THE
FOURTH PART:
INSTITUTES
TO THE
Laws of England,
View of the Judiciaries of Great Britain.
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 proprio potestatis egressus in aliam mei sem perperam mittit falcem suam.

Author Edward Coke Milite.

Hac ego grandaeus posui tibi, candid Le Eior.

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Cum Gratia & Privilegio Regis Majestatis.
A Table of the several Courts in this Fourth part of the Institutes Treated of.

Chap. Pag.

O of the high and most honourable Court of Parliament. 1

2 Of the Council Board or Table. 53

3 Of the power and authority of the Protector. 58

4 Of the Court of the High Steward of England. ibid.

5 Of the Court of Star-Chamber, Coram Rege & Concilio. 66

6 Of the Court for redress of delays of Judgments in the Kings great Courts: 67

7 Of the Court of Kings Bench, Coram Rege. 70

8 Of the Court of Chancery, Coram Rege in Cancellaria. 78

9 And incidently of the Court of Request. 97

10 Of the Court of Common Pleas. 99

11 Of the Court of Exchequer. 103

12 Of a Court to enquire of, and certifie unlawful and untrue Accompts in the Exchequer. 117

13 Of the Court of Exchequer Chamber. 118

14 Of the First-fruits and Tenths Ecclesiastical. 120

15 Of the Court of Augmentations. 121

16 Of the Court of General Surveyors of the Kings Lands, &c. 122

17 Of the Court of Chivalry before the Lord Constable and Earl Marshal. 123

18 Of the Court of the Marshalsea. 130

19 Of the Counting-house of the Kings household, called the Greencloth, and by the way of the Wardrobe, &c. 131

20 Of the Court of the Lord Steward, Treasurer, and Comptroller of the Kings house, concerning felony by compassing, &c. to kill the King, &c. 133
The Table.

Chap.          Pag.
21 Of 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, of Treson, Murder, and bloodshed within the Kings house. 133
22 Of the Court of the Admiralty proceeding according to the Civil law. 134
23 Of the Court of the Commission under the Great Seal by force of the Statute of 28 H. 8. cap. 15. for Criminal and Marine causes proceeding according to the course of the Common Law. 147
24 Of Portmoots or Port-Courts. 148
25 Of the power and authority of Commissioners and others for maintaining and erecting of Beacons, Light-houses, and Sea-marks, and concerning Watches. ibid.
26 De Conservatore seu custode Treugarum, i. indiciarum & aliorum Regis conductuum, and incidently of the office, authority, and privilege of Ambassadors, and of Leagues, Treaties, and Truces. 152
27 Of the Courts of the Justices of Assize, and of Nisi Pri- us. 158
28 Of Justices of Oyer and Terminer. 162
30 Of Justices of Gaol-delivery. 168
31 Of the Court of the Sessions of the Justices of the Peace. 170
32 Of the Court of Inquiry of the defaults of Justices of Peace, &c. concerning Riots, &c. 184
33 Of the Court of Justices in Eire or Itinerant. ibid.
34 Of the Court of Justices of Trailebafton. 186
35 Of the Court of Wards and Liveries. 188
36 Of the Court of the Dutchy Chamber of Lancaster at Westminster. 204
37 Of the County Palatine of Chester. 211
38 Of the County Palatine of Durham. 216
39 Of
<table>
<thead>
<tr>
<th>Chap.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>39</td>
<td>220</td>
</tr>
<tr>
<td>40</td>
<td>221</td>
</tr>
<tr>
<td>41</td>
<td>222</td>
</tr>
<tr>
<td>42</td>
<td>ibid.</td>
</tr>
<tr>
<td>43</td>
<td>225</td>
</tr>
<tr>
<td>44</td>
<td>227</td>
</tr>
<tr>
<td>45</td>
<td>229</td>
</tr>
<tr>
<td>46</td>
<td>237</td>
</tr>
<tr>
<td>47</td>
<td>239</td>
</tr>
<tr>
<td>48</td>
<td>242</td>
</tr>
<tr>
<td>49</td>
<td>245</td>
</tr>
<tr>
<td>50</td>
<td>247</td>
</tr>
<tr>
<td>1</td>
<td>ibid.</td>
</tr>
<tr>
<td>2, 3</td>
<td>ibid.</td>
</tr>
<tr>
<td>4</td>
<td>248</td>
</tr>
<tr>
<td>5</td>
<td>ibid.</td>
</tr>
<tr>
<td>6</td>
<td>249</td>
</tr>
<tr>
<td>7</td>
<td>ibid.</td>
</tr>
<tr>
<td>8</td>
<td>ibid.</td>
</tr>
<tr>
<td>9</td>
<td>ibid.</td>
</tr>
<tr>
<td>10</td>
<td>250</td>
</tr>
<tr>
<td>11</td>
<td>ibid.</td>
</tr>
<tr>
<td>12</td>
<td>ibid.</td>
</tr>
<tr>
<td>13</td>
<td>ibid.</td>
</tr>
<tr>
<td>14</td>
<td>250</td>
</tr>
<tr>
<td>15</td>
<td>251</td>
</tr>
<tr>
<td>16</td>
<td>ibid.</td>
</tr>
</tbody>
</table>

Of the Royal Franchise of Ely.
Of the County Palatine of Pembroke.
Of the Franchise of Hexham and Hexamshire.
Of the Courts of the Cinque Ports.
Of the Court of the Escheator, and of Commissioners for finding offices, &c.
Of the Courts of the Universities of Cambridge and Oxford.
Of the Courts of the Stanneries in Cornwall and Devon.
Of the Court of the Mayor of the Staple.
Of the legal Courts and their Jurisdictions within the Principality of Wales.
Of the Court of Equity before the President and Council of Wales, and the Marches of the same.
Of the President and Council in the North.
Of the Courts and their Jurisdictions within the City of London, and...
Of the Husting.
The two Courts of the Sheriffs.
The Court of Equity before the Lord Mayor, commonly called the Court of Conscience.
The Court of the Mayor and Aldermen.
The Court of Orphans.
The Court of Common Council.
The Court of Wardmote.
The Court of Halimote.
The Court of the Chamberlain for Prentices.
The Court for the conservation of the Water and River of Thames.
The Court of the Coroner in London.
The Court of the Escheator in London.
The Court of Policies and Assurances in London.
The Court of the Tower of London.
The Jurisdiction, &c. of the College of Physicians in London, &c.
Of the Courts of the Justices assigned for the government of the Jews.
<table>
<thead>
<tr>
<th>Chap.</th>
<th>Of the Court of Stancliff and Friendles Wapentage</th>
<th>Pag.</th>
</tr>
</thead>
<tbody>
<tr>
<td>52</td>
<td>ibid.</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Of the City of Westminster.</td>
<td>255</td>
</tr>
<tr>
<td>52</td>
<td>Of the City of Norwich.</td>
<td>256</td>
</tr>
<tr>
<td>53</td>
<td>Of the Court of the Tourn.</td>
<td>259</td>
</tr>
<tr>
<td>54</td>
<td>Of the Court of the Leet or view of Frank-pledge</td>
<td>261</td>
</tr>
<tr>
<td>55</td>
<td>Of the County Court.</td>
<td>266</td>
</tr>
<tr>
<td>56</td>
<td>Of the Hundred Court.</td>
<td>267</td>
</tr>
<tr>
<td>57</td>
<td>Of the Court Baron.</td>
<td>268</td>
</tr>
<tr>
<td>58</td>
<td>Of the Court of ancient Demeise.</td>
<td>269</td>
</tr>
<tr>
<td>59</td>
<td>Of the Court of the Coroner.</td>
<td>271</td>
</tr>
<tr>
<td>60</td>
<td>Of the Court of Pipowrds.</td>
<td>272</td>
</tr>
<tr>
<td>61</td>
<td>Of the Court of the Clerk of the Market.</td>
<td>273</td>
</tr>
<tr>
<td>62</td>
<td>Of the Court of the Commissioners of Sewers.</td>
<td>275</td>
</tr>
<tr>
<td>63</td>
<td>Of the Court of the Commissioners upon the Statute of Bankrofs.</td>
<td>277</td>
</tr>
<tr>
<td>64</td>
<td>Of Commissioners for Examination of Witnesses.</td>
<td>278</td>
</tr>
<tr>
<td>65</td>
<td>Curia curfus Aquæ apud Gravelend.</td>
<td>280</td>
</tr>
<tr>
<td>66</td>
<td>Of the Kings Swanberd.</td>
<td>ibid.</td>
</tr>
<tr>
<td>67</td>
<td>Of the Wardens Courts in the East, West, and Middle Marches adjoining to Scotland.</td>
<td>281</td>
</tr>
<tr>
<td>68</td>
<td>Of Callais, or Callis Caletum.</td>
<td>282</td>
</tr>
<tr>
<td>69</td>
<td>Of the Isle of Man, and of the Law and Jurisdiction of the same.</td>
<td>283</td>
</tr>
<tr>
<td>70</td>
<td>Of the Isles of Jersey and Garnsey, and of the Law and Jurisdiction of the same.</td>
<td>286</td>
</tr>
<tr>
<td>71</td>
<td>Of the Isle of Wight.</td>
<td>287</td>
</tr>
<tr>
<td>72</td>
<td>Of the Island called Lindesfarn, &amp;c. called also the Holy Island.</td>
<td>288</td>
</tr>
<tr>
<td>73</td>
<td>Of the Forests, and the Jurisdiction of the Courts of the Forests.</td>
<td>289</td>
</tr>
<tr>
<td>74</td>
<td>Of the Ecclesiastical Courts, viz.</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>The Court of Convocation.</td>
<td>321</td>
</tr>
<tr>
<td>2</td>
<td>Concerning Subscription.</td>
<td>322</td>
</tr>
<tr>
<td>3</td>
<td>Of the High Commission in Causes Ecclesiastical.</td>
<td>324</td>
</tr>
<tr>
<td>4</td>
<td>The Prerogative Court.</td>
<td>335</td>
</tr>
<tr>
<td>5</td>
<td>The Court of the Arches.</td>
<td>337</td>
</tr>
<tr>
<td>6</td>
<td>The Court of Audience.</td>
<td>ibid.</td>
</tr>
<tr>
<td>7</td>
<td>The</td>
<td></td>
</tr>
<tr>
<td>Chap.</td>
<td>The Table.</td>
<td>Pag.</td>
</tr>
<tr>
<td>-------</td>
<td>-----------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>7.</td>
<td>The Court of Faculties.</td>
<td>337</td>
</tr>
<tr>
<td>8.</td>
<td>The Court of Peculiars, Curia Peculiarium.</td>
<td>338</td>
</tr>
<tr>
<td>10.</td>
<td>The Court of the Archdeacon, or of his Commisary.</td>
<td>339</td>
</tr>
<tr>
<td>11.</td>
<td>The Court of Delegates, and incidently of Appeals.</td>
<td>ibid.</td>
</tr>
<tr>
<td>12.</td>
<td>The Court of Commissioners of Review.</td>
<td>341</td>
</tr>
<tr>
<td></td>
<td>The Courts of the Conservators of the priviledges of St. Johns of Jerusalem.</td>
<td>ibid.</td>
</tr>
<tr>
<td>75.</td>
<td>Of Scotland.</td>
<td>345</td>
</tr>
<tr>
<td>76.</td>
<td>Of the Kingdom of Ireland.</td>
<td>349</td>
</tr>
</tbody>
</table>

