 43 El. in Cancellar Sir Moyl Finche his caſe.

A Diſſeiſor ſubject to no truſt.

A truſt cannot be aſſign'd over, 22 El. Dier fo. 369. pl. 50.

Matters determinable by the Common law cannot be decided in Chancery.

Suit for Evidence.

by the Common law shall be decided in Chancery in this Court of Equity. And thus were these points resolved by Sir John Popham, Sir Edmond Anderson, Sir William Periam, and Walmesly, Gawdye, Fenner, and Kingesmill Justices, and Clarke and Savill Barons of the Exchequer, and all this amongst other things they certified under their hands into the Chancery, and thereupon the former decree was reversed, And in debating of this case it was resolved by the two Chief Justices, Chief Baron, and divers other Justices, that if a man make a conveyance, and express an use, the party himself or his heirs shall not be received to averre a secret trust, other than the express limitation of the use, unless such trust or confidence do appear in writing, or otherwise declared by some apparent matter. And Popham said, that covin accident, and breach of confidence were within the proper jurisdiction of this Court.

Mich. 39 & 40 El. in Cancellar'

Thomas Throckmorton Esquire exhibited a Bill in this Court against Sir Moyl Finch Knight, claiming a Lease of the Mannors of R. and S. for many years to come, and shew clear matter in equity to be relieved against a forfeiture pretended by Sir Moyle for breach of a condition where there was no default in the Plaintiff, &c. Unto which Bill the Defendant pleaded this Plea, that for the trial of the forfeiture of which Lease, he made a Lease for years to one priviledged in Exchequer, who brought an Ejectione firme against the Plaintiff, and upon pleading a demurre in Law, the Lessee had judgement to recover against Thomas Throckmerton (now Plaintiff in Chancrye:) whereupon Thomas Throckmorton brought a writ of Error in the Exchequer Chamber, where upon due proceeding the judgment was affirmed, & demanded judgment, if after these judgments given at the Common law he ought to be drawn to make any further answer in this Court of Equity. And Egerton Lord Chancellor delivered his opinion in Court, that the Defendant should answer to the Bill: and forasmuch as the case was of great consequence, the consideration of the demurrer was by the Queen referred to all the Judges of England: before whom the Councell of Throkmorton said, that the intent of the Lord Chancellor was not to impeach the said judgments, but confessing the said judgements, to be relieved upon matter in equity: As if a man hath (as he is advised) two matters to aide him, matter at the Common law, and matter in equity, and being impleaded at the Common law, doth by advice of his Councell assay the Common law, where his adversary prevaileth against him, and hath judgment accordingly, yet in this case the party may, confessing the judgment, sue to be relieved upon a collateral matter in equity: and thereupon they shewed some presidents in time of H. 8. E. 6. &c. and one in the point betwéen Ward and Fulwood. But upon great deliberation it was resolved by all the Judges of England, that the plea of Sir Moyle Finch was good, and that the Lord Chancellor ought not to examine the matter and equity after the judgement at the Common law: for though the Lord Chancellor (as hath béen said) would not examine the judgement, yet he would by his decrée take away the effect of the judgment: and for the Presidents, they were grounded upon the sole opinion of the Lord Chancellor, and passed sub silentio. But that such a course should be permitted, it should not onely be full of inconvenience, but directly against the laws and Statutes of the Realm against which no president or prescription can prevail; *Which you may read at large in the Third part of the Institutes, cap. Premunire. Which resolution of the Judges was signified by Popham Chief Justice to the Lord Chancellor, and thereupon no further proceeding was against Sir Moyle Finch, but his Plea stood.

* 17 E. 3. cap. 1. 4 H. 4. c. 22, &c. in the preamble. Doct. & Stud. 30. W. 2. cap. 5. Vid. pasch. 5 E. 4. Coram rege Rot. 35. Sir Simon Norres case. Nota.

Mich. 37 & 38 El. in Cancellar'.

In a Case depending in Chancery by English Bill betwéen Mears Plaintiff, and Saint-John and his Wife Administratrix of John Almon Defendant, the Case was this: That the Intestate took the profits of the Lands of the Plaintiff being within age by force of a trust reposed in him by the Father of the Plaintiff by his last Will, the yearly value of which Lands was fourscore pounds per annum, and the Intestate took the profits from the 23. year of Quéen El. untill the 33. year of her reign, and with parcell of the profits purchased Lands in fée which descended to his Heir, and left assets to his Administratrix one of the Defendants

dants to satisfie the plaintiff, all debts paid. The question was, whether in this case the Administratrix might not be charged in equity for the said mean profits: And Sir Thomas Egerton Master of the Rolls said, that he had seen a case in Chancery in Anno 34 H. 6. resolved by all the Judges of England remaining in the Tower, that where the Feoffees to use took the profits of the land, and received the Rents, and made their Executors and died, leaving Assets to satisfie all debts over and above the said rents and profits, that the Executors should be charged to satisfie cesti que use for the said rents and profits, and accordingly it was decreed in Mears case against the Defendant: but whether the heir should be contributory or no, it was doubted.

Withams case in the Chancery was, that a tearm for years was granted to the use of a feme sole, she took husband and died, whether the husband should have the use, or the Administrators of the feme, was referred to the Judges; and by them it was resolved, that the Administrators should have it, and not the husband, because that this trust of a feme was a thing in privity, and in nature of an Action, for which no remedy was but by Writ of Subpœna. And so it was resolved by the Justices in Waterhouses Case, Hil. 8. Eliz. Eborum, for the trust runneth in privity in this case, and a husband should not be Tenant by the curtesie of an use, nor the Lord of the Villain should have it at the Common Law.

Pasch' 32 El. in Cancellaria. Withams case. Eborum. Vide 7 E. 4. 14. & 18 E. 4. 11 & 12

A man possessed of a tearm for years in lands, by his last Will devised the same to one and the heirs of his body begotten, made his Executors and died; the Devisee entreth by the assent of the Executors, hath issue and aliens the tearm and dieth: this alienation barreth the issue, for a tearm of years cannot be entayled. And afterwards An. 31 Eliz. in a case depending in Chancery between Higgins and Milles it was certified by the Lord Anderson and Justice Walmsley (to whom it was referred) that no estate tail could be of a tearm, and that the alienation of the Devisee did bar the issue.

Trin. 28 El. adjudge in the King's Bench, in Peacocks case.

31 Eliz. between Higgins and Mills in Cancellaria.

In a Præmunire between John Perrot Plaintiff, and T.M. H.W. and others Defendants, it was resolved by Sir Christopher Wray Chief Justice, and the Court of Kings Bench, that the Queen could not raise a Court of Equity by her Letters Patents, and that there could be no Court of Equity but by Act of Parliament, or by prescription time out of mind of man. But the Queen might grant power tenere placita or conusans de plea, for all must judge according to one ordinary rule of the Common Law, but otherwise it is of proceedings extraordinary without any certain rule.

Mic. 26 & 27 El. Coram Rege. Perrots case. 10 H. 6. 15. in London by prescription. Note, this resolution is against the Court of Requests, See hereafter, ca. 9.

These cases which upon so great and mature deliberation have been resolved by the Judges of the Realm, and whereunto we were privie and well acquainted with, we have thought good to report, and publish for the better direction in like cases hereafter.

He is made Lord Chancellor of England, or Lord Keeper of the Great Seal, per traditionem magni sigilli sibi per Dominum Regem, and by taking his Oath. Forma Cancellarium constituendi regnante Henrico secundo fuit appendendo magnum Angliæ sigillum ad collum Cancellarii electi.

¶ *How he is created.* Camden p. 131. a 35 H. 6. 3. B. Winch. 1 H. 6. nu. 16.

Some have gotten it by Letters Patents, [a] at will, and [b] one for tearm of his life; but it was holden void, because an ancient office must be granted, as it hath been accustomed.

[b] Cardinal Woolsey.

[c] It is enacted and declared, that the Common Law of this Realm is and always was, and ought to be taken, that the Keeper of the Great Seal of *England* for the time being hath always had, used, and executed, and from thenceforth may have, take, use, and execute the same and the like place, authority, preheminence, jurisdiction, execution of laws, &c. as the Lord Chancellor of *England* for the time being lawfully used, &c. And so it appeareth in 18 E. 3. nu. 41. that the Lord Chancellor or Lord Keeper for the time being ought to have conusance.

[c] 5 El. cap. 18.

Rot. Par. 18 E. 3. nu. 41.

[a] I find that King H. 5. had two great Seals; one of Gold, which he delivered to the Bishop of Dureme, and made him Lord Chancellor of England; and another of Silver, which King Henry the Fifth delivered to the Bishop of London to keep.

[b] William de Ayremin Garden des Rolles del Chancellar' & ses compagnions gardens del Grand Seale. At this time was Robert Burnell Bishop of Bath and Wells Chancellor of England.

[c] It is to be observed, that where divers ancient Statutes speak of the Chancellor and of his Lieutenant, it must of necessity be intended of such a Lieutenant, as the Law doth allow of, and that cannot be of a Deputy, for the Chancellour cannot make a Deputy; but locum tenens is to be taken for one that holdeth the place, or hath equal authority of the Chancellor, and that is Custos Magni Sigilli: and this agreeth with the judgement of the said Parliament in 5 Eliz. But all questions are now taken away by the said Act of 5 Eliz. and at this day there being but one Great Seale, there cannot be both a Lord Chancellor and a Lord Keeper of the Great Seale at one time, because both these are but one Office, as it is declared by the said Act.

[a] Rot. Par. 1 H. 6. nu. 13, 14. 13 R. 2. nu. 7. Vide Camden ubi supra.

[b] Stat. de forma mittendi extract. in Scaccarium, Anno 16 E. 1. vet. Mag. Charta, 2 part. fo. 47. b.

[c] An. 27 E. 1. De liberatibus perquirendis. Vet. Mag. Carta, part 1. fo. 126, & 2 part. fo. 57, &c.

¶ *Cancellarius unde.*

It is said before, that the Chancellor by his ordinary power may hold plea of Scire fac' to repeale the Kings Letters Patents under the Great Seale being always inrolled in this Court, which we (to make a true derivation of his name) shall now particularly touch. This Writ of Scire fac' to repeal Letters Patents doth lie in this ordinary course of Justice in three cases. The first, when the King by his Letters Patents doth grant by several Letters Patents one and the self-same thing to several persons, the former Patentee shall have a Scire fac' to repeal the second Patent. Secondly, when the King granteth any thing that is grantable upon a false suggestion, the King by his Prerogative Jure Regio may have a Scire fac' to repeal his own grant. Thirdly, when the King doth grant any thing, which by Law he cannot grant, he Jure Regio (for advancement of justice and right) may have a Scire fac' to repeal his own Letters Patents. Now the Judgment in all these three cases is, Quod prædictæ literæ patentes dicti domini Regis revocentur, cancellentur, evacuentur, adnullentur, & vacuæ, & invalidæ pro nullo penitus habeantur, & teneantur; ac etiam quod irrotulamentum eorundem cancelletur, cassetur, & adnihiletur, &c. Hereof our Lord Chancellour of England (for forein Chancellours, it may be, have not like authority) is called Cancellarius, à Cancellepdo; *i.* à dignioni parte, being the highest point of his Jurisdiction to cancel the Kings Letters Patents under the Great Seale, and damming the inrolment thereof, by drawing strikes through it like a Lettice.

6 E. 4. 9. Dier 3 Eliz. 137. 2 E. 3. 7. 17 E. 3. 59. 21 E. 3. 47.

Lib. 2, fo. 14, &c.

¶ *The Lord Chancellours Oath.*

And all this which hath been said concerning the Office of the Lord Chancellour, or Lord Keeper is included within this [a] Oath, which followeth in these words, and consisteth upon six parts. He shall swear,

1. That well and truly he shall serve our Soveraign Lord the King and his People in the Office of Chancellor (or Lord Keeper.)

2. That he shall do right to all manner of People, poor and rich, after the [c] Laws and Usages of the Realm.

3. That he shall truly counsel the King, and his counsel he shall [d] layne and keep.

4. That he shall not know nor suffer the hurt or disheriting of the King, or [e] that the Rights of the Crown be decreased by any means, as far as he may let it.

5. And if he may not let it, he shall make it clearly and expressly to be known to the King, with his true advice and counsel.

6. And that he shall do and purchase the Kings profit in all that he reasonably may. As God him help, and by the Contents of this Book.

[a] Rot. Par. 10 R. 2. Rot. 8. the Oath recited. Vide Rot. Parl. 11 H. 1. nu. 28.

[b] Because he hath power of Judicature as is aforesaid.

[c] 10 R. 2. Rot. Par. nu. 8. 2 H. 4. nu. 10. 15 E. 3. nu. 10, 25, 37, 41, 42.

[d] Layne is an ancient French word, and signifyeth to hide.

[e] Rot. Parl. 10 R. 2. nu. 6, 7, 8, &c. The Case of *Mic. de la Pole* Chancellor of *England*.

Articles

Articles against Cardinal Woolsey.

Now for as much as the Articles exhibited to King H. 8. 1 die Decembris Anno 21 of his reign, by the Lords and others of his Privie Councel (whereof Sir Thomas Moor Lord Chancellor was one) and by two of the principal Judges of the Realm against Cardinal Woolsey, do in divers of the Articles concern the jurisdiction of the Chancery, (viz. the 20. and 26. Articles, &c.) and other titles of this Fourth part of the Institutes, we have thought good justly and truely to transcribe from the very Original, under the proper hands of the Lords and others of the Privie Councel, and of the said Judges (which we have seen and had in our custody) and have compared this Transcript with the Original it self, and have (because they are of great weight and use to many purposes) transcribed it de verbo in verbum without omission of any thing, as matters of that nature ought to be: and the rather, for that in our Chronicles they are very untruly rehearsed: and before this time (that we find) the true Articles were never printed. Vid. Artic. 20, 21, 26, 38, 41, 43, 44, 46.

Constrained by necessity of our Fidelity and Conscience, complain and shew to your most Royal Majesty, we your Graces humble, true, faithful, and obedient Subjects: That the Lord Cardinal of *York*, lately your Graces Chancellour, presuming to take upon him the authority of the Popes Legate *De latere*, hath by divers and many sundry wayes and fashions committed high and notable grievous offences, misusing, altering, and subverting the Order of your Graces Laws; and otherwise contrary to your High Honour, Prerogative, Crown, Estate and Dignity Regal, to the inestimable great hinderance, diminution, and decay of the universal wealth of this your Graces Realm. And it is touched summarily and particularly in certain Articles here following, which be but a few in comparison of all his enormities, excesses, and transgressions committed against your Graces Laws. That is to say:

1. First where your Grace and Noble Progenitors within this your Realm of England, being Kings of England, have been so free, that they have had in all the World none other Soveraign, but immediate subject to Almighty God in all things touching the Regality of your Crown of England, and the same preeminence, prerogative, jurisdiction, lawful and peaceable possession your Grace and your Noble Progenitors have had, used, and enjoyed, without interruption or business therefore by the space of 200. years and more: whereby your Grace may prescribe against the Popes Bulles, that he should not, nor ought to send or make any Legate, to exercise any authority Legatine contrary to your Graces Prerogative within this your Realm. Now the Lord Cardinal of York being your Subject and natural Liege born, hath of his high, ogallous, and insatiable mind, for his own singular advancement and profit, in derogation, and to the great imblemishment and hurt of your said Regal Jurisdiction and Prerogative and the long continuance of the possession of the same, hath obtained Authority Legatine: by reason whereof he hath not only hurt your said Prescription, but also by the said Authority Legatine, hath spoyled and taken away from many Houses of Religion within this your Realm much substance of their Goods. And also hath usurped upon all your Ordinaries within this your Realm much part of their Jurisdiction, in derogation of your Prerogative, and to the great hurt of your said Ordinaries, Prelates, and Religious.

The soveraignty, prerogative, regal jurisdiction and freedom of the Crown of England. Prescribe. Cardinal of York. Authority Legatine. Spoyled many houses of Religion. Usurped upon Ordinaries.

2. Also the said Lord Cardinal being your Ambassadour in France, made a Treaty with the French King for the Pope, your Majesty not knowing any part thereof, nor named in the same; and binding the said French King to abide his order and award if any controversie or doubt should arise upon the same, betwixt the said Pope and the French King. Ambassadour.

3. Also the said Lord Cardinal being your Ambassadour in France, sent a Commission to Sir Gregory de Cassalis under your Great Seal in your Graces name, to conclude a Treaty of Amity with the Duke of Ferrare, without any Ambassadour.

commandment or Warrant of your Highneſs, nor your ſaid Highneſs advertiſed or made privie to the ſame.

4. Alſo the ſaid Lord Cardinal, of his preſumptuous mind, in divers and many of his Letters and Inſtructions ſent out of this Realm to outward parts, had joyned himſelf with your Grace, as in ſaying and writing, The King and I would ye ſhould do thus. The King and I do give unto you our hearty thanks. Whereby it is apparent that he uſed himſelf more like a Fellow to your Highneſs, than like a Subject. The King and I.

Oath. 5. Alſo, where it hath ever bèn accuſtomed within this Realm, that when Noble Men do ſwear their Houſhold-ſervants, the firſt part of their Oath hath bèn, that they ſhould be true Liege-men to the King and his Heirs Kings of England: The ſame Lord Cardinal cauſed his Servants to be only ſworn to him, as if there had bèn no Soveraign above him.

Great Pox. 6. And whereas your Grace is our Soveraign Lord and Head, in whom ſtandeth all the ſurety and wealth of this Realm; the ſame Lord Cardinal knowing himſelf to have the foul and contagious Diſeaſe of the Great Pox broken out upon him in divers places of his Body, came daily to your Grace, rowning in your ear, and blowing upon your moſt Noble Grace with his perilous and infective breath, to the marvellous danger of your Highneſs, if God of his infinite goodneſs had not better provided for your Highneſs. And when he was once healed of them, he made your Grace to believe, that his diſeaſe was an Impoſthume in his Head, and of none other thing.

Proviſion. Premunire. 7. Alſo the ſaid Lord Cardinal by his Authority Legatine, hath given by prevention the Benefices of divers perſons, as well Spiritual as Temporal, contrary to your Crown and Dignity, and your Laws and Statutes therefore provided: by reaſon whereof he is in danger to your Grace of forfeiture of his Lands and Goods, and his Body at your pleaſure.

Counſellors Forein Ambaſſadors. 8. Alſo the ſaid Lord Cardinal taking upon him otherwiſe than a true Counſellor ought to do, hath uſed to have all Ambaſſadors to come firſt to him alone, and ſo hearing their charges and intents, it is to be thought he hath inſtructed them after his pleaſure and purpoſe before that they came to your preſence, contrary to your High Commandment by your Graces mouth to him given: and alſo to other perſons ſent to him by your Grace.

Letters ſent from beyond Sea. Firſt to him. 9. Alſo the ſaid Lord Cardinal hath provided ſo, that all manner of Letters ſent from beyond the Sea to your Highneſs hath comen firſt to his hands, contrary to your High Commandment by your own mouth, and alſo to others ſent to him by your Grace: by reaſon whereof, your Highneſs, nor any of your Councel had knowledg of moe matters but of ſuch as it pleaſed him to ſhew them; whereby your Highneſs and your Councel have bèn compelled of very force to follow his devices, which oftentimes were ſet forth by him under ſuch crafty & covert meanings, that your Highneſs and your Councel have oftentimes bèn abuſed: inſomuch that when your Councel have found and put divers doubts & things which afterward have enſued, he to abuſe them have uſed theſe words, [I will lay my Head that no ſuch thing ſhall happen.] Councel.

Forein Intelligence to him, &c. 10. And the ſaid Lord Cardinal hath practiſed, that no manner of perſon having charge to make eſpial of things done beyond the Sea, ſhould at their return come firſt to your Grace, nor to any other of your Councel, but only to himſelf: and in caſe they did the contrary, he puniſhed them for their ſo doing.

Licences to tranſport Grain and Victual. 11. Alſo the ſaid Lord Cardinal hath granted Licenſes under your Great Seal, for carrying out of Grain and other Victuals after the reſtraint hath bèn made thereof, for his own lucre and ſingular advantage of him and his ſervants for to ſend thither as he bare ſecret favour, without your Graces Warrant or knowledge thereof.

Ambaſſadours reſident with other Princes. 12. Alſo the ſaid Lord Cardinal uſed many years together not only to write unto all your Ambaſſadors reſident with other Princes in his own name, all advertiſements concerning your Graces affairs being in their charge, and in the ſame his Letters wrote many things of his own mind without your Graces

pleaſure

pleasure known, concealing divers things which had bæn necessary for them to know; but also caused them to write their advertisements unto him. And of the same Letters he used to conceale for the compassing of his purpose many things both from all your other Counsellours, and from your self also.

13. Also where good hospitality hath bæn used to be kept in Houses and places of Religion of this Realm, & many poor people thereby relieved, the said hospitality, and relief is now decayed & not used: and it is commonly reported that the occasion thereof is, because the said Lord Cardinal hath taken such impositions of the Rulers of the said Houses, as well for his favour in making of Abbots and Priors, and for his visitation by his authority Legatine. And yet nevertheless taketh yearly of such Religious houses, such yearly and continual charges, as they be not able to kæp hospitality as they were used to do: which is a great cause that there be so many Vagabonds, Beggers, and Thieves.

Hospitality in Houses of Religion decayed.
Imposition.
Yearly charges.

14. Also where the same L. Cardinal said before the suppression of such houses as he hath suppressed, that the possessions of them should be set to ferm among your Lay-subjects after such reasonable yearly rent as they should well thereupon live, & kæp good hospitality: and now the demesne possession of the same houses since the suppression of them had bæn surveyed, mete, and measured by the Acre, and be now set above the value of the old rent. And also such as were fermors by Covent seal, and Copyholders be put out and amoved of their ferms, or else compelled to make new fine contrary to all equity and conscience.

Suppression of houses.
Reasonable Rents.
Above the value.
New fine.

15. Also the said Lord Cardinal sitting among the Lords and other of your most Honourable Privie Councel, used himself, that if any man would shew his mind, according to his duty, contrary to the opinion of the said Cardinal, he would so take him up with his accustomable words, that they were better to hold their peace than to speak, so that he would hear no man speak but one or two great personages, so that he would have all the words himself, and consumed much time with a fair tale.

Abused the Privie Councel.
All the words himself.

16. Also the said Lord Cardinal by his ambition and pride hath hindered and undone many of your poor Subjects for want of dispatchment of matters, for he would no man should meddle but himself, insomuch that it hath bæn affirmed by many wise men, that ten of the most wisest and most expert men in England were not sufficient in convenient time to order the matters that he would retain to himself. And many times he deferred the ending of matters, because that suiters should attend and wait upon him, whereof he had no small pleasure, that his House might be replenished with Suiters.

Ambition and pride.
Want of dispatch.
No man to meddle but himself.
Suiters to attend.

17. Also the said Lord Cardinal by his authority Legatine hath used, if any Spiritual man having any riches or substance, deceased, he hath taken their goods as his own, by reason whereof their wills be not performed: And one mean he had to put them in fear, that were made Executors, to refuse to meddle.

Taken the goods of Spiritual men deceased.

18. Also the said Lord Cardinal constrained all Ordinaries in England yearly to compound with him, or else he will usurp half or the whole of their jurisdiction by prevention, not for good order of the Dioceses, but to extort treasure: for there is never a poor Archdeacon in England, but that he paid yearly to him a portion of his Living.

All Ordinaries, &c. to compound with him.

19. Also the said Lord Cardinal hath not only by his untrue suggestion to the Pope shamefully slandered many good Religious Houses, and good vertuous men dwelling in them, but also suppressed by reason thereof above thirty Houses of Religion. And where by authority of his Bull he should not suppress any House that had moe men of Religion in number above the number of 6 or 7, he hath suppressed divers Houses that had above the number. And thereupon hath caused divers Offices to be found by verdict untruly, that the Religious persons so suppressed had voluntarily forsaken their said Houses, which was untrue, and so hath caused open perjury to be committed, to the high displeasure of Almighty God.

Slandered religious houses to the Pope.
By authority of his Bull suppressed 30 houses of Religion.
Caused divers Offices to be found untruly.
Perjury.

20. Also the said Lord Cardinal hath examined divers and many matters in the Chancery after judgement thereof given at the Common Law, in subversion of

Examined matters in Chancery after judgements.

of your Laws, and made ſome perſons reſtore again to the other party condemned that, that they had in execution by vertue of the Judgement at the Common Law.

Injunctions. 21. Alſo the ſaid Lord Cardinal hath granted many Injunctions by Writ, and the parties never called thereunto, nor Bill put in againſt them: and by reaſon thereof, divers of your Subjects have bẽn put from their lawful poſſeſſion of their Lands and Tenements. And by ſuch means he hath brought the more party of the ſuiters of this your Realm before himſelf, whereby he and divers of his ſervants have gotten much riches, and your Subjects ſuffered great wrongs.

His Servants rich.

The Popes Pardons. 22. Alſo the ſaid Lord Cardinal to augment his great riches hath cauſed divers pardons granted by the Pope to be ſuſpended, which could not be revived, till that the ſaid Lord Cardinal were rewarded, and alſo have a yearly penſion of the ſaid pardon.

Oppreſſion. 23. Alſo the ſaid Lord Cardinal not regarding your Laws nor Juſtice, of his extort power hath put out divers and many fermors of the Lands, and alſo Patentes of the Archbiſhoprick of York, and the Biſhoprick of Wincheſter, and of the Abbey of St. Albons, which had good and ſufficient grant thereof by your Laws.

Election of Abbots, Priors, &c. 24. Alſo the ſame Lord Cardinal, at many times when any Houſes of Religion have bẽn void, he hath ſent his Officers thither, and with crafty perſwaſions hath induced them to compromit their election in him; And that before he named or confirmed any of them, he and his ſervants received ſo much great goods of them, that in manner it hath bẽn to the undoing of the Houſe.

Viſited. Extortion. 25. Alſo by his Authority Legatine, the ſame Lord Cardinal hath viſited the moſt part of the Religious Houſes and Colledges of this your Realm, and hath taken from them the twenty fifth part of their livelyhood, to the great extortion of your Subjects, and derogation of your Laws and Prerogative, and no Law to bear him ſo to do.

Injunctions. Threatned Judges. 26. Alſo when matters have bẽn near at judgment by Proceſs at your Common Law, the ſame Lord Cardinal hath not only given and ſent Injunctions to the parties, but alſo ſent for your Judges, and expreſly by threats commanding them to defer the judgement, to the evident ſubverſion of your Laws, if the Judges would ſo have ceaſed.

Penſion out of France. His ſon Winter. 27. Alſo whereas neither the Biſhop of York nor Wincheſter, nor the Abbey of St. Albons, nor the profit of his Legation, nor the benefit of the Chancery, nor his great penſion out of France, nor his Wards, and other inordinate taking could not ſuffice him, he hath made his Son Winter to ſpend Seven and twenty hundred pounds by the year, which he taketh to his own uſe, and giveth him not paſt two hundred pound yearly to live upon.

Legate *De latere* His promiſe. Nothing againſt Preaogative or Regality. Or to the prejudice of ordinary juriſdiction. Breach of Promiſe. 28. Alſo where the ſaid Lord Cardinal did firſt ſue unto your Grace to have your Aſſent to be Legate de latere, he promiſed & ſolemnly proteſted before your Majeſty, and before the Lords both Spiritual and Temporal, that he would nothing do nor attempt by the vertue of his Legacy, that ſhould be contrary to your gracious prerogative or regality, or to the damage or prejudice of the Juriſdiction of any Ordinary, and that by his Legacy no man ſhould be hurted nor offended: And upon that condition, and no other, he was admitted by your Grace to be Legate within this your Realm: which condition he hath broken, as is well known to all your Subjects. And when that he made this promiſe, he was buſie in his ſuit at Rome to viſit all the Clergy of England both exempt and not exempt.

Untrue ſurmiſe to the Pope of the Clergy. 29. Alſo upon the ſuit of the ſaid Lord Cardinal at Rome to have his authority Legatine, he made untrue ſurmiſe to the Popes Holineſs againſt the Clergy of your Realm: which was, that the Regular perſons of the ſaid Clergy had given themſelves in reprobum ſenſum; which words St. Paul writing to the Romans applied to abominable ſinne: which ſlander to your Church of England ſhall for ever remain in the Regiſter at Rome, againſt the Clergy of this your Realm.

30 Alſo

30. Alſo the ſaid Lord Cardinal had the more part of the goods of Doctor Smith late Biſhop of Lincoln, Biſhop Savage of York, Maſter Dalbye Archdeacon of Richmont, Maſter Tonyers, Doctor Rothal late Biſhop of Durham, and of Doctor Foxe late Biſhop of Wincheſter, contrary to their Wills, and your Laws and Juſtice. Oppreſſion and extortion.

31. Alſo at the Oier and Terminer at York, Proclamation was made, that every man ſhould put in their Bills for extortion of Ordinaries, and when divers Bills were put in againſt the Officers of the ſaid Lord Cardinal of extortion, for taking twelve pence of the pound for probation of Teſtaments, whereof divers Bills were found before Juſtice Fitzherbert and other Commiſſioners, the ſaid Lord Cardinal removed the ſaid Inoictments into the Chancery by Certiorari, and rebuked the ſaid Fitzherbert for the ſame cauſe. Extortion of Ordinaries. Indictments of extortion of Ordinaries removed into the Chancery.

32. Alſo the ſaid Lord Cardinal hath uſed and endeavoured himſelf by craftie and untrue Tales to make diſſention and debate amongſt your Nobles of your Realm, which is ready to be proved. Made debate between the Nobles of the Realm.

33. Alſo the ſaid Lord Cardinals Officers have| divers times compelled your Subjects to ſerve him with Carts for carriage, and alſo his ſervants have taken both Corn and Cattel, Fiſh, and all other Victual, at your Graces price, or under, as though it had bèn for your Grace, which is contrary to your Laws. Purveyance for him. Purveyance at the Kings price, Vid. in f. 35, 36.

34. Alſo the ſaid Lord Cardinal hath miſuſed himſelf in your moſt Honourable Court, in kæping of as great eſtate there in your abſence, as your Grace would have done if you had bèn there preſent in your own perſon. Keeping great eſtate in Court.

35. Alſo his Servants by vertue of your Commiſſion under your Broad Seal by him to them given, have taken Cattel and all other Victual at as low a price as your Purveyors have done for your Grace by your Prerogative, againſt the Laws of your Realm. Purveyance. Prerogative in purveyance.

36. Alſo where it hath bèn accuſtomed that your Purveyors for your Honourable Houſhold, have had yearly out of your Town and Liberty of St. Albons three or four hundred quarters of wheat, truth it is, that ſince the Lord Cardinal had the rom of the Abbot, that your ſaid Purveyors could not be ſuffered by him and his Officers to take any Wheat within the ſaid Town or Liberty. Purveyance.

37. Alſo he hath divers times given Injunctions to your Servants that have bèn for Cauſes before him in the Star-chamber, that they, nor other for them ſhould make, labour by any manner of way, direcly or indirecly, to your Grace, to obtain your Graces favour or pardon; which was a preſumptuous intent for any Subject. Injunction not to ſue for pardon for cauſes in the Star-chamber. A great preſumption.

38. Alſo the ſaid Lord Cardinal did call before him Sir John Stanly Knight, which had taken a Farm by Covent Seal of the Abbot and Convent of Cheſter, and afterwards by his power and might contrary to right committed the ſaid Sir John Stanly to the priſon of Fleet by the ſpace of a year unto ſuch time as he compelled the ſaid Sir John to releaſe his Covent Seal to one Leghe of Adlington, which married one Larks daughter, which Woman the ſaid Lord Cardinal kept, and had with her two Children. Whereupon the ſaid Sir John Stanly upon diſpleaſure taken in his heart made himſelf Monk in Weſtminſter, and there died. Oppreſſion. Legh of Adlington The Cardinal kept Larks daughter, and had by her two children.

39. Alſo on a time your Grace being at St. Albons according to the ancient cuſtom uſed within your Verge, your Clerk of the Market doing his office, did preſent unto your Officers of your moſt Honourable Houſhold the prices of all manner of Victuals within the Precinct of the Verge. And it was commanded by your ſaid Officers to ſet up the ſaid Prices both on the Gates of your Honourable Houſhold, and within the Market place within the Town of St. Albons, as of ancient cuſtom hath been uſed. And the Lord Cardinal hearing the ſame, preſumptuouſly, not like a Subject, cauſed the foreſaid prices which were ſealed with your Graces Seal, accuſtomably uſed for the ſame, to be taken off and pulled down in the ſaid Market place, where they were ſet up: and in the ſame places ſet up his own prices ſealed with his Seale, and would Clerk of the Market. Prices of Victuals. Pulled down the price, &c.

would if it had not bæn letted in semblable maner, used your Seal standing upon your gates. And also would of his presumptuous mind have openly set in the stocks within your said Town your Clerk of your Market. By which presumption and usurpation your Grace may perceive that in his heart he hath reputed himself to be equal with your real Majesty.

The Cardinals hat in the Kings coyn of Groats, &c.

40. Also the said Lord Cardinal of his further pompous and presumptuous mind hath enterprised to joyn and imprint the Cardinals Hat under your Arms in your coin of Groats made at your City of York, which like dæd hath not bæn sæn to be done by any Subject in your Realm before this time.

Subpœna.

41. Also where one Sir Edward Jones Clerk, Parson of Orewly in the County of Buck' in the Eightænth year of your most Noble Reign let his said Parsonage with all Tythes and other profits of the same to one William Johnson by Indenture for certain years, within which years, the Dean of the said Cardinals College in Oxenford pretended title to a certain portion of Tythes within the said Parsonage, supposing the said portion to belong to the Parsonage of Chichelly, which was appointed to the Priorie of Tykeford lately suppressed, where (of truth) the Parsons of Orewly have bæn peaceably possessed of the said portion out of the time of mind. Whereupon a Subpœna was directed to the said Johnson to appear afore the Lord Cardinal at Hampton-Court, out of any tearm, with an Injunction to suffer the said Dean to occupy the said portion. Whereupon the said Johnson appeared before the said Lord Cardinal at Hampton-Court, where without any Bill, the said Lord Cardinal committed him to the Flæt, where he remained by the space of twelve wæks, because he would not depart with the said portion. And at the last upon a recognisance made that he should appear before the said Lord Cardinal whensoever he was commanded, he was delivered out of the Flæt; howbeit as yet the said portion is so kept from him that he dare not deal with it.

Injunction.

42. Also where one Martin Decowra had a lease of the Manor of Balsall in the County of Warwick for tearm of certain years, an Injunction came to him out of the Chancery by Writ upon pain of a thousand pounds, that he should avoid the possession of the same Manor, and suffer Sir George Throckmorton Knight, to take the profits of the same Manor to the time the matter depending in the Chancery betwæn the Lord of S. Johns and the said Decowra were discussed. And yet the said Decowra never made answer in the Chancery, ne ever was called into the Chancery for that matter, and now of late he hath received a like Injunction upon pain of two thousand pounds contrary to the course of the Common Law.

Heresies and erroneous Sects.

43. Also whereas in the Parliament Chamber, and in open Parliament communication and devices were had and moved, wherein mention was an incident made of matters touching Heresies, and erroneous Sects; It was spoken and reported by one Bishop there being present, and confirmed by a good number of the same Bishops, in presence of all the Lords Spiritual and Temporal then assembled, that two of the said Bishops were minded and desired to repair unto the University of Cambridge for examination, reformation and correction of such errors as then sæmed and were reported to reign amongst the Students and Scholars of the same, as well touching the Lutheran Sect and opinions, as otherwise. The Lord Cardinal informed of the good minds and intents of the said two Bishops in that behalf, expressly inhibited and commanded them in no wise so to do. By means whereof, the same errors, as they affirmed, crept more abroad and took greater place; saying furthermore that it was not in their defaults, that the said Heresies were not punished, but in the said Lord Cardinal, and that it was no reason any blame or lack should be arrected to them for his offence: whereby it evidently appeareth that the said Lord Cardinal, besides all other his heinous offences, hath bæn the impeacher and disturber of due and direct correction of Heresies, being highly to the danger and peril of the whole body, and good Christian people of this your Realm.

44. Finally, forasmuch as by the aforesaid Articles is evidently declared

to

to your moſt Royal Majeſty, That the Lord Cardinal by his outragious pride hath greatly ſhadowed a long ſeaſon your Graces Honour, which is moſt highly to be regarded, and by his inſatiable avarice and ravenous appetite to have Riches and Treaſure without meaſure, hath ſo grievouſly oppreſſed your poor Subjects with ſo manifold crafts of bribery and extortion, that the Common-wealth of this your Graces Realm is thereby greatly decayed and impoverished. And alſo by his cruelty, iniquity, affection, and partiality, hath ſubverted the due courſe and order of your Graces Laws, to the undoing of a great number of your loving people.

Pleaſe it your moſt Royal Majeſty therefore of your excellent goodneſs towards the Weal of this your Realm and Subjects of the ſame, to ſet ſuch order and direction upon the ſaid Lord Cardinal, as may be to the terrible example of others to beware ſo to offend your Grace, and your Laws hereafter. And that he be ſo provided for, that he never have any power, juriſdiction or authority hereafter to trouble, vex, and impoveriſh the Common-wealth of this your Realm, as he hath done heretofore, to the great hurt and damage of every man almoſt high and low, which for your grace ſo doing, will daily pray, as their duty is, to Almighty God for the proſperous eſtate of your moſt Royal Majeſty, long to endure in honour and good health, to the pleaſure of God, and your hearts moſt deſire. Subſcribed the firſt day of December the 21. year of the reign of our Soveraign Lord King Henry the 8.

T. More. T. Norffolk. Charl. Suff. Tho. Dorſet. H. Exon. John Oxinford. H. Northumberland. G. Shrewsbury. R. Fitzwater. T. Rochford. T. Darcy. W. Mountjoy. William Sandys.

William Fitzwilliam. Henry Guldeford. * John Fitz James. † Anthony Fitzherbert.

So theſe Articles began to be ſubſcribed by Sir Thomas More Lord Chancellor, and ended with the two Judges of the Law.

There be in this Court many Officers, Miniſters, and Clerks of the Court, the principal whereof is the [a] Maſter of the Rolls, anciently called Garden des Rolles, Clericus Rotulorum, Cuſtos Rotulorum. And this is an ancient office, and grantable either for life or at will, at the pleaſure of the King. [b] The houſe annexed to his Office, is called Domus Converſorum, ſo called becauſe * King H. 3. founded this houſe to be a houſe of Jews as ſhould be converted to the true religion of Jeſus Chriſt, and there ſhould have maintenance and allowance, which continueth to this day. King E. 3. anno 15. of his reign, by Letters Patents annexed this houſe to the office of Cuſtos Rotulorum, and this Office is grantable by Letters Patents: for the more aſſurance whereof, and of divers things worthy of obſervation, we have thought good to ſet down an Act of Parliament concerning this matter in theſe words.

[c] King E. 3. by this Charter anno 51 of his reign did grant after the death of William Burſtall then Keeper of the Rolls and of the ſame houſe of Converts of the Kings grant to the Keeper of the Rolls for the time being, and annexed it to the ſaid office imperpetuum, and further granted that after the deceaſe of the ſaid William, the Chancellor or Keeper of the Great Seal after the voydance of the ſaid Office of Keeping of the Rolls to inſtitute ſucceſſively the Keepers of the Rolls, in dicta domo Converſorum, & cuſtodes illos ponend in poſſeſſione ejuſdem, &c. This Charter was confirmed by Act of Parliament, as by that which followeth appeareth.

[d] *A noſtre treſdoulte H. le Roy et ſon honourable counſeil en ceſt Parliament ſupplie ſon petit Clerke William de Burſtall Gardeiner des Rolles de la Cancellarie, & Gardeiner de la Meaſon des Converſes de Londres quele eſt de voſtre honorable Patronage que come le dit William à ſes treſgraundes cuſtages & reparille la Chappelle de les edifices du dit meaſon, & noſtre Seignior le Roy dareine (que Dieu aſſoil) pur maintenance de la dit Chappelle & meaſon à la prier du dit William grante pur luy & ſes heires par ſes*

* Chief Juſtice of England.

† Sir Anth. Fitz. a Juſtice of the Court of Common Pleas.

[a] He was not called Maſter of the Rolls, until 12 H. 7 cap. 20. but never ſo called in any Letters Patents of this office.

[b] Forteſc. ca. 24.

* See the Charter of erection by King H. 3. Hollinſh. 1281. Vide Rot. Parl. 18 E. 1. nu. There were above fourſcore Converts in 18 E. 1. and petitioned in Parliament for more relief.

[c] Rot. Pat. 11. An 51 E. 3. which you may read at large in Hollinſh. pag. 1281, 1282.

[d] Ex bundello petit. Parl. anno 1 R. 2. *Gardein des Rolles de la Chauncery & meaſon des Converſes des Londres.* Nota, the Maſter of the Rolls or Keeper is Gardein of the houſe of Converts of the Patronage or gift of the King.

ſes Letters Patents que le dit Meaſon de Converſe apres le deceaſe du dit William demerera à tous jours al Gardein des dits Rolles pur le temps eſteants tanque come ils ſeront en le dit office ſans certain forme compriſe en Letters ſurſdits, Pleaſe à noſtre dit Seignior le Roy et Seigniors deu Parliament confirmer la dit grant et les Letters Patents iſsint ent faitz, et les choſes compriſes en yeels en outer de charitie. Whereunto full aſſent was given by Authority of Parliament.

Rot. Pat. 6 R. 2.

After which Act of Parliament John de Waltham Gardein or Keeper of the Rolls obtained of R. 2. in the ſixth year of his reign Letters Patents, whereby the Kings granted to him & ſucceſſoribus ſuis Cuſtodibus Rotulorum the ſaid houſe of Converts; and the reaſon hereof ſeemeth to be, for that in the ſaid Charter of 51 E. 3. Sibi & ſucceſſoribus ſuis wanted. This John of Waltham was in 12 R. 2. Biſhop of Salisbury, and after Treaſurer of England. Hereby it appeareth what eſtate the Maſter of the Rolls hath in domo Converſorum. And this houſe is the place where the Rolls of the Chancery are kept, and are ſo called becauſe they are written in parchment, and made up in bundles of Rolls, that is to ſay, of Charters, Letters Patents, Commiſſions, Deeds inrolled, Recognizances, &c.

Theſe Records ſince the beginning of H. 7. remain in the Rolls, and all before were tranſmitted into the Tower, and there remain.

Alſo for further manifeſtation hereof, we have thought good to ſet down a Letters Patents of this Office in the 25 year of H. 6. and rather for that it was granted Authoritate Parliamenti, in theſe words, Henricus Dei gratia Rex Angliæ, & Franciæ, & Dominus Hiberniæ, omnibus ad quos præſentes literæ pervenerint. Sciatis quod cum nos tertio decimo die Novembris, anno regni noſtri decimo ſeptimo conſtituimus dilectum Clericum noſtrum Johannem Stopenden Cuſtodem Rotulorum & Librorum Cancellariæ noſtræ cum omnibus ad officium illud ſpectantibus, percipiendi in eodem officio feoda, commoditates, & proficua conſueta, quamdiu nobis placuerit. Et ulterius dederimus, & conceſſerimus eidem Johanni cuſtodiam domus noſtræ Converſorum præfato officio pro inhabitatione dicti Cuſtodis per progenitores noſtros quondam Reges Angliæ ab antiquo depoſitæ, & annexæ: Habendum & tenendum cuſtodiam illam cum omnibus juribus & pertinentiis ſpectantibus ad eandem, prout in literis noſtris patentibus inde confectis plenius continetur. Nos bonum & gratuitum ſervitium quod dilectus clericus noſter Thomas Kirkby nobis ante hæc tempora multipliciter impendit, indieſque impendere non deſiſtit merite contemplantes, ac de fidelitate, circumſpectione & induſtria ipſius Thomæ plenius confidentes, conſtituimus ipſum Thomam Cuſtodem rotulorum & librorum Cancellariæ noſtræ cum omnibus ad officium illud ſpectantibus, percipiendo in eodem officio feoda, commoditates, & proficua conſueta a tempore quo officium illud per Ceſſionem ſeu alio modo quocunque proximo vacare contigerit, quamdiu nobis placuerit. Et ulterius dedimus & conceſſimus, ac per preſentes damus & concedimus eidem Thomæ, cuſtodiam dictæ domus noſtræ Converſorum præfato officio pro inhabitatione ejuſdem cuſtodis per dictos progenitores noſtros ab antiquo (ut præmittitur) diſpoſitæ & annexæ. Habend & tenend eidem Thomæ cuſtodiam illam cum omnibus juribus & pertinentiis ſpectantibus ad eandem quamdiu ipſum Thomam dictum officium Cuſtodis rotulorum & librorum prædictorum habere & tenere ſive occupare contigerit. Eo quod expreſſa mentio de vero valore annuo officii prædicti & cæterorum præmiſſorum ſeu alicujus eorum, aut de aliis donis ſeu conceſſionibus per nos præfato Thomæ ante hæc tempora factis in præſentibus facta non exiſtit, aut aliquibus Actibus ſive Ordinationibus in contrarium editis ſive ordinatis, aut aliqua alia cauſa, re, ſeu materia in aliquo non obſtantibus. In cujus rei teſtimonium has literas noſtras fieri fecimus patentes. Teſte meipſo apud Maidſton viceſimo nono die Martii, Anno regni noſtri viceſimo quinto. Authoritate Parliamenti.

Clericus noſter Cuſtos rotulorum & librorum Cancellar' noſtræ cum omnibus ad officium illud ſpectant'. Cuſtodia domus noſtræ Converſorum.

Cuſtos Rotulorum, &c.

Of

Of latter times in the grant of this Office he is ſtiled Clericus * parvæ bagæ, Cuſtos Rotulorum, & domus Converſorum.

The Maſter of the Rolls hath in jure officii, the gift of the Offices of Six Clerks in the Chancery.

In the abſence of the Lord Chancellor he heareth cauſes and giveth orders.

See in the Third part of the Inſtitutes, ca. Præmunire.

* Belonging anciently to his office. See the ſtatute of 14 H. 8 cap. 8.

CAP. IX.

The Court of Requeſts.

HAving ſpoken of the Court of Chancery, ſwayed and governed by the Lord Chancellor, or Keeper of the Great Seal: It ſhall be fit in this place to treat of the Juriſdiction of the Court of Requeſts, wherein the Lord Privie Seal at his pleaſure, and the Maſters of Requeſts do aſſemble and ſit. And the original inſtitution hereof was, that ſuch petitions as were exhibited to the King, and delivered to the Maſters of the Requeſts, ſhould be peruſed by them, and the party directed by them to take his remedy according to their caſe, either at the Common Law, or in the Court of Chancery. And thereupon they were called Magiſtri à libellis ſupplicum: and in this reſpect this meeting and conſultation was called the Court of Requeſts, as the Court of Audience and Faculties are called Courts, albeit they hold no plea of Controverſie.

See hereafter the Courts of Audience and Faculties, pa.

Thoſe which in former times would have this Court to be a Court of Judicature, took their aim from a Court in France, which is called Curia eorum quos Requeſtarum, *i.* ſupplicationum palatii magiſtros vocant, apud quos cauſa eorum tantum agitur, qui regis obſequiis deputati, vel privilegio donati ſunt, hujus curiæ Judices octo ſunt. But others taking this Juriſdiction to be too narrow, contend to have it extend to all cauſes in Equity equal with the Chancery, and their decrées to be abſolute and uncontrollable. But neither of theſe are warranted by Law, as ſhall evidently appear.

Caſſeneus 7 part fol. 136. b.

In the reign of H. 8. the Maſters of Requeſts thought (as they intended) to ſtrengthen their juriſdiction by Commiſſion, to hear and determine cauſes in Equity. But thoſe Commiſſions being not warranted by Law (for no Court of Equity can be raiſed by Commiſſion) ſoon vaniſhed, for that it had neither Act of Parliament, nor preſcription time out of mind of man to eſtabliſh it.

See before, cap. Chancery. Peeres caſe, pag. 87. See the Articles againſt Cardinal Woolſey, pa. 89. See Halls Chronicle ubi ſupra; and Guines learned preface to his Reading in the Inner Temple, about 16 Eliz.

* Mich. 40 & 41 Eliz. In the Court of Common Pleas, upon a Bill exhibited in the Court of Requeſts againſt Flood, for default of anſwer an Attachment was awarded againſt Flood under the Privie Seal, to Stepneye then Sheriff of Carnarven, who by force of the ſaid Writ attached Flood, and would not let him go, until he had entred into an Obligation to the Sheriff to appear before his Majeſties Councel in the Court of Requeſts: upon which Obligation the Sheriff brought an Action of debt for default of appearance, and all this matter appeared in pleading. And it was adjudged upon ſolemn argument, that this which was called a Court of Requeſts, or the White Hall, was no Court that had power of Judicature, but all the proceedings thereupon were Coram non Judice, and the arreſt of Flood was falſe impriſonment, ſo as he might avoid the bond by Dures at the Common Law, without aid of the Statute of 23 H. 6. c. 10.

* Tr. 40 Eliz. in Com. banco inter Stepney & Lloyd. Rot. 1157. See Halls Chr. 8 H. 8. f. 59. agreech with the Law.

The puniſhment of Perjury in the Court of Whitehall by the Statutes of 33 H. 8. cap. 9. and 5 Eliz. cap. 9. doth not give it any juriſdiction of Judicature, no more than the Statutes that give againſt a Gaoler an action for an eſcape, or

punished a Gaoler of his own wrong for extortion, an Officer of his own wrong shall be punished by the Statutes in that case provided, and yet the Statutes thereby make them unlawful Officers; for it is one thing to punish, and another to give authority. So it was iustice in the Parliaments to punish perjury in the Whitehall, although the Court were holden by usurpation, and so before it appeareth to be by the Iudgement in Stepneys case. See Beverleys case, lib. 4. 123, 124. and the case of the Orphans of London, Lib. 5. fol. 73. where it is called the Court of Requests, taking the same to be according to the Original institution. And as Gold or Silver may as currant money pass even with the proper Artificer, though it hath too much Allay, until he hath tried it with the Touchstone: even so this nominative Court may pass with the Learned as iustifiable in respect of the outside by vulgar allowance, until he advisedly looketh into the roots of it, and try it by the rule of Law; as (to say the truth) I my self did: But errores ad sua principia referre, est retellere, To bring errors to their first, is to see their last.

The Author of the Book of diversity of Courts written in 21 H. 8. doth not so much as mention any such Court: nor the Doctor and Student who wrote in 23 H. 8. treating of matters of Equity never mentioneth any such Court: nor in any of the Reports of H. 8. or of any other before him, we find any mention made of any such Court. Herein, as in all other things, we have dealt clearly and plainly upon what authorities and reasons we have grounded our opinion: and when we undertook to write, we resolved to publish nothing reluctante conscientia, which we (by Gods special Grace) have performed, without any spark of contradiction, or respect of any private whatsoever: That charge ever sounding in mine ear, that is given to all that take upon them to write, Ne quid falsum audeant, ne quid verum non audeant. And although the Law be such as we have set down; yet in respect of the continuance that it hath had by permission, and of the number of decrees therein had, it were worthy of the wisdom of a Parliament, both for the establishment of things for the time past, and for some certain provision with reasonable limitations (if so it shall be thought convenient to that High Court) for the time to come: Et sic liberavi animam meam.

Error, qui non resistitur, approbatur.

Regula.

CAP.

CAP. X.

The Court of Common Pleas.

By the Statute of Magna Carta cap. 11. it is proved, Quod communia placita non sequantur curiam nostram, sed teneantur loco certo. Habet Rex etiam curiam, & Justitiarios in banco residentes, qui cognoscunt de omnibus placitis, de quibus authoritatem habent cognoscendi, & sine warranto jurisdictionem non habent nec coercionem. *Et paulo post.* Sunt etiam alii Justitiarii *perpetui, certo loco residentes, sicut in Banco, loquelas omnes de quibus habent warrantum terminantes, qui omnes jurisdictionem habere incipiunt præstito sacramento.

Mag. Cart. c. 11.

Bracton lib. 3. fol. 107. b.

*Ut sup. fo. 108. a.

Oustre ceo voilons que Justices demorgent continualment a Westm' ou ailors la, ou nous voudrons ordeiner, a pleader comunes pleas solonque ceo que nous les manderons per nous briefs; issint que des parols deduces devant eux per nous brieves eyent record.

Britton fo. 2. Vide Flets, lib. 2. cap. 2. & lib. 1. cap. 54.

Out of these, three things are to be observed: First, what shall be said communia placita. They are not called communia placita in respect of the persons, but in respect of the quality of the Pleas. Regularly Pleas are divided into Pleas of the Crown, and into Common or Civil Pleas. Pleas of the Crown are Treason and Felony, and Misprision of Treason and Felony, &c. This Court is the lock and key of the Common Law in Common Pleas, for herein are real Actions, whereupon Fines and Recoveries (the Common Assurances of the Realm) do pass, and all other real Actions by Original Writs are to be determined, and also of all Common Pleas mixt or personal: in divers of which, as it appeareth before in the Chapter of the Kings Bench, this Court and the Kings Bench have a concurrent authority.

See the Second part of the Institutes Mag. Cart. cap. 11. Vide 17 E. 3. 50. *Quare incumbravit*, and in the Chapter of the Kings Bench here before.

* Robert Parning the Kings Serjeant at Law 24 July 14 E. 3. was created Chief Justice of England, in which Office he remained until the fifteenth of December following, and then he was made Lord Treasurer of England; In which Office he continued until the fifteenth year of E. 3. when he was made Lord Chancellor of England: and while he was Lord Chancellor, he would come and sit in this Court, being the lock and key of the Common Law, as is aforesaid: and there debate matters in Law of greatest difficulty, as it appeareth in the Report of the year of 17 E 3. fo. 11, 14, 23, 37, &c. knowing assuredly, that he that knows not the Common Law, can never rightly judge of matters in Equity: whereof at that time very few matters were depending before him in Chancery.

* Vid. sup. p. 79.

2. These words of Bracton, [sine warranto jurisdictionem non habent,] well expounded by Britton, that that Warrant is by the Kings Writs. Solonque ceo que nous les manderons per nou brieves. So as regularly this Court cannot hold any common plea in any action, real, personal, or mixt, but by Writ out of the Chancery, and returnable into this Court.

3. That in certain cases this Court may hold plea by Bill without any Writ in the Chancery, as for or against any Officer, Minister, or privileged person of this Court.

Also this Court without any Writ may upon a suggestion grant prohibitions to keep, as well Temporal as Ecclesiastical Courts, within their bounds and jurisdiction, without any Original or Plea depending; for the Common Law hath in those cases a prohibition of it selfe stands in stead of an Original, whereof there be infinite presidents in this Court. And Sir Thomas Egerton, Lord

8 R. 2. Attachment sur prohib. pl. ultimo. 9 H. 6. 61. 10 E. 2. action sur statut. 34.

Lord Chancellor Mich. 7 Jac. Regis called Fleming Chief Justice and all the Judges of the Kings Bench, and Tanfeild Chief Baron, and the rest of the Barons of the Exchequer, of whom the Chancellor demanded whether the Court of Common Pleas had authority to grant any prohibition without Writ of Attachment or plea depending: who upon mature deliberation unanimously resolved, that this Court might grant prohibitions upon suggestions without any Writ of Attachment or plea depending, for the reason aforesaid, and according to a multitude of presidents. The Justices of the Common Pleas were not called, because they had often resolved the point before. So as now this point concerning the jurisdiction of this Court for granting of prohibitions upon suggestions, where there is neither Writ of Attachment, nor plea depending, is in peace, being resolved by the Justices of the Bench and of the Common Pleas, and by the Barons of the Exchequer.

See the second part of the Institutes all these points.

4. This Court upon an Adjournment upon a forein voucher may hold plea likewise upon other forein pleas, and upon general bastardy, Ne unques accouple in loyal matrimony, &c. for none but the Kings Courts, and no inferiour Court shall write to the Bishop. So likewise upon ancient demesne pleaded, &c.

The Chief Justice of the Common Pleas is created by Letters Patents, Rex, &c. Sciatis, quod constituimus dilectum & fidelem E. C. militem, capitalem Justiciarium * de Communi banco. Habendum quamdiu nobis placuerit, cum vadiis & feodis ab antiquo debitis & consuetis. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste, &c.

* So called the Common Bench in respect of the Common Pleas there holden. n.

And each of the Justices of this Court hath Letters Patents. Sciatis quod constituimus dilect' & fidelem P. W. militem unum Justiciariorum nostrorum de Communi banco, &c. But none can be constituted Judge of this Court unless he be Serjeant at Law of the degree of the Coife, and yet in the Letters Patents to them made, they are not named Serjeants.

The Jurisdiction of this Court is general, and extendeth throughout all England.

See the second part of the Institutes, Mag. Cart. cap. 11. 6 E. 3. 52. 39 E. 3. 24. 18 E. 3. stat. 3.

For the Antiquity of this Court see before in the Chapter of the Kings Bench adjoyning thereunto, 6 E. 3. where a fine was levied in this Court 6 R. 1. and in 39 E. 3. a plea in this Court in 1 H. 3. And that I may speak once for all the Justices of the Kings Bench, or of this Court of the Common Bench, that they observe the ancient rule of Law, Nemo duobus utatur officiis, for none of them can take any other Office, or any Fee, or reward but of the King only. And it were behoveful to the Commonwealth and advancement of Justice and Right, and preferment of well deserving men, if the like course were holden concerning all offices, as well Ecclesiastical as Temporal and Civil: and that no man following the example of the reverend Judges should enjoy two offices. For several offices were never instituted to be used by one man.

Term. Trin. Anno 19 E. 1. in. Communi Banco Rot. 146. Rotel. in Thesaur.

The jurisdiction of this Court for punishment of their Officers & Ministers. *Petrus de Luffenham indictatus quod ipse in Curia hic à die Sancti Hillarii in 15 dies Anno regni regis nunc 19, falso et malitiose delevit adjornationem ejusdem essoin' ad diem illum intrati de Com' Rotel. pro Roberto Attehale de South-Luffenham petente & Radulph. de Kirkeby tenent' de placito terre, &c. Et quæsitus qualiter se velit inde acquietare, dicit quod in nullo est inde culpabilis, & de hoc ponit se super juram' de sociis in Cur' hic. Et qui jurati dicunt super Sacramentum suum, quod prædictus Radulphus prædictis die & anno fuit in Cur' hic, & dixit prædicto Petro quod prædictum essonium fuit adjornat', et prædictus Petrus intravit infra Bancum et rotulos de esson', et cum perpendisset quod le aff. fuit appositum molivit ipse policem suum et inde frotavit super le aff. quousq; illud fere omnino delevit ut sic faceret prædictum Robertum amisisse breve suum, &c. Ideo consideratum est quod prædictus Petrus committitur Gaolæ de Fleete custodiend' per unum annum et unum diem pro falsitate et deceptione prædictis, et tunc redimendus*

pro

pro voluntate domini Regis, &c. Et ſciend' quod liberatus fuit Gaolæ die Mercurii prox' ante feſtum Sanctæ Margaretæ virginis hoc anno, &c. Poſtea die Veneris prox' ante feſtum Sanctæ Margaretæ virginis Anno 20. Deliberatus eſt prædictus Petrus, & inhibitum eſt ei, quod nihil habet niſi veſtes pendentes in dorſo, admittitur ad dimid' Marc. per 20. li. Will. de Okeham. Ita tamen quod ſi ad plus ſufficiat, &c. Juſtic' reſervant eis poteſtatem, &c.

*Et quia prædictus Johannes de Upton in Cur' hic recognovit quod hoc anno in æſtate conceſſit quod prædictam defaltam remitteret, & pro illa conceſsione recepit 20. s. in Autumpno, & poſtea ad prædictam tertiam ſeptimanam Sancti Michaelis idem Johannes remiſit prædictam defaltam, per quam prædictus Willielmus recuperaſſe potuit prædictum ten' in fraudem & deceptionem prædicti Willielmi; Ideo ipſe pro falſitate prædicta committitur Gaolæ de Fleet commoraturus per annum & diem, &c. per formam * ſtatuti, &c. Poſtea poſt annum & diem, &c. prædictus Johannes venit & deliberatus eſt ſecundum ſtatutum, &c. & inhibitum eſt ei, &c. & finivit pro una marca.* Mich. 19 E. 1. in Banco Rot. 191. Northampton. W. 1. cap. 29.

Bene examinatur fraus de Brevi in Jur' per Vic' retorn' Termin' Trin' & per quendam alium panellum ejuſdem mutatum & contrefactum, unde contrefactor per Jur' eſt culpabilis, & adjudicatur Gaolæ de Fleete per annum & diem. Et quia ſcriptor ejuſdem brevis licet de falſitate & malitia non fuit particeps, nec aliquid mali feciſſe putavit, &c. Cuſtodiatur, &c. & finem fecit per unam marcam. Eodem Rot. m. 210. London.

Et quia Rogerus de Langeport Attornatus eſt malæ famæ, & defatigavit Cur': Ideo committitur Gaolæ, &c. Et quæſitis rotulis de Indictamentis Attornatorum, &c. compertum eſt qd idem Rogerus indictatus fuit, quod ipſe fuit converſus in Cancell' & ſocius Adæ de Ponte fracto, qui falſavit ſigillum Domini Regis, & falſa brevia compoſuit, &c. Et quæſitus qualiter ſe velit acquietare, dicit quod Clericus eſt, & non poteſt in Curia hic Domino Regi inde reſpondere. Et quia nullus ordinarius ipſum petit, &c. nec ipſe Rogerus aliter ſe velit inde acquietare, Ideo ipſe committitur Gaolæ quouſq; &c. Et mittitur ad Turrim London, &c. Hil. 20 E. 2. in Banco Rot. 109. Northampton.

The Officers of this Court are many, viz. Cuſtos Brevium, tres Prothonotarii, three Prothonotaries: Clericus Warrantorum, Clerk of the Warrants: Clericus Argenti Regis, Clerk of the Kings Silver: Quatuor Exigendarii, Exigenters: Quatuordecim Falazarii, Filazers: Clericus Juratorum, Clerk of the Juries: Clericus Eſſoniatorum, Clerk of the Eſſoines: Clericus Utlagariorum, Clerk of the Outlawries: this belongs to the Office of the Attorney General, who exerciſeth it by Deputy.

In former times great abuſes have been by Attorneys of this Court, by ſuing out a judicial Proceſs without any Original; which when it hath been found out, it hath been ſeverely puniſhed; for many inconveniences thereupon do follow. For example, in 20 H. 6. an Attorney of the Common Pleas had made a Capias directed to the Sheriff of York; whereof there was no Original; at which day of the return an Attachment was awarded by the Court againſt the Attorney to anſwer the deceipt, whereupon he was taken and examined, and confeſſed it, and thereupon by the Court he was committed to the Fleet, impriſoned for a moneth, and that his name ſhould be drawn out of the Roll of Attorneys, and never ſhould be Attorney in this Court or any other, and thereunto he was ſworn. Note, the ſeverity of this Judgement doth ſhew the hainouſneſs of the offence. 20 H. 6. 37. & W. 1. cap. 29.

An

17 E. 3 51, 52. Nota, he may be punished for the crime, & the party grieved may have his Action.

An Attorney sued out an Habere facias seisinam against one, by force whereof the true Tenant was put out of his freehold; where in truth there was no Record of any recovery: the party grieved brought an action of Deceit against the Attorney, and recovered damages, and the Attorney imprisoned.

Pasch. 20 E. 1. in Banco, Rot. post 135.

Memorandum quod Magister Johannes Lovell qui fuit Custos Rotulorum & Brevium Domini Regis de Banco per manus suas proprias liberavit Johanni Bacon Clerico de mandato Domini Regis in hæc verba. Edwardus, &c. Dilecto Clerico suo Johan' Lovel salutem. Cum commiserimus dilecto Clerico nostro Johanni Bacon' custod' Rotulorum & Brevium nostrorum de Banco; Habendum quamdiu nobis placuerit: Vobis mandamus quod eidem Johanni Rotulos & Brevia prædicta quæ sunt in custodia vestra ex commissione nostra per Chirographum inde inter vos & ipsum consiciend' sine dilatione liberetis custod' in forma prædicta. T. meipso apud Stebenheth 17 Aprilis Anno Regni nostri 20.

Super quo prædictus Johannes liberavit dicto Johanni Bacon Rotulos & Brevia de Termino Sancti Michaelis Anno 17, usque hunc Terminum, & similiter Rotulos de Esson'. Et scripta dedicta & suspecta cum talleis dedit', una cum compotis dedit'. Ac etiam 160 rot' finium, duas ligulas de recordis sine die, & 14 Certificat' Episcoporum.

CAP.

CAP. XI.

The Court of Exchequer.

The Authority of this Court is of Original jurisdiction without any Commission. Of this Court Britton speaking in the Kings person saith, [a] Volons nous que a nous Eschekers a Westm' & ailors eyent nous [b] Treasorers, & nous [c] Barons illonques Jurisdiction & record de choses que touchent lour office a oier & determiner touts les causes que touchent nous debts, & auxi a nous fees, & les incident choses, sans les queux tiels choses ne purront estre tries, & que ilz eyent power a conuster de detts que lon doit a nous dettors per ou nous puissons pluis tost approcher a nostre dett.

[d] En droit des purprestures voilons nous que le noisances soient oustes aux costages des purprestours, & les sufferables soient prise in nostre maine a la value per an soit inrolle, et solonque le discretion des Treasorers & des Barons de nous Eschequers soient arenees a fee farme a eux que pluis voilent doner.

[e] Et soit auxi enquis de nos customes de quits & de leynes que les ount coilles, et combien les coillours ount bien suffert de passer de sackes de leyne sauns payer custome, et combien eit valu la custome chescun au en chescun mannere de custome a nous appurtenant & ceux articles soient termines a nostre Escheker selonc la discretion de nos Barons.

See the Customes of Normandy, cap. 5. & 6. touching the Exchequer there, both of another Jurisdiction, and of other Judges, and Officers, then our Court of Exchequer is.

Lescheker est un place quarre que solement est ordeine pur le prou le roy on deux Chivaliers. 2. Clerks, ou 2. homes, lit' sont assignes pur Oier & Terminer, les torts faits al roy & a sa corone en droit des ces fies & ces franchises, et les accounts des Bailiffs, et des receivors de deniers le roy & des administrators de ces biens per la view de une Soveraign quest *Treasorer de Angliterre*. Les dieux Chivaliers soloient estre appeles deux Barons pur afferer les amerciaments de Counties, & des Barons & des tenants counties & baronies cy que nul ne fuit affere forsque per ces Piers.

A celle place estoit assigne un Seale ove garden pur fair ent acquitance de chescun payment que avoir le voloit, & de sealer les breves & les estrets south cere verte issant de celle place pur le prou le roy. En celle place sont auxi Chamberleins et plusors auters ministers que ne touch my molt a la ley.

Ordeine fuit Leschequer in manner come ensuist, & les paines pecuniels de Countees & Barons en certein, et auxi de tenants, Counties et * Baronies dismemblies et que ceux amerciament fuissent affered per les Barons del Eschequer, et que lein envoiast les estreets de lour amerciaments al Exchequer ou que ilz fuissent amercies en la Court le roy.

[f] Ouster ceo nul Common plea ne soit deformes tenus en Leschequer encounter la form de la grand Charter.

[g] Fleta (for Bracton treateth not of this Court) saith. Habet & Rex Curiam suam & Justiciarios suos residentes ad Scaccarium. And this is all I find in him.

This Court is divided into two parts, viz. judicial Accounts, called Scaccarium computorum, and into the receipt of the Exchequer. [h] Una origo utriusque Scaccarii, superioris scilicet, & inferioris, sed quicquid in superiori computatur, in inferiori solvitur.

Before we observe any thing out of these ancient Authors and Acts of Parliament, it shall be necessary to set down the great Officers, the Judges, and

[a] Britton fo. 2. b.
[b] Note, Treasurers in the plural number.
[c] Of ancient time they were Barons and Peers of the Realm, lib. nigro Scaccar. parte 1. ca. 4. See the 14. chap. of Mag. Cart. and the exposition of the same.
[d] Et fo. 29. b.
[e] Et fol. 38. b.

Mirror c. 1. Sect. 14. De la pace del Eschequer.

Et c. 1. Sect. 3.
* This was in respect of the tenure, for all Earldomes and Baronies were holden in Capite. 20 E. 3. ass. 120. 26 ass. 37.
[f] Artic. sup. Cart. cap. 4. 28 E. 1. Stat. de Rotland. 10 E. 1. Reg. 187.
[g] Fleta li. 2. c. 2.
[h] Ocham.

other Officers and Miniſters of this Court, as they be at this day.

Fiſcus in one ſence is taken for the Exchequer, properly it is Sporta a Hamper, wherein the confiſcations, ſeſſements, and other moneys of the King were carried into the Treaſury.

¶ *The Officers of this Court.* Rot. Par. 13 R. 2. nu. 6. & 7.

1. Dominus Theſaurarius Angliæ: which Office he hath at this day by the delivery of a white ſtaffe, at the Kings will and pleaſure. In former times he had this great Office by delivery of the keys (golden keys) of the treaſury: when treaſure failed, the white ſtaffe ſerved to reſt him upon it, or to drive away importunate ſuiters.

Vide Rot. Pat. 23 E. 3. part. 1. for this office. * Math. Paris 18 H. 3. p. 391. & 19 H. 3. anno Dom. 1234. And to was Tho. Wimondham. anno dom. 1258. 50 H. 3.

2. Theſaurarius Scaccarii, anciently called Arcarius ab arca, and this Office he hath by Letters Patents. For both theſe Offices he hath 365 l. fees, robes out of the Wardrobe 15 l. 7 s. 8 d. In toto 380 l. 7 s. 8 d. * Hugo Puteſhul was firſt Treaſurer of the Exchequer, and after Summus Theſaurarius.

Cancellarius Scaccarii, that keepeth the Seal. See Pl. Com. 321. Leſchequer ad Chancelor & Seale, & les Brev. uſuall in le Chancery in Leſchequer, &c. iont pluis ancient que le Regiſter. See of the Chancellour of the Exchequer hereafter in the Court of the Exchequer Chamber.

Capitalis Baro & Barones alii.

Subthesaurarius Scaccarii, anciently called Locum tenens Theſaurarii. Petrus de Willebye locum tenens Theſaurarii, Anno 30 E. 1. et plures alii: He nameth the two praiſers of all the goods ſeiſed or not cuſtomed, and ordereth whether the party ſhall have them at the price or not, he appointed the Steward, Cook and Butler for the proviſion of the Star-Chamber: he in the vacancy of the Treaſurer doth all things in the Receipt, that the Treaſurer doth. In the ſtatute of 39 El. cap. 7. and 43 El. in the Subſidy of the Clergy he is called Under-Treaſurer of England. Concerning this matter I find of Record this Writ following.

Rot. Brevium. 30 E. 2. a Archbiſhop Treaſurer of the Exchequer. b Nota in dicto Scaccario. c Under-Treaſurer. d Treaſurerſhip of the Exchequer granted by Letters Patents. Cuſtos regni.

Edwardus Rex Angliæ & dominus Hiberniæ Baronibus & Camerariis ſuis de Scaccario ſuo, Salutem. Quum pro eo quod [a] venerabilis pater W. Archiepiſcopus Eborum nuper Theſaurarius Scaccarii prædicti; circa diverſa negotia in partibus borealibus eſt occupatus, quo minus intendere poſſit ad ea quæ ad officium illud in [b] dicto Scaccario pertinent exercenda, conſtituerimus venerabilem patrem Johannem Wintonienſem Epiſcopum, [c] tenentem locum Theſaurarii Scaccarii prædicti, quicquid de officio illo aliter duximus ordinandum, percipiendo in eodem officio (dum illud ſic tenuerit feodum) conſuetum, [d] prout in literis noſtris patentibus prætato Epiſcopo inde confectis plenius continetur. Vobis mandamus quod ipſum Epiſcopum ad officium admittatis & ei in his quæ ad officium prædictum pertineant intendatis in forma prædicta. Teſte Edwardo filio noſtro primogenito Cuſtode regni noſtri, apud Hereford Sexto die Novembris. Anno regni noſtri viceſimo.

The Office and duty of the Lord Treaſurer of England doth appear by his Oath, which ſtandeth upon eight Articles.

Vide, the Lord Chancellors oath in the Chapter of the Chancery.

1. That well and truly he ſhall ſerve the King and his people in the Office of Treaſurer.

2. That he ſhall do right to all manner of people, poor and rich, of ſuch things as concern his Office.

3. The Kings Treaſure he ſhall truly keep and diſpend.

4. He ſhall truly counſel the King.

5. The Kings Counſel he ſhall * lepn and keep.

* Lain, is an old French word, to hide.

6. That he ſhall neither know nor ſuffer the Kings hurt, nor his diſheriting, nor that the rights of the Crown be decreaſed by any mean, as far forth as he may let it.

7. And if he may not let it, he ſhall make knowledge thereof clearly and expreſſy to the King with his true advice and counſel.

8. And he ſhall do and purchaſe the Kings profit in all that he may reaſonably do: which in effect agreeth with the oath of the Lord Chancellor, as you may read ubi ſupra.

Imprimis

Imprimis poſt ſigillationem patentium de illo officio vocetur in cur' Cancellariæ, coram domino Cancellario genibus flexis facit ſacramentum, ut ſuperius ſcribitur, & deinde ſigillatum erit breve regis directum Baronibus & Camerariis de Scaccario de attendenc' recitans effectum dictarum literarum patentium. Et inde receſſerit dictus dominus Cancellarius ad Curiam Scaccarii & ibidem (dicto Theſaurario ſtante) ad barram legantur literæ Patentes prædict' & ſimiliter prædictum breve, & vocatus eſt idem Theſaurarius ad locum ſuum per dictum dominum Cancellarium accipiens ceſſum, & liberatæ erunt tunc & ibidem claves officii Theſaurarii, & omnes officiarii ſub ſe recedent cum ipſo Theſaurario in Theſaurum & dantes ei attendenc'. This we tranſcribed de verbo in verbum in eiſdem verbis. Forma conſtitutionis Theſaurarii Angliæ.

The Lord Treaſurer of England hath alſo granted to him by Letters Patents under the Great Seal, Theſaurariam Scaccarii Regis Angliæ, which of ancient time was a diſtinct office by it ſelf. The office of the Treaſurer of the Exchequer did principally take care of the grein war, fées, and tenures, as it is ſaid; he hath alſo with the Barons the cuſtody of Records, as by the inſuing Record appears. Vid. Rot. Cartarum anno 17 H. 3.

In an Information of intruſion in the Exchequer againſt Brace, judgement was given for the Queen againſt Brace, who brought a writ of Error directed to the Lord Chancellor and Lord Treaſurer, and they made a warrant under their ſeals to the Barons to bring the Record before them. And Manwood Chief Baron objected againſt both the writ and the warrant, for that the ſtatute of 31 E. 3. c. 12. that giveth this writ of Error is generall, that the Lord Chancellor and Lord Treaſurer ſhall cauſe to come before them the record and proceſſe of the Exchequer, and in as much as no ſpeciall writ was given by the ſtatute, therefore the writ ought to be directed to them that have the keeping of the record according to the courſe of the Common law, *And for that the Treaſurer of the Exchequer and Barons have the keeping of the Records of the Exchequer, the writ of Errour ought to have been directed to them, and that the Lord Chancellor and Lord Treaſurer of England are Judges in this caſe, and not the Treaſurer of the Exchequer. And upon ſearch of preſidents all the writs of Error from the making of the ſtatute untill 7 El. were directed to the Treaſurer of the Exchequer, and Barons to bring the Record before the Lord Chancellour and Lord Treaſurer: but in 7 El. and ſince divers writs have been directed as this writ was, &c. But it was reſolved by the Lord Chancellour, Lord Treaſurer, and the two Chief Juſtices Aſſiſtants, that the writ ought to be directed to the Treaſurer of the Exchequer and Barons that have the Record in their cuſtody according to the ancient courſe and preſidents, and thereupon this writ abated. Hil. 25 El. Coram Baronibus

Note the ſtatute ſpeaketh of the Chancellor and Treaſurer generally, which is intended of the Treaſurer of *England, in digniori ſenſu.* See lib. 1 fo. 11. Sir *William Pelham's* caſe.

* Note hereby it clearly appeareth that the Treaſurer and Barons of the Exchequer are keepers of the Records judiciall of the Exchequer. Vide 9 E. 3.

Here Four things are to be obſerved. 1. That albeit the Barons, as hath bin ſaid, are the ſole Judges, yet the Treaſurer of the Exchequer is joyned with them in keeping of the Records, whereof the Barons are Judges, for they are parcell of the Kings Treaſure. 2. That writs of Error are to be directed to them that have the cuſtody of the Record wherein any judgement is given; as a writ of Error to reverſe a judgement in the Court of Common Pleas, ſhall be directed to the Chief Juſtice onely who hath the cuſtody of the body of the Record wherein the judgement is given, but the originall writ and warrant of Attorny are not in his cuſtody. 3. That albeit the Lord Treaſurer is alſo Treaſurer of the Exchequer, yet the writ of Errour is directed to him as Treaſurer of the the Exchequer, and the Barons, to have the Record before himſelf as Treaſurer of England and the Chancellour. 4. That the making of the ſtatute of 31 E. 3. that giveth the writ of Error, the offices of Treaſurer of England and the Treaſurer of the Exchequer were in ſeverall hands, as by the writs of Error brought ſon after appeareth. Before the ſaid ſtatute of 31 E. 3. the Errors in the Exchequer were ſometimes examined in Parliament, and ſometimes before Commiſſioners by force of the Kings writ under the great Seal. Par. 18 E. 3. n. 40 &c. Vid. 1 R. 2. nu. Sir *William de la Pole's* caſe. Mich. 33 & 34. E. 1. Coram *Rogero* de Hegham & aliis Juſticiariis, &c.

It was petitioned in Parliament in 22 E. 3. nu. 25. that erroneous judgements

in the Exchequer might be reversed in the Kings Bench, but it succeeded not.

Vide Term. Pasch. 14 E. 3. a Writ directed to the Treasurer and Barons calling to them such Justices as they should think fit to examine the Record, &c. of the judgement in the Exchequer, &c. for the Countesse of Kent against the abbot of Ramsey, upon which judgement the Abbot brought his writ of Error. Fitzherbert for another purpose abridgeth the case, Tit. Scire fac' 122.

Hil. 11 E. 3. in libro rubeo in Scaccario fo. 322. the case of John de Leceſtre Chamberlain of the Exchequer, a notable president to the like effect, Lege, quia optime.

Nota in the Act of 31 E. 3. that is called the Councell Chamber, which now is called the Exchequer Chamber: because there was the assembly of all the Judges being the Kings Councell for deciding of matters in law.

1 part of the Institutes, cap. Grand Serjanty Sect. 153.

¶ The Chamberlains of the Exchequer. For these officers see in the first part of the Inst. lib. 2. cap. Grand' Serjeanty. Sect. 153. the Office mentioned in the Letters Patents is, Officium unius Camerariorum de Receipt' Scaccarii, sive officium unius Camerariorum de Scaccario, and is granted for term of life to be exercised by him or his Deputy. To this office belongs the office of one of the Door-keepers of the Receipt,

¶ Contrarotulator. Of so great regard in the right use of the Pipe, as there is a Controller thereof, which no office in this Court hath. And the Chancellor of the Exchequer is the Controller of the Pipe.

¶ Rememoratores 3. viz. Regis Thesaurarii, & Primorum fructuum.

¶ Clericus Pipæ. Of this Officer somewhat is necessary to be said. The originall institution of this Court was taken from a Conduit or conveyance of water into a Cistern: for as water is conveyed from many Fountains and Springs by a Pipe into a Cisterne of a House, and from thence into the severall offices of the same: so this golden and silver stream is drawn from severall Courts, as fountains of Justice, and other springs of Revenue reduced and collected into one Pipe, and by that conveyed into the Cistern of his Majesties Receipt, &c. Therefore all accounts and debts to the King are delivered and collected out of the offices of the Kings Remembrancer, and Treasurers Remembrancer, &c. and drawn down and put in charge in the Pipe. So as whatsoever is in charge in this Roll or pipe, is said in law to be duly in charge. The Clerk of the Pipe in the Patent of his office, is called Ingrossator magni Rot. in Scaccario.

See the stat. of 5 R. 2. c. 14. stat. 1. 26. Ass. p. 60.

Duly in charge.

The Annuall or great Roll.

Also the Treasurers Remembrancer is by his office to charge and enter from the Originall into the Annuall, otherwise called the Great Roll, all fee-farme rents and other rents whatsoever upon leases of lands within the survey of this Court: and whatsoever is in charge in this Roll is said to be duly in charge. Also he ought to keep another Roll, commonly called a Roll of reversions, as of grants of lands and offices in taile, for life or years absque compoto, aut aliquid inde reddendo, to the end, as often as need shall require, Writs may be granted to enquire whether the issue be spent, the lessee dead, &c.

Duly in charge. The Roll of revenues.

5 Auditors. 1 H. 7. 4 a. 7 El. Dier. 238. b Sir Rich. Lees case.

¶ There be five Auditors of the Kings revenues within the survey of this Court, and their office is to take the accounts of the Kings receivers, Sheriffs, Escheators, Collectors, and Customers, and to audite and perfect them. But an Auditor cannot allow any license or grant for the Auditor knoweth not whether the license or grant be good or no, but upon petition it ought to be allowed by the Barons who know the Law, & sic de similibus. Neither can the Auditor put any thing in charge, for his office is (as hath been said) but to take and audite accounts: for the words of the Patent be, Concessimus B. officium unius Auditorum Scaccarii nostri quod I. S. nuper habuit & occupavit: Habendum & tenendum prædictum officium prefato B. quamdiu se bene gesserit in eodem per se vel sufficient. deput. suum, May though the Barons do order upon sight of any Record or evidence, that any thing shall be put in charge, this is used to be done to bring it in question, but it is not in law accounted to be duly in charge (untill it be recovered, received, and accounted for of Record; for it is not judicially done,

Quamdiu se bene gesserit.

done because it may be done in the absence of the party. Neither can any Auditor make a Super, but of that hath bæn received and accounted for before.

¶ Auditor of the Prests, doth take and audite the accounts of Ire'and, Barwick, the Mint, and of any money imprested to any man.

¶ Auditor of the Receipts. First, he is a kind of Filazer, for he fileth the Tellers Bills and entreth them. Secondly, he is a Remembrancer, for he giveth to the Lord Treasurer a Certificate of the mony received the wæk before. Thirdly, he is an Auditor, for he maketh Debentures to every Teller before they pay any money, and taketh and auditeth their Accounts. Besides all these he kæpeth the Black book of receipts, and the Lords Treasurers key of the Treasury, and sæth every Tellers money locked up in the new Treasury.

¶ Forinsec' Oppositor, the Forein Opposer, he doth oppose all Sheriffs and Bailiffs of Liberties of their græn war: Under these words [Green wax] are included Fines, Issues, and Amerciaments, Recognizances for the peace, Recognizances for appearance in any other Court, and good behaviour, and such like incertainties certified in several Streats into the office of the Lord Treasurers Remembrancer, who delivereth the same to the Clerk of the Extreats to be put into Proces. And because the Extreats annexed to the Writ are under a Seal in græn war, they are vulgarly called Græn war. But Felons goods, Waifes, Straves, Outlaws goods, Deodands, and such like, are within the Sheriffs Accounts, with which the Escheator was wont to deal. Green wax. 42 E. 3. cap. 9. 7 H. 4. cap. 3.

¶ Clericus Extractorum, Clerk of the Extreats, his office is partly touched before.

Here it may be demanded what the meaning of these words (of Effreats that sowne not) is. The Act of 4 H. 5. cap. 2. being original in French, is in proprio idiomate, *Des Eſtreats nient ſovvenn*, which by turning the two single v v into a w was first made sowenn, and afterwards sowne. Now sovvenn properly signifieth to be remembred, and such casualties as are not to be remembred run not in demand, that is, are not levable. 4 H. 5. cap. 2.

¶ Clericus Nihilorum maketh a Roll of all such summes as the Sheriff upon Proces for the Græn war return Nihil, and delivereth that Roll into the office of the Lord Treasurers Remembrancer to have execution done of it for the King. See the Statute of 5 R. 2. cap. 13. stat. 1. concerning these returns of Nihil and the discharge thereof. See the stat. of Rotel. vers. finem.

¶ Clericus Placitorum, Clerk of the Pleas. In this mans office all the officers and privileged persons in this Court are to sue and be sued. Of this matter more hereafter.

¶ Mareschallus, Marshall. To this officer the Court committeth the kæping of the Kings debtors during the sitting of the Term, to the end they may provide to pay the Kings debts, or else to be further imprisoned. Such offices as are found Virture officii, and brought into the Exchequer, are delivered to him, to be delivered over to the Lord Treasurers Remembrancer. He also appointeth Auditors to Sheriffs, Escheators, Customers, and Collectors for taking their accounts. Stat. de 61 H. 3. stat. 5.

¶ Clericus Summonitionum. Clerk of the Summons.

¶ Deputati Camerarii duo, called Under chamberlains of the Exchequer: they cleave the Tallies written by the Clerk of the Tallies, and read the same, that the Clerk of the Pell and the Controllers thereof may sæ their entries be true: they also search for all Records in the Treasury.

¶ Secundarii Rememoratoris Regis duo.

¶ Secundarii Rememoratoris Thesaurarii duo.

¶ Secundarii Pipæ duo.

In the other part of the Exchequer which is called the Receipt. Concerning the course of the Receipt of the Exchequer, sæ Rot. Claus. 39 E. 3. m. 26. Rot. claus. 39 E. 3. memb. 26.

¶ The two Chamberlains. Of the duty of these Officers sæ in the first part of the Institutes. Vide 51 H. 3. stat. 3. 14 E. 3. cap. 14. First part of the Instit. Lect. 153.

¶ Clericus Talliarum. There be two kind of Taills or Tallies, the one is called

called a Tally of [a] debt, and the other is called a Tally of [b] reward; of both which you may read in divers Acts of Parliament.

[a] 1 R. 2. cap. 5.
[b] 27 H. 8. c. 11. 13 H. 8. cap. 16. 2 E. 6. cap. 4.

¶ Clericus Pellis, Clerk of the Pele. His duty is to enter every Tellers bill into a Roll, called Pellis receptorum. His duty also is to enter in another Roll payments called Pellis exitus; and by what warrant the payment was made.

¶ Numeratores, 4 Tellers. The office of a Teller consisteth in four duties. 1. To receive monies due to the King. 2. To give to the Clerk Pellis receptorum a bill thereof, whereby he may be charged. 3. To pay to all persons monies by Warrant of the Auditor of the Receipt. 4. They make yearly and weekly books of their receipts and payments, which they deliver to the Lord Treasurer.

¶ Junctores talliorum duo.
¶ Deputati Camerarii duo.
¶ Custos Thesauriæ.
¶ Tabellarii Ordinarii 4.
¶ Scribæ duo.
¶ Officiarii Decimarum & Primitiarum.

Parl. 5 R. 2. c. 16. stat. 1.

By the statute of 5 R. 2. for making a Commission in the Exchequer, the Clerk shall not take for his fee above 2s. only; nor for a Record of Nisi prius with the Writ but 2s. only, as afore this time was wont to be done and used.

Vid. in the Office of the Kings Remembrancer. Mich. 26 H. 6. Rot. 46.

See in the end of a book containing many little books, as Fitzherberts Justice of Peace, Carta Feod' &c. the fees of the Offices of the Exchequer.

But it shall be necessary to set down the duties of the Kings Remembrancer, and of the Lord Treasurers Remembrancer.

The duty of the Kings Remembrancer.

The office of the Kings Remembrancer consisteth principally in eight duties. His first is to write Proces against Collectors of Customes, Subsidies, and Fifteens, 2. He entreth in his Office all Recognizances before the Barons, and taketh bonds for any of the Kings debts, for observing of orders, or for appearances, and his duty is to make out Proces upon every of them. 3. He maketh Proces upon Informations upon penal statutes, all which Informations are entred in his office. 4. He maketh Bills of composition upon informations upon penal statutes. 5. He taketh the Estalment of debts and entreth them. 6. The Clerk of the Star-chamber certifieth into his office the fines set in the Star-chamber; this officer maketh a Record thereof, and draweth them down into the Pipe. 7. Into this office ought to be delivered to be safely kept, all Assurances, Conveyances, and Evidences, whereby any Lands, Tenements, Hereditaments, or other things are granted to the King. 8. Also there is a Court of Equity holden in the Exchequer Chamber by English Bill: all the Bills and proceedings thereupon are entred into the office of this officer. See the statute of 5 R. 2. cap. 14 stat. 1.

The duty of the Lord Treasurers Remembrancer.

The office of the Lords Treasurers Remembrancer principally consisteth in eight duties. 1. His duty is to preserve the broad-spreading and fruitfull tree of Tenures so many wayes beneficial to the Crown, and the jurisdiction of the Court of Wards, which sometimes were within the survey of this Court, but since taken from it. He maketh out Proces for the Kings revenue by reason of the tenures of the King (Wards excepted.) 2. He maketh Proces of Fieri fac' and Extent for debts due to the King either in the Pipe, or with the Auditors. If a Clerk of this Court make any Writ of Proces for a debt which hath been paid and the Tallies thereof joyned and allowed, he shall lose his office, and be imprisoned untill he hath satisfied the party so much as by the discretion of the Treasurer and Barons he is endamaged. 3. He maketh Proces against all Sheriffs, Escheators, Receivers, and Bailiffs, to bring them to account. 4. To make an Entry of Record, whereby it appeareth whether Sheriffs and other Accountants pay their proffers due at Easter and Michaelmas. 5. He maketh another Entry of Record, to the end it may be known whether Sheriffs and other Accountants keep their days of prefixion. 6. The Green-wax is certified into his office, and are by him delivered to the Clerk of the Estreats, as

See hereafter in the Chapter of the Court of Wards. 1 R. 2. cap. 5.

hath

hath been said. 7. There ought to be brought into this Office all the accounts of Customers, Controllers, and all other accounts, to make thereof in this Office an entry of Record, to avoid all delay and concealment in the Kings business. 8. See the Statute of 5 R. 2. cap. 14. stat.

Concerning these Officers, there is an excellent Law made in 5 R. 2. whereby it is enacted, [That from henceforth no Baron of the Exchequer, Clerk of the Pipe, Remembrancer, Opposer, Controller, Clerk of the Pleas, and Clerk of the Forein summons, Auditor, or other chief Officer of the Exchequer be made, unlesse he be well learned in the Law, or otherwise very skilful in the courses and usages of the Exchequer.] Here is the heart-string of this Court: for albeit the laws and orders thereof be most excellent, yet the benefit thereof consists in good and skilful Officers and Ministers. Rot. Parl. 5 R. 2. no. 105. & worthy to be printed.

These things being understood, let us now perule our ancient Authors, for out of the old fields must come the new Corn.

Et nous Treasorers. Hereby it appeareth being in the plural number, that there be two Treasurers, whereof we have spoken before. There is also a Treasurer of the Kings Chamber, Thesaurarius Cameræ Regis, which is not accountable in the Exchequer, but to the King himself. If the King appoint some whom he trusts to take his account, this is esteemed to be done by the King himself, Qui per alium facit, per ipsum facere videtur. Rot. Parl. 3 H 6. nu. 47.

¶ Et nous Barons illoeques jurisdiction. * All judicial proceedings according to law in the Exchequer, are coram Baronibus, and not coram Thesaurario & Baronibus: But the Court of Equity holden in the Exchequer Chamber, is holden before the Lord Treasurer, Chancellor, and Barons. Of this Court we have given a touch before, and shall treat more hereafter. Note the judicial proceedings before the Barons are in Rolls, but they are not numbred as in other Courts. 28 H 6. 11, 12. 5 R. 2. c. 9 stat. 2. 20 E. 3. cap. 2. *The Court of Equity in the Exchequer Chamber.* See hereafter, c. 13. p. 118. Rolls not numbred.

The Oath of the Barons of the Exchequer expressing their duties consisteth upon ten Articles. 1. That well and truly he shall serve in the Office of Baron of the Kings Exchequer. 2. That truly he shall charge and discharge all manner of people, as well poor as rich. 3. That for highness, nor for riches, nor for hatred, nor estate of no manner of person or persons, nor for any deed, gift, nor promise of any person the which is made to him, nor by craft, nor by ingen he shall let the Kings right. 4. Nor none other persons right he shall disturb, let or respite contrary to the Laws of the Land. 5. Nor the Kings debts he shall put in respite, where that they may goodly be levied. 6. That the Kings need he shall speed before all others. 7. That neither for gift, wages, nor good deed, he shall † layne, disturb, nor let the profit or reasonable advantage of the King in the advantage of any other person, nor of himself. 8. That nothing he shall take of any person for to do wrong or right, to delay or to deliver, or to delay the people that have to do before him; but as hastily as he may them goodly to deliver without hurt of the King, and having no regard to any profit that might thereof to him be therein, he shall make to be delivered. 9. Where he may know any wrong or prejudice to be done to the King, he shall put and do all his power and diligence that to redresse; and if he may not do it, that he tell it to the King, or to them of his Council, which may make relation to the King, if he may not come to him. 10. The Kings Counsel he shall keep and layne in all things. *The Oath of the Barons.* See the Statute of 20 E. 3. cap. 2. † Layne, *i.* to conceal or hide.

In the Exchequer at the Suit of the King in an Information of intrusion of lands, wherein issue is joyned, which may be tryed by the Country; yet where the King hath a direct Record or Records for the manifestation of his title, the Kings Attorney may pray that the trial may be by Records, whereof you may read a notable case, Mich. 27 & 28 Eliz. in the Exchequer, where the case was, That in an Information of intrusion into certain lands, &c. against Savil, the issue was, Whether certain Lands belonged to a house or no? And upon a trial by Record judgment was given against Savil. Afterwards Savil the Defendant died, and his sonne and heir brought a Writ of Error in the Exchequer Chamber, where it was holden, that this kind of Tryal by Records was before the Statute of 33 H. 8. 51. Trial by Record. Mich. 27 & 28 El. in Scaccar. inter le roigne & Savil. 33 H. 6. 10, 11.

For trial by Records, vid. Mich. 32 & 33 E.1. coram Rege. Robertus Archiep. Cant. &c. Hill. 8 E.2 coram Rege, Cornub. Walterus Epiſc. Exon, &c.

33 H. 8. cap. 39. the words whereof be, That all and every triall and trials of all manner of Suits, Bills, Plaints, Informations, &c. and Iſſues in the Court of Exchequer, ſhall be made and tried by due examination of Witneſſe, Writings, Proofs, or by ſuch other wayes or means, as by the Court of Exchequer ſhall be thought expedient; and that every ſuch Judgment, Decree or Decrees, ſhall be good, perfect, and in full ſtrength, force, and effect in Law to all intents, conſtructions, and purpoſes. And yet, notwithſtanding the generality of theſe words, if a Judgement be given upon a triall by Record, a Writ of Error doth lye thereupon; becauſe, as to that point, this Act is but in affirmance of the Common Law.

11 E.3. nu. 17.

It was petitioned in Parliament, that remedy might be found, that no Accountant in the Exchequer do run in iſſues before he be warned. The Kings anſwer was, The Proces therein ſhall be firſt a *Venire fac.* then a *Diſtringas*, and after a Writ out of the Chancery to the Treaſurer and Barons.

51 E.3. nu. 27.

It was alſo petitioned in Parliament, That ſuch as owe to the King may upon their account be allowed of all ſuch loans, as be due unto them, or to any of his Anceſtors: whereunto the King anſwered, The Treaſurer and Barons ſhall make allowance of due debts.

So great care was taken by the Court of the Exchequer (which is the center of the Kings Revenue and profit) that no man might ſue or plead for their diſcharge of any debts, account, or other demand, without having expreſſe commandement by Writ or Letter of the Great Seal. But by the ſtatute of 5 R.2. it appeared, that the parties ought to have been received thereunto, according to the Law, without any ſuch Writ or Letter: and that the obtaining of ſuch Writs or Letters was to the great diſquietneſſe, miſchief, and delay of the parties impeached, and no advantage to the King. And where before that time no plea could be allowed in the Exchequer by Attorney, but in proper perſon: by the ſaid Act it is ordained, that the Barons of the Exchequer ſhall have full power to hear every anſwer of every demand made in the ſame: ſo that every perſon that is impeached or impeachable of any cauſe by himſelf or by * any perſon, ſhall be received in the Exchequer, to plead, ſue, and have his reaſonable diſcharge without carrying or ſuing any Writ or other commandement whatſoever. So as by this Act both theſe miſchiefs are provided for. And out of this Act this general concluſion may be juſtly collected, that ſuch courſe of the Exchequer as tendeth to the diſquietneſſe, miſchief, and delay of the Subject, and no advantage to the King, is againſt Law, and ought not to be allowed. And it is to be obſerved, that Britton doth joyn in this clauſe, the Treaſurers and Barons.

5 R.2. cap. 9. Courts of the Exchequer againſt law, &c.

* That is, by his Attorney: and therefore the admittance of an Attorny in theſe caſes, is not *ex gratia curiæ* (as is ſaid in the common pleading) but *ex debito juſtitiæ.*

a And into the Exchequer Chamber or the like, all caſes of greateſt difficulty in the Kings Bench or Common Pleas, &c. are, and of ancient time have been adjourned and there debated, argued, and reſolved by all the Judges of England, and Barons of the Exchequer. See more of this Court infra cap. 13. pag. n. 121.

a *Tempore Regis Johannis*, the Abbot of Crowlands caſe. *Juſticiarii hæc audientes urgentes de Banco, cum Baronibus ſcaccarii & Domini Regis plelibus illic reſidentibus colloquium, &c. Rot. 15 Scace. de Crowland. Pl. Coronæ coram Juſtic. Itinerantibus apud Turrim London. An.* 4 E.1. *Rot. Claus.* 13 E.1. *infra p.* 121. *Bill.* 32 E.1. *Coram Rege irrotul.* Mic. 6 E.2. *in Communi Banco* Deſpencers caſe. Mic. 11 E.2. *Coram Rege*, caſe of the Burgeſſes of Great Yarmouth.

4 H. 6. 11. b. 5 E. 4. 7. 7 E. 4. 14. b. 16. b.

¶ A Oier & Terminer touts les cauſes que touchont nous debts. Here debts are taken for all manner of duties due to the King.

¶ Et auxi a nous fees. Here the tenures of the King (whereof we have ſpoken before) are expreſſed. And albeit there be many tenures of the King both in Capite, and by Knights Service of ſome Honour or Manno, &c. yet there be many more by the error or negligence of Sollicitors, by ſuing out of licenſes or pardons of alienation, where in troth the Manors or Lands were not holden of the King in Capite.

Mich. 39 & 40 El. *Per touts les Juſtices.*

But Mich. 39 & 40 Eliz. it was reſolved by all the Judges of England, when I was Attorney-General; That if a man purchaſe a Licenſe or Pardon, and after

after being called into the Exchequer do plead the license or pardon, that neither the purchase nor pleading is any conclusion, but the tenure may afterwards upon another alienation be traversed or denied. For the words of the license or pardon be, Quæ de nobis tenentur in capite (ut dicitur;) for neither the charge in this case is direct being grounded upon a license or pardon, nor the plea; for the license or pardon is pleaded, as it is ut dicitur: and therefore neither the one nor the other doth conclude. But if he in his plea doth by expresse words (with a bene & verum est, &c.) confesse a tenure, in Capite, and in discharge thereof plead the pardon or license in discharge thereof, there is a conclusion wrought: and so are the books to be intended: Which Resolution I heard and observed, and have reported it for truth and right.

46 E. 3 33. 29 Ass. 38. 7 E. 6. Estoppel Br. 222. Pl. Com. 398.

Concerning licenses of alienation, and the short pleading of licenses and pardons, there is a profitable statute made Anno 18 Jac. Regis, and another An. 1 Jac. cap. 26. concerning the orders of the Exchequer.

18 Jac. cap. 1 Jac. Reg. ca. 26.

¶ Et les incident choses sauns les queux, &c. Quando lex aliquid alicui concepit concedere videtur & id sine quo res ipsa esse non potest.

¶ Et que ils eyent power a conuster des detts que lendoit a nous detors per ou nous puissont plus tost approcher a nostre dett. This is the ancient Prerogative of the King, as it appeareth in our Books.

20 E. 3. Ley 52. 8 H. 5. 4.

The King brought an action of debt in this Court against a Prior alien. The Prior had Proces against A. who detained goods from him, without which he could not answer the King: A. came and claimed the goods as his tithes as Parson of D. the Prior claimed the tithes as Parson of S; and thereupon issue taken for the King triable in the Exchequer.

38 Ass. p. 20.

If he that in this execution will in this Court confesse himself debtor to the King, where he is no debtor of Record, he shall be remanded to the first person, and after the creditor be satisfied, then to be committed unto the Fleet untill he hath paid the sum confessed.

1 R. 2. cap. 12.

¶ Solonque le discretion des Treasorers & Barons, &c. soient a rents a fearm a eux que pluis voillent doner. To the end that no Lands in the Kings hands, which ought to be to the Kings profit, should be without a Farmor that should yield a rent to the King, the Treasurer in certain cases, and with certain cautions ought to make a Warrant to the Great Seal for demising thereof, that is to say, not only of lands extended, of lands during the vacation of any Abbey, and of lands seised for an alienation without license, and before 23 H. 8. of land in ward, or the like upon uncertainties, but also of the demeans of the Crown out of lease, &c.

The lease will be best expressed by an example, first of lands extended. Rex omnibus ad quos &c. Salutem. Sciatis quod per manucaptionem Walteri Mathew de Westm. in Com' Mid' Yeoman, & Nich. Whitfield de eadem, Yeamon. Commisimus Rich. Foster, custodiam unius shopæ, 30 acr. terræ, 3 acr. prati, & 4 acr. pasturæ cum pertin. in Stanford in Com. Lincoln, quæ fuerint Silvani Southorpe, quæ in manus Regis Edwardi nuper Regis Angliæ tertii pro 138 li. 6 s. 8 d. in quibus idem Silvanus præfato nuper regi tenebat', seisiti fuerint, & in manibus nostris ea de causa adhuc existunt. Habendum à festo Sancti Michaelis Anno Regni nostri 13 usq; finem 10 annorum ex tunc proxime sequen. & plenarie complendorum. Reddendo inde nobis per annum in custodia prædicta 25 s. prout nobis responsum est, ad fest. Paschæ, et Sancti Michael' per æquales portiones. Proviso semper quod si aliquis alius dare voluerit de incremento per annum pro custodia prædicta sine fraude vel malo ingenio, quod tunc dictus Richardus tantum pro eadem solvere teneatur, si custodiam prædictam habere voluerit. In cujus rei, &c. Teste R. apud Westm. 7. die Novemb. Anno decimo sexto.

In Original. Anno 16 E. 4. Rot. 13. Nota herein five things. 1. *Per manucaptionem.* 2. *Commisimus.* 3. *Custodiam.* 4. Yeelding a rent. 5. *Proviso, quod si quis alius plus dare voluerit.* Nota Britton. sup. *A eux que plus voilent doner.* See 27 H. 8. cap. 11.

Note by many presidents the Lord Treasurer may make a Warrant to grant the lands extended, either for years, or quamdiu in manibus nostris fore contigerit.

The Lord Treasurer made a Warrant to the Lord Chancellour to demise to John Pempons land parcell of the Dutchy of Cornwall for the tearm of fifteen

Rot. pat. 5 H. 6.

pears in the like form of words as the before recited Lease was. This Lease was pleaded in 11 H.6. and though the Lease was by the words of Commisimus and Commisimus custodiam terræ, &c. yet in pleading the Lessee pleaded a demise of the Land it self, and there allowed to be good, which is worthy of observation.

11 H.6.18.b. 8 H.6. 34. Br. Lease 71. Register 295. See for this word Commisimus.

Vide in Original' in Scaccario de Anno 21 & 22 H. 7. Rot. 4. & ibid. 23 H. 7. Rot. 12. many such leases. But of ancient time, as it appeareth by Britton, both the Treasurer and Barons did demise, &c. † Letters Patents of the Alnage shall passe only by the Lord Treasurers warrant. And the gift of the office of the Escheators belongs to his office. Vide in Chapter of the Court of Escheator.

Vide 27 H 8. c. 1. a special Proviso for the Lo. Treasurer. † 32 H.6. ca. 5. 17 R. 2. cap. 5. 4 H. 4. ca. 18. Dier 303.

By the statutes of 8 H.6. cap. 16. and 18 H. 6. cap. 6. it appeareth that the Chancellor or Treasurer had power to make leases in certain cases of Wards lands: but that is altered by the statute of 32 H.8. of erection of the Court of Wards. * Note the statute of 18 H.6. cap. 1. extends only to the Kings warrant, and not to the warrant of the Lord Treasurer.

See in the Chapter of the Court of Wards. * Vid. Pl. Cr. 491. † Hill. 18 E. 1. f. 9. nu. 128.

† It is to be observed, that when in any Act of Parliament or other Record the Treasurer is named for demising, or other intermedling with any of the Kings Revenue, it is to be intended of the Treasurer of the Exchequer.

¶ De nous customes de quirs & leynes, &c. What these customes were appeareth in the Second part of the Institutes, by the statute of Confirmation Cartarum, the last branch, and the Exposition upon the same, whereby it appeareth that the King had no Customs but such as was granted to him by Act of Parliament.

Second part of the Instit. Confir. Cart. Vid. supra cap. Parl. p. 29.

¶ Leschequer est un place quarre. It is four square, and the Carpet that sometime lay upon it had wrought in it the form of a Chesse board, and thereupon it was called the Exchequer: and about the end of the Reign of E. 1. this Court was new built, and therefore in 2 E.3. it was called the novel Exchequer, and it was new built upon this occasion. Both the parts of the Exchequer were of ancient building, and weak; Fourscore and one persons (whereof the Abbot of Westm' and forty eight of his Monks were part) brake into the Receipt, and feloniously robbed the King of a hundred thousand pounds, ad damnum inæstimabile, saith the Record. All these fourscore and one were indicted of this felony, and committed to the Tower of London, and this was the occasion of the new building of both these parts of the Exchequer.

Mirror. Ockham. 2 E.3. 25. Rot. Par. 31 E.1. m. 12. Dors. Nota, the robbery of the King of his treasure is *damnum inæstimabile.*

¶ Qui solement est ordeine par le prowe le Roy. Here is a short but an effectuall description of the jurisdiction of this Court, that is, for the profit of the King. This profit is either immediate, or mediate: [a] Immediate, as of Lands, Rents, Franchises, Hereditaments, Debts, Duties, Accounts, Goods, Chattels, and other profits and benefits whatsoever due to the King. [b] Mediate, as first, the privilege of the Officers, and † Ministers of the Court: for two things do principally support the jurisdiction of a Court viz. the just preservation of the dignity of it, and the due attendance of the Officers and Ministers of the same to sue and be sued in this Court. 2. [c] By Quo minus. 3. It extendeth (as hath been said) to the debtor of the Kings debtor. 4. To prisoners in this Court to be sued here. 5. To accountants that have entred into their account, except [d] Collectors of Dismes, they shall not be sued by bills, neither if he be sued in any other Court, shall he have the privilege of this Court.

a 21 E.3.25. *Jeffery Sharlan's* case. 14 E.3. tit. Scire fac' 122. 44 E.3. 27 Reg. 187.b. Prohibit. 38. aff. p.20. Rot. Par. 1 R. 2. nu. 64. 2 H.4.11. Rot. Par. 2 H.4. 101. *Dat. est nobis intelligi.* Rot Par. 11 H.4. 54, 56. 64. ibid. 16 H. 4. 32. 8 H.5. Ley 66. 20 E.3. Ley 52. 32 H.6.24. 5 E.4.4.b. 7 E.4. 30.

¶ Ou deux Chivaliers, & 2 Clerks, ou 2 homes lettres. 2 Chivaliers be hereafter explained. 2 Clerks, ou 2 homes lettres, the one is intended to be the Baron of Course, the other the Clerk of the Pipe.

21 E.4.44, 45, &c. 8 H.6 34. 36 H.6.26. Li. 5. f. 62. action sur le case. 11 H.7.26. b Stat. de Rutland. 10 E.1. * Register 187. F.N.B. 90. f. Information ce intrusion ou trans & 217.c. terræ taile. Vid. 32 H.8.cap.39. 16 Eliz. Dier 328. c 14 E.3. breve 789. 20 E.3. Ley 52. 2 H. 4.9. 8 H.5.6,10. 8 H.5. Ley 66. 11 H. 7.26. Pl. Com. 322. Lib.6. fol.18. d 1 E.3. cap.14. 5 R.2. cap.9. stat.15. the Barons shall hear, &c. without any writ, letter or commandement. 4 H. 4. cap.9. 7 H.4. cap.11. concerning Commissions. 13 Eliz.cap.9. Sewers. 14 E.3. cap. 12. Weights. 13 R.2. cap.2. No recognizance or bond in double.

¶ De

¶ De ſes fees & franchiſes. Of fées, that is, tenures, whereof we have ſpoken before. Franchiſes, being flowers of the Crown, are notorious and known.

¶ Et les accounts, &c. All accounts to the King ought to be made upon oath, and it is beſt for the King to have the accounts to be taken in this Court, for accounts taken by Commiſſion are little for the Kings benefit. [c] The Keeper of the Wardrobe is to make his account once in the year in the Exchequer. [f] Once in the year the Treaſurer of Ireland ſhall account in the Exchequer of England. [g] The accounts of the Exchequer to be more ſhortly heard, made and ingroſſed, &c.

[c] Stat. de Rutland 10. 1.
[f] Rot. Par. 11 E. 1. Rot. 3.
[g] 5 R. 2. c. 11.

[h] The Treaſurers of the Kings Chamber are only accountable to the King, and not in this Court of Exchequer, but yet the King, by the advice of ſome whom he may truſt in ſecret, doth take account thereof, as before is ſaid.

[h] Rot. Par. 3 H. 6. nu. 47.

Vide recordum & Proceſſum contra Petrum de Rivalles alias Petrum de Oriall, Theſaurarium & Camerarium Regis totius Angliæ & Hiberniæ, & cuſtodem omnium foreſtarum, & omnium portuum, maris de compoto reddit' de officiis prædictis, & de judicio contra ipſum reddito per defaltam, quia venire recuſavit niſi ſalvo regis conducta, quod rex denegavit, quaſi inſolitum & indebitum.

18 H. 3. nu. 110.

¶ Per le view de un Soveraign que eſt Treaſurer Dengliterre. Of this great Officer we have ſpoken before.

¶ Le 2 Chivaliers ſo loient de 2 Barons, &c. And herewith agréeth Bracton, Comites vero vel Barones non ſunt amerciandi, niſi per pares ſuos ſecundum modum delicti, & hoc per Barones de Scaccario vel coram rege.

Bracton lib. 3. fo. 116 b.

¶ En cel place ſont auxi Chamberleins, & pluſors auters miniſters, que ne touch my molt a la ley. Hereof we have ſpoken before.

See the 2 part of the Inſt. Mag. Carta 14.

¶ Nul Common plea ne ſoit diſormes tenus in Leſchequer enconter le form del Grand Charter. Upon this Act four ſeveral opinions have bén conceived. 1. That this Court might originally have holden plea of all Common pleas; and this they think to prove by the title of Glanvils Book, which taking it altogether is this, Tractatus de legibus, &c. tempore Henrici 2. compoſitus, juſtitiæ gubernacula tenente illuſtri viro Ranulpho de Glanvilla, juris regni & antiquarum conſuetudinum eo tempore peritiſſimo, & illas ſolum leges continet & conſuetudines, ſecundum quas placitatur in curia regis ad Scaccarium coram Juſticiis ubicunque fuerint. 2. Others think, that at the making of Magna Carta, the Court of the Exchequer was parcel of the Kings Bench, which they infer upon the words of this Act, No Common plea ſhall be holden in the Eſchequer againſt the great Charter. In which Charter Curia noſtra is only intended of the Kings Bench. 3. That in Magna Carta, to which this ſtatute refers, there is no reſtraint, and therefore this ſtatute of Artic' ſuper Cartas reſtraineth not. 4. That the Ordinance of Rutland is no ſtatute, but made by the King for the order of this Court. In the Second part of the Inſtitutes, in the Expoſition of Magna Carta, cap. 11. we have ſpoken nothing of this matter, but thought good to refer it to this Act being his proper place.

Artic. ſup. Cart. Ubi ſupra. Stat. de Rutland, 10 E. 1. acc. Pl. Com. 209.

As to the firſt: it appeareth by the ſaid ancient Authors, and by the authority of our books, that the Inſtitution and juriſdiction of this Court have bén only for the Kings buſineſſe and profit, &c. as hath bén ſaid. For the Title of Glanvils book: Firſt it was never of his own making, for he would never have given himſelf ſuch high and ſuperlative Titles, as Illuſtri viro juris regni, &c. eo tempore peritiſſimo. 2. He that added the title ſpeaketh of the three Courts, viz. 1. In Curia Regis. 2. ad Scaccarium. 3. Coram Juſticiis ubicunque fuerint. For the Firſt, viz. in Curia Regis, he intendeth Juſtice in Eire, &c. For example, Inquirentur purpreſturæ vel in Capitali Curia, vel coram Juſticiis Regis ad tales Inquiſitiones faciend' in diverſas regni partes tranſmiſſas per Juratam patriæ ſive Vicinet'. 2. Ad Scaccarium, this Court he doth mention but once (that I remember) in all his book in theſe words. Si vero dominus Rex aliquam cuſtodiam alicui commiſerit, tunc diſtinguitur utrum ei cuſtodiam pleno jure commiſerit, ita quod nullum eum inde reddere compotum opporteat ad Scaccarium,

Glanv. lib. 9. cap. 11. &c.

Lib 7. cap. 10.

which agreeth with the original inſtitution and juriſdiction of the Court concerning the profit of the King. 3. Coram Juſticiis ubicunque fuerint is the Kings Bench, whereof Glanvil was Chief Juſtice, and of the pleas in that Court is in effect the ſum of his Treatiſe.

As to the Second: 1. Glanvile who wrote in the Reign of H. 2. doth (as hath been ſaid) name the Exchequer as a diſtinct Court for the accounts to be made to the King. 2. In the * Black Book of the Exchequer dedicated to H. 2. of the obſervation of the Exchequer, it is ſaid, Nulli licet ſtatuta Scaccarii infringere, vel eis quavis temeritate reſiſtere, habet in hoc commune cum ipſa Domini Regis Curia, in qua ipſe in propria perſona jura diſcernit, nec recordationi nec ſententiæ in eo latæ liceat alicui contradicere. Whereby it appears that the Kings Bench and Exchequer were diſtinct Courts in the Reign of H. 2.

* The author of this Book is Gervaſius Tilburienſis a learned man, and an Officer of the Exchequer, cap. 1.

To the third, our ſtatute is intituled Articuli ſuper Cart', that is, Articles upon Magna Carta & Carta de Foreſta: So as the ſenſe of this Act is, that the Exchequer ſhould hold no common plea no more then the Kings Bench: for the form of the Great Charter is, Quod communia placita non ſequantur Curiam noſtram. Secondly, our ſtatute is but an affirmance of the Common Law concerning the juriſdiction of this Court, and this doth expreſly and notably appear in the Regiſter in theſe words. Rex Theſaurar' & Baronibus de Scaccario Salutem. Cum ſecundum legem & conſuetudinem regni noſtri communia placita coram vobis ad Scaccarium prædict' placitari non debeant, niſi placita illa nos vel aliquem miniſtrorum noſtrorum ejuſdem Scaccarii ſpecialiter tangant &c. Here it is to be obſerved, that this Writ of prohibition is not grounded upon the ſtatute of Artic. ſuper Cart. or any other ſtatute, but upon the Common Law and Cuſtome of the Kingdom, which concerning the juriſdiction of this Court doth in omnibus agree with our ancient Authors and year-books, wherein you ſhall obſerve an admirable harmony and conſent in ſo many ſucceſſions of ages.

Regiſt. 178. b.

This is a ſtatute provided by the title thereof, and for that it is entred in the Parliament Roll, and in the Regiſter 187. b. it is called Statutum de Rotland.

Stat. de Rotland, 10 E. 1. Vid. Pl. Com. 221. per 2 Barons Regiſt. 187. b.

Now it is good to know, how the Law commonly called Reſpondeat ſuperior, holdeth in this Court and in other Courts, and firſt by the Records of this Court, and then by Acts of Parliament.

Reſpondeat ſuperior. Int' Præcept. de Termino Sancti Hill. Anno 14 E. 3. ex parte Remem. Regis Rot. 9. in Scac' *Coronator.*

Memorand' quod allocuto præfato Willielmo morantur nuper Vic' ſuper levatione 40 s. extract' in magno Rotulo de anno 12. in Banc' ſub nomine William Herlizan unius Coronatorum Com. Banc. pro falſo retorno. Idem Willielmus Vic. dic. ſuper ſacramentum ſuum quod præfatus Willielm. Herlizan non habet terr' vel ten', bona, ſeu catilla in balliva ſua, nec habuit unde dict. denar. levari poſſint. Et quia ipſe Coronator electus erat per Comitatum juxta formam ſtatuti, &c. ita quod in defectu ejuſdem Coronator. totus Comitatus ut elector & ſuperior, &c. habeant regi reſpondere, præcip' hunc Vic. quod de terris & tenementis hujuſmodi totius comitatus in balliva ſua fieri fac' præd' xl. s. & eos habeat hic in Craſt. clauſi Paſchæ ſuper proffrum ſuum regi ſolvend. Ad quem diem Vic. non retorn' breve. Ideo ſicut alias in Craſt. Sancti Johan' Baptiſt. For more preſidents in the Exchequer of this kind, ſee Mich. 17 R. 2. Rot. Mich. 19 H. 8. Rot. 4. Eborum. Paſch. 30 H. 8. Rot. 30. Wiltes. Mich. 5 E. 6. Rot. 130. &c. Stat. de 52 H. 3. de Scaccario.

How it holdeth in other Courts, Vid. 11 E. 2. tit. det. 172. where the Sheriffs be removeable as in London for their inſufficiency, reſpondeat ſuperior, that is, the Mayor and Commonalty of London.

45 E. 3. 9, 10. Prior datiſe & removeable ſuffer eſchape, reſpondeat ſuperior. E. 4. Pur inſufficiency del Bailie dum libertie reſpondeat dominus libertatis. Vid. 44 E. 3. 13. 50 E. 3. 5. 14 H. 4. 22. 11 H. 6. 52. 30 H. 6. 32. W. 2. cap. 2. Si non habeat Balivus unde reddat, reddat ſuperior.

2 H. 6. cap. 10.

There is a general ſtatute concerning all the Courts of the King, worthy of obſervation in theſe words:

Item,

Item, To the intent that better and more ſure Government be had within the Courts of our Lord the King for his profit, and eaſe of his people, which have to purſue, and do in the ſame. It is ordained and eſtabliſhed, that all the Officers made by the Kings Letters Patents Roy: all within the ſaid Courts, which have power and authority by vertue of their Offices of old times accuſtomed, to appoint Clerks and Miniſters within the ſame Courts, ſhall be charged and ſworn to appoint ſuch Clerks and Miniſters, for whom they will anſwer at their perill, which be ſufficient, faithful, and attending to that which pertaineth to them in performance of the buſineſs, as well of the King, as of his people.

In the ſame manner we have ordained in the right of the Barons of the Exchequer, and we have expreſly charged them in our preſence, that they ſhall do right and reaſon to all our ſubjects, great and ſmall, and that they ſhall deliver the people reaſonably and without delay of the buſineſs which they have to do before them, without undue tarrying as hath been done in times paſt. 20 E. 3. ca. 2. Hereby appeareth that to them belongeth doing of right and reaſon in legal proceedings.

It was reſolved in the caſe of Auditor Provie, that if A. be indebted to B, and B. is indebted to the King, that the King by his Prerogative may levy his debt upon A: but this levying ought to be of an immediate, and not of a mediate debtor to the debtor of the King. As if A. be indebted to B, and B. to C, and C to the King, the King cannot levy his debt of A. for then it might be levied in infinitum, quod reprobatur in jure, and it appeareth in our books. Mich. 13 Jac. *in Bank le roy in Prohibition.* 8 H 5 4. 45 E. 3. *D cits tantum* 12.

For aſſignments of debts made to the King, See in my Reports. Lib 5. fo. 89, 90.

By the Statute of 7 Jac. no debt ſhall be aſſigned to the King his Heirs or Succeſſors by or from any debtor or Accountant to his Majeſty, by his heirs or ſucceſſors, other than ſuch debts as did before grow due originally to the Kings debtor. 7 Jac. cap. 15.

No obligation, recognizance or ſtatute made for ſaving harmleſſe or performance of Covenants, &c. though it be forfeited, or for any cauſe, other then a due debt, can be aſſigned to the King by any of his debtors. Theſe aſſignments of debts to the King are not favoured in Law when the Kings immediate debtor is able to pay his debt: for the aſſignment at the Kings ſuit, the body, lands and goods of the debtor to the Kings debtor are liable to the King, whereas at the ſubjects ſuit, he could have had but his body only by Capias ad ſatisfaciend', or his goods only by Fieri fac', or half his lands and goods by Eligit. By the ſtatute of 1 R. 2. a penalty is provided for him who confeſſeth a debt to the King (that is not debtor to the King of Record) to delay the execution of others. 1 R. 2. cap. 12.

The Barons of the Exchequer are the Soveraign Auditors of England, for if a man aſſign Auditors to a Bayliff or receiver to account, and the Auditors will not allow juſt and reaſonable allowances but commit the Bayliff or receiver to priſon, ſuch priſoner may have an Original Writ of Ex parte talis returnable before the Treaſurer and Barons of the Exchequer, &c. for his relief in that behalf. Fleta li. 6. ca. 64. 2 E. 3. 12. 14 E. 3. account 74. 8 E. 4 16. F.N.B. 129. L Regiſt. 137.

Upon the Account in the Exchequer of B. Fulham the Kings Butler, he demanded allowance of certain parcells of Wines given by the King to certain perſons by word of mouth without writing, and it was diſallowed by the Rule of the Court. Rot. Clauſ. anno 4 E. 3. m. 2.

Upon the account in the Exchequer of Richard Bury Keeper of the Wardrobe, he demanded allowance for certain Veſſels of gold and ſilver, and certain Jewels given by the King ore tenus to Iſabell Queen of England, and others to Philip Queen of England Conſort of the King, & non allocatur by the like rule of the Court: for the gifts by word in both theſe caſes are void, which with Petilians caſe that followeth are good rules to eſtabliſh the law in a caſe wherein there hath been variety of opinions in our books. Rot. Clauſ. anno 4 E. 3. m. 19. 35 H. 8. Prerog. 8. 61. 14 E. 4 2. 2.

Hill.

Hill. 6 E. 4. Rot. 14. in Scaccario Inter Brevia in Dorſ. Petilians caſe. A warrant under the Signet is not ſufficient to iſſue any Treaſure of the King out of the Receipt, but it muſt be under the Great or Privy Seal.

Regiſt. 191. a. b. & 193. If the Barons do not allow unto an accountant before them ſuch juſt demands as he maketh, he may have a Writ De allocatione faciendâ, directed to the Treaſurer and Barons, commanding them to allow the ſame.

Of a Liberate *for payment of a penſion or debt, &c.*

A Liberate is an Original Writ iſſuing out of the Chancery, and is directed to ſome Officers that have of the Kings mony in his hands to pay over a penſion, debt, or duty. And it is not called a Liberate by reaſon of any ſuch words contained in the Writ, (as for the moſt part Writs are) for the words be, Quod ſolvas, or ſolvatis, but it is ſo named ab effectu. But ſuch a Writ cannot be directed to the Kings Fermor to pay a penſion, &c. becauſe, though the ferm or rent be behind, yet it is not the Kings untill it be paid, and all the Writs in the Regiſter are directed as is aforeſaid to Officers, as to the Treaſurer and Chamberlain, to a Cuſtomer, &c. The form of the Writ appeareth in the Regiſter 192, 193. And there it appeareth that there be two kinds of writs of Liberate, one dormant or currant and continual, and another hac vice and particular. And it is ſometimes accompanied with a Writ of Allowance, as there you may read.

If the Officer have ſufficient in his hands to pay, &c. at the time of the Liberate delivered to him, he is become debtor (by Act of Law) to the party, for which he may have an action of debt: but after the Liberate ſued out, and before the delivery, the King may diſcharge the Officer of the Kings money in his hands. And if the King deceaſe before the delivery of the Liberate, the Officer hath no warrant to pay it.

If the Officer at the time of the delivery of the Liberate have of the Kings money to pay but part, and not the whole, the writ is no warrant to him to pay part. See 21 H. 6. tit. det. 43. 27 H. 6. 9. 37 H. 6. 24, 25. 9 E. 4. 12, 14. 1 H. 7. 8. 2 H. 7. 9. F. N. B. 121. f. Br. Tit. Taile Deſchequer.

Vid. Mag. Cart. cap. 22. Liberationem antiquitus ſtatut', id eſt, precium antiquitus ſtatutum.

The courſe of the Eſchequer is, that as ſoon as a Sheriff or Eſcheator enter into his account for iſſues, amerciaments and mean profits, to mark upon his head O. Ni. which is as much as to ſay, as Oneratur, niſi habeat ſufficientem exonerationem, and preſently he is become the Kings debtor, and a Debet ſet upon his head, and thereupon the parties peravaile are become debtors to the Sheriff or Eſcheator, and diſcharged againſt the King.

Dier 7 El. 238. The ancient courſe of the Eſchequer hath been, that if in an Information of Intruſion into lands or tenements the Defendant plead not guilty, he ſhall loſe the poſſeſſion; and it is ſaid that the reaſon of this courſe is, firſt for that regularly the Kings title appeareth of the Record, and therefore the Defendant may take knowledge thereof, and the rather, for that in every information of Intruſion it is ſpecified of whoſe poſſeſſions the lands, &c. were: but if the Defendant plead not guilty, the Kings learned Counſel cannot know the Defendants title, to provide to anſwer the ſame, as the Defendant may do the Kings title.

CAP.

CAP. XII.

A Court to enquire of, and certifie unlawful and untrue Accounts in the Exchequer.

This Court sitteth by Commission under the Great Seal by force of the Statute of 6 H. 4. directed and sent, together with the tenour of the account, to the most lawful and discreet persons in the Counties, where the Accountants be Officers, to enquire and certifie the profits which the Sheriffs, Escheators, Alnagers, Controllers, and other the Kings Officers have received, &c. by them upon their said accounts deceitfully concealed, &c. and being attainted of the said frauds and deceipts, they shall forfeit trebble the value, and their bodies to prison, untill they have made fine and ransome to the King, after the discretion of the Judges. 6 H. 4. cap. 3. See Rot. Parl. 6 H. 4. nu. 59. so the print swarveth from the Record.

But (as hath been said before) it is certain, that it is ever most for the Kings benefit that accounts be yearly taken in the Exchequer, and not by Commission, and to that end an Ordinance was made in the Parliament holden Anno 21 E. 1. in these words: Dominus Rex vult & præcipit, quod de cætero singulis annis semel in anno commotus Vasconiæ & Hiberniæ per Constabularium Burdegaliæ, & Thesaurarium Hiberniæ reddantur ad Scaccarium Angliæ, & ibid. audiantur per Thesaurar' & Barones suos. A fortiori of Accounts within the Realm. Rot. Parl. Anno 21 E. 1. Rot. 3. Vide Parl. Parl. 28 E. 1. Nich. de Clere Thesaurarius Hiberniæ.

And of the Court of the Exchequer we will end with an old Verse ingraved in stone in the Eschequer wall,

Ingrediens Jani, redituras es æmulus Argi.

The Chief Baron is created by Letters Patents, and the Office is granted to him Quamdiu se bene gesserit, wherein he hath a more fired estate (it being an estate for life) then the Justices of either Bench, who have their Offices but at will: And Quamdiu se bene gesserit must be intended in matters concerning his Office, and is no more then the Law would have implyed, if the Office had been granted for life. And in the like manner are the rest of the Barons of the Exchequer constituted, and the Patents of the Attorny General, and Solicitor are also Quamdiu se bene gesserit. See Lit. 1. part of the Instit. Sect.

CAP.

CAP. XIII.

The Court of Equity in the Exchequer Chamber.

THe Judges of this Court are the Lord Treaſurer, the Chancellor, and Barons of the Exchequer. Generally, their juriſdiction is as large for matter of Equity, as the Barons in the Court of the Exchequer have for the benefit of the King by the Common Law: for all the proceedings both in this Court of equity and of that by the Common Law ought to be, as hath been ſaid, for the profit or benefit of the King, or touching the King: and if in either Court they hold any plea, which is not for the profit or benefit of the King, or which toucheth not the King, there lyeth a Prohibition, which, as is aforeſaid, appeareth in the Regiſter: for all are ſaid Communia Placita, which are not Placita Coronæ.

Art. Cler. cap. 4. Regiſt. fol. 187. b. ſtat. de Rotl. cap. ultimo.

By the ſtatute of 33 H. 8. cap. 39. they have full power and authority to diſcharge, cancell and make void, all and ſingular Recognizances and bonds made to the King for payment of any debt or ſumme of money, or for performance of conditions, &c. upon ſhewing the Acquittance, &c. or any proof made of payment and performance. Alſo to cancel and make void by their diſcretion all Recognizances made for any appearence or other contempt. And that if any perſon of whom any ſuch debt or duty is demanded, alledge, plead, declare, or ſhew in the ſaid Court ſufficient cauſe and matter in law, reaſon and good conſcience in barre or diſcharge of the ſaid debt or duty, and the ſame matter ſufficiently prove in the ſaid Court: then the ſaid Court ſhall have power and authority to judge and allow the ſaid proof, and clearly acquit and diſcharge ſuch perſon and perſons. Alſo lands chargeable to the Kings debts in the ſeiſin and poſſeſſion of divers and ſundry perſons, the ſame ſhall be wholly and * intirely, and in no wiſe ſeverally liable to the payment of the ſaid debt and duty: but in the ſaid Act of 33 H. 8. all manner of eſtates, rights, titles, and intereſts, as well of inheritance as freehold, other then joyntures for term of life, are excepted.

Cancell.

Cancell.

Matter in Law, reaſon and good conſcience. Lib. 7. fo. 18. Sir Thomas Cecils caſe, and reſolved by English bill in the Exchequer Chamber. See there divers preſidents.

* Lib. 7. fol. 20. ubi ſupra. Et lib. 3. fo. 12. Sir Wil. Herberts caſe.

Inheritance. Freehold.

By the ſaid Act of 33 H. 8. ſpecial juriſdiction is given to the Court of Augmentation, when title is pretended to any Manors, Lands, Tenements or Hereditaments, bargained, ſold, or exchanged by the King, upon which Letters Patents there is or ſhall be reſerved any annual Rents or Farms, payable in the Court of Augmentations, and divers other clauſes which gave to the Court of Augmentation juriſdiction. But the Court of Augmentation is but in ſhew annexed to the Court of the Exchequer and not de jure, as hereafter it appeareth in the Chapter of the Court of Augmentations. And therefore this Court of Exchequer Chamber cannot claim any juriſdiction given and appropriated to that Court, for that the Court of Augmentations is diſſolved.

J. S. holdeth Lands of the King by fealty and yearly rent, and maketh a Leaſe thereof for years to A. B. pretends that J. S. leaſed the ſame to him by a former Leaſe; albeit there is a rent iſſuing out of theſe Lands to the King, yet neither A. nor B. can ſue in this Court by any priviledge in reſpect of the rent, for that the King can have no prejudice or benefit thereby: for whether A. or B. doth prevail, yet muſt the Rent be paid: and if this were a good cauſe of priviledge, all the lands in England holden of the King by Rent, &c. might be brought into this Court.

31 E. 3. tit. Aid *Le Roy* 1. 35 H. 6. 56.

But if black-acre be extended to the King for debt of A. as the land of A. and the King leaſeth the ſame to B. for years, reſerving a rent: C. pretends that A. had

had nothing in the land, but that he was seised thereof, &c. this case is within the privilege of this Court, for if C prevail the King loseth his rent.

The King maketh a Lease to A of Black acre for years reserving a rent, and A is possessed of a tearm for years in White acre, the King may distrain in White acre for his rent, yet A hath no privilege for White acre, to bring it within the jurisdiction of this Court.

Note Reader, where our Books say, that the King may distrain for his rent in all the other lands of his tenant, of whomesoever the same be holden, it is thus to be understood, that the other lands must be in the actual possession of the Kings tenant for he cannot distrain in those lands in the possession of his tenant for life, tenant for years, or at will. 44 E.3.45. 13 E.4.6. 8 H.5.4. Pl.com.323.a. This Prerogative holdeth not only in case of Rent service, but in case of a Rent charge: and a Rent seek.

Some are of opinion that a Court of Equity was holden in the Exchequer Chamber before the Statute of 33 H.8. And then it must be a Court of Equity by prescription: for we find no former Act of Parliament that doth create and establish any such Court: and if it be by prescription, then judiciall presidents in course of equity must guide the same: as to the Jurisdiction, certain it is that there hath been of ancient time an Officer of the Exchequer called Cancellarius Scaccarii, of whom amongst other Officers of the Exchequer Fleta saith thus: Officium vero Cancellarii, est sigillum regis custodire simul cum controrotulis de proficuo regni. And the Mirror saith, Perjure est per la ou il fuit Chancelor del Eschequer veia tiel a fair luy acquittance de tant que a voit pay al Eschequer de la dait le Roy south le seale del Eschequer ou delay a faire acquittance de tiel jour tanq; a tiel jour, &c. His ancient fee is 40 Marks. Liberty out of the Wardrobe 12 l. 17 s. 4 d. in toto 39 l. 10 s. 8 d. See 15 H.8.cap.16. *Cancellarius Scaccarii.* Mirror.cap.2. Sect.13. & cap.5. Sect.2.

* The Exchequer hath a Chancellor and Seal, and the Writs usuall in the Chancery in the Exchequer to seise land, are more ancient then Prerog. Regis. * Pl.com.321.

Whereunto it is collected, that seeing there hath been time out of mind of man a Chancellor of the Exchequer, that there should also be in the Exchequer a Court of Equity.

Where some do vouch 22 E.4.tit Petition 9. for the naming of the Chancellor of the Exchequer in granting of Writs of search to the Treasurer and Chancellor, the Book is false printed, for it should be the Chamberlains and Treasurer of the Exchequer: for no Writ of search is directed to the Chancellor, &c. but to the Treasurer and Chamberlain of the Exchequer, we have the custody of the Records, &c.

[a] We find a Petition of the Commons in 2 H.4. that no Writs or Priv Seals be sued out of the Chancery, Exchequer, or other place, to any man to appear upon a pain, &c. to answer, &c. contrary to the ordinary course of the Common law: whereunto the King answered. That such Writs should not be granted without necessity. a Ro.Par.2 H.4 nu.69.

[b] Anno 3 H.5. the Commons petitioned that all Writs of Subpœna and Certis de causis going out of the Chancery and the Exchequer might be inrolled, and not granted of matters determinable at the Common law on pain of 40 l. The Kings answer was, That he would be advised. b Rot.Par.An. 3 H.5.nu.46.

[c] So as in the Exchequer there are seven Courts. 1. The Court of Pleas. 2. The Court of Accounts. 3. The Court of Receipt. 4. The Court of the Exchequer Chamber being the* Assembly of all Judges of England for matters in law, 5. The Court of Exchequer Chamber for errors in the Court of Exchequer. 31 E. 3.cap.8. & 31 Eliz.ca.1.6. A Court in the Exchequer Chamber for errors in the Kings Bench. 27 Eliz.ca.8. 31 Eliz.ca.1. Co. pl. Intr. fo. 2. 24. 37. And 7. This Court of Equity in the Exchequer Chamber. c 7 H.6.43. 6 H.7.15. 8 H.7.13. Lib.1.fo.111. Vet.N.B. * Rot.Claus.in Dors. An.13 E.1 in schedula append. *Et si contingat quod, &c.* Vide 24.37.

supra pag. 110. 31 E.3.cap.8. 31 Eliz.cap.1. 27 Eliz.cap.8. 31 Eliz.cap.1. Co. pl.Intr. fo. 8.

CAP. XIV.

Of First-fruits and Tenths Ecclesiastical.

Stat. de 32 H.8. cap.45. Rot Par.47 E.3. nu.30. 7 H.4.n.43.acc.

A Court of the First-fruits and Tenths was raised, Officers constituted, of Chancellor, Treasurer, Kings Attorny, two Auditors, and two Clerks: Authority given them to compound for First-fruits, Bonds taken thereto, should be of like force as a Statute Staple: but this Court was dissolved by Quen Mary Parl. 1 Sess.2.cap.10.

26 H.8 cap.3. 2 & 3 Ph. & M. cap.4.

These were granted to the Crown by the statute of 26 H.8. cap.3. But all the Clergy were exonerated and discharged thereof afterwards, Anno 2 & 3 Phil. & Mar.cap.4.

1 Eliz cap.4. observe the alteration and alternation.

The statute of 26 H.8. revived, and First fruits and Tenths of the Clergy reunited to the Crown by Anno 1 Eliz. cap. 4. But no Court is revived, but First-fruits and Tenths to be within the rule, survey, and government of the Exchequer, and created a new Office, and Officer, viz. a Remembrancer of the First-fruits and Tenths of the Clergy, who taketh all compositions for the said First-fruits, and Tenths, and maketh proces against such as pay not the same.

25 H.8. cap.5. 1 Eliz. cap.4.

First-fruits, or Annates, Primitiæ, are the First-fruits after avoidance of every Spirituall Living for one whole year except Vicarages not exceeding 10 l. and Parsonages not exceeding 10 Marks) but all are to pay Tenths.