The Epilogue.
IN the two former Parts of the Inscriptiæ, we have principally treated De communiis placitis, and of those two great Pronouns [Meum & Tuum]. In the Third we have handled Placita Corona, and Criminal causes. But because Rex non solum regnator, sed etiam jurisprudens, we in this Fourth and Last Part of the Inscriptiæ are to speak of the Jurisdiction of the Courts of Justice within this Realm.

In partes de actionibus præfatorum & rerum secundum quod de duobus fuerant in judicium per auctoritatem ordinatam seu delegatam; And again, in partes de publico introducta cum necessitate juris dicendi. It is derived of fus and divir, s-potește juris.

Curia hath two several significations, and accordingly it is severally derived. It signifies the Kings Court, where his Royal Person, and His Honourable Household do reside, and is all one with Palatinum Regium, and is derived de vexâ regis, of the Lord, because the Sovereign Lord resides there. It also signifies a Tribunal, or Court of Justice, as here it doth, and then it is derived de curia, quia est loco, ubi publicas curias gerebant.

Of Jurisdiction some be Ecclesiastical, and some Civil, or Temporal; of the former 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 only; 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 another's work: As for example, the hands of 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 preferrer thereof) if once Court should usurp or encroach upon another, it would introduce uncertainty, subvert Justice, and ruin 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
having such Triumphs, and State of Justice, as his Majesty hath; which God willing, in this Treatie 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, noe invisible beholder, 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 honorable building, and fearing that they should be of little use after my decease, being very short, and not easily to others to be understood, if I should have left them as they were. 

Out of the store that I have to his most excellent Majesty, and in zeal and affection to the whole Commonwealth, I have ventured to break the ice therein, and to publish more at large those things which in our reading we had observed concerning Jurisdiction of Courts. For as it is a labour of great pains and difficulty; for as in a high and large building, he that beholds the same after it is finished, and furnished, feels not the carriages, scaffolding, 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 puncted 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, Warranties in Law, and other invisible works, from Latins, Greeks, et alii; yet I was the rather encouraged thereto, 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 more 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.

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 Corona, Rot. Placitorum Parliament. Rot. Claus. Rot. Brevisim, Finium, Inquisitionum, Liberationum, Rot. Casarum, Eschatologium, Pet. Rot. Ordinaria, Rot. Francia, Scotia, Vescovia, & Almain, Rot. Romanis, Rot. Judoriam, Rot. Regnum, Brangvin, Rot. Contrairementum. (And the reason of the naming of this Roll, was, for that Thomas Earl of Loundafer, (a man singularly beloved) taking part with the Barons against King E. 2. in hatred of the Spencer, it was not thought fit for the King, in respect of their power and greatness, to name them Rebels or Traytors, but Contrairementa, 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 (became it is the first of never so little moment) but it will stand the diligent observer in stead at one time or other.

And that for all our pains, with the benevolent Reader all the profit, we present Des; & answerer Chrifts, begin with the High and most Honourable Court of Parliament.
OF

THE HIGH
AND
MOST HONOURABLE COURT
OF
PARLIAMENT.

CAP. I.

Of what Persons this Court consists.

This Court consists of the Kings Majesty, sitting there as in his Royal political 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 Bishoprics, which they hold also in their political capacity; And every one of these when any Parliament is to be holden, ought, ex debito justitiae, to have a Writ of Summons. The Lords Temporal, Dukes, Barones, Earls, Viscounts, and Barons, who sit there by reason of their dignities which they hold by descent or creation, in number at this time 166, and likewise every one of these being of full age, ought to have a Writ of Summons ex debito justitiae. The third estate is the Commons of the Realm, whereof there be [as] Knights of Shires 32, Counties, Citizens of Cities, and Burgesses of Boroughs. All which are respectably elected by the Shires 32 Counties, Cities and Boroughs, by force of the King's Writ ex debito justitiae, 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.

The Court consists 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 Bishoprics, which they hold also in their political capacity; And every one of these when any Parliament is to be holden, ought, ex debito justitiae, to have a Writ of Summons. The Lords Temporal, Dukes, Barones, Earls, Viscounts, and Barons, who sit there by reason of their dignities which they hold by descent or creation, in number at this time 166, and likewise every one of these being of full age, ought to have a Writ of Summons ex debito justitiae. The third estate is the Commons of the Realm, whereof there be [as] Knights of Shires 32, Counties, Citizens of Cities, and Burgesses of Boroughs. All which are respectably elected by the Shires 32 Counties, Cities and Boroughs, by force of the King's Writ ex debito justitiae, 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.

Of what number.

In the beginning Romanus expounded 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; while treating with what gravity Statutes are made, faith, Dam non unius, aut centum solam consiliorum virorum prudentia, sed plures quorum trecentorum electorum hominum, quali numero olim Senatus Romanorum regnavit, ipva situta edita sunt. Erant autem Senatores majorum gentium, & Senatores minorum gentium, ex patriciis & nobisbus electi, hi ex populo.

And it is observed, that when there is best appearance, there is the best success in Parliament. At the Parliament holden in the thirty seven 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
true, that of ancient time in judgments at the Common Law, in cases of difficulties either criminal, or civil, the causes and issues of judgment were set down in the Record, and so it continued in the reign 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 issues of judgments, in respect of the multitude of them, are not set down in the Record, but then the great Counsel and Re- porter of Causes (certain grave and sad men) published the Cases, and the causes and issues 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.

The Summons of Parliament.

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

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 attendance 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 interitis nobiscum & cum easter de concilio nostro (and sometimes nobiscum onty) super praemissis tractaturi, veltrumque consilium i impenium; but the Writ to the Barons is, Quod interitis cum praetatis, magnifici & proceribus super dictis negotiis tractaturi, veltrumque consilium impenium.

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: Praesontientes Decanum & Capitulum Ecclesiae Nor- wicensis, ac Archidiaconos totumque clerum vetern Dioecese, quod in eadem De- cani & Archidiaconi in propriis personis satis, ac dictum Capitulum per annum, identique clerus per duos procuratores idoneos plenam & sufficientem potestatem ab ipsis capitulo & clero dividim habentes pradicti, die & loco personaliter interfint ad contentiens hum quae tune ibidem de communi censitio dicti regni noti divina lavenza elementia congerit ordinari: And the Bishop under his Seal make Certificate accordingly. And these are called Procura- tores Cleri, and many times have appeared in Parliament as Spiritual Assistants, to consider, consult and consent, at supes, but had never voices there, because they were no Lords of Parliament. Some have thought, that because the Clergy were not partri 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 explained, soes their consent was only to such things as were explained 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 to

* Regist. 261.
F.N.E. 220 a.
ib. called Attenda-

orapart. 22 E. 3.

Procuratores

Procuratores de

Clero.

In facie loci, li-

terum procurat-

orae. 15 H. 4.

& 5 H. 5. See also L.

Pronunc.
Cap. I. The High Court of Parliament.

...hold, as have freethold in Ancient demesne, and ill women having freethold as no freethold, and men within the age of one and twenty years, &c. And it apparently by the Breviss De modo tenendi Parliamentam, &c. that the Process of the Clergy should appear, cum praetentia suum sit necessaria (which probably that they were voteless Ministers only) and having no votes, and to many learned Bishops having votes, their presence is not now holden necessary.

It is to be observed, that in the Writs of Parliament 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 Patre Johanni, eterni gratia Archeipiscopo Cantuar. &c., Rex &c, Reverendo in Christo Patre Johanne Episcopo Norwicens. &c. But if the Surname be added it makes not the Writ vicitious.

But the Abbots and Bishops being Lords of Parliament, religious and regular, might be named by the name of their Office only; as, Rex directo situs in Christo Abaete Sarri Edmundo de Bey, &c.

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 Surnames; e.g. are they named by their Knight-hood, if they have any, but rarely. If a Baron be a Knight, he is regularly named by his Christian name, Surname, and by Miles, or Chivaler, and his Baronet. If he be no Knight, then he is named by his Christian name, and the name of his Baronet; but if the Surname be added, it maketh not the Writ vicitious. And this holds as well where the Baron taketh his dignity of a place, as where he taketh it of his Surname; but where the Surname is dignified, there to make a formal Writ, it is good to add the place of his Baronet.

At present time the Temporal Lords of Parliament were commanded by the Kings Writ to appear, in side & homago, quibus nobis tenemini; and in the reign of E 3. in side & Iegancia, and sometimes in side & homago; but at this day commonly in side & Iegancia, because at this day there are no feudal Baronetis, in respect whereof homago is to be done, which in 21 E. 3. was the true cause of this alteration.

The Ecclesiastical Baronis secular or regular, were commanded by the Kings Writ to be present, in side & dictione, quibus nobis tenemini, as the Bishops are at this time.

We find in the Rolls of Waxlia rent a Writ in Anno 23 R. 2. and successively in every Parliament until and in the fifth year of H. 6. among the Baronetis that came to the Parliament, it is laid Map praef Thoman de la Warre, and some say that the addition of Magister was to distinguish him from them, that were Knights, as in the Roll of E 4. among the Baronetis it is laid, Johanne de Audely armiger, &c. and the rest of the Baronetis (taking himself) and the Lord Clymton, were Chivaleries. And others do hold that he was of the Clergy before the dignity ascended to him, and in that respect he was called Magister.

In the Roll of 3 H. 5. and in many succeeding Rolls, we find Baro applied to the Lord of Greylock, as, Radulpho Broto de Greylock, and Johanni Baron de Greylock, and to few others.

In many Rolls we find the Baronetis that were Knights, named Chivaleries, whereof we observed, that they liked to be called Chivaleries 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 Chivaler, &c. and under subscribed thus, Milites omnes, except Johanne de Audely armiger, & Johanne domino de Clymton. And in 3 E. 4. all the Baronetis (taking the Lord Scale) have the addition of Chivaleries, and subscribed thus, Equites auratus omnes praeter dominum Scale, and in 3 E. 4. all the Baronetis have the addition of Chivaleries, and therefore subscribed thus, Equites auratus omnes. Whereby and by many others it appears, that the Baronetis if they were Knights, were so named; and that they were not named Chivaleries unless they were Knights. But in the reign of H. 8. and
...and since, Barons are named Chivaliers in the Writ of Summons, though they be no Knights.

Baron legally Banerium, vexillum, Banerier, unde Banerierius; Barumen, t. Birex, vexillum maior, & Baneretius a diminutio of Banerium, vexillum minor. A Baron is called Banerierius; 22 Banerius, of the Baron, (being the Sign of his honour) for & for a guide and direction: to the Baron observing the end of his Nobility, she be an example and guide to others as well in War as in Peace, in all notable habitations and visitus, and so of the Baronet: both the Baron and the Baronet hath one kind of Baron; for the Baronet is created in the field in the things Poul, and (amongst other things) by cutting the shape point of his Person, and making it a Baron, 22 vexillum Baronis; so as the Baronet hath the Barner, but not the dignity of the Baron. And this both 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 suit challenge put collo que il fuit a Baner, & non allocutus: car filo fo a Baner, & ne tient per Barony, aliens in Aulice. Spiritus, one was challenged because he had the Barner, and was a Baronet, & non allocutus by the rule of the Court, because albeit he had the Baron, yet ne tient per Barony, that is, he was no Baron of Parliament.

Note some tempor. John Coupland a valiant Leader in Anno 20 E. 3. near Durham, at Nehils Cuffe, took in sperto pago, David, second, King of Scots; for which King E. 3. created him Knight Baronet, and gave him Lands and Libings, and in 22 E. 3. the case in Law fell out.

For this Order of Knighthood by Cambden Britannia 124, and for this case of Sir John Coupland, Cambden in Lib. pag. 618. Sec 35 H. 6. fol. 46. Where the challenge was, that he was a Baronet a Lord of Parliament. Sec 48 E. 3. 35 Ass. pl. ultimo, Lib. 6. fol. 55. But Sir John Coupland was not the first Baronet that England had, as some have thought, and was with us before the reign of E. 3. as in Pelle exitus anno 8 E. 2. in Scaccaria, Johannes de Cromlesiis Baronetus. And ex compoto Garderobe anno 9 E. 2. Nicholas de Gray was declared by Meir of E. 2. to be de familia regis tanquam Baronetanus, both for his procedens et salary.

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 Nights, 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 Patentes under the Great Seal, when the King is in remote 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 inapt. [a] The Patent of the Office of a Guardian of England reciteth his spouse going beyond Sea, or in remiss, or urgent occasions and the cause thereof. Nos quod per nostra ten in nostra absinta quae praestitit inviolabiliter observavit, & quod habet communis judicium signalisti conscientie in suis aetionibus & queribus, de fideitate deedit & fidelis nostris Edwardus Dux Cornubiar, & Comites Cotres, fili nostri primogeniti plenariae confidentes, constituimus ipsum custodem deedit regni nostrac locum nostrum tenent in eodem regno quam diem in dictis transmissm quibus moram fecerimus, vel donec inde alius duxerimus; (And this is that capitalis Justiciar's mentioned in Magn. Carta cap. 11. when the King is extra regnum) with a clause of assent. 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 Telle of the Writ of Summons shall be in the Guardians name.

Rot. Parl. 3 H. 5. nu. 1. H. 6. fate in Parliament when he was 3 or 4 years old, and so did he in the 8 and 9 years of his reign. The Royal Person represented two ways.

A Parliament was held 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 Telle of the Gardien or Lieutenant. [* It is reputed, that if the King being beyond the seas, cause to summon a Parliament in this Realm, by his Writ under the Telle of his Lieutenant: and after such summons of Parliament gone out of the Chancery, the King arrived 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.]

[1 in 3 of 5. 7. 4. a Parliament was begun in the presence of the King and prosoaged without further day: and then William Archbishop of York the king's Commissary by Letters Patent held the same Parliament and adjourned the same. The cause of the said postponement was, that for the King was enforced to go in person to Gloucestershire to represse a rebellion there.

As hath been said, the Kings person may be represented by Commission under the great Seal to call the 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 23 of December anno 28, reciting that the for urgent occasions could not be present in her Royal person did authorize John Whitgift Archbishop of Canterbury, William Baron of Burgheley Lord Treasurer of England, and Henry Earl of Derby Lord Steward of the Household then being, Ad inchoandam, &c. tenendum, &c. & ad procedendum, &c. & ad faciendum, omnia & singula, &c. nec non ad Parliamnum adiungendum & prosoagandum, &c. which Commission is entered in hac 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 Dominus Regina representatur per Commissionarios, viz. &c. The 29 day of December, the said Commissioners sitting on a form before the Cloath of Estate where the Commission read, adjourned the Parliament until the 15 of February following, &c. And this Parliament began the 29 of December, and not the 15 of February, wherein the printed Book is mistaken, for then the Parliament began, and was prosoaged.