Ecclesiasticall Livings were sometimes valued by a Book of Taxation made in 20 E. 1. which remaineth in the Exchequer, and by another taxation in 26 H. 8. which also remaineth in that Court. And according to that latter taxation are the values of Ecclesiasticall Livings computed for the First-fruits and Tenths. What Pope first imposed First-fruits, untill [a] Historians do agree, I will not trouble my self.

a Walf.An. Do. 13. 16. Trivet. Ranulphus Cistrensis lib.7.c.2. Po.Virg.lib.8. cap.2. Platin. Fox, &c.

What we find of Record concerning First-fruits, we will summarily relate.

b 2 E.3.Rot. claus. m.4.

[b] The King forbiddeth H.P. the Popes Nuntio to collect First-fruits, &c.

c Parl. 1 R.3. nu.66.

[c] That the Popes Collector be willed no longer to gather the First-fruits of Benefices within this Realm being a very novelty, and that no person do any longer pay them.

d Rot.Par.4.R. 2. nu. 44.

[d] The Commons do petition that provision may be made against the Popes Collectors for levying of the First fruits of Ecclesiasticall dignities within the Realm. The answer of the King in Parliament is, There shall be granted a Prohibition in all such cases where the Popes Collectors shall attempt any such [e] novelties.

e Note they were not so antient with us as is pretended.

f Upon complaint made by the Commons in Parliament, The King willeth that Prohibitions be granted to the Popes Collectors for receiving of First-fruits.

f Ro. Par.6.R.2. nu. 50.

g Against First-fruits by Arch-Bishops and Bishops to the Pope of Rome, terming it a horrible mischief and damnable custom.

g 6 H.4.cap. 1.

h Ro. Par.9 H.4. nu.43.

[h] It is enacted, that the Popes Collectors should not from thenceforth levy any mony within the Realm for First-fruits of any Ecclesiasticall dignity by any provision from Rome upon pain of the statute of Provisors: but this is omitted out of the print of 9 H.4.cap. 8.

i 19 E.3. tit. Jurisdiction.22.

[i] The Bishop of Norwich had in 19 E.3. by prescription time out of minde of man First-fruits within his Dioces of all Churches after every avoidance.

k 26 H.8.cap.3.

But these also were given to the Crown [k] by the statute of 26 Hen. 8. cap. 3.

Tenths Ecclesiastical, Decimæ, these are the Tenth part of the value of all Ecclesiasticall

Eccleſiaſticall Livings yearly payable to the King, his Heirs and Succeſſors by the ſaid Statute of 26 H. 8. and 1 Eliz. to be valued as is abovelaid.

Where the Pope (as the Canoniſts hold) pretended to have De jure Divino, as due to the High Prieſt by preteſt of theſe words, Præcipe Levitis atq; denuncia, cum acceperitis à filiis Iſrael decimas quas dedi vobis, primitias earum offerte Domino, id eſt decimam partem decimæ, ut reputetur vobis in oblationem primitiarum tam de areis, quam de torcularibus & univerſis quorum accipietis primitias offerte Dom. & date ea Aaron Sacerdoti. But the Parliaments in 25 H. 8. and 26 H. 8. were not of opinion that theſe Tenths did belong to the Biſhop of Rome as by the ſeverall preambles thereof appeareth, which we have added; for that we have endeavoured to ſhew through all this work the ſeverall claims or pretences of every thing whereof we have treated. And King Philip and Queen Mary yielded not theſe Tenths to the Pope, but (as hath been ſaid) by authority of Parliament diſcharged the Clergy thereof: which they would never have done if they had taken them to be due to the Pope De jure Divino. And the Biſhop of Norwich could not have preſcribed to have First-fruits within his Dioces, if they had been due to the Pope De jure Divino: and the rather for that Anthony de Beck, for whom the preſcription was made, was a reteiner to the Court of Rome, made Biſhop of Norwich by the Pope.

Num. 18. 26. &c. Vi. Jerom. in Ezech. 44. v. 28, &c.

25 H. 8. cap. 19. 26 H. 8. cap. 3.

19 E. 3. tit. Juriſdiction, ubi ſup.

CAP. XV.

The Court of Augmentations of the Revenues of the Crown of *England*.

This Court was erected by authority of Parliament in Anno 27 H. 8. conſiſting of a Chancellor, Treaſurer, Attorny, Solicitor. And all Land, &c. belonging to Monaſteries, and purchaſed lands were within the ſurvey and governance of this Court. This Court could not be erected but by Parliament, becauſe a Chancellor and a Court of Equity were conſtituted. More hereof in the next Chapter.

27 H. 8. cap. 27.

CAP. XVI.

The Court of Generall Surveyors of divers of the Kings Lands, with power to make Leases for twenty one years, erected by Act of Parliament in 33H. 8.

33 H.8.cap. 39

Both these Courts King H. 8. by his Letters Patents Anno regni sui 38. dissolved, and erected a new Court of Augmentations by his Letters Patents. The dissolution was holden void, because they were created by authority of Parliament. Vid. the rehearsall of the Statute of 7 E.6.cap.2. and the erection was also void for the cause aforesaid. And thereupon the said Letters Patents, as well for the dissolution of the former, and for the erection of the new Court of Augmentations were confirmed and established by the said Act of 7 E.6.

Brict. Nihil tam conveniens est naturali æquitati, unumquodq; dissolvi eo ligamine quo ligatum est

7 E.6 cap.2.

1 Mar.cap.10.

Queen Mary according to the power given to her for dissolution of the said Court by Act of Parliament holden the fifth of October in the first year of her Reign, did afterwards by her Letters Patents, bearing date 23 Januarii in the same year dissolve the said Court of Augmentations; and the next day following by other Letters Patents united the same to the Exchequer, which was utterly void, because she had dissolved the same before: so as she pursued not her authority.

Dier 4 Eliz. 16. So resolved by all the Judges.

CAP.

CAP. XVII.

The Honorable Court of Chivalry before the Conſtable and Marſhall.

ROt. Par. 12. H. 4. m. This Court is called Curia Militaris, and Rot. Par. 2 H. 6. nu. 9. the Marſhall Court.

¶ *The Stile of the Court.*

The Iudges of this Court are the Lord Conſtable of England and the Earl Marſhall of England, and this Court is the fountain of the Marſhall law. And the Earl Marſhall is both one of the Iudges, and to ſee execution be done.

¶ *The Iudges* 43 E. 3. fo. 3. See the Firſt part of the Inſtitutes, Sect. 745. many other authorities cited.

Conſtable or Cunſtable is compounded of two Saxon words, Cuninge per contractionem Kinge, and ſtable, id eſt, columen, quaſi columen regis, anciently written Cuningſtable. Marſhall anciently written Mareſcale' likewiſe of two Saxon words, viz. *Marc* for equus; and *Stale* curator, quaſi curator equorum: For the Marſhall Mariſchallus, and the derivation thereof, ſee the Firſt part of the Inſtitutes Sect. 102. fol. 74. Sect. 154. fo. 106. Sect. 745. fo. 391.

¶ *The name.* 1. part of the Inſtitutes, Sect. 101 & 153.

The Court of Chivalry was anciently holden in the Kings Hall.

¶ *The Place.*

This jurisdiction is declared by the ſtatute of 13 R. 2. ſtat. 1.

¶ *The Juriſdiction.* Rot. Par. 8 R. 2. n. 31. not in print 13 R. 2 ſtat. 1. ca. 2. Rot. Parl. 8 H. 6. nu. 33.

Becauſe the Commons do make a grievous complaint, that the Court of the * Conſtable and Marſhall have incroached to them, and dayly do encroach contracts, covenants, treſpaſſes, debts and detinues, and many other actions pleadable at the Common law, in great prejudice of the King and of his Courts, and to the great grievance and oppreſſion of his people. The King willing to ordain a remedy againſt the prejudices and grievances aforeſaid, hath † declared in this Parliament by the advice and aſſent of the Lords Spirituall and Temporall the power and juriſdiction of the ſaid Conſtable in the form that followeth.

* The Judges, Vide infra. 1 H. 4. cap. 14. † Nota declared.

¶ *The power and juriſdiction.*

To the Conſtable it appertaineth to have conuſance of Contracts and deeds of arms, and of war out of the Realm, and alſo of things that touch war within the Realm, which cannot be determined or diſcuſſed by the Common law, with other uſages and cuſtomes to the ſame matters pertaining, which other Conſtables have heretofore duly and reaſonably uſed in their time, joyning to the ſame that every Plaintiffe ſhall declare plainly his matter in his Petition afore that any man be ſent for to anſwer thereunto. And if any will complain that any plea be commenced before the Conſtable and Marſhall, that might be tried by the law of the land, the ſame Complainant ſhall have a Privy Seal of the King without difficulty directed to the ſaid Conſtable and Marſhall to ſurceaſe in that plea, till it be diſcuſſed by the Kings Councell, if that matter ought and of right pertaineth to that Court, or otherwiſe to be tried by the Common law of the Realm of *England*, and alſo that they ſurceaſe in the mean time.

See the Third part of the Inſtitutes, cap. High Treaſon, pag. 26. Rot. Par. 25 E. 3. parte 1. m. 16. 1 H. 4. between the Lord Morly and the Earl of Saram. the Record whereof we have ſeen. Rot. Par. 2 H. 4. parte 1. m. 7. between Highly and Scroop. Rot. Par. 3 H. 4. Balleſhuls caſe. Rot. Vaſcon. 9 H. 5. nu. 14. Bullemers

lemans caſe. Rot. Parl. 21 R. 2. nu. 19. &c. Rot. Parl. 2 H. 6. nu. 9. Holl. Chron. 424. 3 H. 4. Sir John Annesleys caſe. See this caſe Walſing. pa. 237. Duellum percuſſum. Ibidem 8 R. 2. 446. John Walſhes caſe. For this caſe of Walſh, ſee Walſing. pag. 311. and Stowes Annals 477. Howes Chron. 8 H. 6. 371. betweene John Upton and John Down. Vide Stowes Survey of London 385. See this caſe Rot. Pat. 8 H. 6. parte 2. m. 7. Annals 609. Stow. Ibid. Anno 25 H. 6. Anno domini 1446. betweene John Davye and William Catur his maſter, Annals 655 ibid. 385. battel joyned betweene Thomas Fitz-thomas Baron of Cilman and James Butler Earl of Ormond; but when it came to the point the King forbad it. Vide Rot. Parl. 2 H. 6. nu. 9. John Lord Talbot Lieutenant of Ireland accuſed the Earl of Ormond of High Treaſon before the Earl of Bedford Conſtable of England in his Marſhall Court, the King did abolish the accuſation.

* Deu. 19. 18. And the Judges ſhall make diligent inquiſition, and if the accuſer be found falſe and that he hath given falſe witneſſe againſt his brother, then ſhall you do to him as he had thought to do to his brother, and thou ſhalt put evil away from the middeſt of thee.

What judgement ſhall be given when either party is vanquiſhed, ſee the Articles of the Duke of Glouc' Conſtable of England about the beginning of the Reign of R. 2. The law of armes is, that the Appellant being overcome ſhall incurre the ſame punishment, that the Defendant ought to have done if he had vanquiſhed.

See an ancient Manuſcript in French entituled Modus faciendi Duellum coram Rege. Bone foy & droit & ley de Arms voet, quel appellant encourge meſme peyne que le defendant devoroit, ſil fuit convict & diſcomfit * And this ſeemeth to be conſonant to the law of God.

This Manuſcript treateth both of the juriſdiction and manner of the proceeding before the Conſtable and Marſhall, and for that it is long, and I doubt not but copies thereof are in many hands, I have not inſerted it here.

There are many in forrain parts that have written of Combats, &c. in Latine, French, and Italian. As Alciat, Lancelotus, Conradus, Johannes de Lignano, Mutio Juſtino Politano, Berardier, Beutheus. Deſdigueres, &c. to whom we refer the reader, for that it is ſafe to follow the Acts of Parliament concerning the juriſdiction of this Court and ſuch preſidents as have been before the Conſtable and Marſhall in the Marſhals Court within this Realm.

¶ Out of the Realm.] This is to be underſtood in any forrein part beyond the Seas. In partibus exteris & tranſmarinis. For upon the Sea the Admirall hath juriſdiction, which Admirall (our Engliſh Neptune) cannot meddle with any thing done beyond the Seas upon the Land, and the Conſtable and Marſhall have no conuſance of any thing done upon the Sea,

26 H. 8. cap. 13. 35 H. 8. cap. 2. 5 E. 6. cap. 11.

Where by theſe Acts it is provided, That all treaſons, miſpriſion of treaſons, or concealment of treaſons committed out of this Realm of England, ſhould be inquired of, heard and determined in the Kings Bench by good and lawfull men of the ſame Shire, where the ſaid Bench ſhall ſit, or elſe before ſuch Commiſſioners and in ſuch Shire, as ſhould be aſſigned by the Kings Commiſſion by good and lawfull men of the ſame ſhire, in like manner and form to all intents and purpoſes as if ſuch treaſons, &c. had been done within the ſame, &c. None of theſe Acts doth take away the juriſdiction of the Conſtable and Marſhall, where one accuſeth another of High Treaſon done out of the Realm: for of ſuch an accuſation of one againſt another of any High treaſon done out of the Realme the Conſtable and Marſhall ſhould have conuſance thereof: becauſe High Treaſon is not triable by Jury according to the courſe of the Common laws of the Realm in that caſe for want of proof, as by all the preſidents aforeſaid it appeareth. Neither doth the ſaid Act of 35 H. 8. or 5 E. 6. take away the Statute of 28 H. 8. cap. 15, for triall of treaſons done upon the Sea albeit they be done out of the Realm. See hereafter Cap. 23. and the Third part of the Inſtitutes, Cap. of Piracy, 111, & 112. and there was no doubt conceived of the triall of them. See the preamble of the Statute of 35 H. 8. and of 5 E. 6.

See 1 E. 6. ca. 12. & 5 E. 6. ca. 11. in the 3 part of the Inſt. pa. 24.

See 5 El. ca. 5.

* Vid. Regi. 129. F. N. B. 114. b. Note remedy by the Common law for wrong done beyond the Sea

* If any Merchant Engliſh be ſpoiled, or his goods taken from him beyond Sea by any Merchants ſtrangers, and the Engliſh Merchant cannot upon ſuit attaint

attain to justice there, he shall have upon testimony thereof a writ out of the Chancery to arrest the Merchants strangers if they come into England, or their goods, &c. untill they be satisfied. See hereafter the Chapter of Admiralty.

Before this Act at a Parliament, holden in the 8 year of R. 2. It was enacted that no plea which should concern the Common law should be tried before the Constable and the Marshall. Rot. Par. 8 R. 2. nu. 31. not printed.

No addition either of persons or of jurisdiction can be added to this Court, unlesse it be by Act of Parliament,* for ancient Courts ought to be exercised according to the ancient and right institution. Rot. Par. 5 R. 20 nu. 36. Bennet Wilmots case. 6 H. 7. 5. Simile * Regul. 6 H. 7. 4. 5.

In the Appeal aforesaid betwéen Upton and Down in 8 H. 6. after battel joyned, the Kings writ out of the Court of Chancery issued to the Sheriffs of London, as we find it entred and recorded in the great book of the Abby of Bury, fol. 87. as followeth.

Rex Vic' London Salutem, Præcipimus vobis firmiter injungentes quod quasdam listas et barras de maremio fortes et satis sufficientes pro quodam Duello inter Johannem Upton Appellantem et Johannem Down Defendentem, secundum legem Armorum die Lunæ prox' futur' apud West-smithfield in suburb' Civitatis prædictæ Deo dante perficiend. contra diem prædictum nostris sumtibus et expensis erigi, construi, et fieri fac' in omnibus prout in ultimo duello ibidem facto fact' fuerunt, et quod terra infra listas prædict. cum sabulo sufficiente et equalit' cooperiatur, Ita quod aliqui lapides grandes aut arena infra easdem listas minime inveniantur quovismodo: Et de omnibus et singulis pecuniarum summis quas circa præmissa applicaveritis, nos vobis in compoto vestro ad Scaccarium nostrum per præsens mandatum nostrum, debitam allocationem habere faciemus, &c. Breve, Vic' Lond. pro listis & barris &c. pro duello fac'. Lex Armorum. Pro duello. &c. See the Articles set down by Tho. of Woodstock Duke of Glouc' Constable of England, about the beginning of the reign of R. 2.

By this writ we observe 4 things. 1. That Sheriffs ought to make the lists, &c. 2. The manner how they are to make them. 3. That they ought to make them by the Kings Writ. 4. That they are to be made at the Kings charges. See mod' fac' duellum coram rege. 1 H. 4. cap. 14.

By the statute of 1 H. 4. all Appeals of things done within the Realm shall be tried and determined by the good laws of the Realm, &c. And that all Appeals made of things done out of the Realm shall be tried and determined before the Constable and Marshall of England for the time being, and that no Appeal be pursued in Parliament. Ro. Par. 11 H. 4. nu. 24.

They proceed according [a] to the Customes and usages of the Court, and in cases omitted, according * to the Civill law, secundum legem Armorum, And therefore upon Attainders before the Constable and Marshall of England for the time being, no land is forfeited, of corruption of bloud wrought. [a] 13 H. 4. 5. ¶ *By the Civil law, &c.* * 37 H. 6. fo. 3. Forresc' cap. 32. fo. 38.

For records, Book-cases, and other Authorities in law as well for the exposition of the said statutes, as for the jurisdiction and proceedings of this Court, [b] see the First part of the Institutes, Sect. 102. and 745. and peruse the Authorities there cited, See also the petition of Right, 3 Car. cap. 1. [b] 11 H. 4. nu. 24. All statutes made touching the Courts of the Constable and Marshal and Admiral of England shall be observed. Vide Rot. Parl. 5 H. 4. nu. 24.

It is to be observed that after sentence pronounced in this Court of Chivalry in case of Arms the party grieved may appeal to the King, whereof you may read a notable Record, Rot. Par. 13 R. 2. parte 3. Note also a speciall Roll, An. 14 R. 2. intituled Rot. process' in curia militari in causa Armorum, Int' Ric' le Scroop Chivalier, & Robertum Grovener Chivalier.

And for this cause (amongst others) [c] the Heralds are Attendants upon this Court. Of these Heralds there be tres Regis, *viz.* Garter Rex armorum, Cla- An Act not in print touching a Commission 12. Clergy exempt the Ecclesiasticall 5 E. 4 6. b. Pl.

for arraying and mustering of men, which at this day is of force, and no other. Vide 8 H. 4. nu. out of that. See also 14 E. 3. stat. 2. nu. 53. a Commission of Lieutenancy. See hereafter amongst Courts. Tit. Appeals, Vid. Glover 82, 83. c. Saxonice *Ernhold*, i. honorem tenens, Latine fæciales. Com. 12. b.

renceux

renceux Rex Armorum ex parte Australi, Norroy Rex Armorum ex parte Boreali, & sex alii Heraldi. These English Heralds are messengers of war and peace, skilfull in descents, pedegrées, and Armories; they marshall the solemnities at Coronations, they manage combats before the Constable and Marshall, and upon request they solemnize the Funerals of noble, honourable, reverend, and worshipfull Parsonages. [a] They were first incorporated by King R. 3. and afterwards newly incorporated by King Philip and Quæn Mary. Their learning and faithfull dealing in descents and pedegrées upon just proof may be a mean to quiet many controversies about the titles of honors, dignities, and inheritances.

[b] In the Prophet Ezekiel it is thus written: Dicit dominus deus, & erit manus mea super Prophetas, qui vident vana, & divinant mendacium: in concilio populi mei non erunt, & in scriptura domus Israel non scribentur.

Upon these latter words Divines do hold, Quod mos erat in Israel, quod unaquæque familia genealogiam ejus scriberet, in qua dignoscebatur quilibet de qua tribu erat, & de qua familia & quæ hæreditas ejus esse deberet, & ille qui penitus destruetur non scriberetur.

[c] These Heralds are discharged of Subsidies, Tolls, and other charges of the Common-wealth by Letters Patents of E. 6. Anno 3. of this reign,

See the First part of the Institutes for degrées, and creations of Nobility, and triall thereof, Sect. 9. fol. 19. & Sect. 95. fol. 69. whereunto you may adde a notable writ in [d] the Register, when a Baron or any higher degrée of Nobility is sued in the *Court of Commons pleas, and processe awarded against him by Capias or Exigent, then may he sue out this writ.

Rex Justiciariis suis de Banco Salutem. Mandamus vobis, quod si G. T. *miles coram vobis sectam alicujus per actionem personalem implacitatus existit, talem processum et non alium versus ipsum in actione prædicta fieri faciatis, qual' versus dominos, magnates, Comites sive Barones regni nostri Angliæ qui ad Parliamentum nostrum de sommonitione nostra venire debent aut eorum aliquem secundum legem et consuetudinem regni nostri Angliæ fuerunt faciend', quia prædict'* G. T. *unum Baronum regni nostri prædict' ad Parliamenta nostra de summonitione regia venientium recordari, &c.*

The Barony of Edmond de Eincourt commonly Deincourt of Langley in Lincolnshire originally created by Writ, had long continued in his Sir-name, and having no issue male, desirous that his Sir-name, Arms, and Barony, all which he held in fée simple might continue, by humble suit importunod King E. 2. for that he conceived, Quod cognomen suum & arma post mortem suam delerentur, & corditer affectabat ut post mortem ejus in memoria haberentur, ut de maneriis & armis suis feofferat quemcunque voluerit: and in the end he obtained his suit by the Kings Letters Patents under the Great Seal, and afterwards about 19 E. 2. he assigned according to the Kings grant his Sir-name, Arms, and possessions. For we find in the close Rolls that the said Edmond Baron of Eincourt sat in Parliament untill and in 18 E. 2. and that after his decease his assignée sat in Parliament in 1 E. 3. by the name of William de Eincourt, and in his heirs males the dignity, sirname and possessions continued * untill 21 H. 6. and then his male together with the name and dignity ceased.

And I did hear the Baron of Burleigh Lord Treasurer Deputy to the Earl of Shrewsbury then Earl Marshall of England, in hearing of the cause by the Quéens commandment betwéen Edward Nevill and Lady Mary Vane daughter and heir of Henry Lord of Aburgaveny for the right of the Barony of Aburgaveny, vouch a Record in the reign of E. 4. That the Lord Hoe, who bare for his ensigns of honour quarterly Silver and Sable, having no issue male, by his

déed

a Rot. Par. 1 R. 3. Rot. Pat. 2 & 3 Ph. & Mar. 18. *July.* Their Colledge is in the Parish of S. Bennet in Castle Bainard Ward granted to the corporation of the Heralds by Letters Patents bearing date 18 July 1555. An. 2. & 3 Ph. & Mar.

b Ezekiel. 13. 8, 9. Psalm 69 *deleantur de libro viventium, & cum justis non scribantur.* 1 Esdr. ca. 2. 62. *Hi quæsierunt scripturam genealogiæ suæ & non invenerunt, & ejecti sunt.*

c Discharged of Subsidies.

d Regist. 287. b. F. N. B. 247. c.

* Or in the Kings Bench or other Court.

Nota, pro Barone. Vid. 8 H. 6. 9, 10. 14 H. 6. 2. Lib. 6. fo. 53. b. le Countes de Rutlands case.

10 E. 2. Camden Brit. Rot. Cart. 23 H. 3. nu. 32. 34. Armarick Earl of Leic' Matth. Par. pag. 647.

* Inquisit' 21 H. 6. Post mortem Willielmi domini de Eincourt

Hil. anno 31 El.

deed under his seal, granted his name, arms and dignity over, but having not the Kings License and Warrant, the same was in Parliament adjudged to be void.

Our Heralds are constituted by Letters Patents, and have many ceremonies done unto them at their creation, but those ceremonies are not of the essence of their Office, but the Letters Patents only: And so was it adjudged in the Kings Bench in the Reign of Queen Eliz. in the case of Dethick King of Arms. But thus much of Heralds upon this occasion shall suffice: And now let us return to our Constable and Marshal.

In ancient Laws before the Conquest, you shall read De Heretochiis or Heretogiis, *i.* ductoribus exercitus, ab *Here* exercitus, & *toech* ducere. *Inter leges Edwardi regis. Lamb. 136. Hovenden Annal. cap. 35. De Heretochiis.*

Heretochiis agreeth with either of these great Officers, Constabularius or Marischallus: Illi vero eligebantur per commune concilium pro communi utilitate regni per provincias & patricos in pleno Falkmote. *Of ancient time eligible. Lamb. ubi sup. Hovend. ubi sup.*

This Office of the Constable of England was afterwards of inheritance by the tenure of the Mannors of Harlefield, Newman, and Whitenhurst by Grand Serjeanty, in the line of the Bohuns Earls of Hereford and Essex, and afterwards of right in the line of the Staffords and Dukes of Buckingham, as heirs general to them: at the last by the Opinion of * all the Judges it was lawfully descended to Edward Duke of Buckingham, who was attainted of Treason, in Anno 13 H. 8. whereby this Office became forfeited to the Crown, and since that time both in respect of the amplitude of the Authority both in War and Peace, and of the charge, it was never granted to any subject, but now of late hac vice. * See 11 El. Dier 285. so resolved in 6 H. 8.

For the Office of the Earl Marshal, see the First part of the Institutes, Sect. 102. & 135.

The effect of the grant of this Office of Constable of England is in very few words, viz. Officium Constabularii Angliæ una cum omnibus feodis, proficuis, commoditatibus, & emolumentis quibuscunque officio prædicto qualitercunque pertinentibus, & ab antiquo debitis & consuetis. And by no means we are to follow the irregular president of the grant thereof by King E. 4. in the seventh year of his Reign to Richard Widevile Earl Rivers and Lord of Grafton and De la mote for his life: which Patent you shall find Rot. Pat. Anno 7 E. 4. part 1. and is directly against the Common Law and the Statutes concerning the jurisdiction of this Office; and therein to over-reach all the good and wholesome Lawes made for the declaration of the jurisdiction of this great Office, power was given to the Earl Rivers to have conusance in case of High Treason, and other causes and affairs; Quæ in Curia Constabularii Angliæ ab antiquo, viz. Domini Gulielmi Conquestoris progenitoris regis, seu aliquo tempore citra, tractari, audiri, examinari & decidi contueverunt, seu de jure debuerunt sive debent, & diversa alia perperam. And therefore by no means the same or the like is to be drawn into example.

For grants of this great Office of Constable of England, see the presidents, and by that which hath been said chuse the best. Rot. Pat. 1 H. 4. parte 1. Henrico Comiti North. pro vita. Rot. Pat. 4 H. 4. parte 2. Johanni filio regis, ad placitum. Rot. Parl. 1 H. 6. nu. 23. Duci Glouc' ad placitum, Rot. Pat. 1 H. 6. parte 2. Johanni Duci Bedford pro vita. Rot. Pat. 8 H. 6. parte 1. Richardo Duci Eborum in absentia Johannis Ducis Bedford. Rot. Pat. 25 H. 6. parte 1. Johanni Vicecom. de bello monte. Rot. Pat. 28 H. 6. parte 2. m. 22. Henrico Com. Northumbr. ad placitum. Rot. Pat. 29 H. 6. parte 1. Edmundo Duci Somerset. ad placitum. Rot. Pat. 1 E. 4. parte 3. m. 188. Johanni Com. Wigorn. Rot. Pat. 7 E. 4. parte 1. Johanni domino Tiptoft. Rot. Pat. 7 E. 4. Ubi supra Richardo Com. Rivers. Pat. 8 E. 4. parte 1. Pat. 9 E. 4. Georgio Duci Clarence. Pat. 9 E. 4. parte 2. Richardo Duci Gloc. Pat. 10 E. 4. parte † Johanni Tiptoft Comiti Wigorn. pro vita. Pat. 16 E. 4. parte 1. Richardo Duci Eborum. Henricus Stafford Dux Buckingham jure hæreditario. Pat. 1 R. 3. Thomas dominus Stanley, Edwardus Dux Buck. jure hæreditario.

† *Hic omnium immanissimus*: but the debts of cruelty are never unpaid, *respice finem.*

This great Office hath been usually granted, as by the Presidents aforesaid appeareth, Exercendum per se vel per sufficientes deputatos suos, seu per sufficien. deputatum suum.

There is also an Office of Subconstabularius granted to Thomas Kent Doctor of Lawes. Pat. 23 H.6. parte 2. Simile Pat. 22 E.4. m.1.

There is also Clericus Constabulariæ Angliæ, & Promotor causarum & negotiorum regiam majestatem tangen'. This Office was granted to Thomas Appulton with a fee of Five marks, Pat. 8 E.4. parte 1.

Concerning the Grants of the Office of Earl Marshall of England: for this Office ever passed by the grants of the King, and never belonged to any Subject by reason of tenure, as the Stewardship, and Constableship of England sometime did.

Rot. Cart. 20 R.2. m.1. n.3.

Rex, &c. Sciatis quod cum nos nuper de gratia nostra speciali concesserimus dilecto consanguineo nostro Thomæ Comiti Notingham Officium Mareschalli Angliæ, habendum ad totam vitam suam: Nos jam de ulteriori gratia nostra concessimus præfato consanguineo nostro officium prædictum * *una cum nomine & honore Comitis Mareschalli.* Habendum sibi & hæredibus suis masculis de corpore suo exeuntibus, cum omnibus feodis, proficuis & pertinentiis quibuscunque dicto officio qualitercunque spectantibus imperpetuum. His testibus, &c. Dat. 12 Junii Anno regni sui 20. This Charter of creation is confirmed by Act of Parliament. The former grant before recited, yet shorter than this, was made anno 9 R. 2.

* This is the first stile that ever came in any Patent.

Rot. Cart. 9 R. 2. nu. 17.

For other Grants of this Office in Rot. Cartarum, Pat. & Parl. See Rot. Cart. 1 Johannis parte 2. nu. 85. Rot. Cart. 9 E.2. nu. 32.

Vide Rot. Pat.
- 1 H. 3. m. 14. 16.
- 22 R. 2. parte 1. m. 12.
- 1 H. 4. parte 1. & 5. m. 6.
- 1 R. 3. parte 1. m. 12.
- 1 H. 7. parte 3.
- 2 H. 8. parte 2.
- 25 H. 8. parte 2.
- 1 E.6. parte 1. m. 19. & 22.
- 19 Jac. parte 13. nu. 5.

Vide Rot. Parl.
- 3 H.6. m. 181.
- 1 Mariæ, nu. 34.
- 1 R.2. m. 4. & 3.
- 20 R. 2. nu. 33.
- Parl. 21 E. 1. Rot. 1. Quæ pertinent ad officium Comitis Mareschalli, &c.

Pat. 22 E.4. m.2.

There was also Vicemareschallus, which Office was granted to Tho. Grey hac vice.

Vid. Lib. nigr. de Scaccario, concerning the Offices of the Constable and Marshall, & Lib. rubro fo. 36.

See also the Marshal of England, Fleta lib.2. cap.4,5. and Britton in principio libri.

See Mich. 13 E.2. in Scaccario pro feodis Constabularii Angliæ.

Hill. 5 E. 3. in Scaccario Certificatio fact' Regi pro officio Mareschalli, 1 E. 3. fo.16. 2 E.3. fo.12. 48 E.3.3. Rot. Parl. 2 R.2. nu. 47. 5 R. 2. tit. Trial, 54. Rot. Par. 5 H.4. nu.39. Kelwey 172. Stanf. Pl. Cor.65, Fortescue ca.32. fo.38. 5 Mar. Br. tit. Battell 15.

Hereslita signifieth a Soldier hired and departing without license, derived of *Here*, exercitus, & *sliten*, to depart.

Regist. fo.191.2. & Par. 5 E. 3. nu.18.

If any Souldier have covenanted to serve the King in his War, and appears not at the time and place appointed, there lyeth by the Common Law an original Writ of Capias conductos ad proficiscendum, directed to two of the Knights Serjeants

Serjeants at Armes to arrest and take him whereſoever he may be found, and to bring him Coram concilio noſtro with a clauſe of aſſiſtance: but of this matter, ſee the Third part of the Inſtitutes, Cap. [Soulders that depart, &c.] 3 Car. the petition of Right concerning Martial law, and the Commiſſion to Lieutenants &c.

To conclude with ſome ſhort touch concerning right of war. Si quando acceſſeris ad expugnandam civitatem, offere ei primum pacem: and ſee there many things concerning right of war. Quis rex itturus committere bellum adverſus alium regem, non ſedens prius cogitat ſi poſſit cum decem millibus occurrere ei qui cum viginti millibus venit ad ſe, alioquin illo adhuc longe agente legationem mittens rogat ea quæ pacis ſunt. Deut. 20. 10. &c. Luc. 14. 31.

Haud facile vincitur qui de ſuis & adverſarii copiis, vere poterit judicare. Qui colloquium offert, ſemper paveſcit, he that offereth parly is ever afraid. Nulla ſunt meliora conſilia quam quæ ignoraverit adverſarius antequam facias. *Tacitus.* *Vegetius de re militari*

Nullum bellum eſt juſtum, niſi aut pro rebus petitis geratur, aut ante denunciatum ſit, & indictum. *Cicero Offic.*

Jure gentium non licet indictas inimicitias exercere & bellum gerere, priuſquam ille à quo injuria ſit oria moneatur illicitam injuriam reſarcire, et ab injuria abſiſtere. *Cambden.*

Juſtum autem bellum eſt quod tria hæc habet, Authorem, Cauſam, Finem. *Lipſius.*
Semper in prælio huis maximum periculum, qui maxime timent. *Saluſt.*
Longa belli præparatio celerem dat victoriam. *Veget. & Seneca.*
Ideo ſuſcipenda ſunt bella, ut ſine injuria in pace vivatur. *Cic. ubi ſup.*
In republica maxime conſervanda ſunt jura belli.
† Olim veteri lege armorum cives et burgenſes militiam tractare prohibiti fuerunt. *Ariſt. 10.*

† Vid. 24 E. 3. Tit. Coron.

We touch Vegetius for his own honour and worthineſſe, and for that Forteſcue fo. 70. b. citeth him.

CAP. XVIII.

The Court of the Marſhalſea.

¶ *The name.* 1 part of the Inſtitutes, ſect 101. & 135.

For the derivation of Mareſchallus & Mareſchalcia, ſee before in the next preceding Chapter of the Court of the Conſtable and Marſhal, that they be derived from two Saxon words, which we conceive tendeth much for the proof of the antiquity and honour of our Nation, ſeeing other Nations have the ſame Officers and Offices; and in reſpect their name is derived from the Language of our Anceſtors, it is like they took the ſame from us.

¶ *The Antiquity and honor.* 4 H.6 8. L. 5 E.4. 229.

¶ *Wherefore it is called the Court of the Marſhalſea.*

Albeit in this Court the Steward and Marſhal of the houſhold are Judges, and the Steward hath the precedency, yet the Court is called the Court of Marſhalſea for three cauſes. Firſt, he is not only a Judge, but ſeeth that execution (which is the life of the Law) be done. Secondly, his office is in force both in time of peace, and in time of war. Thirdly, though the Conſtable hath the precedency of the Marſhal of England, yet the Court holden before them is called the Marſhal Court, for the cauſes aforeſaid. See before in the Chapter of the Conſtable and Marſhal; ſee alſo Rot. Par. anno 8 H.4. nu. 82. that the Court of the Marſhal can hold no plea but ſuch as were holden in the Reign of E. 1.

¶ *The Juriſdiction of this Court is original and ordinary.* 4 H.6. 1. Hill. 20 R.2. Coram Rege Rot. 58. Midd.

For the juriſdiction of this Court, and within what precinct, ſee in my Reports, Lib. 10. fo. 68, 69, &c. Le caſe del Marſhalſea. Lib 6. fo. 20, 21. Michelbornes Caſe. 7 H.4. 15. in Calvins Caſe. Lib. 4. fo. 46, 47. Swifts Caſe. See Parl. 30 E. 1. Rot. 2. All inquiſitions concerning any Citizen of London ſhall be taken in London.

Pertinet ad Mareſchallum Cur. hic venire fac. juratores ſuper felones captos cum manuopere in Aula regis.

This Court hath his foundation from the Common Law of England.

W.1. c.26. fees.

This Marſhal by the ſtatute of W.1. can take no fee for doing of his office, but only of the King, but ſuch fees as latter Acts of Parliament have given him, he may take. See the Third part of the Inſtitutes, Cap. Extortion.

For the fees of the Marſhal of the Kings Houſe, and of Staff-bearers, and Servitors of bills, ſee the ſtatute of 2 H. 4. cap. 23.

Rot. Par. 17 E.3. nu. 31.

To conclude this Chapter with an Act of Parliament not in print. It is enacted, That every perſon arreſted into the Marſhalſea, may tell his own tale, and that the Officers do not paſſe the Verge. See Par. 50 E.3. nu. 91, 162.

CAP. XIX.

The Counting-houſe of the Kings Houſhold. *Domus Compotus Hoſpitii Regis.*

IT is commonly called the Greencloth, in reſpect of the Green cloth upon the Table, whereat the honourable Officers hereafter mentioned do ſit, viz. the Lord Steward, the Treaſurer of the Kings Houſe, the Controller of the Kings Houſe, the Maſter of the Houſhold, the Cofferer, and two Clerks Controllers continually ſitting in this Counting-houſe for theſe purpoſes. Firſt, for daily taking the accounts for all expenſes of the ſaid Houſhold. Secondly, for making of proviſions for the ſaid Houſhold, according to the Laws and Statutes of the Realm. Thirdly, for making of payment for the ſame accordingly. Fourthly, for the good government of the Kings ſervants of his houſhold. Fifthly, the Cofferer is to pay the wages to the Kings ſervants beneath the ſtairs, and the Lord Chamberlain above the ſtairs of the Kings Houſhold. Vide 39 Eliz. cap 7. and he is to account in the Exchequer for about 40000 l. 33 H.8. cap. 12.

Sic Fleta de officio Theſaurarii Hoſpitii Regis, &c. Habet enim Rex alios clericos in hoſpitio ſuo, ut Theſaur. Garderobæ ſuæ quæ eſt locus Clericis tantum aſſignatus, quæ in Francia Camera Clericorum appellatur. Huic enim Theſaurario cur' expens' Regis & familiæ ſuæ committit, qui cum Clerico provido ſibi aſſociato pro Controlatore recordum habet ut in hiis qui officium ſuum contingunt. Fleta lib. 2. c. 13. Theſaurarius Garderobæ.

¶ Officium Theſ. Garderobæ eſt pecuniam, jocalia exempta' regi facta recipere & recepta regiſque ſecreta cuſtodire, & de receptis expens' facere rationabiles, expenſarumque particulas inbreviare, & de particulis comp' reddere ad Scaccarium ſingulis annis in feſto S. Margaretæ abſque ſacramento præſtando, eo quod de conſilio regis eſt juratus, Et unde primo debet diſtinctè & aperte comp. reddere de omnibus recept. ſeparatim per ſe in uno rotulo. In alio autem rotulo de expenſis quotidianis de quibus Sen. audiverit comp. ſimul cum Theſ. & conſocio ſuo. Item de neceſſariis expenſ. in quibus emptiones equorum, cariagia & plura alia continent. Item de donis. Item de oblationibus & eleemoſynis. Item de vadiis militum. Item de vadiis baliſtar. Item de feod. forinſecis. Item de præſtit. & accommodat'. Compotum reddere. De conſilio Regis juratus. Modus compoti.

¶ Item de expenſ. Garderobæ in quibus emptiones pannorum, pelure, cere, ſperum tele, et hujuſmodi comprehenduntur. Idem de jocalibus. Item de expenſ. forinſecis, in quibus diverſi onerant. in compot. reddend. Item de Nunciis. Item de Falconar.

¶ Theſ. autem memoratus convenire debet ſingulis noctibus Sen' hoſpitii, Camerar. Controlatorem & clericum ejus, Coſtrarium, Mar. aulæ & hoſtiar. milites, Mar. ſervientem & duos hoſtiar. aulæ & hoſtiar. cameræ ſervientes, aſſeſſorem ſerculorum, pincernam, panetr. piſtorem & clericum eorundem officiorum, qui de expenſ. dietæ, viz. panis, vini, & cervis. pichiorum, ciphorum, ſalis, fructus, caſei & hujuſmodi reſpondebit. Convenire ſingulis noctibus. Coſſrarius.

¶ Item duos magiſtros Cocorum, lardenar. poletar. ſcutelar. falſar. & clericum coquinæ qui de eiſdem officiis pro omnibus in eorum præſentia de expenſ. illius dietæ reddit. rationem, quorum omnium præſentia neceſſaria eſt. Item Eleemoſynar. janitor. ſervientem ad cuſtodiam ſummar. & carectarum deputatum & clericum de Mareſcalcia cum Mareſcall' fractore equorum, qui quidem clericus de expenſ. feni & aven. litere fracture equorum & harneſie pro equis et carectis ac de vadiis ſervient. ſcutiferarum clericorum & garc' reſpondebit, cujus intereſt ſcire tam de hiis qui de novo erunt admiſſi ad vad. Regis, quam de vagantibus & in hiis vadis minuere & augere. Vadia autem abſentibus ſine ſpeciali præcepto regis niſi obſequia reg' fuerint minime concedunt, præſentia autem Coronatoris Regis neceſſario eſt Magiſtri Coccorum. Clericus Coquinæ.

erit in pleno compoto, compoti auditores ſuper foro frumenti & aven. inſtruent & edocent qualit. proclamat. in eiſdem partibus per quod melius ſcire poſſint quod pines obolati fieri debent de quart. frument. quibus omnibus congregatis audire debet expenſ. & rationabilem compot. illius dietæ.

¶ Mareſchalli autem de ſuperveniennibus debent inferiori Mar. teſtimonium perhibere. Hoſtiarius miles hoſtiariis aliis de numero ferculorum lardenar', coco, camerar', hoſtiario camer' Regis, & ſic quibus alii, & ſic audiat. compotus de tota dieta.

And then followeth a deſcription of the duties of the ſeveral Officers abovesaid, worthy the reading.

Artic. ſup. Cart. cap. 2.

The Cofferer is in Fleta called Coffrarius of the Coffer: becauſe he ſhould have money in his Coffer to pay wages, &c. as is aforeſaid. It is enacted by the ſtatute of 28 E. 1. cap. 2. That all Purveyors ſhall account in the † houſhold, or in the Wardrobe. Rot. Par. 28 E. 3. nu. 34. no Purveyor arreſted ſhall be brought before the Councel, &c. but take his remedy by the Common Law. See the Third part of the Inſtitutes, Cap. Purveyours.

† Counting-houſe having the Green-cloth.

Rot. Par. 28 E. 3. nu. 34.

* 36 E. 3. ca. 1, 3, 4, &c.

* See the Statutes concerning Purveyours, Anno 36 E. 3. cap. 2, 3, 4, 5, 6, &c. But obſerve that there is left out of the print the pain on the Steward, Treaſurer, Controller, and other Officers of the Houſhould at the Kings will, for not executing the ſtatute: which omiſſion hath made thoſe of the Green-cloth the bolder.

Rot. Par. 36 E. 3. nu. 18.

At that Parliament it was alſo enacted, That the Kings Carriages ſhould be made in eaſie manner as might be, and that in the Summer, and other times convenient, as in Auguſt (which is alſo left out of the print.) For the Kings Carriages, ſee Mag. Cart. cap. 21. and the expoſition upon the ſame in the Second part of the Inſtitutes.

For the Wardrobe, Vide 15 E. 2. Rot. perſe. 1 E. 4. cap. 1. Clerk of the Wardrobe. Rot. Parl. 7 H. 7. the expences of the Kings Houſhold and Wardrobe: 1 H. 8. an Act concerning the great Wardrobe. 3 H. 8. the aſſignment for the Kings Wardrobe. 39 Eliz. cap. 7. Maſter of the Wardrobe, whoſe Office is accountable in the Exchequer. See W. 1. cap. 44. what iſſues the Kings Juſtices are to eſtreat into the Wardrobe: more of the Wardrobe, Rot. Clauſ. 33 E. 1. m. 3. Rot. libertatum. 11 E. 2. m. 4. To conclude, See Rot. Clauſ. 18 E. 4. m. 13. where it appeareth, that Letters and Writings concerning matters of State, which were not fit to be made vulgar, were inrolled in the Wardrobe, and not in the Chancery, as leagues were and ought to be, as it appeareth in 19 E. 4. 6. And thus much of the Wardrobe being mentioned in Fleta.

Vide infra c. 26.

The Officers of the Counting-houſe never held plea of any thing.

CAP.

CAP. XX.

The Court of the Lord Steward, Treasurer, and Controller of the Kings Houshold, concerning felony, by compassing or conspiracy to kill the King, or any Lord or other of the Kings Councell, &c.

THey have Jurisdiction by Act of Parliament, to enquire, hear, and determine the said offence, as particularly and at large appeareth in the Third part of the Institutes, Cap. Felony, by compassing or conspiracy to kill the King, &c.

3 H. 7. cap. 14. 3 part of the Institutes, cap. Felony by compassing or conspiracy to kill the King, fol. 67.

CAP. XXI.

The Court of the Lord Steward of the Kings House, or in his absence of the Treasurer, and Controller of the Kings House, and Steward of the Marshalsea.

THey have Jurisdiction by Act of Parliament to enquire of, hear, and determine all Treasons, Misprision of Treasons, Murders, Manslaughters, Bloodshed, and other malitious strikings, whereby blod shall be shed in any of the Palaces and Houses of the King, or in any other house where the King in his Royal Person shall be abiding. And by that Act the * limits and bounds of the Kings Palaces or Houses, or the house where the Royal Person is abiding, are particularly and expressly set forth and described. In this and like cases we refer you to the Statute it self, for Compendia sunt dispendia.

33 H. 8. cap. 12. See the statute for the trial and manner of proceeding. Rastal. Pl. 124. See the third part of the Instit. cap. Misprision. fol. 229.

* Vide 28. c. 12.

CAP.

CAP. XXII.

The Court of the Admiralty proceeding according to the Civil Law.

Articuli Admiralitatis.

Articuli Admiralitatis. The Articles of the Admiralty. ¶ The Proces and proceedings in this Court are in the name of the Lord Admiral.

The Complaint of the Lord Admiral of *England* to the Kings moſt Excellent Majeſty againſt the Judges of the Realm, concerning Prohibitions granted to the Court of the Admiralty 11 *die Febr. penultimo die termini Hilarii, Anno* 8 *Jac. Regis*: The effect of which complaint was after by his Majeſties Commandement ſet down in Articles by Doctor *Dun* Judge of the Admiralty; which are as followeth, with Anſwers to the ſame by the Judges of the Realm: which they afterwards confirmed by three kinds of authorities in Law. 1. By Acts of Parliament. 2. By Judgements and Judicial proceedings. And laſtly, by Book-Caſes.

The Title of the Complaint. Certain Grievances whereof the Lord Admiral and his Officers of the Admiralty do eſpecially complain, and deſire Redreſſe,

1 *Objection.* That whereas the conuſance of all contracts and other things done upon the Sea belongeth to the Admiral juriſdiction, the ſame are made triable at the Common Law, by ſuppoſing the ſame to have been done in Cheapſide, and ſuch places.

The Anſwer. By the Laws of this Realm the Court of the Admiral hath no conuſance, power, or juriſdiction of any manner of contract, plea, or querele within any County of the Realm, either upon the land or the water: but every ſuch contract, plea, or querele, and all other things riſing within any County of the Realm, either upon the land or the water, and alſo Wreck of the Sea ought to be tried, determined, diſcuſſed, and remedied by the Laws of the Land and not before, or by the Admiral nor his Lieutenant in any manner. So as it is not material whether the place be upon the water infra fluxum & refluxum aquæ: but whether it be upon any water within any County. Wherefore we acknowledge, that of contracts, pleas, and querels made upon the Sea, or any part thereof which is not within any County (from whence no trial can be had by twelve men) the Admiral hath and ought to have juriſdiction. And no preſident can be ſhewed that any Prohibition hath been granted for any contract, plea or querele concerning any marine cauſe made or done upon the Sea, taking that only to be the Sea wherein the Admiral hath juriſdiction, which is before by Law deſcribed to be out of any County. See more of this matter in the Anſwer to the ſixth Article.

The deſcription & limitation of the (Sea) wherein the Lord Admiral hath juriſdiction.

2 *Objection.* When Actions are brought in the Admiralty upon bargains and contracts made beyond the Seas, wherein the Common Law cannot adminiſter juſtice, yet in theſe caſes Prohibitions are awarded againſt the Admiral Court.

The Anſwer. Bargains or Contracts made beyond the Seas wherein the Common Law cannot adminiſter juſtice (which is the effect of this Article) do belong to the Conſtable and Marſhall; for the Juriſdiction of the Admiral is wholly confined to the Sea, which is out of any County. But if any Indenture, Bond, or other Specialty, or any contract be made beyond Sea for doing of any act or payment of any money within this Realm, or otherwiſe, wherein the Common Law can adminiſter

See hereafter in the proofs by Judgements and judicial preſidents.

miniſter juſtice, and give ordinary remedy; In theſe caſes neither the Conſtable and Marſhal, nor the Court of the Admiralty hath any juriſdiction. And therefore when this Court of the Admiralty hath dealt therewith in derogation of the Common Law, we find that Prohibitions have been granted, as by Law they ought.

Whereas time out of mind the Admiral Court hath uſed to take ſtipulations for appearance and performance of the Acts and Judgements of the ſame Court: It is now affirmed by the Judges of the Common Law that the Admiral Court is no Court of Record, and therefore not able to take ſuch ſtipulations: and hereupon Prohibitions are granted to the utter overthrow of that Juriſdiction. *The 3. Objection*

The Court of the Admiralty proceeding by the Civil Law is no Court of Record, and therefore cannot take any ſuch Recogniſance as a Court of Record may do. And for taking of Recogniſances againſt the Laws of the Realm, we find that Prohibitions have been granted, as by Law they ought. And if an erroneous ſentence be given in that Court, no Writ of Error, but an appeal before certain Delegates do lie, as it appeareth by the Statute of 8 Eliz. Reginæ, cap. 5. which proveth that it is no Court of Record. *Anſwer.* 8 Eliz. cap. 5.

That Charter-parties made only to be performed upon the Seas, are daily withdrawn from that Court by Prohibitions. *The 4. Objection*

If the Charter-party be made within any City, Port Town, or County of this Realm, although it be to be performed either upon the Seas, or beyond the Seas, yet is the ſame to be tried and determined by the ordinary courſe of the Common Law, and not in the Court of the Admiralty. And therefore when that Court hath encroached upon the Common Law in that caſe, the Judge of the Admiralty and party ſuing there have been prohibited, and oftentimes the party condemned in great and grievous damages by the Laws of the Realm. *The Anſwer.*

That the Clauſe of Non obſtante ſtatuto, which hath foundation in his Majeſties Prerogative, and is currant in all other grants, yet in the Lord Admirals Patent is ſaid to be of no force to warrant the determination of the cauſes committed to him in the Lordſhips Patent, and ſo rejected by the Judges of the Common Law. *The 5 Objection*

Without all queſtion the Statutes of 13 R. 2. cap. 3. 15 R. 2. cap. 5. & 2 H. 4. cap. 11. Being Statutes declaring the Juriſdiction of the Court of the Admiral, and wherein all the Subjects of the Realm have intereſt, cannot be diſpended with by any Non obſtante, and therefore not worthy of any anſwer: but by colour thereof, the Court of Admiralty hath contrary to thoſe Acts of Parliament incroached upon the juriſdiction of the Common Law, to the intollerable grievance of the Subjects, which hath oftentimes urged them to complain in your Majeſties Courts of ordinary Juſtice ad Weſtm. for their relief in that behalf. *The Anſwer.* 13 R. 2. cap. 3. 15 R. 2. cap. 5. 2 H. 4. cap. 11.

To the end that the Admiral Juriſdiction may receive all manner of impeachment and interruption, the Rivers beneath the firſt Bridges, where it ebbeth and flowеth, and the Ports and Creeks are by the Judges of the Common Law affirmed to be no part of the Seas, nor within the Admiral juriſdiction: and thereupon Prohibitions are uſually awarded upon actions depending in that Court, for Contracts and other things done in thoſe places; notwithſtanding that by uſe and practice time out of mind, the Admiral Court have had juriſdiction within ſuch Ports, Creeks, and Rivers. *The 6 Objection*

The like anſwer as to the firſt. And it is further added, that for the death of a man, and of mayhem (in thoſe two caſes only) done in great Ships, being and hovering in the main ſtream only beneath the points of the ſame Rivers nigh to the ſea, and no other place of the ſame rivers, nor in other cauſes, but in thoſe two only, the Admiral hath cogniſance. But for all contracts, pleas, and querels made or done upon a River, Haven, or Creek, within any County of this Realm, the Admiral without queſtion hath not any juriſdiction, for then he ſhould hold plea of things done within the body of the County, which are tryable by verdict of twelve men, and meerly determinable by the Common Law, & not *The Anſwer.*

within the Court of the Admiralty according to the Civil Law. For that were to change and alter the Laws of the Realm in those cases, and make those contracts, pleas and querels tryable by the Common Laws of the Realm to be drawn ad aliud examen, and to be sentenced by the Judge of the Admiralty according to the Civil Laws. And how dangerous and penal it is for them to deal in these cases, it appeareth by judicial Presidents of former ages. See the answer to the first Article.

The 7. Object. That the agreement made in Anno Domini 1575. between the Judges of the Kings Bench and the Court of the Admiralty for the more quiet and certain execution of Admiral Jurisdiction, is not observed as it ought to be.

The Answer. The supposed agreement mentioned in this Article hath not as yet been delivered unto us, but having heard the same read over before his Majesty (out of a Paper not subscribed with the hand of any Judge) we answer, that for so much thereof as differeth from these answers, it is against the Laws and Statutes of this Realm: and therefore the Judges of the Kings Bench never assented thereunto, as is pretended, neither doth the phrase thereof agree with the tearms of the Laws of the Realm.

The 8. Object. Many other grievances there are, which in discussing of these former will easily appear worthy also of reformation.

The Answer. This Article is so general, as no particular answer can be made thereunto, only that it appeareth by that which hath been said, that the Lord Admiral his Officers and Ministers principally by colour of the said void Non obstante, and for want of learned advice have unjustly incroached upon the Common Laws of this Realm, whereof the marvail is the less, for that the Lord Admiral, his Lieutenants, Officers, and Ministers have without all colour incroached and intruded upon a right and prerogative due to the Crown, in that they have seised, and converted to their own uses goods and chattels of infinite value taken by Pyrats at Sea, and other goods and chattels which in no sort appertain unto his Lordship by his Letters Patents, wherein the said Non obstante is contained, and for the which he and his Officers remain accountable to his Majestie. And they now wanting in this blessed time of peace Causes appertaining to their natural Jurisdiction, they now incroach upon the Jurisdiction of the Common Law, lest they should sit idle and reap no profit. And if a greater number of Prohibitions (as they affirm) hath been granted since the great benefit of this happy peace, then before in time of hostility, it moveth from their own incroachments upon the Jurisdiction of the Common Law. So as they do not only unjustly incroach, but complain also of the Judges of the Realm for doing of justice in these cases.

Touching our proceedings in granting of Prohibitions concerning any of the said Articles, two things are to be considered of. First, the matter; and secondly, the manner. For the matter nothing hath been done therein by your Majesties Courts at Westminster, but by good warrant of Law and former judicial President. And for the manner, we have granted none in the time of Vacation, nor in the Term time in any of our Chambers, nor in the Court in the Terme time Ex officio, but upon motion made in open Court by learned Councel, and after a day prefixed, and warning given to the adverse party, and upon reading of the Libel in open Court, and hearing of the Councel Learned of such of the parties as were warned and did attend.

The said answers were proved and confirmed (as is aforesaid) by three kind of Authorities in Law. First, by Authority of the High Courts of Parliament. Secondly, by Judgements and judicial Presidents. Thirdly, by Book-cases, and the Authority of our Books.

¶ 1. *By Acts of Parliament.* 13 R. 2. cap. 5.

Concerning the Acts of Parliament: It is enacted by the Statute made in 13 R. 2. ca. 5. That the Admirals and their Deputies shall not meddle from henceforth with any thing done within the Realm of *England*, but onely with things done upon the Sea, according to that which hath been duly used in the time of the Noble King *Edward*, Grandfather of King R. 2. By which it is manifest, that

that the Jurisdiction of the Court of Admiralty is only confined to things done upon the Sea, which the adverse party pleaded, but claimeth by colour of a Non obstante, &c. which is utterly void, as hath been said.

By the Statute of 15 R. 2. cap. 3. it is enacted and declared, That the Court of the Admiral hath no manner of conusance, power nor jurisdiction of any manner of contract, plea or querel, or of any other thing done or rising within the bodies of the Counties, either by land or by water, and also of wreck of the Sea, but all such manner of contracts, pleas, and querels, and all other things rising within the Bodies of the Counties as well by land as by water, as is aforesaid, and also wreck of the sea shall be tried, termined and discussed, and remedied by the Laws of the Land, and not before, nor by the Admiral nor his Lieutenant in no manner. Nevertheless of the death of a man, and of a mayheme done in great Ships, being and hovering in the main stream of the great Rivers onely beneath the points of the same Rivers, and in no other place of the same Rivers, the Admiral shall have conusance. This later clause giveth the Admiral further jurisdiction in case of death and mayheme, (with neither of which we ever medled) but with all other happening within the Thames, or in any other River, Port, or water, which are within any County of the Realm, (as all Rivers and Havens be, as hereafter shall manifestly appear) by express words of this Act of Parliament, the Admiral or his Deputy hath no Jurisdiction at all. Wherein it is to be observed, how curious the makers of this Statute were to exclude the Admiral of all manner of Jurisdiction within any water which lieth within any County of the Realm. 15 R. 2. cap. 3. Note, the Lord Admiral hath greater jurisdiction in case of the death of a man, and mayhem, than in other cases.

The Statute of 2 H. 4. cap. 11. enacteth, That the said Act of 13 R. 2. cap. 5. be firmly holden and kept, and put in due execution; and further at the prayer of the Commons that as touching the pain to be set upon the Admirall or his Lieutenant, that the Statute and Common Law shall be holden against them, and the party grieved shall recover his double damages. By which Act it appeareth, that the Statute of 13 R. 2. is but an affirmance of the Common Law, as shall also manifestly appear hereafter. 2 H. 4. cap. 11.

Which three Acts cannot be dispensed withall by a Non obstante, as hath been said before, but remain in full force, and hath been put in due execution in all ages.

This Statute of 27 Eliz. cap. 11. describeth particularly the limits of the Lord Admirals jurisdiction in these words. All and every such of the said Offences before mentioned, as hereafter shall be done on the main sea, or coasts of the sea, being no part of the Body of any County of this Realm, and without any precinct, jurisdiction and liberty of the Cinque-ports, and out of any Haven or Peer shall be tried and determined before the Lord Admiral, &c. So as by the judgement of the whole Parliament the Jurisdiction of the Lord Admiral is wholly confined to the main Sea, or Coasts of the Sea, being no parcel of the Body of any County of this Realm. 27 El. cap. 11. 5 El. cap. 5.

And by these four Acts of Parliament all the said Objections that have been made, or can be made against the proceedings of the Kings Courts at Westminster (being grounded on the same) are fully answered. And we will conclude this first part with the saying of God himself. Almighty God (as he himself out of a whirlwind spake) hath shut up the Sea within certain dores and bounds, Quis conclusit ostiis mare, quando erumpebat, quasi de vulva procedens: circumdedi illud terminis meis, & posui vectem & ostia, & dixi, Usque huc venies, & non procedes amplius, & hic confringes tumentes fluctus ejus. Job 38. 8, 10, 11.

Concerning the second kind of proof, viz. by Judgement and Judicial presidents, every of them in all successions of ages in serie temporis, taking some in every age for many that might be cited. ¶ *By Judgement and judicial presidents.*

Register Origin. fo. 129. F. N. B. 114. If goods be taken from an Englishman in Spain beyond the Sea, and the party cannot obtain justice there, he shall have a Writ to the Sheriff to arrest the body of the offenders, and to seise on their goods to the value: which proveth that the Admiral cannot hold plea thereof, for that Regist. Origin. fo. 129. F. N. B. 114.

the party hath remedy by the Common Law, and the Admirals power is only Super altum mare.

Hil. 6 H. 6. Rot. 303. in Banc.

Hil. 6 H. 6. Rot. 303. in the Court of Common pleas betwæn John Burton Plaintiff, and Bartholomew Put Defendant, the Case was this upon the said statutes. The said Bartholomew sued the said John Burton in the Admiral Court before Thomas Duke of Exeter then Admiral of England, for that the said John Burton with force and arms the second day of September, Anno 1 H. 6. three Ships of the said Bartholomew with his Prisoners and Merchandizes to the value of 960 Marks, 5 s. 5. ob. in the same Ships being, did take and carry away, supposing by his Libel the same to be taken away, super altum mare, upon the high Sea. Although the taking aforesaid was infra corpus Comitatus in Bristow (the said Ships lying in the Haven of Bristow) and not upon the high Sea, contrary to the form and effect of the said Statutes, the parties descended to an issue, which was found for the Plaintiff, and damages assessed for the Plaintiff to 700 l. And it appeareth by the Record, that this being the first Case that we can yet find that received Judgement in the Court of Common Pleas upon the said Statutes, the same depended in advisement and deliberation eight Terms: and then the Record saith, Et super hoc audito tam recordo quam veredicto prædicto, & per Curiam plenius intellect'. Consideratum est quod præd' Johannes Burton recuperet versus præfat' Bartholomæum damna sua prædicta occasione attachiamenti, prosecutionis, & vexationis, quam mis-rum & custagiorum ad septingentas libras per Juratores præd' superius assess. in duplum per Statutum, &c. quæ damna in duplo se extendunt ad mille & 400. & idem Barth' pœnam decem librarum erga dominum regem nunc per idem Statut' incurrat', & capiatur, & querens remittit 400 l. Upon which Judgement four things are to be observed. First, that it is contemporanea expositio, being made within twenty years of the making of one of the said Statutes, and contemporanea expositio est optima. Secondly, that albeit the said three Ships with the Prisoners and Merchandizes in them lay in the Haven, inter fluxum & refluxum aquæ, and infra primos pontes, yet that the Haven is infra corpus Comitatus, and that for taking of the ships and prisoners, and merchandises in the same, no suit ought to be in the Admiral Court, but at the Common Law. Thirdly, that the Court of Admiralty hath no Jurisdiction but super altum mare, which is not within any County, for the Record saith, that the said three Ships with the prisoners and merchandize in the same, did lie infra Comitat' Bristoliæ, & non super altum mare, as the Plaintiff in the Admiral Court supposed the same to be. Lastly, that Judgement so solemnly, and with such advisement given, if it were alone, were sufficient to give full satisfaction in this point; for Judicium est tanquam jurisdictum, and Judicium pro veritate accipitur. But to proceed.

In Portu.

Pasch. 12 H. 6. Rot. 124. in Banc.

Pasch. 12 H. 6. Rot. 124. a like Action brought by Robert Cupper upon the said Statutes in the Court of Common Pleas (reciting the said three Statutes) against John Rayner of Norwich, for that the said Rayner did sue the said Cupper in the Court of Admiralty before John Countee of Huntingdon, and Ivery Lieutenant to John Duke of Bedford Admiral of England, for that Rayner having a Ship in Portu aquæ Jernemuthæ infra corpus Com. Norff. ready for a Voyage to Zealand, the said Cupper entred the said Ship lying in the said Haven, and took away divers goods in the same being, asserendo per prædictum placitum res illas super altum mare emersisse, ac si res illæ super altum mare emersissent, cum non ibi, sed apud Jernemutham contra formam statutorum præd' which also proveth that the Haven is within the body of the County.

In Portu;

a Mich. 31 H. 6. Rot. 315. in banc. Hil. 2 Ph. & Ma. Rot. 130. Cr. 2. prohibition upon a Charter-party, Hil. 17 Eliz. Rot. 410. Cr. Spencers case, and infinite others upon Charter partits.

In the same Term in the same Court a like Action betwæn John Widewell and the said John Rayner, Rot. 123. which, with many others, being to one effect we omit.

a Mich. 31 H. 6. Rot. 215. betwæn William Hore, and Jeffery Unton for a suit in the Court of Admiralty before Henry Duke of Exeter, Admiral of England, concerning a contract of fourscore pounds upon a Charter-party of a fraight of a Ship of the said Jeffery called the Trinity of Harflew to go from the Port of

Pole

Pole towards the parts of Iseland, cum contractus ille apud novam Sarum infra corpus Comitatus, & non super altum mare factus & junctus fuit, contra formam statutorum prædᵗ. The Defendant pleaded to issue, which was found against him, and damages assessed to an Hundred Marks, and costs to forty pound: and thereupon judgement is given by the Court, that he should recover his damages in duplo, according to the Statute, &c. Which judgement directly proveth, that if a Charter-party or any other contract be made within City, Town or County of the Realm, though the performance thereof be to be done and performed upon the high Sea, yet the Admiral hath no Jurisdiction, because it may be tried by the Common Law, as by the said Record it appeareth. But where the whole is to be done supra altum mare, and no part of it infra corpus Comitatus, the Admiral hath Jurisdiction.

The Statute of 32 H. 8. c. 14. Concerning fraights of ships giveth to the Lord Admiral or his Deputy power to make certificate concerning the ships of Aliens in Ports, &c. And if the Lord Admiral or his Deputy be not resiant, then it giveth power to the Customer and Controller, or their Deputy to make certificate: but without question this giveth no power to the Lord Admiral to hold plea of fraights of ships more then he had before, no more than it doth to the Customer and Controller, to whom equal power is given by the Act to make certificate concerning the Ships of Aliens, &c. in the absence of the Lord Admiral or his Deputy, as to the Lord Admiral and his Deputy being present; and yet no man will affirme, that the Customer & Controller can hold plea of fraights. 32 H. 8. ca. 14.

Mich. 38 H. 6. Rot. 26. cr. A Præmunire brought by John Cassy Esquire, Qui tam, &c. against Richard Benchamp, Thomas Paunce Esquires, and others upon the Statute of 16 R. 2. for suing in Curia Romana vel alibi, of matters belonging to the Common Law. For that the Defendant did sue the Plaintiff in the Admiral Court before Henry Duke of Exeter, that the said John Cassy did take and carry away certain Jewels super altum mare, ubi idem Johannes Cassy bona illa apud Stratford at Bow infra corpus Comitatus Midd' & non super altum mare cepit, which is so evident, and of so dangerous consequence, as no application shall be made thereof. Mich. 38 H. 6. Rot. 36. cr.

In the Book of Entries, fol. 23. tit. Admiralty, it appeareth that the taking of a Ship called the Trinity of London lying upon the River at E. in the County of Kent is not super altum mare, but infra corpus Comitatus Kantiæ. And therefore a suit for the taking of that Ship lying there in the Admiral Court before John Earle of Huntingdon Admiral of England appeareth to be against the said Statutes, and yet no question that taking was infra fluxum & refluxum maris, & infra primos pontes. Book of Entries, fo. 23.

9 H. 7. A Præmunire brought for a suit in the Admiral Court before John Earle of Oxford for taking and carrying away quandam naviculam apud Horton Key at Southlyn, &c. supposing the same to be super altum mare, where it was infra corpus Comitatus. Book of Entries ubi supra.

Mich. 16 H. 8. Rot. 140. The River of Thames at Belingsgate is not within the Jurisdiction of the Admiral, but infra corpus Comitatus. Mich. 16 H. 8. Rot. 140.

35 H. 8. A prohibition to John Dudley Knight, Viscount Lisle, for holding plea in the Court of Admiralty for a contract made in Rivo Thamesiæ, supposing the same to be super altum mare, where in truth it was in Rivo Thamesiæ, apud B. in Com. Essex, which notwithstanding was infra fluxum & refluxum aquæ, & infra primos pontes. Book of Entries ubi supra.

Hil. 36 H. 8. Rot. 38. cr. The like prohibition inter Whelet & Warner, Eodem termino Rot. inter Tooly & Lewes, a Prohibition for a contract made at Dansick, in partibus transmarinis. And in 2 Jac. Regis, the whole Court of Common Pleas, because the Libel supposed the Act to be done in partibus exteris & transmarinis, granted a Prohibition. Hil. 36 H. 8. Rot. 38. cr. Hil. 2 Jac. Regis. *In communi Banc. Int' Throd. Tomlinson Quer' & Philips Def.*

Trin. 38 H. 8. Rot. 126. between Crane and Bell a promise made at Dertmouth, that Ship called the Mary Fortune should pass safely without taking and surprising, &c. which ship was after taken by the Spaniards super altum mare, Tr. 38 H. 8. Rot. 126.

is not determinable in the Court of the Admiralty, for that albeit the taking was upon the high sea, yet the promise was made upon the land, whereupon an action doth lie at the Common Law.

Tr. 3 & 4 Ph. & Mar. Rot. 709. in Banco.

Tr. 3 & 4 Ph. & Mar. Rot. 709. betwæn Lawrence Masherode, and Richard Wyn, a Prohibition out of the Court of Common Pleas to the Court of the Admiralty, William Lord Howard then Lord Admiral being.

Eodem Termino Rot. 811. in banc.

Tr. 3 & 4 Ph. & Mar. Rot. 811. the like Prohibition granted out of the same Court to the Court of Admiralty betwæn Robert Inne Plaintiff, and Roger Garland Defendant.

Hil. 4 & 5 P. & M. Rot. 831.

Hil. 4 & 5 Ph. & Mar. Rot. 831. the like Prohibition.

Many are the Presidents in the reign of the late Quæn Eliz. in the Court of Common Pleas, the Kings Bench and Exchequer, which we purposely omit, and insist rather upon the more ancient, yet one or two we will remember concerning things happening beyond Sea, whereupon an Action did lie at the Common Law, agreeable with the president in the reign of H. 8.

Mich. 39 & 40 El. Rot. 3158.

Mich. 39 & 40 Eliz. Rot 3158. A prohibition out of the Court of Common Pleas for a suit in the Admiral Court upon a Bill under the parties hand and seal for French Crowns, for that the Bill was made beyond Sea.

Mic. 3 Jac. in Scaccar'.

And Mich. 3 Jac. A prohibition was granted in the like case to the Admiral Court by the Court of Exchequer, for Sir John Swinarton having the privilege of that Court for a matter arising beyond the Sea. And divers prohibitions granted also in the like case in the Kings Bench.

See in the Chap. of the Court of the Constable and Marshal.

For causes of Actions which are transitory done out of the Realm, an Action may lie at the Common Law; but if the Action be criminal or local done beyond Sea, then before the Constable and Marshal only.

¶ 3. *By Book-cases and Authorities in Law.*

Concerning the last manner of proof, viz. by Book-cases and Authorities of our Books.

In the Register the most ancient Book of the Law, fo. F. N. B. fo. 87. I. & 88. F.

Temps E. 1. Avowry 192. in Communi Banc.

In Temps E. 1. Tit. Avowry 192. A Replevin was brought for the taking of a ship in the Coast of Scarborow in the Sea, and for carrying the same from thence into the County of N. Mutford the Plaintiff counteth of a taking in the Coast of Scarborow, which is neither town or place, out of which a Jury may be taken, for that the Coast is four miles long, and also of a thing done in the Sea, this Court hath no conusance, for certain Judgement is given thereof to Mariners. Berry Chief Justice of the Common Pleas; the King willeth, that the peace be as well kept on the Sea, as on the Land, and we find that you are come hither by due process, and therefore ruled him to answer. Out of which Four things are to be observed. First, that it is called the Sea, which is not within any County from whence a Jury may come. Secondly, that the Sea (being not within any County) is not within the Jurisdiction of the Court of Common Pleas, but belongs to the Admiral Jurisdiction. Thirdly, that when the ship came within the River, then it is confessed to be within the County of Northumberland. Lastly, that when a taking is partly on the Sea, and partly in a River, the Common Law shall have Jurisdiction.

8 E. 2. Tit. Coron 399.

8 E. 2. Tit. Coron. 399. It is no part of the Sea, where one may see what is done of the one part of the water, and of the other, as to see from one land to the other, that the Coroner shall exercise his office in this case, and of this the Country may have knowledge; whereby it appeareth that things done there are triable by the Country (that is, by Jury) and consequently not in the Admiral Court.

43 E. 3. Vid. 5 E. 3. 3. Tit. Replevin. 41.

43 E. 3. Norff. as the Lord Dier voucheth the Record in Mich. 15 & 16 El. saying (quod vidi) the Case was, that the Abbot of Ramsey was seised of the Manor of Brancaster in Norff. bordering upon the Sea, upon sixty Acres of Marsh of which Manor the Sea did flow and reflow; and yet it was adjudged parcell of the Abbots Manor, and by consequence within the body of the County unto the low water mark.

Pasch. 17 El. in Scaccario.

And it was adjudged Pasch. 17 El. in the Exchequer, Diggs being Plaintiff, that

that the land betweene the flowing and reflowing of the sea belonged to the Lord of the Manor adjoyning, as the Lord Dier doth there report.

48 E. 3. 3. If a Mariner makes a Covenant with me to serve me in a ship, upon the sea, yet if I ower ne soit pay, it shall be demanded in this Court by the Common Law, & ne per la ley de mariner. 48 E. 3. 3.

46 E. 3. tit. Conusans 36. An action of trespass was brought for taking of a ship in the Haven of Hull against certain Persons: the Mayor and Bayliffs of Hull demanded conusance by the Charter of the King granted unto them, that the Citizens and Burgesses of Hull should not be impleaded alibi de aliquibus transgressionibus, conventionibus & contractibus infra Burgum, &c. quam infra Burgum. And the Conusans was granted; which proveth that the Haven of Hull where the Ship did ride was infra Burgum de Hull, and by consequence infra corpus comitatus, and determinable by the Common Law, and not in the Admiral Court. 46 E. 3. tit. Conusans 36.

7 R. 2. tit. trespass in Statham pl. 54. In trespass for a ship and certain merchandize taken away (which trespass must of necessity be alledged in some Town and County in some River or Haven) the Defendant pleaded, that he did take them in le haut mere ove les Normans queux sont enemies le roy. And it is ruled a good plea, which concurreth with the other Books. 7 R. 2. Trespass in Statham pl. 54.

7 H. 6. 22. 35. An action lieth at the Common Law for forestalling, &c. in a Port or Haven, for it is infra corpus comitatus, and tryable by the Common-Law, and by consequence the Admiral hath no Jurisdiction there. 7 H. 6. 22. 35.

19 H. 6. 7. The Statute doth restrain that the Admiral shall not hold plea of any thing rising within any of the Counties of the Realm, but Executors he may make upon the land. And therefore where it is said in 22 Ass. pl. 93. that every water which flows and reflows, is an arm of the sea, yet it followeth not that the Admiral shall have Jurisdiction there, unless it be out of every County, or else such a place whereof the Country cannot take knowledge, as it appeareth in the Book of 8 E. 2. before cited. But of this more hereafter. 19 H. 6. 7. 22 Ass. p. 93.

Forteſcue cap. 32. fo. 38. Nam si quæ super altum mare extra corpus cujuslibet comitatus regni illius fiant quæ postmodum in placito coram Admirallo Angliæ deducantur per testes, illa juxta legum Angliæ Sanctiones terminari debent; which proveth by express words that the Jurisdiction of the Admiral is confined to the high Sea, which is not within any County of the Realm. Forteſc. cap. 32. fo. 38.

2 R. 3. fo. 12. Hibernici sunt sub Admirallo Angliæ de re facta super altum mare, which agreeth with the former, viz. that the Jurisdiction of the Admiral is super altum mare. 2 R. 3. 12.

Stanford. lib. 1. pl. cor. fo. 51. b. If one be slain upon any Arm of the Sea, where a man may see the land of the one part and of the other, the Coroner shall inquire of this, and not the Admiral, because the Country may take conusance of it, and doth vouch the said Authority of 8 E. 2. whereupon he concludeth in these words. So this proveth, that by the Common Law before the Statute of 2 H. 4. &c. the Admiral had no Jurisdiction but upon the high Sea, which only authority were sufficient to overrule all the said questions. For hereby appeareth that the Jurisdiction of the Admiral is onely confined by the Common Law to the high sea, and agreeth with all the former Book-cases and Acts of Parliament. Stanf. pl. cor. fo. 51. b.

4 & 5 Phil. & Mar. Dier 159. b. By the Libel in the Admiral Court the cause is supposed to commence *Sur le haut mere* & infra jurisdictionem *del Admiralty*, ubi revera facta fuit in tali loco infra corpus comitatus & non super altum mare. Whereby it also appeareth, that the Lord Admirals power is confined to the high sea. 4 & 5 Ph. & Mar. Dier 159. b.

Pasch. 28 Eliz. in the Kings Bench the case was, that a Charter-party by deed indented, was made at Thetford in the County of Norfolk, betweene Evangelist Constantine of the one party, and Hugh Gynne of the other part, by the which Constantine did covenant with Gynne that a certain ship should sail with Merchandizes and Goods of Hugh Gynne to Muttrel in Spain, and there should remain by certain dayes, &c. Upon the breach of which Covenant Gynne brought an Pasch. 28 Eliz.

Action

Action of Debt of 500 l. upon a clauſe in the ſame Chapter, and alledged the breach of the Covenant, for that the Ship did not remain at Mutterell in Spaine by ſo many dayes as were limited by the Covenant. Whereupon iſſue was taken and tried before Sir Chriſtopher Wray Chief Juſtice of England, and found for the Plaintiff: and in arreſt of Judgement it was ſhewed, that this iſſue did riſe out of a place totally and meerly in a foreign Kingdom out of the Realm, from whence no Jury of twelve men could come, and therefore the tryal was inſufficient. But it was adjudged by Sir Chriſtopher Wray, Sir Thomas Gawdy, and the whole Court of Kings Bench after great deliberation, that the Plaintiff ſhould recover 500 l. beſides his damages and coſts, for that the Charter-party whereupon the Action is brought was made at Thetford within this Realm, and that the tryal being in the ſame place where the Action was brought was ſufficient.

Mich. 30 & 31 Eliz. coram Rege.

And the like caſe was after adjudged in the ſame Court, Mich. 30 & 31 Eliz. in an action upon the caſe upon an Aſſumpſit grounded upon an inſtrument called a Policy, commonly made betweẽ Merchants for aſſurance of their goods, whereby the Undertakers did aſſume that ſuch a Ship ſhould ſail from Melcome Regis in the County of Dorſet unto Abvile in France ſafely without violence, &c. and declared that the ſaid Ship in ſailing towards Abvile, that is to ſay, in the River of Somne in the Realm of France, was arreſted by the French King, &c. whereupon iſſue was taken and tried, where the Action upon the Aſſumpſit was brought, and again the validity of the tryal newly queſtioned, and in the end reſolved and adjudged as before: which Judgement proves, that where part of the contract or other thing is made in any place within any of the Counties of the Realm, though the performance thereof be upon the high ſea, the trial and determination of the whole Act belongeth to the Common Law, and conſequently the Court of the Admiralty ought not to deal therewith.

Theſe Anſwers were anſwered to King James, magna eſt veritas & prævalait.

¶ *The Kings Prerogative of the Sea, &c. The Antiquity of the Court of Admiralty long before the reign of E. 3. in whoſe dayes ſome have dreamed it began.*

Now for the great Prerogative and intereſt that the King of England hath in the Seas of England, and for the antiquity of the Court of the Admiralty of England, and of the name of the Admiral, we have ſeen an ancient and a notable Record intituled, De ſuperioritate maris Angliæ & jure officii Admiralitatis in eodem, * ſo much whereof as we find in Archivis Regis, we ſhall tranſcribe de verbo in verbum, as it is in the Record it ſelf.

This cauſe was handled in or about the 12 year of E. 1. as by divers parts of the Record it appeareth.

Admiral of the Sea of England.

A vous Seigneurs Auditors Deputes per le Rois de Engliterre & de France a rearreſſer les damages faits as gents de lour Roialmes & des autres terres ſubgits a lour ſeigneuries per mer & per terre en temps de pees & de trewes. Monſtrent les procurours de Prelats & Nobles, & del Admirall de la mier d' Engliterre & de Comminalties des Cities & des Villes, & des Merchants, Mariners, Meſſagiers, & pelerins et des touts aultres du dit Royalme de d'Engliterre et des aultres terres ſubgits a la ſeignurie du dit Roy d'Engliterre et daillours ſicome de la marine de Genue, Cataloigne, Eſpaigne, Alemaigne, Seland, Hoyland, Friſe, Dennemarch, & Norway et de pluſours aultres lieux del Empire, que come les Roys d'Engliterre per raiſon du dit Royalme du temps dont il ny ad memoire du contrarie euſſent eſte en paiceable poſſeſſion de la ſoveraigne Seignurie de la mier d'Engliterre et des Iſles iſteants en ycele per ordinance et eſtabliſhment des lois, eſtatuts, et defenſes et des veſſeaux autrement garnies que veſſeaux de merchandiſe et de ſeurte prendre et ſauue gardes doner en touts cas que meſtier ſerra et par ordinance entre tout manere des gents taunt dautre ſignurie come de lour propre de

Time out of mind.

Laws, Statutes, and Ordinances.

touts

* In Archivis in Turri *London.*

tous aultres faitz neceſſaries a la garde de pees, droiture & equitie par elonges paſſants & per ſouveraigne garde & toute manere de coniſance et Juſtice haulte & baſſe ſur les dites lois, eſtatutes, ordenances, & defences, & pur touts autres faitz queux a le government de ſouveraign Seignurie appertenir purrent es lieux avantdits. Et A de B Admiral de la dit mier deputey per le Roy d' Engliterre, & tous les aultres Admirals par meſme celuy Roy d' Engliterre & ces anceſtors jades Royes d' Englittere euſſent eſte en paiſeable poſſeſſion de la dit ſouveraigne garde ove la coniſance & Juſtice & touts les aultres appurtenances avanditz, forpriſe en caſe dappele & le querele ſoit de eux a lour ſouveraignes Roys d' Engleterre de defalte de droit ou de malvais judgement, & eſpecialment pur empechement metre & juſtice faire ſeurte prendre de la pees de tout manere de gents uſants armes en la dit mier ou menans niefs aultrement appareilles ou garnies que nappertient au nief de marchants & en touts aultres points en queux homme poit avoir reaſonable cauſe de ſuſpition vers eux de robbery, ou des aultres meſfaitz. Et come le maiſtre de Niefs du dit royalme d' Engliterre en abſence des ditz Admirals euſſent eſte en paiſible poſſeſſion de conuſtre & juger des touts faits en la dite mier entre touts manere de gents ſelone les lois, eſtatuts & les defenſes, franchiſes & cuſtumes.

De Botetort, Admiral of the Sea.

Note for the antiquity of the Admiral of England.

The ſaid De Botetort was Admiral of the ſea, coaſting upon Yarmouth in Norfolk (right over againſt France) and of that ſtation in Anno 22 E. 1.

Et come en le primer article de lalliance nadgaires faite entre les dits Rois en les traites ſur le darreine pees de Paris ſoient compriſes les paroles que enſuient en une ſedule annexe a yceſte.

The league between E. 1. and the French King.

Primerment il eſt traite & accorde entre nous & les meſſagers & les procurours de ſurdiz en nom de dits Roy que yceux Roys ſerront lun a lautre deſores en avant bons verrois & loyaux amies & eydans countre tout homme ſauve Leſgliſe de Rome en tiels manere que ſi aſcun ou pluſours quicunques ilz fuiſſent voloient deponticer, empeſcher, ou troubler les dits Roys en franchiſes & liberties, priviledges es droits, es droitures, ou es cuſtumes de eux & de lour roialmes quils ſerront bons & loyaux amys & aidans countre toute homme que puiſſe venire & morir a defendre, gardir & maintenir les franchiſes, les liberties, les priviledges, les droits, les droitures, & les cuſtumes de ſuſdites, except le dit Roy d' Englitterre, Monſieur John Duc de Breban en Brabant & ſes heires deſcendus de lui & de la fille le Roy d' Engliterre, & except pur le dit noſtre ſeignior le Roy de France excellent Prince Dubert Roy d' Alemaigne ſes heirs Roy d' Alemaigne, & Monſieur Johan Counte de Henan en Hanan, & que lun ne ſerra en conſaile ne en aid ou loutre perdie vie, membre, eſtate ne honour temporel. Monſieur Reymer Grimbald maiſtre de la navy du dit Roy de France que ſe dit eſtre Admirall de la dit mier deputey per ſon Seignior avantdit pur ſa guerre contre les Flemings apres le dite alliance faite & affirmee contre le forme & la force de meſme lalliance & lintention de cieux qui la firent l' office del Admirall en la dite mier d' Engliterre par commiſſion du dit Roy de France tourſeouſement empriſt & uſa un an & plus en peruant le gents et marchants du royalme d' Englitere et daillours per la dite mier paſſaints oveſque lour biens et les gents ainſi priſes livera a la priſon de ſon dit ſeignior le Roy de France lour biens et marchandizes a les reſceivours per meſme celuy roy de France a ceo deputey en les Ports de ſon dit royalme come a luy forfait et acquis fiſt amener per ſon juggement et agard; et la priſe et detenue des dites gents ove lour dites biens & marchandizes et ſon dit juggement, et

Margaret the third daughter of E. 1. was married to John the Duke of Brabant An. Dom. 1290. & 18 E. 1.

Monſieur Raymer Grimbald Maſter of the French Navy.

agard ſur la forfaiture de eaux & acqueſt ait juſtifie devant vous ſeignieurs Auditors en eſcripts per my lautoritie de ſa dite commiſſion ſur l' Admiralte avantdite per lui ainſi uſurpe et per une defenſe comunement fait per le Roy d' Englitere per my ſon poer ſolonc la forme de le tiers article de lalliance avantdite qui contient les paroles deſuſecripts en requerant que de ceo il en fuſſe quitz & abſoluts en grand damage & prejudice du dite Roy d' Englitere & des Prelats & Nobles et aultres deſuſnomes. Purquoy les dits procurours et les noms de lours ditz Seigniours a vous Seigniours Auditors avantditz pryent que deliverance dewe & haſtine des dites gents oveſque lour biens & marchandizes ainſi priſes et detenues faicets eſtre fait al Admiral du dit roy d' Englitere a qui la cogniſance de ceo appertient de droit ſicome deſſus eſt dit ainſi quils ſauns diſturbance de vous & d' aultre puiſſe de ceo conoiſtre & faire ceo qui appertient a ſon office avantdit. Et qee le dit Monſieur Reymer ſoit condempne et diſtreint a fair du ſatisfaction a touts les dits damages ſcavant come il purra ſuffire & eu ſa deſalte ſondit ſeignior le Roy de France per que il eſtoit deputey al dit office, & que apres dewe ſatisfaction faitz as dits damages le dit Monſieur Raymer ſoit ſi duement punis pur le blemiſſement de ladite alliance, que la puniſſion de luy ſoit as aultres example pur temps a venir.

The Admiral of England to whom the conuſance appertain, &c.

Item in alio Rotulo annexo.

Item, a la fin que venes & conſideres les formes des proces & les letters ordenees per les conſailers le Aiel noſtre ſeignior le Roy, &c. eſpecialment a retenir & maintenir la ſouveraign que ſes dits anceſtors Roys d' Englitere loloyent avoir en la dite mier d' Englitere, quant-al amendment declaration & interpretation des loix per eux faites a governer touts maneres des gents paſſants per la dit mier. Et primerement a ſon Admiral & as Maiſters & Mariners des Niefs de Cync ports d' Englitere, et des autres terres annexes a la corone d' Englitere emendant a ſa armee en la dite mier pur retenir & maintenir la garde des lois avantditz, et la puniſſion de touts faitz al encontre en la mier ſuſdite.

Admiral of England.

Item in alio Rotulo de Articulis ſuper quibus Juſticiarii Domini Regis ſunt conſulendi de Anno regni regis E. 3. 12.

Item ad finem quod reſumatur & continuatur ad ſubditorum proſecutionem forma procedendi quondam ordinata et inchoata per * *avum domini noſtri regis et ejus conſilium ad retinendum et conſervandum antiquam ſuperioritatem maris Angliæ, et nos officii Admiralitatis in eodem quoad corrigendum, interpretandum, declarandum & conſervandum leges et ſtatuta per ejus anteceſſores Angliæ Reges dudum ordinata ad conſervandum pacem & juſtitiam inter omnes gentes nationis cujuſcunque per mare Angliæ tranſeuntes, & ad cognoſcendum ſuper omnibus in contrarium attemptatis in eodem, & ad puniendum delinquentes & damna paſſis ſatisfaciendum. Quæ quidem leges & ſtatuta per dominum Richardum quondam regem Angliæ in reditu ſuo à Terra ſancta correcte fuerunt, interpretata & in inſula Oleron publicata & nominata in Gallica lingua* La ley Olyron.

* E. 1. avus E. 3.

R. 1. Inſula de Olyton in Gallia.

And

And long before this King Edgar in his Charter saith thus: Mihi concessit propitia Divinitas cum Anglorum imperio omnia regna insularum Oceani cum suis ferocissimis regibus usque Norwegiam ac maximam partem Hiberniæ cum sua nobilissima civitate de Dublina Anglorum regno subjugare, &c. See this Charter in the Epist. to the 4 book of Reports.

We have also found a Record in 10 E.3. in these words.

Rex dilecto & fideli suo Galfrido de Say Admirallo Flotæ suæ Navium ab ore aquæ Thamesiæ versus partes occidentales, salutem. Cum nuper vobis per literas nostras mandaverimus quod vos una cum quibusdam navibus de quinque portubus nostris quas de guerra pro obsequio nostro muniri & parari mandavimus supra mare proficisceremini ad obviand' et resistend. quibusdam galeis in diversis partibus exteris provisis & hominibus armatis munitis quæ ad partes dominii nostri ad gravand. nos & gentes nostras, vel ad partes Scotiæ in inimicorum nostrorum ibidem succursum divertere ut accepimus proponebant. Et quia jam nobis ab aliquibus est relatum quod galeæ hujusmodi usque ad numerum viginti & sex ad partes Britan. & Norman. noviter accesserunt & ibidem adhuc se tenent ad mala, ut creditur, contra nos & nostros quæ poterunt perpetrand. vel ad succurrend. dictis nostris, ut prædicitur, inimicis. Nos advertentes quod progenitores nostri reges Angliæ domini maris Anglicani circumquaque & etiam defensores contra hostium invasiones ante hæc tempora extiterunt, & plurimum nos tæderet, si honor noster regius in defensione hujusmodi nostris (quod absit) deperiat temporibus, aut in aliquo minuatur, cupientesque hujusmodi periculis auxiliante domino obviare, ac salvationi ac defensioni regni & populum nostrorum providere, malitiámque hostium nostrorum refrænari: Vobis in fide & ligeancia quibus nobis astricti estis, & sicut de vobis specialiter confidimus, mandamus firmiter injungendo, quod statim visis præsentibus & absque ulteriori dilatione naves portuum prædictorum, ac alias naves quæ jam paratæ existunt supra mare teneatis, &c. Rot. Scotiæ, 10 E.3. m. 16.

And because the Reader by this Record shall discern, that of ancient time there were several Admirals) for the wisdome of those dayes would not trust one man with so great a charge, nor any man to have a certain estate in an office of so great trust:) I will briefly give the Reader such light thereof as I have found of Record.

Rex commisit Galfrido de Lucy maritimam Angliæ custodiend' quamdiu domino Regi placuerit, &c. Rot. pat. anno 1 H.3.

Rex commisit Richardo Anguillum marinam regis Norff. & Suff. &c. quamdiu nobis placuerit. Rot. pat. anno 9 H.3.

Petrus de Rival capitaneus Pictaniæ habet ad totam vitam suam custodiam omnium Portuum & totius costeræ marinæ Angliæ, excepto Portu de Dovor, qui est in custodia Huberti de Burgo. Rot. Cart. 15. H.3.

Willielmus de Leybourne constituitur capitaneus nautarum & marinariorum de regno & potestatis regis, quamdiu regi placuerit. Rot. Vascon. 22 E.1. m.8.

Willielmus de Leybourne Admirallus Angliæ. Rot. Pat. 23 E.1. 2 parte. Pat. anno 25 E.1. m. 14. Clauf. in Dorſ. m. 18.

Willielmus de Leybourne capitaneus marinariorum, &c.

To let you know what we have observed in those times: there were also two other, the one had the government of all the Flæt from the mouth of the Thames Westward, and the other from the mouth of the Thames Northward.

Johannes Botetort custos Regis Portuum maritimorum versus partes Boreales. 25 Martii. 1 Parte Pat. 25 E.1. m.9.

Nicholaus Kyriell constituitur Admirallus flotæ omnium Navium ab ore aquæ Thamesis tam quinque Portuum, quam aliorum Portuum & locorum per costeram maris versus partes occidentales, quamdiu Regi placuerit. Teste Rege apud Turrim London 8 Decembris. 1 parte Pat. 10 E.2.

Clauſ. 15 E. 2. Pat. 15 E. 2. I. Rege apud Ebor. 19 Maii.

Robertus de Leyborn Admirallus quarundam Naviũ Regis ſup. mari occidentali, Robertus Battayli Admirallus flotæ Navium ab ore aquæ Thameſis de ſingulis Portubus verſus auſtrum.

1 parte Pat. anno 1 E 3. m. 21.

Johannes Perbrome conſtituitur capitaneus, & Admirallus flotæ Navium magn. Getnemuth. & omnium aliorum locorum ab ore aquæ Thameſis per coſteram maris verſus partes Boreales, quamdiu, &c. Teſte Rege apud Stamf. 21 Aprilis. Warroſius de Valloignes conſtituitur capitaneus & Admirallus flotæ Navium ab ore aquæ Thameſis tam quinq; Portuum quam aliorum Portuum & locorum per coſteram maris verſus partes occidentales, quamdiu, &c. ut ſupra.

2 parte Clauſ. 12 E. 3. in dorſ.

Petrus Bard. Admirallus Navium ab ore aquæ Thameſis verſus partes occidentales, 18 Auguſti.

Thomas de Drayton Admirallus ab ore aquæ Thameſis verſus partes Boreales, 18 Auguſti.

And ſo in the reigns of R. 2. H. 4. H. 5. H. 6. But in theſe and in former times there was a great Admiral of England, Vid. ſupra pa. 142. 143, 144.

Rot. Pat. anno 14 H 6. 25 Oct. E. 4.

The King did by Charter conſtitute John Holland Duke of Exeter and Henry his ſon to be Admirallos Angliæ, Hiberniæ, & Aquitaniæ, pro termino vitæ.

This Charter being of a judicial office and granted to two, we hold to be void: for ſuch antient offices muſt be granted as they formerly have bẽn. This Duke is he that is mentioned in the former Records, who being a great Pẽr of the Realm endeavoured to incroach upon the Common law, but the ſubjects by courſe of law were defended and recompenſed.

Rot. Parl. 7. H. 4. nu. 19, 20, &c. 26. & 142. 9 H. 4. nu. 19.

The Merchants, Mariners, and owners of ſhips undertook the ſafeguard of the Seas for the Subſidies of Tunnage and Poundage, &c. and that Merchants ſhould name two perſons, the one for the South part, the other for the North part, who by Commiſſion ſhould have the like power as other Admirals have had touching the ſame.

Addition of ſome Records of Parliament.

11 H. 4. nu. 24.

All ſtatutes made concerning the Court of the Admiral ſhall be obſerved.

Rot. Par. 17 R. 2. 48. 4 H. 4. nu 47. 11 H. 4. nu. 61.

Sundry Towns of the Weſt part prayed remedy againſt the Officers of the Admiralty for holding plea of matters determinable by the Common law, the which they pray may be revoked: the Kings anſwer was, The Chancellor by the advice of the Juſtices upon hearing of the matter ſhall remit the matter to the Common law, and grant a prohibition.

7 R. 2. nu. 14.

The Earl of Northumberland Admiral of the North, and the Earl of Devon Admiral of the Weſt, to receive the Subſidy of Tunnage and Poundage, and to keep the Seas.

Addition of Books.

1 part Inſtit. Sect. 459. & 677 11 H. 4. fo. 11.

See the Firſt part of the Inſtitutes, Sect. 459. & Sect. 677. where Littleton ſpeaketh of a man out of the Realm, or beyond Sea, and adde thereunto the notable caſe in Mich. 11 H. 4. fo. 11. pl. 85 Sovingles caſe, the Defendant in an appeal of death being outlawed, brought his writ of Error, and aſſigned for error, that at the time of the Outlawry, and before, he was in the Kings ſervice upon the Sea in the company of the Lord Berkley then Admiral, and had a writ unto him to certifie.

Lord Berkley Admiral.

6 E. 2. Tit Protection 46. 7 R. 2. Tit. Treſpaſſe Statham. 10 H. 7. fol. 7. 2 Vide 18 H. 6. nu. 52. where the owner of a ſhip ſhall anſwer for hurt done by his ſhip though he be not party thereunto.

Vide Lacies caſe, Cr. 25. El. li. 2. fo. 93. Vid. li. 5. fo. 106, 107, and 108. Sir Henry Conſtables caſe. Lib. 6. fo. 47. Dowdales caſe. Brook tit. error 177.

See certain ſtatutes, viz. 27 E. 3. cap. 13. Stat. Staple 31 H. 6. cap. 4. 2 R. 3. cap. 6. 28 H. 8. cap. 16.

¶ *The name.*

It appeareth by the former Records, that the Admiralty is ſometime called Admiralitas, ſometime Admirallatus and ſometime by other names, as Admirallus, Capitaneus or Cuſtos maris, or Marinæ or Maritaniæ, or flotæ navium, that

is,

is, of the Navy floating on the Sea. Ley marine, ley del mariners.

The Officer is called Admiral indifferently both in English and in French. We name him in Latin Admirallus, and the Court Curia Admiralitatis, derived of Amir, id est, Præfectus, & ἁλὶς ; Marinus, Præfectus marinus, Admiralius, Admirallus. Admiralli curia res maritimas tractat: In hac numerantur Admirallus Angliæ, locum tenens & judex, scribæ duoserviens Curiæ Viceadmiralli Angliæ.

Hæda or Hitha, *i.* Portus a Haven as Queen-hithe, Lamb-hithe, &c. Hafne Courts, now Haven or Port Courts, Hable, *i.* Portus.

To conclude, the King of Englands Navy, doth excell the shipping of all other foreign Kings and Princes: for if you respect beautiful statelinesse, or stately beauty, they are so many large and spacious Kingly and Princely Palaces. If you regard strength and defence, they are so many moving impregnable Castles, and Barbicans, and were termed of old the walls of the Realm. When our English Navy is among the ships of other Nations, it is like Lions inter pecora campi, and like a Falcon inter phasianos, perdices, & alia volatilia timida cœli.

Besides, no part of the world have such timber for building and repairing of ships, as our King hath.

CAP. XXIII.

The Court of the Commission under the Great Seal by force of the Statute of 28 *H.*8. *cap.* 15.

28 H. 8. cap. 15.

The Commissioners.

This Court must be holden Coram Admirallo Angliæ, seu ejus locum tenente, and 3. or 4. such other substantial persons, as shall be named by the Lord Chancellor for the time being.

The Jurisdiction.

Their jurisdiction is to hear and determine all Treasons, Felonies, Robberies, Murders and confederacies committed or done upon the Sea, &c.

To be heard and determined by the Common law.

These offences shall be heard and determined according to the course of the Common law, and therefore some of the Judges of the Realm are ever in this Commission.

Concerning the mischief that was before the making of this Statute, and how the said Act hath been formerly expounded, you may read plentiful matter in the Third part of the Institutes, Cap. Piracy.

See the 3 part of the Instit. Cap. Piracy, pa. 111, 112, &c.

The processe and proceedings herein are in the name of the King: See before Cap. Chivalry, pa. 124. that the Statute of 35 H.8. cap. 2. nor that of 5 E.6. cap. 11. taketh not away this Act of 28 H.8. concerning treasons: Note, that in all the Commissions granted for the execution of this Act of 28 H.8. since the said Acts of 35 H.8. 5 E.6. power and authority is given to hear and determine all treasons, &c. done upon the Sea.

CAP.

CAP. XXIV.

Of Port-motes, *alias* Port Courts, *alias* Port-mote Courts.

A Portmote is a Court kept in Haven Towns, or Ports, and thereof taketh his name Curia Portus, &c.

Portus est locus in quo exportantur & importantur merces, à portando: And they are Portæ regni the * gates of the Realm. [a] Hitha and Heda often in Domesday is taken for a Haven or Port, anciently written Hafne and now Haven, by changing the f into v, as is usual.

Every Haven is within the body of the County, &c. whereof see before plentifull matter in the Chapter of the Court of the Admiralty proceeding according to the Civil law. See 43 Eliz. cap. 15.

* See in the Cha. of the Courts of the Forest.

[a] Hereof cometh in London Queenhithe, & in Lambith Lambhithe, &c.

CAP. XXV.

The power and authority of Commissioners and others for the maintaining and erecting of Beacons, signs of the Sea, or Light-houses, and Seamarks, and concerning Watches.

See the 3. part of the last. Cap. buildings, p. 204.

Beacon.

Beacon, this word is derived of the Saxon word Beacon, *i.* Speculum, unde speculantur adventus hostium, and is often called Signum speculatum, and Bechan in the Saxon language is signum dare, and we use the word to becken to at this day.

Before the reign of E. 3. there were but stacks of wood set upon high places, which were fired when the comming of enemies were descried, but in his reign pitch bores, as now they be, were instead of those stacks of wood set up, and this properly is a Beacon.

Light-houses.

Light-houses, Ignes speculatorii, seu monitorii, seu lumen maritimum, seu * pharus, unde versus,

Lumina noctivagæ tollit Pharus æmula Lunæ,

These Light-houses are properly to direct Seafaring men in the night when they cannot see marks, and these are also Signa speculatoria.

* ἀπο τῆ φαεῖν id est, lucidum.

Sea-marks.

Sea-marks, as Steeples, Churches, Castles, Trees, and such like for direction of Sea-faring men in the day time, and these are called Signa marina, or speculatoria, or signa nautis, whereof Virgil 5. Æneis.

Hic viridem Æneas frondenti ex ilice metam
Constituit * signum nautis pater, unde reverti
Sciverit, & longos, ubi circumflectere cursus, &c.

* Id est insignium

So as you may divide Specula or signa speculatoria, or signa nautis, into three branches, viz. into Beacons, Light-houses, and Sea-marks.

At the Common law none but the King only could erect any of these three, which ever was done by the Kings Commission under the Great Seal, as taking some few examples for many.

De

De ſignis ſuper montes per ignem faciend.

De ſignis ſuper montes faciend.

Rex aſſignavit [a] Henricum Epiſcopum Norwic. & [b] Willielmum Comitem Suff. & alios, &c. (inter alia) ad ſigna ſpeculatoria ſuper montes in com. Norff. ponend. Et ſimiles Commiſſiones in aliis Comitatibus.

Vide Rot. Clauſ. 1 R. 2. m. 31. in Dorſ. pro vigiliis & ignibus ſpeculatoriis, & monitoriis.

Rot. Scotiæ. 10 E. 3.

Rot. Clauſ. Vaſc. 10 E. 3.

Rot. Franc. 47 E. 3. m. 20.

[a] Henricum Spencer, he of a Souldier became a Biſhop.

[b] Will. Ufford comes Suff.

He that is deſirous to ſee more of Beacons, &c. and watching of the ſame, let him read the [c] Act of 5 H. 4. which is an Act of Parliament, and Dorſ. Pat. Anno 28 H 6. parte 2. m. 21. in com. Kanc. & memb. 13. pro com. Norff. pro ſignis, Anglicè **Beacons**, & vigiliis. Et Dorſ. Pat. Anno 1 E. 4. parte 3. &c.

[c] Rot. Par. 5 H. 4. nu. 24. not in print worthy to be read.

But of latter times by the Letters Patents granted to the Lord Admiral he hath power to erect Beacons, Sea-marks, and Signs for the Sea, &c.

By the Act of 8 Eliz. it is provided and enacted, That the Maſter, Wardens and Aſſiſtants of the Trinity houſe of Debtford ſtrond (a company of the chiefeſt and moſt expert Maſters and Governors of ſhips) ſhall and may lawfully from time to time at their will and pleaſure, and at their coſts, make, erect, and ſet up ſuch and ſo many Beacons, marks and ſigns for the Sea in the Sea-ſhoars, and upland near the Sea-coaſts, or forelands of the Sea only for Sea-marks, as to them ſhall ſeem moſt meet, whereby the dangers may be avoided, and ſhips the better come to their Ports. And all ſuch Beacons, marks and ſigns ſo by them to be erected, ſhall be continued, renewed and maintained from time to time at the coſts & charges of the ſaid Maſter, Wardens and Aſſiſtants. **An excellent law, that this power and authority was given to them which had greateſt skill, ſeeing they were works for the ſafety of the Realm, and ſafeguard of the lives of Sea-faring men, and that theſe works ſhould be erected, and made, and continued by them at their own coſts and charges, becauſe they knew to go the neareſt way.**

8 Eliz. cap. 13.

Paſch. 1 Jac. It was reſolved by the two Chief Juſtices, Attorny and Solliciter, that this Act extended as well to Light-houſes in the night, as to Beacons, &c. by the day.

Beconagium ſignifieth **money due or payable for the maintenance of Beacons, or the watching of the ſame. What puniſhment they incur which take down, fell, or otherwiſe cut down any Sea-marks, ſee the ſaid Act of** 8 El. ubi ſupra, **wherein it is to obſerved, that if the perſon offending be not able to pay the penalty therein inflicted, he ſhall be deemed convict of outlawry, ipſo facto, to all conſtructions and purpoſes: the like whereof we have not obſerved in any other ſtatute.** Wardwite, alias warwite, **or ward peny, to be free from contribution of money to watches and wards.**

Convict of Outlawry.

We have out of an ancient Manuſcript tranſcribed this ordination that followeth, which in the County of Norff. hath been obſerved, and it is very probable that the like hath been done by like Authority in other maritime Counties.

Ordinatio pro Vigill. obſervand. in Com. prædict. à Lynne uſque Yermouth. *Norf.*

Hac igitur authoritate mandati nos Robert de Monte alto & Thomas de Bardolfe mandamus Vic. Norff. quod venire faciat coram nobis apud Norwic. die Mercurii in feſt. decollationis Sancti Johannis Baptiſt. prox. futur. omnes milites, omnes capit. Conſtabul. hundred. & Conſtabul. vill. & duos homines de diſcretior. cujuſlibet villæ ubi portus vel applicat. Navium in balliva ſua tam infra libertat. quam extra in Com. prædict. ad conſulend. formand. auxiliand. qualiter & quomodo dict. cuſtod. ſecurius pro ſalvatione partium illarum fieri poſſit, & ad faciend. quod ex parte Domini Regis ſuper præmiſſis injungitur. Ad quem diem nos dict. Robert. & Thomas perſonaliter acceſſimus ibidem, ac milit. capit. Conſtabul. hundred. Conſtabul. vill. cum omnibus hominibus vill. ubi applicat. Navium exiſt. de Portu Lynne & de Portu Yarmouth coram nobis ibidem compar. & aſſeruerunt, quod valde neceſſe eſſet pro ſalvat. totius patriæ quod vigill' fiant in

Roberts de Monte alto & Tho. de Bardolfe ſat in Parliament. 14 E. 2. as Barons of the Realm, as appeareth in the Parliament Rolls.

* 5 H. 4. cap. 3. Watches to be made upon the Sea-coaſt by the number of the people, in the places, and in manner and form as they were wont to be. Freebrigge, Clackcloſe.

*in locis periculoſis ſicut * antiquo more fieri ſolebant juxta mare. Et quod omnes homines corpor. valid. de Com. Norf. contribuend. ad ill. faciend. per quod ordinat. & conſenſ. eorum concordat. eſt quod duæ vigill. per ſex homines de corpore potenti tam per dies quam per noctes fieri in hundred. de Freebrigge, viz. apud Wolverton, & apud Clencherne, eo quod dict. hundred. jung. ſe mari à Wisbiche uſque Berſingham per 14 leucas. Et quod quilibet vigilans capiet per diem & per noctem pro vadiis ſuis 3 d. Et quod hundred. de Clackcloſe adjung. eidem hundred. de Freebrigge ad contribuend. ad vigill. illa faciend. viz. pro qualibet ſeptiman. 4 s. 6 d. & idem hundred. de Freebrigge 6 s. pro ſeptiman. Et ſciend. eſt 77 vill. continentur in dict. hundredo quæ aſſignantur ad dict. vigill. faciend.*

Fiat etiam una vigill. apud Southlynne in Clinchern, &c.

Smythdon.

Item quod una vigill. fiet in hundred. de Smithdon apud Thornham per ſex homines, eo quod dictum hundred. jungit ſe mari de Derſingham uſque Deepedal fenn per 12 leucas. Et quod hundred. de Southgrenhoe & Laundiche adiung. eidem hundred. de Smithdon ad contribuend. ad vigill. ill. faciend. viz. hundred. de Southgrenhoe 3 s. 6 d. per ſeptiman. et hundred. de Laundiche 4 s. per ſeptiman. & hundred. de Smithden 3 s. et continent. in dict. hundred. 79 vill. ad vigill. illa faciend.

Southgrenhoe. Laundiche.

Gallow.

Et fiat una vigill. in hundred. de Gallowe apud Burnham per 4 homines, eo quod dict. hundred. jungit ſe mari de Deepedale uſque Holkham per 3 leucas. Et hundred. de Brothercroſſe adjungit. eidem hund. ad contribuend. ad vigill. ill. faciend. viz. hundred. de Brothercroſſe 3 s. per ſeptim. & idem hundred. de Gallowe 4 s. per ſeptim. Et ſciend. eſt 45 vill. ſunt in dict hundred. ad vigill. illa faciend.

Brothercroſſe.

Northgrenhoe. Wey and Gilteroſſe. Grimſhoe. Ertham.

Item fiet un. vigill. in hundred. de Northgrenhoe apud Holkham per 6. homines, eo quod dict. hundred. jungit ſe mari, à Holkham uſque Marſton per 6. leucas, Et hundred. de Weyland, Gilteroſſe, Grimſhoe, et Erſham adjung. eidem hundred. ad contribuend. ad vigill. illa faciend. viz. Weylond 2 s. per ſeptim. Grimſhoe 2 s. per ſeptim. Gilteroſſe 2 s. per ſeptim. et Erſham 2 s. per ſeptim. et idem hundred. de Northgrenhoe 2 s. per ſeptim. Et ſciend. eſt quod 76 vill. ſunt in dict. hundred. ad vigill. ill. faciend.

Holt.

Eynsford. Hemſteed.

Item fiet unum vigill. in hundred. de Holt apud Wabornn per ſex homines, eo quod dict. hundred. jungit ſe mari à Marſton uſque Sheringham per 7 leucas. Et hundred. de Eynsford et Hemſteed adjung. eidem hundred. de Holt ad contribuend. ad vigill. faciend. viz. Eynsford 4 s. per ſeptim. Hemſteed 3 s. 6 d. per ſeptim. & idem Hundred. de Holt 3 s. per ſept. & ſciend. eſt quod 70 vill. ſunt in dict. hundred. ad vigill. ill. faciend.

Northerpingham

Item fiet unum vigil. in hundred. de Northerpingham in duobus locis, viz. apud Runton & Trimmingham per 5 homines, eo quod dict' hundred' jung. ſe mari à Sheringham uſque Munſlye becke per decem leucas, & hundred. de Southerpingham & Mitford cum vill' infra libert' adjung' eidem hundred' ad vigill. illa faciend, viz. Southerpingham 6 s. 8 d. per ſept. Mitford 3 s. 6 d. per ſept. & Northerpingham 12 s. 6 d. per ſept'. Et ſciend. eſt quod 77. vill. ſunt in hundred' præd' ad vigill' ill' faciend.

Southerpingham Milford.

Tunſtead. Humbleyard. Fowrehoe.

Item fiet unum vigill' in hundred' de Tunſted apud Baſtwick per ſex homines, eo quod dict' hundred jungit ſe mari à Munſleye uſque Walcote per 4 leucas. Et hundredo de Humbleyard & Fowreboe adjung' eidem hundred.

dred. ad contribuend. ad vigil. ill. faciend', viz. Humbleyard 3 s. per sept. Fowrehowe 3 s. per sep. & Tunstead 4 s. 6 d. per sept. & sciend. est quod 76. vill. sunt in dict. Hund. ad vigil. ill. faciend.

Item fiet unum vigil. in hundred. de Happing in duobus locis. viz. apud Happisborow per 4 homines & apud Wastuesham per 4 homines, eo quod dict. hund. jungit se mari a Walcote usque Wimbesdele in loco periculoso per 6. lucas. Et hundred. de Taverham, Depwade, Sbropham & Disse adjung. eidem hund. de Happing ad contribuend. ad vigil. ill. faciend. viz. hund. de Taverham 2 s. per sept. Depewade 3 s. per sept. Sbropham 5 s. per septim. et Disse 2 s. per sept. et dict. hund. de Happing 2 s. per sept. Et sciend. est quod 60. vill. sunt in hund. prædict. ad vigil. ill. faciend. Happing.

Item fiat unum vigil. in hund. de Eastflegge et Westflegge in tribus locis, viz. apud Winterton per 6 homines, apud Saltivos haven per sex homines, & apud Fordham per sex homines, eo quod dict. hund. jungit se mar. a Wykeldock usque Bunto in Mitford in loco periculoso per 7 leucas, Et hund. de Walsham, Blowfield, Loddon, et Clavering adjung. eidem hund. ad contribuend. ad vigil. illa faciend. viz: Walsham 4 s. 6 d. per sept. Blowfield 4 s. 6 d. per sept. Loddon 5 s. 6 d. per sept. Clavering 5 s. 6 d. per sept. Westflegge 2 s. per sept. Eastflegge 2 s. per sept. Et sciendum est quod 102 vill. sunt in dict. hund. ad vigill. ill. faciend. Eastflegge. Westflegge. Walsham. Blowfield. Loddon. Clavering.

Præcept. est omnibus capital. Constabul. de hund. adjung. mari in locis prædict' in forma prædicta hac instant' die dominica prox' futur' et similiter præcept' est eisdem capital' Constabul' et omnibus aliis subconstabul' hundred' totius Com' quod sine dilatione levari & reparari fac' signa et fierbares super mont' altior' in quolibet hund' Ita quod tota patria per illa signa quotiescunque necesse fuit premuniri posset, & quod ipse Constabul' capital' per avizam Constabul' villarum et aliorum proborum hominum agist' fac' fideliter denar' pro vad' vigil' in hundred' prædict' instant' quod ordinat' solvend' de septimana in septim' ita quod defect' in vigil' prædict' nullo modo inveniatur per eorum defect' et similiter quod omnes qui agist' sunt ad arma et potent' ad portanda arma, & omnes illi qui loco potent' ad arma sua portanda assignat' sint providi et parati sint indies nocte ad veniend' solemniter distinct' et aperte in præsent' Domini Walteri de Norwic' Episcopi juxta nos assiden' ibidem cur'. Cancar' totius Com' Norf' coram nobis un' fecimus proclamar'. Et similiter præcept' est Vic' quod levar' fac' denar' agist' in hundred' prædict' pro costis et vad' præd' solvend'. Signa. Fierbares. * Vigiliarium.

For Watches, and against night-walkers, see the statute of Winch. 13 E. 1. cap 4. 5 E. 3. cap. 14. Vid. 5 H. 7. 5.

Vide Lamb. inter legis Edovardi regis, fol. 136. b. & inter leges Willielmi Regis fo. 125. a.

Quod homines de Larkfield, Filbarow street, Newchurch, & Worth in Com' Canc' tenentur facere vigilias in Romney Marsh. Dors. Claus. 8 H. 4. m. 8. & 10.

CAP. XXVI.

De Conservatore seu custode Treugarum, i. Induciarum & salvorum Regis Conductuum.

And incidently of the office, authority and priviledge of Ambassadors; and of Leagues, Treaties, and Truces.

2 H.5.c.6.Pat.1. By the statute of 2 H. 5. robbery, spoiling, breaking of Truces, and safe Conducts by any of the Kings liege people and subjects within England, Ireland, and Wales, or upon the main sea, was adjudged and determined to be High Treason: but this Branch concerning High Treason is re-

20 H.6.cap.11. pealed by the statute of 20 H. 6. But by the said Act of 2 H. 5. for the better observation of truces and safe conducts, Conservator induciarum & salvorum regis conductuum was raised, and appointed in every Port of the sea by Letters Patents: His office was to enquire of all offences done against the Kings truces and safe conducts upon the main sea (out of the Counties, and out of the Liberties of the Cinque ports) as Admirals, of custome, were wont.

It concerneth the Jurisdiction of divers Courts, and especially of the said Court before mentioned upon the said statute of 28 H. 8. and of the Court of the Admiralty, to know the rights of Leagues and Ambassadors, as far as the laws of England extend unto, for of them we will only treat.

19 E.4.6. b. 18 H.cap. 4. 20 H.6. cap. 1. Vide supr. p.132. * Regula. All Leagues or safe conducts are, or ought to be of record, that is, they ought to be inrolled in the Chancery to the end the subject may know, who be in amity with the King, and who be not: who be enemies, and can have no action here: and who in league, and may have actions personal here. * In all treaties, the power of the one party and the other ought to be equall.

19 E. 4. ubi supr. See the third part of the Instit. cap. Treason. Verba Leagus. 2 H.5. cap.6. A League may be broken by levying of war, or by Ambassador or Herald. Bryan held opinion in 19 E.4. ubi supra, that if all the subjects of England would make war with a King in League with the King of England without the assent of the King of England, that such a war was no breach of the league. See the statute of 2 H.5. cap.6. in the Preamble.

Hil.14. Eliz. In the Duke of Norf. case Hil. 14. Eliz. the question was whether the Lord Herise and other subjects of the King of Scots, that without his assent had wasted and burnt divers Towns in England, and proclaimed enemies, were enemies in law within the statute of 25 E.3. the league being between the King and the Scots and resolved that they were enemies.

Hil.13. Eliz. And in the Bishop of Rosses case, An. 13. Eliz. the question being, An legatus, qui rebellionem contra principem ad quem legatus concitat, legati privilegiis gaudeat, & non ut hostis pœnis subjaceat. And it was resolved that he had lost the priviledge of an Ambassador, and was subject to punishment.

Hil. 12 Jac. Samuel Palache affirming himself to be the Subject and Ambassadour of Mula Sedan King of Morocco to the States of the United Provinces, to treat and negotiate with them of divers matters between them; and they of the United Provinces having accepted him for an Agent or Legat. And the last of June 1611, there being enmity between the King of Morocco and the King of Spain, the King of Morocco made a Commission to the said Samuel to take Spaniards and their goods. The 25 of October 1613. the King of England gave him Letters of safe conduct as a publick Minister sent to the States of the united Provinces. 3 Martii 1613, the States licensed him to leavie men to furnish his Ships, &c. In June 1614. he took a Carbell of the Spaniards at the Ca-

Carvel or Carevel, is a swift Bark.

naries

naries laden with Sugar, and another ship there also laden with Hides, of the goods of Spaniards; and after, with distress of winde, he with the said Prizes was driven to Plimouth, there being at that time league both betwæn England and Spain, and betwæn England and the united Provinces, and wars betwæn Spain and the united Provinces. And against this Samuel the Spanish Ambassadour here in England complained at the Councel Table, and charged him with Piracy. The said Samuel and his company being arrested, and the goods seised, the Spanish Ambassador prayed that he might proceed against him as a Pirat upon the said Statute of 28 H.8.cap. 15. The Lords of the Councell referred the consideration of this request to the Chief Justice of England being present at the Table, and to the Master of the Roll's, and Sir Daniel Dun, Judge of the Admiralty, to consider of the case, and to direct a course of Justice therein indifferently. And the said referrees heard the Councell learned both in the Common and Civil lawes, on both sides on two several dayes in this Terme: and after conference betwæn themselves, and with others, these points were resolved. First, that at this day there could be no Ambassador without Letters of credence of his * soveraigne, to another that had soveraign authority. Legatus per literas de suâ legatione fidem facere debet, si exigantur, & commonitorium, *s.* Instructiones privat' for the Ambassador himself for his direction.

*Nulli nisi absoluti principes & qui majestatis jura habent, Legatos constituere possunt. *Virgil.* Item 11 Æneid. *Legati responsa furent.*——

Secondly, that of antient time Ambassadors were called Oratores.

Jamq; Oratores aderant ex urbe Latina.
Velati ramis olei——

Item 11 Æneid. *Nuntius hæc Idmon Pirygio mea dicta tyranno Haud placitura refer*——

And afterwards they were called Legati à legando, Nuntii à nuntiando, and afterwards Ambassitores or Embassiotories, and sometimes Agents: for Omnis legatus est agens, but Omnis agens is not legatus: For if he be sent from a King or absolute Potentate or State to a King or absolute Potentate or State to treat betwæn them, although he in his Letters of Credence be termed an Agent or Nuntius, yet he is an Ambassadour or Legate.

Thirdly, it was resolved, that Ambassadours ought to be kept from all injuries and wrongs, and by the law of all Countries and of all Nations they ought to be safe and sure in every place, in so much that it is not lawfull to hurt the Ambassadours of our enemies: and herewith agreeth the Civil law. And if a banished man be sent as Ambassador to the place from whence he is banished, he may not be detained or offended there, and this also agreeth with the Civil law.

L. 6 F. de Legat. In aut' de sanctiss. sect. Rerum Coll. 9.

The case (which we have seen reported) in the reign of H. 8. was this: There being amity betwæn King H. 8. and the French King, and ennity betwæn H. 8. and the Pope. * R. Pole a Rebell and Traytor to the King of England flyeth to Rome, whom the Pope being in amity with the French King sendeth as Ambassadour to him: the King of England demandeth his Rebel of the French King, notwithstanding he was sent as Ambassadour, Sed non prævaluit. And it is truely said, whosoever said it, Quia veritas à quocunque dicitur à Deo est, Fuit semper etiam apud Gentiles (qui nullam tenebant veræ fidei rationem) inviolabile nomen Nuncii & Legati, etiamsi ab hostibus mitterentur semper salvi, & hodiæ apud Saracenos & Turcos, à quibuscunque tutæ destinantur legationes & literæ, etiamsi illis ad quos deferantur molestæ sint & injuriosæ. But if a forein Ambassadour being Prorex committeth here any crime, which is contra jus gentium, as Treason, Felony, Adultery, or any other crime, which is against the law of Nations, he loseth the privilege and dignity of an Ambassador as unworthy of so high a place, and may be punished here as any other private Alien, and not to be remanded to his Soveraigne but of courtesie. And so of contracts that be good jure gentium, he must answer here. But if any thing be malum prohibitum by any Act of Parliament, private Law or Custome of this Realm, which is not malum in se jure gentium, nor contra jus gentium, an Ambassadour residing here shall not be bound by any of them: but otherwise it is of the Subjects of either Kingdome, &c.

* See the third part of the Institutes cap. High Treason, verb. *Overt fact. p. 14.* Tempore H. 6.

Pasch. 36 Eliz. Henry de Vole and other French men imported divers manufactures, as Cloth of Tissue, Tawles, Points, &c. Whereupon Tomlinson and other

Pasch. 36. in Scacc.

other good Merchants of London exhibited divers informations upon the ſtatute
19 H.7.cap.21. of 19 H.7. which prohibit the ſame; of whom the French-men complained at the Councell Table, and it was reſolved by the Lord Treaſurer *Burleigh* and the whole Councell, that it was no breach of the League betwéen this Kingdome and France, for that in the Articles of the League the laws of either Kingdome be excepted: and therefore if Tomlinſon the Subject being a French Merchant ſhould trade into France, he muſt obſerve the laws and cuſtomes of France.

Fourthly, it was reſolved, that admit the ſaid Palache was no Ambaſſadour, notwithſtanding becauſe there was enmity betwéen the King of Spain, and the King of Morrocco he could not be indicted as a Pirat before Commiſſioners upon the ſaid ſtatute of 28 H.8. Becauſe that one enemy cannot be a felon for taking of the goods of another enemy. And the words of the ſaid Act be, [That the Commiſſioners by force of the ſaid Act ſhall proceed, as if the offence had béen committed upon the land, and according to the courſe of the Common law.]

5 R.3.fo.2. Sée 2 R. 3. by all the Juſtices, that this is no felony, which caſe is in his parts remembred hereafter. For it is very obſervable what the law of England is in that caſe. It was holden by ſome of the Civilians, that albeit the Spaniard could not proceed againſt him criminaliter, upon the ſaid Act of 28 H. 8. yet the goods being in ſolo amici, that is, in the ſoil of the King of England, who was in league with both, that the Spaniard might proceed againſt Palache, civiliter in the Admiral Court: but that was reſolved to the ordinary by Popham Chiefe
Trin. 2. Jac coram regis. Juſtice, and the whole Court of the Kings Bench, Trin. 2. Jac. to be againſt the law of England in that caſe: where the caſe was this, That where the King of England was in league with the King of Spain, and with thoſe of Holland, &c. and there was enmity betwéen the King of Spain, and thoſe of Holland, &c. and one of Holland upon the high ſea, in aperto prælio took the goods of a ſubject of Spain, and brought them into England, infra corpus comitatus, and for that the goods, where in ſolo amici, the Spaniard whoſe goods were taken libelled for them civiliter in the Admirall Court. It was reſolved by the whole Court of the Kings Bench upon conference and deliberation, that the Spaniard had loſt the property of the goods for ever, and had no remedy for them in England. And relyed principally upon the Book in 2 R.3. ubi ſupra, being of ſo great authority: for by that book, he that will ſue to have reſtitution of goods robbed at Sea, ought by law to prove two things. Firſt that the Soveraign of the Plaintife was at the time of the taking in amity with the King of England. Secondly, that he that took the goods was at the time of the taking in amity with the Soveraigne of him whoſe goods were taken: for if he which took them was in enmity with the Soveraign of him whoſe goods were taken, then was it no depredation or robbery, but a lawfull taking, as every enemy might take of another: all which appeareth in the ſaid Book. Sée the ſtatutes of 27 E.3. and 31 H.6. well expounded in 2 R.3. ubi ſupra. Vide 7 E.4.14. 13 E.4.9.22 E.3.fo.23. concerning this matter. And for that there was enmity betwéen the King of Spain and thoſe of Holland, therefore it could not be depredation, but a lawfull taking. It was alſo reſolved by the Court of the Kings Bench, that the goods ſo taken being within this Realm, *viz.* infra corpus comitatus, in ſolo amici, that if the Spaniard ſue for them civiliter in the Court of the Admiralty, that a Prohibition ſhould be granted, and that it ſhould be determined by the Laws and Statutes of England and not by the Civil law.

27 E.3.ca.13.& cap.17. 31 H.6.cap.4. 7 E.4.fo.14. 13 E.4.9. 22 E.3.16, 17. Regiſt. 129. F. N. B.114. Prohibition. Nota.

With this reſolution of the Kings Bench, Doctor Taylor an Engliſhman, and Solicitor for the King of Spain, was at the firſt much offended, but when he had taken advice and underſtood the reaſon of the reſolution, he was well ſatisfied.

Lib. 5.fo. 106. If a Shipwrack be on the Sea, yet if any of the goods come to land within this Realm, the Admirall ſhall not have juriſdiction, but it belongeth to the Common law.

Sée the Third part of the Inſtitutes, cap. Treaſon: what offence it hath béen and what it is at this day to kill a forrein Ambaſſadour: and ſée there 3 R. 2.

John

John Imperials caſe, Ambaſſadour of Genoa. It appeareth in the Holy Hiſtory, viz. in the firſt Book of the Chronicles, that injury and diſgraces offered to King Davids Ambaſſadours which he ſent to Hanon King of the Moabites, Ad conſolandˈ ei ſupra mortem patris ſui, grandem etiam contumeliam ſuſtinuerunt, &c. was a juſt cauſe of Warre by David againſt the Moabites, and was ſeverely revenged, as by the Holy Hiſtory it appeareth. 1 Chr. 19. 2, &c.

There be four kinds of Leagues, 1. Fœdus pacis, and that a Chriſtian Prince may have with an Infidel. Si fieri poſſit, quod ex vobis eſt, cum omnibus hominibus pacem habeatis. Rom. 12. 18. 2. Fœdus congratulationis ſive conſolationis. And this may a Chriſtian Prince make with an Infidel, as David did with Hanon: ubi ſupra. Gen. 14. 13, &c. Abrah. cum rege Sodom. 3. Fœdus commutationis mercium ſive commercii. And this alſo may be made with an Infidel, as King Solomon did with Hiram an Infidel, and Joſua did with the Gibeonites. Joſua cap. 9. 3 Kings 5. 1, &c. & 34, 35. 4. Fœdus mutui auxilii, and this cannot be done with an Infidel or an Idolater. Jehoſophat King of Juda, made fœdus mutui auxilii with Achab King of Iſrael, an Idolater: For Achab ſaid to Jehoſaphat, Veni mecum in Ramoth Gilead. Cui ille reſpondet, Ut ego & tu, & ſicut populus tuus, ſic & populus meus tecum erimus in bello: in which Warre Achab was ſlain, and Jehoſaphat was in extream danger. And after, as the Text ſaith, Reverſus eſt autem Jehoſophat rex Judæ in domum ſuam pacifice in Jeruſalem, cui occurrit * Jehu filius Hanani, & ait ad illum, Impio præbes auxilium, & his qui oderunt Dominum amicitia jungeris, & idcirco iram quidem Domini mereberis. And the Lawes of England concerning theſe four Leagues are as you perceive grounded upon the Law of God. 2 Chron. 18. Jeremy 15. 14. See 1 Mac. 8. 19, 20. & cap 10. 2 Chron. 19. 2. & ca. 20. 35, &c. * The Prophet of God.

But here ariſeth a queſtion, that ſeeing fœdus pacis, or fœdus commercii may be ſtricken betwixt a Chriſtian Prince and an Infidel, Pagan, and Idolater, and theſe leagues are to be eſtabliſhed by oath, whether the Infidel or Pagan Prince may ſwear in that caſe by falſe gods, ſeeing he thereby offendeth the true God by giving divine worſhip to falſe gods. This very doubt was moved by Publicola to S. Auguſtine, who reſolveth the ſame thus: he that taketh the credit of him that ſweareth by falſe gods not to any evil but good, he doth not ſoyn himſelf to that ſin of ſwearing by Devils, but is partaker with thoſe lawful Leagues wherein the other keepeth his faith and oath. But if a Chriſtian ſhould any way induce another to ſwear by them, herein he ſhould grievouſly ſinne. And ſeeing the league in theſe caſes are warranted by the Word of God, & per praxin ſanctorum in ſacra ſcriptura, all incidents thereunto are permitted: for per praxin ſanctorum the practice of holy men in ſcripture, may oftentimes be collected how the Commandements in it are to be underſtood, and praxis ſanctorum appeareth before. Aug. Epiſt. 154. *ad Publicolam.* Auguſt. lib. de mendacio, ca. 15. Praxis ſanctorum interpres præceptorum.

And it is to be obſerved, that of ancient time, and until latter dayes no Ambaſſadour came into this Realm before he had a ſafe conduct. For as no King, &c. can come into this Realm without a license or ſafe conduct, ſo no Procex, &c. which repreſenteth a Kings perſon can do it. For ſafe conducts ſee the Writs in the Regiſter de ſalvo conductu, and the Statutes of 15 H. 6. 18 H. 6. and 20 H. 6. with all incidents thereunto. And King H. 7. that wiſe and politique King, would not in all his time ſuffer Lieger Ambaſſadours of any foreign King or Prince within his Realm, nor be any with them, but upon occaſion uſed Ambaſſadours. Rot. Parl. 9 H. 6. nu. 12. and long after. See li. 7. Calvins caſe, *De Rege Monac.* Regiſt. fo. 25, 26. 15 H. 6. cap. 3. 18 H. 6. cap. 8. 20 H. 6. cap. 1. 8 H. 7. fo. 10. Legate of the Pope ſworn, &c.

* Every Ambaſſadour ought to have four qualities, expreſſed in this Verſe. * Four qualities ought to be in an Ambaſſador.

Nuncie, ſis verax, tacitus, celer, atque fidelis.

And of him another ſaith,

Fœderis orator, pacis via, terminus iræ,
Semen amicitiæ, belli fuga, litibus hoſtis.

William de la Poole, Duke of Suff. by the Commons was charged (amongſt other things) with this, that he procured the King, in his preſence onely without any other of the Councell, to have ſecret conference with the French Ambaſſadors, &c. for the which (amongſt other things) he was baniſhed, &c. as by the Record appeareth. Rot. Pl. 28 H. 6. nu. 28.

Cardinal

1. Decemb. 21 H. 8.

Cardinal Wolſey was charged with theſe notable high and grievous offences (amongſt others) viz. that he being the Kings Ambaſſador in France made a Treaty with the French King for the Pope, the King not knowing any part thereof, nor named in the ſame, and binding the French King to abide his order, and award, if any controverſie or doubt ſhould ariſe between the ſaid Pope, and the ſaid French King.

See theſe Articles before in her verba, Cap. Chancery, Artic. 2, 3, 9, 10, 12.

Alſo that the ſaid Lord Cardinal being the Kings Ambaſſadour in France, ſent a Commiſſion to Sir Gregory de Caſſalis under the Great Seal in the Kings name to conclude a Treaty of amity with the Duke of Ferrare, without the Kings commandement or warrant, nor the King advertiſed nor made privy to the ſame.

Alſo the ſaid Lord Cardinal taking upon him otherwiſe then a true Privy Counſellour ought to do, hath uſed to have all Ambaſſadours to come firſt to him alone, and to hear their charges and intents, &c.

Alſo the ſaid Lord Cardinal uſed many years together not only to write to all the Kings Ambaſſadors in forain parts with other Princes in his own name all advertiſements concerning the Kings affairs being in their charge, and in the ſame letters wrote many things of his own mind without the Kings pleaſure known, concealing divers things which had been neceſſary for them to know, but alſo cauſed them to write their advertiſements to him, and of the ſame letters he uſed to conceal, for the compaſſing of his purpoſe, many things both from the Kings Counſel and the King himſelf.

The difference between a League and a Truce is, that a Truce is a ceſſation from War for a certain time: a League is an abſolute ſtriking of peace.

a Of a Truce we read in anno 19 E. 3. to this effect, Rex poſt initas inducias cum Francorum Rege per mediationem b Romani Pontificis, copias ſuas bellicas demum reduxit, poſtea deprehendens præfat' regem Franc' hoſtilia contra ipſum moliri, & nuntios præfati Pontificis ſimulata pace diſſidium fovere, præmiſſa omnia per Literas Patentes exponenda duxit, & bellum cum præfato rege reſumſit.

a A Truce. Rot. Franc' 19 E. 3. m. 10. part 1.
b See the truce at large, Lib. Par. fo. 5.

c A League and alliance was made between King H. 5. his heirs and ſucceſſors, and Sigiſmond King of the Romans his heirs and ſucceſſors King of the Romans, and was confirmed by Act of Parliament. The inſtrument whereof is very long, but not ſo long as effectual and worthy of obſervation.

c A League. Rot. Par. 4 H. 5. nu. 14.

d It is ſaid in 9 E. 4. that League made between two Kings (without naming of ſucceſſors) doth not extend to ſucceſſors, although by our Law Rex non intermoritur.

d 9 E. 4. 2. a.

e Juſtice Aſhton is of Opinion, That no Ambaſſador ought to be ſent to the Pope, but there may be many preſidents to the contrary, for beſides his ſpiritual juriſdiction he is a Temporal Prince, whereof ſee a preſident among many others, f Rot. Par. 35 E. 3, parte 2. memb. 24. and likewiſe the Pope ſent Ambaſſadors into England, who were ſworn not to attempt any thing prejudicial to the King or Kingdome.

e 39 H. 6. 39.

f Rot. Par. 35 E. 3. part 2. m. 24. Clauſ. 10 H. 4 m. 15. *mantius pape*, rot. Clauſ. 14 H. 3. m. 1. Rot. Clauſ. 12 R. 2. m. Dorſ. g Ro. pat. 17 R. 2. part. 1. m. 23. Rot. Franc. 12 H. 6. m. 2. Rot. par. 12 H. 6. 12 part. m. 6.

g And that we may give ſome taſte of every kind: In times paſt the King of England ſent Ambaſſadors to general Councels, as taking one example of that ſort for many. Ad concilium Baſilien's ſub Eugenio Papa, quorum diſtinati ſunt per Regem Ambaſſiatores & Oratores Epiſcopi Robertus London', Philippus Exoniens', Johannes Roffens', Johannes Bajocens' & Bernardus Aquarens' Ed. comes Moriton, Abbates Glaſton': & beatæ Mariæ Eborum, Prior Norwici, Henricus Bromflet miles, (dominus Veſciæ) Thomas Browne legum Doctor, Decanus Sarum, Johannes Colleville miles, & alii. Their authority was in theſe words, Dantes & damus eis & ipſorum majori parti poteſtatem & mandatum tam generale quam ſpeciale nomine noſtro & pro nobis in eodem concilio intereſſendi, tractandi, communicandi, & concludendi tam de his quæ reformationem Eccleſiæ univerſalis in capite & in membris, quam in his quæ fidei orthodoxæ fulcimentum, regumque ac principum pacificationem concernere poterunt, nec non de & ſuper pace perpetua, gueramve abſtinentia inter nos & Carolum

* Robert Gilbert Doctor of Divinity. John Langdon Doctor of Divinity dyed at this Councel. *Nicholaus Abbas Gloſtoe, Willielm. Abbas beatæ Mariæ Eborum.* The letters of the Pope whereby general Councels are called, you may read in Mat. Par. Anno dom. 1245. p. 886.