Thus much shall suffice, when the King's 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 prosoaged 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 Telle before the return thereof, and signed above with the Kings sign Manual, and directed Praeclatis, magnibus, procenibus hujus regni, ac militibus, civibus, & baronibus convocatis & electis ad hoc Parliamentum pro quibusdam cause & considerationibus, &c. to prosoage 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 prosoation made accordingly, the Parliament is prosoaged: 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 prosoaged 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 adjourned. A like prosoation was made by the Queens like Writ of the Parliament holden Anno 5 Eliz. at both which days of prosoation, the Parliament did hold before the Queen herself, until the dissolution of the same, which Writs are entered in hac verba in the Journal Book.

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 Chancellor or Keeper of the Great Seal, in the presence of the Lords and Commons, do show the causes of the calling of his High Court of Parliament, but the

Rot.Parl. 5 H. 5. nu. 1.
* 8 H. 5. cap. 1.
in print.
Nota, Quia in praesenti majus cefar prophas minorum. And the Letters Patents of this office is with a quamnum in partibus trans marinae moram fecerim, &c. at jus.
L. 1.13.
Like Letters Patents to the Earl of Warrw. in the same Parliament anno 15. Par. 28 Eliz. See an excellent precedent herof.
Rot.clau. Anno 28 Eliz. 7. Sept. m. 26. & 1 part.
Seme to 2 Eliz. 2 part. par. m. 20. 15 Eliz. nu. 1. flatz. in absentia Gardner Anglic.

Prosoaged by Writ Patent.

And herein the printed book of Statutes erreth, for here the Parliament began not.
Cap. 1.

The High Court of Parliament.

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

[b] At this day Sir Henry Green the king's 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 several matters touching the Church, for observation of the peace, for the affairs of Scotland, for the indemnity of the prince of Woll, &c. [d] But at the next meeting Simon Langham Bishop of Ely proved the causes of Parliament, and in the end, he did in the King's 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 Latin, and discursered upon the same. But when a Judge was Lord Chancellor, he took no text, but in manner of an exposition showed summarily the causes of the Parliament.

The Election of the Speaker.

It is true the Commons are to chuse their Speaker: but being that after their choice the King may refuse him, for avoiding of ex pense of time and contention, the use is (as in the Conge de elier of a Bishop) that the King both 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 ticket is a good cause to remove him, as in H.4. John Cheyne Speaker chosen and admitted, was for ticket, as he could not serje, discharged, and Sir John Doreward chosen in his place: and so was William Storton, after he was chosen and allowed Speaker, removed for grievous ticket, and Sir John Doreward chosen in his place. At the Parliament held in 15 H.6. Sir John Tirrell Knight was chosen and allowed Speaker, and for grievous tickets removed, and William Beery Ely; chosen in his place, &c.

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

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, defers them to proceed to a new choice: which being denied, and he set in the Chair, then he payable them to give him leave, that he may disburse 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 theRealm, and made humble suit to the King, left by his insufficiency the businessof the Realm may be hindered, to be discharged; and a more sufficient man to be chosen: if be be allowed by his Majesty, then he makes a Petition consisting on these parts: First, that the Commons in this Parliament may have free speech, as of right and by custom 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 error) no fault may be arrested to the Commons, and that he may retract again to the Commons for declaration of their true intent, and that his error may be pardoned. The third is, that as often as necessary for his Majesties service, and the good of the commonwealth shall require, he may be directed by the House of Commons have access to his Royal Person.
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 believed 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 appeared in the Writs of Summons to the Lords Spiritual and Temporal, viz.

**The Matters of Parliament.**

1. Touching the King. 2. The State of the Kingdom of England. 3. The defence of the Kingdom. 4. *The State of the Church of England.* and 5. The defence of the same Church. And this appeared by express words in the Parliament Writ in these words: Pro quibusdam arduis & argutissimis negotiis, nos statum, & defensionem regni nostri Anglie, & Ecclesiae Anglicanae concernentibus quoddam Parliamentum nostum, &c. teneri ordinamur, &c. And these words [the State and defence of the Kingdom] are large words, and include the Writ. 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 appeared by the title of every Parliament: As for example, [a] To the honour of God and of holy Church, and quietness of the people, &c.

Now for as much as divers lates 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 Kingdom 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 both 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 redress of divers mischiefs and grievances which daily happen, a Parliament shall be held every year, as another time was ordained by a *Statute.*

Before the Conquest Parliaments were to be held twice every year, Celeremus autem ex omni fatrapia bis quottannis Conventus agitur. King E. 1. kept a Parliament once every two years for the most part, and now it is enacted, that a Parliament shall be held only once a year.

The Romans unquiefted our Ancella the ancient Britains, for that they assembled not, they confessed not in common with them, nos Common Councells, as Tactus in vita Agricolae faith. Nec alud adversus validissimas gentes pro nobis utilem quam quod in commune non consulant. Raras ad propulsandum commune periculum conventus: In dam fanguli pagantium, universi vincuntur. But to return to the matters of Parliament.

And it is enacted and declared by Authority of Parliament in Anno 4 H.8. That all suits, acumencations, condemnations, executions, fines, amercements, 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 held, for any Bill, *speaking, reasoning, or declaring of any matter or matters concerning the Parliament, to be committed, or treated of, be utterly void and of none effect. Which latter branch is general. Now what matter or matters concerning the Parliament appear before. And this clause of the Act of 4 H.8. is declaratory of the ancient laws and custom of the Parliament.

And this both 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 Sheriffs of Norfolk for election of the Knights, Citizens, and Burgesses within that County is, Rex Vicecomitis Norfi. Salutem. Quo nos de avitamento & aequo concitii nostrii pro quibusdam arduis & argutissimis negotiis, nos, statum, & defensionem regni nostri Anglie, & Ecclesiae Anglicanae concernentibus quoddam
The High Court of Parliament. 

Cap. i.

dam Parliamentum notitium spuit, &c. teneri ordinaverimus, & ibidem cum Præ
lato, magnificus, & proceribus dicti Regni nostri collegium habere & tractare:
ipsi Viccom. Norum. precipimus fuisse injungend. quod fecta proclamatione in
presumo comitat. duo polt receptionem ejusdem brevis, duo militres gladiis cin
dos, &c. eligi secreti, &c. [2] ad faciendum & consentiendam hunc quo tandem
item de communi concilio nostro Anglate (Jovante Deo) contingentem ordinari
[b] super negritis aniudéritis, ita quod pro defecit potestas humilium, seu proprii
improvidum electorem Milium, Civum & Burgetium prædicta dicta negorla no
stra intècta non remanente reviviscat. 

And this power extendeth equally to
all Knights, Citizens, and Burgesses of Parliament.

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 be seereth the Commons, that seeing
they have chosen him for their mouth, that they would honourable 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, &c. 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 King's
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, unless it be by Act of Parliament. For if original writs at
the Common law can receive no alteration or addition but by Act of Parlia
ment, a like fiction, the writs for the Summons of the highest Court of
Parliament can receive no alteration, or addition, but by Act of Parliament.
Whereas the writs of Summons 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 militres gladiis
cestes, &c. it required an Act of Parliament, that notable Esquires might be
eligible.

Walfingham faith, 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 Layver should be returned Knight or Bar
gall, but the Historian is deceived, for there is no such clause in those writs,
but it was brought by the King's Letters by paeter of an Ordinance in the
Lords House, in 46 E [3]. But at the next Parliament in 7 Hen. 4. at the griev
ous 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,
 enact, That electors should be free, and indifferently made, notwithstanding
any paper, or commandment to the contrary; s fine piece, by any paper or
gift, &c. præceptum, without commandment of the King by writ, or otherwise,
or any other; which was a close, and patent false, not only for that case, but
for all other in like case, and it is but an Act declaratory of the ancient law and
custom of Parliament.

Petitions in Parliament.

In the first day of the Parliament, after the Commons be departed to
choose their Speaker, there are certain Justices Assignants, and Civilians
Assigns of the Chancery Attendants, viz. four Justices, and two Attendants
appointed
Cap. 1. The High Court of Parliament.

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 days following. At that time there are other Justices and Citizens attendants, viz. there 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 days, as.

When are appointed of the Nobility, Lords of Parliament and Bishops, viz. by of the Nobility, and two Bishops, to be treers of the said Petitions for England, Ireland, Wales, and Scotland; they together, as four of the Prelates and Lords aforesaid, calling to them the Kings learned Council, 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 treers of the Petitions for Gascoign, and other places beyond the Seas, and of the Isles, and a place appointed for them, calling to them the Kings learned Council 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 custom 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 Citizens attendants, who might prepare and inform the treers, being Lords of Parliament, of the quality of those Petitions. Thirdly, that there should be of the Lords Spiritual and Temporal treers of those Petitions, to try out whether they were reasonable, and good and necessary to be offered and propounded to the Lords.

Of Petitions in Parliament some be of Right, some of Grace, and some of Right, some of the Lords Spiritual, some of the Lords Temporal, some by the Commons, some by the Lords and Commons. Extra Parliamentum nulla peticio est gratia, licet necessaria; In Parliamento nulla peticio est ingrata, nisi necessaria. [a] All Petitions ought to contain certain content and particularity, to be a direct answer may be given to them.

[b] Petitions being timely preferred (though very many) have been answered by the late and custom 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 depended undispatched, or at the least, to which a determinate answer is not made.

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

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 [c] Church and Common-wealth) of Courts of Justice, of privileges 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: The treers malignant, and it appeareth by the statute of 26 E.3, cap. 10. That it is one of the principal ends of the Parliament, to redress grievances. And the words of the Writ of Parliament be De arxi & negotiis inquietur, statum & defensionem Ecclesiae Anglicanae conservandum. 

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

* Gascoign, Guyan, Foyers, Normanby, Anson, &c.

Triers of Petitions.
The High Court of Parliament. 

Cap. 1.

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

Absents, Proxies.

Any Lord of the Parliament by licence of the king upon just cause to be absent, may make a proxy: and in the bundle of proxies Ann 5 H. 5. it appeareth, that in those days a Spiritual Lord of Parliament might have made his proxy 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.

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 reassembled and declared before the Conqueror at the time of his Conquest, and by him appointed for England, and accordingly to the Conqueror according to Modus held a Parliament for England, as it appeareth in E. 3. fo. 60.

After King H. 2. had conquered Ireland, he sited and transferred 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 legal. This Modus in the parchment roll transferred 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 wisdom and learning, which roll king H. 4. in the same year, De anno Johannis Talbot Chivalier his Lieutenant there, and of his Counsel of Ireland, exemplified for the better holding of the Parliaments there; and in the exemplification it expressly appeareth that H. 2. did transferre this Modus, as is abovefoaid.

This Modus was first by the makers of the Statute of Magna Carta, Anno 9 H. 3. cap. 2. concerning the reducing of the ancient reliefs of entire Caradoms, Barones, and knightes fees according to such proportions as is contained in the Modus, which they could not have done so punctually, if they had not taken the same, wherefo you may read more at large in the Fift part of the Institutes, Sect. 105. 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 wherefo we have seen in the reign of H. 2. which contained the manner, form and usage Gilbert de Scroger Marshal of England, in what manner he occupied and used the said room and office in all his time, and both he was admitted, ac. at the Coronation of H. 2. and of his Knight Parbaill, and other inferior officers, ac. and adjourned thitherunto, 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 Ambassador, who having spoken much in commendation of Hercules: It was demanded of one that stood by, Quis superavit? Ad quod non fuit responsum. But now let us return toproxies.

A Lord of Parliament by licence obtained of the Queen to be absent, made a proxy to three Lords of Parliament; Conjunction & division in his protestation tractand, tractatioque auxilium & confinium impendendi, atque statutis & ordinationibus, que inacte har contingenter, confentiendi, ita quod non sit melior condito occupantis. And one of the procurators gave consent to a Bill, and the
Cap. 1. The High Court of Parliament.

the two others said, nor content. And first it was by order of the Lords debated among 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 Process, and after come into the Lords House of Parliament, and sit there without arguing, contending or speaking any thing: and it was conceived by the Judges and Civilians, that his sitting there without laying any thing was a revocation in law of his Process; a Exchange, if he moved, to speak to any matter there propounded, and their opinion was resolved by the Lords seriatim. And these were the proues of the Bishop of Bath, the Lord Howard Chamberlain, and of the Lord Wincelow.

King John in the 13 year of his Reign being in extrem fear of both the Pope and the French King, and especially of his own subjects (and what is fear, faith Solomon, but a betraying of the surecours that reason offers?) sent Embassadours to Adrambudos Muredelius great Emperor of the Greeks, Sir Thomas Herrington and Sir Ralph Nicholson Knights, and Sir Robert of London Clerk, Namus was secretarios, to offer to be of his Religion, and to make his Kingdom Tributary to him, and he and his subjects to be his vassalls, and to hold his Kingdom of him. But that Insideli great Prince, as a thing unbecoming a King, to deny his Religion, and betray his Kingdom, 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 parturision of the Popes Commendatory Pandulphus surrendered his Kingdoms of England and Ireland to Pope Innocent the third, cum communitio confilium Baronom, (as he inferred therein) and that hence afterward he would hold his Crownas seodary to the Pope, paying for both his Kingdoms conso marks. Wherupon doing homage and fealty to the Pope by the hand of Pandulphus, and taking off the Crown from his hand surrendered it to the Pope by Pandulphus, at whose foot he laid also the Papal Ensigns, his Sceptor, Sword and Ring; all which was afterward accepted, approved and ratified by the Pope, by his Bull which was called Bulla aures.

Gregorius Papa petivi a Rege E.1. per literas annuum cenfum 1000 mer. Rex respondet fe sine pralatis & processibus regni non posse respondere, & quod Juramento in Coronatione fuit altissimus, quod juris regni fu servarre illibarum, nec aliquid quod Diademam tangat regni ejusdem abique ipsum requestiti confilii facilit.

In anno 40 E.3. the Pope by his Embassadour demanded of the King homage for the Kingdoms of England and Land of Ireland, and the arrages of 1000 marks by the year, granted by King John to Pope Innocent the third and his succurssors, and that it were not paid, the Pope was resolved to proceed against the King. Wherupon the King the same year called his Court of Parliament, and in the beginning of that Parliament (faith the Recop) Fuit monstra a les Prelats, Dukes, Countes, Barons, les Chivaliers des Counties, Citizens & Burgesses en le presence le Roy per le Chancellor, coment ils avoient entendue les causes des summons del Parlament en general, mais la volente le Roy fuit que les causes seunt monstres a eux en especial; leur diroit coment le Roy avoit entendue que le Pape per force dan fait quel il dit que le Roy Johan seidot au Pape de luy faire hommage par le realme D'Engletere & la terce D'Irland, & que par cause du dit hommage il yuy devoroi patier chiaun an perpetuellement mille marcs, et en volonte de fait proces devers le Roy & son roialme par le dit service & cens reconvenir; de qui le Roy priz a dice Prelats, Dukes, Countes & Barons leur avys & bon conseil, & ce qu'il enfforrot, en caue que le Pape vorroit proceder devers luy, ou fon dit roialme par celles caue; & les Prelats requeroient au roy quils se purroient per eus soul avier & respondre lendemain, quoye Prelats ledit lendemain adeprimes per eux mesma, & pues les autres Dukes, Countes, Barons & Gentes respondirent & disoient, que le dit Roy Johan non autre pura mettre lui, ne fon roialme, ne fon people en
No king can put himself nor his realm, nor his people, in such subjection without the consent of the Lords and Commons in Parliament, and therefore if K. John had done it by the Common Council of his Barons, as his Charter purposed, yet it is bound not, for that it was not done in Parliament, for the King, the Lords and Commons: and albeit it might (as here it appeared,) it cannot be done without Authority of Parliament yet it is contra legem et constitutionem Parliamenti, to do such a thing, as by the next Record in 48 E.3 appeared.

* Rot. Par. 48 E.3. no. 7. Lex & constitutionis Parliamenti.

By the ancient law, and custom 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 attend the Parliament in London, Westminster, or the Suburbs, etc. wear any page coat of plate, etc. go armed, or that games or other plays of men, woman, or children, or any other pastimes or strange shows 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 businesse of the Church and Common wealth) should not be withdrawn.

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

And it is to be observed, though one be chosen for one particular County, as Borough, yet when he is returned, and sits in Parliament, he is bound for the whole Realm, for the end of his coming thither, as in the writ of his election appeareth, is general, ad faciendum et containendum his quam nonque ibidem de communi conficio dicti regni nostri (faveste deo) continentur ordinari super negotios predictos, i.e. pro quibusdam arduis et urgentibus negotios nos, itum, et de factionem regni nostri Anglicae & Ecclesiae Anglicanae concernentibus, which are rehearsed before in the writ.