Carolum adverſarium noſtrum de Francia, ac etiam tractandi, communicandi, & appunctandi, conſentiendi inſuper, & ſi opus fuerit, diſſentiendi hiis quæ juxta deliberationem dicti concilii inibi fiatui, & ordinari contingerit. Promittentes & promittimus bona fide nos ratum, gratum, & firmum perpetuo habiturum totum & quicquid per dictos Ambaſſiatores, Oratores, & Procuratores noſtros, aut majorem partem eorundem actum, factum, ſeu geſtum fuerit in præmiſſis, & in ſingulis præmiſſorum, & hoc idem cum de & ſuper iis certiorari fuerimus quantum ad nos ad Chriſtianum principem attiner, executioni debitæ curabimus demandar. In cujus rei teſtimonium has literas noſtras fieri fecimus patentes. Dat' ſub magni ſigilli noſtri teſtimonio in Palatio noſtro Weſtm. 10 die Julii.

We have expreſſed this Ambaſſage the more particularly, for that, to this Councel alſo I find that Henry Beauford (ſon of John of Gaunt by Katharin Swinford) Biſhop of Wincheſter and Cardinal of S. Euſeby addreſſed himſelf and had licenſe to tranſport and carry with him 2000 l. of gold and ſilver (mute by moving Ambaſſadors) notwithſtanding the ſtatutes of 9 E.3. cap.1. and 5 R.2.cap. 2, &c. For the form of a ſafe conduct (which is called de ſalvo conductu) ſee the Regiſter. And for the effect and validity thereof, ſee the ſtatutes of 15 H.6.c.3. 18H.6. cap.4. 20 H.6. cap.1.

Rot. Pat. anno 11 H.6. parte 1. m. 10. & 12. & anno 12. part 2. m. 13.
9 E.3. ca 1.
5 R. 2. ca. 2.
Safe conduct. Reg.f.25,26.

Recordum & proceſſ' contra Petrum de Rival Theſaurarium & Camerarium totius Angliæ & Hiberniæ, & cuſtod' omnium Foreſtarum & omnium Portuum maris, &c. de compoto regi reddito de officiis prædictis & de judicio contra ipſum reddito per defaltum, quia venire recuſavit, niſi ſalvo regis conductu, quod rex denegavit quaſi inſolitum & indebitum. Anno 18 H.3.

What rewards Legats have had in former times you may read Rot. Liberat. 11 H.3. m.13. Rot. Clauſ. 11 H.3. m.11. in Dorſ. Rot. Liberat. 3 E. 1. m.9. Eodem Rot. 1 E.1. m.2. Rot. Alman. 11 E.3. per totum Rotulum.

See Beda in his Hiſtory of England. Lib.1. cap.11. **hereafter Cap.75. Of Scotland in fine, the danger of unwiſe and incertain Leagues.**

CAP.

CAP. XXVII.

The Court of the Juſtices of Aſſize, and *Niſi Prius*.

Glanvil lib. 13. cap. 32, 33, &c. Bract. lib. 4. fo. 164. b. Britton f. 106. b. 112. 118. Fleta lib. 4. ca. 1. & 5. Mirror ca. 2. Sect. 15. Stat. Walliæ in Vet. Mag. Cart. 2 part. fo. 12. 26 Aſſ. P. 24. * F.N.B. 177. R. See the 1 part of the Inſt. Sect. 442. Mag. Cart. ca. 30. 39 H. 6. 19. b. mord.

FOr the Writ of Aſſize, whereof the Juſtices take their name; in all ancient Authors, it is called Aſſiſa novæ diſſeiſinæ, or Petit brief de novel diſſeiſin. Of which writ Bracton ſaith: Recognitio Aſſiſæ novæ diſſeiſinæ multis vigiliis excogitata & inventa fuit recuperandæ poſſeſſionis gratia, ut per ſummarium cognitionem abſque magna juris ſolennitate, quaſi per compendium, negotium terminetur. And the Mirror ſaith, that for expedition of juſtice, and auoiding of delayes, it was ordained by Randulph de Glanvill; but I find the writ more ancient, as it appeareth in 26 Aſſ. pl. 24.

At the Common law Aſſizes were not taken but either in * Bank, or before Juſtices in Eire, and this was a great delay to the Plaintiffe, and a great moleſtation and vexation of the recognitors of the Aſſize. For remedy whereof, it is enacted by the ſtatute of Magna Charta, Quod recognitiones de nova diſſeiſina, & de morte anteceſſoris non capiantur niſi in ſuis propriis comitatibus, & hoc modo nos ſi extra regnum fuere Capitales Juſticiarii noſtri, mittent Juſticiarios noſtros per unumquemque comitatum ſemel in anno, qui, &c. capiant comitatibus illis Aſſiſas prædictas. By force of this Act, theſe three concluſions are to be obſerved. Firſt, that no Aſſize can be returnable in the Kings Bench, or Common Bench, unleſſe the deſeiſin be done in the County where the Benches ſit reſpectively, or if both Benches ſit in one County, then the Plaintiff hath election to make it returnable in which Bench he will. Secondly, that the Juſtices of both Benches in that caſe have juriſdiction originally and ordinary without any Patent. Thirdly, that upon the ſaid Act of Magna Charta Letters Patents to Juſtices of Aſſiſe were framed for the taking of Aſſizes in the proper Counties in theſe words.

When Juſtices of Aſſize by Patent firſt began.

† The Patent of the Juſtice of Aſſiſe.

† Rex, &c. dilectis & fidelibus ſuis R.M. uni Juſtic. ſuorum de Banco, & I.L. uni Juſtic. ſuorum ad placita coram nobis tenend. aſſign. Salutem. Sciatis quod conſtituimus vos Juſticiarios noſtros una cum hiis quos vobis aſſociaverimus, [a] ad omnes Aſſiſas, [b] Jurat', [c] certificat. coram quibuſcunque Juſtic' tam per diverſa brevia domini Johannis nuper regis Angliæ patris noſtri, quam per diverſa brevia noſtra in Com' noſtris South', Wilteſ. Dorſ. Somerſet. Devon. & Cornub. ac in civitate Exon. arrainan' capiend'. Et ideo vobis mandamus, quod ad certos dies & loca quos vos ad hoc provideritis, Aſſis', Jurat' & certificat' illas capiatis; [d] Facturi inde quod ad Juſtitiam pertinet ſecundum legem, & conſuetudinem regni noſtri Angliæ. Salvis nobis amerciamentis inde provenien. Madavimus enim Vicecomitibus noſtris com' & civitat' prædict', quod certos dies & loca quos eis ſcire faciatis Aſſis', Jurat. & certificat. illas una cum brevibus origin. & omnibus aliis ea tangen. coram vobis venire fac'. In cujus rei teſtimonium, &c.

a *Juſtic' noſtros ad Aſſiſas.* Hereunto belong Commiſſions of aſſociat' writs of admittance and of *ſi non omnes*, &c. F.N.B. 177. Regiſter, and a writ to the Sheriff to bring before them *omnia brevia Aſſiſ' Jurat' & certificat'*, &c.

b *Jurat'* when the recognitors are turned *injuratam* 19 E. 2. Aſſ. 418. 29 Aſſ. p. 78. &c.

c Certificat. hereof you may read in F.N.B. and the Regiſter.

d Nota.

e By this writ the ſeiſin and poſſeſſion was recovered, and became moſt frequent, quia non eſt aliud breve in Cancellaria, per quod querentes habent tam feſtinum remedium, quam per Aſſiſam. f And after the ſtatute of W. 2. was made, and thereby it was provided, quod aſſignentur duo Juſticiarii juraki, coram quibus, & non aliis, capiantur Aſſiſæ, &c. ad plus ter per annum.

e W. 2. ca. 25.

f W. 2. ca. 30. Vid. 4. E. 3. ca. 2.

g Dominus Rex, &c. præcepit, quod de cætero aſſignentur Octo Juſticiarii circumſpecti & diſcreti ad Aſſiſas, Jurat. & certificat. capiend. per totum regnum Angliæ, viz. and divideth the Realm into eight parts, and to every part aſſigneth two Juſtices.

g Ro. Pa. 21. E. 1. Rot. 3. De Juſticiariis aſſignatis.

But

But divers Acts of Parliament have given unto Justices of Assise authority in many cases.

[b] Per lestatut' de finibus ca. 3. Justiciarii ad Assisas capiendas assignati deliberent Gaolas in com. illis tam infra libertates quam extra de prisonariis quibuscunque. [c] Appeals of murder, robbery and rape may be commenced before Justices of Assise. [d] Power given to Justices of Assise to try the appeals of Approvers. [e] Justiciarii ad Assisas capiend. assignati non compellant Juratores dicere præcisè.

[f] Justices of Assise shall enquire for non-returning, and false returns of Sheriffs.

[g] Justices of Assise may hear and determine of Conspirators, false Informers, and wicked procurers of dozens, Enquests and Juries at the complaint of any without writ, and without delay, and of confederacies and Champerties and maintainers, bearers, and alliances by bond, &c. [h] Of defaults of Sheriffs, Escheators, Baillies, and other Officers.

[i] Justices of Assise may enquire of defaults, &c. of punishment of Victuallers, &c. which sell at unreasonable prices.

[k] They have power to hear and determine riding and going armed, &c. and to punish Justices of Peace, Sheriffs, Baillies, and others for not doing their office in that case.

[l] They may hear and determine treason in counterfeiting of money, &c. [m] They shall do execution of the statute of 13 H. 3. of riots done in their presence upon pain of an hundred pound. [n] And by the statute of 2 H. 5. Commissions shall be awarded to enquire of the default of Justices of Assise, and of Justices of Peace in that behalf.

[o] They shall enquire of, hear, and determine all offences contrary to the statute of 23 H. 6. concerning Sheriffs, Under-Sheriffs, and their Clerks, Coroners, Stewards of Franchises, Bailiffs, and keepers of prisons for extortion, and for letting to bail such as were not bailable, or for denying of bail to them that ought to be bailed, &c.

[p] Justices of Assise shall take bail of him that is acquitted of murder within the year to answer to the appeal of the party, 5 Eliz. cap. 5. Of Informers. 5 Eliz. cap. 4. Of Labourers.

[q] Justices of Assise, of Gaol-delivery, and of the Peace, shall enquire of the default of Coroners.

[r] Justices of Assise, &c. shall enquire of false making of Leather. [s] Of amending of High-ways. [t] Of hunters in Parks. [u] Of unlawful taking of Fishes. [x] Of forgery of false deeds. [y] Against deceipt in Linnen-cloth. [z] Against perjury. [*] Of usury and many other things.

[a] Justices of Assise twice in the year ought to proclaim the statute of 32 H. 8. and other statutes against unlawful maintenance, champerty, imbracery, and unlawful retayners. [b] They ought to proclaim the statute of unlawful games in their circuit. See the Custumer of Normandy, cap. 19.

[c] Now concerning Justices of Nisi prius, they were first instituted by the statute of W. 2. of issues, joyned to the Common Bench, and Kings Bench: and their authority is annexed to the Justices of Assise, and is by force of a judicial writ, and therefore we have joyned them under one title. And this appeareth in the judicial writ of Nisi prius, which is,

[b] 27 E. 1. Stat. de Finibus, cap. 3. To deliver Gaols.
[c] 22 E. 4. 19.
[d] Stat. de Appellatis, an. 28 E. 1.
[e] W. 2. cap. 30.
[f] W. 2. cap. 39. 2 E. 2. cap. 5.
[g] Artic. sup. Cart. 28 E. 3. 4 E. 3. c. 11. 7 R. 2. c. 15. Regist. 186. 188. 4 E. 3. ca. 12. Of Maiors and Bailifs, que ne serche wines.
[h] 20 E. 3. ca. 6.
[i] 23 E. 3. ca. 6.
[k] 2 E. 3. ca. 3. de Northampton. 1 R. 2. ca. 7. Of unlawful maintenance.
[l] 3 H. 5. ca. 7.
[m] 13 H. 4. ca. 7.
[n] 2 H. 5. cap. 8.
[o] 23 H. 6. ca. 10. 33 H. 8. ca. 9. for shooting.
[p] 3 H. 7. ca. 7.
[q] 1 H. 8. ca. 7.
[r] 18 El. cap. 9.
[s] 18 El. cap. 10.
[t] 5 El. cap. 3.
[u] 5 El. cap. 5.
[x] 5 El. cap.
[y] 1 El. cap. 14.
[z] 5 El. ca. 9.
[*] 13 El. cap. 8.
[a] 32 H. 8. ca.
[b] 33 H. 8. ca. 9.
[c] W. 2. c. 30. See the 2. part of the Inst. the exposition of this Act. vid. Fleta l. 4. c. 5. Vid. Hil. 32 E. 3. m. 5. see the authority of Justices of Nisi prius, in libro meo, fo. 54. b. the Pl. begun, *Et auxint en Nisi prius grant devant Stanf.*

Rex Vicecomiti salutem. Præcipimus tibi quod venire fac' coram Justiciariis nostris apud Westm. in Octab. sancti Michaelis, vel coram Justiciariis nostris ad Assisas in Com. tuo per formam statuti nostri inde provis. capiend' assignatis, si prius die lunæ prox. ante festum, &c. apud, &c. venerint 12. tam milites quam alios, &c.

¶ *The writ of Nisi prius.*

And by the said Act the Justices of Nisi prius have power to give judgement in Assise of Darrein Presentment and Quare Impedit.

Reg. judic. 48. 75. W. 2. ca. 30. 6 E. 6. Dier 77.

7 R. 2. ca. 7. By the ſtatute of 7 R. 2. Niſi prius ſhall be granted as well in the Exchequer as elſewhere.

18 El. ca. 12. Of iſſues joyned in the Kings Bench, Common Bench, and Exchequer, the Chief Juſtices, or Chief Baron, or in their abſences two other Juſtices or Barons of the ſaid ſeveral Courts, as Juſtices of Niſi prius for the County of Midd. within the Term, or four dayes after ſhall ſeverally try, &c. and that Commiſſions, and writs of Niſi prius ſhall be awarded, &c. It is to be obſerved that there is but a tranſcript of the Record ſent to the Juſtices of Niſi prius.

9 El. Dier 261.

27 E. 1. de finibus F.N.B. 241. c. Stat. de York 12 E. 2. cap. 3. & 4. 2 E. 3. ca. 16. & 4 E. 3. cap. 2. 14 E. 3. ca. 16. By the ſtatute of 27 E. 1. de Finibus ca. 4. It is provided, Quod inquiſitiones & recognitiones capiantur tempore vacationis coram aliquo Juſticiario de utroque Banco, coram quibus placitum deductum fuerit, See the Statutes of York 2 E. 3. cap. 16. 4 E. 3. cap. 2. and the ſtatute of 14 E. 3. cap. 16. which ſtatute doth provide, that Niſi prius may be taken in every plea real or perſonal before two, ſo that one be Juſtice of one of the Benches, or the Chief Baron or Serjeant ſworn, without any regard where the plea depended, and this ſtandeth yet at this day. Vid. 42 E. 3. cap. 11. 19 H. 6. fol. 47. 33 H. 6. fol. 14. 16 H. 7. fol. 14. 5 Mariæ Dier fol. 163.

Rot. Claſ. 10 E. 3. m. 10. Concordatum fuit per totum concilium regis, quod nullus Vicecomes aut Coronator fiat Juſticiarius ad Aſſiſas capiend. Gaolas deliberand. tranſgreſſ. audiend. & terminand. ſeu ad aliquod aliud officium Juſtic. faciend. eo quod debent eſſe intendentes aliis Juſticiariis. Which Act is declaratory of the Common law, for that (as by the reaſon pædeo in the Act it appeareth) theſe offices be incompatible, the one being attendant unto, and within the controlment of the other.

F.N.B. 240. c. Staunf. 156. Niſi prius in caſe of felony and treaſon, 4 E. 3. cap. 11. 14 H. 6. cap. 1. Juſtices of Niſi prius have power in all caſes of felony and treaſon to give judgement, as well where the priſoner is acquitted, as where he is attainted, and to award execution.

[a] 14 E. 3. f. 23. Rot. Par. 37 E. 3. m. 18. F.N.B. 24. r. a Where the King is a party, a Niſi prius may be granted, if the Kings Atturny aſſent unto it.

[b] 10 E. 4. fo. 14. 22 E. 4. 18. 3. Mir. Dier 110, 121, 131. In Appeal of murder, robbery, and rape brought in the Kings Bench, if the parties be at iſſue a Niſi prius may be granted before Juſtices of Aſſiſe, 25 E. 3, 30. 14 E. 3. Niſi prius 16. 22 E. 4. 19. 21 H. 7. 36. 9 El. Dier 261. 42 E. 3. c. 11. 8 H. 5. 6. But it is to be obſerved, that if the Appellæ be acquitted before Juſtices of Niſi prius, they have power to acquit, &c. and give judgement, as is aforeſaid.

[c] See the 2. part of the Inſt. upon this Act of W. 2. cap. 12. They may alſo enquire and judge of the abettors and damages by the ſtatute of W. 2. c. 12. and not by the ſaid Act of 14 H. 6. And ſo it is if the Appeal be brought before the Juſtices of Aſſiſe, they have alſo power to enquire and judge, Ut ſupra.

[d] 27 E. 1. ſtat. de finibus, cap. 4. Regiſt. 186. These Juſtices of Niſi prius were inſtituted for two cauſes, viz. 1. Propter intolerabilem jacturam Juratorum, & in exonerationem Juratorum. 2. Ad celerem juſtitiam in ea parte exhibendam.

W. 1. cap. 30. Inquiſitiones & Jurat. in placito terræ capiend. quæ magnæ non ſunt examinationis, capiantur in patria, &c.

Regiſt. 186. And hereupon a prohibition is grantable to Juſtices of Aſſiſe, Quod non caperent in patria inquiſitiones quæ magna indigent examinatione.

14 E. 3. aſſ. Br. 413. & cit. Aſſ. Pasch. 110. By the original inſtitution of Juſtices of Aſſiſes and of Niſi prius, the tryal ſhould be before two at the leaſt, & it were much for the advancement of juſtice and right to have the law put in due execution, for plus vident oculi, quam oculus, and ſpecially in Pleas of the Crown concerning the life of man, in regard whereof they ſhall be worthy of greater allowance.

Dier Manuſcript Hill. 11 Eliz. 26 aſſ. p. 3. Before the Juſtices of Aſſiſe in Pays a forain plea, viz. Villenage was pleaded, for tryal whereof the Record was removed into the Common Bench, and there a Venire fac. was awarded, and return ſervie, and a Habeas corpus with a Niſi prius was prayed. And it was obiected, that the iſſue was not joyned in Bank, nor Judgement to be given there, and yet in the end the prayer was granted, as

in

in a * Certificate, upon an Aſſiſe a Niſi prius ſhall be granted: [a] And ſo it is upon a ſozain Voucher, Receipt ſhall be granted, and a tryal by a Niſi prius had.

[b] The Juſtice of Niſi prius may grant a Tales de circumſtantibus, either when but one or more appear of the principal pannel, or where eleven do appear: and all the Jury may be of the Tales de circumſtantibus, as it was upon a Tales at the Common law.

[c] Where the King is party, a Niſi prius is grantable for the King, but not for the party without aſſent of the Kings Atturney, and ſo are the books to be intended.

[d] In Attaint the Plaintiff craved a Niſi prius, and becauſe one of the Petit Jury was priſoner in Newgate, and came in ward and pleaded, and was remanded, and if a Niſi prius ſhould be granted he ſhould loſe his challenges, the Court denyed to [e] grant any Niſi prius, otherwiſe a Niſi prius may be granted in an Attaint.

[f] In treſpaſſe between the Duke of Exeter and the Lord Cromwell, the Counſel of the Duke moved for a Niſi prius, and for that the Duke was a Prepotent Prince in that Country, and the Venire fac. being returned, there was a great rout in the Hall, ſo as if a Niſi prius ſhould be granted great miſchief might enſue, therefore no Niſi prius was granted.

More you may read of the writs of Aſſiſe and of Niſi prius in our books, that which hath been ſaid concerning the juriſdiction may ſuffice. It is commonly called a writ of Niſi prius, but the words of the writ are Si prius, &c. And albeit the authority of Juſtices of Aſſiſe (as it hath appeared) hath by Act of Parliament been exceedingly enlarged both in dignity and multitude of cauſes, yet they retain their firſt and original name, albeit Aſſiſes are in theſe dayes very rarely taken before them. See in the Chapter of Juſtices of Peace powers and authorities lately granted to Juſtices of Aſſiſe, and Juſtices of Niſi prius.

* 7 H. 4. 45. 8 E. 4. 16. F.N.B. 183. h.

[a] 18 E. 3. 1. 49 E. 3. 21. 3 H. 4. 18.

[b] 35 H.8.cap. 6. 23 El. Dier. 376. 4 & 5 Ph. & Ma. cap. 7. 14 El. c. 9. 18 El. cap. 12. Vid. 8 El. 2, Dier 245.

[c] 24 E. 3. 39. 18 E. 3. 58. 14 E. 3. Niſi prius 16. 24 E. 3. 23. 21 H. 7. 34. F.N.B. 140. Stanf. pl. cor. 156. 2. b.

[d] 44 E. 3. fo. 2. 44 aſſ. p. 20. 8 H.4.23 21 E.3. 17.6. aſſ. p. 7.

[e] 15 E. 3. Niſi prius 22. ſimile. 21 E. 3. ibid. 21.

[f] 32 H. 6. 9. 22 E.3.16.F.N.B. 241. 2. Dier 4 El. 215.

CAP. XXVIII.

Juſtices of *Oier* and *Terminer.*

The authority of Juſtices of Oier and Terminer is by Commiſſion. Of Commiſſions of Oier and Terminer there be two ſorts, one general, ſo called becauſe it is general, in reſpect of the perſons, the offences, and the places where the offences are committed, the which Commiſſion followeth in theſe words.

For general Commiſſions, ſee 42 Aſſ. pl. 5. 2 R. 2. Cor. 47. Pl. com. 390. Countee es Leic'. caſe.

*Elizabeth Dei gratia Angliæ, Franciæ, & Hiberniæ Regina, fidei defenſor, &c. Chariſſimis conſanguineis ſuis Willielmo Marc. ini Winton, Henrico Comiti South. &c. ac dilectis & fidelibus ſuis Rogero Manwood uni Juſtic' ſuorum de Banco, Johanni Jefferay uni Juſtic' ad placita coram nobis tenend' aſſign' Johanni Arundell militi, &c. Johanni S. John, Humf. Walron, William Pool, Petro Edgecombe, Thomæ Morton, &c. ſalutem. Sciatis quod aſſignavimus vos & tres veſtrum, quorum aliquem veſtrum vos præfat' Rogerum Manwood & Johannem Jefferay unum eſſe volumus Juſticiarios noſtros ad inquirendum per ſacramentum proborum & legalium hominum de Com. noſtris South. Wilteſ. Dorſet, Somerſet, Devon. & Cornub. & eorum quolibet ac aliis viis, modis, & meditis quibus melius ſciveritis, aut poteritis tam infra libertates quam extra, per quos rei veritas melius ſciri poterit de quibuſcunque proditionibus, miſpriſionibus proditionum, inſurrectionibus, rebellionibus, murdris, feloniis, homicidiis, interfectionibus, burglariis, raptibus mulierum, congregationibus, & conventiculis illicitis, verborum prolationibus, coadjutationibus, miſpriſionibus, confœderationibus, falſis allegantiis, tranſgreſſionibus, riotis, routis, retentionibus, eſcapiis, contemptibus, falſitatibus, negligentiis, concelamentis, manutenentiis, oppreſſionibus, cambipartiis, deceptionibus, & * aliis malefactis, offenſis, & injuriis quibuſcunque, necnon acceſſar. eorundem infra Com. prædict. & eorum quemlibet, tam infra libertates, quam extra per quoſcunque & qualitercunque habit' fact' perpetrat' ſive commiſſ. Et per quos vel per quem, cui vel quibus, quando, qualiter, & quomodo, ac de aliis articulis & circumſtantiis præmiſſ. & eorum aliquod vel aliqua qualitercunque concernen'. Et ad eaſdem proditiones & alia præmiſſa (hac vice) audiend' & terminand' ſecundum legem & conſuetudinem regni noſtri Angliæ. Et ideo vobis mandamus quod ad certos dies & loca quos vos vel tres veſtrum, quorum aliquem veſtrum ex vobis præfat' Rogerum Manwood & Johannem Jefferay unum eſſe volumus, ad hoc provideritis diligenter ſuper premiſſis faciatis inquiſitiones, & præmiſſa omnia & ſingula audietis & terminetis, ac ea faciatis & expleatis in forma prædicta, * ſalvuri inde quod ad Juſticiam pertinet ſecundum legem & conſuetudinem regni noſtri Angliæ. Salvis nobis amerciamentis & aliis ad nos inde ſpectantibus. Mandavimus enim Vicecomitibus noſtris Com. prædict' quod ad certos dies & loca, quos vos vel tres veſtrum, quorum aliquem veſtrum ex vobis præfat' Rogerum Manwood & Johannem Jefferay unum eſſe volumus, eis ſcire feceritis venire fac' coram vobis, vel tribus veſtrum, quorum aliquem*

Hereupon they are called Juſtices of Oier and Terminer.

* Note, theſe general words.

* Note.

aliquem vestrum vobis præfat' Rogerum Manwood & Johannem Jefferay unum esse volumus, tot & tales probos & legales homines de ballivis suis tam libertates, quam extra, per quos rei veritas melius sciri poterit & inquiri. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipsa apud Westm' 27 die Junii Anno regni nostri decimo octavo.

2. Particular Commissions of Oier and Terminer, so called in respect of the persons, of the offences, or of the places, whereof you shall find five presidents in the Register: 1. Against the Bishop of Winchester and his Ministers. 2. De nave fracta, if the goods ought to be taken for Wreck. 3. Of divers oppressions, &c. extortions, &c. by the Kings Ministers. 4. Of Oier and Terminer for the Prior of Daventry. And 5. for the King in time of vacation, which you may read there.

[a] Concerning Commissions of Oier and Terminer Ten Conclusions are to be observed. 1. That Oiers and Terminers shall not be granted, but before the Justices of the one Bench or the other, or the Justices errant, and that for great or horrible trespasses, of the Kings especial grace, according to the statute in the time of his [b] Grandfather.

[c] And in the Register there is a Supersedeas, Quia non enormis transgressio, which word [enormis] is in the statute of W. 2. ubi sup. [d] To Commissioners of Oier and Terminer a Writ of Supersedeas was delivered. Quia enormis transgressio non est, ideo supersedeant, for it was not but for cutting down of Trees. [e] And afterward a Writ of Procedendo under the Great Seal of later date was delivered to them to proceed secundum legem & consuetudinem Angliæ non obstante aliquo mandato, &c. by vertue whereof, notwithstanding the former Writ, they did proceed by advice of all the Justices. For a Writ of Supersedeas is one thing, and an absolute repeal or countermand of the Commission it self is another. A Supersedeas is but to stay, or forbear the proceedings, * that is, super advisamentum sedere, and is not mes uñ surcesse de advisement. And such may the cutting down of trees be, as it may be enormis transgressio, and therefore notwithstanding a Supersedeas the cause may proceed by a Writ of Procedendo. But after an absolute repeal or countermand by the King of the Commission it self, the Commissioners cannot proceed after by force of any Procedendo, but there must be a new Commission.

The second Conclusion is, that Commissions are like to the Kings Writs, such are to be allowed which have warrant of law and continual allowance in Courts of Justice. For all Commissions of new invention are against law untill they have allowance by Act of Parliament. [f] Commissions of novel inquiries are declared to be void: [g] Commissions to assay Weights and Measures (being of new invention) are declared to be void, & that such Commissions should not be after granted. So as a Commission is a delegation by warrant of an Act of Parliament or of the Common law, whereby jurisdiction, power, or authority is conferred to others. Sapientis Judicis est cogitare tantum sibi esse permissum, quantum commissum & creditum. And it is a good rule for all Commissioners to hold the like, and ever to keep themselves within their Commission.

The Commons do petition, that certain Commissions lately sent to Cities for the making of certain Boats and Bullingers being done without assent of Parliament, might be repealed. The King doth answer, That after conference with the Lords, reasonable answer should be made. And that these Commissions took no effect, appeareth in this, That no further complaint was thereof made, and no such Commission was ever after granted.

At the petition of the Commons, the King granted that one Bennet Wilman, who was imprisoned to answer before the Constable and Marshal of England, should be tried according to the Common laws of this Realm, notwithstanding any Commission to the contrary. And thereupon a Writ was accordingly directed to the Justices of the Kings Bench, as there it appeareth. Of these kinds many

* Regist. 125, 126, 127. F.N.B. 110, 111. For particular Commissions see 42 Ass. pl. 12. 34 Ass. p. 8. 29 E. 3. 30, 31. Rot. Claus. 18 H. 3 m. 15. de Petro de Rival.

a 2 E. 3. cap. 2. 34 E. 3 cap. 1. To be named by the Court, and not the party. See the statute of 42 E. 3. c. 4. which extends to Enquiries. 4 H. 4. cap. 9. Vide Rot. Parl. 50 E. 3. nu. 51. for Commissions of inquiry what persons ought to be named: so note a diversity between Commissions of Enquiry, and of Oier and Terminer.

b W. 2. 13 E. 1. cap. 29.

c Regist. 124, 125. 2 E. 3. c. 2.

d 12 Ass. p. 21. Vide Br. com. 12. & Oier & Terminer 4.

e Reg. 124, 125.

* Supersed. unde.

f 18 E. 3. cap. 1.

g 18 E. 3. cap. 4.

Rot. Parl. 2 H. 4. nu. 22.

Rot. Parl. 5 H. 4. nu. 39.

Vid. 42 Ass. p. 5.

many more authorities might be cited, but let us return to our Justices of Oier and Terminer.

41 Ass. p. 12. Vid. F.N.B. 110. b. Regist. 125, &c.

In the reign of E. 3. the Justices were so carefull, that no innovation should creep in concerning Commissions of Oier and Terminer, that certain Justices having their authority by Writ, where they ought to have had it by Commission, though it were of the form and words that the legal Commission ought to be, John Knivert Chief Justice by the advice of all the Judges resolved, that the said Writ was contra legem. And where divers Indictments were before them found against T.S. the same, and all that was done by colour of that Writ was damned.

3 Mar. Br. Commissions 23.

The third conclusion is, that Justices of Oier and Terminer cannot proceed upon any Indictment, but upon Indictments taken before themselves, for their authority is, Ad inquirend. audiend. & terminand.

The fourth conclusion, that Justices of Oier and Terminer may upon an Indictment found proceed the same day against the party indicted. But against this there seems to be great authority: For in Kelwey fo. 159. b. it is thus said, Mem. que en briefe de Oier & Terminer, P. 9 H. 8. sur le insurrection in Londres il fuit determine clerement per touts Justices Dengliterre, que Justices D'oier & Terminer ne puit inquire un jour, & mesme le jour determine, nient plus que Justices de peace; mes Justices de Gaol delivery & Justices in Eire poien bient. It may be that he that set down this case took it upon trust, for it agreeth in effect totidem verbis with the Chronicle in 9 H. 8. fo. 843. and it is erroneous in divers main points. 1. That the Oier and Terminer was by Writ, where it was and ought to be by Commission, as hath been said. 2. That Justices of Oier and Terminer cannot enquire one day, and determine in the same day, which without question they may do: for proof whereof we will cite some few Records instead of many.

Vide 29 Ass. 33.

Hil. 2 H. 4. rot. 4.

Thomas Marks Bishop of Carlisle before Commissioners of Oier and Terminer was indicted, tried and adjudged all in one day, for High Treason.

1 H. 8. Sir Rich. Empsons case. Northampton.

De Lunæ post festum Sancti Michaelis, Anno 1 H. 8. before Fisher, Brudnell, Palmes, &c. Commissioners of Oier and Terminer, Sir Richard Empson was indicted of High Treason and tried all in one day. And we desirous to see the entry, upon not guilty pleaded, it is thus: Ideo inter dict. dominum Regem & dict. Rich. Empson militem in instant. diem ad horam primam post meridiem, &c. apud castrum de Northampton venerunt, &c. qui nec, &c. ad recognosc. &c. Ad quos quidem diem, horam, & castrum de Northampt. venit coram præfat. Justic. præd. Rich. Empson, &c.

2 Dec. Anno 3 E. 6. at Westm. before Richard Lister, Edward Mountague, Roger Cholmeley, Edmond Merton, William Portman, and Humfrey Brown, and other Commissioners of Oier and Terminer, Robert Bell was indicted of High Treason and tried the same day. 10 Dec. Anno 3 E. 6. before Sir William Portman and other Justices of Oier and Terminer at Reading in the County of Berks Thomas Bonham was indicted of High Treason and tried the same day. 4 Augusti 10 Eliz. John Felton was before Commissioners of Oier and Terminer in London indicted of High Treason, and tried the same day by the advice of all the Judges of England. [a] Note, the award in the Roll by the Justices of Oier and Terminer to the Sheriff to return a Jury is not sufficient; but there ought to be a precept to the Sheriff, under the Seals of the Commissioners for the returning of a Jury, but otherwise it is in the Kings Bench.

[a] And with this constant experience agreeth 4 H. 5. tit. Enquest 55.

[b] The third error in the said case of 9 H. 8. that Justices of Peace cannot inquire and try the same day, which without question they may, for they are special Justices of Oier and Terminer: and wherefore Justices of Oier and Terminer should not try the same day, as well as Justices of Gaol-delivery, and Justices in Eire, no sound reason can be given.

[b] 22 E. 3. cor. 44. holden for no law.

[c] The fifth conclusion is, that if any offence be prohibited by any statute, and name not in what Court it shall be punished; or if the statute appoint that it shall be punished in any Court of Record: In both these cases it may be heard and determined before Justices of Oier and Terminer. And so it seemeth to me if

[c] Vide Statut. de 5 E. 6. cap. 14. Of Forestallers, Ingrossers, and Regraters. 33 H. 8. c. 9. Of unlawful games. 7 El. Dier 236. See many Statutes wherein Justices of Oier & Terminer are expressly named.

if the statute appoint the penalty to be recovered in any of the Kings Courts of Record, according to the opinion of Catlyn, Sanders, and Whiddon; for the Court of Oier and Terminer is the Kings Court of Record.

The sixth conclusion is, that the King may make a Commission of Association directed to others to joyn with the Justices of Oier and Terminer, and a Writ of Admittance to the Justices of Oier and Terminer, to admit the others into their society, which Writ is close. There is also a Writ of Si non omnes directed to the Justices of Oier and Terminer and to their Associates: the forms of all which you may read in the Register ubi supra, and in F. N. B. ubi supra. And in all these Commissions and Writs, the Justices are directed with this Rule, Facturi quod ad justitiam pertinet secundum legem & consuetudinem Angliæ, which is a true mark of a lawfull Commission.

The seventh. If the Justices sit by force of the Commission, and do not adjourn the Commission, it is determined. Commissions Br. 12.

The eighth. Justices of Oier and Terminer, or Justices of Peace, cannot assign a Coroner to an approver; for it is not within the Commission of either of them, but Justices of Gaol delivery may do it. 9 H. 4 coron. 457. Stanf pl. co. 143. c.

The ninth. Justices of Oier and Terminer shall send their Records and Proces determined, and put in execution to the Exchequer at Mich. every year to be delivered there to the Treasurer and Chamberlains, &c. to keep them in the Treasury. 9 E. 3. cap. 5.

The tenth. None of these Commissioners, or of Assise, Gaol-delivery, or of the Peace, or other of the Kings Commissioners are countermanded by any new Commission, unlesse the new Commission be shewed unto them for so many as it is shewed unto; or that it be proclaimed in the County, or that the new Commissioners do sit and keep their Sessions by force of the new Commission, the former Commission is countermanded. 34 Ass. p. 8. L. 3 E. 4. fo. 12. 10 E. 4. fol. 7. 20 H. 7, 8. Kelwey 116. Br. Commiss. 6. 19 Eliz. Dier 355. Vid. infra pag. 169. The statute of 2 & 3 Ph. & M. cap. 18. for Cities or Towns Corporate being no Counties, but is extended not to Commissioners of Oier and Terminer.

And a right profitable statute is made concerning this matter, viz. That no Proces or suit before any Justices of Assise, Gaol-delivery, Oier and Terminer, Justices of the Peace, or * other of the Kings Commissioners, shall not in any wise be discontinued by the making or publishing of any new Commission or Association, or by altering of the names of any of the said Justices or Commissioners, but that the new Justices and Commissioners may proceed in every behalf, as if the old Justices and Commissioners had still remained and continued not altered. 1 E. 6. cap. 7. * Nota the general words.

CAP.

CAP. XXIX.

The Courts of Special Juſtices of Oier and Terminer, of and concerning, 1. Purveyours, 2. Miſdemeanours of Villains, &c. 3. Sums of money collected for houſes of Correction, &c. 4. Colledges, Hoſpitals, and Charitable uſes.

And firſt of Purveyors.

36 E. 3. cap. 4. Of Purveyours.

THis Court is raiſed by the Statute of 36 H. 3. whereby it is enacted, That Commiſſions ſhall be made to two good men and lawfull of every County, and the third to be of the Kings houſe. So that if any of the three come not, the two ſhall proceed to enquire of the behaviour and acts of the ſaid buyers and takers, and how much the ſaid buyers have taken and bought; and how much carriage: and to hear and determine the contempts, outrages, and treſpaſſes in that behalf, as well at the Kings ſuit, as of every man that will complian of them.

Buyers of Victual, &c. Takers of Carriage.

These Commiſſions are to be granted ex mero juſtitiæ, and cannot be denied. And it is to be obſerved, that the action or ſuit given by the ſaid Act is not popular; for either the King only is to have it, or the ſubject only that will complain.

And for better information to be made to the ſaid Juſtices of the things aforeſaid, the Steward, Treaſurer, and Controller of the two Houſes, (*viz.* of the King and Queen) at every Quarter or Half year, ſhall certifie into the Chancery the parcels taken in every Town, and of every perſon; and the Chancellor ſhall ſend the ſaid Certificate to the Juſtices which ſhall be ſo aſſigned. And that this Act extend and hold place as well againſt the Purveyors of the Great Horſes of the ſaid two Houſes, as againſt the buyers or takers before named.

2. Concerning miſdemeanours, &c. of Villains.

1 R. 2. cap. 6.

See the Statute of 1 R. 2. cap. 6.

3. Of and for Sums of money collected for Houſes of Correction, or for the poor, &c.

39 Eliz. cap. 4. 1 Jac. c. 7.

This Court is called by the ſtatute of 39 Eliz. cap. 4. as by the ſame appeareth, wherein this is to be obſerved, That their proceedings, judgements, and executions ſhall remain good and available in law, without any redreſſe to be had by ſuit in any other Court.

See the Second part of the Inſtitutes the expoſition of theſe ſtatutes.

4. Concerning Colledges, Hoſpitals, or Almes-houſes, or for charitable and lawfull purpoſes and uſes.

39 Eliz. cap. 6.

It is lawfull for the Lord Chancellor or Lord Keeper of the Great Seal,

Seal, and for the Chancellour of the Dutchy of Lancaster (for lands within the County Palatine of Lancaster) to award Commissions under the Great Seal, or Seal of the County, to the Bishop of the Diocese and his Chancellor, and to other persons of * good and sound behaviour, to enquire by the oaths of twelve lawful men, &c. as by all other good and lawful means of all and singular Colledges, Hospitals, and other places, founded or ordained for the charitable relief of poor aged, and impotent people, maimed Souldiers, Schools of Learning, Orphans, or for such other good, charitable and lawful purposes and intents. And also of Lands, Tenements, and Hereditaments, Leases, Goods and Chattels given or appointed for the like lawful and charitable uses. As also for reparation of Highways, of Bridges and Seabanks, for maintenance of Free-Schools and Poor Scholars, and of Orphans and fatherless children, and such like good and lawful charitable uses. And to enquire of the abuses and misdemeanours, mis-imployments, falsities, defrauding the trusts, alienations, and mis-governments, &c. And after such inquiry made upon hearing and examining thereof, to set down such orders, judgements and decrees, as the said good and charitable uses may be fully observed in full, ample, and most liberal sort, &c. Which orders, judgements, and decrees (not being contrary to the orders, statutes, and decrees of the Donors or Founders) shall stand * firm and good according to the tenor and purport thereof: which Orders, Judgements, and Decrees are to be certified under the Seals of the Commissioners respectively, either into the Chancery of England, or of the County Palatine of Lancaster.

* No person interessed, &c. to be a Commissioner.

Colledges in both Universities, of Westminster, Eaton, or Winchester, and Cathedral Churches, &c. are excepted. It extends not to lands in Cities or Towns Corporate where there is a special Governor, &c. Nor to any Colledge, Hospital, or Free-school, which have special Visitors, &c. But this exception extends not to Leases, Goods, or Chattels.

* The party grieved may complain to the Lord Chancellour or Lord Keeper, or to the Chancellour of the said Dutchy, for their redress therein, &c. and they have power to judge &c. according to equity.

It is to be observed, that when any Act of Parliament doth authorise the Lord Chancellour or Lord Keeper to make or grant any Commission under the Great Seal, that he may make or grant the same without any further warrant, because the King is party to the Act of Parliament, and there cannot be a greater warrant to the Lord Chancellour, &c. then the Act of Parliament.

CAP. XXX.

Justices of Gaol-delivery.

Their Authority is by Commission in these words.

The Commission of Gaol-delivery Note, they are called the Kings Justices.

* Their Commission extends onely to them that are in prison.

a Nota.

Elizabeth, &c. Dilectis & fidelibus suis A B. C D. &c. *salutem. Sciatis quod constituimus vos, tres, & duos vestrum, quorum aliquem vestrum vos præfat'* A B. &c. *unum esse volumus, Justiciarios nostros ad Gaolam nostram castri nostri de* C. *de* * *prison' in ea exist' hac vice deliberand'. Et ideo vobis mandamus qd' ad certum diem quem vos, tres vel duo vestrum (quorum vos præfat'* A B. &c. *unum esse volumus) ad hoc provideritis, conveniatis apud castrum predict' ad gaolam illam deliberand'* a *facturi inde quod ad justitiam pertinet secundum legem & consuetudinem regni nostri Angliæ. Salvis nobis amerciamentis & aliis ad nos inde spectantibus. Mandavimus enim Vic' nostro Com' nostri M. quod ad certum diem quem vos, tres vel duo vestrum (quorum vos præfat'* A B. *&* C D. *unum esse volumus) ei scire feceritis, omnes prisonas ejusdem gaolæ & eorum attachiamenta coram vobis, tribus, vel duobus vestrum, (quorum aliquem vestrum ex vobis præfat'* A B. *&* C D. *unum esse volumus) ibidem venire fac'. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste, &c.*

See the second part of the Inst. stat. de Gloc. c. 9.

b 4 E. 3. cap. 2. 17 R. 2. cap. 9.

c Thrice in the year, and oftner if need be.

d Nota, few but effectual words.

e 4 E. 3. cap. 2.

f 4 E. 3. cap. 2. 3 Mar. Br. Commissions 23. 2 R. 3. Coron. 47.

4 H. 5. Enquest. 55

2 R. 3. Coron. 47.

Pasch 29 Eliz. coram Rege int' Apharry & Morgan in Appeal. 9 H. 7. 9. R. 3. Coron. 47.

b By the Law of the land, ne homines diu detineantur in prisona, but that they might receive plenam & celerem justitiam, this Commission was instituted, and by this Commission Gaols ought to be delivered c thrice in the year, and oftner if need be.

Their authority is by this Commission, which consisteth in d few words, Constituimus vos Justiciarios nostros ad Gaolam nostram castri nostri de C. de prisonibus in ea existentibus hac vice deliberand. * These Justices ought to be, Bone gents & sages auters que des places, &c.

Upon this authority, and by Statutes given unto them, thirteen conclusions do follow.

1. f Justices of Gaol-delivery may arraign any man that is in prison in that Gaol upon an Indictment of Felony, Trespass, &c. before Justices of Peace, though it were not found before themselves, which (as hath been said) Justices of Oyer and Terminer cannot do. Justices of Peace shall deliver their Indictments to the Justices of Gaol-delivery.

2. They shall take a panel of a Jury returned by the Sheriff, without making any precept to him, as Justices of Oyer and Terminer (as hath been said) ought to make. And the reason of the difference is, because a general commandement is made to the Sheriff by the Justices of Gaol-delivery to return Juries against their coming: but if they have a special Commission, otherwise it is by Hankeford.

3. They may deliver suspects for felony, &c. by Proclamation, against whom there is no sufficient evidence produced to the Great Inquest to indict them, &c. which Justices of Oyer and Terminer, or Justices of Peace cannot do.

4. They may inquire & take Indictments of felony, &c. of prisoners before them, and proceed upon them. And so it was resolved in an appeal of Murder brought by Apharry against Morgan, who pleaded that he was autrefoitz indicted and convicted of the same felony, and had his Clergy before Justices of Gaol-delivery, and pleaded ober to the felony (& the plea allowed.) And so may Justices of Oyer

and

and Terminer do, which is to be observed by the judicious Reader, for both of them have authority to enquire, hear, and determine of such as be prisoners in the Gaole: and in that case they have a concurrent authority.

5. If a man be indicted before Justices of the Peace, and thereupon outlawed, and is taken and committed to prison, the Justices of Gaol-delivery may award execution of this prisoner. 15 H.7.5.b.

6. They may assign a Coroner to an Appover, and make Proces against the Appellée in a forein County. Stat. de Appellat. 28 E. 1. Staunf. Pl. cor. 143. c.

7. * They may punish those that let men to Bail or Mainprise, which are not bailable by Law, or suffer them to escape. * 27 E. 1. Stat. De finibus cap. 3. 4 E. 3. cap. 2. 1 & 2 Ph. & Mar. cap. 13.

By the Statute of 1 E. 6. it is provided in these words. 1 E. 6. cap. 7. Treason, &c.

And be it, &c. That in all cases where any person or persons heretofore have been, or hereafter shall be found guilty of any manner of Treason, Murder, Man-slaughter, Rape, or other Felony whatsoever; for the which judgement of death should or may ensue, and shall be repried to prison without judgement at that time given against him, her, or them so found guilty, that those persons, that at any time hereafter shall by the Kings Letters Patents be assigned Justices to deliver the Gaole where any such person or persons found guilty shall remain; shall have full Power and Authority to give judgement of Death against such person so found guilty and repried, as the same Justices before whom such person or persons was or were found guilty might have done, if their Commission of Gaol-delivery had remained and continued in full force and strength.

8. Here by the judgement of the whole Parliament this conclusion doth follow, that Justices of Gaol-delivery, according to the generality of the words of their Commission, may deliver the Gaol of prisoners committed for High Treason, which we prefer before any private opinion, especially concluding with a Quære. 27 E. 1. de finibus cap. 3. See 28 E. 1. De Appellatis, the recital. Vid. 2 R. 3. cor. 47. Case de Colinborne. Staunf. pl. cor. 57, 58, & 182. a.

9. [a] Justices of Gaol-delivery shall send their Records and Proces determined, and put in execution to the Exchequer at Michaelmas every year to be delivered there to the Treasurer and Chamberlains, &c. to keep them in the Treasury. a 9 E. 3. cap. 5.

10. [b] Justices of Gaol-delivery may receive Appeals of robbery and murder by Bill, but the Appellées must be in prison before them. 14 H. 7. fo. 15. b. b 13 H. 4 fo. 10. Dyer fo. 99.

11. [c] To these Justices Commissions of Association, and Writs of Admittance, and Si non omnes (as hath been said of Justices of Oyer and Terminer) are directed. 3 H. 7. cap. 1. Staunf. pl. cor. c 2 E. 3. cap. 2.

12. [d] Justices of Gaol-delivery shall keep their Sessions in the principal and chief Towns of the Counties where the Shire Courts of the same Counties be holden. d 6 R. 2 cap. 5.

13. By the Statute of 2 & 3 Phil & Mar. it is provided, That all Commissions of the * Peace or Gaol-delivery to any City or Town Corporate not being a County of it self, shall stand and remain, the granting of any like Commission of the Peace or Gaol-delivery in any Shire, Lathe, Rape, Riding, or Wapentake, being of a later date, to the contrary notwithstanding. 2 & 3 Ph. & Mar. cap. 18. * 11 H. 6. cap. 6.

See in the Chapter of Oyer and Terminer Conclusione 9. more concerning Justices of Gaol-delivery. Vide 44 Ass. pl. 21.

See Authorities lately granted to Justices of Gaol-delivery in the Chapter next ensuing of Justices of Peace.

CAP. XXXI.

Justices of Peace.

SIr Anthony Fitz-herbert, one of the Justices of the Court of Common Pleas, and divers others have written of the Jurisdiction and power of Justices of the Peace, both in the Court of the Sessions of Peace, as without; to whose labours I refer the Reader.

And it is such a form of subordinate government for the tranquility and quiet of the Realm, as no part of the Christian world hath the like, if the same be duly executed.

Before the Conquest, *De pace violata.* 4 H.7.cap.12.

To the former Treatises are necessary to be added certain Acts of Parliament made in the 21. year of our late Soveraign Lord King James, and certain Caveats, Additions, and Observations necessary to be known, De pace violata; vide inter leges Alveredi, cap.36. Edwardi cap.6.

But as to a Preface to all that shall be said of the office and duty of Justices of Peace, we will begin with that which is enacted by the Statute of 4 H. 7. as a necessary caveat to all Justices of Peace, viz. The King considereth that a great part of the wealth and prosperity of the land standeth in that, that his subjects may live in surety under his peace in their bodies & goods; and that the husbandry of all this land may increase and be upholden, which must be had by due execution of Laws and Ordinances, chargeth and commandeth the Justices of the Peace to endeavour them to do and execute the tenor of their Commission; the said Laws and Ordinances ordained for subduing of the premises, as they will stand in love and favour of his Grace, and in avoiding the pains that be ordained, if they do the contrary. And over that he chargeth and commandeth, that every man, what degree or condition that he be of, that let them in word or deed to execute their said authority in any manner or form abovesaid, that they shew it to his Grace; and if they do it not, and it come to his knowledge by other then by them, they shall not be in his favour, but taken as men out of credence, and be put out of Commission for ever. And over this he chargeth and commandeth all manner of men, as well the poor as the rich, which be to him all one in due ministration of Justice, that is hurt or grieved in any thing, that the said Justice of Peace may hear, determine, or execute in any wise that he so grieved make his complaint to the Justice of the Peace that next dwelleth unto him, or to any of his fellows, and desire a remedy: and if then he have no remedy, if it be nigh such time as his Justices of Assises come into that Shire, that then he so grieved shew his complaint to the same Justices; and if he then have no remedy, or if the complaint be made long afore the coming of the Justices of Assise, then he so grieved come to the Kings Highness, or to his Chancellour for the time being, and to shew his grief: and his said Highness then shall send for the said Justice to know the cause why his said subjects be not eased, and his Laws executed. Whereupon if he find any of them in default of executing of his laws in these premises, according to his high

high commandment, he ſhall do to him ſo offending to be put out of the Commiſſion, and furthermore to be puniſhed according to his demerits. And over that his ſaid Highneſs ſhall not let for any favour, affection, coſt, charge, nor none other cauſe, but that he ſhall ſee his laws to have plain and true execution, and his ſubjects to live in ſurety of their lands, bodies and goods according to his ſaid Laws, and the ſaid miſchiefs to be avoided, that his ſubjects may increaſe in wealth and proſperity to the pleaſure of God.

And where the words of the ſaid Act be: And further to be puniſhed according to his demerits. Theſe words are ſo to be underſtood, that he ſhall be puniſhed in an ordinary courſe of Juſtice by way of Indictment upon this Act, for his contempt, &c. and not by any abſolute power, as hath bin often obſerved.

It is to be obſerved, that when Juſtice Fitzherbert and ſome others did write of the authority of Juſtices of Peace, the Commiſſion of the Peace ſtood overburdened and incumbred with divers Statutes, ſome whereof were before, and ſome ſince repealed: and with ſome, whereas there was none ſuch, and ſtuffed with many vain and unneceſſary repetitions, and many other corruptions crept into it by miſtaking of Clerks, &c. For amendment and correction whereof (being a matter of ſo great importance) Sir Chriſtopher Wray Chief Juſtice of England, Mich. 32 & 33 Eliz. aſſembled all the Judges of England and upon peruſal had of the former Commiſſion of the Peace, and upon due conſideration had thereupon, and often conferences betwixt themſelves, they reſolved upon a reformation of the former, with divers additions and alterations both in matter and method, as it now ſtandeth at this day; and there needeth yet another reformation of that alſo; for ſince that time divers ſtatutes then in force have bin repealed, and divers have expired: as for example, All the ſtatutes of Liveries inquirable by Juſtices of Peace are repealed by the ſtatute of 3 Car. cap. 4. ſaving the ſtatute of 1 R. 2. cap. 7. inquirable before Juſtices of Aſſiſe, Vide ſupra, pa. 159. Alſo the ſtatute of 27 H. 8. cap. 22. that the owner of any ſcite or precinct, &c. of any diſſolved religious houſe under the value of 200 l. per annum, for the keeping of honeſt and continual houſhold thereupon, and inquirable by Juſtices of Peace is repealed by 21 Jac. Regis cap. 28. And the ſtatute of 13 R. 2. cap. 8. and 4 H. 4. cap. 25. for taking by any Inholders in gain above a half penny in a buſhel of Oats over the common price in the market, and inquirable by Juſtices of Peace be alſo repealed by the ſaid Act of 21 Jac. Likewiſe the Statute of 39 El. cap. 2. concerning husbandry and tillage, which being but a probationer for a time, was diſcontinued 21 Jac. And the ſtatutes concerning houſes of husbandry and tillage in 4 H. 7. 7 H. 8. 27 H. 8 5 E. 6. and 5 Eliz. are all repealed by 21 Jac. and divers others, &c.

Compare the old with the new Commiſſion, and the reformations, additions and alterations will appear.

Mich. 32 & 33 El. the Commiſſion of the Peace reformed by all the Judges of England.

13 H. 4 cap. 5.
8 H. 6. cap. 4.
8 E. 4. 2. &c.
27 H. 8. cap. 22.
5 El. c. 2.

13 R. 2. c. 8.
4 H. 4. cap. 25.

39 El. c. 2.
4 H. 7. c. 19.
7 H. 8. c. 1.
27 H. 8. cap. 22.
5 E. 6. cap. 5.
5 El. c. 2.

It is a good rule therefore for all Judges and Juſtices whatſoever, that have Juriſdiction by any Statute, which at the firſt was temporary, or for a time, to conſider well before they give Judgement, whether that ſtatute have bin continued or made perpetual: and if it were at the firſt made perpetual, whether it be not repealed or altered by any later ſtatute, Erudimini qui judicatis terram &c. in the Second part of the Inſtitutes the Expoſition upon the Statute of 22 H. 8. cap. 5.

Juſtices of Peace may inquire if Eſtreats be not ſhewed by Sheriffs, &c. to the party indebted and totted. A neceſſary Law for the eaſe of the Subject.

42 E. 3. cap. 9.
W. 1. cap. 19.

Concerning the nomination of Juſtices of Peace, ſee the Statutes of 12 R. 2. cap. 2. 2 H. 5. ſtat. 2. cap. 1. 18 H. 6. cap. 11. whereunto you may add, that before all theſe another Act not in Print was made is 28 E. 3. as well for their nomination, as how and by whom they ſhall be diſcharged. Certain it is, that he that is named in the Commiſſion of Peace under the Great Seal to be a Juſtice of Peace, is a lawful Juſtice of Peace.

7 H. 4. cap. 3.

Rot. Par. 28 E. 3. nu. 17.
37 E. 3. nu. 18.
50 E. 3. nu. 64.

At

21 Jac. Reg. c. 4.

At the Parliament holden Anno 21 Jac. Regis, **there was an excellent Law made, entituled,** An Act for the ease of the Subject concerning Informations upon penal Statutes, **which Act for that it principally concerneth Justices of the Peace, is here inserted** in hæc verba, **as followeth.**

This was the ancient & prudent policy of Parliaments (as before it hath appeared) that justice might be administred and tried in their proper Counties, and not to be drawn up to the Courts at Westminst' for the causes in this preamble expressed.

Whereas the offences against divers and sundry pœnal Laws and Statutes of the Realm may better, and with more ease and less charge to the subject, be commenced, sued, informed against, prosecuted and tried in the Counties where such offences shall be committed. And whereas the poor Commons of this Realm are grievously charged, troubled, vexed, molested, and disturbed by divers (*a*) troublesome persons, commonly called Relators, Informers, and Promoters, by prosecuting and enforcing them to appear in his Majesties Courts at Westminster, and to answer offences supposed by them committed against the said pœnal laws and statutes, or else to compound with them for the same.

(*a*) Of this kind of men it was formerly truly said, *Hoc genus hominum semper vitabitur, & tamen semper in civitate retinebitur.* But this Law consisting of seven parts, remedied all the former Inconveniences, and the abuses of these troublesome persons.

1. For remedy whereof be it enacted by the Authority of this present Parliament, That all Offences hereafter to be committed against any penal statute, for which any common Informer or Promoter may lawfully ground any popular Action, Bill, Plaint, suit, or Information [b] before Justices of Assise, Justices of Nisi prius, or Gaol-delivery, Justices of Oyer and Terminer, or Justices of the Peace in their General or Quarter Sessions, shall after the end of this present Session of Parliament be commenced, sued, prosecuted, tryed, recovered and determined by way of Action, Plaint, Bill, Information or Indictment before Justices of Assise, Justices of Nisi prius, Justices of Oyer and Terminer, and Justices of Gaol-delivery, or before the Justices of Peace of every County, City, Borough, or Town Corporate, and Liberty, (*c*) having power to enquire of, hear and determine the same within this Realm of England or Dominion of Wales, wherein such Offences shall be committed, in any of the Courts, places of Judicature, or Liberties aforesaid respectively, only at the choice of the parties, which shall or will commence suit, or prosecute for the same, (*d*) and not elsewhere, save only in the said Counties, or places usual for those Counties or any of them.

(*b*) Note before Justices of
1. Assise.
2. Nisi prius.
3. Gaol delivery.
4. Oyer & Term.
5. Peace.
But the greatest care for the due execution of this Act will belong to the Justices of Peace, whereof there be many learned in the Laws.

(*c*) Note this Act giveth Justices of Peace no new power in cases where former Acts gave them none, and so of the rest of the Justices here named. (*d*) So as they cannot be commenced, &c. in any of the Kings Courts at Westminster.

(*e*) By this branch proces of Outlawry doth lie upon every popular action, a necessary clause for execution of Justice.

2. (*e*) And that like proces upon every popular Action, Bill, Plaint, Information or Suit, to be commenced, or sued, or prosecuted after the end of this present Session of Parliament by force of, or according to the purport of this Act, be had and awarded to all intents and purposes as in an Action of Trespas *vi et armis* at the Common Law.

(*f*) This clause was added, that the Kings Majesty should be bound expresly by this Act, that no Information in the Courts at Westminster should be exhibited by the Kings Attorney General, by any common Informer, or other person whatsoever. Note the generality of these words.

3. (*f*) And that all and all manner of Informations, Actions, Bills,

Plaints,

Plaints and Suits whatsoever hereafter to be commenced, sued, prosecuted, or awarded either by the Attorney General of his Majesty, his heirs or successors for the time being, or by any Officer or Officers whatsoever for the time being, or by any common Informer, or other person whatsoever in any of his Majesties Courts at Westminster, for or concerning any of the offences, penalties or forfeitures aforesaid, shall be void, and of none effect, any law, custom, or usage to the contrary thereof notwithstanding.

4. And be it further enacted by the Authority aforesaid, that in all Informations to be exhibited, and in all Bills, Courts, Plaints, and Declarations in any action or suit to be commenced against any person or persons, either by, or on the behalf of the (*g*) King or any other, for or concerning any offence committed, or to be committed against any penal statute, the offence (*b*) shall be laid and alledged to have been committed in the said County where such offence in truth was committed, and not elsewhere. And if the Defendant to any such Information, action or suit, pleadeth that he oweth nothing, or that he is not guilty, and the Plaintiff or informer in such information, action or suit upon evidence to the Jury that shall try the issue, shall not both prove the offence laid in the said Information, Action or Suit, and that the offence was committed in that County, then the Defendant and Defendants shall be found not guilty.

(*g*) Note, the King expresly named.

(*b*) Shall be laid in the proper County. This clause is but in affirmance of the true institution of the Common Law, for *vicini vicinioribus præsumuntur scire*, and for these Informers they were best trusted where they were least known. This is a very beneficial clause for every Defendant to take hold of.

5. And be it further enacted by the Authority aforesaid, that no Officer or Minister in any (*i*) Court of Record shall receive, file, or enter of Record any Information, Bill, or Plaint, Count or Declaration, grounded upon the said penal Statutes or any of them, which before by this Act are appointed to be heard and determined in their proper Counties, until the Informer or Relator hath first taken a (*k*) corporal oath before some of the Judges of that Court, that the offence or offences laid in such Information, Action, Suit or Plaint was, or were not committed in any other County, then where by the said Information, Bill, Plaint, Count or Declaration the same is, or are supposed to have been committed, and he believeth in his conscience the offence was committed (*l*) within a year before the Information or Suit within the same County, where the said Information or Suit was commenced, the same Oath to be there entred of Record.

(*i*) That is, in any of the Courts before Justices of Assise, and other Justices named in the first part of this Act.

(*k*) The Informer must take an oath before his information, &c. be received. A beneficial clause also for the Defendant.

(*l*) Note, within a year before the Information.

6. And be it also enacted by the Authority aforesaid, that if any Information, Suit or Action shall be brought, or exhibited against any person or persons for any offence committed, or to be committed against the form of any Penal Law, either by, or on the behalf of the King, or by any other, or on the behalf of the King and any other, it shall be lawful for such Defendants to plead the general

Vid. 7 Jac. cap. 5. 21 Jac. cap. 12.

The Reasons of this clause were, 1. For that in the Courts afore, specially before Justices of the peace, there are not such skilful Prothonotaries and Clerks for good pleading as were in the Kings Courts at Westminster; and therefore the makers of this Law provided, that the Defendant might plead the general Issue. 2. For the ease and benefit of the Subjects great charge, growing by special pleading. 3. For avoiding of demurrers upon strict and nice points of pleading. 4. For avoiding of Writs of Error, which often are brought in respect of special pleading.

neral

neral iſſue, that they are not guilty, or that they owe nothing, and to give ſuch ſpecial matter in evidence to the Jury that ſhall try the ſame, which matter being pleaded had been a good and ſufficient matter in Law, to have diſcharged the ſaid Defendant or Defendants againſt the ſaid information, ſuit, or action; and the ſaid matter ſhall be then as available to him or them to all intents and purpoſes, as if he or they had ſufficiently pleaded, ſet forth, or alledged the ſame matter in barre, or diſcharge of ſuch information, ſuit, or action.

Provided alwayes that this Act or any Clauſe contained therein ſhall not extend to any Information, Suit, or Action, grounded upon any Law or Statute made againſt Popiſh Recuſants, or for, or concerning popiſh Recuſancy, or againſt thoſe that ſhall not frequent the Church and hear Divine Service, nor to any Information, Suit, or Action for Maintenance, Champerty, or buying of Titles, nor to any Suit, or Information grounded upon the Statute made in the firſt year of the Raign of our Soveraign Lord the King, of a Subſidy granted to the King, of Tunnage, Poundage, Wooll, &c. nor for, or concerning the concealing or defrauding the King his heirs or ſucceſſors of any Cuſtom, Tunnage, Poundage, Subſidy, Impoſt, or Priſage, or for tranſporting of Gold, Silver, Ordnance, Powder, Shot, munition of all ſorts, wool, Woolfels, or Leather, but that ſuch offence may be laid or alledged to be in * any County at the pleaſure of any Informer, any thing in this Act to the contrary notwithſtanding.

* This proviſo referreth only to the County, &c. So as no information, &c. grounded upon any of the Statutes in this proviſo mentioned can be commenced, &c. in any of the Kings Courts at Weſtminſter, but before the Juſtices of Aſſiſe, Juſtices of Niſi prius, or Gaol-delivery, Juſtices of Oyer and Terminer, or Juſtices of Peace.

There was another miſchief which lay heavy upon the Subject, whereof advantage might be taken by any Informer, which was not provided for by this Act, viz. divers former Statutes, which in reſpect of the alteration of times lay as ſnares upon the people, and at this day could not be performed. For example: That a yard of Broad-cloth of the fineſt making, Scarlet-grained, or other cloth grained, what colour ſoever it be, ſhould not be ſold above the value of 16 s. a broad yard, &c. Which Act and many other Acts of Parliament of like nature, and other obſolete Laws, to a very great number were at this Parliament utterly repealed, and made void. We adviſe therefore the Juſtice of Peace (for to him we principally direct our ſpeech, though it concern the reſt of the Juſtices before named) ſeriouſly to read over that Act, where all thoſe obſolete Laws are particularly mentioned and repealed, and therefore no Information, &c. can be commenced, &c. upon any of them.

4 H. 7. cap. 8.

21 Jac. cap. 28.

At the ſame Parliament alſo anno 21 Jac. Regis, another good and profitable Law was made concerning Juſtices of Peace and others, the tenour whereof is as followeth.

21 Jac. cap. 12.

The Title. *An Act to enlarge and make perpetual the Act made for eaſe in pleading againſt troubleſome and contentious Suits proſecuted againſt Juſtices of the Peace, Mayors, Conſtables, and certain others his Majeſties Officers for the lawful execution of their Office, made in the 7. year of his Majeſties moſt happy reign.*

Whereas an Act intituled, An Act for eaſe in pleading againſt troubleſome and contentious ſuits proſecuted againſt Juſtices of the Peace, Mayors

Maiors, Constables, and certain others his Majesties Officers for the lawfull execution of their office, made in the seventh year of his Majesties most happy reign of England, was made to continue but for seven years, and from thence to the end of the next Parliament, after the said seven years, which by experience hath since been found to be a good and profitable Law. Be it therefore enacted by the Kings most Excellent Majesty, the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the authority of the same, That the said Act shall from and after the end of this present Session of Parliament be perpetual, and have continuance for ever.

7 Jac. regis c. 5. That Act extended to
1 Justices of Peace.
2 Maiors or Bailiffs of Cities or Towns Corporate.
3 Headboroughs.
4 Portreves.
5 Constables.
6 Tithingmen.
7 Collectors of Subsidies, and Fifteenths, and not to any Officer not named in that Act.
Made perpetual.

And be it further enacted by the Authority aforesaid, That all Churchwardens, and all persons called Sworn-men executing the office of the Churchwardens, and all Overseers of the poor, and all others, which in their aid or assistance, or by their commandment shall do any thing touching or concerning his or their office, or offices, shall hereafter be enabled to receive and have such benefit and help by vertue of the said Act, to all intents, constructions and purposes, as if they had been specially named therein.

This Act of 21 Jacobi extendeth to
1 Churchwardens.
2 All persons called Sworn-men executing the Office of Churchwardens.
3 All Overseers of the poor.
4. All others in their aid and assistance, and not to any other Officer or person not named in this Act.

And whereas notwithstanding the said Statute, the Plaintiff is at liberty to lay his act on which he shall bring against any Justice of Peace, or other Officer in any foraign County, at his choice, which hath proved very inconvenient unto sundry of the Officers, and persons aforesaid, that have been impleaded by some contentious, and troublesome persons in Countries far remote from their places of habitations.

Be it therefore further enacted by the Authority aforesaid, That if any Action, Bill, Plaint, or Suit upon the Case, Trespasse, Battery, or false Imprisonment shall be brought after the end of this present Session of Parliament against any Justice of Peace, Maior, or Bayliff of City, or Town corporate, Headborough, Portreve, Constable, Tything-man, Collector of Subsidy or Fifteens, Churchwardens, and persons called Sworn-men executing the office of Churchwarden, or Overseer of the poor, and their deputies, or any of them, or any other which in their aid, or assistance, or by their commandment, shall do any thing touching or concerning his or their office or offices, for or concerning any matter, cause or thing by them or any of them done by vertue or reason of their or any of their office or offices, that the said action, bill, plaint, or suit shall be laid within the County where the trespass or fact shall be done & committed, and not elsewhere. And that it shall be lawful to & for all and every person and persons aforesaid, to plead thereunto the general issue, that he or they are not guilty, and to give such special matter in evidence to the Jury which shall try the same, as in or by the said former Act is limited or declared. And that if upon the tryal of any such action, bill, or suit, or the Plaintiff or Plaintiffs therein shall

This branch extendeth to
1 Actions upon the Case.
2 Trespasse.
3 Battery.
4 False Imprisonment.

The Actions aforesaid shall be laid in the proper County.

To plead the general Issue.

not prove to the Jury which shall try the same, that the trespasse, battery, imprisonment, or other fact, or cause of his, her, or their such action, bill, plaint, or suit was, or were had, made, committed, or done within the County where such action, bill, plaint, or suit shall be laid, That then in every such case, the Jury which shall try the same shall find the Defendant and Defendants in every such action, bill, plaint, or suit, not guilty, without having any regard or respect to any evidence given by the Plaintiff or Plaintiffs therein touching the trespasse, battery, imprisonment, or other cause, for which the same action, bill, plaint, or suit is, or shall be brought: and if the verdict shall pass with the Defendant or Defendants in any such action, bill, plaint, or suit, or the Plaintiff or Plaintiffs therein become nonsuit, or suffer any discontinuance thereof, that in every such case the Defendant or Defendants shall have such double costs, and all other advantages and remedies, as in and by the said former Act is limited, directed, or provided.

The Plaintiff upon the evidence must prove that the cause of action was done or had in the proper County.

21 Jac. cap. 15.

See also another Act of the same Parliament, Anno 21 Jacobi Regis, entituled,

An Act to enable Judges and Justices of the Peace to give restitution of possession in certain cases.

1 Judges, or Justices of the Kings Bench. 4 H. 7. 18. b. 7 E. 4. 18. 2 Justices of the Peace, 8 H. 6. ca. 9. Lib. 9. f. 118. b. 2 H. 8. Kelw. 159. Not Justices of Oier and Terminer, nor any other Justice. In stead of *disseisivit* which was formerly in the Indictment, now it shall be said, *ejecit, expulit, & amovit, or detinuit.* This Act extendeth to 1 Tenant for years. 2 Tenant by copy, &c. 3 *Guardein en Chivalry.* 4 Tenant by Elegit. 5 By Statute Merchant. 6. By Statute staple, which no former Act extended unto. Dorf. Claus. An. 8 R. 2. m. 5. Rot. Pat. 3 R. 2. nu. 39. *Regula.*

Be it enacted by the Authority of this present Parliament, That such Judges, Justices, or Justice of the Peace, as by reason of any Act or Acts of Parliament now in force are authorised, and inabled upon inquiry to give restitution of possession unto tenants of any estate of freehold, of their lands or tenements which shall be entred upon with force, or from them withholden by force, shall by reason of this present Act have the like and the same authority and ability from henceforth (upon indictment of such forcible entries, or forcible withholdings before them duly found) to give like restitution of possession unto Tenants for tearm of years, Tenants by copy of Court-roll, Guardians by Knights service, Tenants by Elegit, Stature merchant and staple of lands, or tenements by them so holden, which shall be entred upon by force, or holden from them by force.

See 8 H. 6. cap. 9. & 31 El. cap. 11.

In Termino Pasch. 6 E. 1. Coram rege prima fuit institutio Justiciariorum pro pace conservanda.

Rot. Patl. 18 E. 1. fo. 3. nu. 41. Homines de Cheshire qui onerati sunt de servientibus pacis sustentandis, petunt exonerari de oneribus statut. Winton, &c. *Rex non habet consilium mutandi consuetudines, nec statuta sua revocandi.*

The Lord Chancellor and others of the Privy Council do remove divers Justices of Peace, for that they were retaining to the Archbishop, &c.

See a profitable and good law for Justices of Peace in the Parliament Roll, and not in print.

But let us return to the duty of a Justice of Peace, for Melius est recurrere quam male currere.

One or more Justice or Justices of Peace cannot make a warrant upon a bare surmise to break any mans house to search for a Felon, or for stoln goods, for they being created by Act of Parliament have no such authority granted unto them by any Act of Parliament: and it should be full of inconvenience, that

it

it should be in the power of any Justice of Peace being a Judge of Record upon a bare suggestion to break the house of any person of what state, quality, or degree soever, and at what time soever, either in the day or night, upon such surmises. But if the party suspected be indicted, then the Sheriff by force of the Kings writ may demand the party indicted to be delivered, and that not done, he may breake open the house, &c. and apprehend the Felon, for that the Kings writ is a Non omittas propter aliquam libertatem: but if the Kings processe be in debt, trespasse, &c. at the suit of a party, there the Sheriff by force of the Kings writ cannot breake open the house of the subject. And so is the book in 13 E.4. fo. 9. which saith; It was holden, that for felony or suspicion of felony a man may breake the house to take the Felon, and two reasons are yelded in the book. 1. Because it is for the Common weal to take them. 2. Because the King hath an interest in the felony, and in such case the writ is a Non omittas propter aliquam libertatem: but otherwise it is for debt, or trespasse, the Sheriff or any other cannot breake the house to take him. And yet it is to be understood, that if one be indicted of felony, the Sheriff may by processe thereupon after denyal made, &c. breake the house for his apprehension, or upon Hue and cry of one that is slain or wounded, so as he is in danger of death; or robbed, the Kings Officer that pursueth may (if denyal be made) breake a house to apprehend the delinquent: but for Justices of Peace to make warrants upon surmises, for breaking the houses of any subjects to search for felons or stoln goods, is against Magna Carta, Nec super eum ibimus, nec super eum mittemus, nisi per legale judicium Parium suorum, vel per legem Terræ: and against the *statute of 42 E.3.cap.3. &c. And we hold the resolution of the Court, viz. of Brudnell, Pollard, Broke, and Fitzherbert in 14 H. 8. to be law, that a Justice of Peace could not make a warrant to take a man for felony, unlesse he be indicted thereof, and that must be done in open Sessions of the Peace. For the Justice himself cannot arrest one for felony, unlesse he himself suspect him, (as any other may) and by the same reason he cannot make a warrant to another. And all this appeareth in that book, and is agreeable with our former books in 42 Ass. p. 5. & 12. & 24 E.3. tit. com. Br. 3. and with reason, for this warrant to take a Felon should be in nature of a Capias for felony, which cannot be granted before indictment, nor after indictment, but in open Court. And this is the reason wherefore Justices of Peace before indictment could not bave let any charged with felony or suspition to bail, or mainprise, because Justices of Peace are Judges of Record, and ought to proceed upon Record, and not upon surmises. Sed distinguenda sunt tempora, & concordabis leges: For since the statutes of 1 & 2 Ph. & Mar. cap. 13 and 2 & 3 Ph. & Mar. cap. 10. (the words whereof be, That the said Justices, or one of them being of the Quorum, when any such prisoner is brought before them for any manslaughter or felony, shall take examination, &c.) if any person be charged with any manner of felony, and information be given to a Justice of Peace of the felony or suspition of felony, and feareth that the Kings peace may be broken in apprehending of him, the said Justice may make a warrant to the Constable of the town to see the Kings peace kept in the apprehending and bringing of the party charged with or suspected of the felony before him, and the party that giveth the information of his knowledge or suspition to be present and arrest the delinquent; and in this manner it is implied and intended by the said statutes for the prisoner to be brought before them: and this (as we take it) agreeth with the common use and observance ever since those statutes. And this agreeth also with the said book in 14 H. 8. that a Justice of Peace may have his warrant for the salvation of the peace, meaning to assist the party that knoweth or hath suspition of the felony. But in this case neither the Constable, nor any other can breake open any house for the apprehension of the party suspected or charged with the felony, for it is in law the arrest of the party that hath the [a]knowledge or suspicion, who cannot breake open any

13 E.4.9 20 E.4. 6.b. He may enter into the house the door being open. See 1.5.f.91,92 Semains case.

7 E.3.16. 29 E.3.9. 2 E.4.8. 9 E.4.26.

Mag. Cart. c.29.

*Read the stat.

14 H 8.fo.16 2.

Vid. 1 R.3.ca.3. 3 H.7. cap.3. 1 & 2 Ph.&Ma. ca.13.& 2 & 3 Ph.& Mar.c.10.

[a] 2 H.7.3 & 15. 4 H 7.2,3. 4. 13 E. 4. 9.

5 H.7. 4. 10 H. 7. 17. 20 H. 7. 12. 7 E. 4. 20 8 E.4.3 b. 10 E.4 17. 9 E.4 16. 11 E. 4. 7 H. 4 35. 17 E.4.5. 27 H. 8.23 2. Dier 7 Eliz. 236.b.

any house: but if the *door of the house be open, he may enter into the same, and arrest the party. Thus much upon reading of some that have written of the Office of Justices of Peace, we have thought good to adde, For though commonly the Houses or Cottages of poor and base people be by such Warrants searched, &c. yet if it be lawfull, the houses of any subject, be he never so great, may be searched &c. by such Warrant upon bare surmises.

* 20 E. 4. fo. 6. 17 E. 4. 5 2. Lam. f. 188, 189.

¶* *Bail and Mainprise.* See the second part of the Institutes. W. 1 c. 11. f. 471, &c. Glanv. l. 14. c. 1. W. 1 cap. 15. 27 E. 1. stat. de finibus cap. 3.

* Concerning bailment and mainprise, and what offenders were bailable by the Common law, you may read in the Second part of the Institutes, W. 1. ca. 15. Now something is necessary to be added in respect of some variety of opinions touching the true diversity and signification of Bailment Mainprise, Fidei juss. Surety, Pledges, Plevin, Plevina Replevin, Borough, and the like. And first of Bail.

¶ *Of bail and bailment.*

Some derive this word from the French word *Bailler*, id est Tradere, to deliver, because the prisoner is delivered out of prison; but it cannot so be derived: for the entry is, traditur in or per ballium, and then the sense (or nonsense) should be, he is delivered into delivery. But this word Ballium is truly fetched from the French Noun Bail, that signifieth a Gardian, Keeper, or Gaoler: [a] and herewith agreeth Bracton, who saith, Non erit ulterius per ballium dimittendus. And again, Per ballium dimittatur usque adventum Justitiariorum, alioquin remaneat in prisona: and in the same page, tradas in ballium 12 probis hominibus. We read not in Britton of this word Bail, but of some other words hereafter following. Que plevissent corps de home ceux ne sont my proprement pledges mes sont mainpernors pur ceo que ils supposent que ceux plevisable sont livers a eux per bail corps pur corps.

a Bracton lib. 3. fol. 123. And herewith agreeth the Register, f. 133 b. Fleta lib. 1. c. 26. Mirror, c. 2. sect. 14.

* There bailment is called a living prison.

*Cust. de Norm. [b] 24 E. 3. 33. 25 E. 3. 42 b. mainprise 1. 3 E. 3. cor. 354. 2 Eliz. Dier 179 F.N.B. 246. c.

[b] A man arrested or imprisoned (and bailable) for felony shall be bailed before it appeareth whether he be guilty or no. But if a man be convicted by verdict or confession, &c. he is not bailable, because it appeareth that he is guilty. So, if upon examination a man confesseth a felony, if the Mittimus be for felony confessed, he cannot be bailed.

[c] By Shard there is a diversity between Bail and mainprise, for the entry of the bail is, that such an one tradatur in ballium, in which case they be his [d] Gardians: and if they suffer him to escape, they shall answer for it.

c 36 E. 3. ib. 13. ac' 4 H. 6. 8. 22 H. 6. 59. 32 H. 6. f. 4. ac. 39 H. 6. 27. 21 H. 7. 53. *Vid. infra. †

d This agreeth with the former Etymologie.

[e] And where it is said there, Et per quosdam alz serra pende, it was spoken but in *terrorem, and thereupon a Quere is made of it. And that it was no felony in ancient time, hear what the Mirror saith. It is abusion to think that such pain should be awarded to the Bail, as to the principals which made default, where they were but amerciable in that case.

e f 36 E. 3. ubi sup. Br. Mainprise 89.

[f] And where any man is delivered in ballium, he may safely be kept by his Bail for their indemnity, because the Court of Justice doth deliver him unto them to be safely kept.

The manner of the several entries of the bail is worthy of observation, because it is only attainted unto by observation of presidents, and the course of Courts.

And first in case of bailment for felony by the Common law, those that do bail him are severally bound to the King by Recognisance in a certain summe, that the prisoners shall appear at a certain day, &c. Et ultra quilibet eorum corpus pro corpore, &c.

21 H. 7. 20 b. per Fineux. F.N.B. 251. d.

The bail of a felon before two Justices of the Peace, whereof one to be of the Quorum: by the statutes of 1 & 2 Ph. & Mar. & 2 & 3 Ph. & M. is for the felon in double, and for each of the bail in single. As for example: If the felon be 40 l. the bail is 20 l. a piece. And herein to observe in effect three things. 1. Ad comparendum at the next Gaol-delivery. 2. Ad standum recto de felonia praedicta. 3. Ad respondendum dicto Domino Regi, &c. See the second part of the Institutes, the statutes of Marlebridge, cap. 27. if the party bailed Propter privilegium Clericale respondere noluerit, non amercientur illi quibus traditus in ballium. There must be also a Liberate in that case to the Gaoler, if the felon be formerly committed to prison, to deliver him out of prison.

See Lamb f. 352 353. F.N.B. 251 f.

Before

Nota, amercientur. * Vid. supra. †

Before the said statutes of 3 E.1.cap.15. 27 E.1. cap. 3. and 1 & 2 Ph. & M. cap.13. If any person had been set to bail that was not bailable: by law this amounteth to a negligent escape, and shall be punished as a negligent escape of a felon shall be, that is, to be fined at 5 l. But by the statute of 1 & 2 Ph. & Mar. the Justices of Gaol-delivery shall in that case set what fine upon the Justices of Peace, &c. they shall think fit. Upon a Capias, and a Cepi corpus returned, the entry is, traditur in ballium 8 die Maii Anno 16 Regis H.8. *Jo. Long*, &c. usq; diem Mercurii prox. futur. & sic de die in diem, & termino in terminum, quousq; placitum prædictum termin etur, *viz.* quilibet eorum corpus pro corpore.

25 E.3.39. 3 E.3.tit.cor. 40 Ass.42. 3 E.1.cap.15. 27 E.1 stat. de finibus, cap.3. Hil.18 H.8. Bendl. This bail is determined by the judgement, if the principal be then there.

If A be custodia Mareschal. in the Kings Bench, & a Bill of debt be brought against him; and the defendant find B for his bail, B entereth a Recognisance to the plaintiff with this condition precedent, Quod si contigerit præd. defendentem debit. & damna ill. præfato querenti minime solvere, aut se prisonæ Mareschalli ea occasione non reddere, that then he would satisfie the same.

Nota, In these personal actions the bail is only bound, & their Recognisance is general, and of no certain summe, as it is in case of felony: and against him that is by bail in the Kings Bench, any Stranger in the same Term may sue him by Bill in any personal action; otherwise it is if he were by Mainprise de die in diem. But if A be outlawed in any personal action, and taken by force of a Capias Utlagatum, and plead any plea triable by the Country in avoidance of the Outlawry, as that he was commorant in another County, &c. In this case A shall be bailed, and the entry is, Super hoc, T B. & B T. manuceperunt præfat. A. habendum corpus ejus hic. &c. et sic de die in diem in quemlibet diem placiti, quousque placitum prædictum terminetur, & judicium inde redditum fuerit. *viz.* quilibet eorum corpus pro corpore: Et prædictus A. assumpsit pro seipso essendi tunc hic ad quemlibet diem placiti prædicti sub pœna 40 l. &c. si contingat ipsum A ad aliquem diem, &c. defaltam facere, aut sectam suam in hac parte non prosequi. Note whensoever the principal is bound, it is in a certain summe.

21 H. 7.40 b. 9 E.4.21. See before cap. of the Kings Bench. Here the Bail are bound in no sum but *corpus pro corpore*, the principal in a certain sum.

And where some do hold, that in all cases when any statute enacteth that the body of the Delinquent shall be committed to prison at the will of the King, he cannot be let to Mainprise before the Kings will be known; The Rule is good if it be rightly understood; for he cannot in that case by force of any such statute be imprisoned, before he be indicted, convicted, and judgement given, and then he cannot be bailed or letten to mainprise, because his offence appeareth, as hath been said.

Stanf. pl. cor. 77 b.

And the case there cited in 24 E.3. upon the statute of 2 E.3.cap.3. for going armed in Westm. Hall, &c. the Book saith, That Thomas Figgot Chivaler fuit attaint per Shard, &c. which proveth that he was indicted, arraigned, and legally proceeded with, neither was his armour forfeited before conviction. And note, that the said Act in that case giveth the forfeiture of his armour, and imprisonment: and therefore in that case he shall not be fined: but Sir Thomas Figgot might have been bailed before conviction.

24 E.3.33. Sir Tho. Figgots case.

¶ *Of mainprise.*

In the next place we are to speak of Mainprize, Manucaptio, which deriveth it self, and signifieth a taking into the hand.

Every bail is mainprise, (for tho'se that are bail take the person bailed into their hands and custody) but every mainprize is not a bail, because no man is bailed but he that is arrested, or is in prison: for he that is not in custody or prison cannot be delivered out, as before it appeareth. But a man may be mainpernedwhich never was in prison, and therefore mainprise is more large then bail. As in an Appeal of felony, the defendant wage battel, &c. and a day appointed, &c. the plaintiff shall find mainprise, &c. to appear, &c. And yet he never was in prison or under custody. And *sometime these mainpernors are called pledges Also if A be in execution for debt, &c. at the suit of T. and sueth a Scire fac. upon a release or the like, the Entry is, Et super hoc prædictus A. dimittitur per manucapt. E D. E F. qui eum manuceperunt, ad habendum corpus ejus hic ad præfatum terminum, & sic de die in diem, &c. quousque inde judicium redditum fuerit. Et si pro prædict. T. transierit, exequatur, *viz.* quilibet sub pœna 40 l. quas quilibet

17 E.3.fo.2. 17 Ass.1. 5 E.3.21. 32 E.3. Mainprise 23 * 9 H.4.3.2 H.6. 6.30 E.3.20. 26 E.3.12. 11 H.4.43. 12 R.2. conusance 37. 8 H.6.30.

quiſhet recognovit, &c. ad opus ipſius T. levari, &c. ſi contigerit ipſum A. ab aliquem diem placiti defaltam facere, ſeu idem placitum cum effectu minime proſequi vel ſe ab executione judicii, ſi pro præd. reddatur verſus ipſum A faciend. retrahere &c. And this is properly in the Entry ſaid, by mainprize, and no bail becauſe it is for the plaintiff in the Scire fac. who was in execution. Now for as much as every bail is a mainprize (as hath been ſaid) bail is oftentimes termed in our Books by the name of mainprize, as before it hath partly appeared, and as it appeareth in the *Writ De Manucaptione. 38 E. 3. fo. 14. 11 H. 6. 31. 50 E. 3. 11. 1 H. 7. 1. And in divers Acts of Parliament, A Stat. Bureel 11 E. 1. 4 E. 3. cap. 2, 23 H. 6. cap. 10. 1 & 2 Ph. & Mar. cap. 13.

* Regiſter. F.N.B. 249. 250 Bract. lib. 3. 154. a 33 E. 3. mainprize 12. 36 E. 3 fo. 13. 1 R. 2 tit. bail 9. 9 E. 3. 12. 7 H. 8. 4 3 H. 6. 10. 32 H. 6. 4. 39 H. 6. 37. 21 H. 7. 33 a. Vid. 4 H. 6. 8. per Cokeine.

Laſtly, [a] there is a manifeſt diverſity betwixt De die in diem, and a bail: for he that is by mainprize De die in diem no Writ can be maintainable againſt him: otherwiſe it is againſt him that is by bail per curiam curiæ.

¶ *Of Pledges.* Glanvil l. 10 c. 5. Stat. de offic. cor. 4 E. 1. Plegii de proſequendo. b F.N.B. 31 f. & 195 b. 17 E. 3. 75 b. Lib 8 61. & l. 5. 49 a. Bract. l. 4. f. 254 a * Regula. c Regiſt. 288. F.N.B. 19. 18 E. 4. 9. d Vid. 2 H. 6 f. 15 2 part of the Inſtit. W. 2. cap. 2. e 31 E. 3. mainprize 21. 42 E. 3. 7 &c. f 12 El. Dier 289 20 E. 3 pledges 31. 9 E. 4. 27. 2 H. 4. 17. 18 E. 4. 9. a H. 7. 1. 17.

Plegii and Plegiatio are derived of the French word Plegie, which ſignifieth one that undertaketh for another, a ſurety, fidei juſſor. Now as every bail is a mainprize, ſo every bail and mainprize is ex vi termini plegiatio: which ſee in Glanvile for the Act of ſuretiſhip. But in legal underſtanding it is taken, firſt for the pledges which the demandant or plaintiff find in ſuch writs as begin S. A. (i. queremus) fecerit te ſecurum de clamore ſuo proſequendo, &c. And theſe are called plegii de proſequendo, and the reaſon of theſe were, for the anſwering of the King of the Amerciament if the demandant or plaintiff were barred or nonſuit, &c. ſo cautious were the founders of our law, that the King ſhould ever be anſwered of ſuch duties as belonged to him: but the Writ of the [b] King, Queen, or of a. i. Infant, ſhall not comprehend the Clauſe, ſi fecerit te ſecurum, &c. becauſe they ſhall not in thoſe caſes be amerced. But it is obſervable, that the tenant or defendant ſhall find no pledges: and yet if judgement be given againſt him he ſhall be amerced, &c. for *melior eſt conditio poſſidentis & rei, quam actoris.

[c] Pledges may be found in the Chancery, or may be entred at any time hanging the Writ or Bill by the diſcretion of the Juſtices, upon gaging deliverance by the avowant he ſhall find pledges de liberatione illa facienda.

[d] There be alſo plegii de retorno habendo by the ſtatute of W. 2. Of Pledges come Plevin, Replevin, Replegii, &c. See the ſtatute of Marlebridge, ca. 27. that tradicus in ballium, replegiatus, & per plegios is all one and ſynonyma. [e] When the defendant commeth in by Cap. or Exigent, he ſhall not find pledges but mainprize.

[f] He that ſueth by Bill ſhall finde pledges De proſequendo in fine billæ, which have been controverted in books.

We have hitherto ſpoken of pledges in a judicial courſe. [g] There be alſo voluntary pledges, as you may read in Fleta, lib. 2. cap. 5. 32 E. 3. monſtrans des faitz, 179 42 E. 3. 11. 44 E. 3. 21 48 E. 3. 20, 22 Eliz. Dier 270. F.N.B. 137. c.

g See Mag. Cart. cap. 8. 2 part of the Inſtitutes.

¶ *Surety, Securitas.* b Regiſt. F.N.B. 85. See the third part of the Inſtit. c Fugitives. i 2 H. 7. f. 2. 13 H. 7 fo. 10 b. k 13 H. 7. f. 10 b. 1 H. 7. 8. per. Fineux & Trem. Theſe words are well explained. Hil. 30 Eliz. coram Rege infra l Hil. 30 Eliz. coram Rege.

Surety comprehendeth all the former. And note, there is a ſurety by the Common law, and ſurety by ſtatute. By the Common law, [h] as in a Writ De ſecuritate inveniendo ne exeat regnum, &c. There is ſurety of the peace, and ſuretyof the good behaviour de bono geſtu. The ſurety of the peace cannot be broken without ſome act, as an Affray, or Battery, or the like. But the ſurety De bono geſtu conſiſteth chiefly, that a man demean himſelf well in his port and [k] company, doing nothing that may be cauſe of the breach of the peace, or of putting of the people in fear or trouble; and that it doth not conſiſt in obſervation of things that concern not the peace, as in not well doing his art or occupation. Thus far is the authority of the Book in 2 H. 7. by the reſolution of all the Juſtices aſſembled for that purpoſe. But in mine opinion, the Reporter male ſe geſſit in the laſt words of the caſe.

[l] At a general Seſſions holden at Bridgewater in the County of Somerſet, Anno 28 Eliz. one William King with ſureties was bound by recogniſance to appear at the next generall Seſſions of the Peace in the ſame County. Et quod interim ſe bene gereret erga dictam Dominam Reginam, & cunctum populum ſuum. And after at the next Seſſions William King appeared and was indicted for

ſlanderous

slanderous words spoken since his binding, viz. for saying at one time to Edw. Kyrton Esq; Thou art a Pelter, thou art a liar, and hast told my Lord lies, and I will make thee a poor . And he was further indicted, that since the said Recognisance, Clausum cujusdam Johannis Wich, vi & armis fregit & intravit, & averia & catalla ipsius Johannis in clausu prædicto depascent, illicite vexavit & chasiavit. And afterwards at another time he said to the said Kyrton, Thou art a drunken Knave: which indictment was removed into the Kings Bench. And hereupon two questions were debated divers times both at the Barre and the Bench. First, admitting that all that is contained in the Indictment be true, whether any therein was in judgement of Law a breach of the said Recognisance. The second, for how much the said indictment was good in Law. As to the first, it was resolved, that neither any of the words, nor the trespasse, were any breach of the good behaviour, for that none of them did tend immediately to the breach of the peace, for though the said words (especially Thou art a lyar, thou art a drunken knave) are motives and mediate provocations for breach of the peace, yet tend they not immediately to the breach of the peace; as if William King had challenged Kyrton, or sent him a Challenge to fight with him, or had threatned Kyrton to beat or wound him, or the like; these tend immediately to the breach of the peace, & therefore are breaches of the Recognisance of the good behaviour. And this diversity was justly collected upon the coherence and contert of the statute of 34 E. 3. whereby Justices of Peace are assigned for keping of the Peace, and to restrain the Offenders, Riotors, and all other Barettors, and to chastise them according to their trespasse and offence; and to enquire of Pillors and Robbers, in the parts beyond the Seas, and be now come again, and go wandering & will not labour, &c. (And thus much for punishment of offences against the peace after they be done: now followeth an expresse authority given to the Justices, for prevention of such offences before they be done.) viz. † And to take of all them that be not of good fame, (that is, that be defamed and justly suspected that they intend to break the peace,) where they shall be found, sufficient surety and mainprise of their good behaviour towards the King and his people (which must concern the Kings peace, as is also provided by the word subsequent) to the intent that the people be not by such Riotors troubled or indamaged, nor the peace blemished, nor Merchants nor other passing by the High-wayes, disturbed, nor put in the perill that may happen of such offenders. For the trespasse, &c. Although every wrongful trespasse is quare vi & armis & contra pacem, yet these force and arms, or contra pacem implyed in Law are not taken to be such as shall make a breach of the good behaviour; because they are trespasse upon the land or touching goods or chattels, and not the person of a man.

34 E. 3. cap. 1.

† This was the first statute that gave this expresse authority to Justices of peace.

As to the second point it was holden, that the Indictment concerning the words was void and coram non judice, and good onely for the trespasse, Quare clausum, &c. But if there be any just cause of breach, he ought to have a Scire facias upon the Recognisance.

21 E. 4. 10.

In an Account, if a Capias ad computand' be awarded against the Defendant, and thereupon he is outlawed, and rendreth himself to the prison of the Fleet, and Auditors be assigned to him, before whom they be at issue, and the Auditors bring the Record into the Common Pleas, and the Defendant found surety in 200 l. to appear in proper person every day pendente placito; and if the issue passe against him, that he rendreth himself to prison.

21 H. 6. 26.

[a] A fine sur conusance de droit was levied to an Infant, and because the Infant ought to pay the fine to the King, he found securitatem de fine solvendo.

[a] 45 E. 3. Surety 24. Register 291. b. Nota. F.N.B. 79. g.

There is also a Writ De securitate pacis, & de bene gerendo.

[b] In homine replegiando the Defendant avow for that the Plaintiff is his villain regardant. The Plaintiff said that he is free, and thereupon they were at issue; the plaintiff prayed that he might gage deliverance. And it was awarded that he should have deliverance of his goods, and find no surety that the avowant should have the goods again if it were found for him. But note when the avowant be at issue upon the villenage, [c] then the Plaintiff shall find surety to sue cum effectu.

[b] 2 H. 7. 14. &c. 36 H. 6. 23. 3 H. 4. 9. 6 E. 4. 8. 12 E. 4. 4. 2. 5 H. 7. 2. 13 H. 7. 17. 2.

[c] 3 H. 7. 3.

Surety;

See F.N.B. 151. g.

Surety; By Statutes, ſée the ſtatute of W.1. cap.20. De malefactoribus in Parcis in the Second part of the Inſtitutes in the expoſition of the ſame; the ſtatute of Gloc. cap.4. and W.2.cap.21.. for finding of ſurety in a Ceſſavit. See alſo the Second part of the Inſtitutes in the expoſition thereof.

The ſtatute of W. 2. c.4. Et ſtatut. de defenſione Juris, An. 20 E.1. of finding of ſurety by tenant by Reſceipt. See the Second part of the Inſtitutes the expoſition of the ſame. And many other whereof we need not to make mention; only this is obſervable, that when any ſtatute doth require pledges or ſurety to be found, they ought to be ſufficient, for inſufficient pledges are no pledges in judgment of Law; and ſurety cannot be ex vi termini unleſſe it be ſufficient.

W.2. c.29. Mag. Cart. cap. 26. * Reg. 133, 134. 28 E.3. c.9. Stanf. Pl. Cor. 77. g. See Hill. 32 E.1. Coram rege Rot. 71. & 79. Regiſt. 268. b. F.N.B. 250.a. Bract.l.3. f.154. 28 E.3. cap.9. Regiſt.80.a. Regiſt. 133. b. F.N.B. 250.k.l. & 251.a.b c.

It appeareth by W. 2. cap. 29. that the * Writ De odio & atia concerning the bailment of priſoners is grounded upon Magna Carta. And it is holden by ſome, that Writ is not now in uſe, but is taken away by the ſtatute of 28 E.3. But this Writ is revived again by the ſtatute of 42 E.3. cap.1. whereby it is enacted, That if any ſtatute be made againſt Magna Carta, or Carta de Foreſta, it is enacted to be void. See more of this matter in the Second part of the Inſtitutes, Mag. Cart. cap.26. which were unneceſſary here to be rehearſed. This Writ De odio & atia is omitted by Fitzh. in his N.B. Concerning the Writ de De manucaptione, one kind thereof directed to the Sheriff is a Writ grounded upon, and rehearſing the ſtatute of W.1. cap.15. and how that before him by a certain inquiſition of office A B. ſtandeth indicted de quodam latrocinio cujuſdam equi, &c. Now in as much, as by the ſtatute of 28 E.3. he cannot take ſuch inquiſitions by force of any Writ or Commiſſion, therefore that Writ De manucaptione ceaſeth. But the Writ of manucaptione may be directed to other Juſtices, as to the Juſtices of the Foreſt, Juſtices of Peace, and to other: for the ſtatute of 28 E. 3. extends only to Sheriffs, and to Sheriffs only upon taking of inquiſitions. But a Writ of manucaptione may in other caſes be directed to the Sheriff. Vide the ſtatute of 4 E.3. cap.2. for the Court of the Marſhalſea, F.N.B. 25. I.

Regiſt. 79. F.N.B.250.d.f.i. See Bract. li. 3. 121, 154. Fleta l.2. c.2.

For the Writ of homine replegiand. ſée the Regiſter fo.133. F.N.B. 66 E. Hill. 43 E. 3. Coram rege Rot. 110. Suſſex. Mich. 5 H. 4. Rot. 26. Devon. per breve Regis in duobus Com. William Scottes Caſe. 11 H.4.15. F.N.B. 68.c.Cap. in Withernam.

Bract. l.3. f.145. Britton fo.49. Fleta l.1. ca.40. Mirror ca.2. Sect.11. *la appeal de impriſonment.*

So odious was unjuſt impriſonment, or unjuſt deteining of any Freeman in priſon, as in ancient time there lay a Writ De pace & impriſonamento, &c. ubi liber homo, &c. uno modo propter injuſtam captionem, & alio modo propter injuſtam detentionem, &c. And there you may read the form of the Writ of Appeal, De pace & impriſonamento, which we have the rather remembred, that it may be obſerved what ſeveral remedies the Law hath allowed for the relief and eaſe of the poor priſoner. But the readieſt way of all is by Habeas Corpus in the Term time, or in the Vacation out of the Chancery, as you may read at large in the Second part of the Inſtitutes, Mag. Carta cap. 29. and ſtatut. de Gloc. c. 9. and the Expoſition upon the ſame.

34 H.8. cap.14. This is expounded to be *reddendo ſingula ſingulis reſpective.* Vid. 8 E.4.18. a Vid. Dier 8 El. 253, 254. upon another branch of this Act. b 14 H.7.20. *per Keble Br.* Judg.8. to be underſtood of the Kings Bench. 14 H.7. 15.b. *Per curiam.*

The Clerk of the Crown, Clerk of the Peace, and Clerks of Aſſiſe ſhall certifie briefly a tranſcript of ſuch Attainder, Outlawry or Conviction as is had for any kind of felony before Juſtices of Oier and Terminer, Juſtices of Gaol-delivery, and Juſtices of Peace before the King in his Bench, there to be a remain of Record, &c. See the ſtatute, a very neceſſary Law for the plea of auterfoitz attaint or convict for ouſting of Clergy, &c. and for eſcheats and forfeitures to the King.

[b] For the better underſtanding of this Act of Parliament, it is to be underſtood, that ſuch Attainders of Outlawry and Convictions of Felony before any of the Juſtices named in this Act, as are certified, or delivered into the Kings Bench, are under the cuſtody of the Clerk of the Crown of that Court, and for that cauſe he is named in this Act.

See the ſtatute of 9 E.3. cap.5. by which it is ordained and eſtabliſhed, that Juſtices of Aſſiſe, Gaol-delivery, and of Oier and Terminer, ſhall ſend all their records and proceſſes determined, and put in execution to the Exchequer at Mich. every year once to be delivered there, and the Treaſurer and Chamberlains, &c.

ſhall

shall kep them in the Treasury as the manner is, so that the Justices alwayes do first take out the estreats of the said Records and Processes against them to send to the Exchequer, as they were wont before.

By the statute of 11 H.4. cap. 3. Justices assigned (id est, Justices of Assise) shall cause to be delivered into the Kings Treasury all the Records of Assises, Novel dissesin, and of certifications before them determined every second year. 11 H.4. cap. 3. 13 H.4. error 91.

All Indictments and Presentments in the Sheriffs Turn, or law-days shall be delivered to the Justices of Peace of the same County, at their next Sessions of Peace to award processe, &c. 3 E.4. cap. 3. Vid. 4 E.4. f. 31. 8 E. 4. fo. 5.

After the murder or manslaughter found before the Coroners shall they deliver their inquisitions afore the Justices of the next Gaol-delivery. 3 H.7. ca. 1. Lib. Int. Rast 43.

If any person be murdred in the day, and the Murderer escape untaken, the Township shall be amerced, and the Coroner hath power to enquire thereof upon view of the body, and the Justices of Peace have power to enquire of such escapes, and to certifie afore the King in his Bench. 3 H.7. m. 1.

And (that we may say somewhat of every thing) forasmuch as the charge to be given at the Sessions of the peace consisteth on two parts, Laws Ecclesiastical for the peace of the Church, and Laws Civil or Temporal for the peace of the Land, it shall be very fit to say, as a foundation of the charge, that excellent Law established by Authority of Parliament, which we have translated into Latin. Imprimis Rex vult, & præcipit quod Pax Sacrosanctæ Ecclesiæ, & terræ solide custodiatur & conservetur in omnibus, quodque Justitia singulis, tam pauperibus, quam divitibus administretur, nulla habita personarum ratione. W.1. An. 3 E.1. cap. 1. Pax { Ecclesiæ. / Terræ. Justitia pacis mater & nutrix.

First of all, the King willeth and commandeth, that the peace of holy Church and of the Land be well kept and maintained in all points, and that common right (i. Justice) be done to all, as well poor as rich, without respect of persons.

Whereupon the charge to consist upon two parts, 1. Of Laws Ecclesiastical, and 2. Of Laws Civil or Temporal, with an exhortation to do justice.

Or another Axiom or Principle of the Law may be the foundation of the charge. Imprimis interest reipublicæ, ut pax in regno conservetur, & quæcunque paci sentur provide declinentur. 1 Mar. cap. 12. 3 & 4 E.6. ca. 5. Though the body of these Acts be repealed, yet the Axiom rehearsed in the Preamble shall continue for ever.

It is most necessary in a Commonwealth to provide, that tranquility and peace be continued in the Realm, and that all things being contrary thereunto may by foresight be eschewed.

† Or that of 32 H. 8. There is nothing within this Realm that conserveth the Subjects in more quietnesse, rest, peace, and good concord, than the due administration of his Laws. * 32 H.8. cap. 9.

Or the like, see the Third part of the Institutes, in Epilogo.

CAP. XXXII.

A Court of Inquiry of the defaults of the Justices of Peace, Justices of Assise, Sheriffs, and Under-Sheriffs, touching the execution of the Statute of 13 H. 4. Cap. 7. Concerning Riots, Assemblies, and Routs.

2 H. 5. cap. 8. See 19 H. 7. c. 13.

THis Court is raised by the Statute of 2 H. 5. and is a Court onely of Inquiry, and to certifie the inquests incontinent into the Chancery, as by the said Statute more at large appeareth.

CAP. XXXIII.

Justices in Eire.

See the 2. part of the Inst. W. 1. cap. 27. Bracton lib. 3. fo. 116. Britton fo. 1. 2 E. 3. fo. 27. Kelw. fo. 143.

THey were originally instituted for the good rule of the Subject, and for the ease of the Countries, and that such as had Franchises might claim them.

They were called Justiciarii in Itinere, or Itinerantes, in respect of other Justices that were residentes: In the black book in the Exchequer, cap. 8. they are called Justiciarii deambulantes, & perlustrantes. See Vet. Mag. Cart. 2. part. fo. 72. Artic. & sacramenta in Itinere.

Their Authority was by the Kings Writ in nature of a Commission, they had jurisdiction of all Pleas of the Crown, and of all Actions, real, personal, and mixt: they road from seven years to seven years, (but now by the statute of 27 H. 8. cap. 24. all Justices in Eire must be by Letters Patents under the Great Seal) In what County soever they came, all other Courts during the Eire ceased, and all those pleas in that County, or rising there before any other, the Justices in Eire might proceed upon as the others might have done. For example: A Writ was directed to the Justices of the Common Pleas to adjourn, and send all the pleas of that County which were in the Court of Common Pleas before the Justices in Eire to be determined before them, &c. And if judgment had been within that County, the Justices in Eire might award execution without a Scire fac. See the First part of the Institutes, Sect. 514. and read the ancient Books and other Authorities there quoted for their antiquity and jurisdiction, and the causes wherefore they banished away. But the other Justices of Eire, viz. of the Forest, continue to this day according to their original institution. See the Chapter of the Court of the Forest. See also the Second part of the Institutes, Marlbridg 24, 25, 27. W. 1. cap. 18. & W. 2. cap. 10. and the Exposition of every of them.

Regist. F. N. B. 243. k. 14 H. 7. 29. 15 H. 7. 5.

What Franchises and Liberties ought to be claimed before Justices in Eire, see lib. 9. fol. 24. the case of the Abbot of Strata Marcella.

The stile of their Court was, Placita de Juratis & Assisis & Coron. de Itinere Johannis de Vallibus & sociorum Justic. Itiner. apud Ockham in Com. Rutland in crastino Epiphaniæ Domini, Anno regni Regis Edw. 14.

These Justices in Eire did hold their Courts, as hath been said, from seven years

yeares to seven years, and first they began with Pleas of the Crown, for saith Bracton, Imprimis incipere debent de Placitis Coronæ, in quibus terminantur actiones criminales tam majores quam minores. And one could not be indicted for any thing, concerning the Pleas of the Crown, done before the last Eire: for so it appeareth by Bracton, Non erit quærendum de Placitis illis Coronæ quæ emerserunt ante aliud iter Justiciariorum, & quæ coram eis proposita non fuerunt. And by Fleta, Ex capitulis de veteribus Placitis Coronæ alias præsentatis & nondum terminatis, solet exceptio quibusdam indictatis oriri quod de novo indictamento de fact. ante ultimum iter imposito non tenetur respondere; & si non sit allocabilis, sequitur quod Juratores hundredi puniendi sunt de concelamento, vel de perjurio convincendo.

Bract. lib. 3. fo. 115 b. 116 b. Fleta li. 2. c. 29. *vers. finem.*

Vide postea ca. 60. of Pipowders.

And it were to be wished that in criminal causes at the Kings suit, there were a limitation of time, specially in cases concerning the life of man. The Common law in appeals at the suit of the party hath in those cases limited a time, viz. that they must be brought within the year and the day after the offence committed: and the reason thereof was, that the cause might be tryed, whilest it was fresh in memory, and that such as could testifie were living.

Vid. Hil. 15 E. 1. in Banco Rot. 56. they could adjorn into another County.

The Justices in Eire might inquire of the deeds of Justices of Gaol-delivery. Bracton saith, Et si post inter vallum accusare velit, non erit de jure audiendus, nisi docere potest se fuisse justis rationibus impeditum. And Bracton also saith, that after the charge given the Justices in Eire, debent transferre se in locum secretum, & convocatis ad se quatuor, vel sex, vel pluribus de majoribus de com. qui dicuntur * Busones com. ad quorum nutum dependent vota aliorum qualiter à Domino Rege & consilio suo sit provisum, quod omnes tam milites quam alii qui sunt a 15 annorum & amplius jurare debent, &c.

Rot. Par. 20 E. 1. Rot. 6.

* *Busones sive Bursones*, of the French word *Bourson*: for as it is in the proverb, He that beareth the purse ruleth the roast, which agreeth with *Bractons* description here, *Ad quorum nutum dependent vota aliorum.* So vulgarly called, which also *Bracton* insinuateth, when he saith, *Qui dicuntur busones.* a It is misprinted, and should be 12 *annorum.* 2 for 5. See the 2. part of the Instit. Mag. Cart. cap. 7. & 35.

So great was authority of Justices in Eire, that if they came into the County where the Justices of the Court of Common Pleas sate, the jurisdiction of that Court during the Eire ceased, but they yeelded to the Kings Bench.

Br. Jurisd. 116. 27 ass. 1. F. N. B. Fleta, l. 1. ca. 10. Sect. *Ex capitulis vers. finem.*

See Cap. Itineris, Vet. Mag. Cart. part. 1. fo. 150, 151, &c.

See Hovenden, Anno Dom. 1176. Vid. Hil. 13 R. 2. pl. 2. Of proceedings before them.

*Rex Justiciariis suis prox. Itinerantibus, in Com. N. salutem. Quia per * commune concilium regni nostri Angliæ provisum est, quod quilibet liber homo libere possit facere Attornatum ad libertates suas vendicandas, exigendas, prosequendas, et defendendas; Vobis mandamus, quod Attornat. quem A per Literas suas Patentes suo loco attornare voluerit, ad libertates suas vendicandas, exigendas, prosequendas, et defendas coram vobis in Itinere vestro in Com. prædicto, loco ipsius A sine difficultate ad hoc recipiatis*, &c.

Regist. 19. b. * *Viz.* W. 2. c. 10. Nota the Register is a good exposition of this statute. See the 2. part of the inst. W. 2. cap. 10.

See also another writ in the Register, Ubi supra, De clamore admittend. in Itinere, &c.

CAP. XXXIV.

The Court of Juſtices of Trailbaſton.

THeſe Juſtices ſate by force of the Kings Commiſſion of Oier and Terminer grounded, as ſome hold, upon an Ordinance made by King E. 1. and the Lords at a Parliament holden in Anno 33 E. 1. for the haſty proceeding. And therefore they were called Juſtices of Trailbaſton, becauſe they proceeded as ſpeedily as one might draw or Trail a ſtaff, they ſay upon the ſaid Ordinance in the ſame year, viz 33 E. 1. a Commiſſion of Oier and Terminer Vocat. Trailebaſton ſecundum ordinationem inde fact. in Parliamento de Anno 33 E. 1. By this it appeareth, as ſome have conceived, that this Commiſſion was builded upon an Ordinance in Parliament, and not upon an Act of Parliament.

33 E. 1. in Dorſ. Pat. parte 1.

Others ſay that this Commiſſion was grounded upon an Act of Parliament in Anno 33 E. 1. intituled Statutum quod vocatur Ragman de Juſticiariis aſſignatis. See the ſtatute, and that the Ordinance mentioned in the Commiſſion of 33 E. 1. is the ſtatute of Ragman, ſtatutes being often called by the name of Ordinances, for every ſtatute is an Ordinance, ſed non è converſo.

Vet Mag. Cart. 2 part fo. 28.

But let us now conſider what light our bookes have given us, the ſtatute being ſomewhat obſcure and dark.

In Trin. 2 E. 3. we read this caſe. William de B. ſued a writ of Error returnable in the Kings Bench upon a judgement given in a plea of land at the ſuit of John Hodey, which was pleaded by bill before Juſtices of Trailbaſton, where becauſe the Juſtices of Trailbaſton did ſend only the record of the plea, they were commanded to ſend the tranſcript of their Commiſſion, and the bill alſo with the pannell, the which they did, and again the record alſo. In which caſe you may obſerve theſe five Concluſions. First, it was aſſigned for error, that John Hodey made his plaint of certain land againſt William de B. being preſent in Court before the Juſtices of Trailbaſton, and he was put to anſwer without making of proceſſe againſt him, and therefore they erred in receiving the plea without proceſſe, &c. ſed non allocatur. Secondly, for the Juſtices of Trailbaſton be in their caſe as Juſtices in Eire; and in Eire when the party puts in his bill againſt another which is preſent in Court, the Juſtices in Eire ought to receive it. Thirdly, another error was aſſigned, that it appeared by the record, that preſently the Juſtices of Trailbaſton took an inqueſt de circumſtantibus which came not in by proceſſe to give their verdict, and alſo it appeared by the record, that the Twelve gave their verdict ſuper ſacramentum ſuum, without ſaying de conſenſu partium; ſed non allocatur. For in Trailbaſton and in Eire certain men are made to come by whom thoſe Juſtices do inquire ex officio, that is, without proceſſe whereunto the parties which have pleaded to iſſue agree to be tried by them, the Court erreth not if they take an Enqueſt of them, and it is not found of record, that William de B. did diſſent: and as to the other point, the Court ſhall intend an aſſent where there appeareth no diſſent. Fourthly, the errors aſſigned being no errors, the Court did ſearch for errors, and to affirm the judgement or to reverſe it. And the Court did find in the firſt record which was ſent, that William de B. dicit quod in nullo eſt inde culpabilis, & de hoc ponit ſe ſuper patriam, where John de Hodey which was Plaintiff did not joyn with him, & prædictus querens ſimiliter

1 E. 3. fo 27.

similiter, which joyning was in the second record certified; but for that, that record came in without warrant, and the first record certified is the record in law, thereupon the former judgement was reversed. Fifthly, that no error was assigned, that the Justices of Trailbaston had no lawfull jurisdiction, but a Writ of Error brought upon their Judgement, whereby, and by all the contexts of this case their jurisdiction was affirmed, the Judges of the Kings Bench having, as is aforesaid, a Transcript of their Commission. Also they had jurisdiction in case of indictment of death, and so allowed, but Appeals of felony were excepted in the said Statute. 2 E. 3. 2.

Vide Dors. Pat. Anno 14 E. 3. part 3. m. 8. & 2. A Commission of Trailbaston was granted to Robert Parning Treasurer and others in London, Middlesex and Surrey, and like Commissions were granted in other Counties. 14 E. 3.

A Petition was exhibited by the Commons in full Parliament, who prayed, that no manner of Eire or Trailbaston might be holden during the warres, or 20 years, &c. but it was not granted. Rot. Parl. 1 R. 2 101.

But Præcipitatio est Noverca Justitiæ: and both in respect of the precipitation and of some reference to the next Parliament by the Statute of Ragman, this Commission wholly long since vanished, and is left out of the Register as not to be put in execution. But the Commission of Oier and Terminer there remaineth as necessary and usefull for the punishment of horrible and enormious offences. See before the Chapter of Oier and Terminer.

CAP.

CAP. XXXV.

The Courts of Wards and Liveries raiſed by Authority of Parliament.

The ſtatute of 32 H.8. cap. 46. ¶ *The Court of the Kings Wards.*

FIrſt, the King our ſaid Soveraign Lord by authority aforeſaid Ordaineth, maketh, eſtabliſheth, and erecteth a certain Court commonly to be called for ever *The Court of the Kings Wards:* which Court by authority aforeſaid continually and for ever ſhall be a Court of Record, and ſhall have one Seal to be graven and made after ſuch form, faſhion and manner, as ſhall be appointed by the Kings Highneſſe, and ſhall remain and be ordered, as hereafter ſhall be declared.

A Court of Record.

By the Statute of 33 H.8.cap.22. the office of the Liveries is annexed to the Court of Wards. So is now it is in the Court of Wards and Liveries.

See the firſt part of the Inſtitutes. Sect. 441.

Alſo be it enacted by authority aforeſaid, that all Wards which the Kings Highneſſe now is, or hereafter ſhall be intituled to have, with their Manors, Lands, Tenements, Rents, Remainders, Reverſions, Services, and all other Hereditaments whatſoever they be, as well in poſſeſſion as reverſion, and all Revenues, Iſſues, and Profits of the ſame, and every part thereof, for the time the ſame ſhall be, or ought to be in the Kings poſſeſſion, ſhall be in the order, ſurvey, and governance of the ſaid Court, and the Miniſters of the ſame, in manner and form as by this Act is declared and limited.

All Wards, Manors, Lands &c.

In the order, ſurvey, &c.

Alſo that the ſaid Maſter of the Wards for the time being, ſhall have full power and authority to award under a Seal to be appointed to the ſaid Court in the Kings name ſuch Proces and Precepts with reaſonable pains to be therein limited, as be now commonly uſed in the Kings Court of the Dutchy Chamber of Lancaſter being at Weſtm. againſt every perſon or perſons whatſoever they be, for and concerning the intereſt, right and title of the Kings Majeſty, his Heirs and Succeſſors, of, in or for any Wards, Lands, Tenements, Rents, Account, Receit, Services, or other cauſe in any wiſe touching or concerning any thing appointed by the order of the Court, or any part thereof, for and on the behalf of our ſaid Soveraign Lord the King, or to or for any debt, riſing and growing by occaſion of the ſame.

Proces.

Dutchy Chamber.

In any wiſe touching or concerning, &c.

Debt.

Alſo be it enacted by the authority aforeſaid, that the ſaid Attorney, Receiver General, and Auditors ſhall diligently from time to time attend upon the ſaid Maſter in the ſaid Court for the hearing and ordering of matters and cauſes in the ſame Court for the time of four terms in the year uſually kept for the law at Weſtm. and procure with all diligence, that all rents, ferms, profits, caſualties, improvements, and other emoluments of the Wards, marriages, Ideots, and all Manors, Lands, Tenements, and Hereditaments being in the ſurvey and governance of the ſaid Court, ſhall be truly and juſtly paid, and anſwered to the ſaid Receiver General of the ſaid Court to the uſe of the Kings Highneſſe without concealing any part thereof. And ſhall alſo cauſe and procure Proceſſe to be made againſt ſuch as ſhall be indebted

Attend.

By the ſaid Act of 33 H.8. the Surveyour is added, and to take place before the Attorney.

Indebted.

to

to the Kings Highneſſe and their ſureties of and for any part thereof, from time to time, as the time and caſe ſhall require without any delay.

No Procts out of the Exchequer for or concerning any Ward, &c.

Alſo be it enacted by the authority aforeſaid, That all manner of Proces that ſhall be made out of the Kings Exchequer to or againſt any perſon or perſons for any Ferm, Rents, Iſſues, or Profits concerning the premiſes or any part thereof, or any other thing limited in this Act to be in the ſurvey, order and governance of the ſaid Court, and the Miniſters thereof, ſhall be clearly void and of none effect to all intents and purpoſes.

Widowes.

Alſo be it enacted by the authority aforeſaid, That the ſaid Maſter by the advice of the ſaid Attorney, Receiver General, and Auditors, or three of them, whereof the ſaid Maſter to be one of them, ſhall have authority by this Act to ſurvey all the Kings Widows, and to treat, commune, and conclude as well with all and every of the Kings Widows that now be, or hereafter ſhall be, and that have married themſelves without the Kings licenſe, or that hereafter ſhall happen to marry themſelves without the Kings licenſe, for their reaſonable fines to be made to the Kings uſe, and to tax and aſſeſs the ſame by their diſcretion according to the Statute of *Prærogativa Regis*: the ſame fines to be paid to the Receiver General of the Wards lands, as the ſame may appear yearly in his account.

Idiots. Natural Fools.

Alſo be it enacted by the authority aforeſaid, That the ſaid Maſter by the advice of the ſaid Attorney, Receiver General and Auditors, or three of them, ſhall have authority by this Act to ſurvey, govern and order all and ſingular Ideots and natural Fools now being in the Kings hands, or that hereafter ſhall come and be in the Kings hands. And alſo to ſurvey and order all the Manors, Lands, Tenements, and other Hereditaments whatſoever, now being in the Kings hands, or in the hands of any other perſon or perſons to their uſes, or to the uſe of any of them, that hereafter ſhall come and be in the Kings hands, his Heirs and Succeſſors in the right of any of them by reaſon of his Graces Prerogative Royal. And alſo by the advice of the ſaid Attorny, Receiver General, and Auditors, or three or two of them, to let and ſet, the Manors, Lands, and Tenements to the Kings uſe for the time of the Kings intereſt for ſuch rent and fine, as by their diſcretion ſhall be thought convenient; the finding and keeping of the ſaid perſons their Wives and Children, and the reparations of their houſes and lands alwayes to be conſidered in the doing thereof; the ſame rents and fines reſerved to the Kings Grace to be paid alwayes to the hands of the Receiver General of the Wards lands for the time being as the ſame may appear in his account, and be recorded in the Court of Wards.

To let and ſet.

Called by Proceſſe.

And alſo be it enacted by the authority aforeſaid, That the ſaid Maſter for the time being ſhall have power and authority to take Recogniſances of all and every perſon and perſons that ſhall be called into the Court of Wards and Liveries to anſwer to any matter alledged againſt them in the ſaid Court, to make their daily appearance in the ſaid Court, to anſwer to ſuch matters as to them then and there from time to time ſhall be alledged. And that all ſuch Recogniſances of what ſumme ſoever they be, ſhall be as good and effectual in the Law to all intents and purpoſes, as Recogniſances taken in the Kings High Court

of

of Chancery, or elſewhere before any Judge of Record within this Realm. And that the ſaid Maſter for the time being with the advice of the Court, or of ſuch member of the ſame as then ſhall be preſent; ſo that they be two beſide the ſaid Maſter, ſhall have full power and authority to moderate ſuch Recogniſances as be or ſhall be there forfeited, and to ſet fines for the ſame to the Kings uſe under the ſummes contained in the ſaid Recogniſances; the ſaid fines to be levied by like Proces of *Scire facias*, as by the ſtatute made in the 27. year of our Soveraign Lord the Kings reign is given to the Chancellor of the Court of Augmentations of the Revenues of his Graces Crown. And that the ſaid Maſter for the time being with the advice aforeſaid ſhall have power and authority to commit to Ward any perſon or perſons for his or their diſobedience, contempt, or other offence made, or to be made triable within the Kings Court of the Wards and Liveries, and upon the ſaid matters ordered or decreed there, to deliver them from priſon, and to cancel and make void all Recognizances and Obligations taken or hereafter to be taken in the ſame Court to the Kings uſe when and as often as the ſaid Maſter, with the advice of the ſaid Court or three of them, ſhall ſee and perceive the matters and cauſes, for the which any ſuch Recogniſances or Obligations hath or hereafter ſhall happen to be taken, to be finiſhed and ended, and the Kings Grace his Heirs and Succeſſors, or the party thereupon ſatisfied, without any other warrant for the ſame.

To moderate Recogniſances.

¶ *The Authority of the Courts of Exchequer, Wards and Duchy.* A Clauſe of the ſtatute of 33 H. 8. cap. 39.

And alſo ſhall have full power and authority to hear and determine all and all manner of Debts, Detinues, Treſpaſſes, Accounts, Reckonings, Waſts, Deceipts, Negligences, Defaults, Contempts, Complaints, Riots, Quarrels, Suits, Srifes, Controverſies, Forfeitures, Offences, and other things whatſoever they ſhall be, which ſhall hereafter grow, be moved, ſtirred, procured, purſued, or ariſe in, for, or upon any matter, cauſe, or other thing * aſſigned, committed, or appointed to the ſeveral directions, orders, and governances of the ſame Courts, or any of them, or for or upon any manner of thing or things which may or ſhall touch or in any wiſe concern the ſame, wherein the King ſhall be only party. And alſo all manner of ſtates for tearm of years between party and party concerning the premiſes, and to correct and puniſh by their diſcretions all and every perſon and perſons which before them ſhall be convicted of any of the premiſes according to the nature, quality, or quantity of his or their offence or offences, cauſe or cauſes, matter or matters, (all and all manner of Treaſons, Murders, Felonies, Eſtates, Rights, Titles, and Intereſts as well of Inheritance as Freehold, other then Joyncture for tearm of life, onely excepted and alwayes forepriſed.)

* Aſſigned.

Before we deſcend to the ſeveral parts and branches of theſe Acts, it ſhall be expedient for advancement of truth to handle and clear two Queſtions: First, when Wards became due to the Kings of England, by what title, and upon what reaſon. Secondly, who had the charge of the Kings Wards; how they were diſpoſed of, and in what Court this Revenue was anſwered before the Raign of H. 8.

The

The first contains three things, Time, Title, and Cause. And in all these three Polydor, and such as follow him, do erre: for Polydor saith that *Henricus 3. Anno Domini 1219. qui avitum regnum civili bello, ac dissensionibus vastatum, opibus spoliatum, atque prope confectum paulo ante adeptus erat, cum rei domesticæ inopia pressus, non posset sine auxilio suorum, Asiaticum bellum juvare, vitamque regiam decenter degere, prius cipes soluto prius tributo, pro eo bello gerendo postea excogitato novo vectigalis genere, ut regem suum ea inopia levarent, [a] ultro concesserunt, ut quoties quispiam eorum, qui possessiones haberent [b] quarum Rex esset Dominus, ante moreretur quam liberi quos fecisset hæredes vigesimum alterum ageret annum, tum eatenus tam ipse hæres quam patrimonium in potestate atque tutela regis foret, & ille patrimonii hujusmodi proventus caperet, quod hæres ad eam ætatem proveniret: quia apud Anglos more majorum pervetusto conservandarum facultatum causa, filius mas natu grandior sit solus hæres, vel filiæ si mares liberi nulli sint. Egit Rex gratias omnibus generatim pro munere, ac ut ne id humanitatis in oblivionem iret, deinceps istiusmodi nobilium hæredum tutelas ut rem sibi valde utilem accuratissime suscepit. Sed illud beneficium neqnaquam ipsi nobilitati postremo bono fuit, quando cæteri reges qui secuti sunt, non habita ratione, quod à principibus olim in Henricum duntaxat collocatum fuisset, ut qui pauper esset decentius personam regiam per illud sustineret, sibi etiam perpetuatum voluerunt. Quid, quod ita res curæ omnibus fuit, ut non modo reges, sed reliqui locorum domini in hæreditates nobilium defunctorum eodem modo invaserint, id quod etiam nunc fit, & lege certa observatur. Unum istud institutum est tandem aliquando corrigendum, quippe quod quantum uni vel alteri commodi, tantum aliis incommodi affert: sane ita usu venit, ut populorum quibus hæreditates veniunt tutelæ sæpe à locorum dominis ad tempus sicut dictum est, illorum tutoribus per auctionem vendantur, quo sic facto lucro, ab ea educandorum puerorum cura vacui sint, & qui emunt, emunt autem tam nobiles, quam homines novi, si modo plus dederint, ea præsertim de causa redimant, ut pupillos nobilium suis liberis matrimonio conjungant. Idque sæpissime faciunt, antequam illi pubescant, quo simul vivendo, cum primum per ætatem liceat, urgente voluptatum titillatione invicem commisceantur, ut ne postea, cum adoleverint, jam motui polluti nuptias repudiare queant, qui sic sese ab ineunte ætate libidinibus dedecorantes interdum non homines, sed ob virtum infirmitatem plane homunciones gignunt à majoribus degenerantes. Atqui nobilitas cum primis eo damnum facit longe ingentissimum quod homines humili loco nati per ejusmodi connubia sanguinem cum ea socient, contaminentque in dies singulos ejus vetustum genus, & pupilli ipsi à sinu matrum per emptionem erepti parum interdum honestis in aliena domo instituantur. Oritur vel hinc res alia indigna de qua nunc tacere libet, istorum enim conjugum gratia admodum modica aliquoties existit cum ante ætatem, & aliquando contra voluntatem nobiles fœminæ, virique plebeis copulati perraro inter se ament. Prætereo & illud, quantum patrimonia nobilium, causa hujusce tutelæ lacerentur à novis possessoribus; qui sui avare commoditatibus servientes pecus omne non modo tondent, sed deglubunt egregie. Atque hoc est principium munus, quod regias opes maxime adauxit.*

Polydor lib. 16. pag. 288.

Excognitio nova vectigalis genere a Ultro concesserunt.

b Quarum rex esset Dominus.

Herein Polydor hath erred in all three. For first, where he affirmeth for the time, that this Novum vectigalis genus was excogitatum, and granted to King Henry the third Anno Domini 1219. which was in the third year of his reign, Glanvil who wrote in the reign of H. 2. treateth of Wardships due to the King and

Lib. 7. cap. 9. 10.

And Ockham who wrote *tempore* H. 2. treateth alſo of Wardſhips and Liveries.

and other Lords: to the King in theſe words. Notandum tamen quod ſi quis in capite tenere debeat, tunc ejus cuſtodia ad dominum regem plene pertinet, ſive alios dominos habere debeat ſive non, quia dominus rex nullum poteſt habere parem, multo minus ſeniorem, &c. And he treateth ubi ſupra of Wardſhips then due, (which holdeth law till this day) and ſpeaketh nothing of the beginning of them.

Matth. Paris, pag. 246.

King John in the ſeventeenth year of his reign made a great Charter, and granted Concilio Baronum, quod cuſtos terræ hæredis qui infra ætatem fuer' non capiat de terra hæredis niſi rationabiles exitus, & rationabiles conſuetudines, & rationabilia ſervitia, & hæc ſine deſtructione & vaſto hominum vel rerum. Et ſi nos commiſerimus cuſtodiam alicui talis terræ vicecomiti vel alicui alii, qui de exitibus terræ illius nobis debent reſpondere, & ille deſtructionem de cuſtodia fecerit vel vaſtum, nos ab illo capiemus emendam, & terra committatur duobus legalibus & diſcretis hominibus de feudo illo, qui ſimiliter nobis reſpondeant, ſicut prædictum eſt. Cuſtos autem quamdiu cuſtodiam terræ habuerit, ſuſtentet domos, parcos, vivaria, ſtagna, molendina, & cætera ad illam terram pertinentia de exitibus terræ ejuſdem. Et reddat hæredi, cum ad plenam ætatem pervenerit, terram ſuam totam inſtauratam de carucis, & omnibus aliis rebus, ad minus ſecundum quod illa recepit.

1 part of the Inſtitutes. Sect. 103.

2. Where Polydor ſaith, Ultro conceſſerunt ut quotes, &c. he affirmeth that it came from the grant of the ſubject to the King. The truth is, that all Tenures by Knight ſervice, which was ſince the Conqueſt draweth ward and mariage (for relief was due before) were either created and reſerved by the King, or before 18 E. 1. Quia emptores terrarum by the ſubjects of the Realm. If by the King, it is either of the perſon of the King, ut de corona, which we call in Capite, or of ſome Honour or Manor. If by a ſubject, either of his perſon or of an Honour or Manor. And all theſe tenures have been created according to this rule, Cujus eſt dare, ejus eſt diſponere. And all the lands in England originally moved from the King, and are holden of him mediately or immediately.

Polydor ſaith, that this *Notum veſtigalis genus* was granted to the King.
1 part of the Inſtit. ſect. 1.

3. He utterly miſtaketh the end of the creation of theſe Tenures by Knights ſervice, which were originally created for the defence of the Realm by his own ſubjects, which is more ſafe, than to truſt to foreiners. But hereof you may read at large in Littleton Sect. 95 96. & 103. & Li. Rub. Mavult enim princeps domeſticos, quam ſtipendiarios bellicis apponere caſibus.

Britton fol. 162 b Lib. Rub.

This Tenure which now is called Eſcuage, or Servicium Scuti, was of ancient time named expeditio hominum cum ſcutis, as you may read in the Charter of King Kenulphus, who Anno domini 821 & regni ſui 25 granted to the Abbot of Abbandon many Manors and lands, and reſerved quod expeditionem duodecim virorum cum tantis ſcutis exerceant, antiquos pontes, & arces renovent, &c. Of all other ſervices and Chargeshe and his ſucceſſors were diſcharged.

The Charter of King *Kenulfus* Anno Dom. 821
The like Charter of King *Ethelred* to a Knight called *Athelweg*, Anno Dom. 995.
The Charter of King *Ethelred*, 1001.
Bracton lib. 2. fo. 36. 37. &c.
1 part of the Inſtitutes, ſect. 103.
Verb. Chivaler.
Caſtle.
Comming of enemies.

In nomine excelſi Tonantis, cujus nutu & miſeratione à pio patre prædictus, ego Ethelred *Rex totius Inſulæ cum conſenſu & licentia Optimatum meorum aliorumque meorum fidelium dabo, & libenti animo concedo Cloſic. quandam ruris particulam, hoc eſt,* 20 *manſos in loco quem ruricolæ vocitant* at yceantun *in hæreditatem perpetuam, & ſemper liber permaneat notis & ignotis, magnis & modicis, ad habend' & tradend' qualicunque voluerit relinquat ab omni tributo & * ſervicio regali, niſi conſtructione pontis, & arcis ædificatione, & hoſtium expeditione. Actum eſt autem hoc meæ conceſſionis donum Anno Dominicæ Incarnationis* 1001, &c.

In this Book of Domeſday you ſhall find it thus recorded. Sudtie.

Ditone. Regiſt. fo. 2. Domeſday tit. Ciſtreſe.

Epiſcopus Baroc'.

Ille qui tenet de Wodardo reddit ei 50 s. & ſervicium unius militis, and in divers other places. And in Domeſday mention is often made of Drenches or Drenges, which is as much to ſay as Tenentes per ſervicium militare.

Many

Many others of this kind might be cited to prove that prudent Antiquity ever proved by reservation of tenure (amongst other things) for the defence of the Realm against the Invasion of Enemies.

All our ancient Authors treat hereof. See the First part of the Institutes, Sect. 103. and see the Grand Customer of Normandy, Cap. 33. &c. fo. 49.

Glanv. l. 7 c. 9, 10. *Ockham in decretis suis.* Mirror ca. 165. Bracton lib. 2. fo. 36. a. 85. Britton fo. 162, 28. 95. Fleta l. 1. ca. 8. Bract. l. 2. fo. 36. Ubi supra.

You have heard before de regali servicio, before the Conquest, but that regale servicium (which was Knights service) drew unto it relief, but neither wardship of the body or of the land, as hath been said; it is true that the Conquerour in respect of that royal service as a badge of the Conquest took the wardship of the land and the marriage of the heirs within age of such tenants, but this extended not to the tenures of the subjects by Knights service, as it appeareth by Bracton: Dicitur Regale servicium, quia spectat ad dominum regem, & non alium, & secundum quod in Conquestu fuit adinventum; & hujusmodi servicia persolvuntur ratione tenementorum, & non personarum, quia ex tenementis proveniunt, ut si dicatur faciendo inde forinsecum servicium, vel regale servicium, sive servicium domini regis, &c. So as the Conquerour provided for himself, but other Lords at the first by special reservation since the Conquest provided upon gift of lands for themselves: Regis ad exemplum totus componitur orbis, wherein that which we had from the Conquerour we truly confess, and that which the Normans had from us, we have truly related in other places.

The tenure (as before it appeareth) was not then invented, but the fruits of the tenure of the King, viz. wardship and marriage, which was Bractons meaning.

The good King H. 1. son of the Conquerour finding that the wardship of the body and lands of his Tenants by Knight service erected by his Father was both grievous and unjust, by his great Charter Anno primo regni sui, reciting Quod regnum suum oppressum erat injustis exactionibus, &c. (and particularly tempore patris sui) did grant (amongst other things) Quod si uxor cum liberis remanserit, dotem suam & maritagium habebit dum corpus suum legitime servabit, & eam non dabit nisi secundum velle suum, & terræ & liberorum custos erit sive uxor, sive alius propinquior, &c. To be short, by that golden Charter, Omnes malas consuetudines, quibus regnum Angliæ injuste opprimebatur, inde abstulit, & legam regis Edovardi reddidit. These were called King Edwards laws, not that King Edward made them, sed quia ex tribus legibus, sc. Anglorum, Danorum, & Merciorum unam legem communem edidit. Vide Ranulph' Cestrienf. lib. 1. cap. 50.