And as every Court of Justice hath laws and customs for its direction, some by the Common law, some by the civil, and Canon law, some by peculiar laws and customs.
The High Court of Parliament.

cusoms, et. So the High Court of Parliament Suis propriis legibus & consequentibus voluitur. It is lex & consequitudo Parliamenti, that all weighty matters in any Parliament moved concerning the Parts of the Realm, of Commons in Parl. assembled, ought to be determined, and adjudged, and discussed by the course of the Parl. and not by the civil Law,not yet by the Common Laws of this Realm used in more inferior Courts; which was to be declared by secundum legem & consequendum Parli concerning the Parts of the Realm, by the King and all the Lords Spiritual and Temporal, and the like partizans is for the Commons for anything 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 Parliament, hath a judicial place, and can be no witt- nes. 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 & consequendum Parl. and so the Judges in matters Parl. are consulted. And some hold, that every offence committed in any Court punishable by that Court, must be punished (passing criminally) in the same Court, or in some higher, and not in any inferior Court, and the Court of Parliament had no higher.

Upon this petition exhibited to the King, wherein the question was, whether the power which he had held was High Treason, et. which petition (faith the King) let be delivered to the Judges thereby to be considered. Whereupon the Judges made ordinance, that the order thereof belonged to them, which was to them allowed, and they reduced it to be a treason.

And because he had a case in 3 E.3.19. concerning the law and custom of Parli- ment, we have thought good to set down the Breach of that case de verbo in verbo, and then to examine the report of the said case, and the opinion there delivered, wherein we shall before the learned to consider well the nature of 5 R.2.1. et. 2. cap. 4. and thereupon to consider what (as that statute speaks) hath been done of the times, et. And how that Act faith done, and not said.

John. Episc. Winton in misericordia pro pluribus desertis. Iden John. Episc. attachat' fuit ad respondend' Domino Repl, de eo quare cum in Parliamento Regis apud nov' Sarum, super tent' per ipsum Dom. Regem inhibitus fuitet, ne quis ad dictum Parliamento summunitus ab eodem recederet sine licenc' Regis: Iden Episc. duurante Parliamento prae' 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 prae' John. Episc. fecit ei transl. & contempt prae' in contempt. regis mille librarum. Et hoc offeret verificare pro Dom. rege, etc.

Et prae' Episcopius in propria persona sua venit, & defendit omnum contempt. & transl', & quiequis, &c. & dicit, quod ipsa est unus de paribus regni, & Pral. sacr. Eccles. &eis ineo venire ad Parl. dom. regis per summunitionem & pro voluntate ipsius dom.regis cum sibi placuerit, * Et dicit, quod si quis erum deliquerit erga dom. regem in Parliamento aliquo, in Parl. debet corrigi & emendari, & non alibi in minor, cur quam in Parl. per quod non intendiit, quod dom. rex velit in cur' bie
The High Court of Parliament.

Capit.


The High Court of Parliament.

And this is all that is in the Record, whereby it appeareth that the plea of the Bishop to the Annuation of the Court after divers days given, did stand, and was never overruled agreeably 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 appeareth, that this contempt cannot be punished in any other Court than in the King's Bench: so as the question is only for that Court. It appeareth that the reporter never saw the said Record, only took it by the ear of that which was spoken in Court (a dangerous kind of repeating, and subject to many mislakings, for seldom or never the right case is put) as in this case it fell out. For first, where the Record faith, that the Parliament was holden at Sarum, the report is of a Parliament holden at Salop. The report faith, that John B. of Winc октябь was arraigned, which implyeth that he was indicted, &c., where he was sued by original writ. 3. The Inhibition made by the King alleged in the Record, is not in the Report. 4. Concerning the sudden omission of Scrope in this Report: By his opinion the Parliament itself could not have punished this contempt: for he faith, Ceux que sont Judges de Parliament, sont Judges de l'our Piers, mes le Roy nad my pier in fon terre demen, parque il ne poez per eux estre judge, donques alor que cy ne poez estre judge, whereas without question the Parliament might have punished this contempt: and concluded 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 overruled, as the Record it appeareth.

Vide per Indictamenta Termine Pasche, &c. 1 & 2 Ph. & Mar. & Mar. concern Rege. Rot. 48. Informationes 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; whereas 6 being timorous Burgessses, ad redimendum vacationem, submitted themselves to their Fines, but whether they paidam, or kept small, we have not yet found. And * Edward Plowden the learned Lawyer pleaded, that he remained continually from the beginning to the end of the Parliament, and took a Travels full of pregnancy: and after his pleaus, fine the per demisile Regnum.

If offenses been in Parliament might have been punished elsewhere, it shall be intended that at some time it would have been put inure. Vide the first Part of the Inhibitions, Sect. 108.

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

Pasch, 1 & 2 Ph. & Mar. Regis & Reginae. Midd. St. Memo-

and quod Edw. Griffyn ar. Attornæa, dominæ regis & reginae gen-

eralis, qui proceder domino regis & domina regina sequitur, venit bic in Cur' dictorum dominorum regis & reginae, coram ipsi-

sis rege & regina apud Wesm' die Sabbathi proxim' post quin' Pasch' isto eodem Termine, & dat Cur' bic intelligi & informari. Quod cum ad Parliamentum dominorum regis & reginae nunc tert' apud Wesm' annis regnorum suorum primo & secundo inhibi-

tum sufit per ipsos dominum regem & dominam reginam in eodem Parliamento, quod nullus ad idem Parliamentum fummoni-
tus, & ibidem interessens, ab eodem Parliamento abfique speciali licentia dictorum dominorum regis & reginae, & Cur' Parliament'

prædict' recederet, seu scipsum aliquo modo absintaret. Quidam ta-

men Thomas Denton de in com Oxon' ar' Henricus Cary de in

D 2

*Mich. 3 & 4

Ph. & Mar.

Rot. 36. inter

Plac. Regis & Reginae.
com' gen' Richardus Warde de in com' ar' Edmund, Plowden de Tynberbe 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 Melbewes de in com' Courtney de in com' Radulphus Michel de in com' Thomas Matthew de in com' Richardus Brasey de in com' Thomas Masshe 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 Bani-brigge de in com' Job' Eweleigb 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' Dor' 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 Gerard 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' Job' Maynard' de Villa Sancti Albani, in com' Hertf' ar' Nich. Debden de in com' gen' & Philippus Tirwybt de in com' ar' qui summoniti fuerunt ad dictum Parliamentum, & in eodem Parliamento comparuerunt, ac ibidem interfuerunt mandat' & inhibitionem dominorum Regis & Reginae supradit' parvis pendentes, ac statum reipublicae bujus regni Angl' minime curantes aut ponderantes postea seil' 12' die Januarii Annis regnorum dictionum dominorum regis & reginae nunc primo & secundo supradit' & durante Parl. praeclito ab eodem Parliamento sine licentia dictionum dominorum regis & reginae cur' sux praeconTEMPTUOSE recesserunt in ipsorum dom. regis & reginae ac man lat' & inhibitionis suorum praecl' curies' praecl. contemnissent, ac in magnum reipublicae statum bujus regni Angliae detriment', nec non in perniciosum exemplum omnium aliorum, &c' Unde idem Attornatus dominorum regis & reginae petit adversamentum cur' in praemis' & debit' leges process' verf' eodem Thomam Denton, Henricum Cary, Richardum Ward, Edm' Plowden, Henricum Chiverton, Robertum Brown, Job' Courk, Job' Pethybridge, Job' Melbewes, Job' Courtney, Radulph' Michel, Tho' Mathew' Rich.


Cap. 1. The High Court of Parliament.


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

Of Writs of Error in Parliament.

If a Judgment be given in the King's Bench either upon a Writ of Error, or otherwise, the party griev'd may upon a Petition of Right made to the King in English or in French (which is not ex debito justitia, but for decency, that the former judgment was given Coram rege) and his answer thereunto, that justitia, have a Writ of Error directed to the Chief Justice of the King's Bench to remove of the Record in parvis Parliamentum, and thereupon the Writ itself, and a transcript in Parchment is to be brought by the Chief Justice of the King's Bench into the Lords House in Parliament: and after the transcript is examined by the Court with the Record, the Chief Justice carries back the Record it fell to the King's Bench, and then the Plaintiff is to affright the Error, and thereupon have a Scoe 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; whereas 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 only to the Lords in the Upper House, Secundum legem & consuetudinem Parliamenti.

Quintus Gulielmi de Valentia contra Concilium regis, i. Justic. Coram Rege, pro injusto judicio tangeri. allocationem Dionisii filii Gulielmi de monte Canudo ut harele, sed dominus Rex ratus habet eorum factum, & judicium redimum est contra Gulielmum de Valentia.

If a noble man had been erroneously attainted of treason, &c. he might have had his Writ of Error in Parliament, notwithstanding the nature 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 nature of 29 El. c. 2. it is ordained, that no record of Attainder of high Treason that went, for the which the party attainted had been executed for the same Treason, should be retranslated for error: but this extended only 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.