And where some have objected that wardship is a badge of servitude, for that in the writ of Nativo habendo, one of the Explées (amongst others) is capiendo redemptionem ab eo pro filiis & filiabus maritandis, & aliis Villanis serviciis. That is, taking ransom of him for the marriage of his sons and daughters, and other villain services. To this it is answered, that the King for marriage of his Wards taketh no ransomes, but such moderate summs of money, as in respect of the quality and state of the Ward, he, or she, all circumstances considered, is able to pay, and in regard thereof he hath the protection of the Court of Wards during minority: but if ransomes should be taken, it should not only be against the right institution of Wardships before remembred, but also a badge of servitude: and therefore by the Statute of Magna Charta of H. 3. cap. 4, 5, 6. (seeing the Crown had a long possession of the Wardship of the body and lands of the Kings tenant by Knight service) it was provided, first, that the King or his Grantee or Committee should not take of the lands of the heir * but reasonable issues, reasonable customes and reasonable services, without destruction, &c. (and all unreasonable and excessive things are against the Common law, Excessivum omne in jure reprobatur.) Secondly, shall keep up the houses and other inheritance of the heir, and deliver to the heir, all his lands stored with ploughes and all other things (woods and all) at least as he received them: whereby it appeareth, that the value of the marriage should be so reasonable, as the heir should not at his full age be enforced for payment thereof to sell either lands or goods. Thirdly, that if the heir be married, that he be advanced thereby, and not disparaged.

* Note, *reasonable* thrice repeated, that it might be observed.

John Earl of Oxford being the Kings Ward married without the Kings licence,

Rot. Parl. 15 H. 6. nu. 19.

cence, for the which, both for the contempt, and for the duty to the King for so marrying, he was fined at three thousand pounds, which was not the value of his lands by one year: and yet he petitioned in Parliament to be pardoned of part thereof, which was thought reasonable. And certainly the reasonable rating of Wardships of the body and lands is both according to the laws of the Realm, and a mean of increase of the Kings Revenue.

As to the third: there were of ancient and latter times Masters or Keepers of the Kings Wards for the Kings best advantage, and the profits and revenue thereof were answered in the Kings Court of Exchequer: as taking one example or two instead of many for both the points.

* Rot. finium. 14 H. 3. m. 9. Hereof see Mat. Par. Anno domini 1232. 16 H. 3. of Hubert de Burgo, & Stephen Segrave. See also Int. Rot. finium, Anno 3 E. 1. m. 4. Rot. Par. 3. E. 1. m. 33. Rot. finium. 13 E. 1. m. 24. a Ro. Par. 25. H. 6 parte 2. m. 24. b See the 1. part. of the Institutes, li. per totum.

* Rex commisit Radulpho de Nova villa Episcopo Cicestr. & Stephano de Segrave custodiam omnium Escheatorum suorum qui accidunt per totum regnum Angliæ, tam in Wardis, quam in omnibus aliis Eschaetis quæ regi accidere possint, & respondend. inde ad Scaccarium.

a See the statute of 51 H. 3. stat. de Scaccario. Sheriffs shall be keepers of the Kings Wards, and answerable for the issues thereof in the Exchequer.

b What care there was of ancient time to preserve the tree of pious, honourable and profitable tenures of the King, and for profit especially tenures in Capite and by Knights service, and that the King should be truly answered of Wardships, and other fruits and profits due unto him by reason thereof, it notably appeareth by the Articles inquirable by the Justices in Eire, and by our ancient books.

* Capit. Itineris in Vet. Mag. Car. 157, 158 Br. & l. 3. 116. b. Britton to. 28. Fleta l. 1. ca. 20.

* *De Eschaetoribus et Subeschaetoribus in seisina domini regis facientibus vastum, vel destructionem in parcis, boscis, vivariis, vel warennis infra custodias sibi commissas per dominum regem, quantum & de quibus, & a quo tempore. Item de eisdem qui occasione hujusmodi ceperint bona defunctorum, vel hæredum in manu domini regis injuste, donec redimerentur ab eis, et quid, et quantum pro hujusmodi redemptione et quid ad opus suum inde retinuerint, & à quo tempore. Item de eisdem qui minus sufficienter terras alicujus in favorem ejusdem, vel alterius cujuscunque cui custodia terrarum illarum dari, vendi vel concedi debuerit, in deceptionem domini regis, et ubi, et quando, & quid inde ceperint, & à quo tempore. Item de eisdem qui prece, precio, vel auxilio vel favore consenserint, vel consuluerint quod custodiæ domini regis venderentur pro minore precio, quam vendi deberent secundum verum valorem, vel maritagia ad dominum regem spectantia. Et si aliquo modo concelaverint, custodias domini regis, vel maritagia hæredum, vel tenentium de rege in capite, vel maritagia dominarum, viduarum maritatarum sine licentia regis, & si quid propter hoc ceperint & quantum, & à quo tempore. Item de hiis qui reservaverint ad opus proprium custodiam vel maritagium per leve precium, sive per concelamentum factum versus dominum regem, & cujusmodi damnum rex inde habuerit, & à quo tempore. Item cujusmodi seisierint terras, & per quantum tempus eas in manu domini regis tenuerint. Item de terris captis in manu domini regis; quæ capi non deberent, & postea restitutis per præceptum domini regis cum perceptis, utrum percepta restituerint ad mandata domini regis, vel non. Et de omnibus prædictis factis & commissis infra viginti & quinque annos proxime prædictos prædicti Justiciarii se intromittant. Et omnes illi qui sentiunt se super hiis gravatos, et inde conqueri voluerint, audiantur, & fiat eis super hoc justicia, & ipsi Justiciarii pro hiis quæ dominum regem contingunt diligenter inquirant, &c.*

Vet. Mag. Car. a 160, 161. Inter Capit. Escaetriæ.

Primo & principaliter inquiratur de feodis militum, & advocationibus Ecclesiarum ad dominum regem pertinentibus, viz. quot sunt, & quæ sunt tenementa, & quantitas tenuræ, & per quæ servicia. Item

Item si feoda illa integra sint vel demembrata, non habendo respectum ad tempus. Item si demembrata, per quem, quando, cui, qualiter, quomodo, & quantum valent per annum. Item si tradantur alicui ad terminum vitæ, vel annorum sine licentia regis, tunc cui, quando, qualiter, & quomodo, & quantum valent per annum. Et si tenentur per medium, per quem medium.

Item de tenementis quæ tenentur de rege in capite, vel teneri debent, si aliquis faciat se medium inter dominum regem, & verum tenentem suum, tunc quæratur ubi, quando, qualiter, & quomodo, & ad quod damnum regis, vel si modo tenuram mutaverint.

Item de aliis qui tenent de corona per magnam Serjantiam, vel parvam, antiquum dominicum domini regis, socagium, feodi firmam, vel per aliquod servicium, si iidem tenentes aliquod alienaverint, vel demembraverint, cui, quando, quantum, qualiter & quomodo, sive sint de aliquo honore, sive de corona, & de valore annuo. Et si aliquis, qui de rege tenuerit per antiquum dominicum vel socagium, mutaverit tenuram suam, & ad damnum regis, cui, ubi, quando, qualiter, & quomodo, & ad quod damnum regis, & quantum hujusmodi tenementum valet per annum.

Item si aliquis concelaverit aliquem redditum, sive aliquod servicium, seu aliquas consuetudines domino regi debitas, tunc quis, quando, qualiter, & quomodo, & quæ servicia, & quem redditum, & quas consuetudines, & quæ tenementa tenent de quibus debentur hujusmodi servicia, & quantum valent per annum, & ad quod damnum regis hujusmodi concelamenta sunt.

Item, de hæredibus quorum custodia & maritagium pertinent ad dominum regem, & dominus rex ea habuerit, quando deberet habere. Et si aliquis hujusmodi hæredum ingressum fuerit sine authoritate curiæ, & absque legitima ætatis suæ probatione si infra ætatem, & si plenæ ætatis, absque faciendo regi homagium, vel aliud servicium quod ei debet. Et tunc quis sit ille hæres, quo tempore intravit, & post mortem cujus & per quod servicium illa hæreditas teneatur, & quantum valet per annum.

Item de viduis similiter quarum maritagium pertinent ad regem, si se maritaverint sine licentia regis, cui, quando, cujus consensu, & ad quod damnum regis, & quantum tenementa valent quæ tenent in dotem de primo marito suo.

Item de hæredibus qui deberent esse in custodia regis, & quis custodiam usurpaverit super regem, & à quo tempore, & quantum tenementa quæ tenent valent per annum.

Item si aliquis hujusmodi hæredum cujus antecessor de rege tenuit in capite, sive de aliquo hærede in custodia regis existente, maritatus fuerit sine licentia regis, tunc cui, quando, & per cujus consensum, & quantum terræ illæ valent per annum, & quantum cepit pro maritagio.

Item si dominicæ terræ domini regis in isto wapentagio sunt in tali statu sicut esse deberent, vel si trahantur ad firmam, si dimittantur secundum valorem annuum earundem, & si custodes vel firmarii vastum vel destructionem, venditionem seu exilium fecerint in eisdem, vel in terris existentibus in manu domini regis per custodiam, vel alio modo, quis, ubi, quando, &c.

Yea so precious was immediate tenures of the King, as you read in the Parliament Roll in 18 E. 1. in these words.

Gilbertus

Rot' Par' 18 E. 1 fo. 4. nu. 52. Note the form of this tenure.

Gilbertus de Umphrevill petit licentiam quod poſſit feoffare Gilbertum filium ſuum primogenitum, & Margar. uxorem ejus de manerio ſuo de Overton, Tenend' de ipſo Gilberto patre durante tota vita ipſius patris, & poſt ejus deceſſum de capitalibus dominis feodi. Reſponſ. Rex non vult aliquem medium. *Ideo non conceſſit.*

14 E. 3. ca. 13. ſtat' 1.

By the ſtatute of 14 E. 3. if the heir of the Kings tenant in Chief, ar be found within age, and the next friends of the heir, to whom the inheritance cannot deſcend, ſhall come and offer them to take the ſaid lands, yielding the value to the King till the age of the heir, as far forth as other will yield without fraud; by accord betweēn the Chancellor & the Treaſurer, they ſhall have Commiſſion to kēp the ſaid lands by good and ſufficient ſurety till the age of the ſaid heir, and to anſwer the King the value. In this Act this Treaſurer is intended of the Treaſurer of the Exchequer. See before in the Chap. of the Court of Exchequer.

Rot' Par' 1 R. 2. nu. 79. Rot' Par' 50 E. 3. nu. 118. * Ro' Par' 22 E. 4 nu. 16. not in print.

Amongſt the petitions of the Commons, they pray that the ſaid ſtatute of 14 E. 3. may be obſerved, which the King granted.

* It is provided by Act of Parliament in Anno 22 E. 4. that where ſundry of the Kings tenants holding of him immediately, as of his Dutchy of Lanc' by ſundry recoveries, fines and feoffments in uſe, defeated the King of Wardſhips of body and lands: It is enacted, that the King and his heirs ſhall have the Wardſhip and cuſtody of the body and lands of every ſuch perſon being within age, to whoſe uſe the fee ſimple or fee tail of any hereditaments ſo holden ſhall grow as heirs by the death of any of his Auncеſtors, and if they be of full age to have relief notwithſtanding any ſuch conveyance.

Ibidem, nu. 17.

An eran proviſion is made for writs to be granted out of the Chancery for the embeſiling of any ſuch heir upon ſuch purſuit of the Atturny of the Dutchy.

4 H. 7. ca. 17. A general law. Note the ſeveral pennings of theſe two ſeveral Acts.

By the ſtatute of 4 H. 7. it is provided that the Lord of Ceſti que uſe, no will being declared, &c. ſhall have a Writ of right of ward for the body and land, and the heir of Ceſti que uſe being of full age at the death of his Auncеſtor ſhall pay relief. And the heir of Ceſti que uſe ſhall have the like action of waſt, as if the Auncеſtor had died ſeiſed, &c.

Dier 1 & 2 El. fo. 174. b.

Upon this ſtatute, a caſe that had in Mich. 1 & 2 Eliz. depended undiſcuſſed thirty years, as the Lord Dier reports, but not in the Court of Wards, (for that Court had not then had ſo long continuance) but in the Chancery and the Court of Wards it had ſo long continued, though in 7 H. 8. it had been reſolved by all the Judges in the Exchequer Chamber, that Ceſti que uſe of lands in fee by Knights ſervice in Capite, and of lands holden of another Lord in ſocage dying ſeiſed of the uſe of both, his heir within age, and no will by him declared, that the prerogative ſhall hold place: which reſolution if it had bēn publiſhed in print, the tedious and chargeable ſuit had not ſo long continued.

Kylway 7 H. 8. 176. between Conisby and Throckmorton for the heir of Ruſſel.

Lib. 4 fo. 55. &c. Vin' 2 E. 6. ca. 8. Li. 7. fo. 45. Li. 8. 168, 169. See the 2 part of the Inſtit. Cap. the Statute of 2 c. 6. cap. 8 See 50 E. 3. nu. 184. See hereafter 1 H. 8. cap. 12 This Proclamation we have.

Now for Traverſes. Monſtrans de droit, &c. to be relieved againſt offices found for the King, you may read at large in our books, and eſpecially in the Sadlers caſe in the Fourth book of our Reports, which being of the birthright of the ſubject for his relief againſt a falſe office found, cannot be denyed upon juſt cauſe ſhewed, but not to be uſed for delay. This was the offence of Sir Richard Empſon and Edmund Dudley Privy Counſellors to King H. 7. and Makers of his forfeitures (a new and unaccuſtomed office) who cauſing ſecret and falſe offices (as ſhall appear hereafter) to be found, the parties grieved were denyed to have their traverſe, Monſtrans de droit, &c. which King H. 7. a little before his death being far gone into a conſumption, with great remorſe of conſcience amongſt other things repented, and by Proclamation under the Great Seal in print (amongſt other things) publiſhed in theſe words.

See the Statute of 1 H. 8. c. 12. in ratifying hereof.

And that none of his ſubjects ne make no doubt nor difficulty in all cauſes leefull to make traverſes, for his Highneſſe will expreſly and ſtraightly chargeth and commandeth his Chancellour and Treaſurer that they not onely admit ſuch traverſes, but alſo grant ferms, where the caſe ſhall require, according to the true courſe of his laws. Yers

Whereupon many men were admitted to their traverſes, and many on the other ſide were without remedy; for by the practice of Empſon and Dudley, many were not onely denyed to traverſe, but inforced upon ſuch falſe Offices to ſue out their generall Liveries, whereby they were concluded, and could not by Law be admitted to their traverſe.

King H. 8. in the firſt year of his reign intending to give remedy againſt ſecret Offices, doth by Act of Parliament provide, * That every Eſcheator and Commiſſioner ſhall ſit in convenient and open places, according to the Statute heretofore made: and that the ſaid Eſcheators and Commiſſioners ſhall ſuffer every perſon to give evidence openly in their preſence, to ſuch Inqueſts as ſhall be taken before any of them, upon pain of xl. li.

1 H.8. cap.8.
3 H.8.cap.2.
34 E.3. cap.13.
36 E.3. cap. 13.
23 H.6.17.

* By the procurement of Empſon and Dudley offices were found in ſecret places, and men were denied to give in evidence for proof of their rights and tenures.

And by the Preamble and other parts of this Act of 1 H. 8. the ſiniſter and unjuſt dealing of the ſaid Empſon and Dudley concerning the finding of Offices, are pourtrayed out, whereby the Kings Subjects then of late had bẽn ſore hurt, troubled, [a] and wronged, and ſome diſherited by ſine other wayes. 1. In cauſing untrue Offices to be found. 2. In returning of Offices that never were found. 3. In changing of the Offices that were truly found. 4. That Eſcheators and Commiſſioners were men of no libelihood, but indigent and unworthy perſons, ready to ſerve turnes, and having nothing to loſe, or to make ſatisfaction to the party grieved. 5. That Jurors were returned for the finding of Offices of no hability, or behaviour. 6. That the Eſcheator or Commiſſioner, when the Jury were agreed of their verdict, would not receive the ſame, but therein uſe delayes. 7. That the Clerk of the Petit Bag, &c. would refuſe to receive, and file ſuch inquiſitions as were found and offered to them. 8. The like of the Officer in the Exchequer, of Offices returnable into the Exchequer. 9. The Clerk of the Petit Bag would refuſe to tranſcribe the Offices, &c. into the Exchequer. For all which, and the other two before named, remedy is provided by this Act, as by the ſame appeareth. At the ſame Parliament for the redreſſe of parties grieved for ſuing out of Liveries, another Act is made, entituled, An Act concerning untrue Inquiſitions procured by *Empſon* and *Dudley*, in theſe words.

[a] See before ca. Of the high Court of Parliament.

1 H.8. cap.12.

Shewen to your diſcreet wiſdomes, that where divers and many untrue Inquiſitions by the procurement of *Richard Empſon* Knight, and *Edmund Dudley*, have been had and taken within this Realm, as well before Commiſſioners aſſigned by Letters Patents of the late King; King *H.7.* as before his Eſcheators, as well by vertue of Writs of the ſaid late King, as by vertue of their office, by the which Inquiſitions, ſometime parcel of the ſaid Lands contained in the ſaid Inquiſitions, and ſometime the whole Lands there founden holden of the ſaid late King in Capite, where in troth the ſaid Lands contained in the ſaid Inquiſitions, nor no parcel of them was holden of the ſaid late King in Capite, ne of any his Progenitors: To the which Inquiſitions the parties then grieved by the ſame, could not, nor might not take their traverſe to the ſame according to the Law of the Land, but were inforced and conſtrained to ſue their * Livery of the ſame out of the hands of the ſaid late King, whereby they were, and be [a] concluded to ſay, that the ſaid Lands be holden of the King in Chief, to their great loſſe and hindrance, where in truth they were not holden of the ſaid late King, ne of any his Progenitors. Wherefore be it enacted, ordained and eſta-

* This is intended of a general Livery.

General Livery concludeth.

[a] Mich.7. Jacobi reſolved by the two Chief Juſtices and the Chief Baron, and the Court of Wards, in *Holmes* Caſe. 1. That the ſuing of a general Livery concludeth the heir, as here it appeareth by this Act of Parliament, but otherwiſe it is of a ſpecial Livery, for that, as to the tenure, is but, *ut dicitur*. 2. That this concluſion or Eſtoppel continueth but during the life of the heir that ſueth the General Livery; for Jurors are ſworn *ad veritatem dicend'*, and are not bound by Eſtoppels. 3. That by ſuing of Livery, and the death of the heir, the office is executed, and hath taken his full effect, and therefore the Eſtoppel expireth therewith, and after the office cannot be traverſed. Vide 46 E.3. fo.12. 44 Aſſ. p. 35. *Nota dictum Mumbray ibidem, Si un tient de Roy, &c.* 1 H.4.6. 33 H.6. fol 7. per Laiton. Obſerve well the remedies provided by this particular Act. &c. whereby the Common Law is affirmed.

bliſhed

bliſhed by the King our Soveraign Lord, the Lords ſpiritual and temporal, and by the Commons in this preſent Parliament aſſembled, and by the authority of the ſame, that every perſon and perſons having poſſeſſion of the ſaid Lands contained in the ſame Inquiſitions, or any part thereof; may be admitted to have their traverſe to the ſaid untrue Inquiſitions, notwithſtanding any Livery ſued in the time of the ſaid late King *H.*7. And that it be furthered enacted by the ſame Authority, that any Livery ſued of the ſame in the time of the ſaid late King, in any thing contained in the ſame Livery, be any concluſion after the courſe of the Common Law, or in any wiſe hurtful or prejudicial to any perſon or perſons that ſhall happen to tend their traverſe to the ſaid Office, but that they and every of them ſhall be admitted to their traverſe to the ſaid Inquiſitions, and to have like advantage in the Law, as though no Livery had been ſued of the ſame in the time of the ſaid late King, and this at the reverence of God, and in the way of charity, &c. Provided alway, that they, or any of them which ſhall tend their traverſe to any of the ſaid Inquiſitions in any manner and form as is aforeſaid, ſhall not be reſtored to any mean iſſues or profits of Lands and Tenements compriſed in the ſaid Inquiſitions.

See the firſt part of the Inſtitutes Sect. 441. See before Cap. of the High Court of Parliament.

Now touching Liveries which in thoſe dayes were general, what a world of troubles the ſubjects ſuffered for miſſing of Livery in reſpect of pretended omiſſions, and the like, what charging the Subjects with values not found by any Office, nor appearing by any Melius inquirendum with mean rates where none were, or for longer time, than they were due, and the like, and theſe not recovered by courſe of Law, but ſending for the parties by Purſevants, and by their awful countenance mixt with menaces and threats, drew them to compoſitions: Which, and other like oppreſſions and injuſtice, filled King H.7. Coffers; for by the Cloſe Roll in Anno 3 H.8. it appeareth, that the King left in his Coffers Fifty and three hundred thouſand pounds, moſt part in forein Coin, which in thoſe dayes was not of leaſt value. Notwithſtanding King H. 8. at his Parliament holden in Anno 5. of his reign, Cap.7. moved for a Subſidie, and was denied it; whereupon an Act was made for taking out of general Pardons, as a mean to bring money to the King. But I perſwade my ſelf the Reader will inquire what became of theſe two wicked men, Empſon and Dudley. The anſwer is, that firſt they were ſeverally indicted as followeth.

5 H.8. cap.7.

*Juratores præſentant quod Richardus Empſon nuper de London Miles, nuper Conſiliarius excellentiſſimi Principis Henrici nuper Regis Angliæ Septimi, 10 die Maii, anno regni dicti nuper Regis viceſimo, ac diverſis vicibus antea & poſtea apud London, &c. Deum præ oculis non habens, ſed ut filius diabolicus imaginans honorem, dignitatem, & proſperitatem dicti nuper Regis, & proſperitatem regni ſui Angliæ minime valere, ſed ut ipſe magis ſingulares favores dicti nuper Regis adhibere * unde magnatem fieri potuiſſet, & totum regnum Angliæ ſecundum ejus voluntatem gubernare, falſo, deceptivè, & proditorie legem Angliæ ſubvertens, (inter alia) idem Richardus dictis die & anno apud London in Parochia & Ward' pred' &c. diverſas falſas Inquiſitiones, & Officia de intruſionibus & alienationibus, de maneriis, terris, & tenementis, diverſis legeis ipſius nuper Regis inveniri procuravit & excitavit, quod ipſi maneria, terras & tenementa in Inquiſitionibus illis ſpecificat' de domino Rege in Capite vel aliter tenerent, cum ita non fuit, ac poſtea cum dicti ligei dicti nuper Regis ad Inquiſitiones illas ſic fact' traverſiat in Curia ipſius nuper Regis ſecundum legem Angliæ tendere & allegare voluiſſent, iidem ligei ad traverſias illas admitti non potuiſſent, ſed ſe debitis & legitimis*

* Ambitio.

Proditorie legem Angliæ ſubvertens

Falſas Inquiſitiones & Officia &c.

Ad traverſias admitti non potuiſſent.

legitimis traversiis ad officia prædict' faciend' custodivit & retardavit, quousque ipsi cum dicto Ricardo diversas & magnas & importabiles fines & redemptiones, tam pro commodo ipsius nuper Regis, quam pro singulari commodo ipsius Ricardi fecer. in magnam depauperationem eorundum ligeorum. Et quod prædictus Ricardus dict. die & anno in Parochia & Warda prædict. ac diversis vicibus antea & postea, diversos ligeos dict. nuper Regis de dicto domino Rege diversa maneria, terras & tenementa per servic. Milit. tenent, & mori: antecessor. suis ipsis infra ætatem existent. & in custodia dict. nuper Regis ratione tenuræ suæ, cum ad ætates legitimas pervenerunt, & debitam liberationem maneriorum, terrarum, et tenementorum suorum secundum formam & legem Angliæ, ac secundum cursum Cancellariæ ipsius nuper Regis prosequi voluissent, ad hoc recipi non potuissent, sed ad hoc faciend. totaliter negat. & exclus. fuerunt, quousque ipsi cum prædict. Ricardo diversas magnas & importabiles fines & redemptiones, tam pro commodo ipsius Regis, quam pro commodo ipsius Ricardi fecer. in magnam depauperationem eorundem ligeorum ejusdem nuper Regis. (And the conclusion of the Indictment is;) *Per quod plures & diversi populi dicti nuper Regis hiis gravaminibus et injustis extortionibus multipliciter torquebantur, in tantum quod populi dicti nuper Regis versus ipsum Regem multipliciter murmurabant, & malignabant in magnum periculum ipsius nuper Regis regni sui Angliæ, ac subversionem legum & consuetudinum ejusdem regni.*

Pro singulari commodo ipsius Ricardi.

Ad debitam liberationem admitti non potuissent.

The residue of the indictment concerning other exorbitant oppressions and grievances, are worthy to be read, but concern not the matter in hand.

True it is, that in this Indictment [proditorie] was used but for aggravation, and as a preparative to greater offences, for in the same year they were both indicted of high Treason both by the Common Law, and Act of Parliament, and in the 2 year of H. 8. they lost both their heads. And albeit in some respects the special Livery is for the benefit of the heir, yet the fees and charges are so great and the Bonds and Covenants, &c. so many, so intricate, and dangerous, as it were worthy to be redressed, for the ease and quiet of the fatherlesse, and widdow, (being no benefit to the King, but to fill the purses of Clerks and Officers) by authority of Parliament; and the rather, for that special Liveries were of ancient time, as short as the charges thereof; whereof you may read a notable president, when Wardships and Liveries were in their Cradles which followeth in these words.

Quorum vestigiis qui insistunt, eorum exitum per horrescant.

Ricardus Dei gratia Rex Angliæ, Dux Normaniæ, Aquitaniæ, Comes Andegaviæ, Archiepiscopis, Episcopis, Abbatibus, Comitibus, Baronibus, Justiciariis, Vicecomitibus, & omnibus Ballivis, & fidelibus suis, ad quos præsens Charta pervenerit, Salutem. Sciatis nos [a] *concessisse, & presenti Charta nostra confirmasse dilecto & fideli nostro* [b] *Galfrido filio Petri, & Beatriciæ de Sayeo uxori ejus, tanquam justo et propinquiori hæredi, totam terram Comitis* [c] *Willielmi de Mandevile, quæ ei jure hæreditario pertinebat, cum omnibus pertinentiis, et libertatibus, et liberis consuetudinibus suis. Quare volumus, & firmiter præcipimus quod prædicti Galfridus & Beatrix uxor sua, & hæredes eorum habeant & teneant de nobis & hæredibus nostris totam prædictam terram cum pertinentiis suis, sicut prædictus Comes Willielmus de Mandevile eam melius, & liberius, & honorificentius, et integrius, et quietius habuit unquam & possedit, in bosco, & plano, viis, semitis, pratis, pascuis, pasturis, aquis, vivariis, stagnis piscariis, molendinis, turbariis, in advocationibus Ecclesiarum, in custodiis valectorum, et donationibus puellarum, et in omnibus aliis locis et aliis rebus. Hiis testibus Waltero Rothomagensi Archiepiscopo, Johanne Eboracensi Episcopo, Rogero de Pratellis Dapifero*

Vide in the history of Hovenden, p. 446. 2 R. 1.

a Nota, *concessisse* is a sure word in omnem eventum and will answer to a Livery.

b This Geffery Fitzpeter was after Chief Justice of England.

c This Will. de Mandevile was Earl of Essex.

fero noſtro, Richardo de Kanvile, Betrano de Verdano, Radulpho filio Godefredi Camerario noſtro. Datum per manum Magiſtri R. mali catuli Clerici noſtri Anno regni noſtri ſecundo, xxiij. *die Januarii apud Meſſanam.*

Now are we arrived at the ſaid Act of Parliament in Anno 32 H.8. wherein, and in the Statute of 33 H.8. beſides the expoſition of the ſeveral Terms, we will obſerve what alterations theſe two Acts have made.

¶ Ordaineth, maketh, eſtabliſheth, and erecteth a Court, &c.] Herein three things are to be obſerved. 1. That this new Court could not be erected without an Act of Parliament. 2. That when a new Court is erected, it is neceſſary that the juriſdiction and authority of the Court be certainly ſet down. 3. That the Court can have no other juriſdiction, then is expreſſed in the erection, for this new Court cannot preſcribe.

Paſch. 6. Ja. the Biſhop of Saliſburies caſe.

Paſch. 6. Ja. the caſe between the King and the Biſhop of Salisbury, referred to the two Chief Juſtices and chief Baron, by the Lords of the honourable Order of the Garter, was this. King E. 4. by his Letters Patents in French, bearing date 10 Octobris, An. 15. of his reign, reciting, that where there was no Office of the Chancellor of the Garter, that there ſhould be ſuch an Office of the Chancellor of the Garter, & that none ſhould have it but the Biſhop of Salisbury for the time being: We will and ordain, that Richard Beauchampe, now Biſhop of Salisbury, ſhould have it for his life, and after his deceaſe, that his Succeſſors ſhould have it for ever. And amongſt divers other points it was reſolved unanimouſly, that this grant was void, for that a new Office was erected, and it was not defined what juriſdiction or authority the Officer ſhould have, and therefore for the incertainty it was void. Which being reported to the Lords, they were well ſatisfied therewith, and thereupon the Office was granted to Sir John Herbert the Kings Secretary.

¶ A Court of Record.] Where it is to be noted, that albeit the proceeding in this Court be in Engliſh, yet it is a Court of Record by expreſſe words of the Act.

¶ And ſhall have alſo a Seal, &c.] This is alſo neceſſary to a Court.

¶ That all Wards, &c.] This Clauſe extendeth as well to the Counties Palatines of Lancaſter, Cheſter, and Dureſme, as to any other the parts of the Realm of England, but in ſeveral manners. For as to the Wards within the Realm of England (out of the ſaid Counties Palatines) the Writ for the finding of the Office &c. iſſueth out of the Chancery of England, returnable in the Chancery of England. And as to the Wards in the Counties Palatines of Lancaſter and Dureſme, the Writ likewiſe iſſueth out of the Chancery of England, but is returnable into the Chancery reſpectively of theſe two Counties Palatine, and the Chancellors thereof are to tranſcript them into the Court of Wards.

V. Rot. Par. 9. R. 2. nu. 13. the reſolution of all the Judges of Eng. what right the Duke of Lancaſter had to the Wardſhip of Iſabel the Heir of Tho. of Lathom Whom Sir John Stanly had married, for the manor of Lathom holden of him in chief as of his Count Palatin. V. 26. H. 8. 9. b

[a] But for Wards in the County Palatine of Cheſter, no writ iſſueth out of the Chancery of England, but it ought to be found by force of a Writ or Commiſſion out of the Chancery there in the Exchequer, and tranſcripted by the Chamberlain of that County Palatine into the Court of Wards. [b] Nos dum hæredes in cuſtodia noſtra exiſtunt, indemnes & ſine exhæredatione conſervare tenemur.

a 14 Eliz. Dier. 303.
b Mich. 26 E. 1. coram Rege. Buck. Will. de Ludars caſe.

[c] And by this Clauſe of this Act of 32 H. 8. the power that the Lord Chancellor and Treaſurer had for letting of Wards lands, &c. is taken away.

c 8 H. 6 cap. 16. 18 H. 6. cap. 6.

[d] By the ſtatute of 18 Eliz. it is enacted, That all inquiſitions and offices to be found before any Eſcheator or Commiſſioners, by vertue of any Writ or Commiſſion, or otherwiſe within the ſaid County Palatines of the ſaid Dutchy of Lanc', Cheſter, and Dureſme, or any of them, ſhall be returned by the ſaid Eſcheators or Commiſſioners within one moneth next after the taking of any ſuch Office or Inquiſition into ſuch place or places, and to ſuch office and offices, as heretofore they have uſually been accuſtomed to be certified and returned into, upon pain to forfeit for every default xl. li. to the uſe of our ſaid Soveraign Lady, her heirs

d 18 Eliz. cap. 13.

and

and ſucceſſors. And that the Clerk of the ſaid Dutchy of Lanc', the Vicechamberlain of the ſaid Earldom of Cheſter, and the Chancellor of the ſaid County Palatine of the ſaid Biſhoprick of Dureſme, or other the ſaid Officers or Miniſters within the ſaid Counties Palatines, or their Deputy or Deputies, and every of them for the time being having authority to receive any ſuch Office or Inquiſition, to whoſe hands any ſuch Office or Inquiſition ſhall come to, ſhall certifie or cauſe to be certified under his or their hands in parchment the true tranſcript of every ſuch Office or Inquiſition taken before any of the ſaid Eſcheators or Commiſſioners unto the Maſter of the ſaid Court of Wards and Liveries, in ſuch like manner, form and ſort, as is limited and appointed the Clerks of the Petit Bag in her Highneſs ſaid Court of Chancery to tranſcript the ſame, upon pain to forfeit for every ſuch default 5 li. to the uſe of our ſaid Soveraign Lady, her Heirs and Succeſſors: which tranſcript ſo to be certified ſhall there remain of Record in like manner and form to all intents and purpoſes, as the tranſcripts of other Offices already certified in the ſaid Court by the Petit Clerks of the Petit Bag in her Majeſties high Court of Chancery, are uſed: any Cuſtome, Statute, Act, Proviſo or Proviſoes heretofore had, made, or uſed to the contrary in any wiſe notwithſtanding.

The ſtatute of 32 H.8. for erection of the Court of Wards extended only to Wards: but the ſtatute of 33 H.8. annexeth to this Court Liveries alſo. Now in what caſes the Heir ſhall be in Ward or ſue his Livery, either by the Common law, or by the ſtatutes and ſpecially of 32 H. 8. and 34 H. 8. &c. and of all incidents to the ſame, you ſhall read plentiful matter both in the Firſt part of the Inſtitutes Cap. Eſcuage, & Cap. Service de Chivalier. **And alſo in the Books of my Reports.**

¶ Which the Kings Highneſs &c.] **Although ſucceſſors be not here named, yet (Kings Highneſſe) being ſpoken in his Royal and politick capacity, which never dieth, doth extend to his Succeſſors: otherwiſe this Court had been diſſolved by the demiſe of H.8.**

[a] **All the Juſtices in** Ireland **certified,** Quod homagium tantum dat ſecundum conſuetudinem terræ Hiberniæ cuſtod' & maritag', licet ſervicium militare, non debeatur.

[a] Mich. 7 E.1. in Banco. Rot. 126. Warw. Abbot of Malmſburies caſe.

¶ [b] Intituled to have] **That is by Office to be found.**

[b] See 33 H. 8. cap. 22. A proviſo for the Dutchy of Lancaſter.

¶ With their Manors and Lands, &c.] **This Clauſe extendeth only to the Inheritances of the Ward, and not to any of his goods or chattells, debts, or duties, &c. but hereof more ſhall be ſaid hereafter in his proper place.**

¶ In the order, ſurvey and governance of the ſaid Court.] [c] **The generall words of this Act extend not into** Ireland, **for that is a divided, and diſtinct Kingdome, and hath a proper Seal.** [d] **Nor to the Iſle of Man, becauſe it is no part of the Realm of** England, **and out of the power of the Chancery of** England, **and not to be bound by our Parliament of** England, **but by ſpecial name.**

[c] 14 Eliz. Dier 303.

[d] Mich. 14. H.8. *Tenus per Brudnel, Brook & Fitz.* in Kelways Report. And ſo was it holden Trin. 40 Eliz. by Popham, Anderſon, & Peream, upon a caſe referred to them by the Lords of the Councel, between the Earl of Derby and the Heirs generall.

¶ And that the Maſter of the ſaid Wards] **By this Clauſe the Maſter only hath power to award Proces.**

¶ Such Proces and Precepts with reaſonable pains therein limited, as be now commonly uſed in the Court of the Dutchy Chamber of Lancaſter being at Weſtm.] [e] **Note, the Dutchy of Lancaſter was created a County Palatine by Act of Parliament in** Anno 50 E.3. Adeo plene & integre ſicut comes Ceſtriæ infra eundem com. Ceſtriæ dignoſcitur obtinere. **And hereupon the Court of Wards is well warranted to be a Court of Equity, and accordingly from the erection hereof it hath proceeded.**

[e] See more hereof in the Chap. of the Court of the Dutchy of Lancaſter. And Pl. com. fo. 214. & 215.

¶ [f] For or concerning the Title of the Kings Majeſty.] **This is evident.**

[f] Pl. com. fo. 115. 116. in *Townſends* caſe.

¶ And that the Maſter of the Court of Wards for the time being ſhall make and appoint all and ſingular particular Receivers, Feodaries, and Surveyors in every Shire, and alſo fees for the execution of the ſame under the Seal of the ſame Office in ſuch wiſe as the ſame Officers may be alwayes removeable at the diſcretion of the ſaid Court.] Feodarius

* See the firſt part of the Inſt. Sect. 1.

Feodarius or Feudatorius is derived à Feodo ſeu Feudo, which in one ſenſe ſignifieth a * Seigniory or Tenure: His Office conſiſteth principally in three things: 1 And principally to be skilful in the knowledge of the Kings Tenures within his Office out of Records and authentical Books. 2 At the finding of Offices to do his uttermoſt indeavour to manifeſt the truth concerning the Kings Tenures. 3 After the Office found to ſurvey the Wards lands, and rate it.

¶ Or other cauſe in any wiſe touching or concerning any thing appointed to the order of the ſaid Court, for, and on the behalf of our Soveraign Lord the King.] By this Clauſe, if the Heir within age and in Ward have any goods and chattels, debts, duties, or other thing due unto him, an information may be exhibited by his Majeſties Attorney of his Wards for his Majeſty on the behalf of the Heir; for this doth touch or concern the value of the Wardſhip of the body, which is appointed by this Act to the order and ſurvey of this Court, for the value of the marriage is hereby advanced. But if the Heir at the death of his Anceſtor be of full age, ſeeing the primer ſeiſon is certain, no ſuit can be in this Court for any goods, chattels, debts, &c. belonging to the Heir of full age: * for this doth not in any wiſe concern any thing appointed to the order of this Court, viz. neither the Wardſhip of the body, or of the lands of the Heir.

See Pl. Com. fol. 295. Carils caſe.
See Mag. Car. cap. 5. The ſtock of goods ſhall be reſtored to the heir.
Glanvil fol. 54.
Fleta li. 1. ca. 11.
* Prærogativa regis. cap. 3.

¶ Alſo be it enacted that the ſaid Attorny Receiver General, and Auditors, &c.] The Judges of this Court are the Maſter, the Surveyor, the Attorney, Receiver General, and the Auditors of that Court. For the words of the ſtatute of 32 H. 8. are, That the ſaid Attorny, Receiver General, and Auditors, ſhall diligently from time to time attend upon the ſaid Maſter in the ſaid Court for for the hearing and ordering of matters and cauſes, &c. and the ſtatute of 33 H. 8. hath added the Surveyor in the ſecond place in that Court: and albeit honoris cauſa, they are to attend on the Maſter, as the chief and principal Officer of the ſaid Court, for ſo he is ſtiled by both the ſaid ſtatutes: yet ſuch attendance is for the hearing and ordering of matters and cauſes, &c. which maketh them Judges. And ſee the Oath of the Surveyor which proveth his Office to be judicial: for by the ſtatute 33 H. 8. his Oath is (*inter alia*) That he ſhall miniſter equal juſtice to rich and poor, &c. and that he take no gift or reward for any matter depending, &c. in that Court. And the like Oath in effect taketh the Attorny, the Receiver Generall and Auditors, by the ſaid Act of 32 H. 8. And ſo it was reſolved in Auditor Curles caſe when Robert Earl of Salisbury was Maſter of the Wards and Lord Treaſurer of England.

Hil. 7. Jac. li. 11. fo. 2. & 3. in Auditor Curles caſe.

See the ſtatute of Lincoln 29 E. 1. Stanf. Prær. Regis Ca. Reſeiſer. See a notable caſe upon that ſtatute within three years after the making thereof. Hil. 32. E. 1. Coram rege. Northampton Jorden Twinewilkes caſe.

At the Parliament holden 18 Jacobi Regis it was moved on the Kings behalf, and commended by the King to the Parliament for a competent yearly rent to be aſſured to his Majeſty, his heirs & ſucceſſors, that the King would aſſent that all Wardſhips, primer ſeaſons, reliefs for tenures in capite, or by Knights Service ſhould be diſcharged, &c. Wherein amongſt certain old Parliament men theſe thirteen things did fall into conſideration for the effecting thereof.

1. That it muſt be done by Act of Parliament, and otherwiſe it cannot be done.

2. That all Lands, Tenements, Rents, or Hereditaments, holden of the King, to be holden by fealty only, as of ſome honour, and ſuch rent, as is now due.

3. That all Lands holden of Subjects, Bodies Politick or Corporate, by Knights ſervice to be holden by fealty, and ſuch rent, as is now due: for if Lands ſhould be holden of them by Knights ſervice, the ſame might come to the King.

4. All Subjects, Bodies Politick and Corporate to be diſabled to take any Lands,

Lands, Tenements, Rents, or Hereditaments of the King, his Heirs, or Successors by any other tenure than by fealty only, and yearly rent, or without rent of some honor.

5. No Subject, Bodies Politick or Corporate, to create by any license, or any other way or means, any other tenure than by fealty and rent, or without rent upon any estate in fee-simple, fee-tayl, or otherwise.

6. In respect of the said discharge and freedom of the Subjects and their posterities, and that they shall be also discharged thereby of fines and licenses of alienations, respect of homage and reliefs; * a Competent rent to be assured to the King, his Heirs, and Successors, of greater yearly value than he or any of his Predecessors had for them all, which rent is to be inseparably annexed to the Crown, payable at the Receipt only.

*First search must be made what the King hath been answered for these, &c.

7. A convenient rent to be assured to the Lords for every Knights fee, and so ratably.

8. Commissions for the finding out of the tenures of the King, and the Subject to be returned, &c.

9. Ideots and Madmen to be in the custody of some of their kindred, &c. and not of the King, his Heirs or Successors.

10. The Court of Wards to be dissolved with Pensions to the present Officers.

11. Provision to be made for regulating of Gardian in Socage, and that the Ancester may appoint Gardians, &c. and that no Gardian shall make a grant to the King.

12. Provision to be made that Bishops shall continue Lords of Parliament, notwithstanding their Baronies be holden in Socage.

13. That the Act shall be favourably interpreted for discharge of all Wardships, &c.

Which motion, though it proceeded not to effect, yet we thought good to remember it, together with these considerations; * hoping that so good a motion tending to the honour and profit of the King and his Crown for ever, and the freedom and the quiet of his Subjects and their posterities, will some time or other (by the grace of God) by authority of Parliament one way or other take effect and be established.

* *Spes est vigilantis somnium.* Hope is the dream of a waking man.

And we will conclude this Chapter with holy Scripture: Deus est pater Orphanorum, & Judex viduarum. And again, Deus custodit advenas, pupillum, & viduam suscipiet. And lastly, in Deuteronomy 27. 19. Maledictus est qui pervertit judicium advenæ, pupilli, & viduæ.

Psal. 46. 9. & 67. 6.

Deut. 27. 19.

CAP.

CAP. XXXVI.

The Court of the Dutchy Chamber of Lancaſter at Weſtm.

FOraſmuch (as it hath been ſaid) the Court of Wards hath ſome reference to this Court of the Dutchy, we thought it fit to treat of this Court of the Dutchy next after the ſaid Court of Wards, for that it may give ſome light thereunto. Now for that the County of Lancaſter is a County Palantine, it ſhall be neceſſary to ſhew the beginning and erection thereof.

Rot. Pat. Anno 29 E. 3.

King Edward the 3. created John his fourth ſon Earl of Richmond, Anno Domini 1355. He 19 Maii Anno Domini 1359. married Blanche youngeſt daughter of Henry Duke of Lancaſter (the ſecond Duke that England ſaw.) Duke Henry dyed of the plague, Anno 35 E. 3. At the Parliament holden Anno 36 E. 6. the King in full Parliament did gird his ſon John with a ſword, and ſet on his head a Cap of Furre, and upon the ſame a circle of gold and pearls, and named him Duke of Lancaſter, and thereof gave to him, and to his heirs males of his body, and delivered him a Charter.

Rot. Par. 36 E. 3. nu. 36. 37.
Rot. Pat. Anno 36 E. 3.

In full Parliament, Anno 50 E. 3. the King erected the County of Lancaſter a County Palatine, and honored the Duke of Lancaſter therewith for tearm of his life in theſe words.

Rot. Pat. Anno 50 E. 3. See the 2. part of the In. Mag. Cart. c. 31. 32 H. 6. f. 13. the King may make a County Palatine by his Letters Patents without Parliament.

Edwardus Dei gratia, &c. Sciatis quod ſi nos debita conſideratione penſantes geſtus magnificos cunctorum qui nobis in guerra noſtra laudabiliter & ſtrenue ſervierunt, ipſos deſideramus honoribus attollere, & pro viribus juxta merita præmiare, quanto magis filios noſtros, quos tam in ſapientia, quam in geſtu nobili alios præcellere conſpicimus, & qui nobis locum tenuerunt, tenere poterunt potiorem, nos convenit majoribus honoribus & gratiis prærogare? Conſiderantes itaque probitatem ſtrenuam, & ſapientiam præcellentum chariſſimi filii noſtri Johannis Regis Caſtellæ & Legionis, Ducis Lancaſtriæ, qui laboribus & expenſis ſemper ſe nobis obſequioſum exhibuit pro nobis pluries in neceſſitatibus intrepide ſe guerrarum diſcriminibus exponendo, & volentes eo prætextu, ac deſiderantes eundum filium noſtrum aliquali commodo & honore ad præſens (licet non ad plenum prout digna merita expoſcunt) remunerare; ex certa ſcientia noſtra, & læto corde [a] de aſſenſu Prælatorum & procerum in inſtanti Parliamento noſtro apud Weſtm. convocat. exiſten. [b] Conceſſimus pro nobis & hæredibus noſtris præfato filio noſtro quod ipſe ad totam vitam ſuam habeat infra Comitatum Lancaſtriæ Cancellariam ſuam, ac Brevia ſua ſub ſigillo ſuo pro officio Cancellarii, deputando, conſignando Juſticiarios ſuos tam ad Placita Coronæ, quam ad quæcunque alia placita communem legem tangentia, tenenda, ac cognitiones eorumdem, & quaſcunque executiones per brevia ſua & miniſtros ſuos faciendas. Et quæcunque alia libertates & jura regalia ad comitatum Palatinum pertinentia, adeo libere & integre ſicut comes Ceſtriæ infra eundem Comitatum Ceſtriæ dignoſcitur obtinere, &c.

a De aſſenſu Prælator. & procer. 12 E. 4. 16.
b 5 things to be obſerved for erecting a County Palatine.
1 Cancellaris.
2 brevia ſub ſigillo ſuo. 3 Juſticiarios ſuos tam ad Placita Coron. quam alia placita, &c.
4 Quæcunq; alia jura regalia ad Com. Palatinum pertinentia.
5 Adeo libere & plene prout comes Ceſtriæ. See 19 H. 6. 12.
11 E. 4. 8.

[c] But it appeareth by the Book of 26 E. 3. 59. b. that the ſaid Henry Duke of Lancaſter had the like grant; for there in a Præcipe the tenant vouched, and that he might be ſummoned in the County of Lanc', and the Vouchee challenged, becauſe in the County of Lancaſter the Kings writ did not run, ſed non allocatur, but a writ ſent to the Duke or to his Lieutenant to ſummon the Vouchee in the ſame manner as it ſhould be done in Cheſter. Vid. 39. E. 3. Voucher 198.

c 26 E. 3. 59. b.

Divers have Counties Palatines that are not Earls, as ſhall appear hereafter.

It is called Comitatus Palatinus, a County Palantine, not à Comite in reſpect of the dignity of an Earl, but à Comitatu, & à Palatio regis, becauſe the owner thereof be he Duke or Earl, &c. hath in that County Jura regalia, as fully as the King

King had in his Palace, from whence all Iuſtice, Honors, Dignities, Franchiſes and priviledges, was from the fountain, at the firſt flowed. Neither by this Chapter as the Duke of Lancaſter created Count Palatine, but the County was made a County Palatine. The power and authority of thoſe that had County Palatines was King-like, for they might pardon treaſons, murders, felonies, and outlawries thereupon. They might alſo make Iuſtices of Eire, Iuſtices of Aſſiſe, of Goal-delivery, and of * the Peace. And all original, and judicial writs, and all manner of indictment of treaſons and felony, and the proceſſe thereupon were made in the name of the perſons having ſuch County Palatine. And in every writ and indictment within any County Palatine, it was ſuppoſed to be contra pacem of him that had the County Palatine. But theſe and ſome others are taken away from them that have ſuch Counties Palatines, and annexed to the Crown, and all writs to be made in the Kings name, but the Teſte is in the name of him that hath the County Palatine: and they ſhall have forfeitures of lands and goods for high treaſon, which forfeiture accreweth by the Common law. But for treaſons or forfeits given after the erection of the County Palatine by any Act of Parliament, they ſhall not have them.

* 20 H.7.6.8.

27 H.8.cap.24.

Paſch.12. Eliz. Dier 288,289.

Iuſtices of Aſſiſe, of Goal-delivery, and of the Peace are and ever ſince the erection of the County Palatine of Lancaſter have been made and aſſigned by Commiſſion under the Seal of the County Palatine of Lancaſter.

27 H.8.cap.24.

In the County Palatine of Lancaſter fines were levied with three Proclamations, &c. before the Iuſtices of Aſſiſe there, or one of them: and all recoveries to be had of any lands or tenements in the County Palatine are to be had in the Court of that County Palatine, and cannot be had at Weſtm.

37 H.8.ca.19. 36 H.6.fo.33. 9 H.7.fol.12.

[a] In treſpaſſe in the County Palatine of Lancaſter, the Defendant pleaded a forein releaſe, the Court preſired a day to the parties in Bank, the Record muſt be moved by Certiorari in Chancery, and by Mittimus into the Bench, there to be tryed.

a 22 H.6.48. b 27 E.3.84. 21 H 7.33.

[b] If iſſue be joyned in the Kings Bench, or Common Bench, tryable in the County Palatine of Lancaſter, it ſhall be tryed in the County of Lanc' and remaunded hither.

39 H.6.21, 22. 19 H.6.12. 32 H.6.25. 19 E.3. trial 66.

[c] Where a releaſe or other ſpecial deed is pleaded in Bar in any Court at Weſtminſter, within a franchiſe where the Kings Writ runneth not, it ſhall be tryed where the writ is brought. See the books quoted in the margent. And in this variety of opinions I hold the Law to be, that this ſtatute of 9 E.3. extends not to caſes when any other iſſue is joyned tryable in the County Palantine or other franchiſe: And I ground my opinion upon the reſolution of all the Iudges of England in the Exchequer Chamber, in Anno 32 H.6.25. See 39 H.6.21,22. 21 H.7.33. 21 E.4.33,34,35,56.

45 E.3.viſne 50. c 9 E.3. cap.4. 8 Aſſ.27. 10 E.3. 41. 19 H.6.12. 53.21 E.4.8. a & b 17 E.3.84. 46 E.3. Viſne 53. *Per touts les Iuſtices.* 10 H.4.40. 10 H.6.15,16. Per Martyn.

Vid. Lib.Intr.fo.81,82. pl.8. Henry Parayes caſe in debt, In Camera Guild-hall Civitatis London.

8 H.6.3. per Strange Lib.Int. Raſtall fol.

[d] King H.4 by his Charter by Authority of Parliament, Anno primo of his reign, doth ſever the poſſeſſions of the Dutchy, &c. from the Crown: And that which John of Gaunt held for life, is eſtabliſhed for ever, and [e] ſpecially by the ſtatutes of 1 E.4. and 1 H.7. hereafter mentioned: and this ſeparation H.4. made, for that he knew he had the Dutchy of Lancaſter (*par multis regnis*) by ſure and indefeſible title: and he could not be both Rex and Dux, but ſpecially that his title to the Crown was not ſo aſſured, for that after the deceaſe of R.2. the right of the Crown was in the heir of Lionell Duke of Clarence, ſecond ſon of E.3. John of Gaunt Father of H.4. being the fourth ſon: and therefore he intended not, that by the law of the Crown the Dutchy ſhould go with the Crown, & that he ſhould be ſeiſed thereof in right of the Crown, as the King afterwards was of the poſſeſſions of the Dutchy of York, Earldome of March, and others.

d Ro.Pa. 1 H.4. intituled Carta Regis H.4. *De ſeparatione Ducatus Lancaſtriæ à Corona authoritate Parliamenti anno regni ſui primo.* e Rot.Par. 1 E.4. Pl.Com.219.b.

Humphery de Bohun Earl of Hereford, Eſſex, and Northampton being the firſt and laſt Earl of that name, and ſeiſed of large poſſeſſions in England and Wales, had iſſue two daughters; * Eleanor the eldeſt married to Thomas Duke of Gloue', and Mary married to the Earl of Hertford.

* Vide Rot. Par. 1 H.6. Partition recited an 9 H. 5. between H. 5. and the ſaid Eleanor.

It

CAP. XXXVI.

The Court of the Dutchy Chamber of Lancaster at Westm.

FOrasmuch (as it hath bæn said) the Court of Wards hath some reference to this Court of the Dutchy, we thought it fit to treat of this Court of the Dutchy next after the said Court of Wards, for that it may give some light thereunto. Now for that the County of Lancaster is a County Palantine, it shall be necessary to shew the beginning and erection thereof.

Rot. Pat. Anno 29 E. 3.

King Edward the 3. created John his fourth son Earl of Richmond, Anno Domini 1355. He 19 Maii Anno Domini 1359. married Blanche youngest daughter of Henry Duke of Lancaster (the second Duke that England saw.) Duke Henry dyed of the plague, Anno 35 E.3. At the Parliament holden Anno 36 E. 6. the King in full Parliament did gird his son John with a sword, and set on his head a Cap of Furre, and upon the same a circle of gold and pearls, and named him Duke of Lancaster, and thereof gave to him, and to his heirs males of his body, and delivered him a Charter.

Rot. Par. 36 E.3. no.36.37.

Rot. Pat. Anno 36 E.3.

In full Parliament, Anno 50 E.3. the King erected the County of Lancaster a County Palatine, and honored the Duke of Lancaster therewith for tearm of his life in these words.

Rot. Pat. Anno 50 E.3. See the 2. part of the In. Mag.Cart.c. 31.

Edwardus Dei gratia, &c. Sciatis quod si nos debita consideratione pensantes gestus magnificos cunctorum qui nobis in guerra nostra laudabiliter & strenue servierunt, ipsos desideramus honoribus attollere, & pro viribus juxta merita præmiare, quanto magis filios nostros, quos tam in sapientia, quam in gestu nobili alios præcellere conspicimus, & qui nobis locum tenuerunt, tenere poterunt potiorem, nos convenit majoribus honoribus & gratiis prærogare? Considerantes itaque probitatem strenuam, & sapientiam præcellentum charissimi filii nostri Johannis Regis Castellæ & Legionis, Ducis Lancastriæ, qui laboribus & expensis semper se nobis obsequiosum exhibuit pro nobis pluries in necessitatibus intrepide se guerrarum discriminibus exponendo, & volentes eo prætextu, ac desiderantes eundem filium nostrum aliquali commodo & honore ad præsens (licet non ad plenum prout digna merita exposcunt) remunerare; ex certa scientia nostra, & læto corde [a] de assensu Prælatorum & procerum in instanti Parliamento nostro apud Westm. convocat. existen. [b] Concessimus pro nobis & hæredibus nostris præfato filio nostro quod ipse ad totam vitam suam habeat infra Comitatum Lancastriæ Cancellariam suam, ac Brevia sua sub sigillo suo pro officio Cancellarii, deputando, consignando Justiciarios suos tam ad Placita Coronæ, quam ad quæcunque alia placita communem legem tangentia, tenenda, ac cognitiones eorumdem, & quascunque executiones per brevia sua & ministros suos faciendas. Et quæcunque alia libertates & jura regalia ad comitatum Palatinum pertinentia, adeo libere & integre sicut comes Cestriæ infra eundem Comitatum Cestriæ dignoscitur obtinere, &c.

a De assensu Prælator. & procer. 12 E.4. 16.
b 5 things to be observed for erecting a County Palatine.
1 Cancellaria.
2 brevia sub sigillo suo. 3 Justiciarios suos tam ad Placita Coron. quam alia placita, &c.
4 Quæcunq; alia jura regalia ad Com. Palatinum pertinentia.
5 Adeo libere & plene prout comes Cestriæ. See 19 H.6. 12. 11 E.4.8.

But it appeareth by the Book of 26 E.3. 59. b. that the said Henry Duke of Lancaster had the like grant; for there in a Præcipe the tenant vouched, and that he might be summoned in the County of Lanc', and the Vouchee challenged, because in the County of Lancaster the Kings writ did not run, sed non allocatur, but a writ sent to the Duke or to his Lieutenant to summon the Vouchee in the same manner as it should be done in Chester. Vid. 39. E.3. Voucher 198.

c 26 E.3.59. b.

Divers have Counties Palatines that are not Earls, as shall appear hereafter.

It is called Comitatus Palatinus, a County Palantine, not à Comite in respect of the dignity of an Earl, but à Comitatu, & à Palatio regis, because the owner thereof be he Duke or Earl, &c. hath in that County Jura regalia, as fully as the King

King had in his Palace, from whence all Justice, Honors, Dignities, Franchises and privileges, was from the fountain, at the first flowed. Neither by this Chapter as the Duke of Lancaster created Count Palatine, but the County was made a County Palatine. The power and authority of those that had County Palatines was King-like, for they might pardon treasons, murders, felonies, and outlawries thereupon. They might also make Justices of Eire, Justices of Assise, of Goal-delivery, and of * the Peace. And all original, and judicial writs, and all manner of indictment of treasons and felony, and the processe thereupon were made in the name of the persons having such County Palatine. And in every writ and indictment within any County Palatine, it was supposed to be contra pacem of him that had the County Palatine. But these and some others are taken away from them that have such Counties Palatines, and annexed to the Crown, and all writs to be made in the Kings name, but the Teste is in the name of him that hath the County Palatine: and they shall have forfeitures of lands and goods for high treason, which forfeiture accreweth by the Common law. But for treasons or forfeits given after the erection of the County Palatine by any Act of Parliament, they shall not have them.

* 20 H.7.6.8.

27 H.8.cap.24.

Pasch. 12. Eliz. Dier 288,289.

Justices of Assise, of Goal-delivery, and of the Peace are and ever since the erection of the County Palatine of Lancaster have been made and assigned by Commission under the Seal of the County Palatine of Lancaster.

27 H.8.cap.24.

In the County Palatine of Lancaster fines were levied with three Proclamations, &c. before the Justices of Assise there, or one of them: and all recoveries to be had of any lands or tenements in the County Palatine are to be had in the Court of that County Palatine, and cannot be had at Westm.

37 H.8.ca.19. 36 H.6.fo.33. 9 H.7.fol.12.

[a] In trespasse in the County Palatine of Lancaster, the Defendant pleaded a forein release, the Court prefixed a day to the parties in Bank, the Record must be moved by Certiorari in Chancery, and by Mittimus into the Bench, there to be tryed.

a 22 H.6.48.

[b] If issue be joyned in the Kings Bench, or Common Bench, tryable in the County Palatine of Lancaster, it shall be tryed in the County of Lanc' and remaunded hither.

b 27 E.3.84. 21 H 7.33. 39 H.6.21, 22. 19 H.6.12. 32 H.6.25. 19 E.3. trial 66.

[c] Where a release or other special deed is pleaded in Bar in any Court at Westminster, within a franchise where the Kings Writ runneth not, it shall be tryed where the writ is brought. See the books quoted in the margent. And in this variety of opinions I hold the Law to be, that this statute of 9 E.3. extends not to cases when any other issue is joyned tryable in the County Palantine or other franchise: And I ground my opinion upon the resolution of all the Judges of England in the Exchequer Chamber, in Anno 32 H.6.25. See 39 H.6.21,22. 21 H.7.33. 21 E.4.33,34,35.56.

45 E.3.visne 50. c 9 E.3. cap.4. 8 Ass.27. 10 E.3. 41. 19 H.6.12. 53.21 E.4.8. 2 & b 17 E.3.84. 46 E.3. Visne 53. Per touts les Justices. 10 H.4.40. 10 H.6.15,16. Per Martyn. 8 H.6.3. per Strange Lib.Int. Rastall fol.

Vid. Lib.Intr.fo.81,82. pl.8. Henry Parayes case in debt, In Camera Guild-hall Civitatis London.

[d] King H.4 by his Charter by Authority of Parliament, Anno primo of his reign, doth sever the possessions of the Dutchy, &c. from the Crown: And that which John of Gaunt held for life, is established for ever, and [e] specially by the statutes of 1 E.4. and 1 H.7. hereafter mentioned: and this separation H.4. made, for that he knew he had the Dutchy of Lancaster (par multis regnis) by sure and indefeasible title: and he could not be both Rex and Dux, but specially that his title to the Crown was not so assured, for that after the decease of R.2. the right of the Crown was in the heir of Lionell Duke of Clarence, second son of E.3. John of Gaunt Father of H.4. being the fourth son: and therefore he intended not, that by the law of the Crown the Dutchy should go with the Crown, [f] that he should be seised thereof in right of the Crown, as the King afterwards was of the possessions of the Dutchy of York, Earldome of March, and others.

d Ro.Pa. 1 H.4. intituled Carta Regis H.4. *De separatione Ducatus Lancastriæ à Corona authoritate Parliamenti anno regni sui primo.*

e Ro.Par. 1 E.4. Pl.Com.219.b.

Humphery de Bohun Earl of Hereford, Essex, and Northampton being the first and last Earl of that name, and seised of large possessions in England and Wales, had issue two daughters; * Eleanor the eldest married to Thomas Duke of Glouc', and Mary married to the Earl of Hertford.

* Vide Roc. Par. 1 H.6. Partition recited an 9 H.5. between H.5. and the said Eleanor.

It

Rot. Par. Anno 2 H.5.nu.30. 3 H.5.nu.15. confirmed, and that no land ſhould paſſe of Dutchy, but under the Dutchy ſeal. 2 & 3 Ph.& Mar. cap.20.

It is enacted that all the Manors and hereditaments which deſcended to H. 5. after the deceaſe of the ſaid Mary his mother, as ſon and heir unto her, ſhould be diſſevered from the Crown of England, and annexed to the Dutchy of Lancaſter, and to be of the ſame nature, as by the Kings Letters Patents eſtabliſhed by Parliament there appeareth; where you may read of many Franchiſes and Liberties belonging to the Dutchy.

a See the 1 part Inſt. Sect 8.

a Here is to be obſerved, that albeit theſe poſſeſſions deſcended to King H.5. and heir to his mother, yet he was thereof ſeiſed in Jure Coronæ, and therefore this Act diſſevereth them from the Crown.

b Rot. Par. 1. E. 4 nu.26. Pl.Com. 222. Vid. li. 5.10. the Princes caſe.

b The Dutchy of Lancaſter as ſeparated, &c. is by Act of Parliament aſſured to E.4 and his heirs Kings of England. By this Act all intails of the Dutchy, or of any land annexed thereunto are cut off, and by this made fee ſimple to E 4. and his heirs Kings of England. In an Act of Parliament without queſtion this limitation of a fee ſimple is good. See the whole Act.

c Rot. Par.1.H.7. * Note his heirs without ſaying (Kings of Eng.) as E.4. did 21 E.4 60.

c It is enacted that H.7 ſhould have, hold and enjoy to him and his * heirs for evermore the County Palatine of Lancaſter, and all honors, &c. By which Act alſo all former intails are cut off, and in this ſtate doth the Dutchy ſtand at this day. d All lands, &c. parcell of this Dutchy given to the King by the Statute of Monaſteries, Chanteries are ſtill within the ſurvey of the Dutchy. Within the County Palatine of Lancaſter the Duke having Jura Regalia, his juriſdiction and privileges therein were very great.

Vid. Dier 1. El. 168. b.

d 32 H.8.ca.10. 1 E.6.cap.14. 1 El cap.31.

e Rot.Par.9.R.2. nu.13. 28 H.8. Brook Livery 55 Livery within the County Palat', but not of a tenure without. 26 H.8.9.

e The Duke of Lanc' complaineth by mouth to the King, Biſhops, and Lords in full Parliament; That where after the death of Thomas of Lathome who held the Manor of Lathome in the County of Lanc' of the ſaid Duke in Chevage, whereby the Manor was ſeiſed into the hands of the ſaid Duke of Lancaſter according to his County Palatine of Lancaſter, yet notwithſtanding John Stanly Knight as in the right of Iſabell his wife, daughter and heir of the ſaid Thomas had entred, and taken the profits of the ſaid Manor without any livery or other ſuit made in the Chancery of the ſaid Duke, for which he prayed remedy. After which, upon full advice of the Juſtices of both Benches, and others of the Kings learned Councell, it was declared in the ſaid Parliament, that the entry of the ſaid John into the Manor, as aforeſaid, was unlawfull, and that the ſaid John ought to make ſuit by petition, or otherwiſe in the Chancery of the ſaid Duke for the livery of the ſaid Manor in ſuch caſe to be ſued for.

Vid.33 H.8.c.39. 22 H 8.c.20. 3 E. 6.ca. Cuſtos Rotulorum.

Of the Franchiſes and Liberties belonging to the County Palatine of Lanc' you may read Rot. Par. 2 H.5. Ubi ſupra.

f 2 & 3 Ph. & Mar.cap.20.

f Lands to be annexed to this Dutchy under the Great Seal ſhall be as good, as if it had been annexed by Parliament.

See the ſtatute of 5 El.cap.23. concerning writs of Significavit, and Excommunicato capiendo.

21 E.4 60.71. Pl.Com.219.

Lands within the County Palatine ſhould paſſe by the Dukes Charter without livery of ſeiſon or attornment, but of Lands parcell of a Manor annexed to the Duthey without the County Palatine, there ought to be livery of ſeiſon, and attornment of tenant, and in the ſame degree is it in the Kings caſe. The reaſon hereof is, for that the County of Lanc' was a County Palatine, and the Duke then had Jura Regalia.

Vid.33. H. 8. cap.39. which ſee before in the Chapter of the Court of Wards See 27 H.8.c.11. there alſo is a Chancellor of the County Palatine.

The proceeding in this Court of the Dutchy Chamber at Weſtm. is as in a Court of Chancery for lands, &c. within the ſurvey of that Court by Engliſh, bill &c. and decree; but this Chancery Court is not a mixt Court as the Chancery of England is, partly of the Common law, and partly of Equity, as hath been ſaid. See before in the Chapter of the Court of Chancery.

The proceſſe is by Privy Seal, Attachment, &c. as in the Chancery.

The Officers of this Court be the Chancellor, the Attorny, the Receiver generall, Clerk of the Court, the Auditors, Surveyors, the Meſſenger. There is an Attorny of the Dutchy in Chancery, and another in the Exchequer. There be four learned in the law Aſſiſtants, and of Councel with the Court.

Hil. 1 E. 6. Brook Travers 53.

Where by office a tenure is found of the King ut de Ducatu Lancaſtriæ, and in truth

truth it is not ſo, there nedeth no traverſe, for the King hath the Dutchy * as Duke, and not as King, and a man ſhall not traverſe, but where it is found † for the King: Sed aliter utitur in diebus noſtris, as it appeareth in the caſe following.

* *In hoc erratum eſt*, as it appeareth in Pl. Com. *Ubi ſupra.*

† It is found for the King, for he is not Duke.

Le Roy (in droit de ſon Duchie de Lanc.) Segnior, Rich. Hulme ſeiſie del Mannor de Male in le Counte de Lanc. tenus del roy come de ſon dit Duchie per ſervice de Chivalry Meſne, and Robert Male (ſeiſie des terres in Male tenus del Meſne come de ſon dit Mannor per ſervice de Chivalry) Ten. Rich. Hulme moriſt; Apres que mort Anno 31 H.8. *fuit trove que il moriſt ſeiſie del dit meſnaltie, et que ceo diſcend al Edmonde ſon fits deins age, & trove le tenure avantdit, &c. et durant le temps que il fuit in gard Robert Male le ten. moriſt: apres que mort* Anno 35 H. 8. *fuit trove per office que Robert Male moriſt ſeiſie del dit tenancy per availe, et que ceo diſcend al ſon fitz & heire deins age, et que le dit tenancy fuit tenus del roy come del dit Duchy per ſervice de Chivalrie (ou in veritie ceo fuit tenus del Edmonde Hulme adonques in gard in le roy come del dit meſnaltie,) per que le roy ſeiſiſt le gard del heire le ten. & puis* 4 Jac. *Regis nunc apres le mort de Rich. Male que fuit lineal heire del dit Robert Male, per un auter office trove fuit que le dit Rich. moriſt ſeiſie del dit tenancie, et ceo teignoit del Roy come de ſon Duchy per ſervice de Chivalry ſon heire deins age, Sur ceo Rich. Hulme couſin & heire del dit Rich. Hulme, ad preferre un bill deſtre admit a ſon travers de ceſt darrein office trove in* Anno 4 Jac. *Le queſtion fuit, le quel loffice trove in* 35 H.8. *ſoit aſcun eſtoppel al dit Hulme a traverſer le darrein office, ou ſi le dit Hulme ſerra chaſe primerment a traverſer loffice de* 35 H.8. *Et fuit object que il doit primerment travers loffice in* 35 H.8. *come in le caſe de* 26 Ed. 3. fol. 65. *que ſi* 2. *ſyres ſont levy de terre in antient demeſne, le Segnior de que la terre eſt tenus, doit aver briefe de diſcent a reverſer le primier fine, et in ceo le* 2. *fine ne ſerra barre. Et que le primier office eſtopperacy longe come ceo remaine in force. A que fuit reſponde & reſolve per les* 2. *Chief Juſtices, et Chief Baron, & le Court de Gards, que le trover dun office neſt pas aſcun eſtoppel, car ceo neſt que enqueſt doffice, & le party greve avera travert a ceo come ad eſtre conſeſſe, & pur ceo ſans queſtion ceo neſt pas eſtoppel; mes quant office eſt trouve fauxement que terre eſt tenus del roy per ſervice de Chivalry in capite, ou in verity la terre eſt tenus del auter Seignior, ou del roy meſme in Socage, ſi le heire ſua generall livery, eſt tenus in* 46 E.3.12. *per Mowbray & Perſey que il navera ſute apres d'averre que la terre neſt pas tenus del roy, &c. mes ceo neſt forſque eſtoppel al heire meſme que ſua la livery & ne concludera ſon heire: Car iſſint dit Mowbray meſme, expreſment in autiel caſe in* 44 Aſſ. pl. 35. *que eſtoppel per ſuer de livery eſtoppera ſolement meſme le heire durant ſon vie: Et in* 1 H.4. fo.6.b. *la le caſe eſt myſe de expreſſe confeſſion et ſuer de livery per liſſue in taile ſur faux office, et la eſt tenus que les Furours ſur novel* Diem clauſit extremum *apres le mort de tiel heire ſont alarge ſelonque lour conſcience a trover que la terre neſt pas tenus, &c. car ilz ſont jure* ad veritatem dicendam, *et lour trover eſt appel* veredictum quaſi dictum veritatis: *quel reaſon auxi ſerve quant le heir in fee ſimple fuiſt livery ſur faux office que les Furours apres ſon mort doient trover ſelonque le verity, iſſint eſt dit in* 33 H. 6. fo. 7. *per Laicon que ſi* 2 *ſoers ſont trove heires, dont lun eſt baſtard, filz joine in ſute de livery, ceſti que joine ove le baſtard in livery ne alledgera baſtardy in l'auter, mes*

Hulmes Caſe, Mich. 7 Jac. in Curia Ward. Travers de office Eſtoppel per luer de livery.

26 E. 3. fol. 65.

46 E. 3. 12.

44 Aſſ. pl. 35. 1 H. 4. 6. b.

33 H. 6. fol. 7. per Laicon.

mes nul Livre dit que leſtoppel indurer' pluis longement que durant ſon vie. Et quant livery eſt ſue per un heire, le force et effect del record de ceſt livery eſt execute & determine per ſon mort & pur ceo leſtoppel expirer' ove le mort le heire; mes ceo eſt deſtre intend dun general livery, car ſpeciall livery ne concludera omnino, come appear apres. Les parols de general livery, quant le heire eſt trove de pleine age, ſont. Rex Eſcaetori, &c. Scias quod cepimus homagium I. filii & hæredis B. defuncti de omnibus terris & tenementis quæ idem B. pater ſuus tenuit de nobis in Capite die quo obiit, et ei terras & tenementa reddidimus, Et ideo tibi præcipimus, &c. eidem I. de omnibus terris & tenementis prædict. &c. plenam ſeiſinam habere fac. &c. *Et quant le heire ſuit in gard a ſon pleine age, le brief de livery dirra.* Rex, &c. Quia I. filius & hæres B. defuncti, qui de nobis tenuit in capite, ætatem ſuam coram te ſufficient' provabit, &c. cepimus homagium ipſius I. de omnibus terris & tenementis quæ idem B. pater ſuus tenuit de nobis in Capite die quo obiit, et ei terras & tenementa reddidimus: Et ideo tibi præcipimus, ut ſupra. *Quel brief eſt le ſute del heire & pur ceo coment que touts les parols del brief ſont les parols le roy (come tout les briefs le roy ſont) et coment que le brief de livery eſt generall,* de omnibus terris & tenementis de quibus B. pater J. tenuit de nobis in capite die quo obiit, *ſans direct. affirmac' que aſcun Mannor in particular eſt tenus* in capite, *et nient obſtant que ceo neſt forſque proſecution dun brief le Roy, et nul judgment ſur ceo; uncore intant que generall livery eſt foundue ſur leffice, et per loffice fuit trove que divers terres & tenements fuer' tenus del roy* in capite, *a ceſt cauſe le fuer de ceſt brief conclude le heire ſolement que ſuiſt le livery, et apres ſon mort les Jurors in novel brief de* Diem clauſit extremum *ſont alarge, come eſt avandit, et ſi ceſti Jury trove fauxment tenure del Roy, auxi le Seignior de que la terre eſt tenus poet travers ceſt office, ou ſi terre ſoit tenus del roy, &c. in Socage, le heire poet travers ceſt darrein office, car per ceo il eſt greve ſolement, et ne travers le primer office, & quant le pier ſuiſt livery & mort, le concluſion eſt execute & paſt come eſt dit adevant. Et* nota, *la eſt un ſpeciall livery, mes ceo proceade de grace le roy, et neſt pas ſute le heire, et le roy poet grante ceo ou al plein age devant* ætate probanda &c. *ou al heir deins age come appiert in* 21 E. 40. *et ceo eſt generall, et ne affirm directment aſcun tenure come le generall livery fiſt, mes ove un,* ut dicitur, *et pur ceo neſt aſcun eſtoppel ſans queſtion, Et al common le ſpeciall livery poet aver eſtre grant devant aſcun office trove, mes ore per leſtatute de* 33 H. 8. cap. 22. *eſt purvien,* That no perſos or perſonn having Lands or Tenements above the yearly value of 5 l. ſhall have or ſue any livery before Inquiſition or Office found before the Eſcheator or other Commiſſioner, *mes per un expreſſe clauſe in meſme lacte,* Livery may be made of the Lands and Tenements compriſed or not compriſed in ſuch offices. *Iſſint ſi office ſoit trove daſcun parcell, &c. ceo ſuffiſt, et ſi le terre trove, in loffice nexceade 20 l. donques le heire poet ſuer generall livery apres office ent trove, come eſt avandit; mes ſi la terre nexceade 5 l. per annum donques generall livery poet eſtre ſue ſans office ent trove per garrant del Maſter de gards, &c.* Vide Dier 23 El. 377. *que le Roigne* ex debito Juſtitiæ, *neſt lye a ceſt jour puis le dit Act de* 33 H. 8. *a graunter ſpeciall livery, mes eſt a ſon election a graunt. ſpecial livery, ou a chaſer le heir a un generall livery.*

21 E. 3. 40.
46 E. 3. 33.
46 Aſſ. p.
47 E. 3. 21.
29 Aſſ. p. 8.
33 H. 6. 50.
21 H. 6. 28.
37 H. 8. 8. Eſtoppel 218.
7 E. 6. ibid. 122.
See 4. part Inſt. Cap. Pardon.
Mich. 39 & 40 El. fol. 397.

Fuit auxi resolve in ceſt caſe que liſſice de 35 H. 8. *ne fuit pas traverſable, car ſon travers demeſne provera que le Roy aver' cauſe daver. gard per cauſe de gard, et quant le Roy vient al poſſeſsion per faux iſſice ou aut' meane ſur pretence dun droit, ou in veritie il nad tiel droit, uncore ſi appiert que le Roy ad aſcun auter droit ou intereſt a aver et tener la terre, la nul traverſera ceſt office ou title le Roy, pur ceo que le judgement in le travers eſt,* Ideo conſideratum eſt quod manus Domini Regis à poſſeſſione amoveantur, &c. *Que ne droit eſtre quant appiert al court que le Roy ad droit ou intereſt daver la terre, Et ove ceo accord.* 7 H. 4. fol. 33. *in le Counſee de Kents Caſe; et que apres general livery ſue per le heir de Robert Male le office ne port eſtre traverſe per ſon heire: Et iſſint auxi fuit reſolve per laſſiſtants del Court de Gards in Scurfields Caſe in Curia Wardorum.* Tr. 8 Jacobi.

Which caſe we have rehearſed in the ſame language wherein we reported it when it was freſh in memory, and never hitherto was publiſhed.

What Leaſes may be made of Lands, &c. within the ſurvey of the Dutchy of Lancaſter, See the Ordinances of the Court of Dutchy concerning Leaſes to be made, &c. Anno 20 H 6.

See alſo Dier Mich. 6 & 7 Eliz. the Reſolution of all the Judges concerning Leaſes made by the Chancellor of the Dutchy Chamber. And if the Leaſe either in poſſeſſion or reverſion be made under the Dutchy Seal, Quod Dominus Rex de adviſamento & aſſenſu concilii Ducatus Lancaſtriæ dimiſit, &c. the Leaſe is good, although in truth the Chancellor made it, and put to the Seal of the Dutchy. For ſuch Leaſes under the Dutchy Seal, or under the Seal of the County Palatine of lands within the ſame, are of as great force as lands of the Crown under the Great Seal.

Mich. 6 & 7 El. Dier 232.
27 H 8. ca. 11.
1 Proviſion.
2 & 3 Ph. & M. cap. 20.
37 H. 8. cap. 16.

Albeit by ſpecial proviſion and conſtruction, to a grant of lands and tenements parcel of the Dutchy of Lancaſter that lye out of the County Palatine, there muſt be livery of Seiſin and Attornement, as the caſe requireth, yet the grant under the Seal of the Dutchy is matter of Record in reſpect of the dignity of the perſon of the King, and needeth no delivery to make it a deed (as deeds betwæn ſubjects ought to have) and if the ſame be denied, Non eſt factum cannot be pleaded, but Nul tiel Record.

11 E. 4. fo 60. Rot. Par. 1 H. 4. nu. 81. *Vid. Cartam* H. 4. *de ſeparatione Duc. Lanc. & Coron. auctoritate Parl. Anno regni ſui,* 1.

And if the King by his Letters Patents under the Seal of the Dutchy doth grant a reverſion expectant upon an eſtate for life or years of lands parcell of the ſaid Dutchy lying out of the County Palatine, the reverſion doth paſſe maintenant to the Patentee by force of the Letters Patents: but he ſhall not have an Action of Waſte, or diſtrain before Attornament. † For this caſe is like to the caſe of a fine betwæn ſubjects, which is matter of record: and ſo the Kings Letters Patents under the Dutchy Seal are as high a matter of record (if not higher then a fine.) And this tendeth both to the honour of the King and the ſafety of ſuch as purchaſe ſuch reverſions of the King, that the eſtate of the reverſion ſhould paſſe by thoſe Letters Patents: otherwiſe if the Patentæ dye before Attornament, the Letters Patents ſhould be void, and the validity of the Kings grant ſhould depend upon the pleaſure of the leſſee, and many inconveniencies ſhould thereupon follow. And all this appeareth by that great and grave reſolution of the Caſe of the Dutchy of Lancaſter reported by Mr. Plowden, that no ſtatute now in force doth ſeparate the Dutchy from the perſon of the King, nor to have the perſon of the King ſeparate from the Dutchy, nor to make the King Duke of Lancaſter having regard to the poſſeſſions of the Dutchy, nor to alter the quality of the perſon of King H. 7. but only that the King ſhould have to him and to his Heirs the ſaid Dutchy ſeparate from the other poſſeſſions; in which caſe the Dutchy at the leaſt is joyned to the perſon of H. 7. and to his heirs, and the perſon of the King remain as it did before, for nothing is ſaid to the quality of the perſon of the King, nor to the alteration of his name. And the perſon of the King ſhall not be infeebled becauſe the Dutchy is given to the King & his Heirs, but remain alwayes of full age, as well to gifts and grants by him made, as to adminiſtration of Juſtice: Whereupon it was reſolved, that Leaſes made by E. 6. being

Rot. Par. 3 H. 5. nu. 15. Rot. Parl. 1 E. 4. nu. 26. Rot. Parl. 1 H. 7. nu. 2. Seſſ. 1. 2 & 3 Ph. & M. cap. 20. P. 10 H 4. fo. 7. non omittas, &c. per prærogat. Rot. Parl. 2 H. 5. nu. 30. 23 H. 6. nu. 17. 12 E. 4. nu. 7, 8. Dier Mic. 6 & 7 Eliz. ubi ſupra. † Lit. ſect. 580. 1. part of the Inſt. fo. 320. Plowd. Com. 211. b. Vide Rot. Parl. 1 H. 4 nu. 81. accord.

The Opinion of Sir *James Dier* Knight, Chief Juſtice of the Common Pleas at *Weſtminſter*, *Richard Weſton*, and *Richard Harpur*, Eſquires, two other Juſtices of the ſame Common Pleas, and of *Thomas Carns* Eſquire, one of the Juſtices of the Pleas to be holden before the Queens Majeſty, declared and preſented to her Highneſs the 10. day of *February*, Anno Dom. 1568. by vertue of her Majeſties Letters to us directed the ſecond day of the ſame moneth concerning the juriſdiction and liberties of the County Palatine of *Cheſter*, and the authority of the Chamberlain and his Office there: and concerning the Controverſie between the Lord Preſident and Councel in *Wales*, and the ſaid Chamberlains Office lately grown upon *Thomas Radfords* Caſe exhibited unto us: as enſueth.

Sir James Dier, Weſton. Harpur. Carns. 10. Febr. 11 Reginæ Elizab.

First, by that which we have ſeen and conſidered, the County of Cheſter (wherein the City of Cheſter is now, and by a good time paſt hath been a County of it ſelf) of * very ancient time before the reign of King H. 3. hath been, and yet is a County Palatine, with other members thereunto belonging: and ſo from time to time hath been received and allowed in the Law. And therefore the laws, rightful uſages, and cuſtoms of the ſaid County Palatine are to be preſerved and maintained.

a King H. 7. made it a County of it ſelf. Camden. 459. a.

* By preſcription.

The Chamberlain of Cheſter.

It further evidently appeareth, that by the like time of antiquity and continuance, there hath been and yet is in the ſaid County Palatine one principal or head Officer called the Chamberlain of Cheſter, who hath, and ever had all juriſdictions belonging to the Office of a Chancellor within the ſaid County Palatine.

The Juſtice of Cheſter.

And that there is alſo within the ſaid County Palatine a Juſtice for matters of the Common Pleas, and the Pleas of the Crown, to be heard and determined within the ſaid County Palatine, commonly called the Juſtice of Cheſter.

Error, forein plea, and forein voucher.

We alſo ſee that all pleas of lands or tenements, and all other contracts, cauſes, and matters ariſing and growing within the ſame County Palatine are pleadable, and ought to be pleaded, heard, and judicially determined within the ſaid County Palatine, and not elſewhere out of the ſaid County Palatine: And if any be pleaded, heard, or judged out of the ſaid County Palatine, the ſame is void, and coram non Judice, except it be in caſe of Error, Forein plea, or Forein voucher.

Treaſon and error.

Seal of the County Palatine.

We alſo ſee that no inhabitant of the ſame County Palatine by the liberties, laws and uſages of the ſaid County Palatine ought to be called or compelled by any Writ or Proces to appear or anſwer any matter or cauſe out of the ſame County Palatine for any the cauſes aforeſaid, but only in cauſes of treaſon and error. And the Queens Writ doth not come, nor ought to be allowed or uſed within the ſaid County Palatine, but under the Seal of the ſaid County Palatine, except Writs of Proclamation by the ſtatute of E. 6. Anno regni ſui primo.

Court of the Exchequer is the Chancery Court.

Chamberlain Judge of that Court.

A Conſervator of the peace.

It doth further appear unto us by good matter of Record to us ſhewed, that the Court of the Exchequer at Cheſter is, and by the time of antiquity and continuance aforeſaid hath been uſed as the Chancery Court for the ſame County Palatine, and that the Chamberlain of Cheſter is the chief Officer and Judge of that Court, and that he is, and time out of mind hath been a Conſervator of the peace by vertue of the ſame Office, and hath like power, authority, preheminence, juriſdiction, execution of law, and all other cuſtomes, commodities, and advantages pertaining to the juriſdiction of a Chancellor within the ſaid County Palatine of Cheſter, as the Chancellor of the Dutchy of Lancaſter hath uſed, had and ought to have uſed and executed within the ſaid County Palatine of Lancaſter: which more evidently appeareth alſo by the underſtanding of the firſt grant made by King E. 3. to John his ſonne then Duke of Lancaſter, whereby he made the ſame County Palatine of Lancaſter, referring the ſaid Duke to have his Chancellor, liberties, and regal juriſdiction to a County Palatine belonging, adeo libere & integre, ſicut comes Ceſtriæ infra eundem Comitatum Ceſtriæ dignoſcitur obtinere.

See the Grant before.

Vice-Chamberlain.

Alſo it appeareth unto us, that the Vice-Chamberlain did lawfully and orderly commit to priſon Thomas Radford named in the caſe preſented unto us, for that he

he refused to put in sureties of the peace within the said Exchequer upon Affidavit made in that behalf. And that the proceedings of the Councel of the Marches touching the enlargement of the said Radford from the said imprisonment, and also their further order and dealing against the said Vice-chamberlain was, and is without sufficient authority, and contrary to the jurisdiction of the Office of the said Chamberlain, and the ancient Laws and Liberties of the same County Palatine. Councel of the Marches.

And we do also affirm, That the statute of 34 and 35 H.8. called the Ordinances of Wales, whereby the authority of the Lord President and Councell within the Dominion and Principality of Wales and Marches of the same is established and hath the force of a Law, for or concerning the determination of causes and matters of the same, comprehendeth not the Counties of Chester, and the City of Chester, because the same Counties of Chester and the City of Chester be no part nor parcel of the said Dominion or Principality of Wales, or of the Marches of the same. The President and Councel of Wales and the Marches of the same. The Counties of Chester, and the City of Chester no part of the Marches of Wales.

Between Sir John Egerton Plaintiff, and William Earl of Derby Chamberlain of Chester, and others Defendants, for the trust of an interest of a tearm in lands in the County of Chester, these points were resolved by the Lord Chancellor and by the Chief Justice of England, Justice Doddridge, and Justice Winche, whom the Lord Chancellor called to be his Assistants, as followeth. Hill. 11 Jac. in the Chancery.

First, That the Chamberlain of Chester being sole Judge in Equity, or his Deputy cannot decree any cause wherein he himself is party, for he cannot be Judex in propria causa, but in that case he may complain in the Chancery of England. Vid. in the Charter of Durham. Anno 30 E. 1. Coram Rege.

Vide 21 H.3. breve 881. in rationabili parte versus Comitatem Cestriæ de hæreditate D. quondam Comit. Cestriæ. Comes dicit quod noluit respondere de terra in Com. Cestriæ ubi brevia domini Regis non currunt extra libertates suas nisi Cur. consider. & Consideratum fuit per curiam quod respondeat. 21 H. 3. breve 881.

2. If the Defendant dwell out of the County Palatine, if any of the County Palatine have cause to complain against them for matter of Equity for lands or goods within the County Palatine, the plaintiff may complain in the Chancery of England, because he hath no means to bring them to answer, and the Court of Equity can bind but the person, for otherwise the subject should have just cause of suit, and should not have remedy: and when particular Courts fail of justice, the general Courts shall give remedy, ne Curæ Regis deficerent in justitia exhibenda. 18 Ass. 332. 13 E.3. tit. jurisd. 5 E. 3. 32. 38 H.6.6. 7 H.6. 37. 8 E.4.8. 11 H.4.27, &c.

3. It was resolved, That the King cannot make any Commission to hear and determine any matter of equity, but matters of equity ought to be determined in the Court of Chancery, whose jurisdiction habe had continual allowance; and so was it resolved in † Perrots Case.

4. Upon consideration had of the said Certificate of the Lord Dier, and the said other Judges, it was resolved that for things transitory, though in truth they were emergent within the County Palatine, yet by the general rule of law, the plaintiff may alledge these to be done in any County where he will, and the defendant cannot plead to the jurisdiction of the Court, that they were done, &c. within the County Palatine: but if the plaintiff suppose the transitory cause of Action to be in the County Palatine, that may be pleaded to the jurisdiction, otherwise it is of things local. † See this Case in the Chapter of the Chancery, pa. 87. See in the Chapter of the County Palatine of Durham.

An Office found by Commission in the nature of a Mandamus issuing out of the Chancery at Westminster before the Commissioners in Com. Cestriæ for lands holden in Capite in the same County, was holden void per consilium curiæ Wardorum, for it ought to be by Writ or Commission out of the Exchequer in the County Palatine, which is the Court of Chancery there.

If an erroneous judgment be given before the Chamberlain in the Exchequer in any matter wherein he proceedeth according to the course of the Common law, the writ of Error shall be directed Camerario seu ejus locum tenenti; but if the judgement be given before the Justice of Chester, then the writ is directed

Justiciario

Regist. fo. 17. a. 34 H. 6. 42. 6 H. 4. 9. Lib. Intr. Fast. 72. Dier 15 El. 320, 321. Dier 18 El. 345, 346.

Justiciario Cestriæ sive ejus locum tenenti. And note, That in a Writ of Error to the * County of Chester, day shall be given by so long time, that three Counties may be holden before the return of the same Writ in the Kings Bench, which is four moneths, by which time the Justices or Lieutenant within the same County may redresse the error, if they will, and this by the usages of the same County. But in a writ of Error upon a fine they have no such power: and the Plaintiff ought to bring the writ of Error to the next County after the Teste, and there it shall be read, Coram Judicatoribus ratione tenuratum suarum ibidem: and the Plaintiff shall assign the Error without praying processe against the Tenant or Defendant, but only to pray Judicatores to examine the error, and if error be found they may advise thereon, or presently reform it, and award restitution, or by their discretion they may award processe returnable at the next County against the Tenant or Defendant ad audiend. errores, (which is reasonable, and necessary to be granted) and so return their own judgment given by them or their Predecessor, and then there is an end of the businesse, and the Record shall remain there without removing; and by this means they shall save an hundred pound forfeiture to the King. But if they affirm the judgment which is erroneous, their affirmation and the Record ought to be removed into the Kings Bench, if the party Plaintiff be grieved therewith: and if their affirmation be erroneous, although their first judgement was given by their Predecessors, notwithstanding they shall forfeit the hundred pounds. And the party grieved by their affirmation or reversall ought to bring a speciall Writ of Error peremptory, which shall not be examined by them, for that all this is to be understood where error in Law is assigned: for upon the Writ of Error first brought, if any error in fait be assigned, as death of one of the parties, hanging the plea, or the like, which is tryable by the Country, they cannot hold plea thereof, but return the Record, with the Writ into the Kings Bench. Neither can they hold plea of a release of errors after the judgment or the like, for they are only to examine the errors of the Record or processe, and all this doth notably appear in our Books. But if no such usage had been, the Record ought to have been removed by the Writ of Error into the Kings Bench, as it ought to be in other cases.

* Note, these generall words extend as well to the Chamberlain as to the Justice by the rule of the Regist. ubi supra.

Hill. 29 Eliz.

Egerton the Queens Solicitor moved in the Chancery to have a Certiorari to the County Palatine of Chester, for the removing of a Record of Assise taken in that County between Cotton and others Plaintiffs, and Venables and others Defendants, wherein the Recognitors of Assise gave a false verdict, and to the intent, that a Writ of Attaint might be brought in the Kings Bench, a Certiorari was prayed. And it was doubted, whether an Attaint did lie in this case, out of the County Palatine. And by the Opinion of Wray and Anderson Chief Justices, and Manwood Chief Baron, upon consideration had of the statute of 32 H. 8. cap. 3. whereby it is enacted in these words, That all Attaints hereafter to be taken shall be taken before the King in his Bench, or afore the Justices of the Common Pleas, and in no other Courts; They resolved and so certified the Lord Chancellor, That for a false verdict given in the County Palatine of Chester, the Attaint ought to be brought either in the Kings Bench or Common pleas, and not in the County Palatine of Chester, and thereupon a Certiorari was granted for the removing of the Record.

Vid. 3 El. Dier 202. b. Benloes 3 Eliz.

Hill. 29 El. coram rege, Huddlestons case, in Brevi de errore.

Hill. 29 Eliz. coram Rege. The case was, That Queen Elizabeth by her Letters Patents granted the custody of the Castle of Chester to John Paston, and Richard Huddlestone Esquires, and the survivor of them; John Paston died, and in a Scire facias against Huddlestone in the Exchequer before the Chamberlain, (Glasier then being Deputy Chamberlain) to repeal the said Grant, &c. judgement was given against Huddleston, that the Patent should be annulled and cancelled; and hereupon Huddleston brought his Writ of Error. And it was objected, That before any writ of Error ought to have been granted, Huddleston ought to have sued to the Queen by petition to have a Writ of Error according to the Book in 23 E. 3. fo. 24. But it was answered, That here in this case no inheritance was recovered by the judgement, and if Huddleston that claimed the

23 E. 3. fol. 24. F. N. B. fo.

office

office but for tearm of his life should be driven to his petition, wherein great delay might be used, his life might end before he could obtain his writ of Error, therefore the writ of Error in this case was to be granted without any petition; and of that opinion was the whole Court of the Kings Bench, and so the writ of Error did stand. Pasch. 9. E. 2. coram rege Rot. 32.

Judices & Sectatores Com. Cestriæ non consueverunt apponere sigilla sua alicui recordo in præsentia Justiciariorum.

Before the statute of 34 H. 8. neither the County Palatine of Chester sent Knights to the Parliament, nor Citizens out of the City of Chester. 34 H. 8. cap. 13.

Before the statute of 27 H. 8. the Lord Chancelor of England appointed no Justices of Peace, Justices of Quorum or Goal delivery within the County of Chester. 27 H. 8. cap. 5.

The Manor of C. in the County of York was holden of the Prince, as of the County of Chester, and that all pleas real and personal rising within the County, or within any parcel of land holden of the County ought to be impleaded within the said County Palatine: For the King by his Letters Patents may ordain a Court at York, or in any other County which shall have jurisdiction through the whole Realm, and so it was resolved. 22 E. 4. Jurisd. 6. Lib. Int. Fast. fo. Si teneatur immediate or mediate.

The City of Chester was made a County of it self by King Henry 7. by Letters Patents, dat. 6 Aprilis 21 of his reign. Lic. Pat. 6. Apr. 21 H. 7.

See the statute of 5 El. cap. 23. Concerning writs of Significavit and Excom. capiend. See the statute of 18 El. cap. 8. making of more Justices than one. 5 El. cap. 23. 18 El. cap. 8.

By the statute of 8 H. 6. cap. 10. It is provided, That upon every Indictment or Appeal by which any person dwelling in any other County than there where such Indictment or Appeal is, or shall be taken of treason, felony, and trespass, &c. before any Exigent awarded, &c. that after the first writ of Capias, another writ of Capias shall be awarded directed to the Sheriff of the County whereof he is or was supposed to be conversant in the Indictment, &c. otherwise the outlawry to be void. 8 H. 6. cap. 10. Vide cap. 13.

In an Appeal in the Kings Bench in the County of Dorset where the Appellée was demurrant at Chester, processe continued until he was outlawed without any Capias in Chester, and it was objected that the Capias could not issue into Cheshire, for it is a Franchise into which the Kings writ runneth not. Holden at the Common law for certain things a writ shall issue to the Franchise of Chester, as for treason, and the statute is made by Authority of Parliament, and is general as well within Franchise as without, and therefore the Act being general shall be taken generally to extend into Chester, Quod conceditur, but this is a leading case. 19 H. 6. 1, 2.

Vid. Lib. Int. Coke, fo. 230, 231, 232. & 296. 297. See an Act of Parliament, Rot. Par. 9 H. 4. no. 45. touching adjournment in pleas.

CAP. XXXVIII.

Of the County Palatine of Durham.

10 E.3.41. 11 E.3. Vouchee 115. 17 E.3.36. 5 R.2. Trial 54. 13 H. 4. Vouchee 39. 11 H.4.40. 18 H.6.33,34. 19 H.6. 11.52. 21 E.4. 8. 1 Mar. ſtat.2. ca. 2. Rot. Par.11. H.6. nu.23. See Rot. Paſ. Paſch. 21 E. 1. Rot. 5. a notable record for the liberties of the Biſhop of Dureſme.

THis is alſo a County Palatine by preſcription parcel of the Biſhoprick of Durham, which was firſt raiſed, as it is ſaid, ſoon after the time of William the Conqueror.

Yet I find that this County Palatine hath been queſtioned (but with evil ſucceſſe.) For at the Parliament holden Anno 11 H.6. Thomas Biſhop of Durham prayed a Commiſſion under the Great Seal to certain there named, who by vertue thereof ſat and inquired at Hartlepole being within his County Palatine of the rights of the County Palatine with all the Dependants. Whereupon Sir William Eure Knight the Kings Attorny made divers objections, that the Biſhop ought to have no County Palatine, neither liberties royal. On the contrary part the Biſhop produceth his proofs, and the matter on both parts ſeriouſly debated. In the end judgement was given in Parliament for the Biſhop, and that the ſaid Inquiſitions returned in the Chancery or elſewhere ſhould be void. See the Record being very long, and yet worthy the reading.

When the Biſhop himſelf, that ought to do juſtice and right to others, will do injury and wrong within his County Palatine, and that he cannot be a Judge in his own cauſe: See a notable Record intituled thus. Recordum coram domino rege porrectum per manus Willielmi de Bereford & Rogeri de Heigham Juſticiar. domini regis ad querelas infra libertatem Epiſcopatus Dunelm. audiend. & terminand. aſſignat. in hæc verba,

Paſch. 30 E. 1.

Placita apud Dunelm. coram Willielmo de Bereford & Rogero de Heigham Juſtitiariis domini Regis ad veteres querelas Ricardi Prioris Dunelm. & aliorum hominum Epiſcopatus ejuſdem domini regis prius porrectas & non determinatas audiend. & terminand. aſſignat.

Northumb. Dunelm.

Ricardus de Hoton Prior Dunelm. queritur de * Anthonio epiſcopo Dunelm. &c. The record is long, but therein you ſhall obſerve ſeveral plaints of the Prior againſt the Biſhop, whereupon iſſues are joyned, and verdict given againſt the Biſhop, and judgements given worthy the reading. By which Record it appeareth that the Biſhop had within the County of Dureſme Regalitatem ſuam.

* This was Anthony Beak, of that ſtate and greatneſs, as never any Biſhop was, Woolſey excepted

I find alſo another Record in the ſame Kings time, viz.

Mich. 34 E. 1. Coram rege Rot. 32.

Placita coram domino Rege apud Weſtm. de Termino Sancti Michaelis Anno regni Regis E. filii Regis Henrici 33. finiente, 34. Ro. 32.

*Dominus Rex mandavit breve ſuum Epiſcopo Dunelm. in hæc verba. Edwardus Dei gratia Rex Angliæ, dominus Hiberniæ, & dux Aquitaniæ venerabili in Chriſto patri A. eadem gratia Epiſcopo Dunelm. Salutem. Cum Odeliva filia Ricardi de Hurcheworth, Matild. de Swineburne, & Ricardus Bouche, & Agnes uxor ejus arraniaverunt quandam Aſſiſam mortis anteceſſoris infra libertatem veſtram Epiſcopatus prædict', * coram Lamberto de Trykingham, Guzehardo de Charoun, & Petro de Thoresby per breve veſtrum verſus Galfridum fil. Johannis le Maſchun de Herterpole de uno meſuagio, ſex toftis et una carucata terræ cum pertin. in Hurcheworth Brian. Ac prædictus Galfridus Johannem le Maſchun de Herterpole intrinſecum verſus prædict. Odelivam, Matildam, Ricardum, et Agnet.*

* Juſtices of the Biſhop.

Per breve veſtrum.

inde

inde vocaverit ad warrant'. Et idem Johannes ten. prædict. eidem Galfrido warrantizans Simon. filium Simon. de Mora intrinſecum verſus eoſdem Odalivem, Matild', Ricardum & Agnet' ulterius inde vocaverit ad Warran'. Ac idem Simon. eadem ten. eidem Johanni warrantizans inde vocaverit ad warran. verſus eoſdem Odelivam, Matild', Ricardum & Agn. per auxilium cur. noſtræ Aymerum de Rocheford & Julianam uxorem ejus, Johannem Swayne, & Aviciam uxorem ejus, & Thom. de Fiſhborn juniorem forinſecos, qui terras aut tenementa infra libertatem prædictam aut alibi infra diſtrictionem veſtram non habent, per quæ per ballivos veſtros libertatis prædict. ad warran. illam faciend- diſtringi poſſunt, ut accepimus. Nos attendentes expediens eſſe & neceſſe quid nos ſuper recordo & proceſſu Aſſiſæ prædictæ plenius certioremur, ut partibus prædictis, quod juſtum fuerit in hac parte ulterius fieri faciamus. Vobis mandamus quod inſpectis recordo & proceſſu prædict. ſi vobis conſtiterit ita eſſe, tunc recordum & proceſſum Aſſiſæ prædictæ cum omnibus ea tangentibus nobis ſub ſigillo veſtro diſtincte & aperte mittatis, & hoc breve, Ita quod ea habeamus à die Sancti Michaelis in 15 *dies ubicunque, &c. partibus eundem diem præfigentes quod ſint ibi ſtatur. & receptur. quod curia noſtra conſideraverit in hac parte, ut nos finito placito warran. prædict. in curia noſtra record. & proceſ. totius negotii memorati vobis remittamus ad procedend. in eodem ſecundum legem & conſuetudinem libertatis prædict. T. meipſo apud Wynelingfeld* 13 *die Julii Anno regni noſtri* 33. Virtute cujus brevis prædictis Epiſcopus miſit recordum & proceſſum in hæc verba. *Placita de Aſſiſis apud Dunelm. coram Guychardo de Charroun & Petro de Thoresby Juſticiar. aſſignat. aſſociat ſibi* L. *de Trikingham die Martis proxim. poſt clauſum Paſch. Anno regni regis* E. 33. *& promot. domini* A. *Dunelm. Epiſcopi* 22.

Forein Voucher.

Si vobis conſtiterit ita eſſe.

Aſſiſis venit recognitur. ſi Ricardus de Hucheworth pater Odelivæ fil. Ricardi de Hurcheworth & avus Matildæ de Swyneburne, & Agn. uxor. Ricardi Bouche fuit ſeiſitus in dominico ſu ut de feodo de uno meſuagio, ſex toftis & una carucata terræ cum pertin. in Hucheworth Brian die quo, &c. Et ſi, &c. quæ Galfridus fil. Johannis le Maſchun de Herterpoole. Et ſciendum quod tertia pars prædict. tenement. excipit. eo quod prædict. Odelivæ alias comparuit in curia, & modo non ſequitur pro parte ſua, &c. Et Galfridus alias venit & dixit, quod ipſe tenet prædicta tenementa ad terminum vitæ ſuæ ex dimiſſione Johannis de Maſchun de Herterpoole & in forma prædicta vocavit ipſum Johannem ad Warran. Simon. fil. & hæredem Simonis de Mora, qui modo venit per Sum. & ei warrantiz. Et vocat ulterius inde ad warrant. per auxilium cur. hic et cur. domini regis Aymerum de Rocheford & Julianam uxorem ejus, filiam et unam hæredum Nicholai de Swynburne, Johannem Swayne et Aviciam uxorem ejus filiam et alteram hæredem prædicti Nicholai, et Thomam de Fiſhburne filium Chriſtianæ cohæred. prædicti Julianæ et Aviciæ ſum. in Com. Northumbr. Et quia curia iſta juriſdictionem in prædict. Aymero et datus eſt dies partibus hic die *aliis warrant. &c. qui exec. Martis proxim. poſt feſtum Sancti Jacobi Apoſtoli. Et dictum eſt prædicto Simoni quod ſequatur verſus warrant. ſuos per auxilium cur. domini, prout ſibi viderit expedire, &c. Poſtea ad diem illum ven. tam prædict. Matilda, Ricardus et Agn. quam prædict. Simon. Et iidem Matild. et alii petentes petunt quod procedat ad Aſſiſam capiend. per defaltam*

Dunelm. Pater Odelivæ, avus Matildæ.

prædict. Simonis ex quo quod nondum ſecutus fuit verſus warrantos, &c. Et ſuper hoc idem Simon profert breve domini regis hic de mittendo recordum & proceſſum Aſſiſæ prædictæ eidem domino rege à die Sancti Michaelis in quindecim dies ubicunque, &c. quæ quidem recordum & proceſſus, & etiam breve domini regis prædict. quod habuit record. conſut. per prædict. Matild', Ricardum & Agnet. domino regi mittitur juxta tenorem brevis ſui prædict. Et idem dies præfixus eſt partibus coram eodem domino rege ubicunquæ, &c. Et prædictus Ricardus et Agnet. po: lo: ſuo prædict. Matild' in placito prædict. &c. Ad quem diem coram ipſo domino rege venerunt partes, & quia conſtat per recordum prædict. quod prædict. vocati ad Warran. ſunt extrinſeci, & quod vocati ſunt ad Warran. per auxilium curiæ domini regis qui eſt ſuperior dominus totius regni, & qui omnibus & ſingulis de regno ſuo juſtitiam facere tenetur, & maxime in defectu aliorum per quorum defectum idem dominus rex vocatur in auxilium; Præceptum eſt Vicecom. Northumb. quod ſummoneat prædict. Aymerum de Rocheford & Julianam uxorem ejus filiam & unam hæred. Nicholai de Swineburn, Johannem Swayne & Aviciam uxorem ejus fil. & alteram hæred. prædict. Nicholai, & Thom. Fiſhburn fil. Chriſtianæ cohæredis prædictarum Julianæ & Aviciæ, quod ſint coram rege à die Sancti Hillarii in 15 dies ubicunque, &c. ad Warran. &c. Idem dies datus eſt petentibus, & ſimiliter prædict. Simoni tenen. per Warrant. in Banco, &c. Idem Simon po: lo: ſuo Walter o de Middleton & William de Burgham loquela prædict. &c. Et quia prædictus Epiſcopus non miſit breve originale ſimul cum prædict. recordo, & neceſſe eſt prædict. breve hic mittat; Mandatum eſt prædicto Epiſcopo vel ejus locum tenenti, quod prædict. breve domino rege mittant, ita quod illud habeant ad præfatum Terminum, &c. Ad quem diem præd. Simon tenens per Warran. venit; & prædict. Matild' de Swynburn, Ricardus Bouche, & Agnes uxor ejus petentes non venerunt, nec, &c. Ideo prædict. Simon inde ſine die. Et prædict. Matilda, Ricardus & Agn. & plegii ſui de proſequend. in miſericordia, &c.

Nota.

Paſch. 46 E. 3. Coram rege Rot. 42.

In an Information againſt Thomas Biſhop of Durham for a contempt in not certifying a Record, he pleads that he is Comes Palatinus & dominus regalis cujuſdam terræ vocat. the Biſhoprick of Durham, & habet omnia Jura regalia quæ ad Comitem Palatinum & dominum regalem pertinent, per ſe, Juſtic. & miniſtros ſuos exercenda.

In this County Palatine there is a Court of Chancery which is a mixt Court both of law and equity, as the Chancery at Weſtminſter: Herein it differeth from the reſt, that if an erroneous judgement be given either in the Chancery upon a judgement there according to the Common Law, or before the Juſtices of the Biſhop, a writ of Error ſhall be brought before the Biſhop himſelf, and if he give an erroneous judgement thereupon, a writ of Error ſhall be ſued returnable in the Kings Bench.

But now let us ſee what we find in our books concerning this County Palatine.

Mich. 14 E. 3. tit. Error 6. F.N.B. 21 E. 2 El. Dier. 250.

In a Formedon in Durham the tenant pleaded the warranty of the Anceſtor of the Demandant, with aſſets in a foreign County, whereupon the Court awarded that the tenant ſhould go quit without day. And the Demandant upon this judgement ſued a writ of Error before the Biſhop, and aſſigned for Error, that the Juſtices awarded that the tenant ſhould goe quit without day, where they ought to have continued the plea by adjournment untill the Record had been removed. And for this error the Biſhop reverſed the judgement, and day given to the parties before his Juſtices where the plea was pleaded. At which

which day the tenant was eſſoined, and a day given over. At that day a writ came to remove the Record in the common Bank, and a day given to the parties in the common Bank, and this proceeding of the Biſhop was according to the uſage there. And after by the advice of the whole Court a Venire fac. iſſued out of the Common Bank to try the iſſue joyned at Durham.

If a man in the County Palatine of Durham vouch a forreiner to warranty, the demandant may counterplead that the vouchee hath eſſets within the County Palatine for the delay. 32 E. 3. vouch. 97. 14 H. 6. fo. 3.

In a Writ of Treſpaſſe Des biens emportes deins un certeine ville, the defendant ſaid, that the place where the plaintiff ſuppoſed the taking away, is within the franchiſe of the Biſh. of Durham, where the Kings Writ runneth not, but is a franchiſe Royal Judgement de briefe. Whereunto the plaintiff ſaid, that the defendant came in by diſtreſſe, and ſo the Court ſeiſed of the plea. Finchden giving the rule of the Court ſaid, the Court is not in this caſe ſeiſed of the plea, but that ſhould be where conuſance or franchiſe is challenged, which lieth not in this caſe, but the Biſhop hath franchiſe royal into which the Kings Writ runneth not, and therefore for not denying of the exception the Writ abated. Note the Town wherein the tranſitory treſpaſſe was alledged by the plaintiff was within the County Palatine. 13 E. 3. Voucher 165. 45 E. 3. 17. Vid. 19 E. 3. trial 66. 19 E. 3. juriſ. 29. 33 E. 3 ib. 57. 45 E. 3. Viſne 50.

If the tenant vouch two, one within the County Palatine of Durham, and the other at the Common law, ſummons ſhall be awarded to the Lord of the County Palatine, commanding him to ſummon the vouchee to be at a certain day before the Juſtices here to try the warranty: in this caſe if the tenant recover in value, the Juſtices ſhall write to the Lord of the County Palatine to render in value, quod fuit conceſſum. 19 H. 6. 52.

See Dier 12 El. where he that hath jura regalia ſhall have forfeiture of High Treaſon, whereof Vide before in the Chap. of the County Palatine of Lanc. Dier 12 El. 288 which was the caſe of James Pilkington Biſhop of Durham.

* If the one be vouched, and the tenant prayeth that he may be ſummoned in the County of York, and the County Palatine of Durham, the voucher ſhall ſtand, for if he be ſummoned in the County of York, it ſufficeth. * 13 H. 4. Vouch. 39. 36 H. 6. ib. 49.

* Dominus Rex habebit cuſtodiam omnium terrarum eorum qui de ipſo tenent in capite per ſervicium militare, de quibus ipſi tenentes fuer. ſeiſiti in dominico ſuo ut de feodo die quo obierunt de quocunque tenuerunt per hujuſmodi ſervicium, &c. exceptis feodis Epiſcopi Dunelm. inter Tine & Teſe. d Prærogativa reg. cap. 1.

1. This exception extendeth not to the body. 2. If the Biſhop did after this ſtatute purchaſe any Seignory betwixt Tine and Teſe, it extendeth not to that. 3. That before this ſtatute, the King ought to have had the wardſhip of the lands, as appeareth in our books, contrary to Poles opinion in this caſe. 16 E. 3. tit. Livery 29. Glanv. li. 7. c. 10. Bract. l. 2. fo 85. 9 H. 3. prær. 25. 21 H. 3. ib. 26.

* The third Chapter of the ſaid ſtatute of prærogativa regis doth give the King primer ſeiſon, &c. without any ſaving of the Biſhop of Dureſme. * Prær. regis ca. 2.

Sir Thomas Gray Knight was ſeiſed in fee of the Manor of Chillingham in the County of Northumberland holden of the Queen by Knights ſervice in Capite, and of the Manor of Roſſe in the County Palatine of Durham holden of the Biſhop of Durham by Knights ſervice in Capite, and died ſeiſed of both, his ſon and heir of full age. And although on the behalf of the Biſhop ſome preſidents were ſhewed in like caſe, yet the two Chief Juſtices Popham and Anderſon prima facie did hold, that the primer ſeiſon of and for the Manor of Roſſe belonged to the King. Tim. 38. El. in Curia Wardorum.

The Town of Creke in the County of York holden of the Biſhop of Durham, &c. ſhall be impleaded within the County Palatine of Durham, and in no other place: and ſo is the Manor of Howden in the County of York. 22 E. 4. juriſd. pl. 61.

The King ſhall have the temporalties of the Biſhop of Durham, and for a Church that becommeth void the King ſhall have a Quare impedit. 5 R. 2. trial 49.

See the ſtatute of 5 El. cap. 23. concerning the writs of Significavit and Excom. capiendo. 5 El. cap. 23.

It was holden by all the Juſtices, that if a man be ſurety for another to keep the peace, and after he breaketh the peace, and the ſurety hath lands in the County 21 E. 3. 49. 1 E. 4. 10. Regiſt. 153. F. N. B. 130.

County Palatine of Durham, the King shall command the Bishop of Durham or his Chancelour to doe execution. And so it is in the other Counties Palatines. In the same manner it is of a Statute Staple, &c. Recognizances, &c.

Vide 5 E. 3. fol. 58. 17 E. 3. fol. 56. Rot. Parl. 7 E. 6. Rot. Pat. 7 E. 6. part. 8. 1 Mar. cap. 3.

CAP. XXXIX.

Of the Royal Franchise of Ely.

33 H. 8 cap. 10. 5 El. cap. 23.

In divers statutes it is named the County Palatine of Ely. King H. 1. in the 10 year of his reign, of the rich Monastery of Ely made a Cathedral Church, and of the Abby made a Bishoprick, and for his Diocesse assigned unto him the County of Cambridge, which before was within the Diocesse of Linc': In recompence whereof Robert Bluet Bishop of Lincoln then Chancellor of England, had to him and his Successors three Manors, parcel of the possessions of the Abby, viz. Spaldwiche, Bickleswerth, and Bugden. And for the Chapter of this new Bishop, he instituted that there should be a Prior and Covent. But in respect of the Revenues, for that their principal Manors were granted away, the number of Monks being 70. were brought down to 40. And King H. 1. granted to this new Bishop and his Successors Jura Regalia within the Isle of Ely. But the said Prior and Covent were in the reign of H. 8. suppressed, and instead thereof a Dean and Prebendaries were raised to be the Chapter of the Bishop, and a Grammar School for a Master and 24 Scholars.

This royal jurisdiction the Bishop hath by prescription grounded upon the said grant as well in Pleas of the Crown, as in Common Pleas before his Justices.

Trin. 3. E. I. Rot. 61. Coram Rogero de Seryton & sociis suis Justiciariis de Banc.

The liberty of the Bishop of Ely hath been anciently allowed by the Court of Common pleas for lands in Wisbich, within the Isle whereof a Præcipe quod reddat was brought.

Trin. 16. E. 1. in Communi Banco Rot. 89. Cant. 3 H. 6. trial 2.

Again, Allocatur libertas Episcopo Elienſi pro terris infra Insulam de Ely prout alias, scilicet in rotulo Martini de Littlebury & sociis suis annis 55 & 56 H. 3. Anno 14 Regis nunc coram Thoma de Wayland & sociis suis. Item Mich. 16 Regis nunc, Rot. 27.

In trespasse the Defendant pleaded an arbitrament made at A. in the Isle of Ely, and thereupon issue was joyned, the Plaintiff shewed that Ely is a Franchise Royal, and they of the Isle shall not be empanneled out, and prayed a Venire fac. to the Sheriff of Cambridge.

Lib. int. Rast fo.

Issue being joyned and the Visne to come out of Ely, the Entry is, Super quo prædict. (querens) dicit quod E. prædict. est infra Insulam Elienſ. quodque Episcopus Elienſ. talem habet libertatem in Insula prædicta, quod nullus Justiciar. nec aliquis minister domini regis Insulam illam ingredi debet ad aliquod officium ibi exercend. nec liberi tenentes nec residentes in eadem Insula illam ingredi debent ad aliquam Juratam extra Insulam illam faciend. & petit breve domini regis de Venire fac. hic 12. de vicineto de Soham, quæ est propinquior Villa in prædict. Com. Cantabr. extra Insulam prædict. adjacen. prædict. Villæ de Ely ad triandum exitum præd. Et quia videtur Justiciariis hic quod petitio illa est rationi consonans, Ideo præcept. est Vic. Cant. quod venire fac. hic tali die 12 de vicineto illo, per quos, &c.

46 E. 38.

Sentence was given in the Ecclesiastical Court in Cambridge, and the Defendant was summoned at Hadington in the Isle and Franchise of Ely,

as

as he might be, for where the action is intire, and not several, whereof part is within the Franchise and part without, the Franchise shall not be allowed. As if one take a man in place at the Common law, and carry him into a Franchise and there imprison him, this Court shall hold plea, quia magis dignum trahit ad se minus dignum. Et sic de similibus. 5 E.2. consulans 68. 21 E.4.35.

In an Action of Account against one as Bayliff of lands in H. and A. and H. is within the Franchise of the Isle of Ely, and because the Plaintiff might have charged the Defendant as Bayliff of A. and it is no reason that by joyning of them in one Writ to disherit the Bishop of his Franchise, the Writ abated. 14 E.3. consulans 74. 20 E.3. ibid. 85. 49 E. 24. See 23 E.3. 22. accord.

CAP. XL.

Of the County Palatine of Pembroke.

This was an ancient County Palatine within Wales, and the Earl was Comes Palatinus, and had Jura regalia, and all things belonging to a County Palatine, but the jurisdiction hereof was taken away by the statute of 27 H.8. cap.26. the County Palatine then being in the Kings hands. Ro. Parliamenti, Hil. 18 E. 1. fo 6. *Totus Com' Pembroke fuit Com' Palatinus, & habuit Cancel. & Sigillum, &c.* 27 H.8. cap. 26.

And for further proof that it was a County Palatine, see the Charter of E.3. to Lawrence de Hastings in these words. Carta Regis E.3. An. 13. regni sui. 13 Octob. Rot. Pat. 13 E. 3. m. 12.

Rex omnibus ad quos, &c. Salutem. Sciatis quod circumspectionis & elegantiæ præsagium quod ex aptis consanguinei nostri charissimi Laurentii de Hastings juventutis auspicius concepimus, merito nos inducunt, ut ipsum in his quæ honoris sui debitam conservationem respiciunt, pronis favoribus prosequamur. Cum itaque hæreditas bonæ memoriæ Audomari de Valentia Comitis Pembrochiæ (ut dicitur) jampridem sine hæredе de corpore suo procreato decedentis ad sorores suas fuerit devoluta, inter ipsas & earum hæredes proportionabiliter dividenda: Quia constat nobis quod præfatus Laurentius qui dict' Audomar' in partem hæreditatis succedit est ex ipsius Audomari sorore seniori descendens, & sic peritorum assertione, quos super hoc consuluimus, sibi debeatur prærogativa nominis & honoris; justum & debitum reputamus ut idem Laurentius ex seniori sorore causam habens, assumat & habeat nomen Comitis Pembrochiæ, quod dictus Audomarus habuit dum vivebat: quod quidem (quantum in nobis est) sibi confirmamus, ratificamus, & etiam approbamus; Volentes, & concedentes ut dictus Laurentius prærogativam & honorem Comitis Palatini in terras quas tenet de hæreditate dicti Audomari, adeo pleno, & eodem modo habeat & teneat, sicut idem Audomarus illas habuit & tenuit tempore quo decessit. In cujus, &c. Teste rege apud montem Martini die Octob. Anno regni 13.

Note here, that the eldest sister ought to have the honor, upon consultation with learned men. Prærogativa & honor Comitis Palatini. Sicut Audomarus illas habuit.

CAP.

CAP. XLI.

Of the Franchise of *Hexam* and *Hexamshire*.

THis was sometime parcel of the possessions of the Archbishop of York, and claimed by him to be a County Palatine.

2 H. 5. cap 5.
9 H 5. cap. 7.
8 E 4. cap. 2.
33 H. 8. cap. 10.
14 Eliz. cap. 13.

At the Parliament holden in 2 H. 5. it is resolved that Hexamshire was a Franchise where the Kings writ went not.

And in the statute of 33 H. 8. it is named a County Palatine.

But at the Parliament holden in Anno 14 Eliz. it was seriously examined, and in the end Four conclusions were enacted by Authority of Parliament. 1. That whiles it was in the hands of the Archbishop it was tearmed and named a County Palatine, where in right or proof there was none such. 2. That it is within, and parcel of the County of Northumberland. 3. That all Pleas of the Crown, and suits betwixt party and party shall receive like trial, &c. as the rest of the Subjects of Northumberland ought to have. 4. That the Sheriff and other Officers of the County of Northumberland may execute his or their office, &c. within Hexam and Hexamshire. So as whatsoever it was before 14 Eliz. it is now no County Palatine, nor Franchise royal.

CAP. XLII.

Of the Courts of the Cinque Ports,

Domesday. Chest. Lib. Inr. Rast. fo.

AT the first the privileged Ports were but three. For at the making of the book of Domesday, which was in the 14 year of the Conqueror, there are but three named in that book, viz. Dover, Sandwich, and Rumney, and that these three in the time of Edward the Confessor were exonerated of such charges and burthens, as others did bear; after two Ports were added to them by the Conqueror, viz. Hastings and Hithe.

Bract. li. 3. f. 118.

Bracton who wrote in the reign of H. 3. nameth Hastings, Romnal, Heya, * Dover and Sandwich to be the Five Ports. Of this number of Five were these Ports called the Cinque Ports, as it appeareth by a writ which Bracton rehearseth in the same place, viz.

* Memorandum quod Pharanus de Bolonia venit ad Conquestum tempore Willielmi Regis, Bastardi, & in illo Conquestu perquisivit Wardam de Doveria in feodo, & habuit, & tenuit toto tempore prædict. Regis Willielmi usque ad tempus Regis Henrici, avi Regis Henrici filii Regis Johannis, & dictus Rex Hen. avus dedit dicto Pharano 60. libratas terræ in escambio pro Doveria, viz. Manerium de Wendevre pro xl. libr. terræ, Kingshull pro x libr. terræ, & 7 hidas in Eton pro 10 li. terræ. In lib. de Abbathia Miss. fo. 114.

Rex Vic. Norff. & Suff. Salutem. Sciatis quod summoniri fecimus ad talem diem apud Shepway omnia placita de Quinque Portubus sicut teneri debent, & solent coram Justiciariis apud Shepwey. Et ideo tibi præcipimus quod hoc sciri facias hominibus de Jernemewe, & ballivis de Donewiz, ita quod si aliquis conqueri voluerit de aliquo qui sit de libertate vel infra libertatem Quinque Portuum, tunc sit apud Shepwey coram prædictis Justiciariis nostris querelam suam propositurus, & justitiam inde recepturus. Teste, &c.

In Dors. Cart. Anno 1 Re. Jo. parte 2. m. 12.

After two more, viz. Winchelsey and Rye were added: for I find a Record Anno 1 Regis Johannis, quod Winchelsey & Rye debent esse in auxilium Villæ de Hastings ad faciend. regis servicium 20 Navium, &c.

And these have the same Franchises and Liberties that the former had; and every one of these send two Burgesses by the name of Barons of the Cinque Ports

Ports to the Parliament, as by the Records of the return of them remaining in Chancery at every Parliament doth appear. And albeit two be added, yet they hold their former name of the Cinque Ports. These Ports or Havens do lie towards France, and therefore prudent Antiquity provided, that they should be vigilantly & securely kept, for performance whereof these Ports have a special Governor or Keeper, called by his Office Lord Warden or Keeper of the Cinque Ports, and is also Admiral, and hath the jurisdiction of the Admiralty amongst them, and is exempt from the Admiralty of England. This Warden in former times was ever a man of great fidelity, wisdom, courage, and experience, for that he had the charge of the principal gates of the Realm. He is also Constable of the Castle of Dover, his jurisdiction as Constable is limited by the statute of Artic' super Chartas, Anno 28 E. 1. which you may read, and the Exposition thereof in the Second part of the Institutes. 50 E. 3. 5. Artic. super Chart. cap. 1. 2 part of the Inst.

The Franchise of the Cinque Ports hath been time out of mind partly by ancient Parliaments, partly by ancient Charters, &c. and confirmed by express name by the statute of Magna Carta c. 9. and were made Five by William the Conqueror. 3 E. 4. 17. 17 E. 4. 16, 17. 36 H. 6. 34. Fortesc. Lib. Int. Reg. fo.

For the better understanding of our Books, it is to be known that there is a great diversity between the Principality of Wales, the Counties Palatines, &c. and the Cinque Ports. For Wales was originally no part of England, but County Palatines were parcel of the Realm of England and divided in jurisdiction, and the Cinque Ports are parcel of the County of Kent, and yet ubi breve domini regis non currit, but have not Jura Regalia, and therefore regularly no writ of Error did lie of a Judgement in Wales, otherwise it is in the Counties Palatines. A Judgement here of Lands in Wales or in the County Palatine is void; but a Judgement given here of lands in the Cinque Ports is good if the priviledge be not pleaded, for they be part of the County, and the Franchise may be demanded in another action. 9 H. 7. 12. 36 H. 6. 33, 34.

And it is to be observed, that within the Cinque Ports there be divers Courts, one before the Constable of the Castle of Dover, (whereof somewhat hath been said before) there be other Courts within the Ports themselves, before the Mayors and the Jurats, and another which is called Curia Quinque Portuum apud Shipwey, whereof we shall speak hereafter.

If any of the Kings Courts do write to have a Record in the Cinque Ports, or for doing of any thing within the same, the Writ shal be directed Constabulario Castri de Dover, & Gardiano Quinque Portuum, for he is the immediate Officer to the Kings Courts for execution of the Kings Writs within the Cinque Ports. For example: 33 E. 3 jurisd. 28.

If a man plead a Record within the Cinque Ports, and the other plead Nul tiel Record, there shall go a Writ to the Constable of Dover to certifie the Record, for the course is for the Kings Courts to write to the Constable, and he shall send to the Barons, that is, to the Mayors and Jurats, to certifie him of the Record which is before them, and he shall certifie the Kings Court, and so the Constable is the immediate Officer to the Kings Court. 30 H. 6. 6 & 7.

Note, though Books say that the Writs shall be directed to the Constable of Dover, yet the Writ is to be directed Constabulario Castri de Dover, & Gardiano Quinque Portuum. Regist. fo. F.N.B. 80. b. 240. 1.

A man hath a Judgement in any of the Kings Courts, and the Defendant hath no land or goods but in the Cinque Ports, the Plaintiff shall have a Writ to the Constable of Dover to make execution. And so it is if a man will have surety of the peace against any person within the Cinque Ports, then he shall have a Writ out of the Chancery directed to the Constable of Dover, for the doing thereof. Regist. fo. F.N.B. 80. b. 132. 21 E. 3. 49. See 1 E. 4. 10.

* Et quia in quadam Carta domini regis nunc continetur, qd omnes querelæ versus ipsos Barones Quinq; Portuum apud Shepwey terminari debent coram Custode Quinque Portuum; Præcept' est Stephano de Peneceſtr' nunc Custodi quod partibus prædictis coram eo certum diem assignet & fac' Justiciæ complementum. Regist. 153. * Rot. Parl. An. 18 E. 1. fo. 6. ou. 115. Inter Abbatem de Feversham & Bar. de Port de Feversham.

a 30 H.6. 6 & 7. Dier 23 El. 376. Brook. Cinque Ports. 25. Temps H.8. diversity des Courts.

[a] If an erroneous judgement be given in the Cinque ports before any of the Mayors or Jurats, it shall be redressed before the Constable of Dover at the Court at Shepwey, which Court was raised of ancient time by Letters Patents of E. 1.

b Hil. 18 E. 1. f. 6. Rot. Par. nu. 115. Dorf. Claus. An. 30 E. 1. m. 13.

[b] The Court of the Cinque ports holden at Shepwey adjudged the Abbot of Feversham (which Abby was within the Cinque ports) for his offence to be imprisoned, for the which the Archbishop of Canterbury caused the Kings Ministers of Dover to be cited into the Ecclesiastical Court, &c. The Record saith, Quia secundum consuetudinem regni approbatam, & ratione juris Regii, ministri Regis pro aliquibus quæ fecerunt ratione officii sui, trahi non debeant. Rex prohibuit Archiepiscopo Cant. ne molestari faciat ministros suos Dovor. de eo quod Abbatem de Feversham pro delicto suo incarcerassent per considerationem [c] Curiæ Quinque Portuum de Shepwey, &c. The whole Record is worthy to be read over; this shall suffice for the end that I aim at.

c Curiæ Quinque Portuum de Shepwey. Nota, this for the stile of the Court.

Vide Fleta lib. 2. cap. 48. the Hustings apud Shepwey.

See Bract. lib. 3. ubi supra.

d 50 E. 3. 5. 33 E. 3. tit. jurisd. 60. 1 E. 3. fol. 2. 49 E. 3. 24. 21 R. 2. breve 636. 46 E. 3. 8. 33 H. 6. 4. 8 H. 3. 7. * 39 E. 3. 17. 30 Ass. pa. 1. 8 E. 3. 22.

[d] The Jurisdiction of the Cinque ports is general, and extends as well to personal Actions, as to Actions real and mixt, or which touch the freehold, but so it is not in ancient demesne, for regularly that jurisdiction extends not to personal Actions.

If a Præcipe be brought of Land, part within the Cinque ports, and part without, the whole Writ shall abate: Et sic de similibus. * And there is a diversity between a Franchise to demand conusans, and a Franchise, ubi breve domini Regis non currit: For in the first case the Tenant or Defendant shall not plead it, but the Lord of the Franchise must demand conusans; but in the other case the Defendant may plead it to the Writ.

e 49 E. 3. 24.

[e] The Manor of P. within the Cinque ports was holden of the King as of the honor of Egle, and escheated to the King for want of heir, the King granteth the Manor of P to another. And it is adjudged, that the seison of the King in this case doth not make it of another nature than it was afore; for the privilege runneth with the land.

CAP.

CAP. XLIII.

The Court of the Eſcheator, and of the Commiſsioners for finding of Offices, &c.

The gift of the Office of the Eſcheator belongeth to the Office of the Lord Treaſurer, who granteth the ſame by his Deed. He is to continue in his Office but one year, or once in three years. 14 E.3.cap.8. 1 H.8. cap.8. 3 H.8. cap.2.

For the derivation of his name, his antiquity, and ſome part of this office, ſee the firſt part of the Inſtitutes, Sect. 4. where the ancient Authors, and many Authorities be quoted: He ought to be ſeiſed of 40 Marks land, except Eſcheators in Cities and Counties Palatine.

All Writs Original of Diem clauſit extremum, Mandamus, Devenerunt, Melius inquirend. Quæ plura, &c. are directed to him to find an Office for the King after the death of his Tenant, which held by Knights ſervice in Capite, or otherwiſe by Knights Service.

This Officer in caſe of Eſcheats for Treaſon, Felony, or in caſe of Wardſhip, or Primer ſeiſon, may find an Office virtute Officii. But in caſe of Wardſhip, or Primer ſeiſon, if he find an Office virtute Officii, if the Land &c. be of the yearly value of five pound (or above) he ſhall loſe every time he ſhall ſit five pounds. 3 H. 8. cap. 2.

Offices found before him virtute Officii, he may return either into the Court of Chancery, or into the Exchequer, ſaving at this day for Wardſhips, or Primer ſeiſon, which he muſt return into the Chancery: for by the Stat. of 32 H.8. cap. 46. the Court of Exchequer is barred to deal with the ſame. And Offices found before him virtute Brevis, are to be returned by him into the Chancery. Lib.1.fo.42 b. Alton woods. 4 E.4. 24. Stauf. prær. 70. b.

If he ſit by force of a Writ, he ought to take the Inqueſt within a month next after the delivery of the Writ, and he ought to return the ſame within a moneth after he taketh it, either by Writ, or virtute Officii. 3 H.8.cap.2. 8 H.6.16. 18 H.6.7.

See Capit' Eſchaetriæ, whereof the Eſcheator may inquire: and the Statute De Eſchaetoribus, Anno 29 E. 1. Vide Dier 248, 249. [a] He is accountable pro catallis felonum, fugitivorum, & hujuſmodi. [b] All Offices found before him, or Commiſſioners ought to be found by the oaths of twelve men, every Juror to have Lands, &c. to the yearly value of 40 s. in the ſame County, [c] and indented, and one part by them ſealed, and by him the other part, which is to remain with the Foreman of the Jury, and to be taken in good Towns and open places. For ſecret Offices are abhorred in Law, full of veration and charge, and never have good ſucceſs. Mag.Car.1.part fo.160,161. a Keyl.w. 6 H 8. 173. b 1 H 8. cap. 8. 3 H.8.cap.2. c 34 E.3.cap. 13. 36 E.3. cap.13. otherwiſe void.

Neither he nor the Commiſſioners can take any Enqueſt of iniquity of any other perſons, but ſuch as be impanelled and returned by the Sheriff. 8 H.6.cap.16. 18 H.6.cap.7.

If he or the Commiſſioners ſhall deny any perſon to give evidence openly in his preſence to ſuch Enqueſts as ſhall be taken before him for the finding of an Office, he ſhall forfeit 40 l. If he, or the Commiſſioners, or any of them ſhall refuſe to take a verdict of the Enqueſt offering to preſent the ſame, he ſhall loſe 100 l. to the party grieved. 1 H.8.cap.8. 3 H.8.cap.2.

An Office found before Commiſſioners is as forcible in Law, as if it had been found before the Eſcheator. 24 E. 3. 55.

The Eſcheator ought to take no fee by the Statute of W. 1. but of the King onely, but if he find an Office by force of any Writ, and according to the ſame for the King, he ſhall have a fee of 40 s. by the Statute of 23 H. 6. but if it be found See the 2 part of the Inſtitutes, W. 2. cap. 26. 23 H 6.cap.1,7. 1 H.8.cap.8.

found before him by Writ, or ex Officio, that the Lands are holden of a Subject, or if he find an Office for the King virtute Officii, there is no fée due to him. But the Commiſſioners ought to take no fée at all, though an Office be found for the King, becauſe they are not within the Statute.

[a] 33 H.8.ca.22.

[a] The Eſcheator finding an Office for the King by force of any Writ, not exceeding the value of 5 l. ſhall not take above 15 s. and the Commiſſioners can take nothing: [b] but the Maſter of the Wards may allow Commiſſioners, Counſellors, and Feodaries their Coſts. [c] The Eſcheator may make Deputies, but ſuch able men, for whom he will anſwer, and that have ſufficient Lands in the ſame County, &c. and the Eſcheator ſhall certifie the name or names of his Deputy or Deputies, under his Letters Patents into the Exchequer within twenty dayes after the deputation made. And no Deputy ſhall take upon him to occupy that Office, except the Eſcheator hath lands to the value of 20 l. [d] And if any Sub-eſcheator be made, not having ſufficient, he may be removed by the Kings Writ directed to the Eſcheator, De Subeſcheatore amovendo.

[b] 32 H.8.cap. 46.
[c] 5.E.cap.9. 12 E.4.cap.9. F.N.B. 100.c. 9 H.6.fo.60.

[d] 5 E.3.cap.4. Regiſter 177.

[e] If the Eſcheator, Sub-eſcheator, or Commiſſioner, return a falſe Office, an action upon the Caſe doth lie againſt them by the party grieved, although they be Offices of Record, beſides the penalty of 100 l. by the Statutes of 1 H. 8. and 3 H. 8. [f] The oath of the Eſcheator expreſſing his duty, appeareth in the Regiſter fol. 301. b.

[e] 21 E.4.13. F.N.B. 100.c. 1 H.8.cap.8. 3 H.8.cap.2. 9 H.6.fol.60.
[f] Regiſt. f. 301. b.

[g] If I be poſſeſſed of the goods of a man outlawed in treſpaſs, and I deliver them to the Eſcheator, I am diſcharged, quod Brian affirmavit: for he ſaid that the Eſcheator is the Kings Miniſter, and chargeable for the goods.

[g] 10 H.7.7.b.

CAP.

CAP. XLIV.

Court in the Universities of *Cambridge*, and *Oxford*.

IT is true that each of these Universities hath divers Courts, Jurisdictions and Powers, by the Charters of the Kings of this Realm, divers of which were not grantable by Charter, but by authority of Parliament, which being slipped, Queen Elizabeth, (who could (we speak it of knowledge) not onely speak the Languages of French, Italian, and Spanish, but was learned in the Latine and Greek learned tongues, and excelled all others of her Sex in knowledge both Divine and Humane,) for the great love and favour that her Majestie bare to her Highnes Universities, and for the great zeal and care that the Lords and Commons in Parliament had for the maintenance of good and godly literature, and the vertuous education of youth within either of the said Universities; and to the intent that the ancient Priviledges, Liberties and Franchises of either of the said Universities, granted, ratified and confirmed by the Queens highnes, and her most noble Progenitors, might be had in great estimation, and be of greater force and strength, for the better increase of learning, and the further suppressing of vice: It was enacted by Authority of Parliament holden in the 13. year of her most prosperous reign: 1. That each of the Universities should be incorporated by a certain name (albeit they were ancient Corporations before.) 2. That all Letters Patents of the Queens Highnes, or by any of her Progenitors or Predecessors, made to either of the said corporated bodies severally, or to any of their predecessors of either of the said Universities, by whatsoever name or names, the Chancellor, Maisters, & Scholars of either of the said Universities, in any of the said Letters Patents had bēn named, should be good and effectual, and available in Law, to all intents, constructions and purposes, &c. as amply, fully, and largely, * as if the said Letters Patents were seised verbatim in that Act of Parliament, any thing to the contrary notwithstanding. 3. That the Chancellor, Maisters and Scholars of either of the said Universities, and their successors for ever, should severally have, hold, possess, and enjoy, and use to them and their successors for ever, all manner of Manors, &c. and Hereditaments, and all manner of Liberties, Franchises, Immunities, Quittances, and Priviledges, view of Frankpledge, Law dayes, and other things whatsoever they be, which either of the said corporated Bodies had held, occupied or enjoyed, or of right ought to have had, used, occupied, and enjoyed, according to the true intent and meaning of the said Letters Patents whatsoever, any Statute, Law, Usage, Custom, or other thing or things, made or done to the contrary notwithstanding. 4. That all Letters Patents of the Queens Highnes, or any of her progenitors or predecessors, and all manner of Liberties, Franchises, Immunities, Quietances, and Priviledges, Lets, Law dayes, * and all other things whatsoever therein expressed, given or granted to either of the said Universities, by what name soever, be and by vertue of this Act should be established and confirmed, any Statute, Law, Usage, Custom, Construction, or other thing to the contrary notwithstanding.

Liberal Arts and Sciences are *Animæ Reipublicæ.*

* Note these general briefe and effectual words.

* Nota hoc.

Note these general binding and effectual words. *Actus benedictus.*

By this blessed Act of Parliament, all the Courts, Franchises, Liberties, Priviledges, Immunities, &c. mentioned in any Letters Patents, &c. to either of the said Universities (which were too long here to be recited) * that they might prosper in their Study with quietnes, are established, made good and effectual in Law, against any Quo warranto, Scire facias, or other suits, or any quarrel, concealment or other opposition whatsoever. See the Letters Patents of King H. 8. bearing date primo Aprilis Anno 41. of his reign, made to the Universitie of

* *Haud facile emergunt quorum virtutibus obstat Res angusta domi.*

of Oxford; and other Letters Patents bearing date 26 Aprilis, Anno 3. Reginæ Eliz. made to the Universitie of Cambridge, both which are by expresse name established and confirmed by the said Act of 13 Eliz. In which Act there is a Saving to all, other then to the Queens Majestie, her Heirs and Successors. Et sic omnia in tuto.

Touching the Jurisdiction and Conusans of divers things belonging to the Universitie of Cambridge, see the Parliament Roll of 5 R. 2. nu. 45, &c. till nu. 66.

Nota (*prob dolor*) the ancient Charters, Records, &c. of the Universitie of Cambridge burnt by Rebels.

The Mayor, Bayliffs, and Comminaltie of Cambridge were accused, for that they in the late Tumults and uproar confederated with divers other misdoers, brake up the Treasurie of the Universitie of Cambridge, and thereout took, and burned sundrie of the Charters, &c. of the said Universitie, and also compelled the Chancellor and Scholars of the said Universitie, under their Common Seals to release to the said Mayor and Burgesses, all manner of Liberties, and also all Actions real and personal, and further to be bound to them in great summes of money: whereupon it was agréed in form following: That one Writ should be directed to the Mayor, Bayliffs, and Comminaltie of Cambridge that then were to appear in the Parliament, and to answer, (the form thereof doth there appear.) And that another Writ in form aforesaid should be directed to the Mayor & Bayliffs that were at the time of the offence, (the form whereof doth there appear also.) The Mayor and Bayliffs that then were appeared in proper person, and pleaded not guiltie, ne witting thereto; the Comminaltie by their Attorneys appeared at the day. The Mayor & Bayliffs, that before were at the time of the offence, appeared also in proper person, and the said Mayor answered that he was not privie to any such act, but only by compulsion of others, if any thing were therein done; the which the Kings learned Counsel then did disprove, as by the Record appeareth. The Burgesses of Cambridge delivered into the Parliament the said two Deeds sealed by the Chancellor and Scholars, the one Deed contained a release of all Liberties and Privileges, with a Bond of 3000 l. to release all suits against the said Burgesses. The other was a Release of all Actions real and personal, as there doth appear. Upon the reading of which two Deeds, they both were commanded to be cancelled for the causes aforesaid. After this the Chancellor & Scholars aforesaid by way of petition, and in form of sundrie Articles exhibited, shewed the beginning & whole discourse of the said Mayor and Bayliffs effectually & largely. Upon reading of which Bill, it was demanded of the said Burgesses what they could say, wherefore their liberties late by the King confirmed should not be seised into the Kings hands as forfeited.

They require three things, viz. 1. A copy of the bill. 2. Counsel, and 3. respite to answer: to the copy of the bil was answered, that sithence they heard the same, it should suffice, for by law they ought to have no copy. To Counsel, it was said, that wherein Counsel was to be had, they should have. Wherefore they then were appointed to answer to no crime or offence, but only touching their Liberties. After many dilatorie shifts and subterfuges, the said Burgesses touching their liberties only, having no colour of defence, submitted themselves to the Kings mercy & grace, saving their answers to all other matters. The King therupon by common consent of the Parliament, and by authoritie of the same, seised the same liberties into his hands as forfeited. And after the King granted to the Chancellor and Scholars aforesaid, within the said Town of Cambridge & * suburbs of the same the Assise, conusans, and correction of Bread, Ale, Weights, Measures, Regrators, and Forestallers, with the fines & amerciaments of the same, yéelding therefore yearly at the Exchequer 10 l. And certain Liberties the King after granted to the said Mayor and Bayliffs, and increased their former fée-farm.

Nota, by Act of Parliament. Vide Rot. Parl. 8 R. 2. nu. 11.

Nota, Suburbs proveth a City.

Nota, the priority of the grant to the Universitie.

This Universitie of Cambridge hath power to Print within the same omnes & omnimodos libros, which the Universitie of Oxford hath not. See a notable Record in Parliament 13 H. 4. concerning the Universitie of Oxford, by the which it was decréed and adjudged by authoritie of Parliament, that the Popes Bull should not impeach, or alter the right and custom of any thing concerning that Universitie, and therefore was disallowed, to long to be here inserted.

Rot. Parl. 13 H. 4. nu. 15, 16, 17.

CAP.

CAP. XLV.

The Courts of the Stanneries in *Cornwall* and *Devon*.

¶ *The Stile of the Court.*

THe ſtyle of the Court of Stannery is, and always hath bẽn, Magna Curia Domini Regis Ducatus ſui Coronubiæ apud Crokerenton in Com. Devon. coram A.B. Cuſtode Stannariæ dicti Domini Regis in dicto Com. Devon.

The Officers of this Court be the Steward, Under-warden, &c.

¶ *The Officers.*

It is called Stannaria à Stanno, becauſe the Lord Warden hath juriſdiction of all the Tynne in Cornwall and Devon. Tynne is a Saxon word, and derived à tinnitu, and the Tinners are called Stannatores.

¶ *The Juriſdiction.* See the firſt part of the Inſtitutes, Sect.

The juriſdiction of this Court is guided by ſpecial Laws, by Cuſtomes, and by preſcription time out of mind, which ſo far as we find it to be allowed by the reſolution of the Judges, or by Act of Parliament, we will recite.

In Cancellaria apud Weſtm. coram Nicho. Bacon milite Cuſtod' Magni Sigilli Angliæ pro Stannatoribus, die Veneris, viz. 14 die Novembris Anno regni Elizabethæ Reginæ Quarto. Inter Martinum Trewynarde Quer. in Cur. Stannar. Com. Cornub. & Johannem Killegrew & Georgium Trewynarde Defend.

Mich. 4 Eliz. in Cancellar. Trewynards caſe.

Where the 14 day of October laſt paſt, the matter in queſtion touching the allowing or diſallowing of Writs of Error, as well betwẽn the parties afore-ſaid, as alſo for and concerning all other Writs of Error touching all cauſes determinable in the Stannery Court in Cornwall, was by the order of the Lord Keeper of the Great Seal of England committed to the hearing and examination of Sir William Cordel Knight, Maſter of the Rolls, and Sir James Dier Knight, Chief Juſtice of the Common Pleas, and Juſtice Weſton; to the intent upon the due conſideration of the cauſe, they ſhould make report unto the ſaid Lord Keeper of their opinions and proceedings therein, as in their Judgements ſhould ſeem moſt agreeable to juſtice and equity: who having accordingly travelled diligently for the underſtanding of the truth of the premiſes, upon the deliberate hearing and examining of the cauſe in the preſence of the Councel learned of both ſides, and upon the peruſing and conſideration of the ancient preſcriptions, cuſtomes, liberties, and Charters exhibited by the ſaid parties concerning the premiſes, have this day made their report unto the ſaid Lord Keeper as followeth, That is to ſay, That for as much as the ſaid Plaintiff could not, nor did not ſhew forth any Record or preſident, whereby any judgements or executions heretofore paſſed in any of the ſaid Stannery Courts have bẽn reverſed by writ of Error in any of the Queens Majeſties Courts of her Bench or Common Pleas: And for that it appeareth unto them that divers and ſundrie inconveniencies were likely to enſue by allowing of ſuch Writs of Error, and upon other cauſes & conſiderations them eſpecially moving: They in their opinions think it not meet nor convenient that any Writs of Error ſhould paſs, or be ſuffered in ſuch caſe to reverſe any of the ſaid judgements or executions. Upon which report made, It is this day ordered by the ſaid Lord Keeper of the Great Seal, that the Order heretofore taken the 15 of June laſt paſt made againſt the Lord Warden of the Stanneries aforeſaid, his Officers and others mentioned in the ſame, concerning the not allowing or not executing of any Writ or Writs of Error: and all and ſingular the contempts contained in the ſame Order ſuppoſed by

No Writ of Error lieth upon any judgement in the Stannery Courts. Vide Simile Dier 23 Eliz. fol. 376.

But judgements ſhall be reverſed by Appeal, as in the next page appeareth.

by them to be committed, concerning the not allowing or not executing of any Writ or Writs of Error as is aforesaid, shall be clearly frustrated and void, and they and every of them clearly released and discharged, any thing in the same Order to the contrary notwithstanding. And that the said defendants and every of them shall be at their liberty to take their advantage against the said plaintiff for their executions had or to be had in any of the said Stannery Courts, according to the custom of the same Courts, without let or impeachment of any Writ or Writs of Error or of false judgement sued or to be sued in any of the said Courts of the Kings Bench or Common Pleas. And that from henceforth, no Writ or Writs of Error, or false judgement be hereafter sued in any of the said Courts of the Kings Bench or Common Pleas to reverse any judgement or judgements in any of the said Courts of Stanneries heretofore given, or hereafter to be given, until upon further consideration of the ancient grants and liberties of the said Courts of Stanneries, or upon some other sufficient cause or matter, it shall be otherwise ordered and determined by this Court of the Chancery.

Mic. 7 Eliz. Reginæ in Camera Stellata, 29 Nov.

In Camera Stellata apud Westm. coram Concilio ibidem die Mercurii, *viz.* 29 die Novemb. Anno regni Dominæ Eliz. Dei gratia Reginæ Angliæ, Franciæ, & Hiberniæ, fidei defensor', &c. Septimo, 1564.

Where a matter in variance hath bèn heretofore moved, and depending in this honourable Court, betwèn Martin Trewynard plaintiff, & John Raskarrock, William Gilbert, John Killigrew the younger, James Drewe, and other Defendants by two several Bills exhibited into this Court, whereof the last Bill containeth no other matters of effect being not mentioned in the first Bill, other then the taking of certain cattel of the said complainant and others. And where also it appeareth this present day, that the taking of the said cattel was by certain of the said Defendants lawfully authorized for that purpose by the Steward of the Stannery Court of Penwith, and carried into the County of Cornwall for an execution upon a condemnation by judgement had in the said Court against the said plaintiff. Touching which condemnation the said complainant hath complained as well in the Court of Chancery by Bill, and in the Kings Bench by Writ of Error, as also in this Court, as appeareth in the first of the said two Bills here depending, meaning by some of these ways to call in question the validity of the said Judgement, and was out of the said several Courts by order discharged and dimissed, referring the proceeding upon the said judgement to the order of the said Stannery Court, according to divers Ordinances by divers ancient Charters, customs, and liberties belonging to the Stannery ratified by Act of Parliament. And where it doth also appear that the taking of the said cattel, whereupon the said last Bill in this Court is exhibited was only for the execution of the said recovery. And where also it doth further appear, that by the Laws and Ordinances of the said Stannery (if any such cause of complaint be ministred) the same is to be redressed by appellation in several degrees, viz. first to the Steward of the Stannery Court where the matter lieth, then to the Underwarden of the Stanneries, and from him to the Lord Warden of the same Stanneries: and for default of Justice at his hands, to the Princes Privy Council, and not examinable either here in this Court or in any other Court. It is therefore this present day ordered, That the said several Bills of complaints, and the said defendants named in the same, with all the causes therein mentioned, be forthwith dismissed out of this Court to be determined according to the said Laws and Ordinances in the said Stannery, and not elsewhere.

Erroneous judgements in the Stannery are to be reversed by appellation, & to whom this appellation shall be made.

The

The Reſolution of all the Judges (by force of his Majeſties Letters) concerning the Stanneries in Devonſhire and Cornwall upon the hearing of the Councell learned of both parties at ſeveral dayes, and what could be alledged and ſhewed on either party, and upon view and hearing of the former proceedings in the Courts of the Stanneries both before and ſince a certain Act of Parliament made concerning the Stanneries in * 50 E. 3. Term. Mich. 4 Jac. Regis. * See this Act of Parliament hereafter in this Chapter.

Firſt, We are of Opinion, That as well Blowers as all other labourers and workers (without fraud or covine) in or about the Stanneries in Cornwall and Devon', are to have the privileage of the Stanneries during the time that they do work there.

Secondly, that all matters and things concerning the Stanneries, or depending upon the ſame, are to be heard and determined in thoſe Courts according to the cuſtome of the ſame time out of mind of man uſed.

Thirdly, That all tranſitory actions betwæn Tynner and Tynner, or Worker and Worker (though the cauſe be Collateral, and not pertaining to the Stannery) may be heard and determined within the Courts of the Stanneries according to the cuſtome of the ſaid Courts, albeit the cauſe of Action did riſe in any place out of the Stanneries if the defendant be found within the Stannery: or may be ſued at the Common Law at the election of the plaintiff. But if the one party only be Tynner or Worker, and the cauſe of Action being tranſitory and collateral to the Stannery do riſe out of the ſaid Stanneries, then the defendant may by the cuſtome and uſage of thoſe Courts plead to the juriſdiction of the Court, that the cauſe of action did riſe out of the Stanneries, and the juriſdiction of thoſe Courts, which by the cuſtome of the Court he ought to plead in proper perſon upon oath. And if ſuch plea to the juriſdiction be not allowed, then a Prohibition in that caſe is to be granted. And if in that caſe the Defendant do come to plead to the juriſdiction of the Court upon his oath, he ought not to be arreſted eundo, redeundo, vel morando, at the ſuit of any ſubject in any Corporation, or other place where the ſaid Courts of the Stannery ſhall be then holden.

Fourthly, if the defendant may plead to the juriſdiction of the Court in the caſe before mentioned, and will not, but plead and admit the juriſdiction of the Court and judgment is given, and the body of the defendant taken in execution, the party cannot by Law have any action of falſe impriſonment, but the execution is good by the cuſtome of that Court. But if in that caſe it doth appear by the plaintiffs own ſhewing, that the contract or cauſe of Action was made or did riſe out of the Stanneries, and the juriſdiction of thoſe Courts; or if it appear by the condition of the bond whereupon the Action is grounded, that the condition was to be performed in any place out of the juriſdiction of thoſe Courts, then all the proceedings in ſuch caſes upon ſuch matter apparent, are coram non Judice.

Fifthly, we are of Opinion, That no man ought to demur in that Court for want of form, but only for ſubſtance of matter. As if an Action be brought there for words which will bear no Action, or an Action of debt upon a contract againſt Executors or Adminiſtrators, or ſuch like; In ſuch caſes a demurrer may be upon the matter. And that the proceedings there muſt be according to the cuſtome of thoſe Courts uſed time out of mind of man: for that no Writ of Error doth lye upon any judgment given there, but the remedy given to the party grieved is by appeal, as hath bæn time out of mind of man accuſtomed.

Sixthly, That the Courts of the Stannery have not any juriſdiction for any cauſe of action that is local, riſing out of the Stanneries.

Seventhly, That the privileage of the workers in the Stanneries do not extend to any cauſe of Action that is local riſing out of the Stanneries (for matters of life, member and plea of land are by expreſſe words excepted in their Charters) and no man can be exempt from juſtice.

Vide lib. Intr. Coke fo. 467. tit. Prohibition, & fo. 23. 293. b. in Error. Vide Fleta lib. 6. cap. 7. Sect. *Servitia vero.*

Such Charters, Records, and Acts of Parliament as we have observed concerning the Stannery, we will according as we have done throughout this Treatise recite in serie temporis.

In Regiſtro Epiſcopi Exon.

Johannes dei gratia Rex Angliæ, &c. Sciatis quod intuitu Dei, & pro ſalute animæ noſtræ dedimus & conceſſimus, ac præſenti carta noſtra confirmavimus Deo, & Eccleſiæ beati Petri Exon. & venerabili patri * Simoni Exon. Epiſcopo & ſucceſſoribus ſuis Exon. Epiſcopis Decimam de antiqua firma Stanni in Com. Devon. & Cornub. Habendum ſibi & ſucceſſoribus ſuis cum omnibus libertatibus & liberis conſuetudinibus ad eam pertinentibus per manus illius vel illorum qui Stanneriam habuerint in cuſtodia, &c.

* This was Simon de Apulia, firſt Dean of York, and conſecrate Biſhop. 8 Johan.

Rex Roberto de Courtney Salutem. Mandamus vobis quod ſine dilatione & difficultate aliqua habere faciatis * Iſabellæ Reginæ matri noſtræ Stanneriam Com. Devon. cum Cuneo & omnibus pertinent. Teſte Com. Mareſchallo, &c.

10 E. 2. Inquiſ. 2. nu. 29.

Rot. Pat. 1 H. 3. m. 4.

* She was the daughter of Aymer Earl of Angoleſme.

[a] Rex conceſſit Johanni filio Rici Stanneriam in Cornubia, reddendo mille marcas. Simile Anno 5 H. 3. Rot. finium.

[a] Rot. fin. 4 H. 3.

[b] Rex, &c. Sciatis quod commiſimus Rico. dilecto fratri noſtro Stanneriam noſtram Cornubiæ cum omnibus pertin. &c.

[b] Rot. Pat. 10 H. 3. m. 9.

[c] **There be two ſeveral Charters of liberties and priviledges both bearing date** 10. Aprilis, Anno 33 E. 1. **the one made** ad emendationem Stannariarum noſtrarum in Com. Devon. **and the other** ad emendationem Stannariarum noſtrarum in Com. Cornubiæ, [d] **which you may read at large in** Pl. Com. [e] **Theſe Charters were allowed in** Anno 35 E. 1.

[c] Rot. Pat. 33 E. 1. The liberties and priviledges of the Tinners.

[d] Pl. Com. 327, 328.

[e] 35 E. 1. in the Treaſury.

[f] **The Charter of** 33 E. 1. **was confirmed to the Tynners of** Devon' de verbo in verbum, **and the like in** 1 E. 3. **and** 17 E. 3.

[f] Rot. Pat. 4 E. 2.

[g] Vide Rot. Almaniæ, Anno 12 E. 3. part 1. nu. 17. **An Ordinance of the King by advice of his Councel concerning Tynne.**

[g] 12 E. 3 part 1. nu. 17.

A Leaſe made to Tideman de Linberghe de Conagio Stanneriæ & de emptione totius Stanni in Com. Devon. & Cornub. pro fine mille carcanum & 3500. marcarum redditus. **Theſe were things done** de facto; **but let us turn our ſelves to that, which hath the force of a Law,** viz. [h] **An excellent declaration, limitation and Expoſition of the ſaid Charters of** 33 E. 1. **that was made in the Parliament holden in** Anno 50 E. 3. **by authority of the ſame, but never printed, (which we have ſet down** in hæc verba, **to the end that no ſyllable of the ſame ſhould be omitted) it is enacted as followeth.**

Rot. Pat. 21 E. 3. Vide Rot. Pat. 26 Apr. Anno 7 E. 6. Gilbert Brockhouſe.

[h] Rot. Par. 50 E. 3. holden the Monday after the Feaſt of S. Gregory.

A treſexcellent & treſredout Seignour le roy, ſupplie ſa poure Commune del County de Devonſhire que luy pleaſe per l' avys des Prelats, Countees, Barons, & auters ſages in ceſt preſent Parliament ordeiner remedie de ceo que les Eſteynors, et les Miniſtres del Eſteynery del dit County ont long temps a la dit Commune ſibien as Seigneurs come as autres fait, et font de jour in autre diverſes extortions, oppreſſions & grievances per colour de les Franchiſes a eux grantes per les Chartres noſtre Seigneur le roy, et de ſes progenitors encontre la ley & le purport des ditz Chartres, & per lour malveis interpretation dicelles: et que les ditz Chartres & les Franchiſes compriſes en icelles puiſſent leuz et declarez d' article en article ſi que la Commune du dit County puiſſent eſtre apris droiturelment d' icelles, et que ceſt declaration ſoit mys en record. Et ſi nul article y ſoit en les ditz Chartres que touche cuſtomes ou uſages, que pleſe a noſtre dit Seignieur le Roy d, ordeiner et mander en brief temps ſuffiſants Juſtices Seigniours et autres apris de la ley a celles parties denquirer des dites cuſtomes et uſages, et quils eyent poyur d'oyer et terminer touts les conſpiracies, confederations, alliances, champerties, extortions, oppreſſions, grievances, fauxines et maintenances qu'eux les ditz Eſteynors et lour Miniſtres ont fait a la dite Commune, ou a nul de eux qui plendre ſe vorra, et ce auxi bien al ſuit le roy, come de la party entendants que le roy noſtre ſeig-

nior

nior ent gaignera molt, et d'autre parte ſe remede ne lour y ſoit ore fait ilz ſerront en briefe temps pur la griender party diſherites et deſtruitz a toutz jours, que Dieu ne voilla. Le tenour d' aſcuns des articles de les dites Chartres que lour beſoignent de declaration ſenſuent cy apres premerement, Ceſtaſſavoir.

Sciatis non ad emendationem Stannar. noſtr. in Com' Devon. ad tranquillitatem & utilitatem Stannatorum noſtrorum prædictorum eorundem conceſſiſſe pro nobis & hæredibus noſtris, quod omnes Stannatores præd. operantes in Stannariis illis quæ ſunt dominica noſtra, dum operantur in eiſdem Stannariis liberi ſint & quieti de Placitis Nativorum, & de omnibus Placitis & querelis Curiam noſtram et hæredum noſtrorum qualitercunque tangentibus, Ita quod non reſpondeant coram aliquibus Juſticiariis vel Miniſtris noſtris ſeu hæredum noſtrorum de aliquo Placito ſeu querela infra prædict. Stannarias emergentibus, niſi coram Cuſtode noſtro Stannariarum noſtrarum prædictarum qui pro tempore fuerit, (exceptis placitis terræ, vitæ, et membrorum) nec non recedant ab operationibus ſuis per ſummonitionem alicujus miniſtrorum noſtrorum ſeu hæredum noſtrorum, niſi per ſummonitionem dicti cuſtodis noſtri. Et quod quieti ſint de omnibus tallagiis, theoloniis, ſtallagiis, auxiliis et aliis cuſtumis quibuſcunque in Villis, Portubus, Feriis et Mercatis infra Com. prædictum de bonis ſuis propriis, &c.

Sur quoy pleſe declarer ſi autres perſones que les Eſtainors overants in les Eſtayneriis averont et emoyeront la Franchiſe grante per la dite Chartre du roy deſicome la dite Chartere voet, quod omnes Stannatores prædicti operantes in Stannariis illis ſint liberi, &c. *Et autres perſones que les overours, ceſtaſcavoir lours maiſtres que les lovent et lours ſervants et autres claymont meſme la Franchiſe. Et auxint pleſe declarer ſi les ditz overors y averont les Franchiſes en autre temps que quaint ilz averont in meſme l' Eſteynery, deſicome la Chartre voet* dum operantur in eiſdem Stannariis liberi ſint, &c.

Endroit de les dites paroles. Operantes in Stannariis illis, et dum operantur in eiſdem Stannariis, *ſoient clerement entendus*, de operariis laborantibus duntaxat in Stannariis illis ſine fraude et dolo, et non de aliis, nec alibi laborantibus.

Item ſoit declare ſi meſmes les overours averront meſme les Franchiſes tant come ils averont aillors que in les deſmeſnes que ſeuerent au Roy laiell noſtre Seignior le Roy que ore eſt. La quel Roy Ayell lour grantaſt la dite Chartre au temps del dit grant des Franchiſes deſicome la Chartre voet, quod omnes Stannatores prædicti operantes in Stannariis illis quæ ſunt dominica noſtra, dum operantur eiſdem Stannariis ſint liberi, &c. *Et ilz claymont d'avoir ſont ſoit il einſi quils overont aillours qu' en les dites deſmeſnes le roy layel.*

En droit de ceſt article pur ce que il y a une autre article en meſme le Chartre, que lour donne conge et licence de fover, In terris, moris, et vaſtis ipſius domini regis et aliorum quorumcunque in Com' prædicto, et aquas, et curſus aquarum ad operationes Stannariarum prædictarum divertere ubi et quotiens opus fuerit, et emere buſcum ad funcuram Stanni, ſicut antiquitus fieri conſuevit, ſine impedimento domini regis, hæredum ſuorum, Epiſcoporum, Abbatum, Comitum, Baronum,

seu aliorum quorumcunque, &c. *Il semble un besoignable chose en ce case que lour custumes & usages soient diligemment enquiz, & qua le Gardeine de Lesteynerie soit charge que il ne soeffre nul overour del dit Esteynerie sover en prees, ne autry boys, neve abate autry boys ou autry measons, ne bestover eaue ou cours de eaue per malice. Et si per case le dit gardein se y vorra excuser que les dits Esteynors ny voillent obeire a ses maundements, ne cesser lour malice pur luy que tant tost il se face monstrer al grand conseil le roy, & due & hastive remedy en soit serra ordeignes.*

Item soit declares in speciall comen les Justices que ore serront assignes d'aller celles Marchers pur ent faire la dite enquirere prendont lissue du pais si ascun y chiete entre parties, & coment ceste article precedont touchant les custumes et usages estoit uses devant la sesaunce de la dit Chartre l'aiel, et per queux gents tielle issue serra tries, cestassavoir le quel per foriens solement, ou per Estaynors seulment, ou per ambideux, &c.

Endroit de cest article, en soit la vys pris du grant conseil et y soient les records en Eyre si nulles y soient, et autres evidences & remembrances deins le treasory le roy & ailleurs, et auxint les remembrances des seigniors queux y ont estre pur le temps serches et duement examines, et auxint soient les liures et evidences quelles les dits Estaynors ent ont envers eux venes et regardes, issint que le y purra le mieltz venir al droit verity.

Item soit declare si le Gardein del Estaynery puisse tenir plee entre Esteynor et forein de querele sourdant aillours que in les lieux ou ilz sont overants de sicome la Chartre voet, quod custos noster prædictus vel ejus locum tenens teneat omnia placita inter Stannatores prædictos emergen' & etiam inter ipsos & alios forinsecos de omnibus transgressionibus, querelis, & contractibus factis in locis in quibus operantur infra Stannarias prædictas similiter emergen', &c. *Quar' il tient plee de tieux quereles sourdants chascune parte deins la dit counte.*

Endroit de cest article. Se ont extende la jurisdiction clerement solon les paroles del dit Chartre, cestassavoir, In locis ubi iidem operarii operantur, *et nemi aillours, ne en autre manner:*

Item plese declarer de ceo que la dite Chartre voet einsi. Et si qui Stannatorum prædictorum in aliquo deliquerint per quod incarcerari debeant per custodem prædictum arrestentur, et in prisona nostra de Leidford et non alibi detineantur, quousque secundum legem & consuetudinem regni nostri deliberentur. *Et en cest case que esteinor soit prise pur felony et liverez au Gardein, il est suffert sovent aller a large de quoy grand perill avient moult de fois et auxi de ceo que la deliverance del dit Gaole nest pase fait une foiz en dis ans. Et que pis est per colour de mesme ceste article le dit Gardeine prent hors dautre prison les empriſones pur arrerages sur accompts, et les mette a Lydeford ou ilz sont in tant sovores quilz my font force de jaymays fair gree alour seignior.*

Endroit de ceste article en soit enquiz diligemment devant les Justices que ore y serront proschemement assignes denquerre per quelle authority ilz y fait einsy de puis que en mesme la Charte sont exceptes per special toutz plees de terre et de vie, et de membre, et celle enqueste retourne soit declare en especiall sil busoigne.

And according to this Act a Commission issued out in these words.

Ro. Pat. 50 E. 3. *Edwardus Dei gratia Angliæ et Franciæ Rex et dominus Hiberniæ dilectis*

lectis & fidelibus ſuis * *Guidoni de Brian & Johanni de Montague, Roberto de Belknap, Hugoni de Segrave, Henrico Perchaie, et Waltero de Clopton, Salutem. Cum dominus Edwardus quondam Rex Angliæ Avus noſter per Cartam ſuam quam confirmavimus ad emendationem Stannariarum ſuarum in Com' Devon' ad tranquilitatem, et utilitatem Stannatorum ſuorum earundem conceſſerit pro ſe & hæredibus ſuis, quod omnes Stannatores prædicti operantes in Stannariis illis quæ fuerunt dominica ſua, dum operentur in eiſdem Stannariis eſſent liberi & quieti de omnibus Placitis Nativorum, et de omnibus Placitis et querelis curiam ſuam et hæredum ſuorum qualitercunque tangentibus: Ita quod non reſponderent coram aliquibus Juſticiariis vel miniſtris ipſius Avi noſtri vel hæredum ſuorum de aliquo Placito vel querela infra prædictas Stannarias emergen' niſi coram cuſtode Stannariarum prædictarum qui pro tempore fuerit: (exceptis Placitis terræ, vitæ, et membrorum,) nec recederent ab operationibus ſuis per ſummonitionem aliquorum miniſtrorum dicti Avi noſtri ſeu hæredum ſuorum niſi per ſummonitionem communem dicti Cuſtodis, et quod quieti eſſent de omnibus tallagiis, theoloniis, auxiliis, ſtallagiis, et aliis cuſtumis quibuſcunque in Villis, Portubus, Feriis et Mercatis infra Com' prædictum de bonis ſuis propriis. Conceſſerit etiam eiſdem Stannatoribus quod fodere poſſunt Stannum et turbas ad ſtannum fundendum ubique in terris, moris et vaſtis ſuis et aliorum quorumcunque in Com' prædicto, et aquas, et curſus aquarum ad operationes Stannariarum prædictarum divertere, ubi et quoties opus fuerit, et emere buſcam ad funduram Stanni ſicut antiquitus fieri conſuevit, ſine impedimento ipſius Avi noſtri vel hæredum ſuorum, Epiſcoporum, Abbatum, Priorum, Comitum, Baronum, ſeu aliorum quorumcunque. Et quod cuſtos prædictus vel ejus locum tenens teneat omnia Placita inter Stannatores prædictos emergentia, et etiam inter ipſos et alios forinſecos de omnibus tranſgreſſionibus, querelis et contractibus factis in locis in quibus operentur infra Stannarias prædictas ſimiliter emergen', et quod idem cuſtos haberet plenam poteſtatem ad Stannatores prædictos et alios forinſecos in hujuſmodi Placitis juſticiandi et partibus juſtitiam faciend. prout juſtum, et prius in Stannariis illis fuiſſet uſitatum. Et ſi qui Stannatorum prædictorum in aliquo delinquant per quod incarcerari deberent, per cuſtodem prædictum arreſtarentur, et in priſona de Lydeford, et non alibi cuſtodirentur, et deliverentur, quouſque ſecundum legem et conſuetudinem regni Angliæ deliberarentur. Et ſi aliqui Stannatorum prædictorum ſuper aliquo facto infra Com. prædictum non tangente Stannarias prædict. ſe poſuerint in Inquiſitionem patriæ, una medietas Juratorum Inquiſitionis hujuſmodi eſſet de Stannatoribus prædictis, et alia medietas de forinſecis. Et de facto totaliter tangente Stannarias prædictas fierent inquiſitiones ſicut fieri conſueverint, ſicut per inſpectionem rotulorum Cancellariæ noſtræ nobis conſtat. Ac etiam ex clamoſa inſinuatione tam magnatum quam Communitat. Com. prædict. in præſenti Parliamento noſtro graviter conquerentium ad noſtrum perveverit auditum, quod Stannatores prædicti ac officiarii, ballivi et miniſtri dict. Stannariæ Cartam prædictam pro libito ſuæ voluntatis interpretantes, et debitum intellectum ejuſdem Cartæ pervertentes, et etiam excedentes, ac quidam alii in magno numero aſſerentes ſe fore Stannatores cum non fuerint, habitis inter eos conſpirationibus, confœderationibus, et allegantiis, quamplurima extorſiones, oppreſſiones, falſitates, deceptiones, Cambipartias, ambidextras, manutenen-*

* Theſe two former were Barons and Lords of Parliament, and ſate in the laſt Parliament of 50 E. 3.

Pleas of land, life and member are excepted.

manutenentias, transgressiones, damna, gravamina & excessus diversis subditis nostris dict. Com' colore Cartæ supradictæ per plures vices fecerunt, et indies facere non desistant in nostri contemptum & ipsorum conquerentium grave præjudicium, dict' Com' verisimilem destructionem & eversionem manifestam. Nos affectantes singulos subditos nostros sub quieto & debito regimine gubernare, et nolentes tanta maleficia, si per prædict' Stannatores, Officiarios, Ballivos, vel Ministros, aut alios quoscunque perpetrata existunt, aliqualiter transire impunita; Assignavimus vos, quinque, quatuor, tres et duos vestrum, (quorum vos præfat. Robert. unum esse volumus) Justiciarios nostros ad inquirendum per sacramentum proborum & legalium hominum de Com' prædict. tam infra libertates quam extra, per quos rei veritas melius sciri poterit, et aliis viis et modis quibus melius fore videritis de quibuscunque conspirationibus, confœderationibus, alligantiis, extortionibus, oppressionibus, falsitatibus, deceptionibus, Cambipartiis, ambidextris, manutenentiis, transgressionibus, damnis, gravaminibus, et excessibus per quoscunque Stannatores vel alios in Com' prædict' factis, et per quos vel per quem, quibus personis, ubi & quibus temporibus, qualiter et quomodo, et de aliis articulis & circumstantiis præmissa qualitercunque tangentibus plenius veritatem; et ad præmissa omnia & singula tam ad sectam nostram quam dictorum conquerentium & eorum singulorum & aliorum quorumcunq; pro nobis, aut pro seipsis prosequi volentium, audiend. & terminand. secundum legem et consuetudinem regni nostri Angliæ: Salvis semper dictis Stannatoribus libertatibus et privilegiis eis per Cartam prædictam concessis. Et ideo vobis mandamus quod ad certos diem et loca quos vos, quinque, quatuor, tres vel duo vestrum (quorum vos, præfat. Robert. unum esse volumus) ad hoc providerit is diligenter super præmissa faciatis inquisitiones; et conspirationes, confœderationes, alligantias, extortiones, oppressiones, falsitates, deceptiones, cambipartias, ambidextras, manutenentias, transgressiones, damna, gravamina, et excessus prædicta audiatis et terminetis in forma prædicta, facturi inde quod ad justitiam pertinet, secundum legem et consuetudinem regni nostri Angliæ. Salvis nobis amerciamentis et aliis ad nos inde spectantibus: Mandavimus enim Vic. Com' prædict. quod ad certos diem & loca quos vos, quinque, quatuor, tres vel duo vestrum (quorum vos præfat. Robert. unum esse volumus) ei scire fac', Venire fac' coram vobis quinque, quatuor, tres vel duobus vestrum tot et tales probos et legales homines de balliva sua tam infra libertates quam extra, per quos rei veritas melius sciri poterit et inquiri. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Westm. Sexto die Julii, Anno regni nostri Angliæ 50. Regni vero nostri Franciæ 37. Per consilium in Parliamento.

But what was done upon this Commission we have not yet found.

Rot. Pat. 8 R. 2. The said Charter of 33 E. 1. to the Tynners of Cornwall was confirmed.

And the Charter of 33 E. 1. to the Tynners of Devon, was also confirmed.

Rot. Pat. Anno 1 E. 4. The like confirmation to the Tynners of Devon.

Rot. Pat. 3 H. 7. See the Statute of 11 H. 7. cap. 4. concerning Cunage and Weights.

Mich. 4 Jac. In Camera Stellata. It was resolved by the whole Court, That Stannum, Tyn, otherwise White-lead, nor black lead, nor any other base metall did belong to the King by his Prerogative, as gold and silver do, albeit there may be tried out of the base metal

metall gold or silver, but that is as the seed or strength of the base metal, which being extracted becomes defective.

There be Five kinds of base metals, viz. Æs, sive Cuprum (because it was found out, as some hold, in Cypro) Copper, Stannum Tynne, Ferrum Iron, Plumbum Lead, & Orichalcum Latyn. Polybius 209. years before Christ, wrote that this Island was abundantly stored with Tynne. Britanni qui juxta * Beferium promontorium incolunt mercatorum usu, qui eo Stanni gratia navigant, humaniores reliquis hospites habentur, hii ex terra saxosa cujus venas sectati effodiunt Stannum igne eductum in quandam Insulam ferunt Britannicam juxta, quam Vectam vocant: Ex-hiis Insulis mercatores emptum stannum in Galliam portant, inde diebus fere triginta cum equis ad fontem Eridani fluminis perducunt.

Polibius lib. 5. Plinius lib. c. 8, 9. Diodorus Siculus li. 5. ca. 8. fo. 142. floruit sub Augusto.

* Aut Vestæum, i. *the Cape of Cornwall.*

See M. Camden, p. 134. in Cornwall.

And for as much as Tynne is a Staple commodity, let us in the next place treat of the Court of the Mayor of the Staple.

CAP. XLVI.

The Court of the Mayor of the Staple.

This Court is guided by the Law Merchant, which is the law of the Staple, and is holden at the Wool-staple at Westm. and there are also two Constables, [a] and a certain number of Correctors to do that which pertaineth to their Office, as in other Staples is accustomed.

[a] 27 E. 3. cap. 22. See the first part of the Institutes, Sect. 3. verb. in *la l y. m.*

This Court (though it was far more ancient) is strengthened and warranted by Act of Parliament, which can best expresse the jurisdiction thereof, and followeth in these words.

27 E. 3. cap. 19.

Item, because the Staples cannot long continue, nor the Ordinances thereof made and to be made be kept, if good Executors and Justices be not stablished to make thereof good and ready execution: We have ordained and established, that in every Town where the Staple is ordained, a Mayor, good, lawfull and sufficient shall be made and established, having knowledge of the Law Merchant, to govern the Staple, and to do right to every man after the Law aforesaid, without favour, sparing, or grief doing to any. And in every place where the Staple is, shall be two convenable Constables now at his beginning put by us, to do that pertaineth to their Office, as in other Staples is accustomed; and when they shall be dead or changed, then other shall be chosen by the Comminalty of the Merchants of the said places. And that no Mayor hold the Office over the year, unlesse he be newly chosen by the Comminalty of the Merchants, as well of Strangers, as of Denizens. And that the said Mayor and Constables have power to keep the peace, and to arrest offenders in the staples for debt, trespasse, or other contract, and them to put in prison, and punish after the law of the Staple. And a prison shall be ordained for the safe keeping of them that so shall be imprisoned. And the Mayors, Sheriffs, and Bay'iffs of the Towns, where the Staple is, or joyning to the Staple, shall be attending to the Mayors and Ministers of the Staple to do execution of their commandments upon pain of grievous forfeiture; and one Lord or other of the most sufficient in the Country where the Staple is, shall be assigned to be

27 E. 3. stat. 2. c. 22.

¶ *The Jurisdiction.*

The Law Merchant.

be aide to the Mayor and Miniſters of the Staple to juſtifie the Rebels, which by the ſaid Mayor and Miniſters cannot be juſtified, and to maintain and councel them when need ſhall be to the good governance of the Staple, and to redreſs at every mans complaint that that ſhall be done amiſs by the ſaid Mayor or Miniſters, or other, and to do right to the complainants in this behalf. And that the ſame Mayor and Conſtables do not nor ordain any thing contrary to this Ordinance, nor make interpretation nor exception to them otherwiſe then the words do purport; but if there be any thing that is doubted, it ſhall be ſhewed to our Councell, and there declared by good advice.

[a] See the Statute of 36 E. 3. cap. 7. That Merchant ſtrangers may either ſue before the Mayor of the Staple according to the law Merchant, or at the Common-Law.

[b] The bounds of the Staple at Weſtm. begin at Temple Barre, and extend to Tuthill. In other Cities and Towns, within the walls: where no walls be, the bounds of the Staple ſhall extend through all the City or Town.

The bounds of the Staple.

[c] See 27 E. 3. how triall ſhall be had per medietatem linguæ: & vide 11 E. 1. Cart. Mercator.

[d] See the Statute of 27 E. 3. that the Mayor of the Staple may take Recogniſances of debt under the ſeal of the Office, but not with the ſeal of the party, and how execution ſhall be done thereupon.

[e] The Mayor of the Staple at Weſtm. and the Recorder of the City of London, in the abſence of the two Chief Juſtices, out of Term have power to take Recogniſances of debts according to the form of the ſtatute of 23 H. 8. And this is in nature of a ſtatute ſtaple, but it hath beſides the ſeal of thoſe that take it, the ſeal of the party.

[f] The Mayor and the Conſtables ſhall be ſworn in the Chancery to do lawfully that which pertain unto them.

[g] There are Five Staple Merchandiſes of England, viz. Wooll, Woolfels, Leather, Lead, and Tyn.

This word Staple, anciently written [h] Eſtaple, cometh of the French word Eſtape, which ſignifieth a Mart or Market. So as the Court of the Staple is, as much to ſay, as the Court in the Staple Market, and is incident to that Market, [i] and it was oftentimes kept at Calice, and ſometimes in Bridges in Flanders, and at Antwerp, Middleburgh, &c. (and therefore it was neceſſary that this Court ſhould be governed by Law Merchant) and at ſeveral times in many places within England, and now (as hath been ſaid) is kept at Weſtm.

We uſe for this word Staple, Stapula, as Major Stapulæ, Statutum Stapulæ, &c. And we may truly ſay that we have not umbratilem Stapulam, which in times paſt was ſo renowned and beneficial, [k] as it enriched every place where it was holden, and it was commonly ſaid, that riches followed the Staple.

See the Statute of 2 E. 3. cap. 9. and a Writ thereupon, 7 E. 3. in Scaccario.

[l] Et Original de Scaccario Anno 12 E. 3. Rot. 2. ibid. 13 E. 3. Rot. 12. & Rot. Pat. 15 E. 3. 2 part. See the ſtatute of the Staple, Anno 27 E. 3. through all the Chapters, 36 E. 3. cap. 7. 28 E. 3. cap. 13, 14. 43 E. 3. ca. 1. 12 R. 2. cap. 16.

a 36 E. 3. ca. 7. Rot. Par. 6 H. 6. nu. 29.

b 28 E. 3. ca. 15.

c 27 E. 3. ca. 8. 28 E. 3. ca. 13. Rot. Cart. 31 E. 1. nu. 44.

d 27 E. 3. ca. 9. F. N. B. 131. d. Pl. Com. 62. b. 15 H. 7. 16. Fleta lib. 2. c. 57. See 5 H. 4. ca. 12.

e 23 H. 8. cap. 6.

f 27 E. 3. cap. 13.

g 8 H. 6. ca. 17.

h 27 E. 3. cap. 8. Dier 4. Mar. 144.

i Vid. *Cart. Mercator. ubi ſupra.* Merchants, as well Strangers as Subjects, and Merchandizes.

k Able to furniſh the King with money. Rot. Parl. 7 E. 4. nu. 9. 12 E. 4. nu. 59. Rot. Parl. 9 R. 2. nu. 4.

l Original. de Scac. 7 E. 3. Rot. 9.

CAP.

CAP. XLVII.

Of the legal Courts and their Jurisdictions within the Principality of *Wales*.

This Principality consisteth of 12 Counties, whereof 6. viz. Anglisea, Carnarvan, Merioneth, Flint, Carmarthen, and Cardigan were erected by the Act intituled Statutum Walliæ Anno 12 E.1. [a] and the rest by the statute of 27 H.8.

Wallia, Wales, so called by the Saxons *Brytwealas*, unde Wallenses, Walli, *i.* exteri seu peregrini; and the Britons call Englishmen to this day Saisons: these are of the posterity of the ancient Britons inhabiting on the West part of great Britany. This was sometime [d] a Realm or Kingdome and governed per suos regulos. [e] Rex E. dedit Regi Griffino totam terram quæ jacebat trans aquam quæ vocatur [f] Sed postquam ipse Griffin forisfecit ei, abstulit ab eo hanc terram, & reddidit Episcopo Cestriæ & omnibus suis hominibus, qui ante ipsam tenebat.

[g] By force of a Commission directed to divers discréet and learned men as well English as Welsh. viz. Griffith ap Lluellin, Gitten Owen, John King and others it was found that Owen ap Meredith ap Theodore which married Katherine daughter of France and Dowager of King H.5. was lineally descended from [h] Cadwallader King of the Britains, and gave the Armes of the Princes of Wales.

And here we are fully occasioned to discover the error of those that have given to our late Soveraign Lady Quéen Elizabeth of ever glorious and blessed memory, the sirname of Tydar, and consequently to her Grandfather, Father, Brother, and Sister: which whether it were out of ignorance or malice some do question, because if she had any sirname at all it was Theodore and not Tydar, which is a nick or by-name. But we rather take it to grow out of ignorance, for that in truth she had no sirname at all: for this Owen her Ancestor had no sirname: and therefore was called Owen ap Meridith, that is, the son of Meredith ap Theodore, (the son of Theodore) ap Grono, &c. All which were Christian names: so as they should rather have called her Elizabeth Owen, his own name, or Elizabeth Meredith, his fathers name, than Theodore his Grandfathers Christian name: but almighty God would not suffer her to have a sirname, because by his grace and godnesse she should deserve for her Imperial virtues to be called [i] Elizabeth the Great.

[k] But jure feodali the Kingdom of Wales was holden of the Crown of England, and thereby as Bracton saith, was sub potestate regis. And so it continued until the 11 year of the reign of King E.1. when he subdued the Prince of Wales rising against him, and executed him for treason, whereof Fleta who lived in those dayes speaketh thus. Et unico malefactori plura poterunt infligi tormenta, sicut contigit de Davide Principe Walliæ cum per Edwardum quinque judiciis mortalibus torquebatur, suis namque meritis exigentibus, detractus, suspensus, dismembratus fuit & combustus, cujus caput principali Civitati, quatuorque quarteria ad quatuor partes regni in odium tradit. deferebantur suspendend.

[m] The next year, viz. in the 12 year of King E.1. by authority of Parliament it is declared thus, speaking in the person of the King (as ancient statutes were

See W.1. cap. 17. the second part of the Institutes, p. 195.

Stat. Walliæ. Anno 12 E. 1. in vet Mag. Cart. 1. part 2. fo. 3.

[b] 27 H.8. cap. 26. 34 H.8. cap. 26.

[c] Lamb. Verb. Wallus. 15 E. 3. Record. 38. & tit. Error. 2 H.5. cap. 6. 19 H.6 fo. 12.

[d] Realm from the French word *Royaume*, and both a *Regio* [e] Domesday in Com. Cestr. Ep. Cestr.

[f] Domesday in Com. Hereford. Rex in Arenfield. Rex Griffin. & Ble vastaverunt hanc terram, T.E. Quandoque Rex Griffin. nominatur Rex *Mariadec* g Rot. pat. Anno 7 H.7.

[h] Cadwallader King of the Britains, Ma. Parker Archiep. M.S.

[i] This blessed Queen raigned the years of Augustus, and lived the age of David, a King elder than any King or Queen since the Conquest, and yet had *vegetem corpus & virilem ingenium.*

[k] Lib. 7. fo. 21. b. in Calvins case. Tr. 5 E. 3. 40. Pl. com. 129. a. b.

alien Bracton. (who wrote *tempore* H.3.) lib. 5. fo. 395. b. Fleta lib. 1 cap. 16. 10 H.4. fo. 8. acc'. Dier 3. Mariæ 113. [m] Statutum Walliæ Anno 12 E.1. Vid. 16 H.4. fo. 6.

 wont

wont to do) Divina providentia, quæ in ſua diſpoſitione non fallitur, inter alia ſuæ diſpenſationis munera, quibus nos & regnum noſtrum Angliæ decorari dignata eſt, terram Walliæ cum Incolis ſuis prius nobis * Jure feodali ſubjectam jam ſui gratia in proprietatis noſtræ dominium, obſtaculis quibuſcunque ceſſantibus, totaliter & cum integritate convertit & coronæ regni prædicti, tanquam partem corporis ejuſdem annexuit & univit. Yet this wiſe and Warlike nation was long after this not ſatisfied nor contented, and eſpecially, for that they truly and conſtantly took part with their rightfull Soveraign and Leige-Lord King Richard the Second; In revenge whereof they had many ſevere and ſtrict laws made againſt them in the reigns of H. 4 H. 5. &c. All which as unjuſt are repealed and abrogated. And to ſay the truth, this Nation was never in quiet, until King H. 7. their own countryman obtained the Crown. [b] And yet not ſo really reduced in his time, as in the reign of his ſon King H. 8. in whoſe time by certain juſt laws made at the humble ſuit of the Subjects of Wales, the Principality and Dominion of Wales was incorporated and united to the Realm of England; and enacted that every one born in Wales, ſhould enjoy the Liberties, Rights, and Laws of this Realm, as any Subiects naturally born within this Realm ſhould have and inherit, and that they ſhould have Knights of Shires and Burgeſſes of Parliament, &c. By the which the juriſdiction of the legal Courts are thereby ſo perfectly and plainly eſtabliſhed and declared, and their proceedings to be according to the Laws and Cuſtomes of England, as we have thought good to refer the judicious reader to thoſe Acts of Parliament without recitall of them, where he ſhall find the excellent venerable variety of Seats and Courts of Juſtice, with their proper juriſdictions according to the Laws of England, the golden Metwand, whereby all mens cauſes are juſtly and evenly meaſured. Only we will adde certain things which have not been publiſhed before.

By the ſaid ſtatute 34 H. 8. it is enacted that there ſhall be holden and kept Seſſions twice every year in every of the ſaid [c] twelve Shires, that is to ſay, Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, Cardigan, Mountgomery, Denby, Flint, Carnarvan, Merioneth, and Angleſie, which Seſſions ſhall be called the Kings Great Seſſions of Wales.

[d] A fine was levied of lands in the County of Carmarthen, and the Writ of Covenant was Coram Juſticiariis noſtris magnæ Aſſiſæ in com. Carmarthen, and becauſe all the judicial preſidents were in that form ever ſince the making of the ſtatute, it was adjudged to be good, for Communis error facit jus.

Alſo in the ſaid Act of 34 H. 8. it was enacted, that the Kings moſt Royal Majeſty ſhould from time to time change, &c. all manner of things before in that Act rehearſed, as to his moſt excellent wiſdom and diſcretion ſhould be thought convenient, and alſo to make Laws and Ordinances for the Common-wealth of his ſaid Dominion of Wales at his Majeſties pleaſure, &c. And albeit the common opinion was that the ſame power in ſo high a degree of truſt, as the alteration of laws, &c. was perſonal to H. 8. and referred to his wiſdom, diſcretion, and pleaſure, and therefore extended not to his ſucceſſors, yet for that the ſubjects of the Country and Dominion of Wales had been conſtantly loyal and obedient, and had lived in all dutiful ſubjection to the Crown of England, to prevent all queſtions and danger the ſaid branch of the ſaid ſtatute of 34 H. 8. is repealed and made void.

It was reſolved by all the Juſtices upon a reference made to them by the Lords of the Privy Councel upon conſideration had upon the ſtatutes of 34 H. 8 cap. 26. and 18 Eliz. cap. 8. that the Juſtices in Wales are to be conſtituted and made by Letters Patents, as they had been ever ſince the making of the ſtatutes, and not by Commiſſion. And upon report of their opinion to the Lord Chancellor Baron Snigge was conſtituted and made by Patent accordingly.

Rex dilecto & fideli ſuo Rico. Diamory Juſticiar. ſuo Northwalliæ Salutem. Mandamus vobis quod habito adviſamento cum illis hominibus de partibus prædictis, cum quibus melius fore videritis faciend. diverſimode ſine dilatione venire faciatis

* Note, divers Monarchs hold their Kingdom of others *jure feodali*. As the Duke of Lumbardy, Cicil, Naples, & Bohemia of the Empire, Granade, Leons of Aragon, Navarre, Portugal, of Caſtile. And ſo others. Derſ. Clauſ. 25 E. 1. m. 13. *De Walenſibus ad Parl. apud Eborum venire fac'* viz. 24. *de diſcretioribus, legalioribus & validioribus hominibus de partibus Southwalliæ, & 24 de partibus Northwalliæ.* Rot. Clauſ. 20 E. 1. m. 3. ſecond. 21 Jac. ca. 28.

[b] 27 H. 8. cap. 26. 34 H. 8. cap. 26. 37 H. 8. cap. 26. 18 Eliz. cap. 7.

[c] *The twelve Counties of Wales.*

[d] Trin. 34 Eliz. in the caſe of Morgan of the report of the Chief Juſtice Popham.

So it was reſolved by divers Juſtices in Hil. 5 Jac. regis.

21 Jac. regis, c. 10.

Hil. 5. Jac.

Rot. Clauſ. Anno 20 E. 1. m. 3.

faciatis ad præsens Parliamentum apud Westm. convocatum 24 homines de partibus illis tam Anglicos quam Wallenses ad consentiendum his quæ ibid. pro communi commodo & pace & tranquillitate regni nostri & partium præd favente Domino contigerit ordinari, Et habeatis ibi nomina præd. 24 hominum, & hoc breve. Teste Rege apud Kenilworth 11 Januarii Anno 20 E.2. Rot. Claus.m.3.

12 were English and 12 Welsh. Rot. Claus. 15 E.2. in dors. m. 13 Wallenses vocat. ad Parliamentum.

By this and others of like nature it appeareth that Welshmen were in the reign of E.2. E.3. ere called to our Parliaments.

But now seeing there be Sheriffs throughout all Wales, the Writs are directed to the Sheriffs to cause to be elected Knights, Citizens, and Burgesses, and returnable into the Chancery, where before they were returned into the Parliament.

7 H.4.cap.15. 11 H.4. cap.1. 1 H.5. cap.1. 8 H.6. cap.7. 10 H.6.cap.2. 23 H.6.cap.15. 6 H.6. cap.4. 27 H.8.cap.26. 34 H.8.cap.26. 35 H 8.cap. 11.

We have seen a Charter of the Earl of Arundell proving, that by the ancient custome of Wales, females could not inherit.

Omnibus Christi fidelibus præsens scriptum inspecturis, Johannes Comes Arundel, & Dominus de Mutravers, Salutem in Domino. Sciatis nos prædict. Comitem ad prosecutionem & specialem supplicationem Communitatis Tenen. nostrorum tam quarum partium quam tertiæ partis Dominii nostri de Oswaldestrie in Marchia Walliæ concessisse pro nobis & hæredibus nostris & per præsentes confirmasse Tenen. nostris prædict', hæred. & assig. suis, quod eorum filiæ pro defectu exit. masculini, ac eorum proximi consanguinei, tam masculini quam femellæ de cætero hæreditate valeant imperpetuum terras, tenementa & reddit. antecessorum & consanguineorum suorum ubique infra Dominium nostrum præd. eisd. modo & forma quibus utitur in communi lege Angliæ, Wallica consuetudine prius ibid. de contrario utitat. in aliquo non obstante: Salvis semper nobis & hæred. nostris heriotis, televiis, sect. cur. & al. consuetudinibus quibuscunque de dictis terris & tenementis ante hanc nostram concessionem nobis quomodolibet pertinen. In cujus rei testimonium huic præsenti script. nostro concessionis Sigillum nostrum fecim' apponi: His testibus, Willielmo Ryman, Thoma Baret, Willielmo Sideny Armigeris, Hugone Burgh, cen. Dominii nostri præd. Rich. Irlond, Hoel ap Ogn. Gouch, & aliis. Dat. in hospitio nostro London vicesimo quinto die mensis Aprilis An. regni Regis Henrici Sexti post Conquestum octavo.

Marchia Walliæ

Walliæ consuetudo.

At this day women are inheritable in Wales, according to the Common law in England.

* Ordinatio de Consuetudinibus Northwalliæ & Westwalliæ.

* 9 E.2. m.3.

These Britons were ever lovers of the laws of England, for at the Parliament holden [a] in 4 H.4. they petitioned the King, that in all cases of the Crown throughout every Liberty in Wales the Laws of England might be only used. Whereunto the King yielded, and that his Councel should take order therein.

a Rot. Par.4 H.4. nu. 100.

[b] Quia Episcopi Wallenses ex antiqua consuetudine testamentum aliquod condere non potuerunt, Rex licentiam dedit Episcopo Bangor, quod possit condere testamentum suum non obstante quod Episcopi Wallenses ex antiqua consuetudine testamentum aliquod condere non possunt. See the Chapter of the Consistory Courts of Arch-Bishops and Bishops, fol.

b Rot.Par. 13 E.1 m.21. Vid.Hil. 20 E.1. coram rege. Ro 37.22.Wallia. Pasch. 10 E. 2. coram rege. Rot.37. 18 E. 2. Rot. 73 Trin. 5 E.3. Rot.40. coram rege.

[c] Where execution shall be made of lands in Marches by the Sheriff of the the County next adioyning, sicut solebat antiquitus. See the Record at large.

c Hil. 18 E.2. Rot.73.cor.rege. Glouc. 18 E.2. ass.382. Rot.Par. 18 E.1. Rot.3. 13 E.3. jurisdiction.23. 28 E 2 ca.2. 5 E. 3. fo. 30. 45 E.3. brc.588. 21 H.3. brc 881. simile.

[d] Assach is a British word and signifieth a custome in Wales, which was to excuse one of the death of a man by the oath of 300 men. But this strange kind of excuse or acquital is abrogated by statute.

d 1 H 5.cap.6.

[e] There was also a certain trial in Wales called a Raythe, but that is also abrogated.

e 6 H.6. nu.33.

CAP. XLVIII.

The Court of the Preſident and Councel in the Dominion and Principality of *Wales*, and the Marches of the ſame.

LEaving now the Legal Courts in the Dominion of Wales, to proceed by the right rule, ſecundum legem & conſuetudinem Angliæ, Let us ſpeak ſomewhat of the Court of Equity before the Preſident and Councel there.

Rot. Par. 16 R.2. nu. 44. there was a Preſident of Wales.

This Court is ſtrengthened and warranted by the Statute of 34 H. 8. Cap. 26. with a reference to preſcription before it, in theſe words.

34 H.8. cap.26.

Item, that there ſhall be, and remain a Preſident and Councel in the ſaid Dominion and Principality of *Wales*, and the Marches of the ſame, with all Officers, Clerks, and incidents to the ſame in manner and form as heretofore hath been uſed and accuſtomed: which Preſident and Councel ſhall have power and authority to hear and determine by their wiſdomes and diſcretions ſuch cauſes and matters as be, or hereafter ſhall be aſſigned to them by the Kings Majeſty, as heretofore hath been accuſtomed and uſed.

They ſit by force of the Kings Commiſſion and Inſtructions, and proceed as in a Court of Equity by their wiſdomes and diſcretions. Herefordſhire, Worceſterſhire, Shropſhire, and Glouceſterſhire are included within this Commiſſion pretending that theſe four Shires are within the Marches of Wales.

That theſe four Shires are no part of the Marches of Wales but ancient Shires of the Realm of England, appeareth by ſir manner of proofs.

Firſt, by expreſſe Books, viz. 18 E.2. Aſſ. 82. 1 E.3.14. in Dower. 7 E.3. 9 E. 3. in Dower. 6 H.4.fo.9. in Scire fac. F.N.B. 168.

Secondly, by Acts of Parliament, viz. Prærog. regis. 17 E.2. cap. 1. 28 E.3. cap.2. 2 H.4. cap.12. and 16, 17. 23 H. 6. cap. 5. 27 H.6. cap. 4. 31 H.6. cap.4. 32 H.8. cap.13. 13 El.cap.13.

Thirdly, by Records of Parliament. 3 R.2. nu.29, and 39.

Fourthly, by reaſon. 1. Theſe four Shires were ancient Engliſh Shires, and governed by the laws of England, and not by the diſcretion of the Preſident and Councel: and this were to bring in their inheritances, goods, &c. ad aliud examen. 2. At one and the ſame time there were in former times Earles of the Marches of Wales, and ſeveral Earles of theſe four Counties, and therefore they could not be one and the ſame.

See before in the Chapter of the County Palatine of Cheſter, p. 212.

Fifthly, by the reſolution aforeſaid of thoſe Four Judges concerning Cheſhire and Flyntſhire (which were included alſo within the Commiſſion) that they were not within the Marches of Wales, and therefore out of the juriſdiction of the Preſident and Councel, and ſo to remain until this day: For a Commiſſion without an Act of Parliament cannot raiſe a Court of Equity, as often hath been ſaid before.

Mich. 2. Jac. regis. The caſe of Edward Lord Zouch Preſident of Wales

Laſtly, by the commandment of the King, all the Juſtices of England, and Barons of the Exchequer were aſſembled concerning the juriſdiction of the Preſident and Councel of Wales, and the Marches of the ſame, who upon hearing of Councel learned on divers dayes, and upon mature deliberation reſolved una voce, that the ſaid Four Counties were not within the juriſdiction of the Preſident and Councel. 2. That foraſmuch as the Preſident and Councel have a limited

limited authority if they proceed in any matter that is out of their jurisdiction either in respect of the place or of the authority limited to them, a prohibition may be granted, as to the Marshalsea and the like. Which resolution being made known to his Majesty, his Majesty was graciously pleased, that the Lord Presidents Commission should be reformed: whereupon the Lord Zouch gave over his place. And yet the Commission was not after reformed in all points, as it ought to have been.

Reg. fol. 4. & 8. F.N.B. 39. b. 45. f. 46. a. 171. 159. 185, 186, 187. 19 H. 6. 54.

Rodry Maure, or Rodry the great, King of Wales, son of Mervyn Fryth had issue three sons, Mervyn, Anarawd, and Cadelh. In the year wherein he died, viz. Anno Dom. 877. (King Alfred, alias Alured, then reigning in England) this great Rodry divided his Kingdome of Wales into three Principalities. The first he called Guyneth, the English North-wales, the Latinist Venedotia. The second Principality was called Powis land, in Latin Powisia, of some West-wales, bordering upon England. The third he called Dehevbarth, the English South-wales, in Latin Demetia. The first Principality, some say, he gave to Mervin, after others, to Anarawd. The second to Anarawd, some say, to Cadelh. The third to Cadelh, some say, to Mervyn. The first was the best, because it was the quietest. The second was often invaded and troubled by the English. Into the third often incursions were made by the English, the Norman, and the Fleming. The division of this Kingdome (howsoever it was) brought in processe of time such a division betwæn these Princes, as it was never quiet till it came under one Monarch and King again: For the royal dignity of a Monarch or King, from whence all other subordinate dignities, tanquam lumen de lumine, are derived without any diminution, will suffer no division. Regia dignitas est indivisibilis; & quælibet alia derivativa dignitas est similiter indivisibilis.

This is added for the better understanding of Records and Histories concerning Wales.

The most woful event that fell out in this Realm, when Gorbodug divided this Kingdom betwæn his two sons, Ferrex and Porrex, and what heavy event came to passe, until it was reduced again under one Monarch, let our Historyes tell you: And letting passe others, I cannot over-passe the miserable estate within this Kingdom under the Heptarchy, untill all was reunited under one Soveraign. And this is the reason, that in England, Scotland, and Ireland, the royal dignity is descendible to the eldest daughter or sister, &c.

But let us lok a little into forein parts. Oedipus King of the Thebanes had issue two sons, Polynices and Eteocles: he ordained, that after his decease, his two sons should alternatim by course, &c. reign in his Kingdom. But what was the event? Fratres de regni hæreditate dissidentes singulari certamine congressi mutuis vulneribus ceciderunt. But to return again to our Wales.

Sta. in Theb.

It was divided from England by a ditch, after the name of that King that made it, called King Offa his ditch.

Cambden in the County of Radnor.

King E. 3. at the Parliament holden Anno 17. of his reign, by Charter established by Authority of Parliament, created Edward (called the black Prince) Prince of Wales in these words. De Concilio Prælatorum, Comitum, Baronum & Communium in generali Parliamento nostro apud Westm. die Lunæ in Quindena Paschæ proximæ præterito convocato ipsum Edw. Principem Walliæ fecimus & creavimus, & dictum Principatum sibi dedimus & concessimus, & per Cartam nostram confirmavimus, ac ipsum de dicto Principatu, ut ibidem præficiendo, præsideat, & præsidendo dictas partes dirigat & defendat, per [a] sertum in Capite, & annulum in digito aureum, ac [b] virgam argenteam investivimus juxta morem: Habendum & tenendum de nobis sibi & hæredibus suis Regibus Angliæ imperpetuum, &c. Out of this Charter we observe, that in this Creation there is a great mystery, for lesse then an estate of inheritance so great a Prince could not have, and an absolute estate of inheritance in so great a Principality as Wales; the Kings meaning was (this Principality being so dear unto him he should not have: therefore a qualified fee therein he had in this form, sibi & hæredibus suis Regibus Angliæ, that by his decease, or attaining to the Crown this dignity might be extinguished in the Crown, to the end that the King

Carta creationis Principis Walliæ. Authoritate Parliamenti. Anno 17 E. 3.

[a] A Chapelet of gold made in form of a Garland.

[b] This virge, rod, or Scepter in latter creations for more honor is changed from silver to a Verge or Scepter of gold.

Sibi & hæredibus regibus Angliæ.

See the Princes case. Lib. 5.

king for the time being should ever have the honor and power to create his heir apparent Prince of Wales, as he himself had been by his Progenitor. But otherwise it is in case of the Dutchy of Cornwal as in the Princes case, ubiup. appeareth.

Vide Cartam E. 3. *dat. apud Pontem fract.* 18. *Martii.* 7 E. 3. & Hil. 33 E. 3. *Irrotulat. in Scaccario ex parte Remembratar.* Rot. 15. The black Prince created Earl being three years old.

And in the same manner is the dignity of the Noble and primary County Palatine of Chester at the same time granted to the Prince, sibi & hæredibus suis Regibus Angliæ.

* Hil. An. 20 E. 1. Coram rege Rot. 14. Walliæ.

* Ob quam plurimos excessus more hostili vexillo displicato per Gilbertum de Clare Comitem Glouc. Hertf. & homines suos de Morgannon illatos contra Humfredum de Bohun Comit ē Here. & Essex & homines suos de Brekenock, dominus rex assignavit † Episcopum Elienſ. & alios Commissionar. ad inquirendum, &c. Mandavit etiam dominus rex per literas suas dilectis et fidelibus suis Johanni Hastings, Johanni fil. Reginaldi, Edmundo de Mortuo mari, Rogero de Mortuo mari, Theobaldo de Verdon, Johanni Tregose & Galfrido de Cannil, quod interſint apud Brekenock, &c. Et postea venerunt apud Laundon. Voluit idem dominus rex pro statu & jure suo per ipsos Justiciarios quod inde rei veritas inquiretur per sacram. tam magnatum quam aliorum proborum, & legalium hominum de partibus Walliæ et Com. Glouc. & Heref. per quos, &c. cujuscunque conditionis fuissent, ita quod nulli parceretur in hac parte, eo quod res ista dominum regem & Coronam & dignitatem suam tangit, &c. Dictum est ex parte domini regis Johanni de Hastings & omnibus aliis magnatibus supra nominatis quod pro statu & jure regni, & pro conservatione dignitatis Coronæ & pacis suæ apponant manum ad librum, ad faciend. id quod eis ex parte domini regis injungeretur: Qui omnes unanimiter respondent, quod inauditum est quod ipsi vel eorum antecessores hactenus in hujusmodi casu ad præstandum aliquod sacramentum coacti fuer. &c. Ac pluries eisdem magnatibus ex parte ipsius Regis conjunctim & separatim, libroque eis porrecto, injunctum est quod faciant sacram. Responderunt demum omnes singulatim quod nihil inde facerent sine consideratione Parium suorum. Demum Comes Glouc. fecit finem cum domino rege pro decem milibus Marcarum, & Comes Essex pro mille marcis, & uterque eorum committitur Mareschallo. (Recordum per longum est, & continet tres Rotulos.) Et ob affinitatem, & consanguinitatem cum rege pardonantur plurima. Tamen foris fecerunt libertates suas durante vita ipsorum. Et post decessum eorum, hæredes sui rehabeant.

† Commissionarii.

Inauditum est.

Irrotulatur istud Recordum inter Placita de Banco Term. Pas. An. 14 E. 1.

But now to take our leave of this Principality of Wales, that is that the Romans called by the name of [a] Britannia secunda, and sometimes [b] Valentia, and by the Britains themselves called [c] Cambria. And we will conclude this Treatise of Wales, &c. with that which that [d] excellent Historian speaking of the wars betwēn the Roman and the ancient Britain, saith, Nec aliud adversus [e] validissimas gentes pro nobis utilius, quàm quod in commune non consulunt, ratus ad propulsandum commune periculum conventus: ita dum singuli pugnant, universi vincuntur.

[a] Ortelius in Carta antiqua Britanniæ.

[b] Humph. Lloyd apud Ortelium in the same Geograph.

[c] Idem in Fragm. Britan. Historiæ d Tacitus. Vide supra pa. 9.

[e] Nota. Validissimas gentes.

[f] See 2 part. Pat. 9 E. 2. m. 3. Ordinat. de consuetud. North-walliæ & West-walliæ,

[f] Rot. Pat. 9. E. 2. m. 3.

[g] Vid. Lib. Int. Co. fo. 549. 550. Three notable matters concerning Wales. 1. Of the government of Wales before 27 H. 8. 2. Of Lordship, Marches, and their authorities and liberties. 3. The Act of 1 & 2 Ph. & Mar. concerning the same.

[g] Lib. Int. Co. fo. 549, 550.

CAP.

CAP. XLIX.

The President and Councel in the North.

This Councel is neither warranted by Act of Parliament, nor by prescription, but raised by King H.8. by his Commission upon these occasions, and in the manner hereafter expressed. After the suppression of Monasteries of the yearly value of two hundred pound or under, which was by Act of Parliament 4 Febr. Anno 27 H.8. in the beginning of 28 H.8. there was a great insurrection of the Lord Hussey and 20800 persons in Lincolnshire pretending it to be for the cause of Religion: against whom Charles Brandon Duke of Suff. went and appeased them. As soon as they were appeased, a great rebellion for the same pretence of 40000 of that County, of whom Sir Robert Aske, was Leader: against whom the Duke of Norf. and others went, and dispersed them. Soon after a great Commotion for the same pretence was raised in Lancashire of men in that County, and in Cumberland, Westmerland, and Northumberland: against whom the Earl of Derby was imployed, and quieted them. After this Musgrave Tilly and others to a great multitude did rise, and assaulted Carlisle Castle, whom the Duke of Norf. overthrew. Soon after Sir Francis Bigot with a great number of people rose at Settington, Pickering, Leigh, and Scarborough in Yorkshire, whom the Duke of Norf. pacified. And after this the Lord Darcy, Ask, Constable, Bulmer, and others began a new rebellion about Hull in Yorkshire, whom the Duke of Norf. appeased. And all these rebellions fell out between the beginning of 28 H.8. and 30 H.8.

The King intending the suppression of the great Monasteries, which in effect he brought to passe in Anno 31 H.8. for preventing of future dangers, and keeping those Northern Counties in quiet, in Anno 31 of his reign raised a President and Councel there, and gave them besides two several powers and authorities under one Great Seal, the one of Oier and Terminer, De quibuscunque congregationibus & conventiculis illicitis coadunationibus, confœderationibus, Lollardiis, misprisionibus, falsis allegantiis, transgressionibus, riotis, routis, retentionibus, contemptibus, falsitatibus, manutenentiis, oppressionibus, violentiis, extortionibus, & aliis malefactis, offensis, & injuriis quibuscunque, per quæ pax & tranquillitas subditorum nostrorum in Com. Eborum, Northumberland, Westmerland, Durham, & Com. civitatis Eborum, Kingston super Hull, & Newcastle super Tinam gravetur, &c. secundum legem & consuetudinem regni nostri Angliæ, vel [a] aliter secundum sanas discretiones vestras audiend. & terminand. The authority was, [b] Nec non quascunque actiones reales, seu de libero tenemento, & personales causasque debitorum & demandorum quorumcunque in Com. prædictis, quando ambæ partes vel altera pars sic paupertate gravata fuer. quod commode jus suum secundum legem regni nostri aliter prosequi non possit, similiter secundum leges & consuetudines regni nostri Angliæ, vel aliter secundum sanas discretiones vestras audiend. & terminand.

Anno 31 H.8. 6. parte Roberto Landavens. Episcopo Præsidenti Concilii, &c. & aliis fact.

But these authorities were granted, to the end that Commissioners by mediation might quiet controversies when one of the parties or both were poor, who are ever most clamorous. And all the Authority they had was expressed in the Patents or Commission under the Great Seal, without any reference to instructions, or any instructions at all. But afterwards, for that the said Commission was against law, and to the end, that their authority should not be known,

a First, It was resolved by all the Judges of the Court of Common Pleas, Trin. 6 Jac. that this clause is against law, as the like had been formerly often resolved. See before Cap. of the Court of Requests.

b It was then also clearly resolved, that this latter clause was against law, not only for the cause aforesaid, but also for that actions real and personal were not to heard and determined by Commission, but according to the laws of the Realm. Vid. 2 Eliz. Dier. 175.

they

they procured the firſt inſtitution to be ex diametro altered, viz. that their Commiſſion ſhould not give them any expreſſe authority at all, but wholly did refer their authority to certain inſtructions which they kept themſelves in private, and were not inrolled in any Court whereunto the ſubject might have reſort. Sed miſera ſervitus eſt, ubi jus eſt vagum, aut incognitum. And thereupon King James being informed hereof by the Judges of the Common Pleas (who had granted prohibitions to the Preſident and Councel) gave order that their inſtructions ſhould be enrolled, to the end that the ſubject might take advice of learned Councel what courſe he might take to enjoy the benefit of the laws of the Realm, his beſt birthright.

This is left out of the print in latter time, but it is in the Parliament Roll, &c.

And it appeareth in the Subſidy in Anno 32 H. 8. cap. 50. that H. 8. raiſed not only this Preſident and Councel, but a Preſident and Councel alſo having like authority in the Weſtern parts, pretending it to be for their eaſe to receive juſtice at their own doors, but they of Cornwal, Devon. &c. deſirous to live under the immediate government of the King, and the Common law oppoſed it, Et ſic Commiſſio illa cito evanuit: which Commiſſion under the Great Seal we have ſeen. See in the ſtatute of 13 El. where the Preſident and Councel of York is mentioned, and no man doubteth, but that there is a Preſident and Councel de facto, but what juriſdiction they have is the queſtion.

13 El. cap. 13. See in the Chapter of the Court of Requeſt, anſwer made to this objection in like caſe.

Thus much (having taken upon us to write) we have clearly and plainly delivered our opinion, and he that ſearcheth the ſecrets of hearts, knoweth that we have publiſhed nothing herein or in any other of our works, reluctante conſcientia.

And in reſpect of ſome continuance it hath had, and many decrees made, it were worthy of the wiſdome of a Parliament for ſome eſtabliſhment to be had therein.

CAP.

CAP. L.

The Courts and their Jurisdictions within the City of *London*; And first of *The Court of Hustings*.

For the Antiquity and Name of this Noble City, you may read in Lambard Inter leges Edovardi Regis, fol. 136. b. Sed utere tuo judicio, nihil enim impedio. * But Ammianus Marcellinus an approved Author above 1200. years since, calleth it Vetustum oppidum. And Cornelius Tacitus, (who married the daughter of Lucius Agricola the Roman, and was here with him by the space of seven years) affirmeth, Quod Londinum tempore Neronis (which is above 1500. years past) fuit copia negotiatorum & commeatu maxime celebre. To be short, it is Camera regis, Reipublicæ cor, & totius regni Epitome.

Lib. 8. fo. 130. in the case of the City of London.

* *For the Antiquity.*

For the Antiquity and Name.

And in searching among such Records as we had observed, of or concerning this Noble City, we have observed a Charter in the Saxon tongue made by William the Conqueror in these words; pilliam Cyng gneit pilliam Bisceop ⁊ Godfreges portgeneran ⁊ ealle þa Burhpapen þe on Lunden beon, &c. i. William the King greeteth William the Bishop and Godfrey the Portreve, and all the Burgesses that in London be, &c.

This is the highest Court and of the greatest celebrity within London. It is holden before the Mayor and Sheriffs, of all pleas, real, mixt, and personal. Nota, the rule of the Register is, Quodlibet breve, quod tangit liberum tenementum in London, dirigitur Majori sive Custodi & Vicecomitibus; & alia brevia tantum Vicecomitibus.

Regist. 2. b. F.N.B. 6. f.

This word Hustings is derived of two Saxon words, viz. Hus which signifieth a house, or bench, and things, that is, causes or pleas, as much to say, as the Bench, or Court of pleas, for Bancus or Bench is taken for a Court, as the Kings Bench, the Common Bench &c.

Fleta lib. 2. in his Chapter De differentiis Curiarum. Habet rex Curiam suam, &c. Et in Civitatibus & Burgis & in Hustingis London, Lincoln, Winton & Eborum & alibi in libertatibus, &c. Et cap. 48. Habet rex curiam suam in Civitatibus, Burgis & locis exemptis, [a] sicut in Hustingis London, Winton, Lincoln, Eborum, & apud Shepwey, ubi Barones & cives recordum habent, &c. So as neither the name nor the Court is appropriated to London.

Fleta lib. 2. ca. b. &. 28.

[a] F.N.B. 61. 9. juris utrum. 62. b. partition & 199. ex gravi querela b.

[b] For Writs of Error to be brought of any judgement in the Hustings; See the Register and F.N.B.

[b] Regist. 130, 131. F.N.B. 23. e.

[c] Concerning forain Vouchers, and forain pleas, see F. N. B. fo. 6 E. & stat. de Gloc. cap. 12.

[c] F.N.B. 6. e. Glouc. cap 12.

Of Lands holden, no Writ doth lie but in London according to the custome, Dier 15 El. 317. Judgement of the outlawries in the Hustings is not given by the Mayor, who is Coroner or his Deputy, but by the Recorder by the custom of this City.

2 part Instit. 33 E. 3. jurisd. 6. 36 H. 6. 33.

2, 3. *The two Courts of the Sheriffs.*

In Curia Civitatis prædict' coram Vicecom' sine brevi nostro secundum consuetudinem ejusdem Civitatis. If an erroneous judgement be given before the

Regist. ubi sup. F.N.B. 23. 2.

Sheriffs the party grieved shall sue a Writ of Error, and remove this before the Mayor and Sheriffs in the Huskings.

Stephanides cap. de dispositione urbis.

For the Antiquity of the Sheriffs and their Courts, Fitz Stephen, who wrote of the government of London in the reign of King Stephen, of this City saith;

Nota.

Hæc Civitas Urbe Roma, secundum Chronicorum fidem, satis antiquior est, &c. Unde & adhuc antiquis eisdem utuntur legibus communibus institutis, hæc similiter illi regionibus est distincta, habent annuos pro Consulibus Vicecomites, habet Senatoriam dignitatem, & Magistratus minores, &c. ad genera causarum, deliberative, demonstrative, judicialis. loca sua fora singula, habet sua diebus statutis Comitia, &c.

In Lib. Abbat. de Ramsey. * Tempore H. 1.

In the Book of the Abby of Ramsey to a conveyance or concord * without date, made in the Court of the Huskings of London of a certain house in Walbrook within the City, between Wilcnothus de Walbrock, and Renaldum Abbatem de Ramsey, the Witnesses were (amongst others) Willielmus de Einsford Vicecomes de London, & Johannes Subvicecomes ejus, & Gervasius Clericus ejus. More might be said hereof, but it is clear, that so long as this City hath been a County of it self, so long there have been Sheriffs, for it cannot be a County without Sheriffs. There are within the Walls of this City 97 Parishes, and out of the Walls 16 Parishes, standing partly within the Liberties of the City, and part without Midd' and Surrey.

4. *The Court of Equity before the Lord Mayor, commonly called, The Court of Conscience.*

1 H. 6. 14. Lib. 8. fol. 126. Lib. Int Rast. Custom 21. & Viller.

The Custom of London is, and hath been time out of mind, that when a man is impleaded before the Sheriffs, the Mayor upon the suggestion of the Defendant may send for the parties and for the Record, and examine the parties upon their pleas, and if it be found upon his examination that the Plaintiff is satisfied, that he may award that the Plaintiff shall be barred: and this was holden by the Court to be a good Custom, but by no Custom he can examine after judgement. So a Court of Equity may be had by prescription, but cannot be raised by grant, as hath been said in the Chapter of the Chancery, and of the County Palatine of Chester.

5. *The Court of the Mayor and Aldermen.*

See 43 El. c. 12. in fine. Lib. 4. fol. 64, 65. Folwood's case. The Print is 28 E. 3. cap. 10. but it should be 27 E. 3. cap. 10. And so resolved by Parliament in 1 H. 4. cap. 15. Altered in the

This is a Court of Record, and consisteth of the Lord Mayor, the Recorder and 23 Aldermen, whereof the two Sheriffs being Aldermen are part.

It is ordained and established that the Mayor, Sheriffs and Aldermen, which have the governance of the City, shall redress and correct the errors, defaults and misprisions which be used in the City of London, for default of good governance of the Mayor, Sheriffs, and Aldermen, &c. This is declaratory of their former power of governance, and for this cause principally amongst others, this Court was instituted.

In this Court are many Courts, as namely,

penalty. 17 R. 2. Rot. Par. nu. 26. explained. Parliament not to extend to error in Judgement;

6. *The Court of Orphans.*

F.N.B. 142. E. 31 E. 3. gard. 31. 1 R. 2. ibid. 166. Lib. 4. 64, 65. Rot. Par. 1 R. 2. nu. 130.

The Mayor and Aldermen by Custom have the custody of Orphans within the City. And if they commit the custody of the Orphans to another man, he shall have a ravishment of Ward, if the Orphan be taken away.

It is enacted, that the Mayor and Chamberlain of London for the time being, shall

shall have the keeping of all the lands and goods of such Orphans as happen within the City, saving to the King and other Lords their rights of such as hold of them out of the same liberty.

A Recognizance may be acknowledged in this Court before the Mayor and Aldermen to the Chamberlain for Orphans. Lib.4.fol.64,65. Fulwoods case.

The Chamberlain is a sole Corporation to him and his successors for Orphans: and a recognizance or bond made to him and his successors concerning Orphans, shall by custom go to his successor. Lib.4. ubi sup.

The government of Orphans belong to the Mayor and Aldermen, and they have jurisdiction of them, and therefore if any Orphan sue in the Ecclesiastical Court, or elsewhere for a legacy, or duty due to them by the Custom, a Prohibition doth lie. See the First part of the Institutes, Sect. 267. how the goods of a Freeman of London shall be divided.

For the Liberties of London, see 50 E.3.fol.143.

An Act was made in 7 H. 4. cap. 9. much prejudicial to the Liberties of this City, which is in Print, and it was repealed in 9 H. 4. nu. 30. which is not printed. 7 H.4. cap.9. Rot.Par. 9 H.4. nu.30.

It would ask a Treatise by it selfe to handle at large the other Authorities and Powers of the Mayor and Aldermen in the Court of Aldermen, and of the other Courts within this City, which we will run over as briefly as we can. And the rather, for that in my Books of Reports I have published many Cases concerning the Courts, Customs, Liberties, Franchises, and Privileges of this City, and also in the First part of the Institutes, and in this and other parts thereof. Lib. 2. fol. 57. Lib.4.fol.18 54, 64,65, & 113. Lib.5.fol.63,64, 73,83,107. Lib. 8. fol. 122, 125,126,127. Vide 129. Lib.11.fol.53. & 194. James Baggs his case. See the first part of the Institutes, fol.176.b. Sect.267. See the second part of the Institutes, Mag. Catt. cap.9.

7. *The Court of the Common Council.*

This Court hath some resemblance of the High Court of Parliament, for it consisteth of two Houses, viz. the one of the Mayor and Aldermen, and the other of such as be of the Common Assembly, resembling the whole Comminalty of London. In this Court they may make constitutions and laws for advancement of trade and traffick: for the better execution of the laws and statutes of the Realm, or pro bono publico, and for the good government of the City. So as these constitutions and laws be not contrary to the laws and statutes of the Realm. And this being made by the Mayor, Aldermen, and Comminalty, do bind within this City and the Liberties thereof. They of the Common Assembly do give their assent by holding up their hands. Lib.5.fo.62,63. the Chamberlains case. Lib.8.fo.123, 125. Le cas del City de Londres.

8. *The Court of the ward-mote.*

Ward-mote is derived from Ward and Mote, that is, the Ward Court. In London the Parishes are as Towns, and the Wards are as Hundreds, and therefore Riens diens Gard was a good challenge at the Common Law. 7 H.6.36,38. 7 H.7.4.

In this City there are 26 Wards divided for the government of them amongst the 24 Aldermen of the City. This Ward-mote Inquest, consisting of 12 or more of every Ward, shall inquire of such persons as have not paved or amended their parts and portions of the Streets and Lanes within the said City, &c. 31 H.8.cap.17.

9. *The Court of Hall-mote.*

This is derived of Hall and Mote, as much to say as the Hall Court, i. Conventus Civium in Aulam publicam, every Company of London having an Hall wherein they keep their Courts, and this Court anciently called Hall-mote or Folk-mote.

10. *The Court of the Chamberlain for Apprentices.*

Lib. 8. fo. 129. the case of the City of London.

This Court concerning the making free of Apprentices. One may be free of London three manner of wayes, viz. by Service, as here in case of Apprentices: 2. By Birthright, the son of a Freeman: and 3. By Redemption, by order of the Court of Aldermen.

a Rot. Par. 7 R. 2. nu. 37. Vide inf. 252, 253

b Nota hue. 8 H. 7. 4. b. Dier 22 Eliz. 373. 7 H. 6. 1. 21 H. 7. 16, 17. Pl. Com. 36. b. 38. 47. 59. Lib. 8. fo. 129.

Now to treat of the great and notable Franchises, Liberties, and Customes of the City of London, would require a whole Volume of it self. But there is a most beneficial Statute made for the strengthening and preservation of the same, which I know no other Corporation hath. [a] It is enacted that the Citizens of London shall enjoy all their whole Liberties whatsoever with this Clause, Licet usi non fuerunt vel abusi fuerunt, and notwithstanding any [b] Statute to the contrary, &c. Lege statutum, for by this Act the City may claim liberties by prescription, Charter, or Parliament, notwithstanding any Statute made before 7 R. 2. And this is the Statute mentioned in our Books.

11. *The Court of the Conservation of the Water and River of Thames, &c.*

4 H. 7. cap. 15.

The Mayor of London for the time being hath the conservation and rule of the Water and River of the Thames, and the issues, breaches, and lands overflown, &c. from the Bridges of Staines unto the Water of Yendall and Medwey,

Rot. Parl. 2 H. 5. nu. 15.

and authority as touching punition for using unlawful Nets, and other unlawful Engines in fishing, and to all correction and punishment there concerning unlawful Nets and Engins there. In all Commissions touching the water of

Rot. Parl. 2 H. 5. nu. 16.

Ley, the Mayor of London shall be one. See hereafter Cap. Commission of Sewers

3 Jac. cap. 14.

the Statute of 3 Jac. cap. 14. that Sewers that fall into the Thames shall be subject to the Commission of Sewers.

12. *The Court of the Coroner in London.*

The Mayor is Coroner within the City of London, and the Court of the Coroner is holden before him or his Deputy. Vide postea in the Chapter of the Coroner.

13. *The Court of the Escheator in London.*

The Lord Mayor is also Escheator within the City, and this Court is holden before him or his Deputy. See before in the Chapter of Escheator.

14. *The Court of Policies and of Assurances in London.*

43 Eliz. cap. 12.

This Court sitteth by force of the Commission under the Great Seal warranted by Act of Parliament, An. 43 Eliz. cap. 12. there being an Officer or Clerk to register assurances, the Jurisdiction of which Court you may read in that Act of Parliament made to encourage Merchants to trade and traffick, the benefit whereof appeareth there, and is to long to be recited, and the rather for that we can add nothing to that Act of Parliament.

15. *The Court of the Tower of London.*

This Court is holden within the Mirge of London before the Steward there by preſcription of debt, treſpaſs and other Actions of any ſumme greater or leſſer, whereof you may read in 4 E. 4. fo. 36. a. b. 4 E. 4. 36. a. b.

Note, where it is ſaid, that the Tower of London is within the City of London, it is thus to be underſtood, that the ancient Wall of London (the mention whereof yet appeareth) extendeth through the Tower, and all that which is invironed with the ſaid Wall, viz. on the Weſt part thereof, is within the City of London, that is to ſay, in the Pariſh of All-Saints Barking within the Ward of the Tower of London. And the reſidue of the Tower of London, on the Eaſt part of that ancient Wall is within the County of Middleſex. And this upon view and examination was found out, Mic. 13 Jac. Regis, in the caſe of Sir Thomas Overbury, who was poyſoned in a Chamber in the Tower on the Weſt part of that old Wall. And therefore Weſton the principal murderer was tried before Commiſſioners of Oyer and Terminer in London, and ſo was Sir Gervaſe Elvice Lieutenant of the Tower, as acceſſary.

16. *Of the Juriſdiction and Authority of the Preſident, Cenſors, and Commonalty of the Colledge of Phyſicians, ſcituate in Knight-Rider-ſtreet in the Ward of Caſtle Barnard within the City of London, and ſeven miles compaſs.*

Of this Colledge, and of their juriſdiction and authority, ſufficient hath been ſaid in the 8. Book of Reports in Doctor Bonhams caſe, whereunto we refer the ſtudious Reader. Hereunto we will add for the ſafety of Phyſicians, eſpecially of the Kings Phyſicians a Record worthy of obſervation. Li. 8. fo. 107, &c. Dr. Bonhams caſe. See the Statutes of 3 H. 8. c. 6. & 11. 14 H. 8. cap. 5. 1 Mar. cap. 9. 32 H. 8. c. 40, 41. 34 H. 8. cap. 8.

* Rex adverſa valetudine laborans de aſſenſu concilii ſui aſſignavit Johannem Arundel, Johannem Saceby, & W. Harcliff Medicos: Robertum Warren & Johannem Marſhall Chirurgos ad libere miniſtrandum & exequendum in & circa perſonam ſuam; Imprimis, viz. quod licite valeant moderare ſibi diætam ſuam & quod poſſit miniſtrare Potiones, Syrupos, Confectiones, Laxitivas medicinas, Clyſteria, Suppoſitoria, Caput purgea, Gargariſmata Lealnen, epithimota, fomentationes, embrocationes, capitis raſuram, unctiones, emplaſtra, cerera ventoſ. cum ſacrificatione vel ſine, emorodorum provocationes, &c. Dantes ſingulis in mandatis quod in executione præmiſſorum ſint intendentes, &c. * Rot. Pat. 32 H. 6 m. 17. by what Warrant Phyſick is to be given to the King.

Upon this, Four things are to be obſerved. Firſt, that no Phyſick ought to be given to the King without good warrant. 2. That this Warrant ought to be made by the advice of his Councel. 3. They ought to miniſter no other Phyſick than that which is ſet down in writing. 4. That they may uſe the aid of thoſe Chirurgions named in the Warrant, but of no Apothecary; but to prepare and do all things themſelves, &c. And the reaſon of all this is the precious regard had of the health and ſafety of the King, which is the head of the Commonwealth.

* The Science of Phyſick containeth the knowledge of Chirurgery. * 32 H. 8. cap. 40.

If one that is of the myſtery of a Phyſician take a man in cure, and giveth him ſuch Phyſick as within three dayes he die thereof, without any felonious intent, and againſt his will, it is no Homicide. 3 E. 3. coron. 163.

But Britton ſaith, that if one that is not of the myſtery of a Phyſician or Chirurgeon, take upon him that cure of a man, and he dieth of the Potion or Medicine, this is (ſaith he) covert felony. Britton cap. 5. De homicides.

Phyſicians and Chirurgeons ſoient Sages en lour facultiez, eyent ſanes les conſciences, cy que rien ne ent failli a faire cure, ſilz ne ſcavoient a bone chefe mitter, ou ſilz a bone chefe ſcavoient & ſentre mettent ne quidant follement ou negligentment Mirror, cap. 4. Sect. De homicide, Verb. [illegible] part. 3

negligeament iſſint que ilz mittont froide pur chaude ou le revers, ou trope peu de cure, ou nemi mitter un due diligence, & noſmement in arſons & abſciſſions que ſont defendus a fare forſq; al peril des meſters ſi lour patients moreront ou perdent memorie, in tiels caſes ſont ils homicides ou mayhemers.

And thus much concerning Phyſicians.

For Courts holden in other Cities, Towns Corporate, and Burghs, our purpoſe is not to treat of them, becauſe they are private and ſufficiently known; but let us ſay ſomewhat of the Liberties, Franchiſes and Immunities of this noble City.

Parl. 17 R. 2. nu. 26.

It is enacted, that the Statute of 28 E. 3. cap. 10. ſhall not extend to any erroneous judgement given or to be given in the City of London.

See after, cap. 54. the ancient office of garbling of ſpices, &c.

Regiſt. 267. b.

There is a writ in the Regiſter neceſſary to be put in execution for the wholſomneſs of Air in London, and in all other Cities, &c. De vicis & venellis mutandis.

Lourgulary or Lourglary is an offence when any caſt any corrupt thing appoyſoning the water in or about London, compounded of theſe two words Lour corruption, and Laron a Thief or Felon, as * Burgulary: and if any die by reaſon of any ſuch offence within a year after, it is felony, and extendeth to all other Cities, Burghs, &c.

* See the third part of the Inſt. Cap. Burglary or Burgulary.

It was petitioned to the King, that no man in Cities, Towns, or elſewhere, do carry Maces of Silver, but only the Kings Serjeants at Arms, but that they carry Maces of Copper and of no other mettal. Whereunto the King anſwered, [The ſame ſhall be ſo, except the Serjeants of the City of London, who may carry their Maces of Silver within the Liberties of London before the Mayor in the preſence of the King.]

V. Cartam H. 1. De libr. Lond.

Omnes homines London ſint quieti & liberi, & omnes res eorum per totam Angliam, & per portus maris de theolonio & paſſagio, & ab omnibus aliis conſuetudinibus.

11 H. 3. 18. Feb. ſpecial and rare Liberties granted to the City of London.

In the Charter of H. 3. bearing Teſte 18 Febr. Anno regni ſui 11. **the King granted to the City of** London Vicecomitatum London & Midd. &c. **And in that Charter this ſpecial Franchiſe and Privilege is granted to the Sheriffs of** London **and** Middleſex **for the time being in theſe words.** Ita ſcilicet quod ſi illi qui pro tempore fuerint Vicecomites conſtituti aliquod delictum fecerint, unde miſericordiam pecuniæ debeant incurrere, non judicentur ad plus niſi ad miſericordiam vigint' lib' & hoc ſine damno aliorum civium ſi Vicecomit' non ſufficiant' ad miſericordiarum ſuarum ſolutionem. Si vero aliquod delictum fecerint, per quod periculum vitæ vel membrorum incurrere debeant, judicentur ſicut judicari debent per legem civitatis: De hiis autem quæ ad prædictum Vicecomitatum pertinent reſpondeant Vicecomites ad Scaccarium noſtrum coram Juſticiariis noſtris. Salvis eiſdem Vicecomitibus libertatibus quas alii cives London habent.

Anno 11 H. 3. 16 Martii. Duellum.

In the Charter of the ſame King bearing date 16 Martii Anno regni ſui undecimo ſupradicto, **the King granted to the City of** London, Quod nullus civis civitat' prædict' faciat duellum, & quod de placitis ad coronam pertinent' ſe poſſint diſtrationare ſecundum antiquam conſuetudinem civitatis, & quod infra muros civitatis, neque in porteſokne nemo capiat hoſpitium per vim vel per liberationem Mareſchal' &c. & ſi quis in aliqua terrarum noſtrarum citra mare, vel ultra, ſive in portubus maris citra mare, vel ultra, theolonium vel aliquam aliam conſuetudinem ab hominibus London ceperit poſtquam ipſe à recto deſecerit, Vic' London namiam inde apud London capiant.

Hoſpitium. Per liberationem Mareſchalli.

Anno 11 H. 3. 18 Auguſti.

In another Charter of the ſame King bearing date 18 Auguſti Anno 11. ſupradict' **the King did diſafforeſt and diſwarren the Foreſt and Warren of Stanes in the County of** Middleſex.

Anno 52 H. 3. 26 Martii. De placitis ad coronam.

And by another Charter of the ſame King bearing date 26 Martii Anno regni ſui 52, **the King granted to the Citizens of** London **in theſe words,** Conceſſimus eiſdem civibus, quod de placitis ad coronam pertinent' & hiis maxime, quæ infra civitatem prædictam & ejus ſuburbium fieri contingent, ſe poſſint diſtrationare

ſecundum

secundum antiquam consuetudinem civitatis prædict' eo tamen excepto, quod super tumulos mortuorum de eo quod dictur' essent mortui si viverent non liceat præcise jurare sc. loco mortuorum qui ante obitum suum electi fuerint ad eos distringendos qui de rebus ad coronam spectantibus appellati fuerint, vel rectati alii liberi & legales eligantur qui idem sine dilatione faciant quod per defunctos memoratos, si venirent fieri oporteret, Et quod tam forinseci quam alii attornatos facere possint in Hustingo London tam agendo quam defendendo in curia nostra.

Super tumulos.

Attornati in Hustingo.

The Citizens or Burgesses of London were before and after the Conquest governed by Portgraves or Portgreves until the reign of R. 1. by whose Charter they were governed by two Bayliffs: and yet King Richard in the first year of his reign appointed them a Mayor, who continued therein until the Eighth year of King John, and then King John appointed a Mayor. And forasmuch as sometimes the Mayor appointed by the King was no Citizen of London, King John in the Tenth year of his reign granted to the Citizens liberty and authority to chuse de seipsis a Mayor, &c. And so it continueth unto this day.

An. 10 Johan.

Mayor de seipsis.

The Aldermen of London were changed by election every year until 18 E. 3. Then it was ordered they should not be removed without some special cause. But Rot. Parl. 17 R. 2. nu. 25. it is enacted, That the Aldermen of London shall not from henceforth be yearly chosen, but remain till they be put out for reasonable cause, notwithstanding the Ordinances of E. 2. and E. 3. and so it still continueth.

Aldermen.

Rot. Parl. 17 R. 2. nu. 25. enacted.

Rot. Par. Anno 1 E. 3. the King granted that the Citizens of London should not be constrained to go out of the City of London to any War: and the Liberties of this City shall not for any cause be taken into the Kings hands. Rot. Parl. 1 E. 1. Authoritate Parliamenti.

Warre.

Liberties not to be taken into the Kings hands.

See hereafter Cap. Of Forests, pag. Cart. H. 1. for their recreation by hunting, &c.

Albeit by the Statute of Magna Carta and other Acts of Parliament, the liberties, priviledges, and franchises of the City of London be confirmed: yet the most beneficial of them all is that of * 7 R. 2. before mentioned: whereby it is enacted, that the Citizens of London shall enjoy the same, with this clause, Licet usi non fuerint vel abusi fuerint, [a] and notwithstanding any Statute to the contrary.

Mag. Cart. cap. 9. Rot. Par. 11 H. 3. Rot. Parl. 5 R. 2. nu. 19. 50 E. 3. nu. 143. * Rot. Par. 7 R. 2. nu. 37. Vid. sup. pa. 250. [a] Nota hoc.

These notable, rare, and special liberties and priviledges we have attempted to remember: but whether herein we have done that good to the City that we intended, we know not, for we have omitted many more of no small number of great rarity and consequence, too long here to be recited.

See before pag. 125. Breve de listis & barris pro duello fac. Vid. Rot. Cart. 18 Februarii 11 H. 3. against the exaction of the Lieutenant of the Tower of Bidelles, &c. 2 part of the Institutes, Mag. Cart. cap. 23.

The

The Court of the Justices assigned for the Government of the Jewes.

Justiciarii ad custodiam Judæorum assignati.

Inter leges Edwardi Lamb. cap. 29. f. 133. b.

OMnes Judæi ubicunque in regno sunt, sub tutela & defensione Regis ligea debent esse, nec quilibet eorum alicui diviti se potest subdere sine Regis licentia: Judæi enim & omnia sua Regis sunt. Quod si quispiam detinuerit eos, vel pecuniam eorum, perquirat Rex, si vult, tanquam suum proprium.

These Justices did hold a Court concerning the custody and government of the Jewes, as (amongst many other Records) it appeareth Rot. Pat. An. 41 H. 3. m. 4. nu. 6. **And that then** Philip Basset, Philip Luvell, Henry de Bathon, **and** Simon Passel, &c. **were then Justices** ad Custodiam Judæorum assignat. **But when the Jewes were utterly (as hath bæn said) banished, this Court ceased, which was in** 18 E. 1. Anno Domini 1293. **See the Second part of the Institutes** Stat. de Judaismo. Rot. Claus. 18 E. 1. memb. 6. **See** Tho. VVals. in Hypodigmate Neustriæ 18 E. 1.

Rot. Pat. 41 H. 3. m. 4. nu. 6.

The Courts of Stainclife and Frendles Wapentakes.

3 H. 5. cap. 1. 9 H. 6. cap. 10.

BEcause I finde mention made in Acts of Parliament of the Courts of Stainclife and Frendles Wapentakes, &c. I thought good to referre you to those Acts.

CAP.

CAP. LI.

Of the City of Weſtminſter.

IT hath his name of the Monaſtery, which Minſter ſignifieth, and it is called Weſtminſter in reſpect of the Eaſtminſter not far from the Tower of London.

This Weſtminſter Sebert the firſt King of the Eaſt Saxons that was Chriſtened, founded; and he founded alſo the Univerſity of Cambridge, as works and witneſſes of his Chriſtianity. Segbert began his reign Anno Dom. 603.

But leaving theſe, and others of like nature, to others, not lying properly in my way; let us turn our eye to ſuch particular juriſdiction as within this City is exerciſed. For the better underſtanding whereof, it is to be known that within this City there are Twelve ſeveral Wards, out of which there are elected one Burgeſſe and one Aſſiſtant in every ſeverall Ward; and out of theſe twelve, two are elected yearly in the Thurſday in the Eaſter week for Chief Burgeſſes to continue for one whole year following. To theſe Burgeſſes authority is given by Act of Parliament in the 27. year of the reign of Queen Eliz. (not printed) to hear, examine, determine, and puniſh according to the Lawes of the Realm and lawful Cuſtoms of the City of London, matters of incontinency, common ſcolds, Inmates, and common annoyances, and likewiſe to commit ſuch perſons as ſhall offend againſt the peace, and thereof to give knowledge within 24 hours to ſome Juſtice of Peace within the County of Midd. This Act was at the firſt but a probationer, but is continued to this day.

One thing concerning this ancient Monaſtery is obſervable, That after the High Court of Parliament was divided into two ſeveral houſes (whereof we have ſaid ſomewhat in the Chapter of the High Court of Parliament) the accuſtomed place of that thrice worthy Aſſembly of the Knights, Citizens, and Burgeſſes of Parliament (when the Parliament was holden in Weſtminſter) was in the Chapter-houſe of the Abbot of Weſtminſter, there to debate and conſult De arduis & urgentibus negotiis regni, & Harum regni & Eccleſiæ Anglicanæ concernentibus, &c. And this continued until the ſtatute of 1 E. 6. c. 14. which gave to the Kings Colledges, free Chappels, Chaunteries, and whereby the King enjoyed the ancient and beautiful free Chappel of S. Stephens, founded by King Stephen. (which had lands and revenues of the old yearly value of 1085 l. 10 s. 5 d.) Since which time the Chappel thereof hath ſerved for the Houſe of Commons, when Parliaments have been holden at Weſtminſter. See before in the Chapter of the High Court of Parliament. Rot. Parl. Anno 50 E. 3. nu. 8.

Radulphus de Ingham Chief Juſtice of England, (a very poor man being fined before him at 13 s. 4 d.) in another Tearm, moved with pity cauſed the Record to be raſed and made 6 s. 8 d. for which he (for his fine) made the Clock (to be heard into Weſtminſter-Hall) and the Clock-houſe in Weſtminſter, which coſt him 800 marks, and continueth unto this day, which ſumm was entred into the Roll. And almoſt in the like caſe in the reign of Queen Elizabeth, Sir Robert Carlyn Chief Juſtice of England would have had Juſtice Southcote (one of his compagnions Juſtice of the Kings Bench) to have altered a Record, which the Juſtice denyed to do, and ſaid openly in Court, That he meant not to build a Clock-houſe. Tempore E. 1. Vid. 2 R. 3. f. 10. 2

This Monaſtery in Anno 30 H. 8. was ſurrendred to the King, who erected thereof a Dean and Chapter. Anno 33 H. 8. it was raiſed to a Biſhoprick, and Thomas Thurlby made thereof the firſt and laſt Biſhop, &c. Queen Eliz. made it a Colledge conſiſting of a Dean, twelve Prebends, a School-maſter, an Uſher, 40 Scholars, and 12 Almeſmen, and ſo it was named the Collegiate Church of Weſtminſter.

In Anno 37 H. 8. the Kings Manor of Weſtminſter was made an Honor. 37 H. 8. cap. 18.

CAP. LII.

Of the City of Norwich, &c.

In the Book of Domesday made by William the Conqueror.

WIthin this City there was in the reign of King Edward the Confessor 1300 Citizens, and then this City paid to the King 20 l. and to the Earl 10 l. And besides these 20 s. and Four Prebendaries and Six Sextaries of honey, a Bear, and Six Dogs to bait him. Now it yieldeth 70 l. to the King, and a 100 s. to the Queen, and a Palfrey, and twenty pound of white rent to the Earl, &c.

The foundation of the Incorporation of this City is very ancient, for in ancient Manuscripts it appeareth that In tempore Steph. Regis de nova fundata & ut Villa populata communitas fact'.

Camden in Britannia.

This City is highly commended for many things, for it is truly said of it, Quod suis opibus, frequentia, ædificiorum elegantia, Templorum pulchritudine & numero, (Parœcias enim plus minus 30. complectitur) Civum sedulitate, in principem fide, in * exteros humanitate, inter celeberrimas Britanniæ urbes merito connumeranda, &c. Mœnibus validis (in quibus crebræ dispositæ turres, & undecim Portæ) undique obsepta, nisi ad ortum qua flumen (cum sinuoso flexu 4. Pontibus pervium Septentrionalem urbis partem interluerit) profundo alveo & præcipitibus ripis defendit. * It is preferred before all the Cities in England, except London. It hath above 30. Parishes, and it is as large within the Walls as London. It had within it and the Liberties Six Religious Houses, and one Hospital.

* Urbanitas ab urbe.

* Alex. Nevil.

For the better establishing of the Ecclesiastical jurisdiction belonging to the Bishop of Norwich (of which jurisdiction in general we are to treat hereafter) it shall not be impertinent to set down the true state of this Bishoprick.

In Anno 27 H. 8. and before William Rugge Doctor of Divinity of the University of Cambridge was Abbot of the [a] Monastery of S. Bennets de Hulmo in the County of Norf. and the Bishoprick of Norwich becoming void by the death of Richard Nick commonly called the blind Bishop, the King nominated the said Abbot to be Bishop of Norwich. And afterwards the 4. of Febr. Anno 27 H. 8.

[a] This Monastery was founded by King Knute and increased by Ed. the Confessor, and the Monastery made of that strength as it seemed to be *potius castrum quam claustrum*. It was of the order of S. Benedict of the black Monks.

[b] It was (*amongst other things*) enacted by Authority of Parliament, That such person as should be elected and consecrated Bishop of the said Sea should have and enjoy to him and his successors Bishops of the said Bishoprick of *Norwich* united and knit to the said Bishoprick the Monastery of Saint *Bennets*, and all and singular Manors, Lands, Tenements, &c. belonging to the said Monastery, &c. And that the person which should be named Bishop of *Norwich* and his successors Bishops of the same Bishoprick from thenceforth [c] should be Abbots of the Monastery of *S. Bennets*, and have the dignities of the said Abbacy united, incorporated, and knit to the Sea of the said Bishop, &c.

[b] Statut. de 27 H. 8. concerning the Bishoprick of Norwich.

[c] The like is not in England.

But peruse the Statute, and you shall find that Doctor Rugge had Beneficium viscatum, for the Bishoprick lost much more by that Act than it gained. And afterwards this Doctor was elected and consecrated Bishop of Norwich: And being Patron, in the right of his Bishoprick, of the Hospital of S. Giles in Norwich, he as Patron, and Nich. Shaxton Master of the said Hospital by their Deed acknowledged and inrolled bearing date 6. Martii Anno 1 E. 6. did give and grant to King E. 6. his heirs and successors the said Hospital and the possessions and hereditaments belonging to the same, and all other their possessions and hereditа-

See before in the Chapt. of the royal Franchise of Ely, that King H. 1. of the Monastery of Ely made a Bishoprick, but King H. 2. had therein one end, and King H. 8. another.

hereditaments in the ſaid County of Norf. Certain Concealors (Templorum helluones) by pretext and colour of the ſaid general words paſſed the poſſeſſions and hereditaments of the ſaid Monaſtery of S. Bennets de Hulmo in a took of concealments under certain obſcure words (which appear in the Act of Parliament hereafter mentioned) by Letters Patents of concealment bearing date the 2. day of Auguſt, Anno 27 Eliz. and William Redman Doctor of Divinity, and Biſhop of Norwich, cauſed one Hammond a friend of his to take an eſtate to him and his heirs of and from the ſaid Concealors of all or the greateſt part of the ſaid Monaſtery: which I (being then her Majeſties Atturny General) underſtanding, and utterly miſliking the proceeding herein, conferred with the ſaid Biſhop about the ſame, and in the end he was brought to agree, that an Act of Parliament ſhould paſſe for the eſtabliſhment of the ſaid Biſhoprick and of the poſſeſſions thereof, which Act (whereto I was well acquainted) paſſed at the Parliament holden in Anno 39 El. and is in print, which you may read at large, wherein you ſhall obſerve the fraud and falſhood of the Concealors. 39 El. cap. 22.

What attempts theſe Concealors (graceleſſe and wicked men) made to the ſubverſion of the Deanery and Chapter of the Cathedral Church of Norwich, you may read in the Third Book of my Reports, 73. Sed (favente Deo & auſpice Chriſto) iſti helluones non prævaluerunt. Which I have the rather remembred both for the eſtabliſhment of the ſaid Biſhoprick, as for the repoſe and quiet of very many Farmors, Officers, and other perſons claiming intereſt in the ſaid poſſeſſions in my native Country. Lib. 3. fo. 73. the caſe of the Dean and Chapter of Norwich.

And if any queſtion ſhall hereafter be made either concerning any of the poſſeſſions of this Biſhoprick, or any other, or of any Dean and Chapter, or of the Colledges in either of the Univerſities, &c. by any Concealor or other; their poſſeſſions are eſtabliſhed by the Act of Parliament of 21 Jac. cap. 2. intituled, An Act for the general quiet of the ſubject againſt all pretence of concealment whatſoever. 21 Jac. cap. 2.

For the Courts of Juſtice within this City (which is our principal aime) we have treated of the like before in the City of London. To this we will adde an Act of Parliament concerning the juriſdiction of this City (whereof we have not found the like that we remember in any other) which in effect is as followeth:

It is enacted for the Citizens of *Norwich*, That if their Cuſtomes and Uſages, heretofore uſed, or hereafter to be uſed, be difficult or defective in part or in all, or that the ſame need any due amendment for any matter ariſing, whereof remedy was not aforetime had, that then the * Bailiffs and 24. Citizens of the ſame City, ſo therefore yearly to be choſen, or the greater part of them, ſhall from henceforth have power to ordain and provide from time to time ſuch remedies which are moſt agreeable to faith and reaſon, and for the moſt profit, the good and peaceable government of the ſame Town, and of ſtrangers thereto repairing, as to them ſhall ſeem beſt, ſo as ſuch Ordinances be profitable for the King and his people. Par. 1 R. 2. nu. 39. not in prim. * It hath now a Mayor and 24. Aldermen. Vide Rot. Cart. Anno 4 H. 4.

It is a County of it ſelf, and hath two Sheriffs and large liberties without the Walls. See the ſtatute of 33 H. 6. cap. 7. how many Atturnies ſhould be in this City. See before in the Chapter of the High Court of Parliament concerning new Draperies, &c. and Worſteads, &c. made in this City. See Rot. Parl. 18 E. 1. fo. 5. concerning the ancient Liberties of this City. 33 H. 6. cap. 7.

* Burgi & Civitates fundat' & ædificat' ſunt ad tuitionem gentium, & populorum regni, & idcirco obſervari debent cum omni libertate, integritate & ratione. * Inſt. Leges Wil. Conq. Lam. 125. Inſt. Leges Ethelſtani & Canuti fo. 62. & 106. Oppida inſtaurantur, &c.

* 14 H. 4. It is enacted, That the Merchants and Artificers of Worſteads in *Norf.* may ſell their ſingle Worſteads to any place or perſons being of the Kings amity notwithſtanding any Inhibition or Liberty to the contrary. * Par. 14 H. 4. nu. 47. not in print.

Rot. Pat. 11 H. 4. nu. 48. Trin. 13 E. 1. in Banco Rot. 76.

He that desires the terms, true makings, and quantities of Worsteds: Let him read the statute of 11 H. 4. Rot. Parl. nu. 48.

Trin. 13 E. 1. in Banco, Rot. 76. Inspeximus Cart. H. 3. Civibus Norwic' de libertatibus conces'.

The beautiful Cathedral or Mother Church of Norwich was begun to be built by Herbert Bishop of Norwich, Anno 9 Willielmi Rufi.

19 E. 3. jurisd. 21. 26 H. 8. cap. 3.

The Bishops of this See had the first-fruits of Ecclesiastical Livings within their Diocesse before the statute of 26 H. 8. ca. 3. which no Bishop, or Archbishop of this Realm had.

It hath also a famous River abounding with Fish, especially the Pearch.

The strong and noble Castle of Norwich called Blanchflower invironed about with the City, but no part thereof but of the County of Norf. was not (as some suppose) built by Bigot Earl of Norf. which some upon view thereof have conjectured, for that the Arms of Earl Bigot are graven on the Walls thereof. For we find a Charter of King Stephen in these words, Stephanus Rex Anglorum Archiepiscopis, Episcopis, Abbat', Justic', Comitibus, Baronibus, Vicecomitibus, Ministris, & omnibus fidelibus suis Angliæ, Salutem. Sciatis me dedisse in feodo & hæreditate * Willielmo Comiti Warren. filio meo Castellum Norwici cum toto Burgo, &c.

* This William married Isabel daughter and heir of William Earl Warren, and in her right was Earl Warren. Vid. Mat. Par. pag. 92.

And Rafe de Waet Earl of Norwich defended this Castle of Norwich against William the Conqueror, who was driven out of England, and travelled with his Wife to Jerusalem.

But true it is that Earl Bigot being after owner thereof, did both repair and enlarge the same, and set his Arms upon the Walls thereof. And so much for the Antiquity (a great Ornament of this City) of this Castle, which now for want of reparation is ready to fall.

To conclude, This famous and free City is justly to be commended for profession of true Religion, their Loyalty to their Prince in all times of tumult, the good government of themselves, and the exercise of works of Charity.

This is the chief City of my Native Country.

Nescio qua natale solum dulcedine cunctos
Ducit, & immemores non sinit esse sui.

CAP.

CAP. LIII.

The Court of the Tourne.

We have ſpoken of this Court (being a Court of Record) in the Second part of the Inſtitutes, Mag. Cart. cap. 35. whereunto we will adde a Charter of William the Conqueror, which we finde inrolled 2 R. 2. nu. 5. pro Decano & capitulo Eccleſiæ beatæ Mariæ de Lincoln'.

a part of the Inſt. Mag. Cart. c. 35. 12 H. 7. 18. Fineux. Roc Par. 2 R. 2. nu. 5.

Willielmus gratia dei Rex Anglorum, Comitibus, Vicecomitibus, & omnibus Francigenis, & qui in Epiſcopatu † Remigii Epiſcopi terras habent, Salutem. Scitis vos omnes, & cæteri mei fideles qui in Anglia manent, quod Epiſcopales leges quæ non bene, nec ſecundum ſanctorum Canonum præcepta uſque ad mea tempora in regno Anglorum fuerunt, communi Concilio & Concilio Archiepiſcoporum meorum & cæterorum Epiſcoporum & Abbatum, et omnium Principum regni mei emendendas judicavi. Propterea mando, et regia authoritate præcipio, ut nullus Epiſcopus vel Archidiaconus de legibus Epiſcopalibus amplius in * Hundretto Placita teneant, nec cauſam quæ ad regimen animarum pertinet ad judicium ſæcularium hominum adducant, ſed quicunque ſecundum Epiſcopales leges de quacunque cauſa vel culpa interpellatus fuerit, ad locum quem ad hoc Epiſcopus elegerit, & nominaverit, veniat, ibique de cauſa ſua reſpondeat, et non ſecundum † Hundrettum, ſed ſecundam Canones & Epiſcopales leges rectum deo & Epiſcopo ſuo faciat. Si vero aliquis per ſuperbiam elatus ad Juſtitiam Epiſcopalem venire non voluerit, vocetur ſemel, et ſecundo, et tertio; quod ſi nec ſic ad emendationem venerit, excommunicetur: Et ſi opus fuerit, ad hoc vindicand', fortitudo, et Juſtitia regis vel Vicecomitis adhibeatur: Ille autem qui vocatus ad Juſtitiam Epiſcopi venire noluit, pro unaquaque vocatione legem Epiſcopalem emendabit: hoc etiam defendo, et mea authoritate interdico, ne ullus Vicecom' aut præpoſitus, aut miniſter regis, nec aliquis laicus homo de legibus quæ ad Epiſcopum pertinent ſe intromittat: nec aliquis laicus homo alium hominem ſine Juſticia Epiſcopi ad judicium adducat; Judicium vero in nullo loco portetur niſi in Epiſcopali ſede, aut in illo loco quem ad hoc Epiſcopus conſtituerit.

† This Remigius was the firſt Biſhop of Lincoln, the See being removed from Dorcheſter to Lincoln.

* i. In Turno.

† This not intended of the Hundred Court, but that in thoſe times the Sheriff did hold his Tourn *per Hundreda*. See Mag. Cart. cap. 35. and the Expoſition thereupon.

For the confirmation of this Charter, ſee in the Regiſter of the Biſhop of London. Willielmus dei gratia Rex Anglorum R. Bainardo, & S. de magna Villa, P. de Vabines, cæteriſque meis fidelibus de Eſſex & de Hertfordſhire, & de Middleſex, Salutem. Sciatis vos omnes, &c. Tenor iſtius Cartæ eſt in Anglico de verbo in verbum in eadem Carta. Conſimilis Carta ut ante ex libro Cartarum Archiepiſcopi Cantuar'. **Againſt this Charter it is objected. Firſt, the time of the enrolling thereof, viz. in 2 R. 2. being never heard of before. Secondly, out of the Red book,** Inter leges H. 1. cap. 8. de generalibus Placitis Comitatuum. **1. As well of the Tourn, as of the County Court.**

[a] Sicut antiqua fuerit inſtitutione firmatum, ſalutari regis imperio, vera nuper eſt [b] recordatione firmatum, generalia Comitatuum Placita certis locis & vicibus & definito tempore per ſingulas Angliæ provincias convenire debere, nec ullis ultra fatigationibus agitari, niſi propria regis neceſſitas, vel commune regni commodum ſæpius adjiciant. Interſint autem Epiſcopi, Comites, Vicedomini, Vicarii, Centenarii, Aldermanni, præfecti, præpoſiti, Barones, Vavaſſores, Tungrevii

[a] Lib. ruheus in Cuſtodia Remem. Regis compoſitus tempore H. 1. cap. 8. Read the whole Chapter. Vid. [illegible] cap 12.

[b] Inſt. Legis Ed. Lamb. 135. Vid. Stat. de Marlbr. cap. 10.

grevii & cæteri terrarum domini diligenter intendentes ne malorum impunitas, aut Gravionum pravitas, vel judicum subversio solita miseros laceratione confiniant. Agantur itaque primo debita veræ [a] Christianitatis jura; Secundo [b] regis placita; Postremo [c] causæ singulorum dignis satisfactionibus expleantur. **Whereupon they conclude, That Ecclesiastical causes were handled in the Tourn in the reign of H. 1. long after the said supposed Charter. And certain it is, that the Bishops Consistories were erected, and causes Ecclesiastical removed from the Tourn to the Consistory after the making of the said Red Book:** Ideo penes Lectorem sit judicium.

a Ecclesiastical causes.
b Pleas of the Crown in the Tourn.
c Private causes in the County Court.

In the same Chapter of the said Red Book it is further said, Et quoscunque [d] Shiresgemote discordantes inveniet, vel amore congreget, vel sequestret judicio, debet enim Shiresgemot [e] bis, hundreda, & wapentachia [f] duodecies in anno congregari.

d Tornum as it is here taken.
e And so is the Turn holden to this day. Mag. Cart. 35.
f And so is the County Court holden at this day. Mag. Car. 35. 2 E 6. 25.

The Tourn is a Court of Record holden before the Sheriff: the ancient Institution thereof was before Magna Carta [g] **to hear and determine all felonies (death of man excepted) and common nuisances.** [h] **See the Statute of** Magna Carta, cap. 17. **and the Exposition upon the same in the** Second part of the Institutes.

g 28 E. 4. 22.
h 2 part of the Inst. Mag. Cart. cap. 17.

The stile of this Court is Curia visus Franc. domini regis apud B. Coram Vicecomite in Turno suo, &c. **and not** Turnum Vicecom' tent', &c. **for** Tornum est nisi perambulatio. **The Articles inquirable in the Tourn are known, and need not to be here rehearsed.**

CAP.

CAP. LIV.

The Court of the Leet or view of Frankpledge.

This is a Court of Record, and at the firſt deribed and taken out of the Tourn, and is holden before the Steward, and he is Judge thereof. Of the Antiquity and juriſdiction of this Court, you ſhall read in the Second part of the Inſtitutes, Magna Carta cap. 35. And what the ancient juriſdiction of the Lèt was, you ſhall alſo read in the Second part of the Inſtitutes, Magna Carta cap. 17.

See Mich. 7 E. 1. Rot. 9. Northampt. Abbas de Burgo. See the 2d. part of the Inſt. Mag. Cart. cap. 35.

Lep, Leth, or Lèt is a Saxon word, and cometh of the Verb ȝelæpian or ȝelepian (ȝ being added Euphoniæ gratia) i. convenire, to aſſemble together, unde conventus. Int. Leges Edw. cap. 35.

If a common Nuſance, &c. done within the juriſdiction of the Lèt be not preſented in the Lèt, the Sheriff in his Tourn cannot enquire of it, for that which is within the precinct of the Lèt is exempt from the Tourn, otherwiſe there might be a double charge; but in that caſe a Writ may be directed to the Sheriff enquire thereof, &c. againſt the Opinion of Fineux in 12 H. 7. if his Opinion be not miſreported. And by the Book of 29 E. 3. This Writ is not taken away by the ſtatute of 28 E. 3. cap. 9. made the year before, which was then freſh in the Judges memory. 29 E. 3. 21. Wilby. 12 H. 7. 18.

See the Second part of the Inſtitutes, in the Expoſition upon the Statute of 31 El. cap. 7. concerning Cottages and Inmates, ſpecial matter concerning the juriſdiction of the Lèt. See for the juriſdiction of the Lèt the ſtatute of 2 E. 6. cap. 10. concerning making of Vault.

The Commons petitioned that exceſſive fines ſet on the Kings ſubjects by ſuch as have Lèts may be redreſſed; whereunto the King anſwered, The King would the ſame. Rot. Par. 17 E. 3. nu. 38.

See a notable caſe concerning the juriſdiction of the Lèt & Court Baron, Mich. 18 E. 1. in Banco Rot. 156. Norf. Et ibi tenetur quod Clericus ad Letam venire non habet neceſſe, niſi ejus præſentia ex certis cauſis & conſiderationibus ſit neceſſaria. Mich. 18 E. 1. in Banco Rot. 156. Norf.

This Court of the Lèt may enquire of corrupt Victual as a common nuſance, whereof ſome have doubted, both for that it is omitted in the ſtatute of the Lèt, and of the weak authority of the Book of 9 H. 6. where Martyn ſaith, That it is ordained that none ſhould ſell corrupt Victual. And Cottiſmore held opinion, That it is Actio popularis, whereupon it is collected, that the conuſance thereof belongs to the Lèt. [a] And Martyn and Neal 11 H. 4. agreeing with him ſaid truly, for by the [b] ſtatute of 51 H. 3. Stat. Pillor' & Tumbrel', & Aſſis' Panis & Cervis', and by the ſtatute made in the reign of E. 1. intituled, Stat. de Piſtoribus & Braſiatoribus & aliis Vitellariis, It is ordained, that none ſhall ſell corrupt Victuals. And by the [c] ſtatute of 14 E. 3. it appeareth that this Act was ordained in the time of his Grandfather, which was E. 1. Stat. de viſu Franc. 18 E. 2. 9 H. 6. 53. b. a Vid. 11 E. 4. 6. b. per Neal & Brian. 1 R. 3. 1. a. 7 H. 4. 14, 15. Brook tit. Leet 1. b In the ſtat. at large, p. 17. Mag. Carta parte 2. 23, 24. c 14 E. 3. cap. 12.

[d] Britton who wrote after the ſtatute of 51 H. 3. and following the ſame faith thus; Puis ſoit inquiſe de ceux queux achatent per un manner, de meaſure & vendent per meinder meaſure faux, & ceux ſont punies come vendors des vines, & auxi ceux que ſerront attaints de faux aunes, & faux poys, Et auxi les * Macegrieves, & les gents que de uſage vendent a treſpaſſants mauvaſe vians corumpus & wacius, & autrement perillous a la ſaunty de home. Et les Forſtallers, &c. Et ſo. 33. he doth conclude the like paſſage with theſe words, Encenter le forme de nous ſtatutes. d Britton f. 77. a. * *Macellarius*, a Butcher or Victualler.

Eſt

Fleta lib. 2. ca. 1. ſect. Eſt etiam. Et cap. 11. ſect. Item ſi dominus.

Eſt etiam atrox injuria quæ perpetuam inducit infamiam cum pœna Pillorali & Tumbrelli, quæ quandoque fit per Piſtores, Braſiatores, & alios qui falſis ponderibus utuntur & menſuris, quæ etiam fit per cibaria corrupta, & ſemicocta vendentes, &c. **But none of theſe ſtatutes gave the conuſance to ſurvey and correct Victuallers for corrupt Victual to our Court of the Leet, therefore further Authority therein is deſired. Wherein we will produce that which is** omni exceptione majus, **and that is by reſolution in Parliament.**

12 E. 4. cap. 8.

By the Statute of 12 E. 4. cap. 8. **It is is rehearſed,** That Mayors, Bayliffs, and other like Governours of every City, Borough, and Town of ſubſtance within this Realm of *England* for the moſt part have Courts of Leets and Views of Frankpledge holden yearly within the ſame,

Note.

and ſurveying of all Victuallers there, and correction and puniſhment of the offenders, and breakers of the Aſſiſe of the ſame, to be preſented and amerced if default be found in the ſaid Courts, &c. And where divers perſons intending their ſingular avail and profit, and to oppreſſe the ſaid Victuallers, and to enter and break the liberty of divers places in this Realm having Franchiſes (*that is, Leets aforementioned*) and ſurveying of all Victuallers, and correction of the ſame, had purchaſed Letters Patents of King E. 4. to be ſurveyors and correctors of all ſuch Victuallers within divers Cities, Boroughs, and other places, of Ale, [a] Beer, Wine, and other Victuals, &c. in [b] wrongfull derogation of the Liberties and Franchiſes of the ſaid Cities, Boroughs, and o her places, &c. *as by the ſaid Act is rehearſed.* It is eſtabliſhed and ordained, that all Letters Patents granted by that King, or after to be obtained of any Office of ſearching or ſurveying of Wine, Ale, Beer, or other Victuall, ſhall be utterly void and of none effect. And that no perſon other then ſuch Governours before rehearſed, &c. (*that is, in reſpect of their before rehearſed Leets*) ſhall uſe or exerciſe any ſuch Office, &c. And beſides the declaration of the ſame to be void and againſt Law, a penalty of 40 l. is inflicted upon ſuch as ſhall exerciſe any ſuch office ſo obtained or after to be obtained. An excellent Act of Parliament both for the declaration of the Law in the caſe abovеſaid, as alſo that the King by his Letters Patents cannot make any new office for the ſurveying, correction, &c. of any thing which belong to the Juriſdiction and Conuſance of any former Court which by conſequent hath a large extent, and therefore we have cited the ſame the more at large.

[a] These words follow after in the Act, and Note by this it appeareth, that Beer is not of ſuch late time as ſome ſuppoſe. See alſo Rot. Par. Anno 4 H. 4. nu. 53. Beer and Ale mentioned to be then in *Calice*. Beer is a Saxon word. *Bier*, and Beer is within the word *Cerviſia* in the ancient ſtatutes. For it is but as the putting of a new button to an old Coat, viz. Hops to Malt and Water to make it continue the longer.

[b] Hereby it appeareth that thoſe Letters Patents were againſt Law, and that this is a ſtatute declaratory with addition of a penalty.

Some do hold that it is within the ſtatute of 18 E. 2. **ſome ſay as an incident to the Aſſiſe of Bread and Ale; and others hold, that by that Act power is given to the Lord of the Leet to enquire of that Aſſiſe of Bread and Ale, that is to ſay, of the ſtatute intituled,** The Aſſiſe of Bread and Ale, **which is the ſaid Act of** 51 H. 3. **in which Act ſellers of corrupt Victuals are to be puniſhed. And herewith (ſay they) agreeth the Book in** 1 R. 3. fo. 1. **that of corrupt Victual the Leet had juriſdiction by the ſtatute, howſoever that is conceived, it is the Leet that hath conuſance thereof.**

Paſch. 18 E. 2. Coram Rege. Rot. 76. Southt.

And albeit Malt, Braſium, be no Victual of it ſelf, as it is adjudged in Anno 18 E. 2. Quod venditio braſii non eſt venditio Victualium, nec debet puniri ſicut venditio Panis, Vini, & Cerviſiæ, & hujuſmodi contra formam ſtatut'. **Yet becauſe it is the principal ingredient of Beer, and ſerveth to Victual the Kings houſhold, &c. (as it is ſaid in the ſtatute of** 17 R. 2.) **and tendeth, if it be corrupt and not wholeſome, to the great hinderance of health and increaſe of diſeaſes, we will examine how the Law ſtandeth therein at this day.**

17 R. 2. cap. 4.

Malt

Mealt or Malt is a Saxon word, in Latin we call it Braſium derived of braſſo, i. ebullio, ferveo. In the ancient ſtatutes Braſiator is taken for a Brewer. In Fleta, ubi ſupra, Braſiatrix: in Britton, ubi ſupra, Bracereſſes, for Brewers. In Latin we uſe the word Pandoxator or Potifex: and Braſiator at this day is uſed for a Maltmaker or Malſter.

Malt is made of Barley, and cannot be well and perfectly made, unleſſe it hath the time of 12 daves in the making thereof, and both in the making thereof in the Fat, Flor, ſteeping, and ſufficient drying of the ſaid Malt 3 weeks at the leaſt, except it be in the moneths of June, July, and Auguſt, and in thoſe moneths by the ſpace of 17 dayes at the leaſt. 2 E. 6. cap. 10.

The Maltmaker ought not ſlackly and deceitfully to dry the Malt, to the intent to have an inordinate increaſe thereof by ſwelling of the ſame, which being not ſufficiently dried, within a ſhort time will be muſty and full of *Wivels. * Gurguliones.

¶ No perſon ought to put to ſale any Malt which ſhall not be well and ſufficiently troden, rubbed, and well fanned, whereby there may be conveniently fanned out of one Quarter thereof half a peck of duſt, or more. 17 R. 2. cap. 4.

¶ No perſon ſhall mingle any Malt not being well and ſufficiently made, or being made of mow burnt or ſpired Barley, with other good Malt, and after put the ſame to ſale. All theſe be mala in ſe, and puniſhable by the Common law. 2 E. 6. cap. 10.

And this ſtatute of 2 E. 6. hath added a penalty, if the ſuit be brought upon this ſtatute. And if the Brewer put to ſale any beer, which he hath brewed with unlawful (as all is unlawful that have not the qualities aforeſaid) and unwholeſom Malt, he may be preſented for the ſame in the Leet, &c. as ſelling of corrupt and unwholeſome victual. And by this ſtatute power is given that the Juſtices of peace in every of their Seſſions, and alſo the Steward in every Leet ſhall hear and determine, as well by preſentment of 12 men, as by accuſation or information of two honeſt witneſſes, of, for, and upon all and every the offences and forfeitures in that Act, &c. So as the Juſtices of peace or Stewards in Leets may either proceed at the Common law or upon this ſtatute. It is further provided by this Act, that the Bailiffs and Conſtables of every Borough, and Market town or other Town where Malt ſhall be made or put to ſell, ſhall from time to time ſearch and ſurvey the ſame; and if the ſame be found to be evil made or mingled with evil Malt, they by the advice of one Juſtice of peace ſhall cauſe the ſame to be ſold at ſuch reaſonable price, and under the common price in the market, as to his diſcretion ſhall ſeem expedient. This Act extends not to the making of any Malt for a mans own proviſion for his own houſe or family. And the offences againſt this Act are to be preſented within a year. 2 E. 6. cap. 10.

This Act of 2 E. 6. cap. 10. is continued, and yet ſtandeth in force. 27 Eliz. cap. 4. 1 Jac. cap. 25. &c. 4 Car. cap. 4.

That which hath been ſaid (de malis in ſe) of Malt, may alſo be applyed to Hops another ingredient into Beer, and puniſhable by the Common law. But againſt divers and many falſehods practiſed in packing of forein Hops, for that the ſubjects of the Realm have been by reaſon thereof of late years abuſed and deceived unto the value of 20 thouſand pounds yearly at the leaſt (for that in ſacks of forein Hops there is not found one third part to be good and clean Hops, the reſt being droſſe and ſoil,) A good law is made Anno 1 Jac. and every perſon offending therein ſhall forfeit the ſame Hops ſo brought into the Realm. And it is further enacted by the ſame Act, that if any brewer of Beer or Ale ſhall imploy and ſpend any Hops unclean, corrupt, or mixt with any powder, duſt, droſſe, ſand, or any other ſoil whatſoever, he ſhall forfeit the value of thoſe Hops ſo imployed to be recovered, &c. in any of the Kings Courts of Record. 1 Jac. cap. 18.

The reaſon wherefore theſe Courts of the Tourn and Leet are Courts of Record, and not the Courts of the County, of the Hundred, and of the Court Baron (whereof we ſhall next in order treat) is, for that the Tourn and the Leet are inſtituted for the Common-weal, as for conſervation of the Kings peace, and puniſhment of common nuſances, &c. And for conſervation of the peace, the Sheriff in the Tourn, and the Steward in the Leet may take Recognizances for F. N. B. 81.

kéeping of the peace. But the said inferiour Courts of the County Hundred, and the Court Baron have jurisdiction of private causes under the value of 40 s. betwéen party and party.

—Fuit hæc sapientia quondam
Publica privatis secernere, sacra profanis.

And forasmuch as unclean, corrupted, and mingled Spices and Drugs be so unwholesome and hurtfull, as they tend to the jeopardy of mans body, we will hereunto adde the exposition of the statute of 1 Jac. cap. 19. the penalty of Spices not garbled.

¶ Whereas heretofore great deceits and abuses have been committed in uttering, selling, and putting to sale, sundry sorts of unclean, corrupt and mingled Spices, &c. garbleable, to the jeopardy of his Majesties person, &c.