The Prince and Cobent of Montague by their Petition declared, that Richard Seymour had obtained an erroneous judgment against the said Prior in the King's Bench, upon a judgment given in the Common plea upon a fine for the Manor of Trenhall in the County of Somerset. And the principal error was for denying of aid of the king, where it was granted, and that hanging a Writ of Right, the said Richard fund a Socie fac. And commandment was given to the Chancellor of England, that he should make a Writ of possession and tenant to be had, and other processes upon that judgment to be made: In this Record you shall observe excellent pleading.

The House of the Lords is a distinct Court for many purposes. 23 T. 3. &c. 17. Lib. Instr. Raff. 86.
Cerco 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 suer in Parliament to reverse a Judgment in the King's Bench, he musteth in his bill which he exhibibeth to the Parliament, to judge the error of errors, whereupon he may have a Scire facias.

The Bishop of Worcester breeth that an erroneous judgment was given against him in the Common pleas for the Archdeaconry of Worcester 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 King's Bench, and of the King's Bench in the Parliament, and not otherwise.


[4] The Dean and Chapter of Lichfield recovered in the Common pleas against the Prior of Newport Pagnell; the Prior by writ of Cerco reverseth the judgment in the King's Bench: the Dean and Chapter by writ of Cerco in Parliament reverseth the judgment in the King's 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.


Cerco in Parliament between William Montague Earl of Salisbury, and Roger de Mortimer Earl of March, for the Castle, town, and Honours of Desbigh, &c., upon a judgment given in the King's Bench, and had a Scire facias returnable the next Parliament.

[6] William Seward alias Cheddre complaineth that where he by that name was presented and indicted to the Parsonage of Worton under Egge in the County of Gloucester, and thereof continued the possession by the space of four years, until the King by writ of Inquisition presented Sir John Dwytry the Parsonage of Underhedge in that County, where there was no such Parsonage called Underhedge, as the said William pleaded in a Quare amplexus brought by the King in the King's Bench; upon which Writ the King recovered by the default of the Parsonage of Underhedge and not Under Egge, whereby upon a Writ sent to the Bishop of Worcester, the said William was put from his Parsonage of Under Egge, for which mislaying 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.

The Record and judgment given in the King's Bench for the King, against Edward Bassett for certain lands, &c., was for divers errors reversed in Parliament, and restitution of the premises with the mean profits restored to the said Edward. In errors in Parliament between Roger Deveycourt, and Ralph de Adderley for a judgment given in the King's Bench for the Manor of Anshey in Com. War. Sir William Gaskyn Chief Justice delivered a Writ of the Record and process, wood for wood, under his hand, &c., to the Clerk of the Parliament, &c.

In errors in Parliament between Richard Quatemays and William Hore, &c., upon an erroneous judgment given in the King's Bench in an action of trespass, and the Plaintiff entered his Attorney of Record to proceed thereon.

John Beauchamp Lord of Abbergrove complained in Parliament upon an erroneous judgment given in the King's Bench in a Scire facias, upon a recognizance in the Chanter for the keeping the Peace. In the Record whereof are excellent points of learning, as well touching the recognizance, as the process and issue.


And to omit many others, to descend to some of later times, Richard Whalley recovered in Assize by verdict against divers tenants, who brought a Writ of Cerco in the King's Bench, where the judgment in the Assize was affirmed, the tenant complained in Parliament for errors in the King's Bench.
Cap. 1. The High Court of Parliament.

Erros in Parliament upon complaint of Sir Christopher Heydon Knight of a judgment in a suit of Erros in the King's Bench, between the said Sir Christopher Plantinike, and Roger Godsalve and others Defendants, upon a judgment given for the said Roger, &c, against the said Sir Christopher in an Assize before Judges of Assize, wherein the complaint was affirmed in the King's Bench, whereof the complaint was made, sed non praevalevit.

A Peer of the Realm being indicted of treason, &c, falsely, &c, misprision of treason, may be arraigned therefor 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 Judges, as it appeareth in the Earl of Stainton's case, Rot. Par. 5 H.4. no. 11, 12. See in the Parliament holden 21 R.2. sub titulo Pl. Coronae in a Roll annexed, &c, before the Steward of England and other Lords Temporales, Richard Earl of Arundell, &c, in the Earl of Stainton's case, Rot. Par. 31 H.6. no. 49. Thomas Earl of Devon was arraigned of High Treason before Humphry Duke of Suffolk, Steward of England, &c, was acquitted by his Peers, to E.4. fol. 6, b. Stalf Pl. Coronae 153. b.

Of Judicature.

Now order both 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 banding thereof according to the law and weight of the matter would require a whole Treatise of it itself; 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 the Parliament in anno 6 H.8. c. 16.


And of later times see divers notable judgments, at the prosecution of the Commons, by the Lords at the Parliament helden 18 and 21 Jac. Regis against Sir Giles Monpeison, Sir John Michell, Vicount St. Albome Lord Chancelour of England, the Earl of M. Lord Treasurer of England, whereby the due proceeding of Judicature in such cases both appear.

- Thomas Long gave the Mayor of Welbury four pound to be elected Burgess, who thereupon was elected. This matter was examined and adjudged in the House of Commons, Secondum legem & conueniendum Parliam. and the Pa- pois fined and imprisoned, and Long removed: for that corrupt dealing was to popon the very fountain it self.

- 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, Secondum legem & conueniendum Parliam. adjuvaged by the House of Commons to be committed to the Tower for 3 months, fined at five hundred Marks, and expelled the House.

Munton stroke William Johnion a Burgess of B. returned into the Chamber of Records, for which upon due examination in the House of Commons, it was resolved that secondum legem et conueniendum Parliament, every man must. take notice.


Ib. 2 Aprilis 1 Maria. Vid. 11 H. 6. c.i. 5 H.4. 6.
Privilege of Parliament.

And now after suffracture, let us speak somewhat of the privilege of Parliament: Experience hath made the privileges of Parliament well known to Parliament men, yet will we speak somewhat thereof.

Magister militiae Templi petit quod duellingiae (catalea unius de consilio) temporae Parliamenti pro rebus unius domas in London: Rex respondet, non videtur honorem, quod illi de consilio suo duellandare tempore Parliamenti, sed allo tempore, &c. Whereby it appears that a Member of the Parliament shall have privilege of Parliament, not only for his servitius, as is aforesaid, but for his horses, &c. or other gooda definrable.


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

Rex mandavit satisfactiur fuis ad afflicte, Juratt. &c. capiend. assignat. quod super fidem captiones comendem ubi Comites, Barones & ali summonti ad Parliamentum Regis funt partes, quandam dictum Parl. daravert.

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

Rex omnibus balivus & sifeibus fuis ad quasi, &c. Salutem. Sciei quod cum curia nostra in quibus consensus regni nostri, deducatur ubi, adeo liberae sint & exemptae, & in tempore quo non estat memoria liberae & exemptae fuerant, quod nec aliquus forum ecclesiasticum concernientia in eisdem curia nostra fiesque fuerit eis excuri, nec aliqui etiam curias nostras ad aliquas forum ecclesiasticum contin gentia faciendam vel exequendum ingredi debent, vel consuerunt aliquas temporibus retroExc., ac Magister Henricus de Harewood clericus, Edmondus de Lukenore & Johannis de Weddebargh de eo quod ipsi nuper in Cancellaria nostra in presence venerabilis Paris I. Cantuariensis Archiepiscopo Cancellarii nostri quaestam citationes five monitionibus dictis in nostri contemplum & Corone nostri ac Regis dignitatis nostri praesidium, & contra libertatem & extenuationem praeditis severum in inquisitionem in quam se inde in curia nostra coram dicto Cancellario nostro & alius de consilio nostro posuerunt convivis &c. & occasionem prionae nostre mancipi in eadem ad voluntatem nostrum manum. Nos de gratia nostra speciatis ad requisitionem Philippus Regis Anglie seniores nostrae christiame perdonavimus eisdem Henrico, Edmando & Johanni impri namentum praedictum; Ite tamen quod nobis satisfacti de redemptione sua occasionis praemium, & quod super citationibus, monitionibus, provocacionibus...
The High Court of Parliament.

bus, applicationis sua instrumentis praedictis in dicta cancellaria nostra dictis proceedit aliquem non faciant, nec quicquam quod in nostra sedis seruit corone nostra prejudicium cedere potest attempert vel attempert faciant de caetero quivos modos. In cuius, &c. Teile regis apud Turrim Londinum 15 die Apulis ex originali de Anno 15 E. 2. Rot. 27. Rot. ...

* Privilege of Parliament in informations for the King, generally the privilege of Parliament to hold, unless it be in three cases, viz. Treason, Felony, and the Peace.