¶ Garbleable.] To garble, signifieth in our legal understanding, to sever and divide the good and sufficient from the bad and insufficient; and extendeth not only to Spices and Drugs mentioned in our statute, but to other wares and merchandizes. As for example. By the statute of 1 R. 3. it is provided that no Bowstaves shall be sold ungarbled, &c. that is, untill the good and sufficient be severed and divided from the bad and insufficient; and this garbling of Bows hath reference to the statute of 12 E. 4. cap. 2. where garbling of Bows is well expounded, that is, that the Bowstaves be searched and surveyed, &c. and that such as be not good and sufficient be marked, &c. Some think that it is derived from the French Verb, Garber, to make fine, neat, clean, &c. Others fetch it from Cribler and that of Cribrare, to sift or sever the good from the bad, unde Cribrum, sic dictum, quia crebris pertusum est foraminibus ad res purgandas à pulvere & immundis (unde Cribrarius, the Garbler) which well agréeth with our Act.

1 R. 3. cap. 11.

12 E. 4. cap. 2. the statute appointeth who shall garble them.

A Sive and to sift, do come from the Saxons, viz. ꝛiꝼ, ꝛ ꝼꝛ. This Act consisteth of a Preamble and a Body. In the Preamble it is rehearsed, That unclean, corrupt, and mingled Spices, Drugs, Wares, and Merchandises garbleable do tend to the jeopardy of his Majesties person, and of his Subjects using the same in their meats, drinks, and other needfull occasions, &c.

The selling of such unclean, corrupt, and mingled Spices and Drugs used in meats, and drinks is malum in se, and (as hath béen said) in divers like cases punishable by the Common law. But this Act tendeth to the prevention of such deceipts and abuses, by garbling and purifying of the same before they be sold, and by punishment if they be sold before they be garbled and purified.

All that is garbleable must be garbled and clensed and sealed by the Garbler before sale, upon pain of forfeiture of the same or value thereof, for which an Action popular is given.

There be 32 kinds of Spices and Drugs by special name mentioned in this Act, viz.

1 Pepper, 2 Cloves, 3 Mace, 4 Nutmegs, 5 Cinnamon, 6 Ginger, 7 Long-pepper, 8 Worm-séeds, 9 Comin-séeds, 10 Any-séeds, 11 Coliander-séeds, 12 Bynny pepper, 13 Almonds, 14 Dates, 15 Galls, 16 Spikenard; 17 Galingall, 18 Turmericke, 19 Setwell, 20 Cassia fistula, 21 Ginny-pepper, 22 Seme, 23 Barberies, 24 Rice, 25 Erins, 26 Stavesacre, 27 Calamus, 28 Fennyrick, 29 Cassia, 30 Lignum, 31 Grains, 32 Caraway-séeds.

And in general words, 1. Gums of all sorts and kinds garbleable. 2. All other Spices, Drugs, Wares, and Marchandizes garbleable.

¶ Be it furthermore enacted, that if any of the said Spices, Drugs, Wares, or other Merchandizes be mixed with *garbles, matter or thing whatsoever after the same be garbled, c. That then the said Spices, Drugs, &c. or the value thereof shall be wholly forfeited.

* Nota. Garbles signifie the dust or soil or uncleanesse that is severed.

¶ It

¶ It shall and may be lawfull for the Garbler of Spices, &c. within the City of London and the Liberties of the same, &c.

There hath been of ancient time an Officer in London and the Liberties of the same, called the Garbler of Spices, who may make his Deputies. And this Act giveth him authority at all and every time and times *in the day time to enter into any Shops, Warehouses, or seller, to view and search such Drugs, Spices, &c. and to garble and make clean the same.

* This had been implied if it had not been expressed.

¶ There is a Proviso, that if any Merchant or other person (other then Merchants alien, or made or to be made Denizen) shall bring any Spice, Drugs, or other Merchandizes garbleable into this Realm, and shall not offer the same to sale or sell the same within this Realm, &c. and shall transport the same *bona fide* within eight moneths (accounting 28 dayes to the moneth) after his first landing, &c. shall not incurre any of the penalties of this Act.

And this Proviso was added in respect of a general law made in 16 R. 2. that no manner of Spicery, after that it be brought into the Realm, shall be carried out of the same by Alien or Denisen, upon pain of forfeiture of the same. And this Proviso extendeth only to the natural born Subjects, and not to Merchants alien, or made or to be made Denisens.

16 R. 2. cap. 1.

And by the Act of 16 R. 2. cap. 1. it is enacted, that Aliens shall sell Wines by whole vessels, and spicery by whole vessels and balls, and in no other manner.

The Court of the Leet may inquire of these offences following by authority of Parliament.

De visu franc, Articles of the Leet, to which we will adde. — 18 E. 2. De visu franc.

Concerning tracing and killing of Hares. — 14 H. 8 cap. 11.

Of Hostlers making Horse bread under the assize. — 32 H. 8 cap. 14.

Of breeders of Horses under stature. — 32 H. 8. cap. 13.

Of Artilery, Buts, and Bows. — 33 H. 8. ca. 8. 9.

Concerning shooting in Crossebows and Handguns. — 33 H. 8 cap. 6.

Concerning Victuallers, Artificers, Workmen, and Labourers. — 2 E. 6. cap. 15.

Against great prices and excesse of Wines. — 7 E. 7. cap. 5.

For amendment of High ways. 2 & 3 Phil. & Mar. cap. 3. 5 Elix. 13. 18 Eliz. 9.

Concerning Musters. — 4 & 3 Ph. & Ma. c. 3.

For the preservation of the spawn and fry of Fish. — 1 El. 17. 1 Jac. 25

Against taking of Phesants and Partridges. — 23 Eliz. cap. 10.

Against the erection of Cottages and Inmates. Hereof see before in this Chapter. — 31 Eliz. cap. 7.

By these and divers other Acts of Parliament the jurisdiction of this Court of the Leet hath been much increased, to the end that the Subject might have remedy and justice at his own dores: and therefore it is requisite that the Steward of this Court be learned in the law, for Ignorantia Judicis est calamitas innocentis. See Rot. Parl. 51 E. 3. nu. 49. concerning Taverners.

The style of this Court of the Leet is, Curia visus franc. pleg. tent. apud B. coram *A.* B. Seneschallo, &c.

Francus plegius Saxonice ꝼꝼeboꝼoꝼh Freboroe, Anglice, Freepledge.

The Constables or pety Constables are chosen by the Common Law at the Leet or Torn, and are by the Common law conservators of the peace, and may take surety of the peace by Obligation, and are as ancient as Torns or Leets be and began not about the beginning of E. 3. as some have supposed: Vide the Chapter of the Hundred Court for the Chief Constable, & 9 E. 4. 36. 5 H. 7. 6. 11 H. 4. 12. 38 E. 3. 3.

3 H. 4. 9 10 E. 4. 17. 44 E. 3. bar. 202. 31 E. 3. ib. 259 46 E. 3 ib. 214. Vide Rot. Parl. 6 E. 3. post. nu. 6. Fitz. Just. of Peace 172. 3 E. 3. cor 288. 12 H. 7. 18. Fineux.

But to say once for all: Repetition without addition is but losse of time, and altogether unprofitable.

CAP. LV.

The Court of the County.

See the second part of the Inſt. Mag. Cart. c. 35.

The Style of this Court is: Buck. Curia prima Comitatus E.C. Militis vicecomitis Com. prædict. tent. apud B. &c. And the next Court. Curia ſecunda E. C. vicecom. Com. prædict. &c. And ſo forth.

See the ſtatute of W. 2. cap. 36. againſt procurement of Suits in this Court.

Lib. 6. fol. 12. Gentlemans caſe Stat. de Merton cap. 3. 44 E. 3. 10. 2 part of the Inſtit. Mag. Cart. cap. 35.

This Court is no Court of Record, and the ſuitors are the Judges thereof. But in a Rediſſei ſon the Sheriff is Judge by the ſtatute of Merton cap. 3. and a Writ of error lyeth of his judgement.

F.N.B. 119 g.h. Ib. 85. g. &c. & 138. b. &c.

Of the antiquity and juriſdiction of this Court, you ſhall read in the ſtatute of Magna Carta, cap. 35. It holdeth no plea of any debt or damages to the value of 40 s. or above, nor of any treſpaſſe done vi & armis becauſe a fine is due thereby to the King. But of debt, detinue, treſpaſſe, and other actions perſonal above 40 s. the Sheriff may hold plea by force of a Writ of Juſticies to him directed, for that is in nature of a Commiſſion to him, and is Vicountel, and not returnable. And he may before any County Court award a Summons to his Bailie returnable within 2 or 3 dayes at his diſcretion, to ſummon the defendant by his goods, &c. to anſwer; and if the Baile return Nihil, and the plaintiff removeth the ſame by a Pone into the Common pleas, that Court ſhall not grant a Capias for the nature of the Writ doth not warrant a Capias, and the Sheriff could not grant the ſame, neither doth the Writ of Juſticies alter the nature of the Court of the County, for therein the Sheriff is not Judge, but the Suitors; and upon a Judgement given therein a Writ of falſe judgement doth lye, and not a Writ of error. And in divers Real actions a Writ of Juſticies doth lye as it appeareth in our books, as in Breve D' admeſurement of dower or paſture, in Cuſtoms & Services, Meſne Quod permittat, Rationabilibus diviſis, Sect. ad molend. De nuiſans, de Curia claudenda, Annuity, &c.

4 Eliz. Dier 222. 15 Eliz. 317 a.

In the County Court upon the Exigent after 5 exact, the Coroners give judgment, ideo utlagetur per judicium Coronatorum. But by this Judgement no goods are forfeited before the Outlawry appear of Record: and that is the reaſon, that no man can claim the goods of Outlaws by preſcription. Neither ſhall ſuch an Outlawry diſable the party: but if upon a Certiorari to the Coroners they certifie the Outlawry, this ſhall ſerve the King for the forfeiture of his goods, but ſhall not diſable the party till the Exigent be returned.

this Stat. Weſtm. 2. extends Cap. 11. Vide Coke 2 part of Inſt. fol. 380.

No Court of Record to hold plea of any debt or damages above the ſum of 40 s. but 13 s. 4 d. or any other ſum under 40 s. unleſs by the County Court Baron of a Court Leet. Vide Coke 2 part of Inſtitutes fol. 380.

CAP.

CAP. LVI.

The Court of the Hundred.

This is no Court of Record, and the Suitors be thereof Judges. Of the antiquity and jurisdiction hereof vide Magna Carta, ubi sup. And as the Leet was derived out of the Tourn for the ease of the people, so this Court of the Hundred for the same cause was derived out of the Court of the County, and is a Court Baron in his nature. 2 part of the Instit. Mag. Cart. ca. 35. 12 H. 7. 18.

By the statute of 14 E. 3. Hundreds (except such as then were of estate in fee) are rejoyned (as to the Bailywick of the same) to the Counties, and all grants made of the Bailywick of Hundreds since that statute are void, and the making of the Bailiffs thereof belong to the Sheriff, for the better execution of Justice and of his Office. And so it was resolved by the Lord Treasurer Lea and all the Barons of the Exchequer, and so decreed in the Exchequer Chamber, betwæn Forteſcue of Buckinghamshire plaintiff, and the Sheriff of the same defendant Term. 2. Caroli Regis, the plaintiff having of late divers Hundreds granted to him for life in the County of Buck; reserving a rent, which the Sheriff disallowed, and put in Bailiffs of his own. And a commandement was given by the Court to the Attorny General to avoid the like in other Counties, for that they were against law, and belonged to the office of the Sheriff, and were occasions of delayes and hinderances of Justice. See the statute of W. 2. cap. 36. against procurement of suits in this Court. 14 E. 3. cap. 9. 4 E. 3. cap. 15.

The style of this Court is, Curia E.C. militis hundredi sui de B. in Com. Buck. tent. &c. coram A.B. Seneſchallo ibidem.

If there be a Bailiff of a Liberty appointed by the Lord of the Liberty, or the Sheriffs Bailiff of any Hundred, Wapentake, or Tything, which have not Lands or Tenements sufficient in that County, there lyeth a Writ De Ballivo amovendo, grounded upon the statute of 4 E. 3. cap. 9. There are Constables of the Hundred commonly called, chief Constables, so named, because Constables of Towns are called petit Constables. These Constables of Hundreds were created by the statute of 13 E. 1. and their authority limited to five things. 1. To make the view of armour. 2. To present before Justices assigned such defaults as they do sée in the Country about armour. 3. To present defaults of suits of Tourns. 4 Of High wayes. 5 To present all such as lodge Strangers in uplandish towns, for whom they will not answer. Divers and many Acts of Parliament have given the chief Constable and petty Constable more authority and power then originally they had, which hath been well collected by others. For no Officer that is constituted by Act of Parliament hath more authority then the Act that creates him, or some subsequent Act of Parliament doth give him, for he cannot prescribe as the Officer by the Common law may. Nota 10 E. 4. fo. 17. the petit Constable was an Officer by the Common law per Curiam, Vid. 4 E. 3. cap. 3. 25 E. 3. ca. 2. See in the Chapter of Hue and Cry in the Third part of the Institutes, Hue and Cry alwayes by the Common law made by the Constables of Towns, &c. 9 E. 2. Linc. Stat. Unicum. 4 E 3. cap. 9. 5 E. 3. cap. 4. Register 178. F.N.B. 164. b. Stat. de 13 E. 1. De Winch. ca. 6. Lambard, &c. See cap. Leet for the petty Constable.

Fleta lib. 1. cap. 2. Sect. De Vic. & Constabulariis, &c.

CAP.

CAP. LVII.

The Court Baron.

See the second part of the Inst. Mag. Cart. c. 35.

THis is a Court incident to every Mannor, and is not of Record, and the Suitors be thereof Judges, although the Plea be holden by force of a writ of right.

There is also a Customary Mannor, whereof you may read in the First part of the Institutes Sect. 73. Verb. Court, &c.

And this was first instituted for the ease of the Tenants, and for the ending of debts and dammages under 40 s. at home, as it were at their own doors.

2 part of the Inst. Sect. 73.

See there for the antiquity and institution of this Court, and the Articles inquirable therein are usual and well known.

The stile of the Court is, Curia Baronis E. C. Militis manerii sui prædicti (having the Mannors name written in the Margent) tent. tali die, &c. coram A. B. Seneschallo ibidem.

In the reign of E. 1. we have seen Court Rolls having the Mannors name in the margent. Aula ibidem ten. tali die, &c. the Court of the Mannor being so called, because it was holden in the Hall of the Mannor: as the Court of the Marchallea is called Curia Aulæ Hospitii Domini Regis, because of ancient time it was holden in the Kings Hall.

CAP. LVIII.

The Court of ancient Demeſne.

THoſe Manors are called the ancient Demeſnes of the Crown which were in the hands of St. Edward the Confeſſor or William the Conquerour, and ſo expreſſed in the Book of Domeſday made or begun in the 14 year of William the Conquerour; for ſo we find it in Libro Rubro Scaccarii in Cuſtodia Remem. Regis, fo. 47. quod liber vocatus Domeſday compoſitus fuit Anno 14 Willielmi Regis Conqueſtoris. And Radulphus Niger Monk of Cogiſhall in Eſſex in vita Willielmi Conqueſtoris hath theſe words. Annis 1081, 1082, 1083. 1084, 1085, 1086, Rex Willielmus deſcribi fecit omnes Barones & feudatos Milites, & quot carucatas terræ quiſque habebat & redditus poſſeſſionum. And Anno Domini 1081, was the 14 year of William the Conquerour; and this great and excellent ſurvey laſted 6 years. And in Lucubrat. Okham, it is worthyly called Liber Judicatorius, becauſe it is the only trial of ancient Demeſne; againſt which, for the uncontrollable truth and verity thereof, there can be taken no averment. And therefore in that reſpect like the doom and judgement at Domeſday.

See the ſecond part of the Inſt. W. 1. c. 31. f. 546.

See 21. E. 3. 32

Herein Fitz. In his N.B. fo. 16. aſcribing it to Edw. the Confeſſor, was deceived *Vid.* the Preface to the third Book of my Reports.

In Chent. Archie. Cant. Sandwice in anno quo facta eſt hæc deſcriptio. In Domeſday it ſelf lege librum, for hereby it appeareth that it was made in the time of the Conquerour.

All thoſe that hold of theſe Manors in Socage are tenants in ancient Demeſne: and they plowed the Kings Demeſnes of his Manors, ſowed and harrowed the ſame, mowed and made his Medows, and other ſuch ſervices of husbandry for the ſuſtenance of the King and his honourable houſhold, maintenance of his ſtable, and other like neceſſaries pertaining to the Kings husbandry. And to the end theſe tenants might the better apply themſelves to their labours for the profit of the King, they had Sir priviledges. Firſt, that they ſhould not be impleaded for any their lands, &c. out of the ſaid Manor, but have juſtice adminiſtred to them at their own dor by the little writ of Right Cloſe directed to the Bailiffs of the Kings Manors, or to the Lord of the Manor, if it be in the hands of a ſubject; and if they were impleaded out of the Manor, they may abate the Writ. 2. They cannot be impannelled to appear at Weſtm. or elſewhere in any other Court upon any inqueſt or trial of any cauſe. 3. They are free and quiet from all manner of Tolls in Fairs and Markets for all things concerning husbandry and ſuſtenance. 4 And of Tares and Tallages by Parliaments, unleſſe they be ſpecially named. 5 And of contribution to the expences of the Knights of the Parliament, &c. 6 If they be ſeverally diſtreyned or other ſervices, they all for ſaving of charges may joyn in a Writ of Monſtraverunt, albeit they be ſeveral Tenants.

See the ſecond part of the Inſt. Art. ſup. Cart. cap. 2.

The priviledge of tenants in ancient demeſne.

Theſe priviledges remain ſtill, although the Manor be come to the hands of Subjects, and although their ſervice of the plough is for the moſt part altered and turned into money: Avera in Domeſday Grentbrigſh Rex fordham, ſed tamen ſemper inveniat averam vel 8 d. in ſervicio Regis. that is, a dayes work of a Ploughman, or 8 d.

This Court is in nature of a Court Baron, wherein the ſuiters are Judges, and is no Court of Record; for Brevia Clauſa Recordum non habent.

Nota, the Demandant in a writ of Right Cloſe cannot remove the plea out of the Court of the Lord for any cauſe, the Tenant may remove the ſame for 7 cauſes, viz. 1. For that he holdeth it ad Communem legem. As if a fine and recovery be levied or ſuffered thereof in the Court of Common pleas, this maketh

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the land frank fée ſo long as they ſtand in force. 2. If the land be not holden of the Manor being ancient Demeſne. 3. If the land be holden by knights ſervice: for, as hath béen ſaid, the ſervice of the Plow and Husbandry is the cauſe of the priviledge. 4. *If there be no ſuitors, or but one ſuitor, for that the ſuitors are Judges, and therefore the Demandant muſt ſue at the Common law, for that there is a failer of Juſtice within the Manor. 5. If the Tenant accept a releaſe of his Lord of his ſeigniory, or the ſeigniory be otherwiſe extinguiſhed by reaſon of the ſeiſon of the King or otherwiſe. 6. Or if the Lord diſſeiſe his Tenant and make a feoffment in fée. 7. If the Lord grant the ſervices of his Tenant, and the Tenant attorn.

* Arabant & herciebant ad curiam domini. *i.* they did plough, and harrow at the Manor of the Lord.

[a] And this priviledge doth not extend to méer perſonall actions, as debt upon a Leaſe, Treſpaſſe, Quare clauſum fregit, and the like, in which by common intendment the title of the freehold ſhall not come in debate. But otherwiſe it is of all real actions, and alſo in actions of Account, Replevin, Ejectione firmæ, writ of Meſne and the like, where by common intendment the realty ſhall come in queſtion.

[b] Lands in ancient demeſne are extendable upon a ſtatute Merchant, Staple Elegit, and regularly all generall ſtatutes extend to ancient demeſne.

[c] But a Rediſſeiſin, although they concern the realty, doth not lie in ancient demeſne, becauſe the proceeding in a Rediſſeiſin is appointed by the ſtatutes to be made by the Sheriff, aſſumptis ſecum Coronatoribus Comitatus, &c. and in ancient demeſne there are no Coroners; but otherwiſe it is in an action of Waſte.

And as the Tenants in ancient Demeſne are carefull to preſerve their priviledges ſo the Lord is as carefull to preſerve his ſeigniory, and the tenure of this tenancy in ancient demeſne, [c] And therefore if the Tenant levy a fine, or ſuffer a recovery in the Court of Common pleas, &c. whereby for the time the land is become frankfrée, the Lord by a writ of Diſceit may not only reſtore himſelf to his true ſeigniory, but utterly avoid the fine, and reſtore his Tenant againſt the recovery and his own fine to the land again in his former eſtate: and the reaſon thereof is, for that the recovery or fine was not ſuffered or levied before a competent Judge in the right Court, which ought to have béen in the Court of ancient Demeſne, and therefore after the reverſal in the writ of Diſceit, it is now tanquam coram non Judice, and the parties to the fine or recovery ſhall be fined and impriſoned pro deceptione Curiæ.

[e] But if in a writ of Right cloſe in ancient Demeſne, the Demandant maketh his proteſtation to ſue in the nature of Aſſiſe of Mord. the Tenant plead in abatement of the writ, and the writ by judgement is abated, the Demandant brings a writ of falſe judgement, wherein the writ is affirmed to be good, the Court of Common pleas ſhall proceed as the inferior Court ſhould have done, and although that judgement be given to recover the land in the Common pleas, yet the land is not frankfrée, but remains ancient Demeſne, becauſe the beginning and foundation thereof was in ancient Demeſne.

[h] They may levy a fine in ancient Demeſne which by the Cuſtom it is ſaid to be a bar of the eſtate tail: but certainly that will not hold.

[i] If the tenant remove the plea for the cauſe mentioned in the Recordare, he may come into the Kings Court, and aſſign other cauſe, and twenty, if he hath, to maintain the juriſdicton of the Kings Court.

CAP.

*Regiſt. fo. 17 E.3 44. F.N.B.14.c. 41 E.3 22. 49 E.3.7. 50 E.3.14.

*Demelday *ſæpe herciare* or *herſe-are* of the French word [herſe.]

[a] Vid li.5.fo.105 Allens caſe 44 E.4.38. 46 E.3.1. 49 E.3.7 44 E.3. 22.21 E.3.19. 32.40 E.3.4. 28 E.3.95. 34 E.1.Anc.demeſne 98.21 E.4. Anc.demeſne6. 22 Aſſ.45. F.N.B.136.k. 30 E.3.12.

[b] 2 E.2.Execut. 118.15 E.3. ib.62.8 E.3.ib. 136.7 H.4.19. Lib 5.fo.105. 19 H.6.64.

[c] 4 E.2.Rediſſeiſin 9. d7 H.6.35.8 H.6 34 32 H.6.35. F.N.B.189.g. Lib.5.fo.105. Allens caſe. 22 El.Dier. 373 7 H.7.11.

[e] 2 E 4 26.8E.4. 6.7 H.4.44. 8 H.4.24.17 E.3. 31.Trin.16 E.3. cor.Rege Rot. 132 Eborum. Tr.13 E.3.coram Rege Rot.108. Glouc. (finis) Tr.3 H.5.coram Rege Rot.9.Eſſ. (finis) 21 E.3.20 56.21 Aſſ.4. 26 E.3.63.

[f] Vid.Dier.22. El.373.

[g] 3 E.3.9.F.N.B. 19 d.

[h] Dier 22 El.373. 27 Aſſ.5.44 E.3 38.

[i] 21 E.3.32.

CAP. LIX.

The Court of the Coroner.

This Coroner Coronator is so called, because he deals principally with Pleas of the Crown or matters concerning the Crown: He is eligible by the Freeholders of the County, and so continues to this day, as of ancient time the * Sheriff and a Conservators of the peace were, because the people had a great interest and safety in the due execution of their offices, and so long as they were eligible, they continued, notwithstanding the demise of the King, as the Coroner doth to this day. And of ancient time this office was of great estimation, for none could have it under the degree of a Knight. b And it appeareth by the writ De Coronatore eligendo, that he must have two properties, viz. sufficient knowledge, ability and diligence in execution of his office, implied in these words, Et talem eligi facias, qui melius sciat, & possit officio illo intendere. c And the Sheriff after he be elected, shall give unto him his oath duly to execute his office: And the Court which he holdeth is a Court of Record. And commonly there are Four in every County of England; but in the twelve Shires in Wales, and Cheshire there are but two.

Regist. 172. F.N.B. 164.

* Artic. sup. Cart. cap. 8. & 13. 12 R. 2. cap. 2. 14 E. 3. cap. 7. a Ro. par. 5 E. 1. Lambard Justice of Peace. 16. b. b Regist. 177. F.N.B. 164. Stanf. 48. c. W. 1. cap. 10. c 14 E. 3. ca. 8 He must have sufficient land in the County whereof he may answer all people. F.N.B. 164. 14 H. 8. 35 H. 8. cap. 13.

Now concerning his jurisdiction, what it was before the Statute of Magna Carta, and what he hath at this day, and of his Antiquity, you may read in the Second part of the Institutes, Mag. Cart. cap. 17. and the Exposition upon the same. Merton cap. 3. Red. sterlin, and W. 1. cap. 10. & 26. & Artic. super Cart. cap. 1. and the Exposition of the same.

He is to take nothing for doing his office upon grievous forfeiture, but by 3 H. 7. he is to have upon an indictment found of murder 13 s. 4 d. of the goods of the murtherer, and if he hath nothing, of the amerciament of the Township for the escape, &c. See also the ancient Authors, Mirror des Justices, Cap. 1. sect. del office del Coroner. Bracton Lib 3. fo. 121, 122, 123. Britton Cap. 1. Fleta lib. 1. ca. 18. Statutum de anno 4 E. 1. de officio Coronatoris, and Stanf. Pl. Coronæ fol. 48, 49, 50.

3 H. 7. cap. 1. Vet. Mag. Cart. 4 E. 1. part 1. 119 Stanf. 49. c. f.

And as the Sheriff in his Tourn may enquire of all felonies by the Common law, saving of death of man, so the Coroner can enquire of no felony but of the death of man, and that super visum corporis: He shall also enquire of the * escape of the murderer, of Treasure Trove, Deodands, and the Wrecks of the Sea. But hereof you shall read more in the Authorities before cited, and in the Third part of the Institutes, in the title of Appeals.

35 H. 6. 2. 3. * 3 H. 7. ca. 1. 4 E. 1. ubi sup.

He ought to deliver the Inquisition of death taken by him at the next Gaol-delivery, or certifie the same into the Kings Bench. * Upon an Inquisition found before him of murder or manslaughter he ought to put in writing the effect of the evidence given to the Jury before him being material, and hath power to bind over witnesses to the next Goal-delivery in that County. See before in the Chapter of the Courts in London.

3 H. 7. ca. 1. * 1 & 2 Ph. & M. cap. 13.

To conclude, besides his judicial place, he hath also authority ministerial as a Sheriff, &c. viz. when there is just exception taken to the Sheriff, judicial process shall be awarded to the Coroners for the execution of the Kings writs, in which cases he is locum tenens Vicecomitis, and in some special case the Kings original writ shall be immediately direct unto him.

Pl. Com.

In defectu Vic. pro brevibus regis exequendis, videtur curiæ hic quod aliis quam Coronatoribus non est demandand. Vide Vet. Mag. Cart. parte 2. fo. 19, 21, 22. Stat. Exoniæ, Fleta Lib. 1. Cap. 18.

Pasch. 9 E. 3. coram Rege Rot. 80. Ebor. West.

CAP. LX.

The Court of *Pepoudres*, vulgarly Pipowders, *Curia Pedis pulverisati.*

Bract. l. 5. f. 334. a

THis Court is incident to every Fair and Market, as a Court Baron to a Manor, and is derived of two Latine words, as is apparent, and so called, because that for contracts and injuries done concerning the Fair or Market, there shall be as speedy justice done for advancement of Trade, and Traffick, as the dust can fall from the foot, the proceeding there being de hora in horam. And therefore Bracton saith, Item propterea qui celerem debent habere justitiam, sicut sunt mercatores quibus exhibetur Justitia *Pepoudrous*, &c.

Bract. l. 5. f. 334. a

6 H. 4. 3. 6 E. 4. 3 b. 7 E. 4. 23. Lib. 6. fo. 12. a. & 20.

This is a Court of Record to be holden before the Steward of the Court, and the jurisdiction thereof consisteth in Four conclusions. 1. The contract or cause of action must be in the same time of the same Fair or Market, * and not before or in a former. 2. It must be for some matter concerning the same Fair or Market, done, complained on, heard and determined. 3. It must be within the precinct of that Fair or Market. 4. The Plaintiff must take an oath according to the statute of 17 E. 4. cap. 2. but that concludeth not the Defendant. [a] And all this was resolved, and adjudged in a writ of Error brought by Hall against Jones, and the case was this: Jones being Register of the Bishop of Glouc. brought an Action upon the case in a Court of Pipowders belonging to the Market in Gloucester against Hall for these words; Master Jones and his Clerks have by colour of his office extorted and gotten 300 l. per annum, by unlawfull means for many years together above their ordinary fees, for proving of Testaments and granting Administrations. And not guilty being pleaded, &c. it was tryed and adjudged for the Plaintiff; and divers errors were assigned, but the judgment was reversed for these errors following. 1. That this Court of Pipowders, being incident to the Market hath no jurisdiction but of such things as concern the Market; and the slanderous words did in no sort concern the Market: but if one slander the wares of any in the Market, whereby he cannot make sale of them, an action doth lye in that Court. 2. It appeared in the Record that the words were spoken the day before the Market; [b] and no action lyeth in that Court but for an injury within the jurisdiction of the Court done, complained on, heard and determined on the same Market day, the proceeding being de hora in horam, and within the precinct of the Market. And herewith agreeth 3 Mar. Dier 132. And it was resolved that this Court was incident as well to a Market as to a Fair.

* See before Cap. Justices in Eire, simile pag. 185.

a Mic. 42. & 43. El. Coram Rege. Lib. 10. f. 61. En le case del Marshalsey Jones case.

b 7 H. 6. 18, 19. Kelw. 23. H. 7. 99. Doct. & St. fo. 1. 3 Mar. Dier 132. Int. Hall & Pinder 45 E. 3. 1. 1 E. 4. 6. 13 H. 7. 19 b. 12 H. 7. 16, 17.

[c] And there may be a Court of Pipowders by custome without Fair or Market, and a Market without an owner. Another error was assigned, for that it is provided by the [d] statutes of 17 E. 4. and 1 R. 3. that no plea should be holden in the Court of Pipowders, except the Plaintiff or his Attorny will make oath, that the contract or other deed contained in the Declaration was done or committed within the time of the Fair: but this Error was disallowed by the Court, for although this ought to be done, if the Defendant will stand upon it, notwithstanding it shall not be made part of the Record.

c 13 E. 4. 8. b. 8 H. 7. 4, 5. 22 E. 4. 9. 19 H. 8. Br. incidents 34. 22 H. 6. 3. b. d 17 E. 4. c. 2. 1 R. 3. cap. 6.

Vide Lib. Intrat. Rast. fo. 464. Pipowder 1, 2. fo. 18. Execution 3. fo. 158. Gaoler 1.

CAP.

CAP. LXI.

The Court of the Clerk of the Market.

HE is to this day called Clericus Mercati Hospitii Regis, for of ancient time there was a continual Market kept at the Court gate, where the King was better [a] served with Victuals for his houshold than by Purveyors, the subject better used, and the King at far lesse charge in respect of the multitude of Purveyors, &c. And the Officer of the Market of the Kings houshold retaineth his name still, although the good end thereof according to the first institution ceaseth.

The [b] Clerk of the Market shall hold no plea but such as were holden in the reign of E.1. And at this day there is no great need of him, for the Justices of Assise, the Justices of Oier and Terminer, Justices of peace, and the Sheriffs in their Tourns, and the Lords in their Leets, may and do enquire of false weights and measures.

[c] He doth kéep a Court and inquireth after weights and measures whether they be according to the Kings standard or no, and for that purpose he maketh processe to Sheriffs and Bayliffs to return Pannels before him, &c. [d] And he is to deliver the Estreats of those things which touch his office into the Exchequer.

[e] Of Drink (that is to say) of Wine, Ale, and Bær, and of Corn and Grain there ought to be but one measure: Una mensura Vini, Cervisiæ & Bladi, & Virgæ, and of all other Merchandize per totum regnum. De ponderibus vero sicut de mensuris.

Britton fo.75. b. Fleta l.2.c.20. Rot. Par. 50 E.3. nu.87, & 152. 13 R. 2.cap.4. 32 H.8.cap.20. 17 H.8.cap.24. Lib.Int.Co.445.

[a] See the 2. part of the Institutes, 28 E.1. Artic.sup. Cart. ca.2. and the Exposition thereupon.

[b] Rot. Parl. 8 H. 4 nu 82.

[c] 16 R.2.ca.3.

[d] Stat. de modo mittendi extracta in Scaccarium. Anno 16 E.1. & 15 E.2.

[e] Mag.cart. c.25. 27 E.3. ca. 10. 25 E.3. cap.9.

14 E.3. ca.12. 13 R.2. cap.9. 15 R. 2.c.4. 16 R.2 cap.3. 9 H.5.cap.8. 11 H.7.cap.4. 12 H.7.cap.5. 1 H.5.cap.10

¶ *Weights.*

But notwithstanding these Statutes there be within this Realm two kind of weights, the one called Troy-weight, which is commanded by the statute, and this derived from the grain or corn of barly from the middest of the Ear and dry. 24 of these corns or grains make a peny weight, and 20 of these penny weights make an ounce, and 12 ounces make a pound Troy. A grain contains 20 minutes, a minute contains 24 droits, a droit contains 24 blanks; 12 grains of fine gold make a Caret, 24 Carets of fine gold make an ounce, and 12 ounces make a pound of fine gold. By this Troy weight are weighed according to law pearls, precious stones, gold and silver, bread, wheat, and such like.

Trutina Campana Ordinatio mensurar' 31 E.3.

There is another kind of weight called Aver de pois. A pound of this consisteth of 16 ounces, every ounce having twenty penny weight, every penny weight 21 grains, and $\frac{7}{32}$ of a grain. It is called Aver de pois, because thereby they have full measure. Hereby are weighed all Physical drugs, War, Pitch, Tarre, Iron, Steel, Lead, Hemp, Flax, Flesh, Butter, Cheese, and divers other commodities, but especially every commodity subject to wash. There was another weight called the Auncel or Ansel weight, which was when the Scales were fixed to a beam or staff, and he that weighed by it, used his forefinger or hand in the middest, wherein was great deceipt, and therefore is put out by the statute of 25 E.3. cap.9. 34 E.3. cap.5. 8 H.6. cap.5. It is derived ab Ansa, which is the handle of the ballance, and this weight was guided by the hand.

¶ *Of Measures.*

Measures of Troy be of three kinds, viz. of things that be dry, of Liquor, and of Longitude, Latitude and Profundity.

Ordinatio menſur. 31 E.1. ubi ſup.

¶ Of dry things, 4 grains make a penny weight, 20 penny weight make an ounce, 12 ounces a pound or pint (for a pound weight is a pinte in meaſure) two pounds or pintes make a quart, two quarts make a pottle, two pottles make a gallon, two gallons make a peck, four pecks make a buſhel, four buſhells make a Combe, two Combes make a Quarter, ſix Quarters make a Wey, and ten Quarters make a Laſt.

¶ Of Liquor, 12 ounces make a pound, 8 pound make a gallon of wine, 8 gallons of wine make a Buſhell of London, which is the 8 part of a Quarter.

Of Wine ſée the ſtatutes of 1 R.3. cap.13. 28 H.8.cap.14.

Of Ale and Beer: the Ferkin 8; the Kilderkin 16; the Barrel 32; the Hogſhead 63; or Quarter — Gallons. Et ſic de cæteris.

See Aſſiſa Panis & Ceruiſiæ. 51 H.3. Vet. Mag. Cart. fo.31,32. 2 part. Ibidem 44. b. Compoſition ulnarum & perticarum. vet. Mag. Cart. 2 parte 45, 46. Anno 31 E.1. Statut. de terris menſur.

Sée the Statute Compoſitio de Ponderibus.
Statut. de Piſtoribus, Vet. Mag. Cart.2, part.23,24.
Statut. Panis & Ceruiſiæ.

¶ Of Longitude, Latitude and Profundity: 3 grains of barly in length make an Inch, 12 Inches make a Foot, three Foot make a Yard, a Yard and a quarter make an Ell, 5 yards and a half make a Perche, 40 Perches in Length make a Furlong, 8 Furlongs make a Mile.

I may ſpeak of the ſellers by the weight of Aver de poys, as Tacitus ſpake of the Augures in Rome: Hoc genus hominum ſemper vitabitur, & ſemper in Civitate retinebitur.

But now let us ſée what fées the Clerk of the Market ought to take. By the ſtatute of W.1.cap.26. it is enacted that no Sheriff or other Miniſter of the King ſhall take any reward for doing his office, &c. And the Kings Clerk of the Market is the Kings Miniſter, and therefore he is within the purview of this ſtatute.

W.1. An. 3. E.1. ca.26.

I find that in 8 R. 2. in open Parliament a Groat was allowed to him for marking and ſealing of every buſhell, 2d. of every half buſhell, 1d. of every peck, and ſo according to that rate.

Rot.Par. 8 R.2. nu. 11.

By the ſtatute of 7 H. 7. the chief Officer of every City and Borough ſhall take for ſealing of every buſhell a penny, of every other meaſure a half penny, of every hundred weight 1d. and of every half hundred ob. and of every weight under a farthing and not above.

7 H.7. ca.3. 11 H.4.cap.4.

The Clerk of the Market in the reign of Quæn Eliz. claimed by cuſtome for the examination and view of every buſhell ſealed before by the Clerk of the Market, whether it were lawfull or unlawfull 2d. and in like manner of every leſſer meaſure of wood 1d. and in like manner of Inholders meaſures 4d. and of the meaſures of Victuallers 2d. and divers other fées for examination and viewing of weights and meaſures whether they were lawfull or unlawfull, as is aforeſaid. And it was reſolved by all the Judges of England, that no fée was due to the Clerk of the Market for view and examination onely of weights and meaſures for three cauſes. 1. The ſaid Parliament Roll of 8 R.2. alloweth a fée for ſealing, and ſo doth 7 H.7. and 11 H.7. but no allowance for view or examination. 2. The weights and meaſures are either true, according as before they were ſealed, or falſe: if true, it ſhould be againſt reaſon to charge the innocent, for that were diſperdere juſtum cum impio; if falſe, then by the ſtatute of 13 R.2. they ought to be burnt, and the end of the view and examination is to find out falſhood, to the end they might be puniſhed, and fined to the King, as appeareth by the ſtatute of 13 R.2. but no fée is to be taken therefore. 3. Whereas the Clerk of the Market affirmed that theſe fées had béen of long time taken, the Judges ſaid, that malus uſus abolendus eſt, and the taking of fées for view and examination only was extortion, and that they could not preſcribe againſt the ſaid ſtatute of W.1. Sée in the 2. part of the Inſt. the Expoſition of the ſaid ſtatute of W.1.

13 R.3. cap. 4. 38 Aſſ.p.11.

By the ſaid ſtatute of 13 R.2. he ought to take no common fine, for before that

ſtatute

statute he did use to take a reward (which the Act tearmeth a fine) for not inquiry of defaults, whereby the King was prevented of his fine, the delinquent not punished, and the people wronged by extortion and permission of false measures: and therefore the Act provided that no common fine shall be taken, as is aforesaid, but that every person which is found in default touching the same office be punished according to his desert. And the Clerk of the Market cannot set any price of any thing saleable in the Market, for that belongs not to weights and measures; and by the Common law Arbitrio Domini res æstimari debet, which cannot be altered but by Parliament; and again, Nemo cogitur rem suam vendere etiam justo precio; and things saleable in the Market of one kind are not of one goodnesse: but he ought to assise weights and measures.

It is enacted that good examination and correction be had in Towns infranchised touching weights and measures, so as the * statutes thereof made be duly observed.

12 E.4. 8. b. 23 E.3. cap. 6. 13 R.2. cap. 8. 3 H.8. cap.8.

6 R.2. cap. 13. Rot. Par. 37 E.3. nu. 39.

* Which are before in this Chapter.

CAP. LXII.

The Court of the Commissioners of Sewers.

QUando [a] aqua profluit, that is, when water doth issue, vulgarly, sue: hereupon cometh the word Suera, for a sewer, passage, channel, or gutter of water.

[b] At the complaint of Henry de Lacye Earl of Lincoln, a Commission of Sewers was granted to Roger de Brabason Mayor, and the Sheriffs of London.

[c] Their authority is by Commission under the Great seal in hæc verba, at this day grounded and warranted by the Act of Parliament of 23 H. 8.

[d] Of their jurisdiction you may read in my Reports, and see the statutes of 6 H.6. cap.5. 8 H.6.cap.8. 23 H.6.cap.9. 12 E.4.ca.6. 4 H.7.ca.1. 6 H.8.cap.10. 23 H.8.ca.5. & 10. 3 E.6.ca.8. 1 Mar.cap.11.13. Eliz.cap.9.

Certain necessary observations upon some of these statutes, and principally wherein the statute of 23 H.8. cap.5. hath been explained, declared, or altered by any of the said subsequent statutes.

[e] 1. This Commission shall be granted to such substantial and indifferent persons as shall be named by the Lord Chancellor, the Lord Treasurer, and the two Chief Justices, or any three of them, whereof the Lord Chancellor to be one.

[f] 2. Every Commissioner before he take upon him the execution thereof shall take the Corporal Oath mentioned in that Act before the Lord Chancellor, or such as the Lord Chancellor shall direct by Writ of Ded. Potestatem, or before the Justices of Peace in their Quarter Sessions, and [g] ought to have lands or tenements of the clear yearly value of 40 Marks, of some estate of freehold (except as in the Statute is excepted) upon pain of forfeiture of 40 li. and no Farmer of lands within the Precinct of the Commission, unlesse he hath lands of some estate of freehold of the yearly value of 40 li. and yet he not to meddle with the lands he hath in farm.

[h] 3. The avowry or justification for a distresse taken by force of this Commission shall be general, that the said distresse, &c. was taken, &c. by force of the Commission of Sewers for a lot or tax assessed by the said Commission, or for such other Act or cause, &c.

[i] 4. There must be six Commissioners, &c. at the least, which shall sit by force of the said Commission.

[k] 5. That the said Act of 23 H.8. doth not extend to, nor give authority to the

a Vid. Pasch. 22 E. 1. in Banco Rot. 52. Kanc. Ric. de Gras Com. de Sewers. Vi. Regist. 287. a Certiorar.

b Rot. Parl. Ann. 35 E. 1. at *Carlisle*

c 23 H.8. cap.5.

d Lib. 5 f. 99, 100. Rooks case. Lib. 10. fo. 137. *Le case de Molin de Chester*, & fo. 139. Kinghleys case. Ib. 141. *Le case de Isle de Ely.* Vi. Regist. 252. b de antiqua trenchea obstruenda & nova facienda vel habenda Ad quod damnum. Ibid. 254. b. de aquæ ductu, & 255. 2. F.N.B. 225. c. Tr. 31 E. 3. fol. 44.b. in libro meo M. S. 19 E.3. bar. 279.

e 22 H.8. ca.5. 10. To whom, and by whom this Commission shall be granted.

f 23 H. 8. cap.5.

g 13 Eliz. cap. 9.

h 23 H.8. cap.5. Lib. Inter. Coke 292, 293.

i How many Commissioners must sit.

k 1 Mar. cap. 11. To what nuisances the Commission of Sewers extend not.

Commis-

Commiſſioners of Sewers to reform the great hurt and nuſance by reaſon of the land riſing out of the Sea, and driven to land by ſtorms and winds. A ſpecial proviſion is there made for the County of Clamorgan.

3 Jac. cap. 14.

It is adjudged by Act of Parliament Anno 3. Jacobi regis cap. 14. That Walls, Ditches, Banks, Gutters, Sewers, Gates, Cauſeys, Bridges, and Watercourſes in or about the City of London, * where no paſſage for Boats is uſed, nor the water therein doth uſually ebbe or flow: which Walls, Ditches, Banks, Gutters, Sewers, and other the premiſes, do fall into the River of Thames, are not under the ſurvey, correction and amendment of the Commiſſions of Sewers, nor of the ſtatutes made for Sewers in Anno 23 H. 8. or of any other ſtatute of Sewers, as it is rehearſed by full conſent of Parliament: and therefore proviſion is made that thoſe Walls, Ditches, Banks, Gutters, Sewers, and other the premiſes, ſhall be ſubject to the Commiſſion of Sewers.

* *Nota*, an excellent expoſition of the ſtatute of 23 H. 8. by this Parliament of 3 Jac.

23 Eliz. cap. 9. How long the Commiſſion ſhall endure.

6. That a Commiſſion of Sewers ſhall continue ten years, unleſſe it be repealed or determined by reaſon of any new Commiſſion, or by Superſedeas.

23 Eliz. cap. 9. The laws written in Parchment, and indented, &c. Without Certificate or Royal aſſent.

7. That Laws, Ordinances and Conſtitutions made or to be made by force of any ſuch Commiſſion, and written in Parchment indented under the Seals of the ſaid Commiſſioners or ſix of them, whereof one part ſhall remain with the Clerk, &c. and the other part in ſuch place as ſix of the ſaid Commiſſioners ſhall appoint, ſhall without any Certificat, and without the Royal aſſent ſtand and continue in full force notwithſtanding any determination of any ſuch Commiſſion by Superſedeas, untill the ſame be altered by the Commiſſioners of Sewers after to be aſſigned, &c.

Determination by by expiration.

8. And if any ſuch Commiſſion be determined by expiration of ten years next enſuing the Teſte thereof; then ſuch laws, &c. ſo indented and ſealed, &c. ſhall continue for one whole year. And that the Juſtices of peace or ſix of them, whereof one to be of the Quorum, ſhall have authority during that year to execute the ſaid lawes, &c.

Juſtices of peace

9. That by the granting of a new Commiſſion within that year, the power of the Juſtices of peace to ceaſe.

Nota, no certificate or return of the Commiſſions or of any the Ordinances, Laws, or doings.

10. The ſaid Commiſſioners ſhall not be compelled to make any Certificat or return the ſaid Commiſſions, or any of their Ordinances, Laws, or doings, by authority of the ſaid Commiſſions.

11. See alſo an alteration by the ſtatute of 13 Eliz. concerning fées.

12. Laſtly, this is certain, that neither the Commiſſioners of Sewers, nor any other, have ſuch an abſolute authority, but that their proceedings are bound by Law.

Regiſt. 126, 127. F.N.B. 113, 114. Rot. Parl. 2. *H.* 6. nu. 57. 6 *H.* 6. cap. 5.

Vide the ancient Commiſſion of Sewers by the Common law in the Regiſter, and F.N.B.

A general Commiſſion of Sewers enacted by authority of Parliament, not Printed.

Stat. 25. E. 3. ca. 4. 45 E. 3. cap. 2.

A general Commiſſion of Sewers enacted by Parliament, and in print. But the Commiſſion by the ſtatute of 23 H. 8. ſtandeth now in force. And yet by diligent peruſal of the former, and by adviſed comparing of them with the latter, it will manifeſt wherein the former defects were, and how continually by the latter they were ſupplied and amended, and give a great light for the true underſtanding of that which now ſtandeth.

Hil. 13 E. 2. coram rege Rot. 55. Norf. Paſc. 44. E. 3. coram rege Rot. 2. Mid.

See Hil. 13 E. 3. coram rege. Leges & conſuetudines approbatæ pro reparatione murorum maritimorum & mundatione Foſſatarum & Suetarum in paludibus quæ hic exprimuntur per commiſſionem Regis ad hoc faciendum in Merſhland.

[a] A particular Commiſſion granted to S. Joh. de Sutton, & Sir Rob. de Scrope.

[b] A Commiſſion concerning the River of Lee.

[c] Rumney Marſh in the County of Kent containing 24000 acres, is at this day, and long time hath been governed by certain ancient and equal Lawes of Sewers made by a venerable Juſtice Henry de Bathe, in the reign of H. 3. from which laws not only other parts in Kent, but all England receive light and direction: For example: The ſaid general Act of 23 H. 8. ca. 5. in the clauſe which giveth

a 19 E. 3. tit. bar. 279. *b* 2 E. 3. fo. 26. *c* The Court of Sewers of Rumney Marſh.

given power to the Commissioners to make Statutes, Ordinances, and prohibitions, &c. necessary and behoveful after the laws and customes of Rumney March in the County of Kent, or otherwise by any wayes or means, &c.

Both the Town and March of Rumney took their name of one Robert Rumney. This Robert (as it appeareth by the book of Domesday) held this Town of Odo Bishop of Baieux, wherein he had 13 Burgesses, who for their service at the sea were discharged of all actions and customes of charge, except felony, breach of the peace and forestalling.

See before in the Chapters of the Courts of London, &c. the jurisdiction that the Lord Mayor hath in the River of Thames.

CAP. LXIII.

The Court of the Commissioners upon the Statute of Bankrupts.

We have fetched as well the name as the wickednesse of Bankrupts from forein Nations: For Banque in the French is mensa, and a Banquerot or Exchanger is * mensarius, and route is a sign or mark, as we say, a Cart rout is the sign or mark where the Cart hath gone: metaphorically it is taken for him that hath wasted his estate, and removed his Banque, so as there is left but a mention thereof. Some say it should be derived from Banque and rumpue, as he that hath broken his Banque or state.

In former times as the name of a Bankrupt, so was the offence it self (as hath been said) a stranger to an Englishman, who of all other Nations was freest of Bankruptcy. And the first Statute that we find against this crime, was indeed made against strangers, viz. against Lombards, who after they had made Obligations to their creditors, suddenly escaped out of the Realm without any agreement made with their creditors. * It was therefore enacted, that if any Merchant of the Company knowledge himself bound in that manner, that then the Company shall answer the debt: so that another Merchant which is not of the Company shall not be thereby grieved nor impeached: neither do we find either any complaint in Parliament, or Act of Parliament made against any English Bankrupt until the 34 year of H.8. when the English Merchant had rioted in three kinds of costlinesses, viz. costly building, costly diet, and costly apparel, accompanied with neglect of his trade and servants, and thereby consumed his wealth.

He is called in Latin * Decoctor, à Decoquendo, for consuming of his estate in riotous and delicate living. The said Act of 34 H.8. is altered by the statutes of 13 Eliz.cap.7. 1 Jacobi, cap.15. & 21 Jacobi, cap.19.

And it is to be observed, that all the aforesaid statutes and laws made against Bankrupts, and for relief of creditors, shall be in all things largely and beneficially construed, &c. for the aid, help, and relief of the creditors.

A Bankrupt is described by the statute of 13 Eliz.cap.7. and 1 Jac.cap.15. but more effectually by the statute of 21 Jac.cap.19. So as by all these three he is perfectly described. And the Commission doth extend to all and every of the said descriptions and articles thereof.

[a] The authority of the Commissioners is by Commission under the Great seal; their jurisdiction and power is by force of the saids Acts of Parliament which ought to be pursued, [b] or else they are subject to the action of the party grieved, for he hath no other remedy. [c] The Lord Chancelor or Lord Keeper upon Complaint made unto him in writing hath authority to grant the said Commission.

The

* The derivation and signification of Bankrupt. Cicero pro Flaminio: *In qua civitate summus moveri nullus potest sine quinque praetoribus, 3 praetoribus, & quinque mensariis.*

25 E.3.stat.3. cap.23. Parl. 50 E.3. nu. 160. against Lombards.

* 51 E.3. nu. 52. Vid. 50 E.3. ca.6. & 2 R. 2. cap. 3. stat.2. against frauds generally 34 H.8. cap.4.

* Cic. in Catilinam: *Exercitum collectum ex rusticis, mendiculis, & decoctoribus.*

The description of a Bankrupt.

a The authority of the Commissioners and their jurisdiction.

b Lib.8.f. 22. Int. Cutt & Delabar.

c 13 Eliz. cap.7. who may grant the Commission.

* Three qualities of every of these Commissioners.

The law hath provided that these Commissioners ought to have * 3 qualities, viz. wisdome, honesty, and discretion; which if it be observed, it is the best meanes for the due execution of the said Statute, and the life of these laws doth consist in the due execution thereof: And for such Commissioners if any Action shall be brought against them, &c. for doing of any thing by force of the said Statutes, they may plead generally, and not to be driven to any special pleading.

General pleading 1 Jac. c. 15. 21 Jac. cap. 19.

They have power to examine the offender upon oath, and after he be declared a Bankrupt, to examine his wife upon oath, and to examine witnesses also upon oath. See the Statute. And they have power to break any the Houses, Chambers, Warehouses, &c. Trunks and Chests of such offenders. See the other parts of this Act of 21 Jacobi, which are plainly and effectually expressed, and need not here to be recited.

* Lib. 2. fo. 25, 26. Callamers case Lib. 8. fo. 98. Baspoles case. Ib. fo. 121. Int. Cutt & Delabar.

For the exposition of the said statute of 13 Eliz. * See in my Reports lib. 2. fo. 25, 26. Callamers case. Lib. 8. fo. 98. in Baspoles case, & ibid. fo. 121. inter Cutt & Delabar.

CAP. LXIV.

Commissioners for Examination of Witnesses.

FOrasmuch as the Court of Star-Chamber, the Chancery in cases of equity, the Exchequer-Chamber in cases of Equity, the Court of Wards, and the Dutchy of Lancaster do proceed upon witnesses examined before Commissioners, or in Court before the Examiners, it shall be necessary (as a matter of great importance) to say somewhat of the power, authority, and duty of the said Commissioners and Examiners, and incidently of witnesses.

See li. 9. fo. 70. 71. Peacocks case, for this and some of the cases following Lib. 9. ubi sup.

The Commissioners, albeit named by the parties reciprocally, ought to stand indifferent, and do their uttermost endeavour to find out by due examination the whole truth, and to suppresse no part thereof; for their authority is to that end meerly and wholly from the King by force of his Commission.

Neither Commissioner nor Examiner are strictly bound to the letter of the Interrogatory, but ought to explain every other matter or thing which riseth necessarily thereupon, for manifestation of the whole truth concerning the matter in question.

Lib. 9. ubi sup.

Neither Commissioner nor Examiner ought to discover to either of the parties or to any other, any of the depositions or any part of them, which they have taken before publication be granted.

Lib. 9. ubi sup.

Neither Commissioner nor Examiner after the Examination begun, ought to confer with either party touching the examination, or take new instructions concerning the same.

Aug. Serm. 28. *de verbis Apostoli. Jurare est jus veritatis Deo reddere.* Azo. *Jus jurandum est affirmatio vel negatio, religiose exhibita.* See the third part of the Institutes cap. Perjury.

Forasmuch as the witnesse by his oath, which is so sacred, as he calleth Almighty God (who is truth it self and cannot be deceived, and hath knowledge of the secrets of the heart) to witnesse that which he shall depose; it is the duty both of the Commissioner and the Examiner gravely, temperately, and leisurely to take the deposition of the witnesse, without any menace, disturbance, or interruption of them in hinderance of the truth, which are grievously to be punished. And after the depositions taken, the Commissioners and Examiners ought to read the same distinctly to the witnesses, and suffer them to explain themselves for the manifestation of the whole truth. And it is safe for the Commissioner and Examiner that the witnesses subscribe their names or marks to the Paper-book, but they must be certified in Parchment.

And

And albeit the Commissioners be not equal in state or degree, yet are they all of equal power and authority: for, as it hath been said of old, that there might be propriety, but no superiority amongst Commissioners.

Interrogatories ought to be single and plain, pertinent to the matter in question, and in no sort captious, leading, or directory.

In some cases the Courts of the Common Law do judge upon witnesses, but they must ever give their testimony viva voce: * as in dower, if the issue be whether the husband be alive or no, &c.

Witness is derived of the Saxon Verb Weten, i. Scire, Quia de quibus sciunt testari debent, & * omne sacramentum debet esse certæ scientiæ. In Latine Testis à testando; & testari est testimonium perhibere: unde Regula juris, Plus valet unus oculatus testis, quam auriti decem: Testis de visu præponderat aliis.

[a] An Oath ought to be accompanied with the fear of God, and service of God for the advancement of truth, Dominum Deum tuum timebis, & illi soli servies, & per nomen illius jurabis.

Bracton saith, that an Alien born cannot be a witness: which is to be understood of an alien Infidel: [b] for the Bishop of Rosse being a Scot born, was admitted to be a witness, and sworn Anno 14 Eliz. in the Case of the Duke of Norfolk by the opinion of the Justices assistants. [c] Testis falsus non erit impunitus.

Nocte dieque suum gestat sub pectore testem:

His Conscience always gnawing and vexing him. [d] Vox simplex nec probationem facit, nec præsumptionem inducit.

[e] Testium numerus si non adjicitur, duo sufficiunt.

Jurato creditur in judicio.

[f] Testibus deponentibus in pari numero dignioribus est credendum.

[g] Testmoignes ne poent testifie le negative, mes laffirmative.

[h] Allegans contraria non est audiendus, verum vero consentiens est falsum nec vero nec falso.

Juramentum est indivisibile, & non est admittendum in parte verum, & in parte falsum.

[i] Allegans suam turpitudinem non est audiendus.

Judex non potest esse testis in propria causa.

Jusjurandum inter alios fact' nec nocere, nec prodesse debet.

Facultas probationum non est angustanda.

De crimine in Lupanari commisso, lupanares testes esse possunt.

Qui prodit in scenam mercedis ergo, infamis est.

Witnesses ought to come to be deposed untaught, and without instruction, and should with victory to the party that right hath, and that Justice should be administred: and should say from his heart, Non sum doctus, nec instructus, nec curo de victoria, modo ministretur Justitia. See Britton 134, 135.

* 8 H. 6. 13. 2 E. 2. trial 46, &c. Dier 2 Eliz. 185. 13 Eliz. 306.

¶ *Of Witnesses.* Additions to the 1 part of the Institutes, Sect. 1. fol. 6. And to the third part of the Institutes, cap. Perjury.

* 12 Ass. 12. 23 Ass. 8. 11 Ass. p. 19.

a Deut. 6. 13.

b 16 Januarii 14 Eliz.

c Prov. 19.

d Bract. lib. 5. fol. 400. b.

e 2 H. 7. Kelw. 96. a. b. Bract. li. 5 359.

f Vid. 2 E. 3. trial 45.

g F. N. B. 106, 107.

h 16 E. 4. 10. a.

i Trin. 13 E. 1. in Com. Banco. Rich. de Raynhams case.

Histriones Mercenarii.

CAP. LXV.

Curia curſus Aquæ apud Graveſend.

OF this Court, and others like, which are in private, we intend not to treat, for that the labour herein were infinite, and ſerveth nothing for the publick, whereat our principal aim hath been.

CAP. LXVI.

The Kings Swanherd.

Rot. Pat. 16. R. 2. part 1. m. 39. * Tr. 33 E. 1. Eſſex coram Rege. Rot. 124. 7 H. 6. acc'.

WHat authority the Kings Swanherd hath, being of ancient time by his Office Magiſter deductus Cygnorum, you may read Rot. Patentium Anno 11 H. 4. part 1. m. 14. Rot. Pat. 30 E. 3. part. 1. m. 20. and Lib. 7. fo. 15, &c. Le caſe de Swannes; but Court he hath not: No Fowle can be a * Strap but a Swan.

¶ *The Kings Alneger.*

So likewiſe there is an ancient Officer of the Kings Alneger of the Kings gift being before any Statute: As taking one example for many. [a] In 14 E. 1. Sir Thomas Darlington was by the Kings Letters Patents Alneger of Broad Cloth, and had a fee of the King for the exerciſe of his Office; For the fee that he had of the Subject was (as it ought to be) by Act of Parliament, 27 E. 3. St. 1. cap. 4. [b] Alneger of Aulne in French, and that of ulna, ulnator. See before concerning the Alnaging of new Draperies, Cap. Of the High Court of Parliament, pag. 31.

a Rot. Pat. 14 E. 1. The. Darlington *Militi.* This appeareth alſo by the Statutes themſelves, 25 E. 3. cap. 1. ſtat 4. 27 E. 3. ſtat. 1. c. 4. 3 R. 2. cap. 17 R. 2. cap. 2. & 5. 1 H. 4. cap. 13. 11 H. 4. 6. 13 H. 4. 4. 11 H. 6. 1. 13 H. 6. 5. 4 E. 4. 1. 8 E. 4. 1. R. 3. Rot. Clauſ. 17 R. 2. m. 14.

b The derivation of Alneger.

CAP. LXVII.

The Wardens Courts in the East, West, and middle Marches adjoyning to *Scotland*.

23 H.8. cap.16.
31 H.6. cap.3.
8 E.4. cap.2.
22 E.4. cap.8.

They proceeded according to the Law called the March Law, or Borders Law, but their jurisdiction was increased by Act of Parliament. The limits of their jurisdiction was within the Marches, which were confined to the Counties of Northumberland, Cumberland, Westmerland, and the Town of Newcastle upon Tine in the County of York.

4 H.5. cap.7.
23 H.8. cap.16.
31 H.6.cap.3.

For the Word [Marches,] see before Cap. President and Councell of Wales.

But since King James was Monarch of both Kingdoms, the batable grounds on both sides are become quiet, and so peaceable, as all the said Courts in the East, West, and middle Marches are vanished, and hostile Laws on both sides by Authority of Parliament in either of the Kingdoms repealed. See the Statute of 4 Jacobi. See the First part of the Institutes, Sect. 3.

4 Jac. cap.1.

CAP. LXVIII.

Of *Callais*, or *Callis*, *Caletum*.

Rot. Par. 50 E. 3. nu. 211, 212. 6 H.6. nu. 41. See the Statute of 27 H.8. concerning good laws and orders for Callis, and the Marches thereof, and 1 H. 7. cap. 3.

THis ſtrong Port-Town, the famous and flouriſhing Mart, Staple, and vent of Engliſh Commodities was holden and kept by the ſpace of 211 years by 11 ſeveral Kings, viz. E.3. R.2. H.4. H.5. H.6. E.4. E.5. R.3. H.7. H.8. E.6. and holden and loſt by King Philip and Mary the firſt Queen regnant of this Realm, the Lord Wentworth then Deputy there.

It was governed by Engliſhmen and by Engliſh Laws, ſome particular cuſtoms excepted. [b] And of a Judgement given there a Writ of Error did lie returnable into the Kings Bench. [c] Before the Staple at Callais, it was kept at Bruges in Flanders.

[d] The children born there were inheritable in England, and ſo declared by authority of Parliament.

[e] And there the King had his Mint in ſuch manner as in the Tower of London. Certain it is that riches followed the Staple whereſoever it was kept, [f] And it could not be appointed in any place but by Act of Parliament.

[g] The Staple being at Callais, upon all Rodes forth of the Town by the Captain, the Mayor of the Staple furniſhed him forth of Merchants and their ſervants to the number of 100. Bill men. and 200. Archers without any wages. And yet it appeareth in the Parliament Roll of 2 R. 2. nu. 15. that Callais coſt the King yearly twenty thouſand pounds.

See the Parliament Roll of 50 E. 3. nu. 211, 212. for the Mayors Courts, &c. and Liberties, and Franchiſes, &c. there. Many Acts of Parliament have been made concerning this Town, and the Staple therein, which need not here to be recited, only we thought it not good totally to pretermit it, becauſe the Kings right remains to it, and it may hereafter be reſtored (which is ſo much deſired) to the right owner.

b 21 H. 7. 33. 11 H. 8. Kelw. 201.b.
Par. 5 R.2. nu. 48.
c Par. 15. E. 3. 2 part.
Parl. 9 R.2. nu. 4.
d 42 E.3. cap. 10. Lib. 7. in Calvins caſe.
e Rot. Parl. 9 R.2. nu. 4.
9 H.5. ſtat. 2. c. 5.
f 1 R.2. nu. 37.
g Parl. 50 E.3. nu. 209.

CAP.

CAP. LXIX.

Of the Isle of *Man*, *Insula Euboniæ*, *modo Manniæ*, and of the Law and Jurisdiction of the same.

This Isle hath been an ancient Kingdom, as it appeareth in Li. 7. in Calvins case, which need not here to be recited. And yet we find it not granted or conveyed by the name of a Kingdom, sed per nomen Insulæ, &c. cum patronatu Episcopatus. He hath the Patronage of the Bishoprick of Sodor, which is a visible mark of a Kingdom; albeit of ancient time the Archbishop of Canterbury was Patron of the Bishoprick of † Rochester, and the Earle of Glouc. of the Bishoprick of Landaff. Vide Lib. M. S. in Recept' Scaccarii, fol. 166. & Lib. Parliam. in Turri London Temps E. 1. fo. 19. 21.

Wall. pa. 287. Lib. 7. fo. 22. in Calvins case.

† Rot. Cart. 16. Johan. m. 6.

William le Scrope emit de domino Willielmo de Monte acuto Insulam Eubonæ, (*i.* Manniæ:) Est nempe jus ipsius Insulæ ut quisquis illius sit dominus Rex vocetur, cui etiam fas est Corona aurea coronari.

An. Dom. 1393. Wall. An. 17 R. 2.

The Lord Scrope forfeited the same to H. 4. for High Treason. King H. 4. granted the same to Henry Earl of Northumberland in these words. Rex, &c. De gratia nostra speciali dedimus & concessimus Henrico Comiti Northumbriæ Insulam, Castrum, † Pelam, & Dominium de Man, ac omnia Insulas & Dominia eidem Insulæ pertinen' quæ fuer' Willielmi le Scrope Chivalier defuncti, quem in vita sua conquestati fuimus, & ipsum sic Conquestatum decrevimus, & quæ ratione Conquestus illius tanquam Conquestata cepimus in manum nostram. Quæ quidem Conquestum & Decretum in præsenti Parliamento nostro de assensu Dominorum Temporalium in eodem Parliamento existentium quoad personam prædicti Willielmi, ac omnia, terras, tenementa, bona, & catalla sua tam infra regnum nostrum quam extra ad supplicationem Communitatis regni nostri affirmata existunt, &c. Habenda & tenenda eidem Comiti & hæredibus suis, &c. per servic' portandi diebus Coronationis nostræ & hæredum nostrorum ad sinistrum humerum nostrum & sinistros humeros hæredum nostrorum per seipsum aut sufficientem & honorificum deputatum suum illum gladium nudum quo cincti eramus quando in parte de Holdernes applicuimus, vocatum *Lancaster Sword*, durante processione & toto tempore solemnizationis Coronationis supradictæ.

Corona aurea. Of the quality of him, See Wall. ubi supra.

Rot. Pat. 7 H. 4. Rot. 2. Bundello 2. parte 5. m. 36.

† A Pele or Pile, a fortress in a small Isle belonging to the Isle of Man.

Note, the title of the King by Conquest is affirmed by Parliament.

In this little Kingdom there are 2 Castles, 17 Parishes, 4 Market Towns, and many Villages, and in that Isle there is a Bishoprick, as hereafter shall be shewed.

Anno 5 H. 4. the said Henry Earl of Northumberland was attainted of Treason, and by Act of Parliament 1 Martii 7 H. 4. it is enacted, That the King should have the forfeiture of all his lands and Tenements. And afterwards in 7 H. 4. the King granted the Isle of Man una cum Patronatu Episcopatus, to Sir John Stanley for life: and after in the same year he granted the same Isle una cum Patronatu Episcopatus, to the said Sir John Stanley and to his Heirs; Tenend de Rege hæredibus & successoribus suis per homagium ligeum; Reddendo nobis duos Falcones semel tantum, viz. immediatè post homagium hujusmodi fact': Et reddendo hæredibus nostris regibus Angliæ duos Falcones diebus Coronationis eorundem hæredum nostrorum pro omnibus aliis serviciis, consuetudinibus, & demandis, adeo liberè, plenè & integrè sicut Willielmus Scrope Chivalier vel aliquis alius, &c.

Rot. Pat. 7 H. 4. parte 2. m. 18. Cum patronatu Episcopatus.

This Sir John Stanley had issue Sir John Stanley Knight, who had issue Sir Henry Stanley Lord Chamberlain to King H. 6. who created him Lord Stanley, who had issue George, who had issue Thomas, whom King H. 7. created

Earl

Earl of Derby to him & the heirs males of his body, who had iſſue Thomas, who had iſſue Edward, who had iſſue Henry, who had iſſue Ferdinando and William. Ferdinando had iſſue Anne, Frances, and Elizabeth, and died without iſſue male: And betwæn theſe daughters being heirs general, and William Earl of Derby being heir male, queſtion was moved concerning the title of the Iſle of Man: which by Quæn Elizabeth was referred to the Lord Kæper Egerton, and to divers Lords of the Councel, and to Popham Chief Juſtice of England, Anderſon Chief Juſtice of the Common Pleas, and Peryam Chief Baron; who Trin. 40 Eliz. upon hearing of the Councel of both ſides, and mature deliberation, reſolved theſe Five points. 1. That the Iſle of Man was an ancient Kingdom of it ſelfe, and no part of the Kingdom of England. 2. They affirmed a Caſe reported by Kelw. Anno 14 H. 8. to be Law, viz. Mich. 14 H. 8. an office was found, that Thomas Earl of Derby at the time of his death was ſeiſed of the Iſle of Man in fæ; whereupon the Counteſs his Wife, by her Councell, moved to have her Dower in the Chancery; but it was reſolved by Bradwell, Brook, and Fitzh. Juſtices, and all the Kings Councel, that the office was mærly void, becauſe the Iſle of Man was no part of the Realm of England, nor was governed by the Law of this Land, but was like to Tourny in Normandy, or Gaſcoign in France, when they were in the King of Englands hands, which were mærly out of the power of the Chancery; which was the place to endow the widow of the King, &c. 2. It was reſolved by them that the Statute of W. 2. De donis conditionalibus, nor of 27 H. 8. of Uſes, nor the Statutes of 32 or 34 H. 8. of Wills, nor any other general Act of Parliament did extend to the Iſle of Man for the cauſe aforeſaid, but by ſpecial name an Act of Parliament may extend to it. 3. It was reſolved, that ſæing no office could be found to entitle the King to the forfeiture of treaſon, that the King might grant by Commiſſion under the Great Seal to ſeiſe the ſame into the Kings hands, &c. which being done and returned of Record is ſufficient to bring it into the Kings ſeiſin and poſſeſſion, and into charge, &c. 4. That the King might grant the ſame under the Great Seal, becauſe he cannot grant it in any other manner. And herewith agræth divers Grants under the Great Seal of this Iſle, [b] viz. 4 Junii, 18 E. 1. Rex E. 1. conceſsit VValtero de Huntercombe, &c. Rex E. 2. conceſsit Petro de Gaveſton, &c. 1 Maii, 5 E. 2. Gilberto Magaskill, and in the ſame year granted Henrico de Bello monte Inſulam prædictam cum omni Dominio & Juſtitia regali pro termino vitæ, &c. 5. It was reſolved that a fæ ſimple in this Iſle paſſing by the Letters Patents to Sir John Stanley and his Heirs, is deſcendible to his Heirs according to the courſe of the Common Law, for the grant it ſelf by Letters Patents is warranted by the Common Law in this caſe: and therefore if there be no other impediment, the Iſle in this caſe ſhall deſcend to the heirs general, and not to the heir male; as the grand Seignories and Cannots in Wales were impleadable at the Common Law, but the lands holden of them by the cuſtoms of VVales, &c. Which reſolutions we have thought good to report, becauſe they are the beſt directions that we have found, both in theſe, and for the like caſes.

Vide 33 H. 8. c. 6. a proviſo for the ſubjects of the Iſle of Man. 14 El. cap. 5.

* In Turri Lond. 3 Junii, 6 H. 4. ſuch a Commiſſion under the Great Seal was granted to Sir John Stanley, and William Stanley &c. to ſeiſe, &c. in this very caſe.

[b] In tur. Roc. Pat. 18 E. 1. & Anno 5 E. 2.

Rot. Pat. 2 Apr. 6 E. 2.

By theſe Letters Patents it appeareth, that Simon Montacute had intruded into and occupied the ſaid Iſle in noſtri exhæredationem, for which he was attached to anſwer the ſame in the Kings Bench at the ſuit of the King, but what proceeded thereupon we yet find not.

[b] ADema, a Saxon word for a Judge, *Giraldus: ſunt duo Judices in Inſula Mannia (olim Ewania nuncupata) qui de litibus ibidem emergentibus cognoſcunt.*

But now let us come to their Laws, and Juriſdiction of this Iſle, the like whereof we find not in any place. Their Judges they call * Deemſters, which they chooſe out of themſelves. All controverſies they determine without proces, pleading, writing, or any charge or expence at all. If any caſe be ambiguous and of greater weight, it is referred to 12. which they call Claves Inſulæ, the keyes of the Iſland. They have Coroners (quos Annuos vocant) who ſupply the office of a Sheriff.

But albeit this be ſo, yet when this Iſle was in the Kings hands, if any injuſtice or injuries were done to any of his Subjects there, the King might grant

a Commission for redress thereof: the like whereof we find, Rot. Pat. Anno 20 E. 1. in these words; Rex dilectis & fidelibus suis Nicholao de Segrave seniori, Osberto de Spaldington, & Johanni de Sutherwell, Salutem. Sciatis quod assignavimus vos Justiciarios nostros ad querelas omnium & singulorum de Insula de Man se conqueri volentium de quibuscunque transgressionibus, & injuriis eis per quoscunque tam balivos & ministros nostros quam alios in prædicta Insula illatis audiend & terminand, & ad plenam & celerem Justiciam partibus inde faciend secundum legem & consuetudinem partium illarum. Et ideo vobis mandamus, quod ad certos dies & loca quos, &c. in Insula prædicta querelas, &c. audiatis & terminetis in forma prædicta facturi, &c. Salvis, &c. Mandavimus enim Custodi nostro Insulæ prædictæ, quod ad certos, &c. in Insula prædicta venire fac' coram vobis tot & tales, &c. In cujus, &c. Teste Rege apud Berewick, 15 die Julii.

In the Margent, thus, *De querelis hominum Insulæ de Man audiend' & terminand'.*

Nota, secundum legem & consuetudinem Insulæ de Man.

So as albeit the Kings Writ runneth not into the Isle of Man, yet the Kings Commission extendeth thither for redress of injustice and wrong: but the Commissioners must proceed according to law and justice of the Isle. They have peculiar Laws or Customs; for example: If a man steal a Horse or an Ox, it is no Felony, for the offender cannot * hide them, but if he steal a Capon or a Pig he shall be hanged, &c. Upon the sale of a Horse or any contract for any other thing, they make the stipulation perfect, per traditionem stipulæ. Nota, the true derivation of stipulation. And as they have peculiar Laws, so have they a proper Language.

* They have no Woods. 12 H. 8. fo. 5. a.

This Isle hath a Bishop instituted by Gregory the Fourth Bishop of Rome, and he is under the Archbishop of York, but hath neither place nor voice in the Parliament of England. In hac Insula Judex Ecclesiasticus citat, definit, & infra Octo dies parent, aut carceri intruduntur.

Episcopus Sodorensis.

The Inhabitants of this Isle are religious, industrious, and true people without begging or stealing.

CAP.

CAP. LXX.

Of the Isles of Jersey *alias* Gearsey, *olim Cæsarea*, and Garnsey, *olim Sarvia*, and of the Law and Jurisdiction of the same.

Jersey hath 12. Parishes. Garnsey 10.

BOth these Isles did of ancient time belong to the Dutchy of Normandy: but when King H. 1. had overthrown his elder brother Robert Duke of Normandy, he did unite to the Kingdom of England perpetually the Dutchy of Normandy together with these Isles: and albeit King John lost the possession of Normandy, and King H. 3. took money for it, yet the Inhabitants of these Isles with great constancy remained, and so to this day do remain true and faithfull to the Crown of England; And the possessions of these Islands being parcel of the Dutchy of Normandy, are a good seisin for the King of England of the whole Dutchy.

Concerning the Judicature and Customes of these Isles whereat we principally aim, it appeareth by the Kings Records in the Tower, Quod Rex Johannes constituit 12 Coronatores juratos ad Placita & Jura ad Coronam spectantia custodienda, & concessit pro securitate Insularum, quod Balivus de cætero per visum Coronatorum poterat placitare sine brevi de nova disseisina facta infra annum, de morte antecessorum infra annum, de dote similiter infra annum. And for the most part they proceed according to the Customes of Normandy.

Pasch. 17 E. 2. Coram rege Rot. 67. Jersey. 2 E. 3 fo. 5. b. The Abbot of the Mount of S. Mich. case.

Drugo Barentyne dicit quod 40. Ann. est tempus extra memoriam secundum consuetudinem partium illarum.

King E. 3. assigned Hen. de Guldeford and others, Justices Errants in the Isles of Garnsey and C. by his Commission to enquire if he had right in the Manor of C. &c. and there it appeared, that they demanded advisement of the men of the Isles learned in their customes, who informed them of the customes of the Isles, which the Justices followed, and there it appeareth, that if the Information was against the Laws of the Isles, they may be holpen by the Laws of the same. See the Book.

Rot. claus. 9 E. 3. & 25 E. 3. Mich. 41 E. 3. Coram rege Rot. 109. Jersey in placit. transgres.

Quod in Custumis & aliis rebus tanquam indigenæ & non alienigenæ tractentur, &c. Quod juratores in Insula, &c. non protrahunt judicia sua ultra unius anni spacium.

An Action of trespass was brought by A. in the Kings Bench for a trespass done by B in the Isle of Jersey: whereupon in the Record this Entry was made. Et quia negotium prædictum in Curia hic terminari non potest, eo quod Juratores Insulæ præd' coram Justiciar' hic venire non possunt, nec de jure debent, nec aliqua negotia de Insula prædicta emergentia non debent terminari nisi secundum consuetudinem Insulæ prædictæ. Ideo totum recordum negotii mittatur in Cancellariam domini regis, ut inde fiat [b] commissio domini regis, cui vel quibus domino regi placuerit ad negotium prædictum in Insula prædicta audiend' & terminand' secundum consuetudinem Insulæ prædictæ.

a Secundum cons. Insulæ præd. b M. H. 6. 8. 17 2. b. Kelw. to the Bayliff and Jurates of Jersey Lib. 7. fo. 20, 21. in Calvins case.

By this it appeareth, that albeit the Kings Writ runneth not into these Isles, yet his Commission under the Great Seal doth, but the Commissioners must judge according to the Laws and Customes of these Isles.

[c] De Attornato generali in Insulis de Gernsey, Jersey, [d] Serk & Aureney fac' virtute Brevis domini Regis, Rex omnibus Balivis & fidelibus suis in Insulis de Gernsey, Jersey, Serk & Aureney ad quos, &c. Sciatis, &c. in quibuscunque curiis nostris Insularum earundem, &c. post adventum ipsius A. in Insul' prædict' si contingat

c Regist. fo. 22. d These little Isles of Serk and Aureney do lie between and near the other, and were parcel also of the Dutchy of Normandy.

contingat ipsum A. interim venire ad partes illas. Teste, &c. They are not bound by our Acts of Parliament, unless they be specially named. Vid. 33 H.8. c. 6.

The King hath granted to the men of the Isles of Gernsey, Serk, and Aureney, that they during the space of 8. years shall be free of all manner of Tolls, Exactions and Customs within the Realm as his Liegemen and Denizens. Rot. Par. 14 R.2. nu. 30.

Insulani petunt, quia sunt in mari constituti, quod non ulterius extra Insulas prædictas prosequerentur ad eorum periculum, & non facile possunt sequi Curias Regis in Anglia.

For the Isles of Jersey and Garnsey, see Mich. 5 E. 3. coram Rege Rot. 46. Pasch. 17 E.2. Coram Rege Rot. 67.

Within Garnsey there are ten Parishes, one Market Town being the Port or Haven called S. Peters Port by the Castle of Corner. Jersey hath S. Albones and Hillary two little Islands adjacent, it hath twelve Parishes, and four Castles.

CAP. LXXI.

De Insula Vectis or *Vecta*, of the Isle of Wight.

OF this we shall not need to say any thing, because it is and ever hath been part of Hamshire, and ever governed by the Laws of England, as the other Shires have been: but seeing we have named it, we will relate some things which we have observed.

First, there hath been an ancient Baron, de Insula, of the Isle, or Lisle, and of latter times there was a Viscount of the same, which is to be understood of the Isle of Wight: for in the Parliament Rolls of E. 2. I find him called de Insula Vecta.

Secondly, Henry de Beauchamp Earl of Warwick for the singular favour which King Henry the Sixth bare to him, crowned him King of Wight: but we could never find any Letters Patents of this creation, because (as some do hold) the King could not by Law create him a King within his own Kingdom, because there cannot be two Kings of the same place in one Kingdom: And after the same King named him Primus Comes totius Angliæ. But of this it is truly said, Cum illo novus hic & insolitus titulus omnino evanuit. Camden.

See the Statute of 4 H.7. cap.16. against taking of Farms within this Isle, and the power of Judicature given thereby to the Captain of this Isle, or his Lieutenant in a certain case.

CAP. LXXII.

Of the Iſland called Lindesfarne or Leidisfarne, ſcituate by the River Lied, having on the South Eastward the Iſland of Farn, and is called the Holy Iſland.

IT hath one Caſtle, one Church, and one Pariſh, and a ſafe Haven defended by a Block-houſe.

It is called the Holy Iſland, for that it being a ſolitary place, holy men in times paſt retired themſelves thither for their better, and more devout ſervice of God. It was of ancient time a Biſhops Seat, which was after tranſlated to Dureſme, and is governed by the Law of England.

Farne Iſle. For that this Iſle of Farne hath neither Church nor Town, but only a Caſtle, I paſſe it (and other like Iſles) over.

CAP.

CAP. LXXIII.

Of the Foreſts, and the Juriſdiction of the Courts of the Foreſt.

FOr the word Foreſta, ſée Domeſday in Glouc. & alibi.

For the derivation and deſcription thereof, and ſome other things concerning the ſame, ſée the Firſt part of the Inſtitutes.

In Latin it is called Saltus or Sylva. And ſo in Domeſday, Sylva eſt in defens. ſcilicet, in Foreſta Regis.

A Foreſt doth conſiſt of 8. things, viz. of Soil, Covert, Laws, Courts, Judges, Officers, Game, and certain Bounds.

† Foreſta eſt nomen collectivum, and by the grant thereof the ſoil, game, and a frée Chaſe doth paſſe.

And ſéeing we are to treat of matters of game, and hunting; Let us (to the end we may proceed the more chearfully) recreate our ſelves with the excellent deſcription of Didoes Doe of the Foreſt wounded with a deadly arrow ſtricken in her, and not impertinent to our purpoſe.

Uritur infœlix Dido, totaque vagatur
Urbe furens, qualis conjecta Cerva ſagitta,
Quam procul incautam nemora inter Creſſia fixit
Paſtor agens telis, liquitque volatile ferrum
Inſcius: illa fuga ſylvas ſaltuſque peragrat
Dictæos, * hæret lateri lethalis arundo.

And in another place uſing again the word [ſylva] and deſcribing a Foreſt, ſaith;

Ibat in antiquam ſylvam ſtabula alta ferarum.

King John the 15. of June in the 18. year of his reign at Kummigſmead, alias Kyme mead, betwéen Staines and Windſor granted the like Charter, as Carta de Foreſta is.

And now let us ſet down the Courts of the Foreſt.

Within every Foreſt there are theſe Courts.

1. The Court of the Attachments or the Woomote Court, this is to be kept before the Verderors every forty dayes throughout the year, and thereupon is called the forty day Court. At this Court the Foreſters bring in the Attachments de Viridi & Venatione, and the preſentment thereof, and the Verderors do receive the ſame, and inroll them, but this Court can only enquire, and not convict; but it is to be obſerved, that no man ought to be attached by his body for Vert or Veniſon, unleſſe he be taken with the manner within the Foreſt, otherwiſe the Attachment muſt be by his goods.

2. The Court of Regard or Survey of Dogs is holden every third year for expeditation or lawing of Dogs by that Court.

3. The Court of † Swanimote is to be holden before the Verderors as Judges by the Steward of the Swanimote thrice in the year, and the Foreſters ought to preſent their Attachments at the next Swanimote Court, and the Freeholders within the Foreſt are to appear at the Swanimote to make Enqueſts and Juries. [a] And this Court may inquire de ſuperoneratione Foreſtariorum & aliorum miniſtrorum Foreſtæ, & de eorum oppreſſionibus populo noſtro illatis. And this Court may not only enquire, but convict alſo, but not give judgment.

Domeſd. in Com. Glouc. & alibi.
2 Mar. Dier 169.
1 part of the Inſt. ſect. 378. f. 233. a.
Ockham cap. Quod Regis Foreſts, Bracton fo. 231. & 316. Britton fo. 34. Flet. l. 2. c. 34, 35.
† 1 part of the Inſt. ſect. 1. f. 5. b.
In the Saxons time Foreſts were called *Walds*, unde *waldegrave*, i. *præpoſitus Foreſtæ*.
Virgil.
Sylva, as in Domeſday *Saltus à ſaltando, quia ibi feræ ſaltant.*
* Like to an evil conſcience in the falſe and furious Officer of the Foreſt if any ſuch be.

Carta de Foreſta cap. 16.
The Court of Attachments.

1 E. 3. cap. 8. 7 R. 2. cap. 4.

Cart. de Foreſt. cap. 6.
The Court of the Lawing of Dogs.
Cart. de Foreſt. cap. 8. Of Swanimote.
1 E. 3. ca. 8. 50 E. 3. Aſſiſ. 442.
Swanimote is derived of *Sweine*, that is, *Saxonice*

Miniſter & Mote, or *Gemote*, which is, *Curia*, i. *Curia Miniſtrorum Foreſtæ*, ſo called, becauſe it is preparative for the Juſtice Seat. [a] *Ordinat. Foreſtæ*, 34 E. 1. 34 E. 1. cap. 4.

5 E. 3. fo. 7.

For the Juriſdiction of this Court I find a notable Caſe in 45 E. 3. in a Writ of treſpaſſe of falſe impriſonment brought againſt J. de W. the Defendant ſaid that he is Forreſter in fee of the Foreſt, and that at a certain Swanimote it was preſented by the * Foreſters, Verderors, Regarders, and Agiſters, that the plaintiff had chaſed and taken Deer within the Foreſt, whereupon the defendant being Forreſter in fee came to the plaintiff, and prayed him to find pledges to anſwer the ſame before the Juſtice in Eyre in this Country (that is, at the Juſtice Seat) and that to do the plaintiff refuſed, by force whereof he retained him, untill he had performed the ſtatute in that caſe provided, and juſtified the impriſonment. The plaintiff replied de ſon tort demeſne ſans tiel cauſe, and the iſſue was received by the Court. And it was ſaid, That before the Juſtice in Eyre he ſhould have no averment againſt the preſentment of the Forreſters.

* We will hereafter ſhew from whence theſe ſeveral names be derived, and the the duty of their ſeveral places.

See Domeſday Warw. Si vero per mare contra hoſtes ibat Rex, vel quatuor barſ neiæ, vel quatuor libras denariorum ei mittebant.

Out of this Caſe we do obſerve 6. concluſions. 1. That the Law of the Foreſt is allowed, and bounded by the Common Laws of this Realm, and therefore it is neceſſary, that the Judges ſhould know, and be learned in the ſame. 2. That though the Verderors be Judges of the Swanimote, and the Steward but a Miniſter, yet the preſentment in that Court is as well by them as Verderors, as by Forreſters, or Keepers, Regarders, and Agiſters, by the Law of the Foreſt. 3. [b] That a Forreſter or Keeper may arreſt any man that kills or chaſeth any Deer within the Foreſt when he is taken with the manner within the Foreſt, or if the offender be indicted. But then it is demanded, [c] what if a man be ſo impriſoned, and after offer ſufficient pledges, and they are not taken, what remedy for the party, ſeeing there are very ſeldom Juſtice ſeats for Foreſts holden? The anſwer is, that in the Term time he may have ex merito Juſtitiæ a Habeas Corpus out of the Kings Bench; or if he have privilege, out of the Court of Common Pleas, or of the Exchequer, or out of the Chancery, without any privilege either in the Term time, or out of the Term in time of Vacation, and upon the return of the writ, he may be bailed to appear at the next Eire to be holden for the Foreſt, &c. And may alſo be bailed by force of a * Writ De homine replegiando directed Cuſtod. Foreſtæ, [d] if he be arreſted by the Officers of the Foreſt for hunting, &c. whereof he ſtands indicted or preſented taken with the manner, he finding 12. pledges: but if he be adjudged by the Juſtices in Eire, and impriſoned, he cannot be bailed by that Writ De homine replegiand directed Cuſtodi Foreſtæ, &c. and [e] if he be unjuſtly proceeded withall there, he hath remedy by Law, as hereafter, when we treat of the Juſtice Seat, ſhall be declared. And it is to be obſerved, that there is a diverſity between the Writ De homine replegiando directed to the Sheriff, for he is reſtrained by the ſtatute of W. 1. cap. 15. to replevy any man impriſoned for the Foreſt, being taken with the manner or indicted, but this ſtatute extends not to the Writ De homine replegiand. directed Cuſtodi Foreſtæ, &c.

Rot. Par. Anno E. 3. nu. Int. petitiones.

[d] See the 2. part of the Inſt. W. 1. cap. 15. Bracton lib. 3. fo. 154. Flet. lib. 2. c. 2.

[e] F. N. B. 67. 2. Regiſter.

1 E. 3. cap 8.

Regiſt. 80. b. 43 E. 3. 30. 1. & b.

The Fourth concluſion is, That the offender may be retained by him untill he hath found pledges to appear before the Juſtice in Eire, becauſe (as hath been ſaid) the Court of the Swanimote hath no power of Judicature, but if he offer ſufficient ſureties, he ought not to be impriſoned.

Conſuetud. & Aſſiſa de Foreſta. Vet. Mag. Cart. parte 2. fo. 29.

5. That this Juſtice in Eire at his Seſſions may by the law of the Foreſt proceed upon the preſentments or verdicts in the Court of the Swanimote, though they be taken in another Court, as the Juſtices in Eire might have done in like caſes, as before in the Chapter of Juſtices in Eire appeareth.

6. Laſtly, Note the iſſue joyned upon the plea of the Forreſter, viz. de injuria ſua propria abſque tali cauſa, and allowed by the Court, and the conſequent thereupon. And thus much for the caſe the Reporter ſaith, that it was ſaid that the party ſhould * not traverſe the preſentment of the Foreſters, Verderors, Regarders, and Agiſters: [f] and herewith agreeth 50 E. 3. and note the preſentment was in that caſe by 36. And herein this diverſity is to be obſerved, that if at the Swanimote the preſentment of the Foreſters be found true by the Jury concerning Vert or Veniſon, the offender ſtandeth thereof convict in law, and cannot traverſe the ſame: but an indictment or preſentment before the Chief

* Nota, the entry is, *Præſentatum, & convictum per Viridar.*

[f] 50 E. 3. Aſſ. 442. Ordinat. Foreſt. 34 E. 1. Preſentment by 36.

Chief Juſtice of the Foreſt at a Court of the Juſtice Seat by a Jury, and not found in the Swanimote, may be traverſed. 8 E. 3. Itinere Pickering 147. a. becauſe it is not preſented but by one Jury. 21 E. 3. 48.

4. This Caſe alſo giveth juſt occaſion to ſpeak of the Court of the Juſtice Seat holden before the Chief Juſtice of the Foreſt, aptly called in the ſaid Book Juſtice in Eire, for ſo he is, and hath authority and juriſdiction to hear and determine concerning Vert and Veniſon, &c. by force of Letters Patents under the Great Seal, whereof there be two, one for the Foreſt on this ſide of Trent, the other beyond. By which Letters Patents the King doth grant unto him Officium Gardiani Capitalis Juſticiarii ac Juſticiarii ſui Itinerantis omnium & ſingularum Foreſtarum, Parcorum, Chacearum, & Warennarum ſuarum cum ſuis pertinen. quibuſcunq; † ultra Trentam exiſten. &c. Dantes & concedentes eidem A. B. plenam authoritatem & poteſtatem tenore prædictarum Literarum Patentium omnia & omnimoda Placita, querelas, & cauſa Foreſtarum, Parcorum, Chacearum, & Warrennarum prædict. tam de Viridi gram. quam de Venatione, ac de aliis cauſis quibuſcunque infra eaſdem Foreſtas, [a] Parcos, Chaceas & Warennas evenien. ſive emergen. audiend. & determinand': Habend. occupand. gaudend. & exercend. offic. præd. cum pertin. per ſe vel per ſufficien. [b] deputatum ſuum ſive deputatos ſuos ſuffic. durante vita ipſius A. B. &c. *The Juſtice Seat.*

† The like office *Citra Trentam. mutatis mutandis.* Note, anciently this great Officer was created by Writ, as other Juſtices in Eire were, but now by the ſtat. of 27 H. 8. c. 24. he is to be created by Let. Pat.

And this Court of the Juſtice Seat cannot be kept oftner then every third year, and other Juſtices in Eire kept their Courts every ſeventh year. And (as before other Juſtices in Eire) it muſt be ſummoned forty dayes at the leaſt before the ſitting thereof: and one writ of ſummons is to be directed to the Sheriff of the County, which writ you ſhall find hereafter in this Chapter.

See before Cap. Juſtices in Eire.

There is another Writ of Summons directed Cuſtodi Foreſtæ domini Regis vel ejus locum tenenti in eadem, and this Writ conſiſteth upon two parts. Firſt, to ſummon all the Officers of the Foreſt, and that they bring with them all Records, &c. Secondly, all perſons which claim any Liberties or Franchiſes within the Foreſt, &c. and to ſhew how they claim the ſame. [c] And this Court or Juſtice Seat hath juriſdiction to enquire, hear and determine two things. 1. All treſpaſſes within the Foreſt according to the Lawes of the Foreſts. 2. All the claims of Franchiſes, Privileges and Liberties within the Foreſt, as to have Parks, Warrens, Vivaries, to be quit of aſſerts, and purpreſtures, to cut down his own Woods without view of the Foreſter, &c. Likewiſe claims of Leets, Hundreds, Felons goods, Waifs, Strays, Fugitives, and to kill Hares and other Beaſts of Chaſe within the Foreſt, or to have a Wood infra metas Foreſtæ, & extra regardum Foreſtæ, that is to be out of juriſdiction of the Foreſt, and other Franchiſes, Privileges, Liberties, Immunities, Freedoms, &c. within the Foreſt, whereof you ſhall read excellent matter in the Eire of Pickering, in 8 E. 3. Rot. 3. 1. where Guilberd of Acton claimed his Woods extra regardum Foreſtæ, &c.

[a] This is to be underſtood of Parks, Chaces, and Warrens within the Foreſts, as hereafter ſhall appear.

[b] That is, by the ſtatute of 32 H. 8. cap. 35.

[c] Cart. de Foreſt. cap. 16. 21 H. 7. 30.

This Chief Juſtice may by the ſtatute of 32 H. 8. make his Deputy. (Yet all the writs of Summons ancient and late are Coram (the Juſtices Itinerant) aut ejus Deputato.) 32 H. 8. cap. 35.

Before any Juſtice Seat be holden, the [a] Regarders of the Foreſt muſt make their regard by force of the Kings Writ, and the regard is obambulare, to go through and view the whole Foreſt, and every Bailywick of the ſame, ad videndum, inquirendum, imbreviandum & certificandum all the treſpaſſes in the Foreſt: his office extendeth through the whole Foreſt, and every part thereof, to inquire of all offences concerning Vert and Veniſon, and of all concealments of any offences or defaults of the Foreſters, and all other Officers of the Kings Foreſt. He is a miniſterial Officer, and is conſtituted either by Letters Patents of the King, or by the Chief Juſtice at the Juſtice Seat, or to be choſen by writ to the Sheriff. The duty of this Officer appeareth by the writ hereafter mentioned.

[a] A *Regarder* is derived of the French word *Regardeire*, that is, to view, or ſee, becauſe he cannot preſent any thing but upon his own ſight and view.

Before a Juſtice Seat there ought to be preparations for the ſame, to the

To ſpeak once for all, the names of all the Officers from the higheſt to the loweſt, put them in mind of their duty: *Conveniunt rebus nomina ſæpe ſuis. Nomina*

end that good ſervice may be done there, et quod Itinera non ſunt umbratilia, as taking one or two Examples in ſtead of many.

Breve de Regardo cum artic.

Rex Vic. Not. ſalutem. Præcipimus tibi quod Venire fac. certis die & loco quos ad hoc duxerimus providend. omnes Foreſtarios et Regardatores de [a] Sherwood [1] ad regard. faciend. in Foreſt. prædict. ante advent. Juſticiariorum noſtrorum de Foreſt. [2] et loco regardatorum noſtrorum qui mortui ſunt et infirmi alios eligi fac. ita [3] quod [b] 12 ſint in quolibet Regard. et nomina illorum imbrevientur. [4] Et Foreſtar. debent jurare quod 12 milites ducent per totam ballivam ſuam, ad videndum omnes tranſgreſſiones quæ exprimuntur in [5] ſcriptis [c] capitulorum quæ tibi mittimus, et hoc non omittent pro aliqua re: [6] Debent etiam milites jurare quod facient regard. ſicut debet fieri et ſolet. [7] Et quod ibunt ſicut Foreſtar. eos ducent. ad prædicta videnda. [8] Et ſi Foreſtar. noluerint eos ducere, vel aliquid forisfact. concelare noluerint, ipſi milites non omittent pro illis quin forisfact. illud videant & imbreviari faciant: et hoc pro nulla re demittant. Et [9] quod Regard. fiat circa Feſt. beati Petri ad Vincula prox. futur. Teſte, &c.

a Foreſt. de Sherwood, i. Limpida Sylva.

b Cart. de Foreſt. cap. 7.

c 12 Capit. patinferius.

In this Writ 9. things are to be obſerved.

The 12. Chapters abovementioned are theſe which the Regarders duty is to prepare.

1 Videnda ſunt omnia Aſſarta, &c. Aſſarts.
2 Videndæ ſunt omnes Purpreſt. in boſcis, &c. Purpreſtures in woods.
3 Videndæ ſunt omnes Purpreſt. in terris arabil. &c. in Arable.
4 Videnda. ſunt omnia Vaſta boſcorum, &c. Waſt of Woods.
5 Videnda. ſunt omnes Boſci domini Regis, &c. The Kings Woods.
6 Videnda. ſunt omnes Haiæ domini Regis, &c. The Hedges of the King.
7 Item omnes purpreſtur. et omnia aſſarta, et omnia vaſta, &c. General woods.
8 Videnda. ſunt omnes Aereæ Auſturcorum, Eſpervorum, Falconum, &c. Ayeries of Haulks.
9 Videnda. ſunt omnes Forgæ et Mineriæ, &c. All Forges and Mines.
10 Videnda. ſunt Portus maris, &c. The Havens of the Sea.
11 Videnda. eſt Mel, ſi quid, &c. Hony.

Nota, All theſe 11. are to be upon his view, *ſuper viſum*, and in this reſpect may be reſembled to a Coroner, *ſuper viſum al.*

12 Item milites debent attentè inquirere in itinere ſuo quis habuerit arcus et ſagitt. vel baliſcas leporarias, burchetas, vel aliquid ingenium ad malefaciend. domino regi de feris ſuis. Baliſta, or Arcubaliſta, ſignifieth a Crosbow.

Leporaria, a Harepipe. Burcheta of the French word Berche, a kind of Gunne.

Ordinatio Foreſtæ, 34 E. 1.

Imprimis ordinavimus pro nobis et hæredibus noſtris quod de tranſgres. in Foreſtis noſtris de Viridi et Venatione de cætero fact. Foreſtar. infra quorum ballivas hujuſmodi tranſgres. fieri contigerint, præſentant eaſdem ad prox. Swanimotum coram Foreſtar. Viridar. Regardator. Agiſtator. et aliis earundem Foreſtarum miniſtris. Et ſuper præſentationibus hujuſmodi ibidem coram Foreſtar. Viridar. & omnibus aliis miniſtris ſupradictis per ſacram. militum quam aliorum proborum & legalium hominum de partis vicinioribus, ubi tranſgreſſiones ſic præſentatæ fuer. non ſuſpectorum, per quos rei veritas plenius inquiratur. Et ſic inquiſita veritate præſentationes illæ per communem concordiam & aſſenſum miniſtrorum prædictorum roborentur & ſigillis ſuis ſigillentur. Et ſi alio modo fuit indictament. pro null. penitus habeatur.

This Ordinance being made by the King onely without Authority of Parliament, albeit it was in affirmance of the Law, did not binde, and therefore was not executed: and that it was but an Ordinance, or Declaration made by King E. 1. it appeareth expreſly by the ſtatute of 1 E. 3. and by that Act of 1 E. 3. the ſaid Declaration is rehearſed as a Law, the obſervation whereof is alſo an excellent preparation for a Juſtice Seat.

1 E. 3. c. 8. ſtat. 2. F. N. B. 164.

Viridarius à viridi, Vert, or Green-hue, for that his office principally concerneth to look to the Vert or Grene, and to ſee it be maintained.

Viridarius is a Judicial Officer of the Foreſt, and choſen in full County by force of the Kings Writ. His office is to obſerve and keep the Aſſiſes or Laws of the Foreſt, and to view, receive, and inroll the Attachments & preſentments of all manner of treſpaſſes of the foreſt of Vert & Venison, and to do equal right and juſtice as well to poor as to rich. All this and much more you may read in the

the Oath which he taketh before the Sheriff. There be most commonly four Verderors in every of the Kings Forests.

Agistator, so called, because he taketh beasts to agistment, that is, to depasture within the Forest, or to feed upon the pawnage, and cometh of the French word, Geyser, to lye, because the beasts that feed there are there levant and couchant, lying and rising. And his office consisteth in agistando, recipiendo, imbreviando, & certificando. ¶ *Agistatores.* Const. & Assi. forest. ubi supra.

And this Officer is constituted by the Kings Letters Patents, and of these in such Forests where there is any pawnage, there be four in number.

Gruarii, (of whom you shall read in Forest Records) is derived from the French word Gruyer, which signifieth generally the principall Officers of the Forest. Et ipsi Gruarii vocantur ad similitudinem eorum qui Aucupio Regis in grues olim præerant. *Gruarii.* See the Cust. de Norm.

Forestarius is taken for a Woodward not only of the King within his Forest, but ex vi termini of any subject of his Woods whersoever they lye: which appeareth by a Writ in Bracton in these words. Rex Vic. salut. Scias quod propter destrictionem quæ facta est in bosco & terra quam A. de N. tenet in dotem in tali villa de B. de N. Provisum est in Curia nostra coram Justiciariis nostris, quod idem ponat Forestarium suum ad prædictum boscum custodiend. ita quod prædict. A. non habeat in eodem bosco nisi rationabile estoverium suum ad ardendum & claudendum tantum super eandem terram quam ipse tenet in eodem, &c. But in legal understanding he is taken for a sworn Officer ministerial of the Kings Forest, and his duty appeareth by his oath, which consisteth on Five parts. 1. That he shall be loyal and true to the Master of the Forest. 2. That he shall truly walk and kéep the Office of the Forestership, and true watch make both early and late both of Vert and Venison. 3. Truly attach and true presentment make of all manner of trespasses done within this Forest to his knowledge, and specially within the kéeping of his Bailliwick. 4. The Kings counsel, his fellows, and his own, he shall truly kéep. 5. No concealment make for no favour, méed or dread, but well and truly to behave himself therein. ¶ *Forestarius.* Bracton lib. 4. fo. 316. a. & b. & 231. a.

[a] Officers of the Forest shall not be sworn on enquests out of the Forest. [a] Ordinat. forest. 34 E. 1. cap. 5. Regist. 183. F.N.B.

[b] Messarius is a Mower or Harvester, derived à metendo. Fleta lib. 2. cap. 75. messor. 30 ass.

Thestylis & rapido fessis messoribus æstu
Allia Serpyllumque herbas contundit olentes. *Virgil.*

[b] Assis. & consuet. forest. 6 E. 1. c. 16. Reg. st. & F.N.B. 126. a. c. &c. Surcharge. Mag. Cart. cap. 5

¶ Surcharge of the Forest.] Superoneratio Foresiæ, is when a Commoner in the Forest putteth no more Beasts then he ought, and so surchargeth the Forest. It is taken from the Writ De secunda superoneratione pasturæ in the same sense when the Commoner surchargeth. Where it is said (tempore coronationis Regis Henrici avi, that is, of H. 2.) It is to be known that he was crowned twice, viz. the 20 of December in the first year; he caused his sonne Henry to be crowned King the 15 of June in the 16 year of his reign; Henry his son died the 11 of June in the 28 year of his reign; after whose death King Henry Fitz Empresse was crowned again.

¶ Desertum, id quod ab hominibus deseritur, & feris relinquitur. Domesday.

¶ Masura terræ, sunt in eisdem masuris 60 domus plus quam ante fuerunt. Mas de terra, that is, an exchange of land where there is an house. Sudley. Glouestr. & sæpe.

¶ Fugacia signifieth a Chase, and is all one with Chases. See the Charter of Mawde the Empresse, stiling her self Anglorum Domina, made to Miles of Gloucester, creating him thereby Earl of Hereford, wherein towards the end followeth these words, Præcipio quod hæc omnia supradicta teneat de me libere & quiete in bosco & plano, in forestis & fugaciis, in pratis & pasturis, &c. Præterea autem concedo, ut in propriis ipsius prædiis quisque tam in agris quam in sylvis excitet agiteq; feras; meas autem ne venetur, iis præsertim in locis quos privilegio circumscripsi méo cum pœna præcipio. Carta Matildis imperatricis Miloni de Glocest. Int. leges Canuti cap. 77. Lamb.

That H. 1. made at Woodstock a Park, which was, saith he, the first Park in England. But it is out of doubt that there were Parks in the dayes of the Saxons Johannes Rossus & alii post eum.

Deorfald. Falda ferina. Domesday. Chent. Certh. Ib. parcus sylvat. bestiarum Devonscoire. Winchelere. Hertfordscire. Belinton. Assis. forest. 6 E. 1. cap. 1.

Saxons, which were called Deorfald, of two Saxon words, of Deor for Dœr, and Fald, for a place enclosed with pale, hedge, or wall. And in the Book of Domesday often mention is made by expresse name de Parcis. Parcus bestiarum. Parcus sylvaticus bestiarum.

Haia taken for Parcus of the French word Heye for an inclosure, Rot. Inquisit. 36 E. 3. in Scacc. de forest.

¶ Haia de Kingeslie in Hamshire.

¶ Hulmus, *i.* Insula an Isle. ¶ Bercaria, Vid. 1. part, Instit. Sect. 1. ¶ Mastivus mutulatus is a Mastiff expeditated or lawed, and not musled: for no Dog by the law of the Forest ought to be musled. Mutulatus cometh of the Verb Demutulo, *i.* demembro. ¶ Bissa, *i.* Cerva, of the French word Biche, for a Hind. ¶ Mureleges, à legendo mures, of getting of Mice, a Wilde Cat. ¶ Tessones of the French word Tesson, for a Gray, Brock, or Badger. ¶ Besonus of Bison, a French word for a wild Oxe.

Ibid. 8 E. 3. Itinere Picker. Guilbert of Actons Case.

¶ Ham, Saxonicè domus, home, sometime Villa, as Mileham olim Mildham, because the air was mild and temperate.

Ib. Artic. 21. Canis continet spatium octo palmarum in longitudine. Dors. claus. An. 16 R. 2. m 30.

¶ Hue and Cry, Hutesium & Clamor, the one being an exposition of the other, each of them signifying crying and shouting; verba dolentis. And Hue is derived of the French word huier and crier. But Hue and Cry by the Forest law is not to be made for trespasse in Vert, but in Venison only. This Hue and Cry cannot be pursued but only within the bounds of the Forest; and the offence must be committed within the Forest, and not within the purlieu. And this Hue and Cry may be made by any of the Kings Ministers of the Forest, for any of them may arrest the malefactor, and none can make Hue and Cry but he that may arrest in that case, and cannot. And so are the general words. Si quis viderit, &c. to be understood.

Si quis viderit, &c. If any Township or Village follow not the Hue and Cry, they shall be amerced at the Justice Seat.

¶ Taken with the Mayneer, à Manu is in 4 kinds, viz Dog-draw, that is, drawing after a Dœr which he hath hurt. Stable-stand, viz. at his standing with any Knife Gun, or Bow, or close with Greyhounds in his Leash ready to shoot or course. * Back-bear, that is carrying away the Dœr which he killed. Bloody-hand, that is when he hath shot or coursed, and is imbrued with blood.

* Bract. l. 3. f. 52.

But what if injustice be done at the Justice Seat? For example, as if a claim be made of any liberty at a Justice Seat, and is there allowed, what remedy hath the party grieved in this case? which I do the rather propound, because I find not this doubt resolved in any of the readings upon this statute of Carta de Foresta, or in any that have written of the Forest laws. And I find this question resolved by a notable Book case in 21 E. 3. agreeable with the Register and other Books. where the case was this: A. & B. before the Justices of the Forest of Pickering claimed to have within the Wood of E. within the same Forest a Woodward proper, and also to have the windfalls in the same Wood, which claim was allowed by the said Justices, where in truth the said claim was false to the disherison of the Commoners there: for that the Commoners within the said Town of E. had the choice of the said Woodward, and all the windfalls for their reasonable Estovers as belonging to their freehold. Thereupon on the behalf of the Commoners the Record before the Justices of the Forest was removed by Certiorari, (which in the forest law is called a Venire facias Record) into the Kings Bench (which Court is above all Eires) and two of the Commissioners, viz. Robert de Scarburgh, and Robert Wich sued out a Scire fac. upon the said Record against the said A. & B. &c. And they declared upon the said Writ that all the Commoners had the liberties aforesaid: Exception was taken to the Writ, that the grievance is as well supposed to others, as to those two which were plaintiffs in the Scire fac. Whereunto it was answered, That although the grievance was to others, yet those two that would complain might maintain suit. And if the others be of Record with A. & B. yet these two may sue, and these two might have joyned in Assise. And there it is holden, that if a profit be

21 E. 3. 48. a. In Scire fac. Vid. 25 E. 3 f. 43. Nichol. Gowers Case. Vid. Reg. 263. b. Breve de inquirendo de libertatibus allocatis.

be granted to a comminalty out of the Forest, the claim ought to be made by them all, but otherwise it is within the Forest, where every one shall have his Action by himself for that which belongs to him; and in the end the Writ was adjudged to be good. But in this case somewhat is implyed, for by the law of the Forest, when a claim is made of any liberty within the Forest, although no issue be joyned thereupon, yet the entry is, Et quia videtur Justiciariis quod expediens & necesse ad inquirendum super præmissis rei veritatem antequam ad allocationem clamei prædicti procedatur, inquiratur inde veritas per ministros ejusdem forestæ: and sometime tam per ministros forestæ quam per alios liberos & legales homines, at the discretion of the Justices for the advancement of truth, and accordingly the Foresters, Verderors, Regarders, and Agisters do enquire thereof. [a] Also if a claim be made before the Justices of the Forest, whereupon there groweth difficulty, or if a demurrer in law be thereupon joyned, the Justices may adjourn the same into the Kings Bench to be there adjudged, and then the Entry is, Ideo quod clameum prædict' pro eo quod Justiciarii prædict' nondum advisantur de judicio inde reddendo, datus est dies eidem H. coram D mino Rege (in tali retorn.) ubicunque, &c. de audiendo inde judicium, &c. Et dictum eidem H. quod interim sequatur brev. de Venire fac. inde recordum, &c. Postea Dominus Rex mandavit præfat. Justic. brev. suum in hæc verba. * Edw. Dei gratia Rex Angliæ, &c. Dilecto & fideli suo Rico. de Willobie salutem. Cum vos & socii vestri Justiciarii nostri ad placita forestæ, &c. tenend. assignat. quoddam clameum de diversis libertatibus per dilectum & fidelem nostrum H. de Percye coram vobis & sociis vestris prædictis in eadem foresta fact. propter quasdam difficultates in eodem clameo content, coram nobis adjornaveritis, ut accepimus, Vobis mandamus quod si ita est, tunc omnia clamea prædicta nec non recorda & proces. inde coram vobis habita coram nobis ubicunque fuerimus in Anglia sub sigillo vestro sine dilatione mittatis juxta adjornamentum prædictum hoc brev. nobis remittentes. Teste, &c. Anno 12 E. 3.

Virtute cujus Brevis clameum prædict. nec non recordum & proces. prædict. mittuntur coram Rege ad diem prædict. una cum brevi prædicto.

Postea Dominus Rex mandavit præfato R. de W. quoddam aliud brev. claus. in hæc verba, Edw. &c. dilecto & fideli R. de W. Salutem. Cum vos & socii vestri Justiciarii nostri ad placita foresta. in foresta. H. com. Lanc. de Pick. in com. Eborum tenend. assign. quædam clam. de diversis libertatibus per dilectum & fidelem nostrum H. de Percye coram vobis & sociis vestris prædict. in eadem foresta. habend. fact. propter quasdam difficultat. in eisdem clameis intervenend. coram nobis adjornaveritis, & quædam alia clamea sua similiter ibidem de quibusdam aliis libertatibus fact. allocaveritis, prout accepimus; Nos volentes tam super dictas libertates sic adjornat. quam sup. al. allocat. certis de causis certiorari, vobis mandamus quod si ita est, tunc omnia clamea præd. nec non record. & proces. inde coram vobis, & sociis vestris prædict. habit. coram nobis ubicunque fuerimus in Anglia sub sigillo vestro sine dilatione mittatis, & hoc breve, ut his inspectis ulterius fieri faciemus, quod de jure fore viderimus faciend. T. E. Duce Comub. Com. Cestriæ filio nostro charissimo Custod. Angl. apud Berkhamsteed Primo die Frebruarii anno regni nostri 13. Virtute cujus brevis clam. præd. tam adjornat. quam allocat. mittuntur coram Rege una cum brevi prædict. &c.

By all which cases the former question is resolved, which case and consequents thereupon is worthy of serious consideration.

Nicholas Gower was indicted for that he killed the Kings Came in the Kings Forest, when he was the Kings Steward of the same, and also had taken ransome for Indictments, which Indictments were removed coram Rege, and the Steward was put to answer thereunto. 25 E. 3. 43.

[a] 8 E. 3. Itinere Picker. Henry de Percyes case, which depended in advisement for difficulty 4. years before R. de Willoughby, and other Justices of the Forest.

Venire fac. Record. Certiorari.

* A Certiorari before judgement out of the Chancery returned into the Kings Bench directed to R. de Willowby (being the ancient primary Judge) only, because he onely hath the keeping of the Records.

27 E. 1. coram Rege Rot. 13. Wigorn.

Note the Writ of the Juſtice of the Foreſt return' into the Kings Bench.

Breve Juſticiarii foreſtæ. Verſus Godfridum Epiſc. Wigorn.

Ad finem faciend. pro tranſgreſſ. venationis in foreſta de Windeſor.

Hugo le Deſpenſer Juſtic. Foreſt. citra Trentam mandavit quoddam Breve ſuum Vic. Wigorn. retorn. coram Domino Rege in craſtino Sancti Johannis Baptiſtæ prox. præterito, &c. in hæc verba. Hugo le Deſpenſer Juſtic. Foreſt. citra Trentam Vic. Wigorn. Salutem. Mandamus vobis quod diſtring. Godfridum Epiſcopum Wigorn. per omnes terras & catalla ſua in balliva veſtra, ita quod nec ipſe, nec aliquis per eum ad ea manum apponat, donec aliud à Domino Rege ſeu a nobis inde habueritis in mandatis. Et quod de exitibus coram Domino Rege reſpondeatis, & quod habeatis corpus ejus coram Domino Rege in feſto Sancti Johannis Baptiſtæ ubicunque tunc fuerit in Anglia, ad finem faciend. pro tranſgreſſione venationis per ipſum facta in foreſta de Windeſore ſicut per legalem inquiſitionem ſecundum Aſſiſam foreſtæ coram nobis apud Windeſore captam plenius nobis conſtat. Et unde eidem Epiſcopo per literas noſtras ex parte Domini Regis alias mandavimus, quod pro fine ſuo inde faciendo veniret coram nobis apud London, ita quod eſſet ibi in craſtino Sanctæ Trinitatis prox. præteritto, vel ſufficientem Attornatum ſuum ibidem mitteret ſuam plenam poteſtatem in hac parte habentem, qui ad diem illum coram nobis non venit, nec Attornatum in hac parte miſit ſicut ei ex parte Domini Regis mandatum fuit; Et habeatis ibi hoc Breve. Dat. apud Lugtheburge die Jovis in Octab. Aſcenſionis Domini Anno regni Regis Edwardi viceſimo ſexto. Ad quem diem Vic. nihil inde fecit, ſed mandavit quod præceperat ballivis libertatis ejuſdem Epiſcopi de Oſewoldeſtowe qui nihil inde fecerunt. Per quod præceptum fuit eidem Vic. quod non omitteret propter prædictam libertatem, quin diſtring. prædictum Epiſcopum per omnes terras, &c. Et quod de exitibus, &c. Et quod haberet corpus ejus coram Rege in Octabis Sancti Michaelis, ubicunque, &c. ad finem faciend. &c. cum Domino Rege pro tranſgreſſ. prædict. &c. Et ſimiliter quia procedi non potuit ad finem capiend. de præd. Epiſcopo, &c. ſine record. prædicti Hugonis Juſtic. &c. de tranſgreſſ. præd. &c. Mandatum fuit eidem Hugoni Juſtic. &c. quod recordum inde coram eo habitum regi mitteret ad præfatum Terminum cum omnibus recordum illud tangentibus. Et Vic. nullum breve retornavit coram Rege ad præfat. Terminum Sancti Michaelis: nec prædictus Hugo Juſtic. &c. aliquod recordum miſit, &c. propter quod, ſicut prius præcept. fuit Vic. quod non omitteret propter prædictam libertatem, quin diſtring. prædictum Epiſcopum per omnes terras, &c. Et quod de exitibus, &c. Et quod haberet corpus ejus coram Rege in Octabis Sancti Hilarii ubicunque, &c. ad finem faciend. in forma prædict. &c. Et Vic. retorn. breve, ſed prædictus Hugo Juſtic. nullum recordum miſit. Et ſuper hoc venit quidam Aluredus de Northgrave pro prædicto Epiſcopo, & dicit quod præfatus Hugo Juſtic. &c. diſtringit præd. Epiſcopum per diverſa brevia ſua in Com. Wigorn. & Glouc. ad finem faciend. coram ipſo de eadem tranſgr. & nihilominus paratus eſt ſatisfacere Domino Regi pro prædicto Epiſcopo de prædict. tranſgreſſ. ſecundum recordum prædicti Hugonis, et ſecundum quod Cur. regis conſideraverit, &c. Et quia dictus Hugo Juſtic. nullum recordum miſit per quod procedi poteſt ad finem capiend. de prædicto Epiſcopo, &c. Ideo quoad prædictum Epiſcopum ceſſat diſtr. uſque à die Paſchæ in unum menſem ubicunque, &c. Et dictum eſt prædicto Aluredo quod tunc ſit ibi ad finem faciend. pro prædicto Epiſcopo, vel quod habeat Warrantum de prædicto Hugone Juſtic. quod finem fecit vel finem facere debeat coram prædicto Hugone Juſtic. &c. de tranſgreſſione prædict. &c. Et nihilominus mandatum eſt præfato Hugoni Juſtic. &c. quod Venire fac. recordum prædictum, ut prædictum eſt, coram Rege præfatum terminum, &c.

Procedi non potuit ad finem cap. ſine recordo, &c. A Certiorari to the Juſtice of the Foreſt for the Record.

Epiſcopus paratus eſt ſatisfacere.

Obſerve

Obſerve well the parts of this Record, and a ready way to help the King to his fines after the Eire of the Foreſt be ended.

On the other ſide it is demanded, what if a man make a juſt and lawful claim to certain liberties at the Juſtice Seat, and cannot obtain the ſame to be allowed by the Juſtices of the Foreſt, what remedy for him that maketh ſuch claim? * Whereunto the anſwer is, that he ſhall have a writ De libertatibus allocandis, directed to the Juſtices of the Foreſt, which writ doth appear in the Regiſter.

* Regiſt. 162. and F.N.B. 229. b. & 230. a. & Int. communia de Scaccar. de anno 14 E. 1. de libertatibus allocandis, & vide L. Ockham f. 47, 48.

[a] And any perſon that is to make any claim may the firſt day of the Eire either make it in perſon or by Atturney, F.N.B. 26. g. And he that appears upon a preſentment or indictment taken before the Juſtices in Eire, and traverſeth the Indictment, may after appear by Atturney. See before Cap. Juſtices in Eire the writ in the Regiſt. 19. a. W. 2. cap. 10.

[a] 8 E. 3. Itinere Pick. 148. a.

[b] And the entry is, A.B. ponit loc ſuo T.B. vel L.N. de omnibus placitis ſeu querelis motis ſeu movendis, & ad omnes libertates calumniand. proſequend. & defendend. durante Itinere iſto: whereby it appeareth in what generality an Atturney may be made.

[b] 8 E. 3. Itinere Pick the caſe of the Prioreſs of Rocela. Reg. 19 b.

[c] And this agreeth with the Regiſter, fo. 19. b. by 5. kinds of Writs which are worthy of obſervation, viz. 1 Breve de clameo admittend. in itinere per Attornatum primo die itineris, &c. 2 De libertatibus exigendis in Itinere: 3 De Attornat. in omnibus placitis & querelis in itinere, & ad libertates calumniandas: 4 Aliter in omnibus placitis & querelis in itinere juxta formam ſtat. de Merton cap. 10, Glouc. cap. 8, & W. 2. cap. 10. 5 Aliter de Attornatis, &c.

[c] Regiſt. 19. b.

And theſe Writs are to be granted ex merito Juſtitiæ, without any denyal, as well to the Juſtices in Eire of the Foreſt, as other Juſtices in Eire for the admitting of Atturneys. Vid. 2 part of the Inſtitutes W. 2. cap. 10.

And upon ſearch made I find the like writ beginning, Omnibus Ballivis & fidelibus ſuis, &c. in the Eire of Pickering, 19. b. for the Prior of St. Johns of Jeruſalem to make an Atturney before the Juſtices of the Foreſt.

But what if the Juſtice in Eire give an erroneous judgement, &c. what remedy hath the party grieved? He may have a writ of Error out of the Chancery returnable into the Kings Bench, and there Juſtice ſhall be done.

[d] If a man make his claim by grant or preſcription, and he or his Councel miſtaketh his right title in ſome materiall point, ſo as the claim is found againſt him, it is good for him that his true title be found by the ſame verdict ſpecially, for then may the party by petition make a fine and pray licence to make a new claim, and thereunto he ought to be admitted.

2 E. 3. fo. 29. Lib. 9. fo. 28. b. Labbot de Strata Marcellas caſe. [d] 8 E. 3. Itin. Pic. fo. 165. the caſe of William of Perſay and Petronilla de Kinthorp.

And concerning claims it is ſpecially to be obſerved, that by the Foreſt law a grant made of a privilege within the Foreſt to all the inhabitants being Freeholders within the Foreſt or ſuch other Comminalties not incorporated, is good.

8 E. 3. Itin. Pick. fo. 22. Itin. Lanc. fo. 4.

[e] If a man make a falſe claim by claiming more than he ought, he ſhall be fined for his falſe claim, but that which he ought to have ſhall not be ſeiſed: As the Prior of York claimed by Charter to have Tithe of all Venilon, tam in carne quam in corio, where he ought to have it in corio, for which he was fined and enjoyed it in carne.

[e] 8 E. 3. Itin. Pick. fo. 15. Lanc. f. 64.

In the Eire of Pickering holden before Richard. de Willowby, Robert de Hungerford and John de Hambury Juſtices in Eire for the Foreſt of Pickering, Anno 8 E. 3. a claim was made by Thomas de Pickering and Margaret his wife, viz. Habere in dominico boſco ſuo de Loſton Woodwardum ad cuſtodiendum Boſcum ſuum, & quod nullus in eo amputet aut proſtrare faciat arborem aliquam ſine voluntate ſua, & quod ipſi in boſco ſuo poſſint proſtrare & dare pro voluntate ſua arbores virides & ſiccas, & dare & vendere arbores ſuas pro voluntate ſua ſine viſu Foreſtariorum, &c. and preſcribed in the ſame in the right of the ſaid Margaret, where this preſcription was enquired of and allowed to be good in law, but it was found, as to the taking of the trees without the view of the Foreſter, to be untrue.

Pickerings caſe.

* The like preſcription made by Sellinger to take and cut down Timber trees within his own Woods within the Foreſt of Haye in the County of Hereford without

* *In Cur. Scaccar. Coram Edw. Sanders Capital. Bar. & aliis Baronibus tempore R. Eliz.* of the report of Popham Chief Juſtice.

without the view of the Forester, and upon argument and long advisement it was adjudged, that the prescription was good notwithstanding the Ordinance of 34 E.1. and the statute of 1 E.3. cap. 2. And the reason was, because that Statute was but in affirmance of the Common law of the Forest, and against such a statute a man may prescribe. And that 34 E.1. was but an Ordinance and no Statute, see F.N.B. 167.a. Register. Which judgement was agreeable to Pickerings case abovesaid, and is of great consequence: for the Statute of Carta de Foresta, and most of the Statutes concerning Forests are likewise declarativa antiqui juris; and therefore, as against the Common law, so against them a man may prescribe upon a just and reasonable cause; but if they were introductiva novi juris, then no prescription can be made against them, unless he hath another Statute to preserve the liberties.

Constit. & Assis. Forest. ubi. sup. A man may claim to have dogs inexpeditate and hounds within the Forest,

And if a man hath a Wood in a forest, and hath no such prescription, the law doth appoint him a means to fell both wood and timber, so it be no prejudice to the game, but sufficient is left besides, and that is, by a Writ of Ad quod damnum, upon return whereof the King doth license him, &c.

Regist. 257.a. F.N.B. 226.f. 2 E.2. Trin. 9. Ad quod damnum

By the Kings Commandment under his Signature and Signet, all the Judges were assembled about certain questions concerning his forests of Leicester in the County of Leicester, and of Bowland in the County of Warwick, to be moved to them by the Attorney of the Dutchy. And the first question which was moved, was, whether the said forests were forests in name only, or in law? which being quæstio facti, the Judges could give no answer: but by way of direction they resolved, that if they were forests in law, it must appear of Record, for there be certain incidents inseparable to every Forest, viz. Courts of Record, and Officers of Record, Courts of Record, as Courts of Attachments, Swainimote, and Justice Seats. Officers of Record, as Foresters, Verderers, Regarders, Agisters, &c. who are made (as it appeareth before) by matter of Record, &c. but appellation or naming of them forests in offices, pleadings, grant, or other conveyances, are no proofs, that they be forests in law.

Pasch. 5 Jac. R.

Vid. Reg. 258. a. Bowland is called Libera Chasea de Bowland.

2. It was resolved by them, that if they be but free Chases and no forests in law, that then the owners of Woods within such Chases may cut down timber or wood growing therein without view of any Officer, or license of any; but if they cut down so much as they leave not sufficient covert, and bruise wood for the game, they shall be punished at the Kings suit. And so it is if a common person hath liberty of Chase in other mens Woods, the owners of the Wood cannot cut down all the Woods, but leave sufficient for covert, and bruise, as hath been accustomed, no more then the owners of Woods in which others have common of Estovers, can destroy the whole Woods, but leave sufficient for the Estovers.

Temps E. 1. trespass 249. the case is to be understood of a Forest where Foresters (there named) be, for every Forester is a free Chase, but not è converso 43. E.3. 8. Vid. Dier 6 E.6. fo. 70.

3. And being demanded whether in the Kings free Chases a man might have common and feeding for sheep, and warren by prescription or grant? It was resolved, clearly they might, but they must not surcharge to the prejudice of the Kings game, but the owner of the soil within such a free Chase cannot erect a warren without a Charter from the King. And it seemeth to me that by prescription a man may have common for his sheep within the Kings Forest: for, first, I find no authority in our books (that I remember) against it; and that generally a man may common in a forest, it appeareth by Carta de foresta, Cap. 1. 33 E.1. stat. 5. 34 E. 1. cap. 6. And if for common in general, especially for common appendant so much favoured in law, and particularly for Sheep, as well as for Horses and Mares. 12 H.3. Common 25. F. N. B. 230. a. And to conclude this point, the Prioresse of Wicham prescribed to have Common in the Forest of Pickering, pro omnibus averiis suis, except. capellis, before the Justices in Eire in 8 E.3. Rot. 31. which being found to be true was allowed to her, &c. and such a prescription may have a lawful beginning by the Kings grant.

4. That he that hath a Warren within a free Chase may build upon his own inheritance within his Warren a convenient lodge for preservation of his game. And Popham Chief Justice before all the rest of the Judges cited the said case of Selenger adjudged in the Exchequer.

Some question being moved between the Earl of Nott. Justice in Eire in all the

the Kings Foreſts, and the Earl of Dorſet Treaſurer of England, concerning the diſpoſing of the Kings Woods in his Foreſts; for reſolving whereof by the Kings Commandment all the Judges of England were aſſembled, who upon conference and mature deliberation reſolved theſe 7. points following.

1. That the Juſtices in Eire, and the Kings Officers within his Foreſt have charge of Venſon, and of Vert or Green hue for the maintenance or preſervation of the Kings game, and therein of all manner of trees for covert, bruſe and pawnage. But when need is to ſell ſeaſonable woods within his foreſt, or timber for his Majeſties uſe, the ſame muſt be ſold or taken by force of the Great Seal, or Exchequer ſeal by the view of the Foreſter to the intent that the woods or the timber ſhall not be taken in places inconvenient for the game. But the Juſtice in Eire, or any of the Kings Officers within the Foreſt cannot ſell or diſpoſe of any wood within the Foreſt without Commiſſion: and ſo the Exchequer and the Foreſters have diviſum imperium, the one for the profit of the King and the other for his pleaſure.

Le Regge de Foreſtis in Cuſtodia Rem. Regis 12 E. 2. Com' to ſell the underwood in the Park of Clarendon. 17 E. 2 Com' to ſell Windfalls in the Park of Northamp. 28. Com' to ſell wood in Clarendon. Nota, *mianti blaterones querum Curli & Curbi in Foreſta de Grovele vent' virtute brevis domini regis, Simile ibid. m.* 10, 11, 13, & 14 E. 4. *Simile* 17 H. 6. *virtute Literarum. Pat.* H. 6.

2. That regularly neither the Court of the Exchequer, nor any of the Kings Officers can diſpoſe of the Kings timber or woods, but it ought to be done by Commiſſion, &c. as is aforeſaid for the Kings beſt profit.

3. That every man in his own Woods within the Foreſt may take Houſebote and Heybote by the view of the Foreſters. The Kings Farmers that have clauſes in their Leaſes to take timber, &c. by view, &c. may take the ſame accordingly: and ſo may Freeholders by preſcription, and Coppyholders, which by cuſtome have uſed to take Houſebote, &c. take the ſame by view of the Foreſters, &c. or otherwiſe according to the Cuſtome. 1 E. 3. ſtat. 2. c. 2. Conſtit. & Aſſ. Foreſt. ubi ſup.

4. It was reſolved, that no Officer of the Foreſt could claim Windefalls or Dotard trees for their fees by preſcription, becauſe they were once parcel of the Kings inheritance, but they ought to be ſold by Commiſſion, as before it appeareth, for the Kings beſt benefit. Vid. Inſt. Pick. 8 E. 3. Rot. 30. the caſe of Will. de Percy and Petronilla his wife.

5. That he, that hath the Herbage, or Pawnage of a Park by the grant or demiſe of the King or any other, cannot take any Herbage or Pawnage but of ſurpluſage over and above the competent and ſufficient Paſture, and feeding of the game: and if the owner of the game ſuffer the game ſo to encreaſe, as there is no ſurpluſage, then he that hath the Herbage and Pawnage cannot put any Beaſts in the Park.

6. That the owner of the Park may divide any competent parcel of the Park with Rail, Pale or Hedge for the feed of the game in Winter, and he that hath the Herbage cannot put any Beaſts therein.

Laſtly, if the Paſture and Pawnage of the Park be but ſufficient to feed the game in Winter and Summer, the owner thereof may drive out the Beaſts of him that hath the Herbage and Pawnage. And thereupon by like aſſent of all the Judges the Court of the Exchequer took this order following with ſome reaſonable additions. Ro. Par. 18 E. 1. to. 16. The King may grant Eſtovers in his foreſt without view of the Foreſter.

Whereas heretofore ſome queſtion hath been moved between the Lord Treaſurer of England, and the Warden and Chief Juſtice, and Juſtice Itinerant of all the Kings Majeſties Foreſts, Chaſes, Parks and Warrens on this ſide the water of Trent, what appertaineth to each of their offices and places concerning the dealing with and diſpoſing of Woods, Trees, and Coppices within his Highneſſe Parks, Foreſts, and Chaſes, which being by his Majeſty referred to the conſideration and determination of his Judges, and Barons, they have reſolved touching the ſame by one uniform aſſent, as hereafter followeth, viz. That as the Lord Treaſurer of England for the time being, and Court of Exchequer have the only ordinary power under the King to deal therein ſo far forth as the ſame concerns the inheritance and profit of the Crown, as in the ſale of Woods, Trees, Coppices and ſuch like: ſo in like manner it concerns the Warden and Chief Juſtice, and Juſtice Itinerant of all the Kings Majeſties Foreſts, Chaſes, Parks, *The Order of the Exchequer upon the reſolution of the Judges.*

Parks, and Warrens, and their miniſters to deal therein ſo far as it may concern the preſervation and maintenance of the Game, in reſpect of the ſhades, coverts, pawnage, and ſuch like for the Deer. And therefore it is reſolved by all their opinions, that the Lord Treaſurer of England and Court of Exchequer may not ſell any Woods or Copices within any the Kings Parks, Foreſts, or Chaſes, (except windefalls, roteſalls and meer dead and ſear trees) without the privity and allowance of the ſaid Warden, and Chief Juſtices, and Juſtice Itinerant, within whoſe juriſdiction it is: Nor may cut down the dead and ſear trees, nor carry them or windefalls or rotfalls away, but at fit times, and by the view of ſuch as have charge of the Game, whereby it may be ſeen unto, that the ſame may be done at fit and convenient times: and that no trees, other than thoſe that be dead and ſear: and meerly windefalls and rotfalls, may be thrown down or taken away without the privity and allowance of the Warden, and Chief Juſtice, and Juſtice Itinerant of his Majeſties Parks, Foreſts, or Chaſes.

And as for the Warden, and Chief Juſtice, and Juſtice Itinerant, and the Keepers and other Miniſters of Parks, Foreſts, and Chaſes appertaining to the King, they may not cut down any trees for new paling or railing, or for repair of Lodges, without the Warrant and allowance of the Lord Treaſurer of England for the time being: but timber needful for mending of ſmall defects in old pales or rails that are broken, ſo as the ſame do not exceed two or three timber trees in any one Foreſt, Park, or Chaſe, in any one year, they may be permitted to take of trees in places fit, without making waſt thereof, or any ſpoil or prejudice to the Kings inheritance, making the Kings Surveyor of the Woods ſpeedily acquainted, who is to ſee that the ſame hath been accordingly well imployed: and needful browſe alſo in places fit, and times ſeaſonable the Keepers may take for the Deer, not cutting down the limmes or great boughs of the trees. And therefore it is ordered by this Court, that from henceforth where it ſhall be thought requiſite to ſell any of the Kings Woods or Coppices within any his Parks, Foreſts, or Chaſes, that a Writ or Commiſſion in nature of an Ad quod damnum ſhall be directed unto the Warden and Chief Juſtice, and Juſtice Itinerant within the Foreſts, within whoſe government the ſame is to be done, to enquire and certifie what number of trees and what Copices may be ſold, and in what places with leaſt prejudice to the Kings Game; and that upon the return thereof, the ſale ſhall be made of ſuch trees and Coppices, as upon ſuch Certificat ſhall be thought fit to be ſold. And in like manner it is ordered, that for the new paling, and new railing, and new building of Lodges in any place within or about any his Majeſties Parks, Foreſts, or Chaſes, and the great repairs of old pales, rails, or Lodges in or about the ſame; that it is to be done upon Certificat from the Warden and Chief Juſtice, and Juſtice Itinerant, and the Surveyor of his Majeſties Woods within whoſe Juriſdiction it is, by Warrant from the Lord Treaſurer of England for the time being.

It is very obſervable, that if any Act of Parliament hath been made againſt any of the Articles of the ſtatute of Carta de Foreſta, by the Act of Parliament of 42 E. 3. the ſame is made void, and by the ſtatutes of [a] Confirmationes Cart. all judgments given againſt any of the points of Carta de Foreſta, ſhall be holden for void. And where H. 2. Fitz. Impreſs claimed that he might make Foreſts not only within his own Woods and Grounds, but in the Woods and Grounds of his Subjects, and thereupon made divers ſuch Foreſts within his own and other mens Woods and Grounds: whereupon ſome Readers and others that have followed them are of opinion that H. 2. might De jure do that which he did. But this Act of Carta de foreſta, which is but a declaratory law reſtoring the Subject to this former right, is directly againſt that conceipt, in theſe words. [b] Inprimis omnes foreſtæ, quas Henricus avus noſter afforeſtavit, videantur per bonos & legales homines; & ſi [c] boſcum aliquem alium quam ſuum dominicum afforeſtaverit ad damnum illius cujus boſcus ille fuerit, ſtatim deafforeſtetur; & ſi boſcum ſuum proprium afforeſtaverit, remaneat foreſta, ſalva [d] communia de herbagia & aliis in eadem foreſta illis qui prius eam habere conſueverunt. To the ſame effect is the third

42 E. 3. cap. 1.
[a] Confirm. Cart. 25 E. 1.
[b] Cart. de foreſta. cap. 1, and 2.
[c] This is an Act of reſtitution, for if the King might have made a Foreſt in other mens Woods, then could not the owner have felled down his own woods without view or licenſe, *& ſic ad damnum illius, &c.*
[d] Note, all manner of Commons are ſaved.

third Chapter. Neither could H. 2. or any other King have made or raiſed a frée Chaſe, Park, or Warren for himſelf in any of the grounds of the ſubiects; for it is truly ſaid in Pl. Com. that the common law hath ſo admeaſured the Kings prerogatives, that they ſhould not take away, nor prejudice the inheritance of any. But we agrée, that all the lands of the ſubject are originally derived from the Crown: And therefore when the ancient Kings had the moſt part in their own hands, or at leaſt great Deſarts, waſte and wooy grounds for want of habitation, they might make what Foreſts it pleaſed them therein, which may be a reaſon and cauſe of a lawful beginning, and therefore a Foreſt may be by preſcription good in law over other mens grounds. But the King in his own grounds may make a Foreſt at this day, which is alſo proved by theſe two Chapters, for ſuch Foreſts are thereby ſaved and enacted to ſtand. Pl. Com. Seignior Berkeleys caſe. fo. 236.

King H. 8. intending to make a Foreſt about his Houſe at Hampton Court aſſigned and limited a certain Territory of grounds for nourriſhing and generation of Beaſts of Venery, and Fowls of Warren, extending over the lands and grounds of divers and many Freeholders, and Copiholders, within the Manors, Townſhips, and Villages of Eaſtmulſey, Weſtmulſey, Walton, Eſher, Weybridge, and part of Cobham: and finding that he could not erect either Foreſt or Chaſe over other mens grounds without their conſents, did agrée with the Freeholders and cuſtomary tenants, as by his Indenture bearing date the firſt day of October in the 29 year of his reign, betwéen him on the one part, and Sir Richard Page knight, Thomas Henage Eſquire, and other the Freeholders and cuſtomary tenants in the Towns and Villages aforeſaid of the other part, wherein the King doth name it (ad faciendum populum for the eaſier paſſage) Hampton Court Chaſe. But afterwards (in cloſe words in ſeveral places) that it ſhould have all ſuch and like Liberties, Juriſdictions, and Preheminences, Laws, Statutes, Officers, &c. * as any Chaſe or Foreſt within this Realm had, &c. And all offences done within the ſame, ſhould be puniſhed as if the ſame had béen done within any Chaſe or Foreſt within this Realm. And the King did thereby Covenant and grant, that the Freeholders and Copiholders aforeſaid might fell and take their Woods, Groves, and Coppices, at their will and pleaſure without any view, &c. and to make their hedges and fences about their Corn, &c. to kéep out the Déer, &c. And (for recompence to both Freeholders and Copiholders, &c.) that the third part of the frée rent of every Freehold ſhould be deducted, and the moity of the fine of the heir of every Copiholder ſhould be alſo deducted, &c. which Indenture and all the covenants therein being recited, it is enacted by authority of Parliament accordingly. By which Act and divers general clauſes referring to Foreſts, the King intended to have it a Foreſt. But hereby it plainly appeareth both by the Kings ſaid Indenture, and by the judgement of the whole Parliament, that the King could neither erect any Chaſe or Foreſt over any mans grounds without their conſent and agrément. And yet King H. 8. did ſtand as much upon his Prerogative as any King of England ever did. 31 H. 8. cap. 7. * Nota.

But to joyn this new with ſome that is ancient. In Rot. Parl. anno 18 E. 1. there is a notable Record in theſe words:

Rogerus Epiſcopus Coventr. et Lichf. queritur contra Rogerum Extraneum et ſocios ſuos Juſtic. Domini Regis de Foreſta in Com. Staff. Eo quod ſeiſ. in manus Domini Regis boſcos ipſius Epiſcopi de maneriis ſuis de Cannock & Ruggeleghe, &c. Rogerus & alii Juſticiar. ven. & dicunt, quod in Itinere ſuo præſentatum fuit per Viridar. Foreſtar. & alios fideles Domini Regis, quod prædicti boſci ſuper Dominum Regem et ejus progenitor. per ipſum Epiſcopum et prædeceſſores ſuos purpreſtabantur. Et eo quod licet eis Juſticiariis in Itineribus ſuis purpreſturas factas infra metas foreſtæ Domini Regis in manus Domini Regis ſeiſire, ideo ſeiſire fecerunt, &c. Et Epiſcopus bene concedit quod ſunt infra metas foreſtæ: Set dicit quod Rex Ric. per cartam ſuam Petitio Epiſcopi Covent. & Lich: contra Juſticiarios Foreſtæ. Purpreſtur.

dat.

*dat. 4. die Decembris Anno regni ſui primo dedit Hugoni tunc Epiſcopo Coventr. & Lich. prædeceſſori ſuo et ſucceſſoribus ſuis dicta duo maneria cum Eccleſiis, hundred. & omnibus aliis libertatibus. Et per aliam Cartam dat. 30 Novemb. Anno regni ſui primo conceſſit dicto Hugoni quod omnia maneria ſua, terræ et omnes homines ſui et feod. Eccleſiæ de Covent. et Lichf. de Ceſtr. & Salop. & de Gnowſhall et omnium Eccleſiarum ſuarum, libera eſſent et quieta de foreſta, et de placitis foreſtæ, de vaſtis & aſſartis et regardis foreſtæ, cum multis aliis libertatibus in eiſdem Cartis recitatis, &c. Virtute quarum Cartarum, ipſe et omnes prædeceſſores ſui à tempore confectionis earundem Cartarum ſolebant fugare in dictis boſcis, & voluntatem ſuam inde facere, &c. Et petit quod Dominus Rex, &c. Et prædict. Juſtic. dicunt quod Dominus H. Rex pater Domini Regis nunc fuit in ſeiſina dictorum maneriorum et boſcorum. Et ſcrutatis Rotulis, et Brevibus Scaccarii invenitur primum breve regis H. Anno regni ſui 14. Vic. Staff. direct. & quod ſciat, quod reddidit A. tunc Epiſcopo Covent. et Lichf. dicta maneria, &c. Item 2 alia brevia Baronibus de Scaccario direct. quod computent Vic. Staff. 30 s. 6 d. pro med. pro anno 14. Item comp. &c. 61 s. pro anno 10. pro dictis maneriis, &c. Et præd. Juſtic. dicunt, quod patet per eaſdem Cartas quod Carta per quam Epiſc. clam. eſſe quietus de foreſta, &c. data fuit et facta ante Cartam per quam dictus Rex R. dedit Epiſcopo, manerium et boſcos prædictos, per quod dicunt quod prædictus Epiſcopus non poteſt clamare dictos boſcos eſſe quietos, &c. per formam dictæ Cartæ factæ ante donationem dictorum boſcorum, ob quod datus eſt dies dicto Epiſcopo, &c. in unum menſem ad Parliamentum. &c. Poſtea ad Parliamentum nunc, &c. venit prædict. Epiſc. in propria perſona ſua, et reddidit Regi dictos boſcos ut jus ipſius Regis. Et idem Dominus Rex ex gratia ſua conceſſit et dedit eoſdem boſcos prædicto Epiſcopo per eaſdem metas, bundas, et diviſiones per quas ipſe et prædeceſſores ſui à tempore confectionis cartæ prædict. Richardi regis boſcos illos tenuer. &c. Et quod habeant & teneant liberos ab omnimodis placitis foreſtæ, &c. * Et quod nec Juſticiar. foreſtæ ſeu Foreſtar. Viridar. et Regardatores, ſeu alii miniſtri quicunque ſe intromittent infra metas ſupradictas licet ſint infra metas foreſtæ antiquas de Cannok. Et pro hac, &c. idem Epiſcopus cognovit ſe teneri Domino Regi in mille libris ſterling.*

Gnowſhall.

Nota, in boſcis deafforeſtatis per cartam licet fugare, & voluntatem inde facere; à fortiori, in boſcis deafforeſtat. virtute Actus Parl. de Carta de Foreſta.

38 H.6.fo.10.2c.

Adjorned into Parliament.

Deafforeſtatio. per Cart. Nota.

* Nota infra metas foreſtæ, &c. tamen extra foreſtam.

Foreſta de Cannock.

See hereafter pag. 307.

Obſerve well this Record, and the parts of the ſame. And it is to be known, that where divers perambulations were made in the reign of H. 3. E. 1. and E. 2. that all theſe perambulations and others that ſhould be made (albeit there be no Charters thereof now extant) are eſtabliſhed and made good, both by the ſtatute of 1 E. 3. cap. 1, ſtat. 2. in print: and by an Act of Parliament in 1 R. 2. nu. 61. in the Roll of Parliament, and not in print; and by another Act of Parliament 5 R. 2. nu. 84. not in print. For albeit it be to be preſumed that Charters have been made according to the Perambulations; yet foraſmuch as time wears out many things, if Charters ſhould now be required, many places ſhould become Foreſt again; which now are in peace and deafforeſted.

1 E. 3. ca. 1. ſtat. 2. Rot. Parl. 1. R. 2. nu. 61. 5 R. 2. 84.

The form of the perambulation of a Foreſt is, Perambulatio facta in Com. Eborum de foreſta de G. die Anno Regis, &c. apud E. coram A. B. C. D. Juſticiariis Domini Regis ad dictam perambulationem faciend. aſſignatis per ſacramentum F. G. M. P. N. S. &c. Qui dicunt ſuper ſacramentum ſuum, &c. **And ſo ſet down the metes and bounds of the Foreſt, ſhewing what is within the Foreſt, and what to be extra foreſtam** ſecundum tenorem Magnæ Cartæ de Foreſta, eo quod afforeſtata fuerit poſt coronationem Domini Regis Henrici Regis 2, &c. In cujus rei teſtimonium, &c.

Nota,

Note, the Charters be general and ſhort to this effect. Rex omnibus ad quos præſentes literæ pervenerint, ſalutem. Sciatis quod volumus & concedimus pro nobis & hæredibus noſtris, quod perambulationes factæ coram A B. C D. ad hoc aſſignat' per præceptum noſtrum de foreſtis noſtris in Com' Eborum de cætero teneantur & obſerventur per metas & bundas contentas in eiſdem perambulationibus, quarum tenor de verbo in verbum ſequitur in hunc modum. And rehearſe the whole perambulation.

A long complaint in Parliament againſt Foreſters, for afforeſting of mens purlieus, for undue trial, and for their extortions, too long here to be rehearſed, but worthy to be read, with a prayer that the great Charter may be kept, & that all men may enjoy their purlieus according to the perambulations made in the reign of King E.1. whereunto the King anſwered, [The King would the great Charter to be kept: and that ſuch as will complain in the right of their purlieus, may have Writs out of the Chancery.] See Rot. Parl. 50 E.3. nu. 80. & 1 R. 2. nu. 60. Rot. Parl. 22 E.3. nu. 26.

¶ *Purlieu what it is, and whereof derived.*

Purlieu containeth ſuch grounds which H.2. R.1. or King John added to their ancient Foreſts over other mens grounds, and which were diſafforeſted by force of the Statute of Carta de Foreſta, cap. 1. & cap. 3. and the perambulations and grants thereupon. And is derived from a French Adjective and a French Nown, viz. Pur, which ſignifieth clear, entire, and exempt, and Lieu, that is, a place entire, clear, or exempt from the foreſt. And both of theſe derived from the Latine Adjective and Nown, viz. purus locus; and in this ſenſe the Civilians called that purum locum qui ſepulchrorum religioni non eſt obſtrictus. And the perambulation whereby the purlieu is deafforeſted is called in French Pourallee, i. perambulatio, ſo as the purlieu and pourallee are two diſtinct things, and * purlieu is the right name of the place deafforeſted. * 33 E.1. ſtat. 5.

By this it appeareth, that Chaſes that never were any Foreſts cannot have any purlieu, and conſequently the caſe in 16 Eliz. Dier 326, 326. is miſtaken, for the Chaſe of Whaddon never was any Foreſt. Whereby it may be obſerved, how neceſſary the derivation of words is, according to the example of Littleton, as in divers parts of the firſt part of the Inſtitutes appears.

By this deafforeſtation the owners of the grounds within the purlieu may at their will and pleaſure fell, cut down, eradicate, and ſtub up all the Timber, Woods, and Under-woods, convert their Paſtures, Meadows, and other grounds to arable, incloſe them in with any kind of incloſure, build and erect new edifices upon the ſame or any part thereof, and to diſpoſe and uſe the ſame after the diſafforeſtation, as they never had been afforeſted.

And where ſome have conceived, that quoad to the owners of the ſoyl the purlieu is diſafforeſted, but not as to others, but as to them it ſhould remain a Foreſt, by reaſon of theſe words in the firſt Chapter, ad damnum illius cujus boſcus illus fuerit, thoſe words were added to ſhew the unlawfulneſs of the afforeſtation, becauſe it was ad damnum, &c. as hath been proved before. And then theſe men muſt make a diverſity between a deafforeſtation by force of the firſt Chapter of afforeſtations in the reign of H.2. And deafforeſtations made by force of the third Chapter of afforeſtations in the reigns of R. 1. and King John, for there the clauſe of ad damnum is omitted, and therefore thoſe afforeſtations are utterly made void againſt all men.

The Statute of Carta de Foreſta hath been above 30 times, and laſtly in 4H.5. confirmed and enacted and commanded to be put in execution, and we find no authority in law that we remember againſt our opinion herein; therefore we proceed and do hold, that in any purlieu a man may as lawfully hunt to all intents and purpoſes within the purlieu within his own grounds, as any other owner may do in his grounds that never were afforeſted at all.

Some have endeavoured to limit the purlieu man to hunt by cuſtom or preſcription, but all the ſaid Statutes were made within time of memory againſt which they cannot preſcribe. Some endeavour to maintain it to be by Foreſt law, but it is queſtioned whether there be any ſuch Foreſt law, in that point, for See the firſt part of the Inſtitutes Sect. 170.

Quod non legitur non creditur: but to conclude this point, No foreſt law can ſtand againſt laws enacted by authority of Parliament. Others think, that the ſaid Statute of 33 E.1. Stat. 5. or ſome other Statute in the reign of E.1. E.2. or E.3. do in ſome ſort reſtrain their hunting, which is utterly denied, that they are reſtrained by any ſuch in any of the ſaid Kings times; but if any ſuch ſtatutes were, they are, being contrary to the Statute of Carta de Foreſta, repealed by the Statute of 42 E.3. cap.1. And all the Statutes or Aſſiſes, either that of Woodſtock in the reign of H.2. or any other in his time, or in the reigns of R. 1. or K. John, are all abrogated by the Statute of Carta de Foreſta made in 9 H.3. cap.1. & 3. as to the Deafforeſtations, &c. And the Statute or Aſſiſe of Woodſtock doth extend to Deafforeſtations before, and not after, the words thereof being, Nullus faciat aliquam inſtallationem inter foreſtam & boſcos, &c. per ipſum vel progenitores ſuos deafforeſtatos. And for the ſame reaſon the Purlieu man may keep his dogs within the purlieu unexpeditated, and ſeeing the wild beaſts do belong to the purlieu man ratione ſoli, ſo long as they remain in his grounds, he may kill them, for the property ratione ſoli is in him; ſo as hereby concerning purlieus, and by the reſolution of the Judges concerning Chaſes, it appeareth that the makers of the Statute of 22 E. 4. miſtook the law in both of them, viz. concerning Chaſes and Purlieus, but the Statute being in the affirmative worketh no prejudice to any. And if he chaſe them with Greyhounds, and the Beaſts of the Foreſt do flie towards the foreſt for their ſafety, if the owner purſue them to the bounds of the foreſt, and then call back his dogs, and do his endeavour to call them again from the purſuit, although the dogs follow the chaſe in the foreſt, and kill the Kings Deer there, this is no offence, ſo as the owner enter not into the foreſt, nor meddle with the Deer ſo killed. But if the Dogs faſten upon the Deer, before he recover the foreſt, and the Deer drag the dogs into the foreſt, there the Purlieu man may follow his dogs and take the Deer.

Rot. Par. 51 E.3. nu.39.

22 E.4. cap.7.

43 E.3. 8. the Earl of Arundels caſe.

38 E.3. fo. 10.b. ſimile. 12 H.8. fo.10.a.

In ſome Letters Patents of the perambulations or purallies of foreſts made by King E.3. to any County where lands are diſafforeſted, which we have ſeen, there is reſerved to the King forty days for his wild beaſts within the purlieus to return again, and for his Rangers within that time to rechaſe them into the foreſt, which is taken to be a convenient time for that purpoſe. And albeit theſe purlieus be abſolutely diſafforeſted, and have no liberty of foreſt there, yet for convenience it hath been permitted that the Rangers of the foreſt ſhould as often as the wild beaſts of the foreſt range into the purlieu, with his hound rechaſe the ſame, and theſe Rangers have uſed to preſent unlawful hunting and Hunters of the Kings Deer within the purlieu, as in the night, or at unſeaſonable Deer, or killing of the Kings Deer in purlieus by no purlieu man, but unlawful Hunters or the like: ſuch as ſhould not take advantage of their own wrong both to the King and the purlieu men, and that they are known to be Deer belonging to the Kings foreſt, becauſe there are no other within the purlieu; wherein the beſt rule we can (for avoiding of tediouſneſs) give the Reader, is to follow the judicial Records and Preſidents of the Eyre holden before grave and learned Juſtices in Eyre, as thoſe of Pickering, Lancaſter, & the like concerning preſentment of matters done within the purlieus of the Rangers, whereunto we do rather incline, when we conſider the Oath which the Rangers have anciently taken, and continually in theſe words. You ſhall truly execute the Office of a Ranger in the purlieu of P. upon the border of the Kings foreſt of P. You ſhall rechaſe with your Hound and drive the wild Beaſts of the foreſt, as often as they ſhall range out of the ſame foreſt into the purlieus; You ſhall truly preſent all unlawful hunting and Hunters of wild Beaſts of Venery and Chaſe * as well within the purlieus, as the foreſt, and thoſe and all other offences you ſhall preſent at the Kings next Court of Attachments, or Swanimote which ſhall firſt happen: So help you God. And it is to be noted, that in ſuch foreſts, as have no purlieus, there is no Ranger.

Vide Rot. Parl. 12 E. 3. nu.26, 27. a complaint of the purlieu men, & the Kings anſwer.

The oath of the Ranger.

* This proveth that the purlieus are no part of the Foreſt, but diſtinct things.

Rot. Par. 51 E.3. nu.39. 50 E.3. nu. 80. 1 R.2. nu.60.

It was petitioned in Parliament, that no man be impeached for hunting within the purlieu or without the bound of the foreſt, and that there be levied no aſſart rents.

The

This Petition conſiſting of two parts. 1. Concerning hunting in the purlieu, or out of the bounds of the foreſt, the ſecond concerning aſſart rents.

To the firſt: the King anſwereth, That the Charter of the Foreſt ſhall be kept, which is a yelding to the Petition for that part, for by that Charter the bounds of the foreſts are eſtabliſhed, and no purlieus excepted.

As to the ſecond: he anſwered, That the demand was unreaſonable.

The Commons made Petition, that men might enjoy their purlieus freely, and that perambulations might be made as was in the time of King H. 2. 2 R. 2. nu. 48.

Whereunto the King anſwered, The King thinketh the perambulations are duly made, and who will, may complain, and ſhall be heard.

The Abbot of Whitby had a foreſt called Whitby foreſt (by the grant of H. 2. and King John with all Officers incident thereunto) adjoyning to the foreſt of the Earl of Lancaſter, called Pickering foreſt, and the game of the foreſt of Pickering ranged into the foreſt of Whitby, Idem Abbas habens exploratores ſuos ſtatim ponere fecit retia, & alia ingenia ſua juxta Hakeneſſe & alibi diſtan' à foreſta iſta per tractum unius arcus & aliquando plus, & poſtea cum canibus excitare fecit feras, ita quod per excitationem illam plures ferarum illarum in redeundo & fugiendo verſus foreſtam de Pickering decidunt in retibus & ingeniis prædictis & capiuntur, & annuatim capere facit in deſtructionem ferarum foreſtæ prædictæ de Pickering *ad damnum domini*, & neſcitur quo Warranto; per quod præceptum fuit Vicecomiti quod Venire faciat prædictum Abbatem. Whereupon the Abbot came and pleaded his title to the foreſt, ut ſupra. Et quod omnes Abbates loci prædict' virtute Conceſſ. &c. prædictos cervos & cervas in locis prædictis ubi retia & ingenia prædicta poſita fuerunt, & quæ fuerunt infra limites Foreſtæ ſuæ de Whitby, & quoad quod idem habens exploratores ſuper feras domini, &c. retia & ingenia poni fecit prope Foreſtam de Pickering, &c. per quod in redeundo plures feræ capt. fuerunt, quod omnino eſt contra Aſſiſ. Foreſtæ, idem Abbas dicit, quod ad hoc reſpondere non debet, &c. Et quia manifeſtè liquet Curiæ, &c. quod feræ de Foreſta ad Foreſtam aliter conferri non poſſunt, niſi ipſius in cujus Foreſta inveniuntur, eo quod ſigno aliquo non conſiſtunt ſignatæ nec diviſas aliquas cognoſcunt. Ideo conſideratum eſt, quod idem Abbas eat ſine die. In Itin. Pick. 8 E. 3. Rot. 42: Note, for Harts, Hindes. The Kings Deer are not branded or ſigned with any mark, that they may be known whoſe they are out of the Foreſt. 7 H. 6. fo. 36.

By which Record and many others it doth appear, that when the Kings Game of the foreſt do range out of the foreſt (and purlieu, if any be) they belong not to the King, but are at their natural liberty, & occupanti conceduntur.

And this is the reaſon that ſome have ſaid, that where the King was ſeiſed of the foreſt of M. in fée, and that a cuſtom was pleaded time out of mind, that if any Beaſt of the foreſt ſhould range into the frée Chaſe of the Abbot de Dien adjoyning to the ſaid foreſt, that the Foreſters of the ſaid foreſt, &c. might enter into the ſaid Chaſe, and with little Dogs rechaſe the Kings beaſts of his foreſt into the foreſt again, that this cuſtom is againſt law, for that (beſides the reaſon yelded in the Abbot of Whitby's caſe) immediately when they are out of the bounds of the foreſt, the property is out of the King, for the being within the foreſt maketh the property in that caſe. But the Book of 7 H. 6. is left at large whether the preſcription be good or no, and yet aid was thereupon granted: and Dier 16 Eliz. 326, 327. agréeth therewith. But in the Abbot of Whitby's caſe there is no preſcription for the King, but againſt him. Lib. 5. fo. 104. b. Rolſtons caſe. 16 El. Dier 326, 327.

It is to be obſerved, that by the Law of the Foreſt, when any claim is made by any ancient Charter of any Franchiſe, Liberty, or Immunity, or diſcharge within the foreſt by ancient and obſcure tearms and words, the entry is (for example) Et quia non liquet curiæ manifeſtè cujuſmodi libertates prædict' vocabulorum idem Prior habere intendit, dictum eſt Priori quod prædict' vocabula declaret, &c. And after he that maketh the claim, declareth, that is, explaineth the ſame, and pleadeth further, Quod ipſe & prædeceſſores ſui ſemper à confectione Cartæ prædictæ ſine interruptione uſi ſunt & gaviſi ſunt libertatibus prædictis (according to his declaration) & hoc paratus eſt verificare per miniſtros iſtius Foreſtæ, &c. Ideo inquiratur rei veritas per eoſdem, &c. or the entry is after the declaration made, Et quia videtur Juſticiariis quod expediens eſt & neceſſe, quod Curia certioretur Vide Itin. Pick. 8 E. 3. The Prior of Ellertons caſe. Rot. 35. Et ibid. the Prior of Maltons caſe. Rot.

tioretur ſuper poſſeſſionem ipſius Prioris in hac parte, inquiratur inde veritas per miniſtros ejuſdem Foreſtæ, and thereupon the Foreſters, Verderers, and Regarders are ſworn, and ſo much as they find have been continually uſed, is allowed, and ſo much as hath not been uſed is diſallowed; ſo as uſe and continual poſſeſſions are the beſt Expoſitors of ancient and obſcure words.

Regula. Hil. 6 E. 3. Rot. 179. Coram Rege diuturnitas & longæva poſſeſſio virtute generalium verborum in antiquis Cartis ſufficiunt.

For example: ¶ Quietum eſſe de miſericordia Foreſtæ, is to be quit of all amerciaments in which he in any ſort might fall within the Foreſt. And here miſericordia is taken as well for a fine, as for an amerciament.

¶ Quietum eſſe de Vaſto, if he did waſte in his woods within the Foreſt he ſhould not be amerced, nor for any other waſte.

¶ Quietum eſſe de rewardo, that is to be quit of amerciament whereſoever in any Pariſh within the Foreſt, if the uſage had been accordingly.

¶ Quiet' de omnibus geldis, *i.* quiet' eſſe de omni putura Foreſtar' & de omni præſtatione, ad collectionem garbarum, agnorum & lanæ ad opus foreſtar' ejuſdem foreſtæ.

3 E. 3. Itin. Pick. Lambſtons caſe. putura. Geldum in Domeſday ſæpe pro Scot. Anglice. 23 H. 3. gard. 148.

¶ De VVoodgeldis, *i.* quiet' eſſe de omni collectione in foreſta præd' ad opus quorumcunque miniſtrorum foreſt' præd' ratione boſcorum.

¶ De Horngeldis, Quietum eſſe de omni collect' in foreſta de beſtiis cornutis aſſes.

¶ De Fotegeldis, *i.* quiet' eſſe de finibus & amerciamentis pro canibus infra foreſtam inexpeditatis, if the uſage hath been accordingly, otherwiſe not: for ancient Charters, by the Law of the Foreſt muſt be adjudged according to the continued uſage, and not ex vi termini.

¶ De Burcſtall, *i.* ubi homines convenire tenentur, ibidem convenire ad ſtableiam faciend circa feras, & ad eaſdem congregand quietum eſſe de hoc ſervitio, quando dominus chaſeaverit.

¶ De triſtris, anciently written traiſtis, and is derived of traiſt, *i.* truſt, and ſignifieth, ubi alii homines manentes in eadem foreſta tempore quo dominus chaceaverit in eadem venire debeant, & confiſi ſunt, Anglicè are truſted, ad tenend Leporarios certis locis aſſignatis pro feris ibidem expectand & capiend quietum eſſe de hoc ſervitio.

¶ De Fledwite, of fled, a Saxon word, a fugitive, one that fleeth, an outlaw, and wite a Saxon word alſo, a freedom.

† Carta de Foreſta, cap. 14.

¶ De Careyo, cum aliquæ Cartæ, ſeu careſtæ cartatæ tranſeuntes per foreſtam, & ſimiliter † ſummagia ſeu Somagia equorum conſuet' ſunt ſolvere ſecundum magis vel minus miniſtris ibidem pro chemino, ibidem habend. Quietum eſſe de hujuſmodi ſolutionibus. Summagium or Sommagium cometh of the French word ſommier or ſummier, which ſignifieth a Horſe carrying any load. Chimagium, a Toll for wayfaring men through a Foreſt, derived from the French word Chemin for a way.

¶ De Scoro, ſeu Shoto, quando homines faciunt collectum inter ſe ad aliquod obtinendum ſeu evitandum. Quietum eſſe de tali collect'. ¶ De tallagio, idem ut de Scoto.

3 E. 3. Itin. Pick. fo. 148.

¶ Extra regardum foreſtæ. If any man within a Foreſt do hold his woods or lands by grant or preſcription to be extra regardum foreſtæ, the woods or lands are deafforeſted.

¶ Exilium, *i.* cum homines utlegantur in Itinere iſtius foreſtæ pro tranſgreſſione viridis ſeu Venationis.

¶ De eſcapio, ſecundum Aſſiſam foreſtæ ſi averia alicujus in landis vetitis, vel tempore vetito in eadem inveniantur, prima vice pro quolibet pede averiorum prædict' ipſi quorum fuerint amercientur ad unum denarium; & ſi ſecundo ibidem inveniantur, ſimiliter pro quolibet pede unum denarium, & ſi tertio ibidem inveniantur, averia illa remaneant domino forisfacta, de quibus amerciamentis & forisfacturis per hujuſmodi vocabulum, de eſcapio, extiter' quieti.

F. N. B. 230.

¶ De Pannagio, that is, to be quit to pay any thing for pawnage.

¶ Aſſertum, Aſſert, is ſo called of the effect (as ſome hold) and is derived (ſay they) of ad and ſero, aſſero, becauſe of wood grounds, marſhes or waſte grounds

they

they are converted to be ſown with Corn, and therefore in the Regiſter, it is written aſſertare, with an E, and ſo it is in Carta de Foreſta cap. 4. Bracton hereof ſaith, Illud quod fuit aliquando boſcus, & locus vaſtæ ſolitudinis & communia & jam inde efficitur aſſartum, vel redactum eſt in culturam. And herewith agreeth Fleta, Illud olim fuit foreſta & boſcus, &c. & jam efficitur aſſartum, & reductum eſt in culturam, & idem dici poterit de mariſcis & aliis vaſtitatibus in culturam redactis.

Regiſt. 157. Fleta l. 2. c. 35. F.N.B. 226. I. Cart. de Foreſt. cap. 4. Bract. l. 4. f. 226. Fleta l. 4. ca. 22. Lib. 2. cap. 25. Vide Lucubr. Ockham 20, b. Rot. Pat. 31 E. 3. nu. 39.

Others fetch it otherwiſe, but we hold, that it was derived of the French word eſſarter, to grub up, or clear a ground of wood, &c. and this appeareth by Domeſday, Herefordſh. Merchelay in eodem manerio ſunt 58 acræ terræ provect' de ſylva, written over the ſame eſſarts, de eſſart' ſylvæ exeunt 17 s. & 4 d. E. being turned into A.

Radulphus Epiſcopus Karleol petit verſus Priorem Eccleſiæ Karleol decimas duarum placearum terræ de nova aſſartarum in Foreſta de Inglewood, quarum una vocat' Lynthwayt & alia Kirthewayte, quæ ſunt infra limites parochiæ ſuæ de Aſpaterick. Et ſuper hoc ſimiliter venit Mr. Hen. de Burton perſona Eccleſiæ de Therisby, & eaſdem decimas clamat ut pertinen' ad Eccleſiam ſuam. Et Prior venit & dicit, quod Henr. Rex vetus conceſſit dicto Deo & Eccleſiæ ſuæ beatæ Mariæ Karleol. omnes decimas de omnibus terris quas in culturam redigerent infra Foreſtam, & inde eos feoffavit per quoddam Cornu eburneum quod dedit Eccleſiæ ſuæ prædict', &c. Et Willielmus Inge qui ſequitur pro Rege dicit, quod decimæ prædict' pertin' ad Regem & non ad alium, quia ſunt infra bundas Foreſtæ de Inglewood. Et quod Rex in Foreſta ſua prædict' poteſt villas ædificare, Eccleſias conſtruere, terras aſſartare, & Eccleſias illas cum decimis terrarum illarum pro voluntate ſua cuicunque voluerit conferre, &c. Et quia Dominus Rex ſuper præmiſſ. vult certiorari, ut unicuique tribuatur quod ſuum eſt, aſſignetur, &c. & certificent Regem ad proxim' Parliamentum, &c.

Rot. Plac. Parl. de An. 28 E. 1. Rot. 8. Inter Epiſcopum Karleol. & Priorem ejuſdem de decimis aſſartorum.

¶ [a] Purpreſture. For this and the derivation, ſee in the Second part of the Inſtitutes, Statutum de Bigamis, cap. 4. and the Expoſition upon the ſame, and Carta de Foreſta, cap. 4.

¶ [b] Coopartura, is a Thicket or Covert of Wood.

¶ [c] Maeremium is derived of the old Normandy word Mariſme for Timber.

¶ [d] Scotales, Scotalæ, derived of two Engliſh words Scot and Ale, as much to ſay as tribute or contribution of drinking for the Miniſters of the Foreſt when they came to the houſe of any, whereunto others are contributory within the perambulation of the Foreſt, which then was called [e] potura, a Drinking. And after they claimed the ſame for all victuals for themſelves, their Servants, Horſes and Dogs, which was called putura; and this doth notably appear by a Record in 5 E. 3. in theſe words.

a Glanv. l. 9 cap. 11, 12. Fleta l. 2. cap. 35. 18 E. 2. de viſu Franc. pleg. Dier 7. El. 240.

b Cart. de Foreſt. cap. 12.

c 8 E. 3 Itin. Pick. fo. 17.

d Cart. de Foreſt. cap. 7. Fleta l. 2. c. 35. Cap. Itin. W. 1. cap. 4. de Paſtur. pauperum.

¶ Putura in Chacea de Bowland, *i.* conſuetudo calmata per Foreſtarios, & aliquando per ballivos hundredorum, recipere victualia, tam pro ſeipſis, hominibus, equis & canibus de tenentibus & inhabitantibus infra perambulationem Foreſtæ ſeu hundredi quando eo pervenerint, nihil inde ſolvend'. Where the Statute of Carta de Foreſta ſpeaketh, Nullus Foreſtarius ſeu balivus de cætero faciat Scotalas, &c. [f] by the Statute of 25 E. 3. it is enacted, that no Forester or Keeper of Foreſt or Chaſe, nor any other Miniſter ſhall make or gather ſuſtenance, nor other gathering of Victuals, nor other thing by colour of their office againſt any mans will within their Bayliwick or without, but that which is due of old right, that is, thoſe fees, which time out of mind they ought to have within that Foreſt, and as ſhall appear to be due by the oath of 12 Regarders.

e Potura. Vid. 45 E. 3. 15. & F.N.B. 209. b. *De potura pauperum*, a drinking or ſuſtenance for the poor. 12 H. 4. 24. Hil. 5 E. 3. Coram Rege rot. 30 Eborum. 8 E. 3. Itin. Pick. fo. 150. b. Putura.

f 8 E. 3. Itin. Pick.

Prior de Ellorrons caſe. *Quiet. de gelais* is to be quit *de putura*. 25 E. 3. cap. 7. ſtat. Cap. Itineris *fillenale*, of the Saxon word *fillen*, or fullen, and *ale*, *i.* an Ale feaſt, whereat they were filled with Ale. Bracton lib. 3. fo. 117. in reciting of Capitula Itineris, calleth it Filckale, *i.* Filcale, an extortion. *Libre computationis.* Vide Fleta l. 1. c. 20. Carta de Foreſta cap. 7.

¶ Chablicia

8 E.3. Itin. Pick. Sir John de Melſayes caſe.

¶ Chablicia, or Cablicia, browſe wood, derived of the French word Chablis, as boys Chablis, either rent down from trees by the wind, or branches of trees cut for the browſe of Deer.

¶ Parkebote, to be quit of incloſing of a Park or any part thereof, derived of two Engliſh words, Parke and bote.

Fleta. l. 2. c. 47.

¶ Brigbote or Bruckbote, to be quit of making of Bridges.

¶ Pannagium, or panagium, is derived from the French word panage, *i.* paſtura pecorum in nemoribus de glandibus & aliis fructibus arborum.

Trin. 2 E.3. Coram rege rot. 12.

¶ Expaaltare canes, *i.* expeditare canes. Expeditatio is derived of ex et pede, becauſe the Dog is lamed in the foot, inexpeditatus is unlamed.

Carta de Foreſta, cap. 6.

Canis in this Act is taken for Maſtivus by theſe words, talis expeditatio fact' per Aſſiſam communiter uſitatam, which hath reference to the Aſſiſe of the Forreſt, tempore H. 2. Art. 6. which ſpeaketh only de expeditatione Maſtivorum, & Aſſiſis & Conſuetud' Foreſtæ, 6 E. 1. cap. 9. ſpeaketh only de maſtivo.

¶ Ortelles, this word is taken from the French word Orteilles, in Engliſh, Claws.

Carta de Foreſta ubi ſupra.

¶ Pellota, of the French word Pelote, and they from Pila: In this Act it is taken for the ball of the foot, ſine pelota, without the ball of the foot. And therefore by the expreſs words of this Act the ball of the foot of the Maſtiff is not to be cut off, but the three claws of the forefoot to the skin. This extendeth only to Maſtiffs, and to no other Dogs, for Ubi non eſt lex, ibi non eſt tranſgreſſio; and neceſſary it is, that ſuch as dwell in forreſts where there are coverts, that they ſhould keep other Dogs unexpeditated, and the Maſtiff expeditated for the defence of their houſe, or for giving of warning of Thieves and Robbers, &c. Moloſſus (the old Britiſh word) is a Baſe-thief, becauſe he doth maſe or amaſe a Thief, &c.

M. S. Priorat. Covent. fo. 14. b.

¶ Managium & meſuagium, is commonly in ancient Records taken for meſuagium.

The words of this Act are De expeditatione Canum exiſtentium in foreſta, and therefore in purlieus or places deafforeſted, a man may keep a Maſtiff without being expeditated. And that I may ſay it once for all, my intention is chiefly to explain the obſcure words of this ſtatute of Carta de Foreſta, and other Acts, and leave the Reader to the Text it ſelf being plain: for Satius eſt petere fontes, quam ſectari rivulos.

13 R. 2. cap. 13. 19 H. 7. cap. 11. 1 Jac. cap. 27. 3 Jac. cap. 13. Aſſiſa Foreſt.

Who may keep Greyhounds or other Dogs to hunt, or Ingens, &c. either in a forreſt, or out of the forreſt, appeareth by divers ſtatutes.

But if Greyhounds be found running ad nocumentum, the Forreſter ought to retain them, and preſent them in the preſence of the Verderers, and ſend them to the King, or to the Chief Juſtice of the Forreſt.

We find not that any Chapter or Article of Carta de Foreſta, doth extend to Chaſes or Parks, but only the 11 Chapter, Quicunque Archiepiſcopus, Epiſcopus Comes vel Baro ad mandatum noſtrum tranſierit per foreſtam noſtram, &c. which Chapter doth not only extend to the Forreſts of the King, but to his Chaſes and Parks alſo, for ſo was the Law before the making of this Act, which is but in affirmance of the Common Law of the forreſt before this Act.

1. In reſpect of the perſons, for every Lord of Parliament, be he Spiritual or Temporal, had this privilege beſides thoſe that be named in this Chapter, as ſuch Abbots and Priors, as were Lords of Parliament, and ſo of Dukes, Marqueſſes, Miſcounts, which were erected and created, afterwards being Lords of Parliament have the ſame privilege alſo.

8 E.3. Itin. Pic. fo. 134. A Forreſter, or any other Officer of the Forreſt cannot give a Nobleman a courſe in the Forreſt, but it is preſentable.

2. By reaſon of the kind of commandment ad mandatum noſtrum, ſaith the Statute, which words have reference to the Writ of Parliament directed to every Lord of Parliament. Ideo vobis mandamus, &c. and is a legal commandment by writ directed ſeverally to each and every Lord of Parliament to appear at the Kings Court of Parliament, &c. to treat de arduis & urgentibus negotiis regni, ſtatum & defenſionem regni & Eccleſiæ Anglicanæ concernentibus, and to recreate themſelves veniendo, and after redeundo, they may paſſing by any of the Kings

Kings Foreſts, Chaſes, or Parks, hunt and kill one or two of the Kings Deer. The Lords of Parliament may do it at other times ex gratia, but by law eundo & redeundo, to and from the Parliament.

3. Here is implyed that the Lord of Parliament may in the abſence of the Foreſter or Keeper after the blowing of the horn, kill one or two of the Kings Deer, propriis ſuis canibus, aut arcu ſuo proprio.

Linwode de Venatore Clerico, &c.

4. Here is a ſecret concluſion of Law, that albeit ſpiritual perſons are prohibited by the Canon Law to hunt, yet by the Common Law of the Land they may for their recreation, to make them fitter for the performance of their duty and office, uſe the recreation of hunting, as here it directly appeareth: And in Aſſiſa Foreſtæ 6 E. 1. it appeareth that the Abbot of Peterborow had a right of hunting in the Foreſt of Rockingham. And this appeareth in other Statutes, viz. 13 R. 2. 19 H. 7. 1 Jac. And at this day, and time out of mind, the King hath had after the deceaſe of every Archbiſhop and Biſhop (inter alia) Mutam ſuam canum, &c. his Kennel of Hounds, or a compoſition for the ſame, which and other things are in the Exchequer called multa.

Cart. de Foreſta cap. 11. Aſſiſa foreſtæ, 6 E. 1. 13 R. 2. cap. 13. 19 H. 7. cap. 11. 1 Jac. cap. 27. *Muta canum* is derived from the French word *meute de chiens*. See 25 H. 8 cap. 19, &c.

5. The laſt concluſion is, that all Canons againſt the Laws or Cuſtomes of the Realm, are void and of none effect.

¶ Of the drifts of the Foreſts, *Agitatio Animalium in Foreſta.*

The drifts of the Foreſts are ſaid to be when all the Cattel as well of Commoners as of Strangers are driven by the Officers of the foreſt to ſome certain Pound or place incloſed, and the end thereof is three-fold, viz. Firſt, to ſee whether thoſe that ought to Common do Common with ſuch kind of Cattel as by preſcription or grant they ought. Secondly, if they Common with ſuch Cattel as they ought, whether they do ſurcharge or no. Thirdly, if the Cattel of any Stranger be there which ought not to Common at all.

By the Statute of 32 H. 8. it is enacted, That all Foreſts, Chaſes, Commons, Moors, Heaths, and waſte grounds within the Realm of *England* and *Wales*, and the Marches of the ſame, and every of them ſhall be driven at the Feaſt of St. *Michael* the Archangel next coming or within 15 dayes then next after, and ſo yearly to be driven by the Lords, owners, and poſſeſſors of the ſaid Foreſts or Chaſes, or by the Officers of the ſame, and by the Conſtables, Headboroughs, Bayliffs, Burſholders, and Tythingmen, within whoſe offices, precincts, and limits the Commons, Moors, Mariſhes, Heaths, and waſte grounds being out of the Foreſts and Chaſes be or lie upon pain of xl. *s.* to be forfeited to our ſaid Soveraign Lord the King by every of the ſaid Officers, Bayliffs, Conſtables, Headboroughs, Burſholders and Tithingmen, as often, and at every time as the ſaid drift ſhall be omitted, or left undone, or not effectually done within 15 dayes after the ſaid Feaſt of St. *Michael* the Archangel, as is aforeſaid. And it ſhall be alſo lawful to the Lords, owners and poſſeſſioners of the ſaid Foreſts and Chaſes by their Officers of the ſame, and by the Conſtables, Bayliffs, Headboroughs, Burſholders and Tythingmen and every of them within the limits of their offices to make like drift of the ſaid Foreſts, Chaſes, Commons, Moors, Mariſhes, Heaths, and waſte grounds at any other ſeaſon and time of the year whenſoever, and as often as they ſhall think meet and convenient. 32 H. 8. cap. 13.

Out of this Act of Parliament, as to the drift of the Foreſt or Chaſe, theſe 5. concluſions are to be obſerved. 1. By what perſons this drift is to be made, and therein if the foreſt be in the Kings hands it muſt be made by all the Kings Officers

ſicers of attendance in the foreſt, and by four men and the Reve of every Town within the foreſt, who to that purpoſe are included under the name of Officers. And if they be in a ſubjects hands, then either by the owners or poſſeſſors of the ſaid Foreſts, or Chaſes, or by ſuch Officers as is beforeſaid. 2. At what certain time ſuch drift in foreſts or chaſes is to be made? It appeareth by this Act that it ought to be effectually done yearly within 15 dayes after the Feaſt of St. Michael the Archangel. 3. The ſaid drift may be made at other ſeaſon or time of the year whenſoever, and as often as they ſhall think meet and convenient. 4. That ſtoned Horſes under fifteen handfuls high are prohibited to Common in any foreſt. See the Statute. 5. For Commons, &c. out of any Foreſt or Chaſe. In theſe words are included Purlieus and other grounds wherein men have Common, and theſe are to be driven by the owners and poſſeſſioners of the ſame, and by the Conſtables, Headboroughs, Bayliffs, Burſholders, and Tythingmen, within whoſe offices, precincts, and limits the ſaid Commons, &c. being out of any foreſt, or chaſe do lie at ſuch times as are aforeſaid.

Ayeries of Hawks 8 E. 3. Itin. Pick. Sir John de Melſaes caſe.

The ſtatute ſpeaketh De Aeriis Accipitrum, Eſpervorum, Falconum, Aquilarum, et Hieronum, which is but in affirmance of the Common Law, for it extendeth to Ayeries of other Hawks than be ſpecially named, as to Ayeries Merleonorum in boſcis ſuis de Leveſham.

29 H. 8. tit. Officers. Br. 47.

A Foreſter by Patent for his life is made Juſtice in Eyre of the ſame foreſt hac vice, the Foreſterſhip is become void, for theſe offices be incompatible, becauſe the Foreſter is under the correction of the Juſtice in Eyre, and he cannot judge himſelf: the ſame Law is of a Warden of a foreſt and of a Juſtice in Eyre of the ſame foreſt: Though the Offices of the Steward and Juſtice of the foreſt be both judicial, yet whether he be Steward of the Swanimote, or of the Eyre he is under the correction of the Juſtice in Eyre, and therefore incompatible.

We have been requeſted to ſet down what perſons and what Officers either that then were, or which have been ſince the laſt Eire, and how many ſorts of Officers, and what number do belong to a Foreſt, which we cannot better reſolve and ſatisfie, than by the Records of the Eyres of Foreſts, and ſpecially by the Writ of Summons of thoſe Eyres, which we have thought good to ſet down verbatim, not only for anſwer to the ſaid queſtions, but for divers other obſervations, as we find it in the ſaid Eyre of Pickering, with the exact and particular return of the ſame.

Vic' Eborum. The perſons that ought to appear before the Juſtices in Eyre of the Foreſt, &c. Foreſta Hen. Com' Lanc'.

*Edwardus Dei gratia Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ, Vic' Eborum ſalutem. Summon' per bonos ſummonitores Archiepiſcopos, Epiſcopos, Abbates, Priores, Comites, Barones, Milites, & omnes liber' tenentes, qui terras ſeu tenementa habent infra metas Foreſtæ dilecti conſanguinei & fidelis noſtri Henrici Com' Lanc. de Pick' in Com' prædict' & de qualibet Vill' ejuſdem Com' infra metas ejuſdem Foreſt' exiſten' quatuor homines & Præpoſitum & Foreſtar' Villarum, & * omnes alios, qui coram Juſticiar' ad placita Foreſtæ venire ſolent & debent, quod ſint apud Pickering die Lunæ prox' poſt feſt' Sancti Michaelis prox' futur' coram dilectis & fidelibus noſtris * Richardo de Willoughby, Jo. de Shardelowe, Roberto de Hungerford, & Johanne de Hanbury, tribus vel duobus eorum quo ad requiſitionem dicti conſanguinei noſtri conſtituimus Juſtic' ad itinerandum hac vice ad Placita Foreſtæ ipſius Comitis in Com' prædict' à tempore quo Edmundus nuper Com' Lanc' pater præd' Henrici, cujus hæres ipſe eſt, Placita Foreſtæ in eadem Foreſta virtute * conceſſionis ſibi per Dominum E. nuper regem Angliæ Avum noſtrum inde fact' ultimum tenuit, auditur' & factur' præceptum noſtrum de hiis quæ ad placita præd' pertin'. Fac' etiam venire coram Juſtic' prædictis omnes Foreſtar' Viridar' & omnes illos qui fuer' Foreſtar. & Viridar. Foreſt. prædict. in Com. prædict. poſt ultima placita prædict.*

cum

* Under theſe words are included the Conſtable of the Caſtle, the Warden, the Ranger, the Agiſters, the Steward, the Bow-bearer.

* Four great learned men Juſtices in Eyre of the Foreſt.

* See Cart. de Foreſt. cap. 2.

Foreſtar. Virid.

cum omnibus attachiamen'. ſuis tam de Viridi quam venatione quæ poſt ult. Placita Foreſtæ ſunt emerſa & nondum terminat. (viz.) tam de illis Attachiamentis quæ manent infra metas Foreſtæ, quam de illis quæ manent extra Foreſt. Fac' etiam venire coram eiſdem Juſticiariis tribus vel duobus eorum Regardatores ipſius Comitis in baliva tua, ita quod habeant ibi omnia Regarda ſua ſigillis ſuis ſignat. & omnes Agiſtatores præfat. Com. in eadem baliva ſua cum omnibus Attachiament'. Et habeas ibi Sum. & hoc Breve. T. meipſo apud Weſtm' 17 die Auguſti, Anno regni noſtri 8.

To what end the Officers are ſummoned.

Regardatores.

Ad quod breve Petrus de Saltmerſh Vic' Eborum retornavit quod fecit plenum retornum iſtius brevis Hugoni de Nevill ballivo libertatis H. Comit. Lanc. Honor. de Pickering, cui executio iſtius brevis reſtat faciend'; qui ſibi reſpond. quod ſummon. fecit Archiepiſcopos, Epiſcopos, Abbates, Priores, Comites, Barones, Milites, & omnes libere tenen. qui terras & tenementa habent infra met. Foreſt. & de qualibet Vill. ejuſdem Com. infra metas ejuſdem Foreſt. exiſten. quatuor homines et Præpoſit. et Foreſtar. Villar. et omnes alios qui coram Juſticiar. ad placita venire ſolent et debent, quod ſint apud Pickering ad diem in brevi prædict. content. coram præfat. Juſticiar. tribus vel duobus eorum, audituri facitur. & præcept' domini regis de hiis quæ ad prædict' placita pertinent. Et quod venire fecit Foreſtar. Viridar. et omnes illos qui fuer. Foreſtar. et Viridar. Foreſt. præd' in balliva ſua poſt ult. placita præd' cum omnibus Attachiamentis præd' tam de Viridi quam de Venatione quæ poſt ult. placita Foreſtæ ſunt emerſa & nondum terminat. Et etiam quod venire fac. coram eiſdem Juſtic' tribus vel duobus eorum Regardatores ipſius Comitis in balliva ſua, ita quod haberent ibi omnia Regarda ſua ſigillis ſuis ſignat. et omnes Agiſtatores præfat. Comitis in eadem balliva ſua cum omnibus agiſtamentis prout patet in retorn. ſchedula ſuo prædicto attachiata.

Nota, the punctual and direct anſwer to all the points of the Writ.

- *Foreſtar. de feodo in le Weſtward iſtius foreſtæ de Pickering, viz.*
  - *Willielmus de Perechay Miles.*
  - ** Petronilla de Kynthorpe, et po. loco ſuo. Edmundum de Haſtings ad omnia faciend. quæ Foreſtar. incumbunt durante Itinere, et fecit ſacramentum.*

* Nota, A Woman that is a Foreſter in fee cannot execute the office her ſelf, but ſhe may make a Deputy during the Eire, and her Deputy ſhall be ſworn, &c. By Carta de Foreſta cap. 7. Tot Foreſtarii ponantur ad Foreſtas cuſtodiend. quot ad illas cuſtodiend. rationabiliter viderint ſufficere.

- *Foreſtar. Cuſtod. Foreſtæ in le Eaſtward, viz.*
  - *Rogerus de Leiceſter.*
  - *Hugo de Yeland.*
  - *Willielmus le Parker.*

* *Viridar. foreſtæ de Pickering, viz.*

- *Robertus Thurneſe.*
- *Rogerus Browne.*
- *Robertus Playce.*
- *Jo. de Kilwardbye.*

* *Viridarii 4.*

Regardatores Foreſtæ de Pickering.

- *Willielmus de Everly.*
- *Rogerus de Longe.*
- *Johannes Boye.*
- *Johannes filius Alani.*
- *Galfridus de Kinthorpe.*
- *Thomas Thurneſe.*
- *Hugo de Nevill.*
- *Rogerus de Alveſton.*
- *Johannes filius Galfridi.*
- *Rogerus de Stapleton.*
- *Rogerus Strutcock.*
- *Radulphus de Coſſoughton.*
- *Johannes de la Cheminie.*

Regardator. 13. By the ſtatute de Carta de Foreſta cap. 7. there are to be 12. at the leaſt, and, as here it appeareth, there may be more.

Agiſtatores 4. — *Agiſtatores in le Weſtward iſtius Foreſtæ* { *Johannes Dringe.* / *Ricardus Ruſſell.* }

Agiſtatores in le Eaſtward iſtius Foreſtæ { *Willielmus de Roſton.* / *Willielmus Ruſſell.* }

Nomina Foreſt. & Viridar. qui fuerunt.

Nomina Foreſtar. nunc iſtius Foreſtæ, et eorum qui fuerant Foreſtar. iſtius Foreſtæ, et eorum qui fuerunt Viridar. iſtius Foreſtæ.

Alanus de Newton, / *Johannes de Wardeſden.* — *Capital. Foreſtar. Willielmi de Perchehay unius Foreſtar. de feodo Foreſtæ de Pick. in le Weſtward ibidem.*

Henry de Ripley, / *Thomas de Daley.* — *Capital. Foreſtar. Petroniſſæ de Kinthorp alterius Foreſtar. de feodo Foreſtæ de Pickering.*

David de Newton, / *Thomas de Rippely.* — *Capit. Foreſtar. Hugon. de Yeland For. Cuſtodis Foreſtæ in le Eaſtward.*

Nomina Subforeſtariorum Foreſtæ prædict.

Subforeſtarii 8. — *Johannes de Harley,* *Ricardus de Alesintofies,* *Willielmus Gower,* *Ricardus de Helmeſly,* *Johannes Munmewe,* *Johannes Scot,* *Willielmus Courtman,* *Foreſtar. Radulphi de Haſtings Cuſtod. Foreſtæ prædict. nunc.*

Nomina Subforeſtar. qui fuer. in Foreſta iſta poſt ultimum Iter, &c.

Galfridus de Hawly, *Robertus de Wigan,* *Petrus Lilly.*
Johannes Rouceby, *Rogerus fil. Nich,* *Alanus fil. Radi.*
Adamus fil. Willielmi, *Johannes de Nevil,* *Thomas de Newton.*

Viridar. *Bernardus de Bergh, qui obiit, fuit Viridar. in Foreſta iſta, et Alexander de Bergh filius ejus & hæres venit & reddidit rotulos ſuos tam de viridi quam de venatione tangen. Foreſtam iſtam de tempore prædicto.*

The Law of the Foreſt is, that if a Verderor dye, his heir is to bring in the Rolls of his Anceſtors time, which if he do, then the Entry is ut ſupra.

Adam de Bruis qui obiit fuit Viridar. in Foreſta prædict. et nullus eſt qui venit ad Rotul. reddend. Ideo Vic ſeiſiri fac. omnia terras & tenementa quæ fuer. præd. Adæ quouſque, &c. Poſtea venit Willielmus B. filius ejus & hæres, et fecit finem pro rotulis prædictis, et admittitur per 40 s. prout patet in rotul. de extractis.

If the Verderor alien his lands or dye ſeiſed, and no man bringeth in the Rolls, then ſhall the land by the law of the Foreſt be ſeiſed by the Sheriff, which the Verderor had, untill the Rolls be brought in, and if the Rolls be loſt, then till he make his fine and have his Oyer le main, and the Entry is, as is next above.

Ricardus de Shelton, qui obiit, fuit Conſtabular. caſtr. præd. & cuſtos iſtius Foreſt. & nullus eſt qui venit ad rotul. et munimenta iſt. Foreſt. tangen. reddend. Ideo veniam ejus terr. et tenementa tenentes ad reſpondend. &c.

If

If the Warden of the Foreſt dye, and his heir, or Tertenant bring not in the Rolls, &c. his heir or Tertenant ſhall anſwer for the ſame.

And here it is to be obſerved, that where the Foreſt of Pickering was appendant or belonging to the Caſtle of Pickering, that he that is the Conſtable of the Caſtle is ever by the Law of the Foreſt Chief Warden of that Foreſt. And ſo it is of the Foreſt of Windſor belonging to Windſor Caſtle, of the Foreſt of Rockingham belonging to the Caſtle of Rockingham, and all other Foreſts belonging to Caſtles. And accordingly here you may obſerve, that the office of Conſtableſhip and Wardenſhip are in this Record conjoyned one with the other. 16 Aſſ. p. 60.

Philippus de Monte Gomeri qui ſequitur pro Domino Rege, petit verſ. Radulphum Quintyn Ballivam cuſtodiæ liberæ Hayæ Regis de Alrewas quæ pertin. ad Serjantiam Regis Seneſchall. Foreſtæ Regis de Canoco, & quæ ab eadem Serjantiam alienata eſt ſine aſſenſu prædeceſſorum Regis Regum Angliæ. Et Radulphus venit, & per licentiam reddit Domino Regi inde ſeiſinam ſuam, &c. Trin. 14 E. 1. in banco Rot. 7. Staff.

The duty of a Woodward doth appear by his name, and by his oath. Nomina ſunt notæ rerum. Cuſtos foreſtarum.

Hill. 13 E. 3. it is thus reſolved, Quilibet Woodwardus ſecundum Aſſiſam Foreſtæ debet portare hatchettum, & non arcum & ſagittas pro ſiniſtra ſuſpicione venationis deponend. ad præſentand. tam de viridi quam de venatione. Et videtur Juſtic. hic & Concilio Regis quod * Capreoli Anglicè Roes, ſunt beſtiæ de Warrenna & non de Foreſta, eo quod fugant alas feras. Hill. 13 E. 3. Coram Rege Rot. 103. Eborum. 8 E. 3. Itin. Pick. acc. * Roe-bucks, Capreoli.

¶ Bedellus is an Officer of the Foreſt, that doth warn all the Courts of the Foreſt, and doth execute the Proces of the Foreſt, and make all Proclamations as well within the Courts, as without; and is derived of the Saxon word Bydder, to call or warn; or of the French word in Normandy Bedeau, a Bayliff or Apparitor.

¶ A Maker of the Game of the Foreſt. 16 E. 3. fo. 12.

¶ Mensis veritus, fence month, or defence month, ſo called, becauſe it is the fawning month, when the Does have Fawnes, for the preſervation whereof they ought to be fenced, and defended from hurt and diſquiet. It containeth a month containing 31 dayes, and beginneth in the fifteenth day before Midſommer (that is, the Nativity of St. John Baptiſt) in the beginning of which a Swanimote is to be holden, and endeth fifteen dayes after. See the Statute of Carta de Foreſta, cap. 8. whereby it is enacted, Quod tertium Swanimotum teneatur in initio 15. dierum ante feſtum Sancti Johannis Baptiſtæ, quando Aſſiſtores noſtri conveniunt pro † faonatione ſeu feonatione beſtiarum noſtrarum. Carta de Foreſta cap. 8.

† The printed book is *venatione* which ought to be amended, and made *faonatione* or *feonatione*, which ſignifieth the fawning.

This word faonatio or feonatio, is derived of the French word faonier, that is, to fawne, or for Does to bring forth, &c.

a See Rot. Parl. 18 E. 1. fo. 3. nu. 37. the punishment of a Foreſter for doing treſpaſſe in the Foreſt.

b If the King or other Lord doth pardon a treſpaſſe in a Foreſt, and the offender at a Juſtice ſeat by his learned Councel plead the ſame; in the proceeding thereupon we do obſerve two things. Firſt, that by the law of the Foreſt before any allowance thereof, the Juſtices charge the Miniſters of the Foreſt to enquire whether the delinquent hath done any treſpaſſe in Vert or Venison after the Date of the pardon. Secondly, when the pardon is allowed, then the entry is, Quod invenit manucaptores quod amodo non forisfac', i. non delinqueret aut peccaret. c But if an offender be convicted for treſpaſſe in the Foreſt in hunting, &c. and adjudged to be fined or impriſoned; which fine, though it be paid, yet ſhall he find ſureties for his good abearing, &c. in theſe words; d Quod amodo ſe bene geret, & in Foreſta prædicta non forisfac', i. non delinqueret ſeu peccaret. Unde forisfactura pro delicto.

a Rot. Par. 18 E. 1 fo. 3. nu. 37.
b 8 E. 3. Itin. Pic. Sir Ralph Haſtings caſe.
* This is the word of Carta de Foreſta, cap. 10.
c Ibidem Rob. Saltmerſhes caſe.
d Carta de Foreſt. cap. 10.
e 8 E. 3. Itin. Pic. of William de Perſay, and William de Kynthorp fo. 165.

e By the abſence or non venue of the Juſtices in Eire at the day of adjournment, the Juſtice ſeat is diſcontinued, and how and by what means it may be reconti-

recontinued and reſummoned, it appeareth in 8 E. 3. Itinere Pickering.

7 R. 2. cap. 3. No Jury ſhall be compelled by any Officer of the Foreſt or any other perſon whatſoever, to give their verdict in any other place, than where their charge is given, againſt their good will, nor by malice, menace, or other dures ſhall be conſtrained to give their verdict of a treſpaſſe in the Foreſt, otherwiſe than their conſcience will clearly informe them. This Law extendeth to Foreſts only.

Albeit there be ſome beaſts that be no beaſts of Foreſt, as the Buck, &c. and ſome beaſts and fowles that be no beaſts and fowles of Warren, yet if any man hunt or hawk at them within the Foreſt, it is againſt the Aſſiſe of the Foreſt, and puniſhable by the Lawes of the Foreſt, for all manner of hunting or hawking there without warrant is unlawful, becauſe it diſquieteth the Beaſts of the Foreſt.

Carta Regis H. 1. civibus Londen. * Nota the Citizens of London had this priviledge before this Charter. 42 E. 3. 2. a. in Trans. We read that King H. 1. by his Charter granted, Quod Cives Londoniæ habeant fugationes ſuas ad fugandum ſicut melius, & plenius habuerunt * anteceſſores res eorum, ſcilicet Silre, & Middleſex & Suer.

The King being ſeiſed of a Foreſt, did grant the Foreſt to another in fée, the grantée ſhall have no Foreſt, becauſe he hath no power to make Juſtices and Officers of Foreſt to hold Courts, &c. but yet though it cannot take effect ex vi termini, as a Foreſt, yet together with the Game the ſame ſhall paſſe as a frée Chaſe for the Savages and Conies; for, as hath béen ſaid, every Foreſt is a frée Chaſe, & quiddam amplius.

Regiſt. 8. b. Chacea eſt ad communem legem, and is not to be guided by the foreſt Lawes, and ſo are Parks.

See the firſt part of the Inſtitutes, Sect. 1. verb. Tres, ou tents. But if the King doth grant a Foreſt to a Subject, and granteth further, that upon requeſt made in the Chancery, he and his heirs ſhall have Juſtice of the Foreſt, then the Subject hath a Foreſt in Law, as the Duke of Lancaſter had the Foreſts of Pickering and Lancaſter, and the Abbot of Whitbye had the Foreſt of Whitbye in the County of York, which being not underſtood, hath béen the cauſe that Readers and others have erred. Vide 12 H. 7. Kelw. 13. & 14. &c. 4 E. 3. 55. Malins caſe. 2 H. 6. 15. Foreſt de Exmore 27 H. 8. cap. 7. 1 E. 3. cap. 2. 22 E. 4. cap. 7. 32 H. 8. cap. 13.

Mich. 18 E. 1. in Banco Rot. 155. Eborum. *Ricardus de Cornubia & 9. alii attach. fuerunt ad reſpondend. Johanni de Sallaye quare ipſum ceperunt, & in priſona detinuerunt per decem ſeptimanas apud Caſtrum de Knaresburgh, &c. Ricardus & alii dicunt quod Caſtrum & Honor de Knaresburgh, cum Foreſta de Beſtaine fuit aliquando in ſeiſina Domini H. Regis, patris Domini Regis nunc, & eo tempore fuit talis conſuetudo in Foreſta prædicta, quod ſi quis indictatus fuerit per Foreſtarios coram Seneſchallo ejuſdem Honoris de tranſgreſſione de venatione facta in eadem Foreſta, idem Seneſchallus tales tranſgreſſores ubicunque fuerint inventi infra eandem libertatem prædicti Honoris licitè poteſt arreſtare & impriſonare, & eos in priſona detinere quouſque ſatisfecerint de tranſgreſſione, &c. Qui Rex Hen. dedit prædict. Honorem cum Foreſta &c. Ricardo fratri ſuo Com. Cornub. patri Edmundi Com. Cornub. qui toto tempore ſuo uſus eſt tali libertate arreſtandi, &c. Johannes è contra dicit, nullam talem fuiſſe conſuetudinem arreſtandi malefactores, niſi quando capti fuerunt cum manuopere, & hoc ab antiquiore tempore, quia idem Comes non habet ibidem Foreſtam, ſed Chaceam tantum. Et quod tempore Willielmi de Stotevill Domini dictæ Chaceæ qui dedit Regi J. dictam Chaceam, & tempore dicti Regis J. & tempore Regis H. patris, tum dicta Chacea fuit in manu ſua, nunquam arreſtaverunt aliquos de tranſgreſſione in Chacea illa, niſi illos qui capti fuerunt cum manuopere, & hoc offert verificare per patriam, &c. Ricardus dicit quod non poſſunt prædictam verificationem ſine prædicto Com. verificare. Ideo præc. eſt Vic. quod ſum. prædict. Com. &c.* Conſimile placitum & conſimilis reſponſio in eodem Rotulo. Item. al. in Rot. 163.

By the grant of a Foreſt a Chaſe paſſeth.

Nota, capti cum manuopere.

King

King R. 2. granted to Thomas Duke of Glouceſter in ſpecial taile, the Caſtle of Saint Brionel, and the Foreſt of Dean, (whereby nothing paſſed, as hath been ſaid, but a Frank Chaſe) now by authority of Parliament it is enacted, That the ſaid Duke ſhould hold the ſaid Foreſt as a Foreſt, and to conſtitute ſuch Juſtices and Officers, &c. as belong to a Foreſt. Rot. Par. 14 R. 2. num. 13.

But what was the title of the Courts of Eire of Foreſts in the hands of ſubjects? We anſwer, taking one example of the Foreſt of Pickering in the hands of Henry Earl of Lancaſter; Placita Foreſtæ Henrici Comitis Lanc. de Pickering tent. apud Pickering coram Ricardo de Willowby, Jo. de Shardelowe, Roberto de Hungerford, & Johanne de Hanbury; Juſticiariis ad itinerand. hac vice, ad placita Foreſtæ prædictæ in Com. Eborum aſſignat. die Lunæ prox. poſt feſtum Sancti Michaelis, Anno regni Regis E. 3. poſt Conqueſtum 8.

If any felony be committed within the Foreſt, it ſhall be inquired of before the Judges of the Common Law, and doth not belong to the conuſance of the Foreſt. 12 E. 3. coron. 119. Felonia.

Mich. 9 E. 1. coram Rege Rot. 6. Huntingdon. Tranſgreſſio in foreſta Regis pro Venatione Regis non eſt hic terminanda. Tranſgreſſio.

Nota, Before Scroop and other Juſtices in Eire, according to the courſe of the Common Law, a man claimed to be quit of pawnage of the Kings Foreſt, and alſo he claimed in the ſame Foreſt pawnage of his tenant pur agiſtes; and for that this belonged to the Juſtices of the Foreſt, they would not meddle with it. And the reaſon of that is, the words of the ſtatute of Carta de Foreſta, cap. 16. Præſententur capitalibus Juſticiariis noſtris de Foreſta, cum in partes illas venerint, et coram eis terminentur. So as the termination and ending thereof belongeth to the Chief Juſtices of the Foreſt, by the expreſſe words of the Statute. And where the Statute ſaith, Coram capitalibus Juſticiariis noſtris, &c. It is to be known, that there is but one Chief Juſtice of the Foreſts on this ſide Trent, and he is named Juſticiarius itinerans foreſtarum, &c. citra Trentam. And there is another Capitalis Juſticiarius, and he is Juſticiarius Itinerans omnium foreſtarum, &c. ultra Trentam; who commonly is a man of greater dignity than knowledge in the Lawes of the Foreſt. And therefore when Juſtice Seats are to be holden, there be aſſociated to him ſuch as the King ſhall appoint, who together with him ſhall determine omnia placita, &c. Foreſtæ, with a Patent of Si non omnes, and a Writ De admittendo, &c. And the Chief Juſtice of the Foreſt, and theſe aſſociates, are Capitales Juſticiarii Foreſtæ, and named Capitales, in reſpect of the Verderors and others, that to ſome purpoſes (as hath been ſaid) have inferiour judicial places. V. Cartam de Foreſta cap. 16. Temps E. 3. Kelw. 150. b. V. 21 H. 7. 22, & 30. For theſe aſſociations and other Writs, ſee a notable preſident 8 E. 3. Itin. Pic. in the caſe of William of Perſay, &c. fol. 165.

And ſeeing, as it hath before appeared, the Foreſt Lawes differ in many caſes from the Common Lawes of England, it is good reaſon they ſhould be determined before men learned in the Lawes of the Foreſt, as in other caſes. As if a treſpaſſe be done either in Vert or Veniſon in any Foreſt in the hands of a ſubject, in the life of the anceſtor, Lord of the Foreſt, it ſhall be puniſhed in the life of the heir. But ſo it is not in the Chaſes or Parks of a Subject, for by the Common Law Actio perſonalis moritur cum perſona.

If a man committed a treſpaſſe in a Foreſt, and dye, by the Foreſt Law the treſpaſſe is diſpuniſhable, agreeable to the rule of the Common Law. 8 E. 3. Itin. Pick. Hugh Latimers caſe.

But by the Statute of 19 H. 7. he that ſhall ſtalk with any bush or beaſt in any Park, Chaſe, or Foreſt, without license, &c. ſhall forfeit for every time he ſo ſtalketh x. li. to any perſon that will ſue for the ſame by action of debt, wherein no Wager of Law, Protection or Eſſoyn ſhall be allowed, and two Juſtices of Peace may examine the ſame, &c. See the Statute of 1 H. 7. cap. 7. See the third part of the Inſtitutes, cap. Felony. 19 H. 7. cap. 11. In this Act ſee the great penalty for keeping of Nets called Deer-hayes and Buckſtalls by any that hath not any Foreſt, Park, or Chaſe.

* If a Foreſterſhip or a Bailiwick of a Foreſt be granted in fee, if it be found out at an Eire for the Foreſt, that the grantee hath miſdone in his Bailiwick, the Bailiwick is forfeited. Nota, The Juſtices in Eire have power to enquire thereof. In theſe offices of Foreſterſhips or Bailiwicks in fee within a Foreſt, albeit they have an abſolute fee ſimple therein, yet are they of ſuch truſt, that they * 26 Aſſ. p. 60.

Register fo. 257. F.N.B. 226.

they cannot be granted over without the Kings license, and before such license be granted, there goeth out a Writ of Ad quod damnum to the King, if such license shall be, &c.

For the beasts of Chase and Warren, and Fowls of Warren being not proper to this Treatise, see the first part of the Instit. sect. 378. Rot. Par. 18 E. 1. nu. 20.

There be many beasts of the forest by the Laws of the Forests of England. The Hart in Summer, the Hinde in Winter, and all that proceed as of them: the Buck in Summer, the Doe in Winter, and the proceed of them: the Hare male and female, and their proceed: the wild Boar male and female, and their proceed: and the Wolf male and female, and their proceed: the Fox male and female, and their proceed; the Martin male and female: Capreolus the Roe, as it appeareth before, is no Beast of the Forest, but it is a Beast of Chase.

But I find that in 18 E. 1. John de Claret was amerced in 100 l. pro uno cervo & duobus * lutris captis in foresta de Pek, and he petitioned to the King in Parliament to be discharged thereof and was denied. Yet I take an Otter is no beast of the Forest: but all hunting in the Forest, as hath been said, is unlawful.

* Lutra animal amphibium.

The proceads of the Hart and Hinde. The Male the first year a Calf, the second a Broket, the third a Spayad, the fourth a Staggard, the fifth a Stag, the sixth a Hart, and so after. The Female, the first year a Calf, the second year a Brokets sister, the third year a Hinde.

The proceads of the Buck and Doe. The first year a Fawn, the second year a Pricket, the third a Sorell, the fourth a Sore, the fifth a Buck of the first head, the sixth a great Buck.

The proceads of the Hare, the first year a Leveret, the second a Hare, the third a great Hare. Of a Wilde Boar; a Pigge, a Hogge, a Hogge-stear, a Boar, and after a Sanglier.

The seasons by the Law of the Forest for the Beasts of the Forest are those. Of the Hart and the Buck, beginneth at the feast of S. John Baptist, and endeth Holy Rood day. Of the Hinde and Doe, beginneth at Holy Rood, and continueth till Candlemasse. Of the Fox at Christmasse and continueth till the 25. of March. Of the Hare, at Michaelmasse, and lasteth till Midsummer. Of the Boar, from Christmas till Candlemas.

Cart. de Foresta, cap. 8, 10, 16, &c. And so it is taken 1 Reg. ca. 4. ver. 21 *Venatio Cervorum*, the Venison of Harts.

In the Statute of Carta de foresta in divers places Venatio signifieth Venison, in French Venaison, and so in effect in Dutch and other Languages. It is called Venison or Venaison, of the mean whereby the beasts are taken, quoniam ex venatione capiuntur, and being hunted are most wholesome. [a] They are called Beasts of Venary (not Venery as some term it) because they are gotten by hunting. No beast of the Forest that is solivagum & nocivum is Venison, as the Fox, the Wolf, the Martin, because they be no meat, but caro eorum est nociva: A fortiori, the Bear is no Venison not only because he is Animal solivagum & nocivum, but because he is no beast of the Forest, and whatsoever is Venison must be a beast of the Forest, sed non è converso. On the other side Animalia gregalia non sunt nociva, as the * wild Boar; for naturally the first three years he is Animal gregale, and after trusting to his own strength, and for the pleasure of man becometh solivagum. He is then called Sanglier, because he is singularis, but he is Venison, to be eaten. The Hare is Venison also, which the Poet preferreth before all others:

a Ordinatio forestæ, cap. 15. *Aristotle.*

Aristotle.

* Sanglier, quia singularis.

Inter quadrupedes gloria prima lepus.

Martial.

So as the Red-deer, the Fallow-deer, the wilde Boar, and the Hare, are Venison. Whereupon these two conclusions in the law of the forest doth follow. First, whatsoever beast of the Forest is for the food of man is Venison, and therewith agreeth Virgil, describing a feast,

Deer a θὴρ Græc. i. tera bellua. κατ' ἐξοχὴν, *and their flesh is called* Caro Ferina.

Implentur veteris Bacchi, pinguisque ferinæ.

They had their belly full of old wine, and fat Venison. So Venison was the principal dish of the feast.

2. Whatsoever beast of the Forest is not for food of man is no Venison. Therefore Capreolus being no beast of the Forest, as hath been said, is not by the law of the forest Venison, for though it be food and taken by hunting, it is no Venison. Nature hath endued the beasts of the Forest which are Venison with two qualities, swiftnesse, and fear, and their fear encreaseth their swiftness.

Pedibus

——Pedibus timor addidit alas: but yet the Dær are the moſt fearful.

Dente tuetur aper, defendunt cornua taurum,
Imbelles Damæ quid niſi præda ſumus? *Martial.*

Having ſpoken ſomewhat de Venatione, it followeth that we ſhould ſay ſomewhat de Viridi, becauſe the Statute ſaith, Tam de Viridi, quam de Venatione, and other Statutes ſpeak of Dert and Venſon.

De viridi, viretum, virectum, &c. Cart. de Foreſt. cap. 8. 16. 1 E. 3. cap. 8. * Conſuet. & Aſſiſ. de Foreſt. 6 E. 1. ca. 1, 20, 22. Hill. 13 E. 3. coram Rege. ro. 103. *Virgil.* Iour in antiquam ſylvam ſtabula alta ferarum. a Deut. 20. v. 19. b Conſuet. & Aſſiſ. Foreſt. 6 E. 1. c. 2. & 20.

* Viridis, Græenhue, à viriditate, the French call it Dert, and we Dert, whatſoever beareth græn leaf, but ſpecially of great and thick coverts. And Dert is of divers kinds, ſome that beareth fruit that may ſerve as well for food of men as of beaſts, as Pear-trees, Cheſnut-trees, Apple-trees, Service-trees, Nut-trees, Crab-trees, &c. and for the ſhelter and defence of the Game: ſome called b Haut-boys, ſerving for food and browſe of and for the Game, and for the defence of them, as Oaks, Beeches, &c. Some Haut-boys, for browſe and ſhelter and defence only, as Aſhes, Poples, &c. Of Sub-boys ſome for browſe and food of the Game, and for ſhelter and defence, as Maples, &c. ſome for browſe and defence, as Birch, Sallow, Willow, &c. ſome for ſhelter and defence only, as Alder, Elder, &c. Of bushes and other vegetables, ſome for food and ſhelter, as the Hawthorn, Blackthorn, &c. ſome for hiding and ſhelter, as Brakes, Goſſe, Heath, &c. To ſum up all, Plantarum tria ſunt genera: Arbores, Arboreſcentes, & Herbæ. Arbores, as Haut-boys, & Sub-boys. Arboreſcentes, as Buſhes, Brakes, &c. Herbæ as Herbs and Weeds, which albeit they be græn, yet our legal Viridis extendeth not to them.

A Viridi cometh, as hath been ſaid, Viridarii, becauſe their office is to ſee to the preſervation of Dert, which in troth is the preſervation of Venſon. The Poet ſpeaking to the trees ſaith,

Quercus es in ſylvis pulcherrima, Pinus in hortis,
Populus in fluviis, Abies in montibus altis.

See for the puniſhment of treſpaſſe done de Viridi, either in the Kings Woods, or in the Woods of the Subject, Conſuetud. & Aſſiſ. Foreſt. ubi ſupra.

The Philoſophical Poet in deſcribing the moſt delightful pleaſures of Woods, &c. and Græn hue, ſaith,

Devenere locos lætos, & amæna vireta
Fortunatorum nemorum, ſedeſque beatas. *Virgil.*

¶ *Of Principal and Acceſſary.* 8 E. 3. Itin. Pic. fo. 3. & 5. 12 E. 4. 9. 15 E. 4. 15 b. 14 *H.* 6. 26, 27. 37 Aſſ. 8. 38 Aſſ. 6. 38 E. 3. 18. 13 *H.* 7. 12. 13. *Nota*, that in the higheſt and loweſt offences, viz. High Treaſon and treſpaſſe, there are no Acceſſaries, but in felony which is between both, there be Acceſſaries both before and after. See the 3. part of the Inſtit. Cap. Principal and Acceſſary.

And becauſe it ſhould be hard and difficult that any man ſhould hunt and kill the Kings Dær in his Foreſt and paſſe away without diſcovery, unleſſe there were Procurers, Plotters, Aſſiſters, and Receivers: By the law of the Foreſt, whoſoever receiveth within the Foreſt any ſuch Malefactor either in hunting or killing, knowing him to be ſuch a Malefactor, or any fleſh of the Kings Venſon knowing it to be the Kings; in this caſe he is a principal treſpaſſer, wherein the law of the Foreſt differeth from the Common law, for by the Common Law he that receiveth a treſpaſſer and agreeth to a treſpaſſe after it be done, is no treſpaſſer, unleſſe the treſpaſſe was done to his uſe, or for his benefit, and then his agreement ſubſequent amounteth to a commandment, for in that caſe, Omnis ratihabitio retrotrahitur & mandato æquiparatur, but by the law of the Foreſt ſuch a Receiver is a principal Treſpaſſer, though the treſpaſſe was not done to his uſe, as well as the Procurers and Plotters: but by the Common law in caſe of felony ſuch a Receiver is but an Acceſſary. But in the caſe abovelaid, if the receipt be out of the foreſt, he cannot be puniſhed by the law of the Foreſt, becauſe it is out of the juriſdiction of the foreſt, which juriſdiction is local. And ſeeing the juriſdiction of the Foreſt is local, the law of the foreſt hath provided, that the Foreſt ſhould be incloſed by metes and bounds, which indeed are the incloſure of the Foreſt: for as Parks are incloſed with wall, pale or hedges, ſo Foreſts and Chaſes are incloſed by metes and bounds; and as a Park cannot be a Park without ſuch an incloſure in deed, as is aforeſaid, ſo it can be neither Foreſt nor

Chaſe

Chaſe without an incloſure in law, that is, by metes and bounds. Metæ ſunt clauſuræ Foreſtarum & Chacearum: and Foreſta eſt locus in quo feræ includuntur, venandi ergo, ſolis metis. And where by the Statute of 6 E.1. cap. 18. it is provided, quod omnes metæ Foreſtæ ſint integræ domino regi, that is ſo to be underſtood, quoad juriſdictionem & imperium, & non quoad dominium: for if Rivers or High-wayes be bounds, as moſt commonly they be, yet the King hath no more intereſt in the Soil, Way, River, or Fiſhing, than of Right he ought, but only for his juriſdiction of his Foreſt, which extendeth over the whole Way, River, &c. And where Mills and other houſes, trées, &c. of other men, and ſuch like, be metes and bounds of the Foreſts, yet thereby the King hath no intereſt in ſuch Mills, houſes, or trées, &c. And therefore old Woomen have divided metes, quoad juriſdictionem & imperium, into metes inclusive, as Wayes, Rivers, &c. and into metes excluſive, as Churches, Church-yards, Chappels, Mills, Houſes, Trées, &c. which bound the Foreſt, but are excluded from any juriſdiction: and that the ſaid Law of 6 E.1. is intended onely of metes inclusive, if any man kill or hunt any of the Kings Deer in any part of the River, High-way, &c. being an inclusive boundary of the Foreſt, he is as great an offender, as if he had killed or hunted within the main continent of the Foreſt, albeit the ſtate and intereſt of the ſoil of the High-way or River be in other men; but neither of theſe kinds of metes and bounds are removeable, becauſe they are the incloſure of the Kings Foreſt, and if either of them be removed, it is puniſhable by the Lawes of the Foreſt. This word meta is only uſed in this Statute: In ancient perambulations and records you ſhall read ſecundum metas, meras, bundas, & † marchias foreſtæ. Mæra is fetched from the Saxon word mere, and that of μείρω Græce, which ſignifieth to divide or bound. Bunda a bound, is derived from the Saxon word Bunna, ſignifying a higher thing, as Hills, Houſes, Trees, &c. Marchia is derived from the Saxon word March, now a mark. Sed meta accipitur pro quocunque termino, limite, ſeu fine.

† 8 E.3. Itin. Pick. fo. 6. Mera. Bundæ. Marchia. Meta.

Virgil. His ego nec metas rerum, nec tempora pono.

Regiſt. Judic. 35, 36. Diet 16 El. 326, 327.

And it is to be obſerved, that a man may have a frée Chaſe as belonging to his Manor in his own Woods, as well as a Warren or Park in his own grounds; for the Chaſe, Warren and Park are collateral inheritances, and not iſſuing out of the ſoil, as the Common doth, and therefore if a man hath a Chaſe in other mens grounds, and after purchaſe the grounds, the Chaſe remaineth.

¶ *Perambulations of Foreſts according to the ancient metes and bounds.* Vid. ſup. pa. 302. Rot. Par. Anno 9 H.4. nu. 40.

After Eaſter following the Parliament holden in February, Anno 9 H.3. according to the Statute of Carta de Foreſta, Hugh de Nevill, and Brian de Liſle were appointed Commiſſioners to take Inquiſitions of the ancient metes and bounds of ſuch Foreſts, as either H. 2. or any King after had inlarged. And in the reign of H.3. divers Perambulations, and Diſafforeſtations were made, and many other in the Reigns of H.3. E.1. E.2. and E.3. &c. All which were returned into the Chancery, and remain of Record in the Tower.

The Commons of Herefordſhire pray remedy againſt the evil cuſtomes of the Foreſt of Ewayſtone; namely, for taking their Cattel coming thereunto as forfeit. Whereunto the Royal Anſwer of the King in Parliament was in theſe words, The good old Laws and Cuſtoms of the Foreſt to be obſerved, and the contrary forbidden by a Writ under the Privy Seal. Regalis ſanè & digna *Plantagineſtorum* genere ſententia, wherewith we will conclude, that new opinions of new Authors, or ſingle opinions of Readers grounded upon the Authorities of our Books or Judicial Preſidents, are not to be allowed, but the Lawes both good and old, and ſpecially the Statute of Carta de Foreſta, and other Statutes, and the reſolution of the Judges thereupon are to be duly obſerved. See alſo the old and juſt Articles of the charge in Fleta lib. 2. cap. 35. and reject all new inventions without warrant of Law.

The good old Lawes of the Foreſt to be obſerved.

Note, the charge, and Articles inquirable by the good old Law of the Foreſt, which is worthy to be adviſedly read and followed: Vid. Lib. 2. fo. 80. Lib. fo. 137, 138, Lib. 9. 49, 50.

Two

Two of the principal and ancient Articles, the one concerning Venison, and the other concerning Vert, be, First, the chief Forester at the Justice Seat ought to answer for all manner of Venison delivered by warrant, or otherwise, in this manner: The twelve Jurors ought to present before the Justices in Eire the number of Dær that have bæn killed since the last Eire, and then the chief Forester is to answer by what warrant the same were killed, and such warrants as are lawfull ought to be allowed, and such as be unlawfull are to be disallowed. Secondly, the Twelve Jurors shall present what Okes, Trées, and other woods have bæn felled and delivered out of the Forest by the Officers of the same, and they to answer and shew by what warrants the same were done; whereupon it will appear whether the warrants be sufficient or no, the truth whereof shall be enquired by the Foresters, Verderers, and Regarders. But these or any other Minister of the Forest are not to be returned of any Jury out of the forest.

8 E 3. Itin. Pic fo. 112, 113.

Vide Register, F.N.B. 167.1. 34. E.1.

The Commendation of the Forest Laws of England.

The Lawes of the forests of England are certain, and established by Authority of Parliament, and not, as in other Countries, changeable and floting in uncertainty, ad principis placitum.

The Antiquity of Forests

For the antiquity of such forests within England as we have treated of, the best and surest argument thereof, is, that the forests in England (being in number 69.) except the new forest in Hamshire erected by William the Conqueror, as a Conqueror, and Hampton Court forest by H. 8. by Authority of Parliament, are so ancient as no Record or History doth make any mention of any of their erections and beginnings.

The number of the Forests is 69. with the Forest of Hampton Court.

Our Ancestors the Saxons called a Forest Buckholt, *i.* sylva ferina, or cervina; We dare not fetch our kind of forest, as some do, from the holy History of Scripture, for therein we find no such forests as we have. And it is worthy of observation, that in the Custumary of Normandy Cap. 10. fo. 17 b. Le Seneschal au Prince visiteit les forests & hayes du Prince & ronoquoit les forfeits, &c. So as we fetch not our Chief Justice of the forest from Normandy, where the Kings Steward was the Chief Judge of the forest.

† Holt Saxonice, Sylva Latine Levit. 17. 13. 4 Reg. cap. 2. Psal. 50. 10. Psal. 80. 14. 104. 29. 4 Esdr. 5. 15. Jer. 5. 6. Ezech. 31. 6.

And as forests are of great Antiquity, so the care and charge of them was in England alwayes committed to great and honorable Personages, and the like was also in forain Nations.

Si canimus sylvas, sylvæ sunt Consule dignæ.

Virgil.

For of ancient time the Consuls of Rome had the government of the Forests, &c. But take Suetonius as he is, Ab optimatibus datam scribit operam ut Provinciæ futuris Consulibus minimi negotii, *i.* sylvæ collesi decernerentur, for to say the truth, Recreations should not be used as Professions, and Trades, but to be used as Medicines, to make men more able and fit for higher and greater affairs, and therefore they are called Recreations, because they newly create spirits, tanquam instaurationes spirituum: but yet these pleasures are accounted inter res minimi negotii. Nonnulli principes immoderato venatus studio ita correpti, & corrupti sunt, ut ei omnia posthabeant magno dedecore & in ingenti aliorum damno.

Suetonius in Cæsare. Vid. Fleta lib. 2. cap. 35. De veteribus Capit. Forestæ. Voluptates commendat rarior usus.

Hæc bis bina, canes & aves, servi atque caballi,
Dicantur dominos sæpe vorare suos.

And to say the truth, the Hunter sitteth on a Beast, he is compassed about with Beasts, and hunteth and chaseth Beasts: and therefore not to be used daily as a Trade. And it was justly provided by the Tenth Chapter of this Charter of the forest, Quod nullus de cætero amittat vitam pro venatione nostra, &c. Hereof John Salisbury speaking of hunting and Hunters saith, In tantum hujus vanitatis instinctu erupere, ut hostes naturæ fierent conditionis suæ immemores, divini judicii contemptores, dum in vindictam ferarum imaginem dei exquisitis judiciis subjugarent, nec veriti sunt hominem pro bestiola perdere quem Unigenitus Dei redemit sanguine suo.

Johannes Sarum lib. 1. de nugis Curialium c. 4. Vid. 31 H. 8. c. 22 quod cito evenit repealed 1 E 6. cap. 12. 1 Mar. cap. 1.

Duo clariſſima mundi lumina, Authoritas & Ratio.

Thus have we wandred in the wilderneſs of the Laws of the Foreſt: Wherein we have diſſented from others, we have produced our Authorities, and ſhewed our reaſons, the two main lights and guides, which herein we have followed. We have faithfully publiſhed divers reſolutions of the Judges concerning Foreſt and Foreſts Laws, wherewith we were well acquainted, which are the ſafeſt grounds to build upon. Many things which are evident by the Text of Carta de Foreſta, and other Statutes concerning Foreſts, we have not ſo much as touched, but left the ſame to the judicious Reader, whom we adviſe to beware to give credit to our new Authors, either vouching of Acts of Parliament, Book-Caſes, or Judgements in Eire, &c. for we have found many of them miſtaken, vouched without warrant, or not underſtood, which the judicious Reader will ſoon finde: nor to Carta de Foreſta, of King Canutus granted (as it is publiſhed in print) at a Parliament holden at Wincheſter, Anno Domini 1016. We confeſſe that in the year, which was the firſt year of his reign, he held a Parliament at Wincheſter, and made divers Lawes as well for the honor and worſhip of Almighty God, as for the good government of his people, which he publiſhed in the Saxon Tongue, (neither do we read, that he ever publiſhed any Law for England in the Daniſh tongue, as they affirm he did this.) In all theſe Lawes he never maketh mention of this Carta de Foreſta, or of any theſe ſuppoſed Laws of the Foreſt therein contained, which he had juſt occaſion to doe; for amongſt his other lawes at the ſame Parliament, he maketh this Law the 77. Chapter in the Saxon Tongue, which is thus tranſlated into Latine: præterea autem concedo ut in propriis ipſius prædiis quiſque tam in agris quam in ſylvis excitet agitetque, feras autem meas ne venetur cum pœna præcipio. Now in the ſuppoſed Carta de Foreſta of King Canutus, in the 30 Chapter, it is thus contained Volo ut omnis liber homo pro libito ſuo habeat Venerem ſeu Viridem in planis ſuis, ſine Chaſea tamen: & devitent omnes meam ubicunque eam habere voluero. Which we hold greatly to differ from the true Law before rehearſed in two reſpects. Firſt, that the true Law extended to Woods as well as to Plains, and this to Plains only. Secondly, by that they might hunt, &c. by this they cannot: therefore we leave that Carta de Foreſta of King Canutus as juſtly ſuſpected, till we receive better proof of them: whatſoever it be it is of little uſe, for ſo many of the Chapters therein as be contrary to, or differing either from our Magna Carta de Foreſta, or any other Act of Parliament, are certainly of no force.

Manwood, fo. 2.

Thus have we as briefly as we could, treated of the Courts of the Foreſt, and incidently of ſuch Foreſt Laws as now ſtand in force; wherein (as the ſtudious Reader may well perceive) we have reſpected matter more then method. See Carta de Foreſta Anno 9 H. 3. & Cart. 17. Regis Johannis. Matth. Par. pag. 264.

CAP.

CAP. LXXIV.

Of Eccleſiaſtical Courts, anciently called Halimots, (i. Holy Courts) Circgemots, or Chircgemots.

Where ſome may doubt, how we that profeſſe the Common Law ſhould write of Eccleſiaſtical Courts, which proceed not by the rules of the Common Lawes. To this we anſwer by good authority in our Books, that the Kings Laws of this Realm do bound the juriſdiction of Eccleſiaſtical Courts, and that the King is well apprized of all his [a] Judges which he hath within his Realm, as well ſpiritual as temporal, as Archbiſhops, Biſhops, and their Officers, Deans, and other Miniſters, which have [b] ſpirituall juriſdiction. And that the Popes Collector or Miniſter (ſo ſay our ancient Books) had no juriſdiction within the Realm.

[a] 2 H. 4. 9. Rot. clauſ. 4 H. 4. m. 11 optime. Rot. clauſ. 11 E. 2. dorſ.

[a] Note, the Kings Judges.

[b] Spiritual juriſdiction.

And it is declared by the King, the Lords Spiritual and Temporal, and the Commons in full Parliament, [c] That the Spirituality now being uſually called the Engliſh Church) always hath been reputed, and alſo found of that ſort, that both for [*] knowledge, integrity and ſufficiency of number it hath been always thought, and is alſo at this hour ſufficient and meet of it ſelf, without the intermedling of any exterior perſon or perſons, to declare and determine of ſuch doubts and to adminiſter all ſuch offices and duties as to their roms [d] ſpirituall doth appertain: for the due adminiſtration whereof, and to keep them from corruption and ſiniſter affection, the Kings moſt noble Progenitors, and the anteceſſors of the Nobles of this Realm have ſufficiently endowed the ſaid Church both with honour and poſſeſſions. And the Laws Temporal for trial of property of lands and goods, and for the conſervation of the people of this Realm in unity and peace, without rapine or ſpoil, was and yet is adminiſtred, adjudged, and executed by ſundry Judges and miniſters of the other part of the ſaid body politique, called the Temporalty: and both their authorities and juriſdictions do conjoyn together in the due adminiſtration of Juſtice, the one to help the other.

[c] 25 H. 8. cap. 21.

[*] If ſo, then much more at this day See before pag. 43.

[d] The Spiritual juriſdiction.

The Temporal juriſdiction.

Of what things the Clergy hath ſpiritual juriſdiction, is evident in our Books, and particularly in Cawdries Caſe, whereof there is no queſtion. And certain it is, that this Kingdom hath been beſt governed, and peace and quiet preſerved, when both parties, that is, when the Juſtices of the Temporal Courts, and the Eccleſiaſtical Judges have kept themſelves within their proper juriſdiction: without incroaching or uſurping one upon another; and where ſuch incroachments or uſurpations have been made, they have been the ſeeds of great trouble and inconvenience; for preventing and avoyding whereof, we have compoſed this Treatiſe of the Eccleſiaſticall Courts of the Realm.

Of what things they have juriſdiction.

Articuli Cleri per totum, lib. 5. f. 1. Cawdries caſe.

The Adverſary hath made divers objections againſt our Archbiſhops and Biſhops made about the beginning of the reign of Queen Elizabeth, and by conſequent againſt the Biſhops ever ſince. [e] Firſt, that they were never conſecrated according to the Law, becauſe they had not three Biſhops at the leaſt at their Conſecration, nay never a Biſhop at all, as was pretended; becauſe they being Biſhops in the reign of E. 6. were deprived in the reign of Queen Mary, and were not (as was pretended) reſtored before their preſence at the Conſecration. Theſe pretences being (in truth) but meer cavils, tending to the ſcandal of the Clergy (being one of the greateſt States of the Realm, as it is ſaid in the Statute of 8 Eliz. cap. 1.) are fully anſwered by the ſaid Statute, and proviſion made by authority of that Parliament for the eſtabliſhing of the Archbiſhops

See before cap. of the Chancery, the Articles againſt Cardinal *Woolſey*, Art. 1. 13, 14, 17, 18, 19, 22, 24, 25, 29, 30 Bract. lib. 5. cap. 2, &c. Britton fo. 10 b. Rot. Parl. 15 E. 3 nu. 22.

[e] See Dier Mic. 6 & 7 Eliz.

8 Eliz. cap. 1.

and Biſhops both in præſenti and in futuro, in their Biſhopricks. Of this Statute Archbiſhop Parker in his Book De antiquitate Britannicæ Eccleſiæ ſpeaking of himſelf ſaith, Anno Domini 1559. Cantuar. Epiſcopus electus eſt à Decano & capitulo Eccleſiæ Metropoliticæ Cantuar. poſteaque eodem Anno 17 Decembris adhibitis quatuor Epiſcopis, &c. lege quadam de hac re lata. requiſitus conſecratus eſt. Another objection was made againſt our Archbiſhops and Biſhops, for that the Commiſſion (being never inrolled) whereby the Biſhops made in Queen Maries time were deprived before the fourth year of the reign of Queen Elizabeth or the Record of the approbation of them cannot be found: & therefore it was pretended that the Archbiſhops and Biſhops made by Queen Elizabeth, living the former, ſhould be no lawfull Biſhops. But by the Statute of 39 Eliz. cap. 8. the Archbiſhops and Biſhops are adjudged lawfull, as by the ſaid Act appeareth. And by theſe two Statutes, theſe and all other objections againſt our Biſhops are anſwered, which we have thought good to remember, ſeeing we are to treat of their juriſdiction, ut obſtruatur os iniqua loquentium.

Parker in libr. de antiquitate Britannicæ Eccleſiæ, ſub tit. Matthew. Imprinted 1572. 13 Eliz.

39 Eliz. cap. 8.

Of the Court of Convocation.

The Name. F. N. B. 269. B. Regiſter fo. See the firſt part of the Inſtitutes Sect. 133. 23 H. 8. cap. 1. 32 H. 8. cap. 23. & 33 H. 8. c. 31. Anciently called Churchgemote. Int. leges H. 1 cap. 8. Quouſque Churchgemot diſcordantes inveniet, vel amore congreget, vel ſequeſtret judicio. * 21 E. 45, 46.

It is called the Convocation of the Clergy. In England there being two Provinces, the one of Canterbury and the other of York, the Biſhops and Suffragans belonging to York, are the Biſhops of Dureſme, Carliſle, Cheſter, and the Iſle of Man, and all the reſt of the Biſhops are within the Province of Canterbury.

In domo Convocationis the whole Clergy of either Province are either preſent in perſon, or by repreſentation: *but theſe Provinces and they only ſit in the Parliament time, and this conſiſteth of two parts, viz. the Upper houſe, where the Archbiſhops and Biſhops ſit, and the Lower houſe where the reſt do ſit.

Beda. *The antiquity* Newburgh l. 2. cap. 13. Bract. l. 5. fo. 123, 124. 6 H. 3. Hol. 203. Rot. Parl. 18 E. 3. nu. 1. Rot. Parl. 2 H. 4. nu. 29 F. N. B. 269. 8 H. 6. cap. 1.

Anno Domini 686. Auguſtine aſſembled in councell the Britain Biſhops, and held a great Synod.

By what authority aſſembled. * 13 E. 3. Rot. Parl. 16. 24. Dors. clauſ. 17 E. 2. m. 30. 31. 25 H. 8. cap. 19.

The Clergy was never aſſembled or called together at a Convocation but by the Kings *Writ, adjutoria Regis, as Beda ſaith, ubi ſupra, Vid. Parl. 18 E. 3. nu. 1 Int. leges Inæ Anno Domini 727. a Convocation of the Clergy called Magna ſervorum Dei frequentia.

What their juriſdiction was. Merton cap. 9. 21 E. 4. 45. 1. per Vavaſor & b per. Starkey, Brown & Vavaſor. 20 H. 6. 13. 34 H. 6. 39 28 H. 6. 11. Regiſt. fol. F. N. B. 269. a De procurat. Cler. See in the Chapter of the High Court of Parliament, Regiſt. 161. F. N. B. 229 2. & Parl. 6 E. 3. nu. 6. 8 H. 6. cap. 1. * 2 Chron. 29. 15. Ezrhias. Num. ca. 10. v. 1, 2. Vide. ſup. pa. 43.

Their juriſdiction was to deal with Hereſies, Schiſmes, and other mere Spiritual and Eccleſiaſtical cauſes, and therein they did proceed juxta legem divinam & Canones ſanctæ Eccleſiæ. a And as they could never aſſemble together of themſelves, but were alwayes called together * by the Kings Writ, ſo were they oftentimes commanded by the Kings Writ to deal with nothing that concerned the Kings laws of the land, his Crown and dignity, his Perſon or his State or the ſtate of his Councel or Kingdom: as to illuſtrate this matter to remember one or two examples.

Rot. Pat. 18 H. 3. 2 part. m. 17. De prohibitione fact. Epiſcopis.

Mandatum eſt omnibus Epiſcopis qui conventuri ſunt apud Glouceſtriam die Sabbathi in craſtino Sanctæ Katherinæ firmiter inhibendo, quod ſicut Baronias ſuas (quas de Rege tenent) diligunt, nullo modo præſumant concilium tenere de aliquibus quæ ad coronam Regis pertinent, vel quæ perſonam Regis vel ſtatum ſuum, vel ſtatum concilii ſui contingunt. Sciturí pro certo quod ſi fecerint; Rex inde ſe capiet ad Baronias ſuas. Teſte Rege, &c.

See the Statute of Carliſle Anno 35 E. 1. Stat. de Carliſle 35 E.1.

Rex, &c. Venerabilibus in Chriſto patribus eadem gratia W. Archiepiſcopo Cantuarienſi, totius Angliæ Primati, ac cæteris Epiſcopis & Prælatis Cant. Provinciæ ad Concilium Provinciale apud London in proximo conventuris. Mandamus vobis in fide & dilectione quibus nobis tenemini firmiter inhibentes ne in dicto Concilio quicquid in noſtri, aut ſtatus Coronæ noſtræ vel regni noſtri præjudicium ſtatuatis, faciatis, ſeu quoquo modo libet ordinetis. Teſte Rege, &c. Rot. Par. 15 E. 2 1 part. m. 8. pro Rege de inhibitione faciendâ.

De iſto negotio ſcribitur præfatis Prælatis per literas de credentia, ut in Rotulo clauſarum ſub eodem datu continetur.

Prohibitio fact. Archiepiſcopo Cant. & Clero conventur. poſt feſtum Sancti Barth. quod nihil attemptent in præjudicium Coronæ. 6 E. 3. derſ. clauſ. part 2. m. 15, &c.

Vide Cap. Of the High Court of Parliament, pag. 4. & 5. 2. for Procuratores Cleri, & 21 R. 2. cap. 2.

And further the King did often appoint Commiſſioners by Writ to ſit with them at the Convocation, and to have conuſance of ſuch things as they meant to eſtabliſh, that nothing ſhould be done in prejudice, ut ſupra. * And therefore the ſtatute of 25 H. 8. c. 19. (whereby it is provided, that no Canons, Conſtitution or Ordinance ſhould be made or put in execution within the Realm by authority of the Convocation of the Clergy, which were contrariant or repugnant to the Kings Prerogative Royal, or the Cuſtomes, Lawes, and Statutes of this Realm) is but declaratory of the old Common law. 51 E. 3. nu. 42. 46 E. 3. prem. 8. 21 E. 4. 45 ubi ſup. Rot. Parl. 1 R. 2. nu. 14. * 25 H. 8. c. 19. 19 E. 3. Quare non admiſit &c. 10 H. 7. 6. per Brian. & 2 Ph. & Mar. cap. 8. the Prerogatives, and Lawes of the Crown ſaved. *Veſus finem.*

But by the ſaid Act of 25 H. 8. their jurisdiction and power is much limited and ſtraitned concerning their making of new Canons: for they muſt have both licenſe to make them, and after they be made, the Kings Royal aſſent to allow them, before they be put in execution. But in the end of that Act there is an expreſſe Proviſo, that ſuch Canons as were made before that Act, which be not contrariant nor repugnant to the Kings Prerogative, the Lawes, Statutes or Cuſtomes of the Realm, ſhould be ſtill uſed and executed as they were before the making of that Act. But before that Act a Diſme granted by the Clergy at the Convocation, did not bind the Clergy before the Kings Royal aſſent. *What their jurisdiction now is.* 2 R. 3. 4. 11 E. 4. 42, 47. 20 H. 6. 13.

King H. 8. was acknowledged Supream Head in divers Convocations. 26 H. 8. cap. 1.

And if any cauſe ſhall depend in contention in any Eccleſiaſtical Court which may or ſhall touch the King, his Heirs or Succeſſors, the party grieved ſhall or may appeal to the Upper houſe of Convocation within 15 dayes after ſentence given. 24 H. 8. cap. 12. 1 Eliz. cap. 1.

As there be two houſes of Convocation, ſo are there two Prolocutors, one of the Biſhops of the Higher houſe, choſen by that houſe, another of the Lower houſe, and preſented to the Biſhops for their Prolocutor.

It is called Convocation à Convocando, becauſe they are called together by the Kings Writ.

The Clerks of the Convocation called by the Kings Writ, and their ſervants and familiars ſhall have ſuch priviledge in comming, tarrying, and going, as the great men, and Commonalty of this Realm, called to the Kings Parliament. 8 H. 6. cap. 1.

Of Subſcription.

Subſcription required by the Clergy is twofold: one by force both of an Act of Parliament confirming and eſtabliſhing the 39 Articles of Religion agreed upon at a Convocation of the Church of England, and ratified by Queen Elizabeth under the Great Seal of England. Another by Canons made at a Convocation of the Church of England, and ratified by King James, as is aforeſaid. 13 Eliz. ca. 12. Act a Convocationholden at London Anno Dom. 1562. & 40 Eliz.

By the Act of 13 Eliz. cap. 12. referring to Canons made by the Clergy of England at a Convocation holden at London in Anno Domini 1562. containing 39 Articles of Religion, and ratified as is aforeſaid.

The

At a convocation begun at London, Anno Dom. 1603. 1 Jac. Regis, Sect. 36.

The other is by Canons of the Church of England made and ratified by King James, as is aforeſaid.

The ſubſcription hereby required is to three Articles.

The firſt is, that the Kings Majeſty under God is the only ſupream Governor of the Realm, and of all other his Highneſſe Dominions and Countries, &c.

2. That the Book of Common prayer, and of ordering of Biſhops, Prieſts, and Deacons, containeth nothing in it contrary to the Word of God, &c.

3. That he alloweth of the ſaid 39 Articles of Religion, and acknowledgeth them to be agreeable to the Word of God.

And in this Section, Ubi ſupra, 1 Jac. the form of the ſubſcription is ſet down, which was not expreſſed in the Act of 13 Eliz.

This Book is ratified & confirmed by Act of Parliament viz. 2 E. 6. cap. 1. 5 E. 6. c. 1. 1 El. cap. 2. 8 El. cap. 1. 23 El. ca. 1.

By the Statute of 13 Eliz. the Delinquent is diſabled and deprived ipſo facto but the Delinquent againſt the Canon of King James is to be proceeded withall by the cenſures of the Church. This ſtatute of 13. is well expounded in Dier 23 El. 377, & lib. 6 fo. 69. in Grenes caſe.

Dier 23 El. 377. Lib. 6 fo. 69. Grenes caſe.

And I heard Wray Chief Juſtice in the Kings Bench, * Paſch. 23 El. report, that where one Smith ſubſcribed to the ſaid 39 Articles of Religion, with this addition (ſo far forth as the ſame were agreeable to the Word of God) that it was reſolved by him, and all the Judges of England, that this ſubſcription was not according to the Statute of 13 Eliz. becauſe the ſtatute required an abſolute ſubſcription, and this ſubſcription made it conditional; and that this Act was made for avoiding of diverſity opinions, &c. And by this addition the party might by his own private opinion take ſome of them to be againſt the Word of God; and by this means diverſity of opinions ſhould not be avoided, which was the ſcope of the Statute, and the very Act it ſelf made touching Subſcription hereby of none effect.

*Smiths caſe.

He muſt alſo bring a teſtimonial from men known to the Biſhop, to be of ſound Religion, a teſtimonial both of his honeſt life and profeſſion of the doctrine expreſſed in the ſaid Articles, and he ought to be able to anſwer, and render to the Ordinary an account of his faith in Latin, &c.

Beſides this ſubſcription, when any Clerk is admitted and inſtituted to any Benefice, he is ſworn to Canonical obedience to his Dioceſan.

Of the High Commiſſion in cauſes Eccleſiaſtical.

Paſch. 9 Jac. the reſolution of the Court of Common Pleas upon mature deliberation, ſet down in writing by the commandment of King James.

Two queſtions have been made concerning the Juriſdiction of theſe Commiſſioners.

Firſt, what cauſes do belong to the High Commiſſioners by force of the Act of 1 El. cap. 1. and of the Letters Patents thereupon grounded.

Secondly, in what caſes the High Commiſſioners by the ſaid Act of 1 Eliz. cap. 1. and of the Letters Patents to them granted, may impoſe fine and impriſonment, and in what not.

It is ſaid, by force of the ſtatute of 1 El. For that before this Act it is agreed, that all Ordinaries and Eccleſiaſtical Judges whatſoever, ought in all Eccleſiaſtical cauſes to have proceeded according to the cenſures of the Church, and could not in any caſe have puniſhed any Delinquent by fine or impriſonment, unleſſe they had authority ſo to do by Act of Parliament. And the Papal authority (as hath been confeſſed) did never fine or impriſon in any caſe, but ever proceeded only by Eccleſiaſtical cenſures. Seeing then the ſtate of the queſtion concerning fine and impriſonment dependeth wholly upon the ſtatute of 1 Eliz. and is of greateſt conſequence, and openeth the way to the other queſtion, for it is confeſſed that by Letters Patents onely (without an Act of Parliament) ſuch power to fine and impriſon in Eccleſiaſtical cauſes cannot be granted; the point of fine and impriſonment ſhall be firſt handled. And for that every Act of Parliament doth conſiſt of the letter, and of the meaning of the Makers of the Act:

the Act of 1 Eliz. doth neither by meaning nor letter give any power to the High Commiſſioners to fine or impriſon any, but in certain particular cauſes, as ſhall manifeſtly out of the Act it ſelf appear hereafter. And ſeeing every Act of Parliament upon conſideration had of all the parts thereof together, is the beſt Expoſitor of it ſelf, the parts of this Act of 1 Eliz. doe neceſſarily fall into conſideration.

First the Title of the Act is, *An Act reſtoring to the Crown the ancient Juriſdiction*, &c. By this nature of the Act doth appear to be an Act of Reſtitution. *The title of of the Act.*

And this is alſo manifeſt by the preamble of the Act, where it is ſaid:

Whereas divers good lawes were made in the time of the late King Henry the Eight, for the extinguiſhment of all forain power, and for the reſtoring unto the Crown of this Realm the ancient rights and Juriſdictions of the ſame. *The preamble of the Act.*

From whence this reaſon is drawn, that ſeeing the expreſſe letter and meaning is to reſtore to the Crown the ancient Juriſdiction Eccleſiaſtical, and no Commiſſion by force of that ancient Eccleſiaſtical Juriſdiction could impoſe fine and impriſonment, that theſe Commiſſioners having their force from this Act of Reſtitution, cannot punniſh any party by fine or impriſonment, otherwiſe then ſhall be hereafter expreſſed. 1 *Ratio.*

The firſt clauſe of the body of the Act (to let in the reſtitution of the ancient Right and Juriſdiction Eccleſiaſtical within the Realm) doth abolish all forrain Juriſdiction out of the Realm.

Then followeth the principal clauſe of reſtitution and uniting of the ancient Juriſdiction Eccleſiaſtical, being the main purpoſe of the Act, in theſe words.

Be it enacted, that ſuch Juriſdiction, &c. Spiritual and Eccleſiaſtical, as by any Spiritual or Eccleſiaſtical power or authority hath heretofore been, or lawfully may be exerciſed or uſed for the viſitation of the Eccleſiaſtical ſtate and perſons, and for reformation, order and correction of the ſame, and of all manner of Errors, Hereſies, Schiſmes, abuſes, offences, contempts, and enormities, ſhall for ever by Authority of this Parliament be united and annexed to the Imperial Crown of this Realm.

And upon this clauſe being the final intention of this Act expreſſed in the Title and Preamble, do the ſubſequent clauſes depend; Therefore this clauſe is eſpecially to be conſidered, and therein theſe things are to be obſerved.

Firſt, that by this clauſe Queen Elizabeth was not declared Supream head, &c. but by a former clauſe in this Act, viz. that the Statute of 1 & 2 Ph. & Mar. cap. 8. (whereby amongſt others the Act of 26 H. 8. cap. 1. and 35 H. 8. cap. 3. were repealed) was by this Act made utterly void, and conſequently the Act of Repeal being repealed, the Acts of 26 H. 8. cap. 1. and 35 H. 8. cap. 3. were amongſt others implicite revived, by which Acts of 26 H. 8. and 35 H. 8. It is declared and enacted, that the King, his heirs and ſucceſſors, ſhould be taken and accepted the only Supream Head in earth of the Church of England, and ſhould have and enjoy annexed to the Imperial Crown of this Realm, as well the title and ſtile thereof, as all honours, dignities, preheminences, juriſdictions, &c. to the ſaid dignity of ſupream Head belonging, &c. By which ſtile, title, and dignity of ſupream Head of the Church of England, King H. 8. his heirs and ſucceſſors had and have all Eccleſiaſtical Juriſdiction whatſoever. So as the firſt clauſe reviving the Act of 26 H. 8. &c. thereby Queen Elizabeth, her heirs and ſucceſſors were ſupream Head of the Church of England. And there this Act extending to raiſe a Commiſſion for the neceſſity of the time, intended only to reſtore and annex to the Crown ſuch Juriſdiction in ſome particular points as by the intent of the Statute, the Commiſſioners ſhould execute, and not to declare

clare

claire by this clauſe that her Majeſty ſhould be ſupream Head of the Church, for that was provided for before.

2 *Ratio.* Secondly, that no jurisdiction is by this Act reſtored & united to the Crown, but ſuch as before the Act had bæn, or lawfully might be exerciſed or uſed for the reformation, &c. correction, &c. Whereupon it is concluded, that ſæing that no man could be fined or impriſoned by force of any Jurisdiction Eccleſiaſtical, which had bæn uſed, or lawfully might be uſed before this Act, that therefore by this Act no power of fining and impriſoning in Eccleſiaſtical cauſes is given by this Act.

The third obſervation is, that this clauſe divideth it ſelf into two branches: the firſt concerning the viſitation of the Eccleſiaſtical ſtate and perſons. This branch was enacted out of neceſſity, for that all the Biſhops and moſt of the Clergy of England, being then Popiſh, it was neceſſary to raiſe a Commiſſion to deprive them, that would not deprive themſelves, and in caſe of reſtitution of religion to have a more ſummary proceæding then by the ordinary and proprie courſe of law is required. This branch concerns only Eccleſiaſticall perſons: So as, as neceſſity did cauſe this Commiſſion, ſo it ſhould be exerciſed but upon neceſſity, for it was never intended that it ſhould be a continual ſtanding Commiſſion, for that ſhould prejudice all the Biſhops of England in their Eccleſiaſticall Jurisdiction, and be grievous to the ſubject to be drawn up from all the remote parts of the Realm, where before their own Dioceſan they might receive juſtice at their own doors.

The firſt Commiſſion upon theſe Statutes, whereby about 20 Biſhops were deprived, and many others of the Popiſh Clergy, is ſaid to be loſt and inrolled it is not, as it ought to have bæn. And it is affirmed by ſome that have ſæn it, that it paſſed not above twenty ſhæts of paper copy wiſe; but now the High Commiſſion contains above three hundred ſhæts of paper. And it is likewiſe affirmed, that never any High Commiſſion was inrolled (as they all ought to have bæn) untill my Lord Chancellor Egertons time, ſo as no man before that time could know what their Juriſdiction was till that time.

The ſecond branch is, And for reformation, order, and correction of the ſame (*that is, of Eccleſiaſtical perſons*) and of all manner of Errors, Hereſies, Schiſms, abuſes, offences, contempts, and enormities.

So as theſe two branches extend not to the univerſality of the Supremacy, but only to thoſe points whereunto the Commiſſion to be raiſed by this Act ſhould extend, for which purpoſe nothing is reſtored or united by this Act, but only the viſitation of the Eccleſiaſtical ſtate and perſons, and the reformation of the ſame and of all Errors, Hereſies, Schiſms, abuſes, offences, contempts, and enormities which be criminal.

The Jurisdiction being reſtored to Quæn Eliz. her heirs and ſucceſſors, next and immediately doth the Act, &c. give her power to aſſign and authoriſe Commiſſioners to execute this jurisdiction reſtored and united to her, for which purpoſe it is further enacted, That your Highneſſe, your heirs and ſucceſſors ſhall have power and authority by vertue of this Act by Letters Patents, &c. to aſſign, name, and authorize, &c. ſuch perſons being natural born ſubjects, &c. as your Majeſty, you heirs and ſucceſſors ſhall think meet to exerciſe, uſe, occupy, and execute under your Highneſſe, your heirs and ſucceſſors, all manner of jurisdiction, &c. in any wiſe touching or concerning any Spiritual and Eccleſiaſtical jurisdiction, &c. and to viſit, reform, &c. all errours, hereſies, ſchiſmes, abuſes, offences, contempts and enormities, which by any manner Spiritual or Eccleſiaſtical power, authority, or jurisdiction can or may lawfully be reformed, corrected, reſtrained or amended.

The clauſe of Aſſignation of the Juriſdiction reſtored by this Act.

Out of this clauſe of aſſignation it is to be obſerved, that the ſubſtance of the Commiſſion of aſſignation or deputation is deſcribed and portraped out both for manner and matter by this clauſe.

1 That

1. That it ought to be under the Great Seal.

2. The Commiſſioners to be aſſigned ought to be natural born ſubjects of Queen Eliz. her heirs or ſucceſſors.

3. Their Authority, viz. To exerciſe, uſe, occupy, and execute under your Highneſſe, your heirs and ſucceſſors, all manner of juriſdiction, &c. and to viſit, and reform all ſuch Errors, Hereſies, Schiſmes, abuſes, offences, &c. which by any manner of Eccleſiaſtical or Spiritual power can, or lawfully may be reformed, corrected, &c.

4. The local limits and bounds of their Commiſſion, viz. within the Realm of England, &c.

So as by this clauſe there is no queſtion, but the Commiſſioners for ſuch cauſes as are committed to them by force of this Act, may, if the Commiſſioners be competent, proceed to deprivation of the Popiſh Clergy, which was the main object of the Act, or to puniſh them by Eccleſiaſtical cenſures, and by no words, or meaning hitherto can puniſh by fine or impriſonment, for that no Eccleſiaſtical power could reform and correct (as the ſtatute ſpeaketh) in that manner. And without queſtion, if the Commiſſioners be competent, that is, if they be ſpiritual men, they may proceed to ſentence of Excommunication, which may right well be certified as well as Excommunication before Commiſſioners Delegates; both of theſe Authorities being under the Great Seal, and each of them having authority by force of ſeveral Acts of Parliament. And Excommunication certified by Commiſſioners Delegates hath been allowed, as it appeareth in 23 Eliz. Dier 371. And in many caſes Acts of Parliament have adjudged men excommunicate ipſo facto. But if they be meer Laymen, the fault is not in the ſtatute or in the law, but in the nomination: and upon Certificate made of the Excommunication according to law, a Significavit, or Cap. Excom. ſhall be awarded out of the Chancery, for the taking and impriſoning of the bodies of ſuch excommunicate perſons. 3 Rats. *The High Commiſſioners may excommunicate if they be competent.* Dier 23 El. 371.

Now after the Letters Patents of the Commiſſion are deſcribed, and limited, followeth a clauſe of direction for the Commiſſioners to keep themſelves within their Commiſſion in theſe words.

And that ſuch perſons ſo to be named, &c. after the ſaid Letters Patents to them delivered ſhall have power and authority by vertue of this Act and the ſaid Letters Patents under your Highneſs, your heirs and ſucceſſors to exerciſe, uſe and execute all the premiſſes according to the tenor and effect of the ſaid Letters Patents, any matter or cauſe to the contrary in any wiſe notwithſtanding. *The clauſe of Execution.*

This is a clauſe of reference meerly to the former parts of the Act, and yet by colour of this clauſe the High Commiſſioners do pretend to fine and impriſon.

That this clauſe referreth wholly to the former parts of the Act, it is apparent by the very words thereof, for firſt, the words be to exerciſe, uſe, and execute all the premiſſes, which word (premiſſes) referreth to all the former branches of the Act, viz. 1. To the ancient juriſdiction Eccleſiaſtical, reſtored by this Act, by which ancient juriſdiction no perſon could be corrected by fine or impriſonment. 2. To ſuch juriſdiction Spiritual or Eccleſiaſtical as by any Spiritual or Eccleſiaſtical power hath heretofore been, or lawfully might be exerciſed, or uſed; for theſe be the expreſſe words of the main clauſe of reſtoring and uniting of the ancient juriſdiction to the Crown. But it is agreed, that before this Act no man could be puniſhed by fine or impriſonment by any Eccleſiaſtical power, unleſs it were by force of ſome Act of Parliament; therefore by theſe words in this clauſe (to execute the premiſſes) the Commiſſioners cannot fine or impriſon. This word (premiſſes) hath relation theſe words in the clauſe of aſſignation next going before this clauſe, viz. to viſit, reform, redreſſe, order, correct, and amend all ſuch errors, hereſies, ſchiſmes, &c. which by any manner, power, authority, or juriſdiction Eccleſiaſtical or Spiritual can, or may lawfully be reformed, &c. corrected, &c. but no correction before this Act could be by fine or impriſonment, but in certain ſpecial caſes.

Then this clauſe followeth, (according to the tenor and effect of the ſaid Letters Patents) which words alſo do wholly refer to the former parts of the Act. For if theſe words (to execute all the * premiſes) be words of reference, then the addition of theſe (according to the tenor and effect of the * ſaid Letters Patents, any matter or cauſe to the contrary in any wiſe notwithſtanding) muſt of neceſſity be referred alſo to the former parts of this Act, by none of which power is given to fine or impriſonment.

* Premiſes.
* Said.

Alſo this word (execute) cannot but be referred to the former authority. And it is not ſaid according to the tenor and effect of any Letters Patents, and yet if the words had been ſo, the ſame being coupled to the word (premiſes) had not reſtrained them, for they could in that caſe but only have executed the premiſes; but the words be according to the tenor and effect of the Letters Patents before limited by the ſaid Act, that is, firſt that the Letters Patents be under the Great Seal. 2. That they be made to natural born ſubjects. 3. Their authority is declared with a limitation. 4. The local limits and bounds of the Commiſſion is ſet down: and this is the true and genuine ſenſe of theſe words, viz. To execute the premiſes according to the tenor and effect of the ſaid Letters Patents. And therefore we marvel how in a caſe of ſo great conſequence, and ſo viſible to every eye that looks into the Act of 1 Eliz. the very words thereof are (for the advantage of the High Commiſſioners) in the very binding clauſe altered, and changed. For there it is alledged, that the ſtatute of 1 Eliz. ſaith, that the High Commiſſioners ſhall execute the premiſes by vertue of this Act according to their Commiſſion indefinitely without reference or reſtraint, whereas the words of the Act be, according to the ſaid Letters Patents, the effect whereof was limited and expreſſed before. And by the authority that is claimed by the Commiſſioners, who ſeeth not, but that confiſcation of lands, forfeiture of goods and chattels, &c. as well may be impoſed, as fine and impriſonment? But were it not a violent interpretation directly againſt the letter and meaning of the Act, and full of great inconvenience to make of theſe latter words this conſtruction, viz. that the High-Commiſſioners ſhould correct and punish all the Errors, Hereſies, Schiſmes, Offences Abuſes, Contempts, and Enormities, &c. under ſuch pains, forfeiture, and penalty, as Queen Elizabeth, her heirs, and ſucceſſors, by any Letters Patents, ſhould impoſe or appoint: and that conſequently by force of the generality of this conſtruction, ſhe did impoſe and appoint fine and impriſonment. Which conſtruction ſhould be firſt directly againſt the words and meaning of the Act for the cauſes aforeſaid. Secondly, that by the ſame reaſon by the generality of ſuch a conſtruction Queen Elizabeth might have impoſed forfeiture of lands, confiſcation of goods, nay corporal punishment, loſſe of member, and of life alſo, for incontinency, ſolicitation of chaſtity, working on a Holiday, or any inferiour offence punishable by the Eccleſiaſtical Law, and yet the ſentence of the Commiſſioners in ſuch caſes ſhould be both fatal and final, and uncontroulable by any ordinary means, either by Appeal, Error, Moderata miſericordia, or otherwiſe. Thirdly, that this violent conſtruction, under myſtical and cloudy words, ſhould extend to fine and impriſonment, &c. all perſons, as well Lay men of what eſtate, degree, or ſex ſoever, in caſes Eccleſiaſtical (where they were not to be fined and impriſoned before) as to Eccleſiaſtical perſons, who were the proper objects of this Act. And then by the Conſtruction that hath been made of the other ſide in caſes where an executor detaineth a Legacy, or a Pariſhioner payeth not his Tythes, or the like concerning Meum and Tuum, the Queen, &c. might have inflicted (as hath been ſaid) what punishment ſhe would, and the High Commiſſioners fine and impriſonment (as it ſtandeth at this day) without limitation of time, be it never ſo great, or time of impriſonment, be it never ſo long, and without controlment by any ordinary remedy; be the ſentence never ſo unjuſt or erroneous; than which nothing could be more abſurd and inconvenient. Talis interpretatio in ambiguis ſemper fienda eſt, ut evitetur inconveniens & abſurdum. But this conſtruction ſhould not be in ambiguis, but directly againſt the words and meaning of this Act. And ſeeing it hath been granted that the Papal authority

Note.

rity or any other having Eccleſiaſtical juriſdiction could not fine and impriſon before this Act of 1 Eliz. and that it is expreſly ſaid in the preamble of this Act, that where in the reign of King H. 8. divers good laws were made as well for the extinguiſhment of forein authority, as for reſtoring to the Crown the ancient juriſdictions, &c. by reaſon whereof the ſubjects were kept in order, and diſburdened of great and intollerable charges and exactions (which good laws being repealed by Queen Mary the ſaid Act doth revive and reſtore.) It followeth à conceſſis, and by the Letter of this Act, that it was never the meaning of the makers thereof to extend the ſaid clauſe to fine and impriſon the ſubject for Eccleſiaſtical cauſes, and to make him ſubject to greater confiſcations, forfeitures, and puniſhments, where his body before this Act was not ſubject to impriſonment but upon the Kings Writ De excom' capiendo, nor his body, lands, and goods, to fines, or other penalties, or puniſhments, by them to be impoſed, &c. for this were not by this Act of reſtitution to eaſe them of former intollerable charges (as the ſtatute ſpeaketh) but by this Act to make them ſubject to greater and more heavy pains, puniſhments, and charges, than ever they were before. And the ſtatute of 27 H. 8. cap. 15. ſaith, that the Canons, &c. were overmuch onerous to his Highneſſe ſubjects, but they were never ſo onerous as this Act ſhould be. But Uno abſurdo dato infinita ſequuntur. We muſt therefore retire our ſelves to the text of the Act of 1 Eliz. the only ground of this queſtion, and thereupon the concluſion is, that no Letters Patents can by vertue of this Act of 1 Eliz. give any power to the Commiſſioners to impriſon, except it be in certain particular caſes, which now fall into conſideration. For example. The ſtatute of 1 H. 7. cap. 4. doth give power to Biſhops, &c. to commit Prieſts convicted of any incontinency to priſon, and that no Biſhop, &c. ſhall be chargeable therefore in an Action of falſe impriſonment. Now ſaving that ſuch juriſdiction Eccleſiaſtical (that is, to hear, determine, and puniſh, &c.) as by any Spiritual or Eccleſiaſtical power or authority before the ſaid Act of 1 Eliz. had been, or might lawfully have been exerciſed or uſed for the viſitation of the Eccleſiaſtical ſtate and perſons, and for reformation and correction of the ſame, and of all manner of Errors, Hereſies, Schiſmes, &c. and that every Biſhop, &c. might puniſh ſuch offenders by impriſonment according to the ſaid Act, that ſuch power (and the like in any other caſe by Act of Parliament if any be) is united to the Crown and may be committed over to the High Commiſſioners as before the ſaid Act by any Spiritual or Eccleſiaſtical power had been or lawfully might be uſed, which be the words of the Act it ſelf. 1 H. 7. cap. 4. Vid. ſtat. of 2 H. 4. ca. 13. and 1 Eliz. ca. 1. and obſerve them well

But theſe general words, viz. Which have been or lawfully might be uſed, &c. do not extend to any authority or power given by any Act of Parliament to any Eccleſiaſtical Judge: which Act ſtood repealed and annulled by a former Act of Parliament, and had no eſſence at the time of the making of this Act of 1 Eliz. and that for two reaſons: Firſt, for that this Act of 1 Eliz. doth repeal and revive divers Acts of Parliament, and therefore ſhall not be conſtrued to repeal or revive any other by the ſaid general words. Secondly, for that general words ſhall not extend to authorities repealed or annulled by Act of Parliament. And ſo it was adjudged in the Lord Darcies caſe in the Kings Bench Paſch. 38 Eliz. where the caſe was, that the Lord of the Manor of Thorp Kiby was amongſt other franchiſes and immunities diſcharged by the Letters Patents of King E. 4. of Purveyance: which Charter for the point of diſcharge of purveyance was annulled by the ſtatute of 27 H. 8. cap. And after the Manor comming to the hands of King E. 6. he by his Letters Patents granted the ſaid Manor to the Lord Darcie and his heirs: and further granted Tot, talia, eadem, hujuſmodi & conſimilia jura, juriſdictiones, franchefias, privilegia, &c. quot, quanta, qualia, & quæ, &c. prout aliquis dominus manerii habuit, tenuit, ſeu gaviſus fuit virtute alicujus cartæ, doni, ſeu conceſſionis aut aliquarum literarum patentium per præfatum regem, aut per aliquem progenitorum ſuorum quorumcunque fact. conceſſ. ſeu confirmat. aliquo ſtatuto non obſtante. And it was adjudged as it had been before in the Lord Pagets caſe, Mich. 21 & 22 Eliz. in Scaccario: that albeit Paſch. 38 Eliz. coram Rege the Lord Darcies caſe. Mic. 21 & 22 El. in Scaccario, the Lord Pagets caſe

ſuch a general grant had bæn enacted and confirmed by Act of Parliament, yet had not thoſe general words extended to revive any authority, franchiſe, priviledge, &c. once granted, and which was after, and before the grant repealed or reſumed by Act of Parliament unleſſe there had bæn ſpecial words to revive the ſame, but ſhould extend to other authorities, franchiſes, and priviledges which ſtood not then repealed.

1 H. 7. 12, 13. And there is a far ſtronger caſe reported in 1 H. 7. fo. 12, & 13. By authority of Parliament all prehminences, prerogatives, franchiſes, and liberties were given to King H. 7. in tail generally without limitation or laving. And the queſtion was, whether the franchiſes and liberties of Lords and other inferiour ſubjects were given: as it was reſolved by all the Judges that they were not, for that the Act was to be intended to do no inferiour ſubject wrong, but the general words were to be intended of ſuch as might be intailed without preſudice of the ſubject; which is a ſtronger caſe than this, for beſides the preſudice of the inferiour Ordinary for his juriſdiction and for the ſubject for taking away his appeal, and drawing him from remote parts to his intollerable charge, where he might receive juſtice at home, the clauſe preceding of uniting, and latter particuler words do limit and erpound the generality of the former words.

Now that divers and many other Acts of Parliament, which are general in words, have upon conſideration of the miſchief, and all the parts of the Act (for the avoiding of the inconvenience and abſurdity that might follow) received a particular interpretation, it appeareth in our Books in caſes of far leſſe inconvenience and abſurdity.

Pl. Com. fo. 369. Stowels caſe. Pl. Com. in Stowels caſe fo. 369. the Preamble is to be conſidered, for it is the key to open the meaning of the makers of the Act, and miſchiefs which they intend to remedy. The Judges of the Law have ever in ſuch ſort peruſed the intents of the meaning of the makers of Acts of Parliament, as they have erpounded Acts general in words to be particular, where the intent hath bæn particular (which are the words of the Book:) and therefore upon that rule it is there adjudged, that where the ſtatute of 7 E. 6. is general; If any Receiver or Miniſter accountant, &c. receive of any perſon any ſumme of money for payment of any fees, &c. ſhall forfeit 6 s. 8 d. for every penny; that this do not extend according to the generality of the words to the Receiver of common perſons, becauſe theſe words ſubſequent be added (otherwiſe then he lawfully may by former laws and ſtatutes.) Now the Judges reſtrained the generality to a particular, to the Kings Receiver only: for that no law or ſtatute was formerly made concerning common perſons Receivers, &c. But in the caſe in queſtion, as well the precedent clauſe of reſtitution, as the ſubſequent clauſe erpreſſing offences in particular, and the words in the ſame general ſentence, viz. under your Highneſs, &c. and principally the cauſe of the making of this Act do qualifie the generality of the words. And yet notwithſtanding it was reſolved by all the Court in the ſaid caſe of Stradling, fo. 283. a. that the Receiver of common perſons were within the words of the ſaid ſtatute. But there it is ſaid, that if a man conſider in what point the miſchief was before the ſtatute, and what thing the Parliament meant to redreſſe by this, he ſhall perceive that the intent of the makers of the Act was to punish only the Miniſters of the King. And a little after the Judges ſay that the ſtile of that Act is. An Act for the true anſwer of the Kings Revenues. And by this alſo the intent of the makers of the Act is to be collected, and theſe be the words of the book, which is a far ſtronger caſe than the caſe in queſtion.

4 E. 4. f. 4. & 12. 4 E. 4. fo. 4. & 12, Every ſtatute ought to be erpounded according to the intent of them that made it, where the words thereof are doubtful and uncertain, and according to the rehearſal of the ſtatute; and there a general ſtatute is conſtrued particularly upon conſideration had of the cauſe of making the Act, and of the rehearſal of all the parts of the Act. To conclude this point with a general rule allowed by all laws in conſtruction of ſtatutes, Quamvis lex generaliter loquitur, reſtringenda tamen eſt, ut ceſſante ratione & ipſa ceſſet; cum enim ratio ſit anima vigorque ipſius legis, non videtur legiſlator id ſenſiſſe, quod ratione careat, etiamſi

etiamſi verborum generalitas prima facie aliter ſuadeat. Seeing then ſo many inconveniences againſt reaſon, and the meaning of the makers of the Act ſhould follow, it is evident that the generality of the ſaid words in the clauſe of Aſſignation ſhall (as they ought) be limited by the clauſe of Reſtitution, as hath been ſaid. And it agreeth not well with the ſtile of the High Commiſſion to deal in petty and inferiour cauſes. And for the recital of a Branch of this Act in the Statute of 8 Eliz. cap. 1. It referreth to the Act of primo it ſelf, and is only in the Preamble, and therefore doth neither increaſe nor diminiſh the ſame. But albeit they have conuſance and juriſdiction of enormous and heinous cauſes, according to the original inſtitution, yet cannot they puniſh the offender in the ſame by fine or impriſonment, unleſſe the ſame were puniſhable by fine or impriſonment before the making of the ſaid Act of 1 Eliz. by ſome Act of Parliament unrepealed at the making of this Act.

But it is ſaid (enormous) is uncertain; Surely in an Act whereof many of the makers are Lay and unlearned men, it hath been expounded by law to be equipolent to heinous, horrible and exorbitant. And this appeareth by the Statute of 2 E. 3. cap. 2 Commiſſion of Oier and Terminer, &c. ſhall not go out, but where the treſpaſſe is horrible. Now if ſuch Commiſſion be granted for a ſmall cauſe, a revocation thereof, which is a flat prohibition, doth lye, as it appeareth in the Regiſter 125. and the words thereof be, Quia non enormis læſio. Which word (enormis) in that Writ doth expreſſe this word [horrible] in the ſaid Act, and there is as great uncertainty in that caſe upon this word [enormis] to prohibit the Commiſſioners of Oier and Terminer, as in the caſe now in queſtion concerning the Eccleſiaſtical Commiſſion, and eſpecially in this Act of primo it ought to be taken to be horrible, exorbitant, & extra omnem normam; for that the High Commiſſioners do claim to ſend for all degrées of men and women, and out of all the parts of England or Wales, be the place never ſo remote, &c. But the Commiſſion of Oier and Terminer cannot be taken but in the proper County where the fact was done. And yet it is evident by all which hath been ſaid, that his Majeſty hath, and Queen Elizabeth before him had, as great and ample ſupremacie and juriſdiction Eccleſiaſtical as ever King of England had before them, and that had juſtly and rightly pertained to them by divers other Acts, and by the ancient laws of England, if the ſaid clauſe of Annexation in the ſaid Statute of 1 Eli. had never been inſerted. 2 E. 3. cap. 2.

This Act of 1 Eliz. prohibeth againſt them that ſhould by printing, writing, or words, maintain or defend the juriſdiction ſpiritual of any forein Prince, Prelate, &c. within this Realm; that every ſuch perſon being lawfully convicted by the Courſe of the Common law, ſhall for the firſt offence forfeit and loſe all his and their goods and chattels. And if any perſon ſo convicted ſhall not be worth of his proper goods and chattels to the value of 20 li. then ſuch perſon ſo convicted ſhall ſuffer impriſonment one whole year, &c. Now albeit upon the maintenance or defence of the Popes Supremacy depend ſo many miſchiefs as the principal ſcope of this and other Acts was utterly to aboliſh and extinguiſh the ſame, and that it is High Treaſon in the ſecond degrée: yet ſée how temperately this Act doth puniſh that moſt dangerous and damnable error. And albeit the proceedings of the Common law are reverſible by Writ of error; yet the Statute addeth two cautions, that no perſons ſhould be impeached for any of the offences by preaching, teaching, or words, unleſſe they be lawfully indicted within the ſpace of one half a year. And if any perſon be impriſoned, and be not indicted within half a year, then the perſon ſo impriſoned, ſhall be ſet at liberty. Now if the party offending in ſo high and ſupream an offence, as the maintaining of the Popes Supremacy, ſhall be puniſhed for the firſt offence ſo temperately, and with ſuch caution and limitation, it was never the meaning of the Statute to charge the ſubject with fine or impriſonment by the diſcretion of the Commiſſioners without limitation either of time or impriſonment, or quantity of fine leſſer crimes and offences, whereunto he was not ſubject before the making of this Act.

But

But if the meaning of the Makers of the Act had bæn to have inflicted newly upon the ſubiect not only fine & impriſonment, but by the ſame reaſon confiſcation of goods, forfeiture of lands, nay any corporal puniſhment, &c. they would not under ſuch cloudy and dark words have inflicted thoſe greater puniſhments for leſſer offences without ſome limitation, as they did for the greateſt offences of all, and not to have left leſſer offences to the abſolute and uncontrollable power of the High Commiſſioners by any ordinary mean.

If the High Commiſſioners might have fined and impriſoned men for offences againſt the Eccleſiaſtical lawes, to what end were the ſtatutes of 23 Eliz. 28. Eliz. &c. made againſt men for abſtaining and not coming to Divine ſervice, &c. and why did thoſe Acts inflict a penalty, of 20l. the month, and impriſonment &c. with a diſcharge of the penalty, &c. upon ſubmiſſion, if the High Commiſſioners might have fined and impriſoned them abſolutely without certainty of any ſum, or limitation of any time of impriſonment, and without any ability or power by ſubmiſſion or conformity to eaſe themſelves? And yet abſence from Divine ſervice is a mær Eccleſiaſtical cauſe, and the like may be ſaid of divers other Acts of Parliament of like nature.

Thus hath this ſtatute bæn plainly expounded by the parts of the ſame, according to the natural and genuine ſenſe, and the original inſtitution and juriſdiction of the High Commiſſion by force of the ſaid Act truly expreſſed.

And concerning the form of Commiſſions and practice by the High Commiſſioners in the reign of the late Quæn Eliz. by fining and impriſoning for adultery, fornication, ſimony, uſury, defamation, &c. it may be that ſuch fines have bæn impoſed, but, as we be informed, not one of them levied in all the reign of Quæn Eliz. by any judicial proceſſe out of the Exchequer in the time of Sir Edward Sanders, who was Chief Baron at the time of the making of the ſaid Act, Sir Robert Bell, Sir John Jefferies, Sir Roger Manwood, or Sir William Peryam Chief Barons of the Exchequer: So as in all the late Quæns time (as we be informed) no fine was levied, or any ſubiect in his body, lands or goods charged therewith, which would not have bæn by ſo many worthy men aſſiſted with divers other grave and learned Barons pretermitted to be either levied or written for by the Court, if by law the ſame ought to have bæn levied. And the ſubiects (for the greateſt part) being wrongfully fined, impriſoned, and injured by colour of the High Commiſſion, asked no advice to take any ordinary remedy, for that the High Commiſſioners (knowing the weaknes of their Authority) kept the Commiſſion ſecret, and contrary to law and juſtice ſuffered not the ſame to be inrolled in the Chancery, ſo as the ſubject lived under an unknown Commiſſion and Authority (& miſera eſt ſervitus ubi jus eſt vagum aut incognitum) untill of late the Lord Chancellor (as hath bæn ſaid) according to law cauſed the ſame to be inrolled; and very few upon ſerious conſideration took an exact ſurvey of all the parts of the Act of 1 Eliz. And this is the cauſe why their Preſidents (if they affirm truly) may be many, eſpecially againſt the weaker ſort: and the judgements and Preſidents in the Kings Courts concerning theſe matters, few, as they give out, charging the Judges of the Realm with Innovation. And yet ſome being intollerably grieved, ſometime to their utter undoing, by the High Commiſſioners, upon complaint made to the higheſt Courts of ordinary Juſtice in this Realm, the Judges upon conſideration had of the ſtatute of 1 Eliz. which is the foundation whereupon the High Commiſſion is grounded, have, as often as complaint hath bæn made, relieved them according to law and juſtice.

In Atmers caſe the whole Court of Exchequer in the late Quæns reign, judicially reſolved, being the Kings proper Court, that the High Commiſſioners could not puniſh any man for working on a Holy day, albeit it be a matter of Eccleſiaſtical conuſance, but ought by the true meaning of the ſtatute of 1 Eliz. to be puniſhed by the Dioceſan, which is to be ſæn of Record.

Taylors caſe Mich. 44 & 45 El. Rot. 1255. Simile 43 & 44 El. Rot. 503.

Alſo in the reign of Quæn Eliz. William Taylor Clerk, Parſon of Springfield in Eſſex did implead William Maſſy Gent. before the High Commiſſioners for giving unreverent ſpæches to the Miniſter, &c. for carrying his Corn on Holy days,

dayes, for not ſuffering the Parſon and Parishioners to come thorow his yard in Rogation Week in the perambulation, and not giving them a repaſt as uſually he had done, that he whiſtled and knocked on the Parſons Barn two, and ſaid he did it to make him muſique for his daughters Marriage, and many other Articles of like nature; and it was ruled upon open motion, and often debating by the whole Court of Common pleas, that the High Commiſſioners could not deal with ſuch inferiour offences, but are to be left to the proper Diocesan, who is to reform the ſame with leſſe charge and travel in the proper Dioceſſe. And thereupon a Prohibition was granted by the Court of Common pleas, whereby it appeareth, that they cannot hold plea of all Eccleſiaſtical cauſes.

The like Prohibition was granted out of the Common pleas in the ſaid late Queens reign, betweene Robert Pool Clerk Parſon of Winchelſey, and Thomas Gray, to the High Commiſſioners, for that they held plea for aſſaulting and laying violent hands on the ſaid Robert Pool being a Parſon, upon open motion and argument by the whole Court. Grayes caſe, Vid. infra p. 334. Trin. 44 El. Rot. 1233. in Com. Banco.

Hil. 3 Jac. Regis, in Communi Banco, betweene Lyn and Wats for promiſe of a yearly ſum in marriage. Simile 4 Eliz. Ro. 422. in Com. Banco.

* Trin 3 Jac. in Communi Banco, betweene Jeneway Parſon of T. in Eſſex, and Porter for defamation and laying violent hands on a Clerk. The like in the Kings Bench. Paſch. 29 Eliz. Rot. 100. & Paſch. 41 Eliz. ibid. Rot. 235.

a And concerning fine and impriſonment. Anno 9. Reginæ Eliz. which was about eight years after the ſtatute of 1 Eliz. Sir James Dier and divers other of the Judges were then living, that were preſent at the making of the ſaid ſtatute, Thomas Lee an Atturny of the Common pleas, being convented before the High Commiſſioners for hearing of a Maſſe, was by them in their proceedings committed to priſon, which matter being returned by Habeas Corpus, he was upon great conſideration had, by the Lord Dier and the whole Court of Common pleas diſcharged of his impriſonment, for that the high Commiſſion had no power to impriſon him in that caſe. * Tr. 3. Jac. in Com. Banco. Porters caſe. a Mic. 9. & 10 El. Rot. 1556. Lees caſe.

The like reſolution was in 18 Eliz. by the Lord Dier, and the whole Court of Common pleas, in the caſe of one Hinde, who being convented before the High Commiſſioners for Uſury, to anſwer, &c. was thereupon impriſoned by them, & by Habeas Corpus delivered, for that the impriſonment in that caſe was unlawful. 18 El. Dier fo. Hindes caſe.

By Warrant from the High Commiſſioners in the reign of Queen Eliz. directed to Richard Butler Conſtable of Aldrington in the County of Northampton, for attaching and arreſting the body of John Simſon of Aldrington aforeſaid, and bringing his body before the High Commiſſioners in caſe of Adultery with the wife of Edward Fuſſe, the Conſtable being aſſiſted with one William Johnſon ſervant of the ſaid Edward Fuſſe, the ſaid Conſtable with Johnſon came to a Widows houſe in Aldrington where the ſaid Simſon was, and the doors being open would have at eight of the Clock at night arreſted Simſon by the ſaid Warrant, which the ſaid Conſtable read unto him, notwithſtanding the ſaid Simſon reſiſted him, and in his own defence (and ſhewed how) ſlew the ſaid Johnſon that came in aid of the ſaid Conſtable. Now the queſtion before the Juſtices of Aſſiſe of that County, (Simſon being in the Goal therein) what his offence was? wherein the doubt reſted in this, whether the Conſtable might lawfully attach and arreſt the body of the ſaid Simſon, (which in law is an impriſonment) for if he had lawful authority to arreſt him, then the offence was wilfull Murder in killing one that came in aid of a Miniſter of Juſtice in execution of his office: but if the Conſtable had no lawful authority to arreſt his body by force of the High Commiſſioners Warrant, then it was but ſe defendendo, a ſmall offence, which doubt wholly conſiſted upon conſtruction of the ſtatute of 1 Eliz. for by the Letters Patents expreſſe authority is given to the High Commiſſioners to ſend for the body of any offendor, &c. by Purſevant, or by Warrant. The matter being weighty, and the ſaid Simſon being by the Coroners inqueſt indicted of wilful murder, ſuppoſing the ſaid Warrant to be lawful, the Juſtices of Aſſiſe thought not good to proceed againſt him at thoſe Aſſiſes, but deferred it till the next Aſſiſes: At what time, after this long time of deliberation, Simſons caſe before the Judges of Aſſiſe in Northamptonſhire, 42 El.

tion, and upon conference, it was reſolved, that the ſtatute of 1 Eliz. gave no power to the High Commiſſioners to make any Warrant to arreſt the body of Simpſon in that caſe, but ought to have proceeded by Citation: and therefore that Simpſon killing the ſaid Johnſon had committed no murder; and ſo the Jury upon his arraignment found him not guilty of murder according to the direction of the Court, as it appeareth by the Record it ſelf. And it was reſolved in Grayes caſe aforeſaid, that for the battery of a Miniſter they could not fine and impriſon.

Supra pag. 133. Grayes caſe.

Will. Thicknes caſe, in Communi Banco.

William Thicknes having the priviledge of the Court of Common pleas, had a Habeas Corpus to the Sheriff of London for his body, with the cauſe, he being under their cuſtody, who returned that the High Commiſſioners had committed him to their cuſtody by force of his Majeſties Commiſſion for cauſes Eccleſiaſtical, and of the ſtatute in that caſe provided, for that he was convicted before them of Adultery, and other contempts and enormities apperteining to Eccleſiaſtical conuſance. And the caſe being debated in open Court, he was diſcharged of his impriſonment, for that by the ſtatute of 1 Eliz. they could not impriſon him.

25 H. 8. cap. 19.

By the ſtatute of 25 H. 8. cap. 19. it is enacted, that for lack of Juſtice at or within any of the Courts of the Archbiſhops of this Realm, or in any of the Kings Dominions, it ſhall be lawful to the parties grieved to appeal to the Kings Court of Chancery, and that upon every ſuch appeal Commiſſions ſhall be directed under the Great Seal to ſuch perſons as ſhall be named by the Kings Highneſs, &c. which Commiſſioners ſo by the Kings Higneſſe, &c. to be named or appointed, ſhall have full power and authority to hear and finally determine ſuch Appeal, and that ſuch judgement and ſentence as the ſaid Commiſſioners ſhall make and decree in and upon ſuch Appeal, ſhall be good, effectual, and definitive. Which words, albeit they be more general, and with leſſe reference to the precedent matter, than the Act of 1 Eliz. yet have ſuch Commiſſioners no colour to fine or impriſon any: but where the words be [and ſuch judgement and ſentence as the ſaid Commiſſioners ſhall make and decree] theſe general words have theſe words implicite annexed to them [according to the Eccleſiaſtical laws] ſhall be good, effectual, &c. So in the ſtatute of 1 Eliz. ſuch words are implicite to be added to the ſaid clauſe, viz. That the High Commiſſioners ſhall execute the premiſſes according to the ſaid Letters Patents by the rule of the Eccleſiaſtical law or Authority of Parliament. And ſince the High Commiſſion was inrolled and made publique, many prohibitions have been granted according to Law and Juſtice upon complaint made by the parties grieved.

And in the reign of the ſaid late Queen Eliz. it was reſolved, that the High Commiſſion ſhould be limited to certain particular enormious and exorbitant cauſes, which if it were purſued would breed great quiet and repoſe within the Realm.

See Hil. 17 El. Rot. 1402. Inter Hen. Evans Clericum queren. & Thomam Jefferies Clericum Defendant.

In the reign of the ſaid late Queen a Prohibition was granted by Sir James Dier Chief Juſtice, and the whole Court of Common pleas, 10 Februarii Anno 21 Eliz. to the High Commiſſioners for that they did hold plea de jure Advocationis.

a Hil. 3. Jac. b Mich. 41 & 42 El. Rot. 2919. and an Attachment thereupon Mic. 42 & 43 El. Rot. 3332.

a And in my Lord Andersons time in the reign of Queen Elizabeth the Court of Common pleas granted divers Prohibitions, as it appeareth before, and two of ſpecial note b between Baker and Broughton, and another between Blackheath and the Biſhop of Glouceſter. And in my Lord Gaudies time who ſucceeded the Lord Anderſon and injoyed his place but a ſhort time, yet in that time the Court of Common pleas granted Prohibitions alſo to the High Commiſſioners.

Many other Prohibitions have been granted to the High Commiſſioners out of the Court of Common pleas of after times.

In the Kings Bench there are alſo many Prohibitions granted to the High Commiſſioners in the times of the Lord Wray, Lord Popham, Lord Fleming, &c. which are to the ſame effect as thoſe which have been cited be.

And we will conclude with the confeſſion of the Lord Archbiſhop Bancroft

croft himſelf in his 22 Article, his own words being: Of latter days, whereas certain lewd perſons, (two for example ſake) one for notorious adultery and other untollerable contempts, and another for abuſing of a Biſhop of this Kingdom by threatning ſpeeches, and ſundry railing tearms, no way to be endured, were thereupon fined and impriſoned by the High Commiſſioners, till they ſhould enter into bonds to perform further orders of the ſaid Court, the one was delivered by *Habeas Corpus* out of the Kings Bench, and the other by a like Writ out of the Common Pleas, and ſundry other Prohibitions have been likewiſe awarded to his Majeſties ſaid Commiſſioners upon theſe ſuggeſtions, that they had no authority to fine or impriſon any man, &c.

See the Articles and anſwers in the 2 part of the Inſtitutes in the Expoſition of *Articuli cleri*, &c.

By this Article it appeareth, that before the time of the Chief Juſtice of the Court of Common Pleas that now is, and before divers of the Judges that now be, were called to be Judges by the Judgement and reſolution both of the Court of Kings Bench and Common Pleas by Habeas Corpus, the parties that were fined and impriſoned by the High Commiſſioners in caſe of Adultery and ſcandal of a Biſhop, &c. were by the Law diſcharged, for that the fining and impriſonment of them was unlawful.

And theſe were the reſolutions of the whole Court of Common Pleas Paſch. 9 Jacobi Regis, upon often conference and mature deliberation, and accordingly they proceeded.

The Prerogative Court of the Archbiſhop of *Canterbury*.

Curia Prærogativa Archiepiſcopi Cantuarienſis.

This is the Court wherein all Teſtaments be proved, and all Adminiſtrations granted, where the party dying within his Province hath bona notabilia, in ſome other Dioceſs than where he dieth, which regularly is to be to the value of 5 l. but in the Dioceſs of London it is 10 l. by compoſition.

The Biſhops, Lords and Commons aſſented in full Parliament, that the King, his heirs and ſucceſſors might lawfully make their Teſtaments, and that execution ſhall be done of the ſame, whereof ſome doubt was made before. See Rot. Par. 1 H. 5. nu. 13. the Teſtament of King H. 4 and his executors refuſed, the Archbiſhop of Canterbury was to grant Adminiſtration with the Teſtament annexed to the ſame. See 1 H. 6. nu. 18. the laſt Will and Executors of H. 5. 10 H. 6. nu. 27.

Rot. Par. 16 R. 2. nu. 10. not in print.

When the King is made an Executor of the laſt Will and Teſtament of any other, the King doth appoint certain perſons to take the execution of the Will upon them (againſt whom ſuch as have cauſe of ſuit may bring their Action) and appointeth others to take the Account. See Rot. Par. 15 H. 6. Katherine Queen Dowager of England, mother of H. 6. made her laſt Will and Teſtament, and thereof conſtituted King H. 6. her ſole Executor. And thereupon the King appointed Robert Rolleſton, Clerk, Keeper of the great Wardrobe, John Merſton, and Richard Alreed Eſquires, to execute the ſaid Will by the overſight of the Cardinal, the Duke of Glouc. and the Biſhop of Linc. or two of them to whom they ſhould account.

Rot. Par. 15 H. 6. nu. 32. Obiit 2 Junii 1436. apud Bermondſey.

The Probate of every Biſhops Teſtament or granting of Adminiſtration of his goods, although he hath not goods but within his own juriſdiction, doth belong to the Archbiſhop.

The like Court the Archbiſhop of York hath.

From this Court the Appeal is to the King in Chancery. Now touching the juriſdiction of this Court, and the Conſiſtories of Biſhops, &c. ſuch points as have been judicially reſolved, are neceſſary to be remembred, both for the ſafety of the Judge, and the benefit of the party intereſted.

If a man die inteſtate having bona notabilia in divers Dioceſſes, the Judge of this Court hath uſed to aſſeſs a convenient ſum to be imployed in pios uſus, but with theſe limitations following: It muſt be after Adminiſtration granted, and the Inventory made and returned, to the end the Eſtate of the Inteſtate may be known. 2. The Adminiſtrator before any aſſeſſment muſt be called to it, to the intent the Judge may be informed of the true ſtate of the Inteſtate, and of his children and kindred, for whoſe ſuccour and reliefe there is great piety. The 3. the aſſeſſment muſt be in particular, how much, to whom, and to what uſe. 4. There muſt a publick Act be made of it before any payment be made 5. Payment muſt be made according to the Act. Laſtly, the Judge ought not directly or indirectly to take any thing thereof to his own uſe, nor for the aſſeſſment thereof, or entring the publick Act, and if he doth, it is Extortion.

Mich. 20 Jac. in Camera ſtellata.

And Termino Mich. 20 Jacobi Regis, Sir John Bennet Judge of this Court, for not obſerving theſe Rules was ſentenced in the Star-Chamber for Extortion, and fined at twenty thouſand pounds, impriſoned, and diſabled ever after to bear an office, as by the ſentence appeareth. And the like orders and rules muſt be obſerved in all reſpects (ſaving the two former) in commutation of penance, which two former do not concern this matter. And theſe rules as well concerning aſſeſſments in pios uſus, upon granting of Adminiſtrations, as for commutation of penance, may ſerve for the direction of all the Ordinaries and Judges in Eccleſiaſtical Courts in England.

21 H.8. cap. 5. Mic. 6 Jac. Reg. Rot 1301. in Communi Banco.

There was an Act made Anno 21 H. 8. concerning fees for probate of Laſt Wills and Teſtaments, and granting of Adminiſtrations. In the caſe of James Rowſe Commiſſary of the Arch-deacon of Huntingdon, in an Information againſt him by Edmond Neale, for Extortion upon the ſaid Statute of 21 H. 8. whereunto he pleaded not guilty, and was found guilty, the point in queſtion upon the Information was, if the Probate be not written upon the Teſtament it ſelf, but upon the Tranſcript ingroſſed, whether the taking of a fee by the Defendant for the ingroſſing were within the ſaid Statute? And it was upon debate in open Court reſolved by the Chief Juſtice, and the reſt of the Juſtices, Walmſly, Warburton, Foſter and Daniel, that ſuch a fee taken for the ingroſſing was within the Statute, for that the Act is in the Negative. And if the Executor requeſt any to ingroſs the Teſtament, he muſt agree with him, that he ſo requeſt (or * bring one ready ingroſſed with him as he did in the caſe in queſtion, which is a ſafe and ready way) but the Ordinary or Commiſſary ought not to exact a fee for it of the party as a fee due to him, for divers cauſes. Firſt, for that the words are expreſs for the Probation, &c. or for Regiſtring, Sealing, VVriting, Praiſing, making of Inventories, &c. which word [writing] extends not to this caſe. Secondly, the words be, or any thing concerning the ſaid Probate, and when the Seal and Probate is put to the Tranſcript, this concerns the Probate, for the Probate is not put to any other writing. Thirdly, if ſuch a conſtruction ſhould be made, that this caſe is out of the Statute, this beneficial Law ſhould be illuſory and vain; for if the Ordinary or his Commiſſary might take what he would for the ingroſſing by his Clerks as a fee due to him, the Act ſhould be of none effect; and the manner of the preciſe penning of the Act and the certainty of the fees, and not above, ſhould be all in vain. And the Ordinary, if he will, may anner the Probate to the Teſtament it ſelf, as ſeeing he can have no other fee than is in the ſtatute, it may be hereafter he will do: but for the miſreciting of the Act of 21 H.8. in the Information, Curia adviſare vult: and this reſolution extending to all Courts of Eccleſiaſtical Juriſdiction that have Probate of Teſtaments, we thought it neceſſary to make a memorial of it.

See the 3. part of the Inſt. cap. Extortion.

See the Act.

* Note this.

See the words of the Act at large.

The

The Court of the Arches of the Archbiſhop of Canterbury.

This Court is called Curia de Arcubus, and hath been anciently holden in Bow Church of London. For I read of it in a Record of a Prohibition Termino Hil' coram Rege Anno 7 E. 1. Rot. 8. In Curia Chriſtianitatis coram Decano de Arcubus London. Of Bow Church in London, where the Court hath continually been kept, which and 12. other Pariſhes in London, whereof Bow is the chief, are within the peculiar juriſdiction in ſpiritual cauſes of the Archbiſhop of Canterbury, and exempt from the Biſhop of London.

Hil. 7 E.1. coram Rege Rot. 8. Paſch. 12 E.1. in Banco. Eſſex. Gulielmus de Mortuo mari Clericus, &c. See Dier 7 Eliz. 241.

The Judge of this Court is called the Dean of the Arches, unto whoſe officiality in Spiritual cauſes to the Archbiſhop of Canterbury is annexed the peculiar juriſdiction of theſe 13 Pariſhes. He hath ordinary juriſdiction in Spiritual cauſes of the firſt inſtance, and by Appeal through the whole Province of Canterbury, as it appeareth by the Statute of 24 H. 8. cap. 12. His power to call any perſon for any cauſe out of any part of his Province in the Dioceſs of any other, unleſs it be upon appeal, is reſtrained by the ſtatute of 21 H. 8. cap. 9. This Court in the Statute of 25 H. 8. cap. 19. is called the Court of the Arches or Audience of the Archbiſhop of Canterbury: and from this Court of the Arches the Appeal is to the King in Chancery by the ſaid Act of 25 H. 8.

24 H.8.cap.12. 1 Eliz.cap.1. 21 H.8.cap.9. 25 H.8.cap.19.

The Court of Audience. *Curia Audientiæ Cantuarienſis.*

This Court is kept by the Archbiſhop in his Palace, and medleth not with any matter betwéen party and party of contentious juriſdiction, but dealeth with matters pro forma, as confirmations of Biſhops elections, conſecrations, and the like, and with matters of voluntary juriſdiction, as the granting of the gardianſhip of the Spiritualties ſede vacante of Biſhops, admiſſion and inſtitution to Benefices, diſpenſing with banes of matrimony, and ſuch like.

The Court of the Faculties.

This is alſo a Court, although it holdeth no plea of controverſie (like the Court of Audience next before.) It belongeth to the Archbiſhop, and his Officer is called Magiſter ad Facultates. And his power is to grant Diſpenſations, as to marry, to eat fleſh on days prohibited, (and ſo may every Dioceſan) the Son to ſucceed the Father in his Benefice, one to have two or more Benefices incompatible, &c. It is called Faculties in the Statute of 28 H. 8. which in one ſenſe ſignifieth a diſpenſation. So as facultates, (in this ſenſe) diſpenſiones & indulta are ſynonyma.

Vi. 28 H.8.cap.16 21 H.8.cap.13. 5 Eliz.cap.16.

This authority was raiſed and given to the Archbiſhop of Canterbury by the Statute of 25 H. 8. cap. 21. whereby authority is given to the Archbiſhop and his ſucceſſors to grant Diſpenſations, faculties, &c. by himſelf or his ſufficient and ſubſtantial * Commiſſary or Deputy for any ſuch matter, whereof heretofore ſuch diſpenſations, faculties, &c. then had been accuſtomed to be had at the See of Rome, or by authority thereof. [a] This branch of this Act you ſhall find pleaded Lib.plac.Co.pag.512,513.

* Commonly called the Maſter of the Faculties.

[a] Tri. 44 Eliz. in Com. Banco. rot. 1525. l. 4. fo. 117. Lib.pl.Co.pag. 512,513.

[b] Concerning the power of the Archbiſhop to grant Diſpenſations to any to eat Fleſh on Fridays, Saturdays, Embring dayes, Vigils and Lent, the ſame is limited by the Statute of 5 Eliz.cap.5. And the penalty of 5 Eliz. in that caſe is diminiſhed and made leſs by 35 Eliz.cap.7. Note the Statute of 5 Eliz. concerning eating of fleſh on Wedneſdays is repealed by 27 Eliz.cap.11. which Act of 27 Eliz. is affirmed by the Act of 35 Eliz. and by 21 Jac. cap. 28. and expreſſly by the Statute of 3 Caroli cap. 4.

[b] 2 E.6 cap.19. 5 E.6.cap 3. See the 3 part of the Inſtit.cap. Dier pag.200. 5 Eliz.cap.5. 35 Eliz.cap.7. 27 Eliz.cap.11. Lib.pl.Co.371. 27 Eliz.cap.11. 3 Caroli cap. 4. Vid. 35 Eliz. c.7.

Curia Peculiarum. The Court of Peculiars.

The Archbiſhop of Canterbury hath a peculiar Juriſdiction in divers pariſhes within the City of London and other Dioceſſes, &c.

The Conſiſtory Courts of the Archbiſhops and Biſhops.

See Lit. Sect. 133, 136, 648.

The Conſiſtory Court of every Archbiſhop and Biſhop of every Dioceſs in Eccleſiaſtical cauſes is holden before his Chancellor in his Cathedral Church, or before his Commiſſary in places of the Dioceſs far remote and diſtant from the Biſhops Conſiſtory, ſo as the Chancellor cannot call them to the Conſiſtory, without great travail and veration: and he is called Commiſſarius foraneus. From theſe the Appeal is to the Archbiſhop of either Province reſpectively: when Conſiſtories of Archbiſhops and Biſhops began within this Realm, ſee before in the Chapter of the Tourn of the Sheriff.

24 H. 4. cap. 12.

Ro. claus. 30 H. 3. m. 4. mandatum eſt Thom. de Stanford, &c. Ro. Pat. 13 E. 1. m. 21. Rex licent. dedit Epiſcop. Bangor, &c.

It appeareth by many Records in the reigns of H. 3. and E. 1. (as taking ſome one or two examples for many) that by the law and cuſtom of England no Biſhop could make his Will of his goods or chattels coming of his Biſhoprick, &c. without the Kings licenſe. The Biſhops that they might freely make their Wills, yielded to give to the King after their deceaſes reſpectively for ever ſix things. 1. * Their beſt Horſe or Palfrey with bridle and ſaddle. 2. A Cloak with a Cape. 3. One Cup with a cover. 4. One Baſon and Ewer. 5. One Ring of Gold. 6. His Kennel of Hounds. For theſe a Writ iſſueth out of the Exchequer after the deceaſe of every Biſhop: For example: Rex, &c. Vic. Eborum. Præcipimus tibi, quod non omit' propter aliquam libertatem, quin etiam ingred' & diſtring' omnes executores teſtamenti & ultimæ voluntatis reverendiſſimi in Chriſto patris Matthæi nuper Archiepiſcopi Eborum defuncti, ac adminiſtratores & occupatores bonorum & catallorum quæ fuer' dicti nuper Archiepiſcopi, necnon hæred' & tenent' terrarum & tenementorum quæ nuper ſua fuer' per omnes terras & catalla ſua in balliva tua. Ita quod nec ipſi nec aliquis per ipſos ad ea man' appon, donec al' inde tibi præceperimus. Et quod de exitibus earundem terrarum nobis reſpondend', & quod habeas corpora eorum coram Baronibus de Scaccario noſtro apud Weſtm' à die Paſchæ in tres ſeptimanas ad reſpondend' nobis de uno optimo equo ſive palfrido cum cello & fræno. Una chlamyde ſive cloca cum capella. Uno cipho cum coopertorio. Uno pelve cum levatorio ſive aquar' & uno annulo aureo, nec non * muta canum quæ nuper fuer' ejuſdem nuper Archiepiſcopi tempore mortis ſuæ; & quæ ad nos ratione prærogativæ noſtræ ſpectant & pertinent, & de precio ſive valore inde, unde nobis nondum eſt reſponſ. Et habeas ibi tunc nomina executorum & aliorum prædict' & hoc Breve.

Ro. claus. 30 H. 3. m. 4. mandatum eſt Thom. de Stanford, &c.

Ro. Pat. 13 E. 1. m. 21. Rex licent. dedit Epiſcop. Bangor, &c.

* It is ſaid that this was given by the Biſhops being ſecular perſons Eccleſiaſtical for all the ſecular Clergy.

* *Mutes de Chiens* of mait cometh *muta*, ſignifying a Kennel.

The moſt ancient of this kind that we find and remember (but certainly there were ſuch Writs before) is inter Memoranda de Scaccario Anno 2 E. 2. the Biſhop of Bathe and Wells caſe, Tr. 36 E. 3. ibid. Inter comia. The Biſhop of Cheſters caſe. Hil. 5 E. 4. ibid. adjudge upon demurrer, that the duty being to the King after the deceaſe of every Biſhop, it extendeth to an Archbiſhop, the Archbiſhop of York's caſe, for every Archbiſhop is a Biſhop. It is ſometimes called multura or mulctura de Epiſcopis, ſometime monutier, &c. The King by verdict of twelve recovered ten thouſand Marks againſt the Biſhop of Norwich for that he proſecuted againſt the Abbot of S. Edmonds Bury to appear before him againſt the Kings Prohibition, for which it was adjudged that his Temporalties ſhould be ſeiſed, and his Body taken.

Int. com. de Hil. 2 E. 2. in Scacear. Proces verſ. Epiſc. de Bath & Wells.

Mich. 19. E. coram Rege Rot. 157. Norf.

Tr. 21 E. 3. Rot. 170. coram Rege.

21 E. 3. fo. 60.

† 3 R. 2. cap. 3. 7 H. 4. cap. 12. 1 H. 5. cap. 7. Rot. Par. 6 H. 4. nu. 48. 4 H. 6. nu. 29.

† Upon conſideration had of the Statutes of 3 R. 2. 7 H. 4. 1 H. 5. & Rot. Parl. 6 H. 4. nu. 48. & 4 H. 6. nu. 29. If an Alien or Stranger born be preſented to a Benefice, the Biſhop ought not to admit him, but may lawfully refuſe him: which we have added, for that the Abridgements or late Impreſſions may deceive you.

The

The Court of the Arch-deacon, or his Commissary.

This Court is to be holden where and in what places the Arch-deacon either by prescription or composition hath jurisdiction in Spiritual causes within his Arch-deaconry. And from him the Appeal is to the Diocesan. He is called Oculus Episcopi. 24 H.8.cap.12.

In some Acts of Parliament and many Records and Histories you shall read of the Bishops Pall, Pallium Episcopale. It is a Hood of white Wooll, to be worn as Doctors Hods be upon their shoulders, with four Crosses woven into it, &c. the form and colours thereof you may see in the Book De antiquitate Britannicæ Ecclesiæ pag. 1. for a Pall is the Arms belonging to the See of Canterbury, and therefore expressed there and commonly in other places. 20 H.8. c.20,&c. Vide Cassaneus 4 part. Catalogi gloriæ mundi fol. 103.2. 26 Consideratio ubi legas, si placet, multa de pallio.

Palla est vestis qua Altare cooperitur, viz. ut lineus pannus consecratus qui super Altare ponitur, super quem extenditur Corporale. Vocabular. juris.

The Clergy petitioned in Parliament, that of every Consultation conditional, the Ordinary may of himself take upon him the true understanding thereof, and therein proceed accordingly. Parl. 51 E. 3. nu. 83.

Whereunto the Kings answer was, That the King cannot depart with his right, but to yield to his Subjects according to Law. *Nota hoc, & finde bene.*

The Court of Delegates, and consequently of Appeals.

It is so vulgarly called, because these Delegates do sit by force of the Kings Commission under the Great Seal upon an Appeal to the King in the Court of Chancery in three Cases. First, when a sentence is given in any Ecclesiastical cause by the Archbishop or his Official. Secondly, when any sentence is given in any Ecclesiastical cause in places exempt. Thirdly, when a sentence is given in the Admiral Court in suits civil and marine by the order of the Civil Law. And these Commissioners are called Delegates, because they are delegated by the Kings Commission for these purposes. 25 H.8.c.19.

Now because we have generally spoken of Appeals in Ecclesiastical causes, which are grounded upon Acts of Parliament, it shall be pertinent to our purpose to set down the resolution of the Judges, and of the Learned in the Ecclesiastical Law, which doth sum up in what causes, from what Courts, & in what time Appeals are to be made, and other necessary incidents concerning the same, as the Lord Dier under his own hand hath reported, but are left out of the Print, and yet worthy to be known and published, which you shall hear in his own words and language.

Of Appeals.

First, in cases Testamentary, Matrimony, and Tythes, from the Arch-deacon or his Official, if the matter be there commenced, to the Bishop of the Diocese, and from the Bishop Diocesan or his Commissary in such case, or if the matter be there commenced, within fifteen days after sentence given, to the Archbishop of the Province, and no further. Appeals. Anno 24 H.8. ca.12.

Item, From the Archdeacon or Commissary of the Archbishop, if the matter be there commenced within fifteen days, &c. to the Audience or Arches of the said Archbishop: and from thence within other fifteen days, &c. to the Archbishop himself, and no further. And if the case be commenced before the Archbishop, then to be there definitively determined without further appeal. See infra, this is altered by the Statute of 25 H. 8. in the next page.

Item, Where the matter toucheth the King, the Appeal within fifteen days to be

be made to the higher Convocation houſe of that Province, and no further, but finally to be there determined.

25 H.8.cap.19. A general Prohibition, that no Appeals ſhall be purſued out of the Realm to Rome, or elſewhere.

Item, a general Clauſe that all manner of Appeals, what matter ſoever they concern, ſhall be made in ſuch manner, form and condition within the Realm, as it is above ordered by 24 H.8. in the three Cauſes aforeſaid; And one further degree in Appeals for all manner of Cauſes is given, viz. from the Archbiſhops Court to the King in his Chancery, where a Commiſſion ſhall be awarded for the determination of the ſaid Appeal, and from thence no further.

Vide ſupr. pag. præcedent.

Item, that perſons exempt ſhall likewiſe purſue their Appeal in the Chancery, ut ſupra, and not to the Archbiſhop.

Note, in caſe where a ſentence is given by Commiſſioners delegates by the Prince, as by the late Viſitors, Anno 1 Eliz. the party grieved appealing, ſuch Appeal is out of the Orders preſcribed by the ſaid Statutes, and the Prince in that caſe may grant a new Commiſſion to others to determine that Appeal. Et ceo fuit fait per lopinion del pluſors des Juſtices en le caſe de Goodman deprive del Deanery de Wells.

Nota, Stephen Gardener Eveſque de Winton, fuit deprive al Lambeth per Commiſſion del Roy E. 6. fait a 10 perſons proceeding ſur ceo ex officio mero mixto vel promoto omni appellatione remota ſummarie de plano, abſque omni forma & figura judicii, ſola facti veritate inſpecta.

This caſe is in print, Dier fol. 209.a. Et vide Mich. 3 & 4 Eliz. Coveney Preſident del Novel Colledge in Oxon. deprive per le Eveſque de Winton, Viſitor del dit Colledge, & exempt de tout juriſdiction ordinary fait appeale al Roy in ſon Chancery, & Commiſſion illonque grant à A. Browne & Weſton Juſtices, que ſur conference ove auters Juſtices & Civilians, reſolve que le appeale ne gift, ne aſcun auter remedie pur le appellant pur ceo que ceſti caſe fuit hors del dit Statute de 24 & 25 H. 8. car ceſt deprivation eſt mere temporal, & come per ley prov'. Ex quo ſequitur, que uni aſſiſe gift, &c.

Nota, in appellis per Doctorem Lewes Judic' Admiral' & al', &c. Foraſmuch as an Appeal is a natural defence, it cannot be taken away by any Prince or power, and in every caſe generally when ſentence is given, and appeal made to the Superior, the Judge that did give the ſentence is bound to obey the appeal, and proceed no further until the Superior hath examined and determined the cauſe of appeal. Nevertheleſs where this clauſe (appellatione remota) is in the Commiſſion, the Judge that gave ſentence is not bound to obey the appeal, but may execute his ſentence and proceed further, until the appeal be received by the Superior, and an Inhibition be ſent unto him: for that clauſe (appellatione remota) hath three notable effects. The firſt is, that the Juriſdiction of the Judge that gave ſentence, is not by the appeal ſuſpended or ſtopped, for he may proceed, the ſame notwithſtanding. The ſecond, that for proceeding to execution or further proces he is not puniſhable. The third, that thoſe things that are done by the ſaid Judge after ſuch appeal cannot be ſaid void, for they cannot be reverſed per viam nullitatis.

* Parliam. at Clarendon 10 H. 2. cap. 8. Mat. Par. pa. 97.

But if the appeal be juſt and lawful, the ſuperior Judge ought of right and equity to receive and admit the ſame, as he ought to do Juſtice to the Subjects. And ſo if the cauſe of the appeal be juſt and lawful, he ought to reverſe and revoke all mean Acts done after the ſaid appeal in prejudice of the appellant. Thus far the Report of my Lord Dier truly tranſlated.

* Rot. clauſ. in dorſ. ann. 8 H. 3. part 1. m. 29. Rex Dublin. Archiepiſc. &c. Rot. Par. 18 E. 1. Rot. 1. William de Valentia. & Rot. 3. nu. 39. Will. de Martingham &c. See Hovenden fol. 284.

* At the Parliament holden at Clarendon called Aſſiſa de Clarendon Anno 10 H. 2. cap. 8. the forms of Appeals in cauſes Eccleſiaſtical, are ſet down within the Realm, and none to be made out of the Realm. Ne quis appellat ad dominum Papam. * Rex ægrè tulit appell' ad Papam in cauſa Baſtardiæ, ut contra dignitatem Regis de Conſilio igitur (the Record ſpeaking in the perſon of the King) magnatum & fidelium nobis aſſiſtent, vobis mandamus, firmiter injungentes quatenus non obſtante appellatione præmiſſa non differatis pro eo ſententiam, &c. So as the firſt Article of the Statute of 25 H. 8. concerning the

prohi-

prohibition of Appeals to Rome is declaratory of the ancient Law of the Realm.

* And it is to be obſerved, that the firſt attempt of any appeal to the Sée of Rome out of England was by Anſelm Biſhop of Canterbury, in the reign of William Rufus, and yet it took no effect.

* Hayward Doctor of the Civil and Canon Law in the life of William 2.

Sée 8 Eliz. cap. 5. an appeal in Civil and Marine cauſes before the Lord Admiral, &c. a ſentence before Commiſſioners delegates is final. 8 Eliz. cap. 5.

Sée before pag. 125. upon a ſentence given by the Conſtable and Marſhal proceeding by the Civil Law in cauſa Armorum, there lieth an appeal to the King, but none of the ſaid Statutes extend to this kind of appeal.

Sée Rot. Cl. Anno 30 H. 3. part 2. m. 11. de Appellatione pro Rege fac' in electione Abbatiſſæ de Shaftesbury.

The Court of the Commiſſioners of Review *ad Revidendum.*

Albeit the ſaid Acts of 24 H. 8. and 25 H. 8. do upon certain appeals make the ſentence definitive as to any appeal, for the words be [ſhall be definitive] and that no further appeal ſhould be had; yet the King after ſuch a definitive ſentence, as ſupreme Head, may grant a Commiſſion of Review, ad revidendum, &c. for two cauſes. 1. For that it is not reſtrained by the Statute. 2. For that after a definitive ſentence the Pope as ſupreme Head by the Canon Law uſed to grant a Commiſſion ad revidend, and ſuch authority as the Pope had, claiming as ſupreme Head, doth of right belong to the Crown, and is annexed thereunto by the Statutes of 26 H. 8. cap. 1. and 1 Eliz. cap. 1. And ſo it was reſolved in the Kings Bench Trin. 39 Eliz. where the caſe was, that ſentence being given in an Eccleſiaſtical cauſe in the Country, the party grieved appealed according to the ſaid Act of 25 H. 8. to the Archbiſhop, before whom the firſt ſentence was affirmed. Whereupon according to the Statute of 25 H. 8. he appealed to the Delegates: before whom both the former ſentences were repealed and made void by definitive ſentence, and thereupon the Queen as ſupreme Head granted a Commiſſion of Review, ad revidend, the ſentence of the Delegates. And upon this matter a Prohibition was prayed in the Kings Bench, pretending that the Commiſſion of Review was againſt Law, for that the ſentence before the Delegates was definitive by the Statute of 25 H. 8. But upon mature deliberation and debate the Prohibition was denied, for that the Commiſſion for the cauſes aboveſaid, was reſolved to be lawfully granted. In this caſe I being then the Queens Attorney, was of Counſel to maintain the Queens power. And preſidents were cited in this Court in Michelots caſe, Anno 29 Eliz. and in Goodmans caſe, and Huets caſe, in 29 Eliz. alſo. Sée the Statute of 8 Eliz. cap. 5. and obſerve like words in that Statute, ut ſupra.

24 H. 8. ubi ſup. 25 H. 8. ubi ſup.

Trin. 39 Eliz. in the Kings Bench Hollingworths caſe. Lib. Inter Raſt. fol. 16 Appeal to Rome. Ibid. Rome 389.

Upon a ſentence given by the High Commiſſioners, a Commiſſion of Review may be granted to and for the party grieved, as by an expreſs clauſe within that Commiſſion appeareth. And if no ſuch clauſe had been therein, yet a Commiſſion of Review might have been granted: Quia ſicut fontes communicant aquas fluminibus cumulativè, non privativè; ſic Rex ſubditis ſuis juriſdictionem communicat in cauſis Eccleſiaſticis vigore Statuti in hujuſmodi caſu editi & proviſi cumulativè, non privativè, by conſtruction upon that Act.

The High Commiſſion.

Le Court des Conſervatores des priviledges de St. *Johns* de *Jeruſalem, &c.*

There were two Courts holden coram Conſervatoribus privilegiorum, the one Hoſpitaliorum, and another Templariorum. Of whoſe juriſdiction, and of their reſtraint to grant any general Citations priuſquam exprimatur ſuper qua re fieri

West.2.cap.43. fieri debeat citatio, & ſi viderint hujuſmodi conſervatores quod petatur citatio de aliqua re cujus cognitio ſpectat ad forum regium, hujuſmodi conſervatores nec citationes faciant nec cognoſcant, as by the Statute of W. 2. appeareth.

See the Second part of the Inſtitutes, the Expoſition upon that Statute.

The Templers were diſſolved in 4 E. 2. and the Hoſpitlers in 32 H. 8. ſo as theſe Courts are determined.

Now for a concluſion concerning England, I have reſerved to ſay ſomewhat for the honour, & ſupreme Eſtate of both the Relatives of our Soveraign Lord the King, and of this his Kingdom, which I conceive to be neceſſary to that which in this part of the Inſtitutes we have taken in hand, for that it graceth and ſtrengtheneth all the reſt.

24 H.8 cap.12. By the whole Parliament of 24 H. 8. wherein, beſides, the Archbiſhops and Biſhops of the Realm, there were 29 Abbots and Priors Lords of Parliament: It was reſolved, and ſo declared by an Act, That by divers and ſundry old antique Hiſtories, and Chronicles, it is manifeſtly declared, and expreſſed, that this Realm of England is an Empire, and ſo hath been accepted in the world, &c.

Vid. ſtat. de 28. cap.2. in Hibernia. But againſt the truth hereof, oppoſition hath been made. Firſt, that this is the only Parliament that hath affirmed it. Secondly, that this Declaration is unjuſt and untrue, and that Hiſtory or Chronicle doth not affirm the ſame.

As to the firſt I anſwer: that one Act of Parliament is inſtar omnium, being a proof of the unanſwerable and higheſt nature, but this is not the only: for ſo much in effect (as to this point) is affirmed by all the Lords Spiritual and Temporal, and the Commons by Authority of Parliament long before the reign of H. 8. that the Crown of England hath been ſo free at all times, that it hath been in no Earthly ſubjection, but immediately ſubject to God in all things touching the regalty of the ſame Crown, and to no other.

Stat. de 16 R.2. cap.5. An. domini 1392.

Rot.Clauſ. 3 E. 2. m.6. Publique Notaries made by the Emperor claimed de jure to exerciſe their offices here in England, but becauſe it was againſt the dignity of a ſupreme King, they were prohibited by the Kings Writ.

Bracton who wrote in the reign of H.3 Lib.1.cap.8. nu.5. Anno dom. 1270. And long before, theſe by the ancient Law of the Crown of England, were due to the King. Omnis quidem ſub rege, & ipſe ſub nullo, ſed tantum ſub Deo. (Et ibidem paulo poſt eodem numero) Ipſe autem rex non debet eſſe ſub homine ſed ſub Deo, &c.

Int. leges Edovardi cap.17. An. dom.1050. And therewith agreeth the Law before the Conqueſt. Rex autem, quia Vicarius ſummi regis eſt, ad hoc eſt conſtitutus, ut regnum terrenum, & populum domini, & ſuper omnia ſanctam veneretur Eccleſiam ejus & regat, & ab injuriosis defendat, & maleficos ab ea evellat, & deſtruat, & penitus diſperdat.

Anno dom. 169. And long before that Anno 169. à paſſione Chriſti dominus Eluther ius Papa Lucio regi Brittanniæ ſcripſit, ad petitionem regis & procerum regni Britanniæ. Petiſtis à nobis leges Romanas & Cæſaris vobis tranſmitti, quibus in regno Britanniæ uti voluiſtis: Leges Romanas & Cæſaris ſemper reprobare poſſumus, legem Dei nequaquam. Suſcepiſtis enim nuper miſeratione divina in regno Britanniæ legem & fidem Chriſti, habetis penes vos in regno utranque paginam, ex illis Dei gratia per conſilium regni veſtri ſume legem, & per illam Dei patientia veſtrum reges Britanniæ regnum, Vicarius vero Dei eſtis in regno, &c. and higher I cannot go.

22 E. 4. no. 19. And by the way it is to be obſerved in the ſeveral grants by Abbots and Priors made to King E. 4. they ſeverally ſtile him by theſe very words, Supremus Dominus noſter E. 4. Rex.

25 H.8 cap.21. And by three other Acts of Parliament, viz. by the Statute of 25 H.8.cap.21. wherein by authority of Parliament it is enacted and declared (directing their Declaration to the King) That this your Graces Realm recognizing no Superior under God but only your Grace, hath been and is free from ſubjection to any mans Lawes, but only to ſuch as have been deviſed, made and ordained within this Realm for the wealth of the ſame, or to ſuch other, as by ſufferance of your Grace and your Progenitors, the people of this your Realm have taken at their

free

free liberty by their own conſent to be uſed amongſt them, and have bound themſelves by long uſe and cuſtome to the obſervance of the ſame, not as to the obſervance of the Lawes of any forain Prince, Potentate or Prelate, but as to the cuſtomed and ancient Laws of this Realm originally eſtabliſhed as Laws of the ſame, by the ſaid ſufferance, conſents and cuſtome, and none otherwiſe.

And by the Statutes of 25 H. 8. cap. 21. 1 El. cap. 1. and 1 Jac. cap. 1. the Crown of this Kingdom is affirmed to be an Imperial Crown. 25 H. 8. cap. 21. 1 El. cap. 1. 1 Jac. cap. 1.

As to the ſecond: I might anſwer, * that Le Court de Parliament eſt de treſgrand honor & Juſtice, de que nul home doit imaginer choſe diſhoneſtable. And with the Doctor and Student upon the Statute of 45 E. 3. cap. That it cannot be thought that a Statute that is made by the Authority of the whole Realm as well of the King, and of the Lords Spiritual and Temporal, as of all the Commons, will recite a thing againſt the truth. * Pl. Com. 398. b. Doct. & Stud. fo. 164. cap 55.

But to be ſhort, King Edgar ſtiled and ſubſcribed himſelf in his Charter, Baſileus, Imperator & Dominus, which you may read in the Preface to the Fourth part of my Reports. Vide Rot. Par. 1 E. 4. parte 6. m. 23. The like Charter to the houſe of Donnington by King Edgar.

Edward commonly called St. Edward ſon of King Edgar in a Charter which he made to the Abby of Ramſey (which I have) ſtiled himſelf, Ego Edwardus totius Albionis Dei moderante gubernatione baſileus.

Another Charter of King Edwine to the Abby of Crowland, intituled, Carta regis Edwini filii Regis Edmundi fratris regis Edgari de terris in Jeckeles. Wherein he is ſtiled Edwinus Anglorum rex & totius Britannicæ telluris gubernator & rector, and many others.

To conclude this point with a late and learned Writer, whom I will cite, for that he agreeth with the former Authorities, he ſaith, that the regal eſtate and dignity of a King is of two manners. The one is Imperial or Supream, ſuch a one is our Soveraign Lady Elizabeth by the grace of God Queen of England, France and Ireland, which Soveraign Queen holdeth her Empire and Kingdoms with her people and Subjects immediately of the Lord of Heaven and Earth, without any other mean ſeignory or attendancie of corporal or bodily ſervice or allegiance to any other worldy Prince or Potentate, maugre the head of either her forain enemies or inteſtine and homeborn traiterous vaſſals, and alſo from her ſentence (ſhe and we all her faithful and loyal ſubjects acknowledging to her eſtate no Superior) lyeth no Appeal. J. F. of the Inner Temple, in his book intituled, *The glory of generoſity*, p. 140, 141.

There is alſo a King, and he a Homager or Feudotary to the Eſtate and Majeſty of another King as to his ſuperiour Lord, &c. As that of Navar and Portugal to the King of Caſtell: the Kingdoms of Granado and Leons to Aragon: the Kingdomes of Lombardy, Sicill, Naples, and Bohemia to the ſacred Empire: the old Kingdome of Burgundy, and now the late erected title of the King of Arles, to the King of the Frenchmen, and ſo forth of the reſt.

The King which is Supream and Imperial is equivalent within his Land to the power and authority that Ceſar can challenge within his own Dominions, and ſuch a King challengeth of right to ſet upon his head a * Crown Imperial with a Diademe elevated on high, to ſignifie the perfection and greatneſs of their eſtate; but to the other Kings homagers a Crown not elevated is due. And that we may (as duty is) both with reverence and dutiful fear diſcern and judge the office and function of our Soveraign to be moſt holy and ſacred; let us ſee with what honors a ſoveraign King (ſuch a one as is her Majeſty) is illuſtrated and made redoubted to his ſubjects, firſt, what great Majeſty, honor, power, and glory is intended by ſetting a Crown upon her head, for in the reverend and maieſtical Action of Coronation, ſhe is firſt anointed, then bleſſed, after that conſecrated; to ſignifie unto her and unto us that ſhe is of God, that her power is from Chriſt, and that ſhe is to rule over Chriſtian people: the Crown ſet on her head is called triumphant, and it is of gold to ſignifie her excellent Majeſty; it is called triumphant, by reaſon that the like Crown in faſhion and form was given the Emperours and Captains of the Romans in their triumphs over Kings and Nations. This Crown triumphant is moſt due to her excellent Majeſty even by Nota. * A Crown Imperial. With what Majeſty crowned. A Crown triumphant.

by the ſtrict courſe of laws of Arms, ſince that her Anceſtors have triumphed over many Kings and mighty people, as H. 1. over five Kings of Ireland; E. 1. triumphed over the Scottiſh and Welch Nations; E. 3. and H. 5. both of them over France. In the triumphant Crown of our Soveraign Lady there be placed (not only for the ornament of her regal Diademe, but alſo to ſignifie the Princely vertues of a King) twelve Gems or ſtones of pretious eſtæm.

And for this Kingdom of England, the other part of the Relative, hear what an ancient Poet hath ſaid,

Bartholomæus.

Anglia gens fortis, & fertilis angulus orbis:
Inſula prædives quæ toto vix eget orbe,
Et cujus totus indiget orbis ope.
Anglia plena jocis, gens libera & apta jocari,
Libera gens, cui libera mens, & libera lingua;
Sed lingua melior liberiorque manus.

The Anſwer to certain Objections againſt the Kings Stile of Defender of the Faith.

This Bull you may ſee in Speeds Chronicle, p. 759. nu. 41. Anno Dom. 1521. 13 H. 8. See Laert. Cherub. Bullar. tom. 3. pag. 619.

And where ſome do object that the King our Soveraign Lord ought not de jure to enjoy the title and ſtile of Defender of the Faith, Defenſor fidei; for (ſay they) Pope Leo decimus, Anno Pontificatus ſui, by his Bull granted the ſame to King H. 8. & poſteris ſuis. Well, veritas à quocunq; dicitur, a Deo eſt. But they ſay that by the Bull of Pope Paul the third, againſt King H. 8. upon his ſuppreſſion of the leſſer houſes of Religion in Anno 27 H. 8. he did not only depoſe him of this title, but of his Crown alſo, and gave his kingdom to him that could get it: which, ſay we, was done de facto, ſed non de jure; and we confeſſe alſo that by colour of that Bull, Pope July the third in his Bull to King Philip and Queen Mary his direction was Chariſſimis in Chriſto filiis noſtris Philippo regi & Mariæ Reginæ illuſtribus, wherein he omitted the title of Defender of the Faith: but beſides the Popes Bull, which (as it ſeemeth) is countermandable at his pleaſure, the King hath a ſurer right thereunto to this ſtile, for by the full conſent of all the Lords Spiritual and Temporal, and the Commons aſſembled in Parliament, and by Authority of the ſame, in Anno 35 H. 8. it is enacted, That all his Majeſties Subjects ſhould from thenceforth accept and take his Majeſties ſtile as it is declared and ſet forth in manner and form following, that is to ſay, in the Latine tongue by theſe words; Henricus octavus Dei gratia Angliæ, Franciæ, & Hiberniæ Rex, fidei Defenſor, & in terra Eccleſiæ Anglicanæ & Hiberniæ ſupremum caput: and in the Engliſh tongue by theſe words; Henry the Eight by the grace of God King of England, France and Ireland, Defender of the Faith, and of the Church of England, and alſo of Ireland, in Earth ſupream head: and that the ſaid ſtile ſhould be from thenceforth by authority aforeſaid united & annexed for ever to the Imperial Crown of his Highneſſe Realm of England. Hereunto it is objected, That this Act of Parliament is repealed by the Act of 1 Mar. but that is miſtaken, for as the treaſons made and enacted by ſubſequent clauſes of the ſaid Act of 35 H. 8. are repealed by the Act of 1 Mar. but the ſtile and title of the Crown without queſtion remaineth of force unrepealed, and accordingly Queen Mary in all her ſeveral Seſſions of Parliament before her marriage & after her marriage, ſhe and King Philip uſed the ſtile and title of Defender of the Faith in all their Parliaments, Letters Patents, &c. according to the ſaid Act of 35 H. 8. and by the way ſhe uſed the title alſo of Supremum Caput in the ſecond Seſſion of her Parliament in the firſt year of her reign. And by the reſolution of the Judges in anno 1 Mar. it appeareth that the Statutes of 26 H. 8. cap. 1. & 35 H. 8. cap. 3. concerning the ſtile of the King remains in force, for thereupon did the queſtion depend: ſo as albeit Pope July in his Bull vouchſafed not to give King Ph. and Queen Mary their ſtile of Defender of the faith, yet both ſhe before, and both of them after their marriage, according to their right took it upon them notwithſtanding the thundring Bull of Pope Paul the third. Laſtly, all the Kings and

35 H. 8. cap. 3.

1 Mar. Dier 94.

Queens

Queens regnant of England have at their Coronation time out of mind been sworn to defend the faith, and therefore were of common right Defenders of the Faith; by reason of which Oath they may take upon them the stile, and are more firmly bound to perform and do it, then by the Popes Bull.

Having spoken of England, and of the petty Islands and Dominions of the same, and intending to speak of that noble Island and Kingdom of Ireland, I could not passe over that ancient and renowned Kingdom of Scotland wholly in silence, but as it were to salute it by the way, and yet to adde somewhat, which none that have written of that Kingdom have (to my remembrance) touched.

CAP. LXXV.

Of *Scotland.*

COncerning this Kingdom there are many things worthy of observation.

1. That these two mighty, famous and ancient Kingdoms, viz. England and Scotland (I use the words of the Act of Parliament) were anciently but one. 1 Jac Regis, c. 1.

2. That one Religion and Service of God is holden and celebrated by both. V de 4 Jac c. 10. & 7 Jac. cap. 1.

3. That as there is one Language in both, so there was one kind of government and one law in ancient time that ruled both with many unanimous agréements betwæn them, which evidently appeareth by many proofs. First, that the Lawes of Scotland are divided as the Lawes of England be into the Common Lawes, Acts of Parliament, and Customs. Their Common laws are principally contained in two Books. The first called Regiam Majestatem, because it beginneth (as Justinians Institutes do) with these words [Regiam Majestatem.] 11 Jac. Regis, c. 1. & 2. in Ireland.

The second Book is called Quoniam Attachiamenta, because it beginneth with those two words.

The first Book doth in substance agrée with our * Glanvil, and most commonly de verbo in verbum, and many times our Glanvil is cited therein by speciall name.

* First printed by the perswasion and procurement of Sir *Wil. Stanford*, a grave and learned Judge of the Common Pleas *Anno Dom.* 1554. 1 & 2 Ph. & Mar. Of whom hear what *Hoveden* saith *Anno Dom.* 1180. (& regni H. 2. 26.) Henricus Rex Angliæ patet constituit Ranulphum de Glanvilla summum Justic. totius Angliæ, cujus sapientia conditæ sunt leges subscriptæ quas Anglicanas vocamus. This *Hoveden* lived in the reign of H. 2. and dies in the time of King *John*. See Pl. Com. 368. b. per *Catlyn* in Epist. to the Eighth Book of Reports.

Secondly, the Crown of Scotland is descendible to the Daughter or Heir Female where there is no issue Male. If there be many Daughters or heirs female, it descends to the eldest. Likewise they have the like descents of lands to Subjects as England have, as none can inherit in the right Line ascendant. The eldest Daughter hath initiam partem. All the Daughters of Subjects do inherit.

Thirdly, they have the High Court of Parliament, as we in England have, and called by the same name, consisting of the same Members, viz. Lords Spiritual, Lords Temporal, and the Commons. It is summoned and called at the Kings pleasure for a certain time. When they mæt, the King or his Chancellor sheweth the causes of calling them together. But there of later times the Lords Spiritual do chuse eight Temporal Lords, and the Lords Temporall chuse eight Spiritual Lords. These fifteen make choice of eight chosen for the Counties, and eight of Cities and Burghs, in all thirty two. But whatsoever is agréed upon by them, the King doth allow or disallow by moving of his Scepter, &c. Parliament.

Fourthly, they have the same degrées of Nobility, as Dukes, Marquesses, Earls, Viscounts, Barons, &c.

Fifthly, they have the same great Officers, as Chancellor, that kæpeth the Great Seal, Lord Treasurer, Lord Privy Seal, Secretary, &c.

Sixthly, and the same Ministers of Justice, as Sheriffs, Coroners, &c.

Seventhly, the same laws for the most part quarto modo appropriated to England, viz. Tenant by the curtesie, because they had the same law that England had.

Eighthly, the like Writs, Brevia, as de Recto, Assise of Novel Disseisin, Mordanc'. De gard, De Ideot. inquirend. De divisis fac. Replegiar. Attachm. &c.

Ninthly, they agrée with Magna Carta concerning Wardships, &c.

Tenthly, with Carta de foresta cap. 11. for it is lawful for Bishops, Earls, and Barons coming or returning through the Kings Forests at the Kings command to kill one or two Beasts in the sight of the Forester, or otherwise in his absence to blow his Horn, that he appear not to take it thievishly.

11. The Lord of whom the Land is holden by Knights service per antiquius feoffamentum shall have the wardship of the body.

12. The Sheriffs should cause the Acts of Parliament to be proclaimed, &c. All which, and many more are the ancient Laws of both Kingdoms, as it appeareth in the said Books of Regiam Majestatem, & quoniam attachiamenta, &c.

13. The Sheriffs there have an inheritance in their Office, as sometime in England they had, and yet in Cumberland they have.

14. The same Vocables of art are used in the Lawes of both Kingdomes, as Ordelium. *i.* the Court of Water and Iron, Filius mulieratus, Marchetum, Serplaith, or Sarpler, Judicamenta, &c. Machimeum or Mahemium, Murdrum or Murcharum, Chancemeley, Mote, Misericordia, Messuagium, Flightwight, Medletum, Remanere, Manerium, Recognitio per Assisam, Pipowdres, Pannagium, Ora, Nonclayme, Soc or Sok, Serjanteria, grand Serjeanty, pety Serjeanty, Sectator, a Suiter, Sheriffs of inheritance there, the Sheriffs Court or County Court, Toll, Turbrellum or Tumbrellum, Thainus, Soccage, Burgage, Servicium militare, Relief or Relieve, Them & Teme, Theftbote, In libera Eleemosyna, Terræ, Dominicales, Liberum tenementum, Vidiare duellum, Warrenna, or Varenna, Valvasores or Vavasores, Waif, Strap, Castleward, Veredictum, Viridarii, Infangthief, Outfangthief, Outlawry, Outlawed Justice in Eire, Wreck of the Sea, Voucher, Vicecomes, Hamsockne, Hida terræ, Bovata terræ, Herior or Heregeld, Hutesium or Huesium, Regrateurs, Forestallers, a Cutlde, falsifying of doms or recovery, Quarentena, Felonia, Feodum, Homage, Fealty, Estrovemum, essonium, emtia pars, Disparagement, Disseisons, Disclaimer, Scaccarium, Collistrigium, Champertie, Maeremium, Averia, Catalla, Bote, Blodwite, Grand Assise, Assise of Novel disseisin, Barettors, Ad dabit, Adjournment, Responsals, Attornes, and many others.

There was an Heptarchy in Scotland, but now a Monarchy. There are there two Archbishops, the one of St. Andrew, the other of Glasco: S. Andrew hath eight Bishops under him, and Glasco three.

There are there thirty Counties or Sheriffdoms.

The ancient Motto of the King of England is, God and my right (*intelligitur*) shall me defend. Of the King of Scotland, In my defence God me defend.

There are also two famous Universities, one in S. Andrewes, the other in Glasco.

The length of Scotland from Twede to the uttermost Coast is 480. Miles, it is longer than England, but narrower, and endeth like a Wedge.

Of ancient time all the Bishops of Scotland were sacred, and confirmed by the Archbishop of York.

But by reason of their Acts of Parliament, which in many points have altered, diminished, and abrogated many of the old, and made new Lawes and other proceedings: the distinct Kingdoms as they now stand have many different laws.

Parl. 3 Jac. 1. c. 48 11 Martii Anno Dom. 1425.

Item, It is ordained by the King by consent and deliverance of the three Estates, that all and singular the Kings Lieges of the Realm live and be governed under the Kings Laws and Statutes of the Realm allanerly: and under na particular Laws, nor special priviledge, nor be na Laws of uther Countries nor Realms.

Item,

Item, It is ſtatute and ordained, That all our Soveraigne Lordis Lieges beand under his obeiſance, and in ſpecial the Iſles be ruled by our Soveraign Lordis awn Laws, and the Common Laws of the Realm, and be nane uther laws. Parl. Jacobi 4. cap. 79. 11 Martii Anno Dom. 1503.

King James at his Parliament holden Anno 1. of his Reign, endeavoured to have made an union of both Kingdoms, and to have erected a new Kingdom of Great Brittain. And thereupon authority was given to certain Commiſſioners of the higher & lower Houſe of Parliament, to treat with certain Commiſſioners of Scotland for and concerning an union of both Kingdoms. Amongſt theſe Commiſſioners there grew a queſtion, whether there could be made an union of the Kingdoms by raiſing a new Kingdom of Great Brittain, before there was an union of the Lawes? Which queſtion by the Kings commandment was referred to all the Judges of England in Trinity Term, Anno 2 Jac. who unanimouſly reſolved (I being then Attorney General, and preſent) That Anglia had laws, and Scotia had lawes, but this new erected Kingdom of Britannia ſhould have no Law. And therefore where all the judicial proceedings in England are ſecundem legem & conſuetudinem Angliæ, it could not be altered ſecundem legem & conſuetudinem Britanniæ, untill there was an union of the Lawes of both Kingdoms, which could not be done but by * Authority of Parliament in either Kingdome. 1 Jac. cap. 2. Vid. ſupra p. 36. * Ex inſtrumento Lib. Hoſp. S. Leonardi in Com. Eborum. Egbert Rex in Parliamento apud Wintonium mutavit nomen Regni de conſenſu populi ſui, & juſſit illud de cætero vocari Angliam. Iſte Rex Egbertus obiit Anno Dom. 673.

Anno 3 Jac. c. 3. An Act made for things to be done by force of the ſaid Act of 1 Jac. cap. 2. in any other Seſſion of Parliament.

Anno 4 Jac. ca. 1. A repeal of hoſtile Laws and of Hoſtility betwæn England and Scotland, &c. And it is enacted, That no Engliſhman ſhall be ſent out of England into Scotland for any offence done in Scotland, untill ſuch time as both Realms ſhall be made one in laws and government. So as the reſolution of the Judges was approved by Parliament. See a Proclamation 20 Octob. 2 Jac. concerning the Kings ſtile King of Great Brittain, wherein all judicial and legal proceedings, &c. are excepted.

I never read of any union of divided Kingdoms, and therefore I conceive it to be without preſident. And in this union many things would fall into conſideration, and thoſe of great weight, other than the union of Laws, though that be a main one: As for example, the ſeveral Crowns are deſcendible to ſeveral heirs of † blood. And queſtion may be made who ſhould be heir of this new Kingdom. See a Proclamation 15. Sept. 1603. 1 Jac. † H. 7.

But the learned Poet hath found out an union without danger, directing his verſes to King James.

Cum triplici fulvum conjunge Leone Leonem,
Ut varias Atavus junxerat ante Roſas,
Majus opus, varios ſine cæde unire Leones,
Sanguine quàm varias conſociaſſe Roſas.

Whoſoever is deſirous to know ſuch Miſcellanea as we have obſerved concerning Scotland, let him read theſe Records and Authorities following.

The Records of Parliament from the beginning thereof, for the receivers and tryers of Petitions in the Lords houſe. Rot. liberat. anno 3 Ed. 1. m. 2. per Johannem Lovetot, Rot. paten. anno 20 Ed. 1. Gilberto Comiti Glovorniæ & Hereford. Scotia. Rot. Parliament. 21 Ed. 1. inter placita. Rot. 1 & 2 Hovenden 1194. pag. 7. Carta Regis R. 1. Mat. Weſtm. Anno Dom. 1260. pag. 302. H. 3. Rot. Scotiæ 21 E. 1. Carta E. 1. & literæ Alexandri Regis Scotiæ. Rot. Vaſconiæ 25 E. 1. m. 2, 3. in dorſ. Trin. 25 E. 1. coram Rege Rot. 6. Norff. Rife de Tonyes caſe. Anno 29 E. 1. literæ quas Rex per ſe & quas Comites & Barones Angliæ per ſe miſerunt Domino Papæ anno 29 E. 1. authoritate Parliamenti, quæ irrotulatæ ſunt etiam in Scaccario. Vid. Walſingham 48 & 49. Rot. Parl. apud Linc. 29 E. 1. An. Dom. 1300. Literæ omnium Nobilium Angliæ, &c. Papæ.

Rot. pat. 24 E. 1. Epiſcopis Scotiæ. Mich. 33 E. 1. coram Rege Rot. 127. Scotiæ,

tia, Rot. Parl. 35 E. 1. in brevi de Parliamento, & auter 1 E. 2. 1 E. 3. fo. 17. Grayes caſe. 6 E. 3. 18. The Abbot of Crowlands caſe, 9 E. 3. 6. John Darcyes caſe. Rot. pat. 10 E. 3. 2. pars. Comes Arundel. Rot. Parl. 14 E. 3. nu. 15. ſtat. 4. Rot. Clauſ. 22 E. 3. & 23 E. 3. breve de Parliamento magnifico Principi, &c. 22 Aſſ. p. 85. 39 E. 3. fo. 35. Rot. Parliament. 42 E. 3. nu. 7. 42 E. 3. fo. 25. 8 R. 2. tit. Cont. clayme. pl. ultimo. 13 H. 4. fo. 5. Rot. pat. 2 H. 5. part 3. m. 1. 8 H. 5. fo. 5. 32 H. 6. 25. 20 E. 4. 6. b. Litt. ſect. 100. & 165. 1 part of the Inſtitutes. Stat. de 2 & 3 E. 6. cap. 36. Forteſcue cap. 13. Pl. Com. 126. Dier manuſcript 3 Eliz. 22. b. & 13 Eliz. fo. 68. m. 5. Dier 12 Eliz. fo. 287. in print. Lib. 7. fo. 22, 23, &c. Calvins caſe. Lib. 9. fo. 114. Seignior Zanchers Caſe. See before in the Chapter of the High Court of Parliament.

Hiſtoriæ. Polydor. Virgil. Hollinſh. 1 part, fo. 116, 117. 2 part, 286. Stowe 303. Math. Weſtm. 428, 425, 443, 444 445. Walſingham 17, 28, 32, 129, &c.

Thus have you all which we have obſerved in our reading concerning this matter, and which the benevolent Reader may peruſe at his pleaſure; to whoſe cenſure we wholly refer the ſame. Multi multa, nemo omnia novit.

You have obſerved, that thoſe of Scotland do agrée with us in language, and as hath béen ſaid, differ in Lawes. On the other ſide, the Subjects of Ireland differ from us in Language, and agrée with us in Lawes, and therefore of them we ſhall ſpeak ſomewhat the more at large.

Bede in Hiſtory of England, lib. 1. cap. 1. † Redſhanks.

Amongſt variety of Authors from whence this noble Nation of the Scots originally came, we follow Venerable Bede in his Hiſtory of England, lib. 1. cap. 1. and alſo from whence the † Picts originally came. And there you ſhall read, that the Picts arriving in Britania, planted themſelves in the North parts thereof, for the Britains had taken up the South part before. And whereas the Picts having no wives did require the Scots to marry their daughters the Scots agréed to grant them their boon, under condition, that as often as the matter was in doubt, they ſhould chooſe their King rather of the next houſe of the woman than of the man.

Cap. 13.

And that Palladius in the eighth year of Honorius the Emperour, Anno Domini 411. was ſent by Celeſtinus Biſhop of Rome to the Scots that had received the Faith of Chriſt, to be their firſt Biſhop.

* Et lib. 2. cap. 4.

* That the Scots doe nothing differ from the Britains in their converſation.

Bede in his Hiſtory of England, lib. 1. cap. 11. Vid. ſupr. p. 157.

Both theſe famous Kingdoms have found by woful experience, that unwiſe and incertain making of leagues, greatly indamageth the Commonwealth, and the fatal danger of ſuch leagues to the Princes themſelves.

CAP.

CAP. LXXVI.

Of the Kingdome of *Ireland*.

WE shall not need to undertake another work to write of the Courts of Justice there, for that they have the same which we have in England, and the same Law, saving, where some that have written of them have in some main points mistaken the matter; we will convince the same by direct matter of Record, and we intend to adde some things which are necessary to be known, which no man that hath written of that Country hath touched; or if they have remembred the same, it is with so light a touch, as much is omitted out of the Record, or case resolved it self, worthy to be known, which we intend to supply for the honour of the King, and benefit of his subjects there. And the rather, for that I have been informed by many of them that have had judicial places there, and partly of mine own knowledge, that there is no Nation in the Christian world that are greater lovers of Justice (whereof we shall principally treat) then they are, which vertue must of necessity be accompanied with many others; and besides, they are descended of the ancient Britains, and therefore the more indeared unto us.

1 Jacobi cap. 1. & 11 Jac. &c. cap. 1. & 6. in Ireland. Vid. the 1. part of the Institutes, Sect. 212.

First, concerning the Parliament of Ireland, being the highest Court there, where some have supposed that the same began in 17 E. 3. we shall make it appear by matter of Record, that then not only King John, as all men agree, but H. 2. also the father of King John, as † before it hath appeared, and in the next page shall be touched, did ordain and command at the instance of the Irish, that such Laws as he had in England should be of force and observed in Ireland: hereby Ireland being of it self a distinct Dominion, and no part of the kingdom of England (as it directly appeareth by many Authorities in Calvins case) was to have Parliaments holden there as England; and thereupon in the Reign of King John himself a Parliament was holden there, as by this Record ensuing appeareth:

Parliaments in Ireland of ancient time.

† Pag. 12.

Rex Comitibus, Baronibus, Militibus, & liberis hominibus, et omnibus aliis de terra Hibernia, salutem. Quia manifeste esse dignoscitur contra Coronam, & dignitatem nostram, et consuetudines, et leges regni nostri Angliæ, quas bonæ memoriæ Dominus Johannes Rex pater noster, de [a] *communi* [b] *omnium de Hibernia consensu teneri statuit in terra illa, quod placita non teneantur in Curia Christianitatis de Advocationibus Ecclesiarum & Capellarum, vel de laico feodo, vel de catallis quæ non sunt de testamento vel matrimonio. Vobis mandamus, prohibentes quatenus hujusmodi placita in Curia Christianitatis nullatenus sequi præsumatis in manifestum dignitatis et Coronæ nostræ præjudicium, scituri pro certo, quod si feceritis, dedimus in mandato Justiciario nostro Hiberniæ, Statuta Curiæ nostræ in Anglia contra transgressiones hujus mandati nostri cum justitia procedat, et quod nostrum est exequatur. In cujus, &c. Teste Rege apud Winchcomb 28. die Octobris, Anno regni nostri decimo octavo. Et mandatum est Justiciario Hiberniæ per literas clausas, quod prædict. literas patentes publicè legi et teneri faciat.* But as true it is, that the Father of King John, viz. H. 2. when he had conquered Ireland, sent that Treatise, intituled, Modus tenendi Parliamentum, in a fair Parchment Roll, for their better holding of Parliaments there, which you may read more at large before Cap. The High Court of Parliament, p. 12.

Rot. An. 18 H 3. m. 17. nu. 21. See the first part of the Institutes, Sect. 212.

a Nota, Rex de communi omnium consensu (ac communi consilio teneri statuit) is by Act of Parliament.

b Nota [omnium] that all received the Lawes, &c. Many things in these Letters Patents are worthy of observation.

Rex

Rex Henricus 3. Anno regni ſui 12. mandavit Juſticiario ſuo Hiberniæ, ut convocatis Archiepiſcopis, Epiſcopis, Baronibus & Militibus ibidem coram eis legi faciat Cartam Regis Johannis; quam legi fecit, & jurari à Magnatibus Hiberniæ de legibus & conſuetudinibus Angliæ obſervandis, & quod leges illas teneant & obſervent.

Rot. pat. 30 H. 3. *Quia pro communi utilitate terræ Hiberniæ, & pro unitate terrarum, proviſum eſt, quod omnes leges et conſuetudines quæ in regno Angliæ tenentur in Hiberniæ teneantur, & eadem terra eiſdem legibus ſubjaceat, ac per eaſdem regatur, ſicut Johannes Rex cum illic eſſet ſtatuit, et firmiter mandavit.*

Note. *Ideo volumus quod omnia Brevia de Communi Jure quæ currunt in Anglia ſimiliter currant in Hibernia ſub novo Sigillo Regis. Teſte, &c. apud Woodſtock.*

Coram Rege Mich. 33 E. 1. Rot. 124. Hibernia. *Major Dublin, qui querebatur verſ. Theſaurarium Scaccarii Dubliniæ, et verſ. Barones Scaccarii de gravaminibus per ipſos illatis, remittitur Parliamento, et inde huc: cui per curiam dictum eſt, quod gravamina ſua proponat, qui dicit quod non adhuc eſt conſultus, ſuper quo dies datus eſt. Ad quem diem nullas propoſuit querelas; Ideo committitur Turri London, et finem fecit Domino Regi.*

Sometimes the King of England called his Nobles of Ireland to come to his Parliament of England, &c. And by ſpecial words the Parliament of England may bind the Subjects of Ireland, as taking one example for many.

Rot. Parl. 8 E. 2. m. 31. 10. *Octobris Rex affectans pacificum ſtatum terræ Hiberniæ, mandavit Ricardo de Burgo Com. Ulton. et aliis Nobilibus terræ prædictæ, quod ſint ad Parliamentum ſuum quod ſummoneri fecit apud Weſtm. in Octabis Sancti Hillarii prox. ad tractand. ibid. cum Proceribus, &c. regni ſui ſuper ſtatu terræ prædictæ.*

An excellent preſident to be followed, whenſoever any Act of Parliament ſhall be made in England, concerning the ſtatute of Ireland, &c.

Rot. Parl. 35 E. 3. intr. ſic. *Anno 35 E. 3. De Conſilio ſummonit. pro terr. habentibus in Hibernia,*

Maria Comitiſſa Norf.
Ælianora Comitiſſa Ormond.
Jana la Deſpencer,
Philippa Com. de la Marche,
Johanna Fitzwater,
Agnes Comitiſſa Penbroke,
Margareta de Roos,
Matildis Comitiſſa Oxoniæ,
Catherina Comitiſſa Athol.

ad mittendum fide dignos ad colloquium.

a Rot. Parl. anno 10 E. 2. Rot. clauſ. 10 E. 2. m. 38. & Rot. clauſ. 12 E. 2. m. 3. Annales Hiberniæ Anno Dom. 1309. 2 E. 2. Parliam. tent. apud Kilkenniæ per Com. Ulton. & Johannem Wogan. Juſtic. Hiberniæ & Magnates, &c.

a *De Parliamentis ſingulis annis in Hibernia tenendis, et de legibus et conſuetudinibus ibidem emendandis.*

Hereby it appeareth that there were Parliaments holden in Ireland before this time, and order taken at this Parliament that they ſhould be holden every year, and the like Acts were made in England in 4 E. 3. & 36 E. 3. for Parliaments to be holden in England.

b Rot. Par. 17 E. 2. 1 part, pat. an. prædict. m. 3.

b *In Octabis Sancti Martini apud Nottingham Rex de conſenſu communis Conſilii ſui fecit certas ordinationes pro reformatione ſtatus ſui Hiberniæ, et miniſtrorum Regis ibidem.*

c Ins. Ordinationes pro ſtatu Hiberniæ anno 17 E. 3. in Turri &c.

c *Volumus et præcipimus quod noſtra et terræ noſtræ negotia, præſertim majora & ardua, per peritos Conſiliarios, ac Prælatos, et Magnates, et quoſdam de diſcretioribus hominibus in Parliamentis tractentur, diſcutiantur et terminentur.*

This

This Ordinance doth regulate the Parliaments in Ireland according to the inſtitution and end of the Parliaments in England, as in the Writ of Parliament, which is to confer and treat De arduis & urgentibus negotiis nos (i. Regem) & ſtatum & defenſionem regni & Eccleſiæ Anglicanæ concernentibus; the effect whereof is contained in the Ordinance of 17 E. 3. but that Ordinance doth not erect any Parliament there, as ſome have (without any colour) ſuppoſed.

Vid. Lib. Album in Scaccario. Divers Acts here made concerning Ireland and tranſmitted thither to be inrolled in the Chancery there.

See 20 H. 6. fo. 8. which began Mic. 18 H. 6. Rot. 46. coram Rege, & 2 R. 3 fo. 12. See before in the Chapter of the High Court of Parliament.

And ſeeing good and profitable Acts of Parliament made in the Realm of England ſince the reign of King John extended not into Ireland, unleſſe it were ſpecially named or by general words included, *as within any of the Kings Dominions, a right profitable Act was made at a Parliament holden in Ireland in Anno 10 H. 7. before Sir Edward Poynings then Deputy or Protex in Ireland, and thereupon called Poynings law.

* 25 H. 8. cap. 12 F. N. B. 178. a. 12 R. 2. 12. Anno 10 H. 7. Poynings law. * Nota.

Whereby it is enacted, that *all ſtatutes late made within the Realm of *England* concerning or belonging to the common or publick weal of the ſame, from henceforth be deemed good and effectual in the Law, and over that be accepted, uſed and executed within this land of *Ireland* in all points at all times requiſite according to the tenor and effect of the ſame. And over that by the authority aforeſaid, that they and every of them be authoriſed, proved, and confirmed, in this ſame Realm of *Ireland*. And if any ſtatute or ſtatutes have been made within the ſaid Land heretofore to the contrary, that they and every of them by the authority aforeſaid be adnulled, revoked, and made void, and of none effect in the law.

And Hil. 10 Jacobi Regis, it was reſolved by the two Chief Juſtices and Chief Baron, that this word [late] in the beginning of this Act had the ſence of [before] ſo that this Act extended to Magna Carta, and to all Acts of Parliament made in England before this Act of 10 H. 7. But it is to be obſerved that ſuch Acts of Parliament as have been made in England ſince 10 H. 7. wherein Ireland is not particularly named or generally included, extend not thereunto; for that albeit it be governed by the ſame law, yet it is a diſtinct Realm or Kingdome, and (as hath been ſaid) hath Parliaments there.

Vide Bracton lib. 5. fo. 395. b. Temps E. 1. Voucher 239. 14 H. 3. ſtat. de Homage. 13 E. 2. Baſtardy 25. 7 E. 3. 9. 8 Aſſ. 17 Britton fo. 1, 2. 45 E. 3. 19 Tr. 29 E. 1. coram Rege. 10 E. 3. 41, 42. 11 H. 4. 7. 8 R. 2. Proces 224. 3 H. 7. 10. 7 E. 4. 27 Pl. Com. 368. 13 Eliz. Dier 303. 20 Eliz. Dier 360. Lib. 7. Calvins caſe. 1 part of the Inſtitutes Sect. 95.

Books concerning Ireland.

How and in what manner a Parliament is to be holden in Ireland, *and how Bills ought to paſſe in the ſame.*

Parliaments in Ireland holden at this day.

The Lords of the Councell directed their Letters to the two Chief Juſtices and Chief Baron in theſe words.

Hil. 10 Jacobi Regis.

After our hearty commendations to your Lordſhips. Whereas his Majeſty for divers weighty conſiderations hath reſolved to hold a Parliament in the Realm of *Ireland*, and that by an Act made in the tenth year of *H.* 7. called *Poynings Act*, it is provided that all ſuch Bills as ſhall be offered to the Parliament there ſhall be firſt tranſmitted hither under the Great Seal of that Kingdome; and having received allowance and approbation here, ſhall be put under the Great Seal of this Kingdome, and ſo returned thither to be preferred to the Parliament foraſmuch as there are accordingly tranſmitted hither from thence di-

vers Bills as well publick as private, ſome of which Bills were firſt agreed on here, ſome others were framed and conceived there, and coming now hither may happily receive amendment or alteration: we have thought meet for avoidance of any queſtion or inconvenience that may ariſe of the manner and form of proceeding in amending or altering of theſe Bills hereby to pray and require you, calling to you his Majeſties Attorny and Sollicitor to look into *Poynings Act*, and to conſider of ſome ſuch courſe as ſhall be fit to be held concerning the ſame, &c.

Dated *Ultimo Januarii* 1612.

Whereupon in this Term the ſaid Chief Juſtices and Chief Baron, and the Attorny and Sollicitor were aſſembled two ſeveral dayes at Serjeants Inne, and had conſideration not only of the ſaid Act of 10 H. 7. cap. 4. but of the Act of 3 & 4 Ph. & Mar. cap. 4. Intituled, An Act declaring how Poynings Act ſhall be expounded and taken.

3 & 4 Ph. & Mar. cap. 4.

For by the ſaid Act of 10 *H.* 7. it is provided that no Parliament be hereafter holden in the ſaid land of *Ireland*, but at ſuch ſeaſon as the Kings Lieutenant and Councel there firſt do certifie the King under the Great Seal of that Land, the cauſes and conſiderations, and all ſuch Acts as them ſeemeth ſhould paſs in the ſame Parliament, and ſuch cauſes conſiderations, and Acts affirmed by the King and his Councel to be good and expedient for that Land, and his licenſe thereupon as well in affirmation of the ſaid cauſes and Acts, as to ſummon the ſaid Parliament under his Great Seal of *England* had and obtained. That done, a Parliament, to be had and holden after the form and effect afore rehearſed. And if any Parliament be holden in that Land contrary to the form and proviſion aforeſaid, it be deemed void, and of none effect in Law.

Sur quel Act divers doubts et ambiguities fuer' conceive et aſcuns de eux fuer' de greinder difficulty que auters.

1. *Et primerment un doubt fuit conceive le quel le dit Act de* 10 H. 7. *extend al ſucceſſors le Roy* H. 7. *intant quel' Act parle ſolement del Roy generalment et ne' de ſes ſucceſſors.* 2. *Si le roigne Marie fuit deins ceſt parol Roy. Et coment que ceux ne fuer' matters daſcun ambiguity, car ceſt parol Roy que import ſon politique capacity ne unques mort, et eſteant parle indefinite extend in ley a touts ſes ſucceſſors, uncore ceo eſt iſſint expound per le dit Act de* 3 *&* 4 Ph. & Mar. *Et que le dit Act de* 10 H. 7. *extendra* to the King and Queens Majeſty, her Heir and Succeſſors.

2. *Ou le Act de Poynings dit* (the Kings Lieutenant and Councel there) *ſcruple fuit conceyve, ſi le Roy appoint un per noſme de le Deputie, ou Lord Juſtice, ou ſil conſtitute* 2 Lords Juſtices, chief Governours or Governour *et le Councell, &c. Et quant a ceux eſt explaine per le Act de* 3 et 4 Ph. et Mar. *que le dit Act de poynings extend a tout ceux.*

3. *Le greinder et pluis difficult doubt fuit ſur ceux parols in lact de Poynings.* And ſuch cauſes, conſiderations, and Acts affirmed by the King and his Councel to be good and expedient for that Land, &c. *Le quel le Roy poit fair aſcun change ou alteration des cauſes, conſiderations ou Acts que ſerr' tranſmitt' icye del Lieutenant et Councell d' Ireland: car ceo neſt pas affirmation mes correction et alteration de eux. Et pur ceo fuit neceſſary deſtre explane, que Lact de* 3 et 4 Ph. et Mar. *fait in ceux parols.* Either

ther for the paſſing of the ſaid Acts, *&c.* in ſuch form and tenor as they ſhould be ſent into *England*, or elſe for the change and alteration of them, or any part of the ſame.

4. *Auter queſtion fuit ſur les parols del primer Act. ſc.* That done a Parliament to be had and holden, *&c. ſi a meſme le parliament auters Acts que fuer' affirm ou alter icy poent eſtre enactes per authority del Parliament la. Le quel eſt explaine per le dit darrein Act in ceux parols*, for paſſing and agreeing upon ſuch Acts, and no others, as ſhall be ſo returned under the Great Seal of *England*.

5. *Grand doubt fuit conceive ſur les ditz parols* (that done a Parliament to be holden) *le quel le Lieutenant et Councell d' Ireland apres le Parliament commence la, et* pendente Parliamento *poient ſur debate et conference la, tranſmitt aſcun auters conſiderations, cauſes, tenors, proviſions, et ordinances come ſembles a eux bone deſtre enact' a meſme le Parliament deins le Realme d' Ireland, le quel eſt explain per le dit Act de* 3 *et* 4 Ph. *et* Mar. *in expreſſe parols, que ils poient, &c.*

Nota Lecteur lorder del proceeding et ſommons del Parliament in Ireland. Primerment le Lieutenant et Councell la doint certefier deſouth le Grand Seale d' Ireland le cauſes et conſiderations de toutz tielz Acts come ſemble a eux bone a paſſer en Parliament, iſſint que le original covient a commencer la. 2. *Ils covient deſtre affirme ou alter et change et retorne deſouth le Grand Seale Dangliterre.* 3. *Licence deſouth le Grand Seale a ſumoner et tener un Parliament.* 4. *A tranſmitter Billes* pendente Parliamento *come appiert devant. Et fuit auxi reſolve una voce.* 1. *Que les cauſes, conſiderations, et Billes tranſmitte icy deſouth le Grand Seale d' Ireland doient deſtre cuſtodie preſerve icy in le Chancerye d' Angliterre, et ne remaunde.* 2. *Silz ſoient affirme, ilz doient deſtre tranſcript deſouth le Grand Seale et retorne in Ireland, et tout ceo que paſſe le Grand Seale doiet deſtre inrolle icye in le Chancerye.* 3. *Si les Acts tranſmitt icy ſoint in aſcun part alter ou change icy, lacts iſſint alter et change doient come en un continent deſtre returne deſouth le Grand Seale Dangliterre a ceux in Ireland, tout quel doit deſtre inrolle icy in le Chancerye Dangliterre. Mes le tranſcript deſouth le Seale d' Ireland que le remaine in le Chancerye icy, ne ſerra amend, mes l' amendment ſerra deſouth le Grand Seale Dangliterre come eſt avandit.* 4. *Les amendments ou alterations icy ſerr' come eſt avandit retourne in Ireland ſans aſcun ſignification ou certificat dallowance de ceux per ceux de Ireland car ſicome les Acts movent originalment de Ireland, iſſint les amendments ou alterations movent icy in Angliterre.* 5. *Touts les Bils que ſont tranſmitt icy de Ireland ſont ove le petition del Deputye et Councill le Roy touts enſemble deſouth un Grond Seale d' Ireland.* 6. *Touts les Bills que ſont affirme ou alter icy ſoient retourne en ſemble deſouth un Grand Seale Dangliterre.*

And thus much concerning the Parliaments of Ireland.

The caſe of the Earl of *Shrewsbury* upon the Statute of 28 H. 8. of Abſentees.

28 *Martii Anno domini* 1612.

Per force de certain Letters Patents *de* 28 Martii 1612. *del ſeigniours del Privy Councell direct al Sir Humfry Winche, Sir James Lea, Sir Anthony Sentleger, et James Fullerton, ilz certifiont aux ſeigniors le claim de Guilbert Countee de Salop aux dignities del Countee de Waterford et Barony de Dongarvan in Ireland come enſuiſt. Le Roy,* H. 6, *per ſes Letters Patents* Anno 24 *de ſon reign granta a ſon treſchier coſin John Countee de Shrewsbury in conſideration des ſes approved & foyall ſervices in le City & County de Waterford in Ireland,* pro eo quoque quod per eundem conſanguineum noſtrum prædicta terra noſtra Hibernia in partibus illis contra hujuſmodi inimicorum & rebellium noſtrorum inſultus potentius defenderetur, ipſum in Comitem Waterford una cum ſtilo & titulo ac nomine & honore eidem debitis ordinamus, præficimus, & creamus Habendum, *al dit Countee, et a les heires males de ſon corps. Et ouſtre per meſme les Letters Patents granta les Caſtles, ſeigniories, honors, terres et Barony de Dungarvan al dit John Countee et a les heirs males de ſon corpus, les premiſſes deſtre tenus del Roy et ſes heires per homage et fealty, et le ſervice deſtre ſeneſchal a ſon Majeſty in le Realm d' Ireland. Puis al Parliament (communement appelle des Abſentees) tenus al Dublyn in Ireland,* 1 Maii, Anno 28 H. 8. *fuit enact (per reaſon del long abſence del George Countee de Salop hors de meſme le Realm) que le Roy, ſes heirs et aſſignes avera et enjoyera in droit de ſon Corone de Angliterre touts honors, mannors, Caſtles, ſeigniories, franchiſes, hundreds, liberties, County Palatines, Juriſdictions, annuities fees des Chivaler, terres, tenement, &c. et touts et ſingular poſſeſſions, hereditaments, et touts auters profits, cibien Spiritual come Temporal, quecunque queux le dit George Countee de Shrewsbury, et Waterford, ou aſcun auter perſon ou perſons a ſon uſe avoient, &c. Le Roy* H. 8. *per ſes Letters Patents,* Anno 29 *de ſon reign recitant le dit ſtatute de Abſentees,* Nos præmiſſa conſiderantes & nolentes ſtatum, honorem, & dignitatem prædicti Comitis diminuere, ſed amplius augere, ex certa ſcientia & mero motu, &c. *Granta al dit Countee et ſes heirs l' Abby de Rufford ove les terres a ceo perteynant in le County de Nottingham, et le ſeigniory de Rotheram in le County de York, les Abbeys de Cheſterfield Shirebroke et Gloſſopdale in le County de Derby ove divers auters terres et tenements de grand value deſtre tenus in capite, et les queſtions fuer'.*

1. *Le quel per le longe abſenee del Countee de Salop hors de Ireland per que les Roys et ſubjects wanted lour defence et aſſiſtance la, enconter le expreſſe conſideration del creation, le title del honor eſt perdue ou forfeit, le dit Countee eſteant Pier del ambideux Realms et reſiding icy.*

2. *Le quel per le dit ſtatute des Abſentees,* Anno 28 H. 8. *le title del dignity del Countee de Waterford ſoit priſe del dit Countee de Shrewsbury cibien comme les mannors, terres, tenements et auters hereditaments in meſme Lact ſpecifie.*

Et puis per auters Letters des ſeigniours del Councell, 27 Septemb. 1612. *les deux Chief Juſtices et Chief Baron fuere require a conſider del dit caſe (que fuit encloſe deins lour Letters) et a certifie lour opinions de ceo.*

Quel caſe fuit argue per Councell erudite del dit County devant les dit Chief Juſtices et Chief Baron, ſur que ilz preſteront adviſement (apres que

ilz

ilz ont divers foitz lye le Preamble et tout le dit Act de 28 H. 8.) *jesque a Term de St.* Mich. Anno decimo Jacobi Regis, *et donques fuit unement resolve per ceux come ensuist.*

Quant al primer fuit resolve, que intant que nappiert que ascun defence fuit requisite, et que le consideration executory nest trove per office destre infreint, ne judgement done in Scire Fac', a cest cause que le dit Countee de Salop, *ceo nient obstant, remain Countee de Waterford.*

Quant al 2 fuit resolve, que le dit Act de 28 H. 8. *des Absentees nad tolle solement les possessions, que fuer' done a luy al temps de son creation, mes auxi le dignity mesme, Car coment que un poet aver dignity sauns ascuns possessions uncore ceo serroit pleine de inconvenience, et a cest cause le dit Act de* 28 H. 8. *(come touts autres Acts doient estre) serra expound douster tout inconvenience, et pur ceo per les generall parolls del Act, (sc. des honors et hereditaments,) le dignity mesme ove les terres dones ur maintenance de ceo sont dont al Roy, et le dignity extinct in le Corone.*

Et est digne de observation le cause de degradation de George Nevill Duke de Bedford, que fuit fait per force dun Act de Parliament, 16 Januarii, Anno 17 E. 4. *quel Act* reciting the erection and making the said *George* Duke, *expresse le cause de son degradation in ceux parols.*

Roc. Parl. tent. apud Westm. 16 Jan. Anno Regis E. 4. 17. degradatio Geo. Ducis Bedford.

And for so much as it is openly known, that the said George hath not, nor by inheritance may have any livelihood to support the said name, estate, and dignity, or any name of Estate, as oftentimes it is seen, that when any Lord is called to high estate, and have not livelihood convenient to support the same dignity, it induceth great poverty and indigence, and causeth oftentimes great Extortion Imbracery, and Maintenance to be had, to the great trouble of all such Countries where such Estate shall happen to be inhabited. Wherefore the King by the advice of his Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same, ordaineth, establisheth and enacteth that from henceforth the same erection and making of the same Duke, and also the names of dignity to the said George or to John Nevil his father be from henceforth void and of none effect, &c.

In quel Act 3 choses fuer' observe, 1. *Que coment le dit Duke navoient ascun possessions a supporter son dignity, uncore son dignity ne poet estre tolle de luy sans Act de Parliament.* 2. *Les inconveniences appiert ou grand estate ou dignity nest pas accompany ove livelihood.* 3. *Ceo est bone cause a toller le dignity per Parliament, Et pur ceo le dit Act de* 28 H. 8. *serra expound selonque le generalty del letter a toller tiel inconvenience, Et coment que le dit Countee de Salop soit non solement de grand honor et vertue, mes auxi des grand possessions in Engliterre, uncore ne fuit lentention del Act a continuer luy Countee in Ireland quant ses possessions in Ireland fuer' tolle de luy, mes que le Roy a son pleasure puit conferre cibien le dignity, come les possessions a ascun auter pur le defence de mesme le Realm. Et les dits Letters Patents de* Anno 29 H. 8. *nad parols a restorer le dignity que lAct de Parliament ad tolle, auxi ne fuit lentent del Roy* diminuere statum, honorem & dignitatem ipsius Comitis, sed augere, *ceux sont destre entendes des possessions pur maintenance de son dignity, car tant appiert per cest parol* [augere] *car il increase per mesme les Letters Patents ove exceeding grand bounty le revenues del dit Countee de Salop en Angliterre, quel le roy pense fuit un increase de son state, honor & dignity, issint son dignity in Angliterre fuit increase ove large possessions in Angliterre in lieu de tout ceo que fuit tolle de luy per Act de* 28 H. 8. *Et on fuit object que les generall parols* [*des honors*

ners et hereditaments] *ſont explain et qualifie per les dits relative ſubſequent* (*queux le dit* George *Countee de Salop ou aſcun auter a ſons oeps*) *et pur ceo ne ſerra entend daſcun honor ou hereditament mes dont auters poient eſtoier ſeiſie al uſe, et ceo nul poet del dit dignity, et put ceo le dit Act extendera a ceo. Mes ceo eſt deſtre priſe reddendo ſingula ſingulis, et les parols queux le dit* George *Countee avoit ſont ſufficient a paſſer le dignity, et ove ceo accord le opinion de touts les Juſtices Dengliterre in* Nevils *caſe, ſur autiel parols in le ſtatute* 26 H. 8. *in le* 7 *part de mes Reports*, fo. 33 et 37.

Rot. Par. 3. R. 2. nu. 42.

There is an Act made in 3 H. 2. worthy here of remembrance, which never was yet printed. It is enacted, that all manner of perſons whatſoever, who have any lands or tenements, offices or other living Eccleſiaſtical or Temporal within Ireland, ſhall reſide or dwell upon the ſame. And that all ſuch as have there any Caſtles or other Forts, ſhall fortifie the ſame and furniſh it with men able for defence, and thereupon alſo dwell. And if they at any time depart, then during their abſence to appoint ſome able to ſupply his room, otherwiſe the Governor to diſpoſe the half of their Living to ſuch defence. See the Act at large, neceſſary to be put in execution in theſe dayes.

Rot. Par. 21 E. 1. Rot. 3 Hibernia.

Dominus Rex vult & præcipit quod de cætero ſingulis annis ſemel in anno compotus Hiberniæ, &c. per Theſaur. Hiberniæ reddatur ad Scaccarium Angliæ, & ibidem audiatur per Theſaur. & Barones ſuos, A neceſſary law, and much for the benefit of the King to be obſerved.

Trin. 13 E. 1. coram rege Rot. 38 in breve de errore, Hibernia. Apud Weſtm. 21 E. 1. Rot. 5. in breve de errore Int. William de Veſey & P. filium Thomæ. & Ro. pat. 23 E. 1 5 E. 2. error 89. 15 E. 3. ibid. 72. 34 Aſſ. p. 7. Reg. F. N. B. fo. 24 c. 11 H. 8. Kelw. 202. 15 E. 3. Record 38.

A long Record touching the cuſtody of the body and lands of the heirs within age, wherein theſe words are contained. Et cum una & eadem lex eſſe debeat tam in regno Angliæ quam Hiberniæ. Like writs of Error of judgement given in the Kings Bench in Ireland, Mich. 32 E. 1. coram Rege. The obald Verdons caſe, Breve de errore ſuper brev. de errore Rot. 76. Paſch. 30 E. 1. coram Rege Rot. 50. in breve de errore, &c. William de la Rivers caſe, Et Tr. 33 E. 1. Rot. 56. [a] Concordatum eſt per omnes de Concilio regis, Epiſcopis & aliis in Hibernia unanimiter, quod conſuetudo uſitata in Hibernia de bonis teſtatorum talis eſt quod ubi, &c.

[b] Priſage vinorum in Hibernia, and the manner of the taking of the ſame.

At a Synod holden in Ireland by St. Patrick their Apoſtle, it was unanimouſly agreed that Iriſh Prieſts ſhould have wives.

[c] *Tres Petitiones porrectæ Regi contra Eliam de Aſhburnham militem Juſticiar. domini regis in Hibernia de diverſis maleſactis, &c. per ipſum perpetratis, qui dicit quod non debet tractari, niſi in Hibernia, et ibidem terminari: et quod oportet ipſum dominum regem informari per indictamentum* 12 *Jur. vel per Appellum formatum et Attachiament. ad ſectam partis ſecundum legem et conſuetudinem regni regis Angliæ hactenus uſitat. Curia vult inde adviſari, et interim manucapitur. Poſtea dominus rex mandavit breve quod caperent manucapt. ad reſpondendum in Hibernia.*

[d] *Admittitur Epiſcopus Exon. pro ſine* 200 *Marc. pro contemptu in non admittendo præſentatum regis ad Eccleſiam de Southwell, pro quo contemptu omnia Temporalia ſeiſita fuerunt in manu regis, et tunc temporis ante finem fact. vacavit Archidiaconat. Cornubiæ ratione quod incumbens electus fuit in* [e] *Archiepiſcopum Dublin in Hibernia (temporalibus Epiſcopi Exon. ad tunc in manibus regis exiſten.) per quod dominus rex recuperavit verſ. Epiſcopum dict. Archidiaconat.*

Sir Elias Aſhburnhams caſe. d Paſch. 24 E. 3. Rot. 25. coram Rege. Cornubia. e Brict. li. 5. f. 395 7 E. 3. 9. 22 E. 1 41. 42.

In this Record two concluſions are to be obſerved. 1. Though Ireland (as hath been ſaid) be a diſtinct Kingdome of it ſelf, yet it is governed by one and the ſame law that England is. 2. That when the Archdeacon was by the King preferred to a Biſhoprick, he had the preſentation to the Archdeaconry in reſpect

reſpect of the Temporalties of the Biſhop of Exeter Patron of the Archdeaconry and not by any [a] prerogative. And ſo it is, if an Incumbent in Ireland be made a Biſhop in England.

If a Biſhop in England be made a [b] Cardinal, the Biſhoprick becomes void, and the King ſhall name the ſucceſſor, becauſe the Biſhoprick is of his patronage.

[c] See 45 E.3.9. upon the repeal of a Ratification of the Incumbent, a Procedendo out of the Chancery here to the Juſtices in Ireland to proceed in the Quare impedit brought by the King.

I finde an ancient Record touching Ireland neceſſary to be explained, in theſe words,

[d] *Rex Theſaurario Hiberniæ, Salutem. Cum Edwardus primogenitus noſter terram Hiberniæ habeat et teneat de dono noſtro cum omnibus pertinentiis ſuis adeo libere et quiete ſicut eam in manu noſtra teneremus, per quod chariſſima filia noſtra Alianora conſors dicti filii noſtri Aurum ſuum tam de finibus quam ſponte oblatis in terra Hiberniæ habere debet, ſicut chariſſima conſors noſtra Alianora Regina Angliæ Aurum ſuum habet de eiſdem in regno noſtro Angliæ: Vobis mandamus, &c. quatenus præfatæ conſorti filii noſtri prædicti Aurum prædictum de finibus et ſponte oblatis, et etiam de quibuſcunq; aliis finibus prædictis habere facias in forma prædicta. Et hoc, &c. In cujus &c. Teſte Rege 29. die Februarii, Anno 52 H.3.*

By this Record firſt it appeareth, that, as the law was taken at that day, by gift of King H. 3. his eldeſt ſonne Prince Edward was Lord of the Dominion and Lordſhip of Ireland. Secondly, that albeit the wife of Prince Edward was not Queen in name, but had the effect of it, therefore ſhe ſhould have a duty called Aurum Reginæ, as well as the Queen of England, being but Lady in Ireland.

[e] For albeit the Kings of Ireland were (until the Statute of 33 H.8.) ſtiled by the name of Lord of Ireland, yet was he ſupremus, and abſolutè dominus, and had royal dominion and authority, and that his Conſort was in rei veritate Regina, or elſe ſhe could not have had Aurum Reginæ.

[f] Albeit this Royal Dominion and Land of Ireland was of ancient time permitted to be granted de facto to the Kings ſonnes before mentioned, yet by the Law the King by his Letters Patents could not grant ſo Royal a member of his Imperial ſtile to any, no more than he could do of the Kingdome of England. And that doth well appear by this, that when King R. 2. by his Letters Patents created Robert de Vere Earl of Lincoln, and Marqueſſe of Dublyn to be Duke of Ireland, he granted to him for life * totam terram & Dominium Hiberniæ, & Inſulas eidem terræ adjacentes, ac omnia Caſtra, Comitatus, Burgos, Villas * Portus Maris, &c. una cum homagiis, * obedientiis, vaſſalis, ſerviciis, & recognitionibus Prælatorum, Comitum, Baronum, &c. * advocationibus & patronatibus Eccleſiarum Metropoliticarum & Cathedralium Abbatiarum, &c. * conſtituere Cancellar', Theſaurar', Juſticiar', &c. cum regaliis, regalitatibus, libertatibus, &c. & omnibus aliis *quæ ad regaliam noſtram pertinent, *cum mero & mixto Imperio, adeo plenè, integrè, & perfectè, ſicut nos ea tenuimus & habuimus, tenuerunt & habuerunt progenitorum noſtrorum aliqui ullis unquam temporibus retroactis. Tenendum per * Homagium ligeum tantum.

[g] The ſaid Letters Patents were authoriſed by Parliament, Aſſenſu Prælatorum, Ducum, & aliorum Procerum, & Communitatis noſtræ Angliæ in Parliamento &c. albeit it was contra legem & conſuetudinem Parliamenti, as before it appeareth, pa. 13, 14. to aſſent to any thing to the deſheriſon of the King and his Crown. Sed novus iſte inſolitus & umbratilis honor cito evanuit.

Rot. Par. 13 R.2.nu.21. the King by authority of Parliament gave the title of Duke of Aquitain to his Uncle John of Gaunt, Duke of Lancaſter, and it was by

[a] This is apparent by many authorities. Trin. 32 E.3. coram Rege, Rot. 75. John de Bonhams caſe. 17 E.3.fo.40. 21 E.3.40. 41 E.3 5. 46 E.3.32. 6 El. Dier 228.b pl.48. reſolve.

[b] Ro. Par. 18 H.6. per 2.m 24. A biſhop made a Cardinal.

[c] 45 E.3.fol 9.

[d] Ro. Par. Anno 52 H.3.m.26. Aurum Reginæ.

The like grant was made of the Land of Ireland by H. 2. to his ſon John.

[e] 33 H.8.cap.1. And ſo it appeareth by this Act that the King & his progenitors had before this Act Kingly juriſdiction and Royal authority.

[f] See before pag. 13, 14. the grant of King John to the Pope declared to be void by the Parliament in 40 E.3. Theſe that (*) marked cannot be granted by Letters Patents.

* Per Hom ligeũ for tenant for life could not do other homage.

[g] Rot. Par. 9 R.2 m 2 & Rot Par. 9 R.2.nu. 9 & 10 m.3.

by consent of Parliament, and could not be granted by Letters Patents, because it was one of the titles and stiles of his Royal Crown. And this also did first begin and end in him.

Aurum Reginæ. But now it is necessary to be known what this duty of Aurum Reginæ is. Wherein three things are to be considered, First, what authority and warrant in Law there is for this duty. Secondly, what it is. Thirdly, what is due thereby. First, in Lib. Rub. in Scaccario fo. 46. de Auro Reginæ, where it is said, that it is to be taken de his qui sponte se obligant Regi, &c. This present Record of 52 H. 3. Vet. Mag. Carta 2. part. fo. 65. Vid. 10 H. 3. Stat. de Roteland to the same effect.

Hil. 4 E. 1. in Scac. ex parte Rem. Reg. Hil. 12 E. 3. ibid. Rot. 3. Rot. clauf. 12 E. 3. part. 1. m. 21 A Record in the Exchequer Termino Hil. Anno 4 E. 1. Another there, Hil. 12 E. 3. Rot. 3. ex parte Rem. Regis and divers other Records in the reigns of R. 2 H. 4. &c. until the reign of H. 7.

In Acts of Parliament, viz. 15 E. 3. cap. 6. 31 E. 3. cap. 13.

2. In divers of these Records it appeareth that the Quæn should have de sponte oblatis * pro centum marcis argenti unam marcam auri solvend. per ipsum qui sponte se obligat. And Pasch. 4 Jacobi Regis the King did require the two Chief Justices and Chief Baron to certifie him what belonged to the Quæn for this duty at this day. And after many conferences, and hearing of Counsel learned on both sides, and view of Records, at last it was resolved by them all, and so did Popham Chief Justice report to the King, that the duty belonged to the Quæn with these four limitations. 1. It must be sponte from the subject, and at his pleasure whether he will give it or no, and no right in the Crown. And therefore fines for offences, for alienations, or the like, are no part of this duty. 2. It must be freely, without any consideration of any grant, sale or lease of any thing wherein the King hath any revenue, estate, or interest. And therefore Sales, Leases, Grants of Lands, Tenements, Wardships, or the like, are out of the same, for there is quid pro quo. 3. It must be sponte super aliqua consideratione &c. For example, if the subject sponte offer to the King for a licence in Portmaine, or to create a Tenure of himself, or to have a Fair, Market, or to make a Park, or the like, where the King diminisheth no part of his revenue, state, or interest, there Aurum Reginæ is due to the Quæn. 4. Of Subsidies, Fiftænes, or any other gratuity of the mær grace or benevolence of the subject, there is nothing due to the Quæn, and so it was resolved, Hil. 4 E. 1. &c. ubi supra. And so much upon this occasion de Auro Reginæ.

Rot. Parl. 7 R. 2. nu. 61.

Certain Irish words necessary to be explained.

a A Tainist was successor apparent under the chief Lord or Captain of every several Country, and was eligible by the Country.

b Brehon, the Irish called their Judges Brehons, and thereupon the Irish Law is called the Brehon Law.

c At a Parliament holden in Ireland by Howel Duke of Clarence, Lieutenant there, Anno 40 E. 3. at Kilkenny, and therefore called the Statute of Kilkenny, the Brehon Law is no Law, but a lewd custome crept in of later times, and never was the Law of the ancient Britains from whom they are descended.

d Cuttings. Under that name they comprehend Tallages and Impositions.

e Cosheries are prehendinations, when the chief Lord and his retinue, &c. came to his Tenants house, and fed upon their provisions till all were spent.

Termondlands are the Glebe of the Church.

Erick signifieth a fine for an offence.

Galloglasses, Equites Triarii qui securibus utuntur acutissimis.

Kernes sunt pedites qui jaculis utuntur.

a Thane apud Britannos pro viro nobili, aut Regis ministro.
b Brehons Bellagines.
c Parliament 40 E. 3. at Kilkenny
d Cuttings.
e Cosheries.
Termondland.
Erick.
Galloglasses.
Kernes.

The Prorex there in former times hath been called Custos, Warden, Lieutenant, Chief Justice, Deputy of Ireland.

These expositions we have added for the better instruction of him who will read the Irish Laws.

Rex, &c. Johanni Mareſcallo dedimus et conceſſimus pro Homagio et ſervicio ſuo Mareſcalſiam noſtram totius Hiberniæ cum omnibus pertinentiis &c. Habendum ſibi et hæredibus ſuis de nobis & hæredibus noſtris.

Rot. pat. 9 Johannis Regis Johanni Mareſcallo, of whom the Lord Morly is deſcended. Regiſt. 294.

See the Regiſter, that if an Archbiſhoprick or Biſhoprick in Ireland be void, that the Chapter ſhall ſue to the King in England to go to election, and after election made they ought upon certificate thereof made to the King to obtain his Royal aſſent to this election, and thereupon a Writ ſhall be directed out of the Chancery here, to the Chief Juſtice of Ireland, or his Lieutenant, rehearſing all this matter, and commanding him to take fealty of the Biſhop, and to reſtore him to his Temporalties. But now the courſe is in Ireland to make ſuch Writs there in the name of the King. But the King names the Archbiſhops and Biſhops there, as he doth in England; and then the Chapter chooſe him whom the King names to him, and thereupon Writs are made of courſe.

F. N. B. 169, 170.

And the reaſon of this change is worthy to be known: for the Charter of King John for election of Biſhops, &c. extended only to the Biſhops, &c. of *England*.[a] But after that the whole Dominion of Ireland (as well concerning the Church as the Commonwealth) was eſtabliſhed to be governed by one law with the Kingdom of England, as is aboveſaid, then the courſe of the Regiſter was changed, and the ſame courſe taken there, as it is in England.

[a] Carta Johannis Regis 15. Jan. apud novum London Ann. 18. Biſhops before were donative by the King. 10 E. 3. 1. b. per Perming. 17 E. 3. 40. per Sharp, &c.

And whereas heretofore ſome not without ſcandal, have divided this Kingdom into the *Engliſh Pale*, and the *wilde Iriſh*, let oblivion bury it, or ſilence cover it, for now all are reduced to obedience and civil behaviour. So as a man may juſtly ſay of the old Britains, *Sunt in bello fortes, & in pace fideles*. And for that ſome have given out that the Crown of England had this Country of Ireland of the donation of the Pope, we will ingenuouſly manifeſt the truth therein by the Records and Writings themſelves at large.

[b] Auferat oblivio, ſi poteſt, ſi non, ubicunque ſilentium regat.

Altitonantis Dei largiflua clementia, qui eſt Rex Regum, et Dominus dominantium, ego Edgarus Anglorum Baſileus, omniumque rerum Inſularum Oceani qui Britanniam circumjacent, cunctarumque Nationum quæ infra eam includuntur Imperator et dominus, gratias ago ipſi Deo Omnipotenti Regi meo, qui meum imperium ſic ampliavit et exaltavit ſuper regnum patrum meorum. Qui licet Monarchiam totius Angliæ adepti ſunt a tempore Athelſtani, qui primus Regum Anglorum omnes Nationes quæ Britanniam incolunt ſibi armis ſubegit, nullus tamen eorum ultra fines imperium ſuum dilatare aggreſſus eſt. Mihi tamen conceſſit propitia Divinitas cum Anglorum imperio omnia regna Inſularum Oceani cum ſuis ferociſſimis Regibus uſque Norvegiam maximamque partem Hiberniæ, cum ſua nobiliſſima civitate de Dublina Anglorum regno ſubjugare, quos etiam omnes meis imperiis colla ſubdere, Dei favente gratia, Coegi. Quapropter et ego Chriſti gloriam et laudem in regno meo exaltare, et ejus ſervicium amplificare devotus depoſui. Et per meos fideles fautores, Dunſtanum, viz. Archiepiſcopum Ayelwolanum ac Oſmaldum Archiepiſcopos, quos mihi patres ſpirituales et conſiliatores elegi, magna ex parte diſpoſui, &c. Facta ſunt hæc Anno domini 964. Indictione 8. Regni vero Edgari Anglorum Regis 6. in regia urbe quæ ab incolis Ocleayeceaſtrie nominatur in natale Domini feſtivitate Sanctorum Innocentium feria 4. &c. + Ego Edgar Baſileus Anglorum, et Imperator Regum gentium, tum conſenſu et Principum et Archiepiſcoporum meorum hanc meam munificentiam ſignomeo corroboravi. + Ego Alfrye Regina conſenſi et ſigno Crucis confirmavi. Ego Dunſtan Archiepiſcopus Dorobor' Eccleſiæ Chriſti conſenſi et ſubſcripſi + Ego Oſticel Archiepiſcopus Eboracenſis Ec-

The Charter of King Edgar, made An. Dom. 964. and in the 6 of his reign.

King Athelſtane reduced England to a Monarchy.

King Edgar conquered the greateſt part of Ireland, with the moſt noble City of Dublin.

Note the piety of this King. Int. leges Edw. Regis & Confeſſoris fo. 137. b. Lamb. Arthurus qui quondam fuit inclytiſſimus Rex Britannorum, &c. ſubjugavit ſibi ſtrenue (inter alia) Hiberniam, &c.

cleſiæ conſenſi & ſubſcripſi. Ego Alferic Dux. Ego Buthmod Dux. Ego Aridgary Dux. ✝

And what Eccleſiaſtical iuriſdiction the Archbiſhop of Canterbury had in Ireland of ancient time before it was ſubiect to the Crown of England, you may read in Camdens Britannia, pag. 735. & 765. as namely in the Conſecration and Confirmation of their Biſhops, by reaſon of his Primacy in Ireland.

Mich. 5 E. 3. coram Rege Rot. 43. Hibernia.

A Iuſtice in Ireland conſtituted by Letters Patents under the Great Seal of England, cannot be removed from his office but by the King only.

Of the Pentarchy of Ireland.

South. *The Kingdome of Mononia had 7 Counties,* viz. Kerry, Deſmond, Corke, Waterford, Limricke, Tipperay, *with the County of St.* Croſſes Tipperay.

East. *Lagenia 7.* viz. Kilkenny, Caterlough, Queens County, Kings County, Kildare, Waſhford, Dublyn.

The mildeſt Media. 3. East Meth, West Meth, Longford.

West. *Conacha had 6. Counties,* viz. Townond, Galloway, Mino, Slego, Le Trim, Roſtaman.

North. *Ulconia had* 10. viz. Louth, Cad, Monaghaia, Domagh, Doun, Antrim, Colran, Tiroen, Tirconel, *or* Doneal.

Ireland hath 33 Counties, beſides Cities, that are Counties of themſelves.

King H. 2. at a Parliament holden at Oxford, Anno regni ſui 13. created his ſon John King of Ireland. But the ſucceeding Kings wrote themſelves Domini Hiberniæ, until the 33 year of H. 8. in which year he tok upon him the name of King of Ireland.

Rot. Parl. 3. R. 2. nu. 43. in England. Mines of Gold and Silver. Bract. li. 2 f. 222 Flet. lib. 4. fo. 119 Pl. Com. in the caſe of Mines Coynage at Dublin.

It was enacted by Authority of Parliament, that every man during ſix years might dig in his own proper ſoil in Ireland Gold or Silver, &c. yielding to the King the ninth part thereof, & that they make Plate or Coyn thereof at the Kings Coynage in Dublyn, paying the fees: and that one carry thereout any of the ſaid Gold, Silver or Bullion, but into England, without the Kings licence, on pain to loſe the ſame.

† Rot. par. 5 H. 6. n. pri.

† A grant of all Mines of Gold and Silver within England, &c. to the Duke of Bedford Regent of France, &c. rendring to the Church the tenth part: to the King the fifteenth part: to the owner of the ſoil the twentieth part.

To conclude with ſomewhat which tends to the honour of that Noble Nation, Certain it is, that whiles the Liberal Sciences in Europe lay in a manner buried in darkneſſe, then did their luſtre ſhine forth clearly here in Ireland; thither did our Engliſh Saxons repair, as to a Fayre or Market of good Letters.

Letters: whence of the holy men of those times we often read in ancient Writers, Amandatus est ad disciplinam in Hiberniam; he was sent into Ireland to study there. Camden in Hibernia.

He that is desirous to read more Records concerning this Kingdome of Ireland he may read these Coram Rege in the Kings Bench. Trin. 13 E. 1. Rot. 36. 38. Hibernia. Mich. 17 E. 1. Rot. 31. 38. Hibernia. Hil. 19 E. 1. Rot. 68. Hibernia. Pasch. 19 E. 1 Rot. 69. Hibernia. Trin. 20 E. 1. Rot. 40. Pasch. 34 E. 1. Rot. 104 Mich. 5 E. 3. Rot. 40. & 46. Mich. 6 E. 3. Rot. 55. Hibernia.

Of the precedency of the great Officers, Nobility, and others of this Realm,

For of the Precedency of the King himself and of other Kings and supreme Princes, I take not upon me to write, but referre you to learned *Camden*, *Lib. Annal. Anno Domini* 1600, 42 *Eliz.* pag.

At the Common law, the King by his Prerogative royal might give such honour, reputation and placing to his Counsellors and other his subjects, as should be seeming to his wisdom, which Prerogative was so declared by Act of Parliament. Præcedere est præcundo incedere. Qui præcellit precedere debet. Most ancient is most honourable. Aristot. 1 Metaph. cap. 3. 31 *H.* 8. cap. 10. in the Preamble. 2 Ro. Par. 23 H. 6 Vid Rot. Par. 28 *H.* 6. 2 parte. m. 23. Precedency granted to R. Earl of Warw.

By this Prerogative, Henrico Beauchamp concessit Rex Henricus Sextus, ut primus & præcipuus esset Angliæ Comes, & hoc titulo uteretur; Henricus Præcomes totius Angliæ & Comes Warwici, Vectæ Insulæ regulum dixit; posteaque Ducem Warwici creavit, & concessit, ut haberet sedem in Parliamentis, & alibi proximam Duci Norf. & ante Ducem Buckinghamiæ.

The same King created Edmond of Hadham to be Earl of Richmond, and granted him precedency before all other Earls. He also created Jasper of Hatfield Earl of Pembroke, and gave him precedency before all other Earls next to his brother the said Edmond Earl of Richmond. But hereof these examples shall suffice.

King H. 8. though standing as much upon his Prerogative as any of his Progenitors, yet finding how veratious it was to himself, and how distastful to his ancient Nobility to have new raised degrees to have precedency of them, and finding that this kind of controversie for precedency was of that nature, that it had many partakers, spent long time, and hindred the arduous, urgent and weighty affairs of the Parliament, was content to binde and limit his Prerogative by Act of Parliament concerning the precedency of his great Officers, and of his Nobility. And first for the Lords Spiritual (who sit in Parliament on the Kings right hand) amongst themselves. 31 H. 8. cap. 10.

1. The Archbishop of Canterbury. 2. The Archbishop of York on the same form. 3. The Bishop of London. 4. The Bishop of Duresme. 5. The Bishop of Winchester, and then all the other Bishops of both Provinces shall sit and be placed after their Ancienties, as before this Act was accustomed. But having regard to the Lords and noble Peers of the Realm, both the Archbishops have place above all the great Officers, and Nobility in Parliament, Council and Commissions, saving in the Star-chamber, the Lord Chancellor or Lord keeper hath the precedency of them. But the other Bishops have place above all the Barons of the Realm, because they hold their Bishopricks of the King per Baroniam, but they give place to Viscounts, Earls, Marquesses and Dukes.

Note, the Lord Steward of England is not here mentioned, because it was intended that when the use of him should be necessary, he should not endure longer than before.

Concerning the great Officers of the Realm. 1. The Lord Chancellor or Lord Keeper of the Great Seal. 2. The Lord Treasurer. 3. the Lord President of the Kings Council. 4. The Lord Privy Seal, being of the degree of Barons of Parliament, or above, shall sit and be placed in Parliament on the higher part of the form above all Dukes, except only such as shall happen to be the Kings Son, the Kings Brother, the * Kings Nephew, or the Kings Brothers or Sisters Sons. See an Act made in 28 H. 8. cap. 18. making it treason for marrying, &c. with any of the blood royal within certain degrees: but it is repealed. 5. The Great Chamberlain of England. 6. The Constable. 7. The Marshal. 8. The Lords Admiral. 9. The Lord Steward of the Kings house. 10. The Kings Chamberlain shall sit and be placed after the Lord Privy Seal in manner and form following, viz. every of them shall sit and be placed above all other Personages being of the same state and degree: as if he be a Baron, above all Barons: if a Viscount, above all Viscounts: if an Earl, above all Earls, &c. 11. The Kings principal Secretary being a Baron of the Parliament shall sit above all Barons not having any of the offices aforesaid. But if he be a Viscount, an Earl, or any other higher degree, he shall not take the place of any Viscount, Earl, or higher degree, as it was resolved in the case of Robert Cecil, Earl of Salisbury. And if the Secretary be a Bishop he shall take the place of all other Bishops not having any of the offices aforesaid, but not above the Archbishops.

* 1 The Kings Grandchilde. Note the degrees within that Act.

The general clause.

All other Dukes not before mentioned, Marquesses, Earls, Viscounts and Barons, not having any of the offices aforesaid, shall all sit and be placed after their Ancientie, as hath been accustomed.

¶ All other Dukes, &c. If the King should create a Duke to the estate of Archduke, yet by force of these words he shall not take place of any Duke that was his Ancient, Et sicde similibus; otherwise this Statute might be made of no force, and an Archduke is some other Duke.

If any person being Lord Chancelor, Lord Keeper, Lord Treasurer, Lord President, Lord privy Seal, or Chief Secretary, shall be under the degree of a Baron of Parliament, they shall in Parliaments sit in the uppermost part of the Sacks in the middest of the Parliament Chamber, &c. But in the Starchamber, and all other Assemblies and conferences of Council, they shall sit and be placed, as is above rehearsed; and in * no other place. Lastly, the Lord Chancelor, Lord Keeper, Lord Treasurer, Lord President, Lord Privy Seal, being Lords of Parliament: The Great Chamberlain, the Constable, the Marshal, the Lord Admiral, the Lord Steward, the Kings Chamberlain, and the Kings Chief Secretary shall sit and be placed in such order and fashion as is above rehearsed, and not in any other place, by Authority of this Parliament, Vid. Statut. de 10 R. 2. cap. 1.

* The words negative were added to avoide all scruple, that the order for precedency set down in this Parliament should not be altered by any non obstante.

[a] He that is desirous to understand the true Rules of Precedency of the Nobles of this Realm in the High Court of Parliament, &c. let him read the great case betwæn John Earl Marshal, and Richard Earl of Warwick, in Parliament, and the affirmations, answers, and replications on both parts exceeding long, but full of notable rules, reasons, and presidents concerning Precedency both in respect of the Blood-Royal, and otherwise: together with the Lines and Pedegrees, Seats, and Places of many Noble men, very delightful to be read.

a Rot. Par. Anno 3 H. 6. in principio. & nu. 10.

b Ro. Par. 17 H. 6 nu. 18. Vide Rot. Parl. 11 H. 6. m 9. nu. 32, 33, 34, 35. between the Earl of Arundel and Moubrey Earl of Norf.

[b] Another betwæn William Earl of Arundel, and Thomas Earl of Devon: wherein you may read notable matter concerning the Castle and Honour of Arundel precedently adjudged by the Lords in Parliament in the reign of H. 4. betwæn the Earl of Arundel and the Earl of Kent.

Rot. Par. 3 H. 6. in principio, cited in the Earl Marshals case.

[c] If a Bishop of this Realm be made a Cardinal, he shall not take any place of precedency in Parliament as Cardinal, but take his place in the right of his Bishoprick, which he holdeth of the King per Baroniam, in respect whereof he sitteth in Parliament.

c Hol. Chron. pa. 610. 10. Hall 143. &c. Anno 20 H. 6.

[d] If a Duke or Earl, &c. be made Protector of the Realm in Parliament, he shall

d Rot. Par. 6 H. 6 nu. 22, 23, 24.

shall have no other place but as a Duke or Earl, &c, whereby you may perceive how necessary it was to set down by authority of Parliament in certainty the place & precedency that great Officers should have in Parliament, who sit not there in right of their Offices, but of their Nobility: And the names of dignities of the Nobility are parcel of their names, and so ought to be named in the Kings Writs: but the Offices of Chancellor, Treasurer, and other Offices are not parcel of their names, and therefore in the Kings Writs need not to be so named.

It is also enacted by authority of the said Act of 31 H. 8. that in all trials of [b] Treasons by the Peers of this Realm, the said great Officers of this Land shall sit and be placed according to their Offices above all other the Peers, as is aforesaid.

We have perused the List of the names of the Lords of Parliament sitting in Parliament both of ancient and later time, wherein we can gather no certainty for precedency.

Thus far for avoyding of contention about precedency in Parliaments, Star-Chamber, and all other Assemblies and Conferences of councell, and upon trials by the Peers of the Realm was necessary.

Now he that desireth to know the places and precedency of the Nobility and Subjects of the Realm, as well men as women, and of their children: we for avoiding of tediousnesse will refer them to a Record of great authority in the reign of H. 7. (for we will not vouch [c] Bern. Cassaneus or any other forein Author) [d] intituled, Series ordinum omnium procerum, magnarum, & nobilium, & aliorum quorumcunque infra hoc regnum tam virorum quam fœminarum, posita & distincta per nobilissimum Jasparum Ducem Bedford & alios nobiles appunctuatione Domini Regis Henrici septimi: (but this Record dealeth not with the places of any of the great Officers) [e] whereunto we will refer you: wherein you shall see what places both the Sons, * Wives, and Daughters, of Lords of Parliament, as Dukes, Marquesses, Earls, Viscounts, and Barons shall have, and of Baronets, Knights, Esquires, and Gentlemen, and of their Wives and Children shall have.

[f] If any question be moved in Parliament for privilege or precedency of any Lord of Parliament, it is to be decided by the Lords of Parliament in the house of the Lords, as all privileges, and other matters concerning the Lords house of Parliament are, as privileges, and other matters concerning the House of Commons are by the House of Commons to be decided.

The determination of the places and precedencies of others doth belong to the Court of the Constable and Marshal, unlesse any question riseth upon the said Act of Parliament of 31 H. 8. for that being part of the Law of the Realm (as all other statutes be) is to be decided by Judges of the Common Law.

[g] Nobilis est qui generis sui imagines proferre potest, [h] Flavia gens obscura quidem & sine imaginibus.

Tota licet veteres exornent [i] undique Ceræ
Atria, nobilitas sola est atque unica virtus.

Major est nobilitas quam virtus: virtus enim sine nobilitate esse potest, nobilitas autem sine virtute esse non potest.

[k] Arma seu insignia gentilitia ex antiquo habuerunt loco imaginum. So as now the best discussing of antiquity of Centry is per insignia.

——Armaque fixit *Virgil.*
Troja.——

And by the Lawes of England as all the degrées of nobility and honour were derived from the King as the fountain of honour: * so all the Lands in England

of the gaining and losing thereof, &c. viz. Sect. 9. fo. 17. a. b. Sect. 1. fo. 9. b. Sect. 95. fo. 69. a. b. Sect. 141. fo. 165. a. Sect. 84, 85. fo. 20. a. Sect. 137. fo. 97. a. Sect. 201. f. 134. a. Sect. 648. fo. 344. a.

47 H. 6. fo. 15. Vid. Rot. Parl. 15 E. 3. nu. 7.

b This is put for an example, for it extendeth to all trials by Peers not only in case of treason, but in case of felony, misprision of treason & felony, and so ever since this Statute hath it been put in use.

c Barth. Cassan. in Catalogo gloriæ mundi.

d Series ordinum tempore H. 7.

e Vid. Camden Eliz. p. 475.

* Which we have added the rather for that the contention about precedency between persons of that sex is ever fiery, furious, and sometime fatal. Vid. the Parl. Rolls ubi supra,

f Vid. Rot. Parl. 31 H. 6. nu. 17. See 3 H. 6. nu. 10. between Mowbray Earl of Nott & Beauchamp Earl of Warwick.

g Cicero. Plin. lib. 39. apud majores, &c. optime.

h Tranquillus in Vesp.

i Juvenal. i. Cereæ imagines.

k Cotte de Arms A coat armour that is, a long coat over armour with his Arms embroidered upon it.

* See the 1 part of the Institutes, Sect. 1. &c. & in that first part in divers places many things concerning nobility and their creations, and Sect. 112. f. 83. b. &c.

land were originally derived from the Crown of England, and are holden of the same mediately or immediately. See before in the Chapter of the high Court of Parliament.

As names make known singular persons, so Armes distinguish several Families.

It is worthy of remembrance, and fit for example, that when Thomas Lord Cromwell by a flattering Herald was offered in the time of King H. 8. to fetch his pedegree from the ancient Lord Cromwel, that he might bear his Coat, he answered that he would bear a Coat of his own, lest another mans Coat might be taken from him: unto whom the King as advanced by him gave this Coat, Quarterly indented per Fesse, Or an Azure, four Lions counterchanged: where the old Lord Cromwels Coat was Argent, a Chief Gules, a Bend Azure. The said Act of 31 H. 8. extendeth not to Archbishops and Bishops, therefore it is necessary to speak somewhat of them also. In ancient time they had great precedency, even before the brother of the King, as it appeareth by the Parliament Roll of 18 E. 1. and many others, which continued untill it was altered by Ordinance in Parliament in the reign of King H. 6. as it appeareth by a Roll of Parliament of that Kings reign, entred in the back of the Parliament Roll. The precedency in Parliament, and other places of Councel at this day (whereunto we aym) is, the two Archbishops have the precedency of all the Lords Temporal; and every other Bishop in respect of his Barony have place of all the Barons of the Realm, and under the estate of the Viscount and other superior dignities. The Bishops betwæn themselves have this precedency. First, the Bishop of London, and after him the Bishop of Duresme, and then the Bishop of Winchester, and after him every Bishop as he is in seigniority. But to this day, in all Acts, Ordinances, and Judgements, &c. of Parliament is said, the Lords Spiritual and Temporal.

Rot. Par. 9 Jac. 8. part. n. 45. Baronets and others.

The first creation of Baronets was in Anno 9 Jacobi Regis: what place and precedency these Baronets and divers others shall hold, you may read Rot. par. 10 Jacobi Regis part 10. m. 8. & Rot. par. Anno 14 Jacobi Regis part. 2. m. 23.

To conclude this Chapter with the Code of Theodosius, &c. Ut dignitatum ordo servetur, si quis indebitum sibi locum usurpaverit, nulla se ignoratione defendat, sitque plane sacrilegii reus.

The

The Epilogue.

THus have we by the great goodneſſe of the Almighty brought this painfull Work, conſiſting of ſuch, and ſo many varieties and difficulties, concerning the Juriſdiction of ſuch, and ſo many diſtinct Courts (above the number of 100.) to a concluſion: and in ſome few caſes, where we have differed from others in opinion, we have ſhewed the cauſe and beginning of theſe errors (as we take them:)for it is a ſure Rule, *Quod errores adſua principia referre, eſt refellere*, to bring errors to their firſt, is to ſee their laſt. Wherein we have ſtrengthned our opinion with our two great guides, Authority and Reaſon, and not truſted Abridgements, Polyanthea's, or taken any thing upon truſt, but have ſearched the Fountains themſelves, alway holding this Rule, *Quod ſatius eſt petere fontes, quam ſectari rivulos*: And our deſired end is, that all theſe high and honourable Tribunals, and other ſubordinate Courts and venerable Seats of Juſtice may proſper and flouriſh in diſtribution of Juſtice, which aſſuredly they ſhall doe, if they derive all their power and ſtrength from their proper roots.

Whileſt we were in hand with theſe four Parts of the Inſtitutes, we often having occaſion to go into the City, and from thence into the Country, did in ſome ſort envy the ſtate of the honeſt Plowman, and other Mechanicks; for the one when he was at his work would merrily ſing, and the Plowman whiſtle ſome ſelf pleaſing tune, and yet their work both proceeded and ſucceeded: But he that takes upon him to write, doth captivate all the faculties and powers both of his minde and body, and muſt be only intentive to that which he collecteth, without any expreſſion of joy or cheerfulneſſe, whileſt he is in his work.

Throughout all this Treatiſe we have dealt cleerly and plainly concerning ſome pretended Courts, which either are no Courts warrantable by Law, as we conceive them, or which without warrant have incroached more juriſdiction then they ought. *Qui non libere veritatem pronuntiat, proditor veritatis eſt.* Wherein if any of our honourable friends ſhall take offence; our Apology ſhall be, *Amicus Plato, amicus Socrates, ſed magis amica Veritas.* Having ever in memory that ſaying of the Kingly Prophet, *Keep innocency, and take heed to the thing that is right, and that will bring a man peace at the laſt.* Pſal. 37, 38

And you honorable and reverend Judges and Juſtices, that do or ſhall ſit in the high Tribunals and Courts or Seats of Juſtice, as aforeſaid, fear not to do right to all, and to deliver your opinions juſtly according to the Laws: for fear is nothing but a betraying of the ſuccours that reaſon ſhould afford. And if you ſhall ſincerely execute juſtice

Lib. Sap. cap. 17. 12. Nihil eſt tam me niſi proditio cogitationis auxiliorum.

ſtice, be aſſured of three things: Firſt, though ſome may maligne you, yet God will give you his bleſſing. Secondly, that though thereby you may offend great men and Favorites, yet you ſhall have the favorable kindneſſe of the Almighty, and be his Favourites. And laſtly, that in ſo doing, againſt all ſcandalous complaints and pragmatical devices againſt you, God will defend you as with a ſhield: * *For thou Lord wilt give a bleſſing unto the righteous, and with thy favourable kindneſſe wilt thou defend him as with a ſhield.*

* Pſal. 5. 13.

And for that we have broken the Ice, and out of our own induſtry and obſervation framed this high and honourable Building of the Juriſdiction of Courts, without the help or furtherance of any that hath written of this Argument before, I ſhall heartily deſire the wiſe hearted and expert Builders (Juſtice being *Architectonica Virtus*) to amend both the method or uniformity, and the ſtructure it ſelf, wherein they ſhall find either want of windows, or ſufficient lights, or other deficiency in the Architecture whatſoever: And we will conclude with the Aphoriſme of that great Lawyer and Sage of the Law (which we have heard him often ſay) *Bleſſed be the amending hand.*

Ariſtotle.

Edm. Plowden.

Deo gloria & gratia.

FINIS.

A

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Zdezynf. 1964

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