There is no Act of Parliament but must have the content of the Lords, the Commons and the Royal assent of the King, and as it appears by 3. Beresford and our 3 Books; whatsoever passeth in Parliament by this threefold content, hath the force of an Act of Parliament.

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


[d] I have read of a restitution in blood, and of lands of one William de Lakenby by the King, by the suit of the Lords Spiritual, and Commons (omitting the Lords Temporal) thus 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 Ordinance of Parliament and authorities following, viz. Rot. Parl. Patich. [c] E. 2. the Case of the Spencers, 3 R. 2. cap. 3. in print.

Our Sovereign Lord by the common consent of all the Lords Temporal, and at the Petition of the Commons, at 7 R. 2. cap. 12. accord. 11 R. 2. nu. 9. 10. 11. Sec 1 H. 5. cap. 7. [f] 21 R. 2. nu. 9. & 10. 6 H. 6. nu. 27. 7 H. 8. Kew. 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 repeated by authority of Parliament 1 E. 3. that repeal of 1 E. 3. was repeated by Act of Parliament in 21 R. 2. and that of 21 R. 2. was repeated by authority of Parliament in 1 H. 4. And to the judgment against the Spencers standeth in force.


Acts of Parliament come 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.

The several forms of Acts of Parliament.

In ancient times all Acts of Parliament were in form of Petitions. And for the several forms of Acts of Parliament, see the Prince's case in the 3 Book of Reports. How for the reading, committing, amended, injoyned, bying, and passing the Bills in either House, and touching conferences with the Lords, and for the privilege of any Member of either Houses, and of their servants no more than hath been laid, they be of ordinary and well known, and in such continual 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
the request of the Commons certain of them are to be appointed, who should be at the unrolling of the Rolls of Parliament.

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

When I read the case of Bremaund in 39 E. 3., upon the statute of 27 E. 3. a

Nobility against the Bishop of Chichester, and observing that Serjeant Cavendish of counsel with the Bishop, denied two things: First, that the Act whereupon the suit was grounded, was no Act. 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; as so soon as the Parliamenl hath concluded any thing, the law intends, that every person hath notice thereof, for the Parliament represents 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 understand, that albeit it was not required 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 appeared) by Cavendish's speech) that they should be published in the County, in the end that the Subjects might have express notice thereof, and not to be overborne by an act produced 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 transmitted into Parliament, and by the King's Writ directed to the Sheriffs of every County of England, and commandment given to him, that all the said statutes in all places through his whole Baltswich, as well within Franchise as without, where he should find well 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 as take Copies thereof. And this was sometime in Latin and sometimes 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.


Richard par la grace de Dieu, Roy Denguille & de France, & Seigneur d'Ireland a nostre Vicounte de Norf. Salut, Saches que al honour de Dieu, & reverence de Saint Eglelie & par notre peace, unite & concord in tous parts de nostre realme, Je quel nous definons mal entierement, del affent des Prelats, Daikes, Counte & Barone de meisme notre realme, al instance & special request des Commons de nostre Realme attendi a nostre Parlement tenu a Welfin, a la quinzem de S. Michael an de nostre regne premier avons fait oidier & hablier certain statuts en amendement & relivement de meisme nostre Realme, & en la forme que desirrant. Premerment est alleuns & ehabts, que saint Eglelie est en joye toute les douleurs, &c. rehersing all the naturest that passed at that Parliament. And the writ concluded thus. Et par ceo vous mandons que tous les de Prelats, d'ecriers & publier, & firmement tenir par nos voitie Bouille (olonq; la bonne & merite de led. & ceo ne leflez en aucun maniere. Done par seigniens a nostre grand salut a Welfin. Je premier jour de Feverer Ian de nostre regne premier. And the like Articles continued until the beginning of the regne of 17, long time after printing within the regne of H.6. (as hath been said) came into vs.
The passing of any Bill or Bills by giving the Royal assent thereunto, or the giving any judgment in Parliament both not make a Session; but the Session both continue until that Session be protracted or dissolved: and this is evident by many instances in Parliament ancient and late.

The Parliament of 14 E.3. began at Westminster the Wednesday after Whitsuntide; the first Sunday of the Parliament, the ninth part of their Easter, 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 Stature, and passed both Houses, and the Royal assent thereunto, and the same exemplified under the Great Seal. After this Parliament continued, and others Acts made, and petitions granted, and in the end that Parliament was dissolved.

In the Parliament helden Anno 3 R. 2. it is declared by Act of Parliament that the killing of John Imperial Ambassador of Siena, was High Treason, in the person of the assassin, and yet the Parliament continued, long after, and other Acts of Parliament afterwards made, and petitions granted: and in the end the Parliament dissolved.

In the Parliament began the first day of March, Anno 7 H.4. on Saturday the 8th 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 enemies 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 other Acts of Parliament made, and petitions answered: and on the 22 day of December 8 H.4. dissolved.

The Parliament began the 7 of November, on the first day of the Parliament it was resolved by all the Judges, that those that were arraigned of treason, and returned Knights, Citizens or Burgesses of Parliament, that the attaints of the Judges and the Commons, that certain strangers by name, who seemed to be enemies 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 other Acts of Parliament made, and petitions answered: and on the 22 day of December 8 H.4. dissolved.

The Parliament was dissolved, on the first day of March, Anno 7 H.4. on Saturday the 8th 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 enemies 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 other Acts of Parliament made, and petitions answered: and on the 22 day of December 8 H.4. dissolved.

The Bill of Queen Katherine Howard's attaint passed both Houses about the beginning of the Parliament, and the King, desiring the Parliament, by his Letters Patent gave his Royal assent, and yet the Parliament continued until the first day of April, and other Acts of Parliament passed after the said Royal assent given. Divers more might be produced, but these shall suffice. So, although Bills pass both Houses, and the Royal assent given thereunto, there is no Session until a proscrition or a dissolution.

The diversity between a proscrition and an adjournment, or continuance, of the Parliament, is, that by the proscrition 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 session begin again: whereas every Bill of a Federal Parliament is in law a Federal Parliament: but it is but adjourned as continued, then is there no Session; and consequently, all things continue still in the same state that were in before the adjournment or continuance.

And the title of divers Acts of Parliament be, At the Session helden by proscrition, or by adjournment and proscrition, but never by continuance or adjournment common. And the usual form of pleading is, at Sessionem remanet, &c. Pet proscritionem.
The High Court of Parliament. Cap. I.

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 appeared) is much more beneficial for the Common-wealth for expediting of causes, than a prosgation. 2. In respect of a clause in the Act of Subsidie in the Parliament helden 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 both sit, and is dissolvd without any Act of Parliament passed, or judgment given, it is no Session of Parliament, but a Convocation.

In the 18 years of K. 2. at a Parliament helden before the Duke of York (the King being in his passage to Ireland) the Petitions of the Commons were all sett: and a Judgment given in the Kings Bench for the Priory of Newport-pen- nell, against the Dean and Chapter of Lichfield, was reversed; but no Act of Parliament passed, and therefore this Judgment 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.

The House of Commons is a distinct Court.

Note. The House of Commons is to many purposes a distinct Court, and therefore is not prosguaged, or adjourned by the prosgation or adjournment of the Lords House: but the Speaker upon significacion of the Kings pleasure by the assent of the House of Commons, both say: This Court both prosgue or adjourn it felt, and then it is prosguaged 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 dissolve 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 lain) it cannot end or be dissolved without his presence either in person or by representation. Nihil enim tam conveniens est naturali aqui, ut quaeque disolvit colegamine quo legatur aet.

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 so good strength and force, as if the Kings person had been there personally present, and had attented openly and publickly to the same.

Of Subsidies and Aides granted by Parliament.

Subsidie is derived of the word Subsidari, which signifies to be ready to help at need, unde subsidium, which signifies 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, aswell because that which we call now Subsidia, Subsidies, were anciently called auxilia, Aides, 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, sc. Communia periculorum resistentia.

This word [Subsidie] is common, as well to the English as to the French. Concerning Subsidies hear what a stranger truly writeth. Reges Angliae nihil tale, nisi convocatis primis ordiniis, & affrentie populo, subsistunt. Quae conttonudo valde mihi laudandia videuntur; interventione enim populus voluntatem & aestens credidit robur, & potentia regnum, & major est ipforum authoritas, & feliciores progressus.

Subsidies taken in their general sense for Parliamentary Aides are divided into perpetual and temporary: perpetual, into these parts. viz. into Cittane antiqua
Cap. 1. The High Court of Parliament.

antique, five magna, cultuma nova five parva, and into cultume of Broad cloth. Temporarily, whereof there are three kinds, viz. 1 of Laminge and Plumbage of ancient time granted for a year or two years uncertainly, and of other times for life. 2. A Subsidy after the rate of 4 s. in the pound for lands, and 2 s. 6 d. for goods. And 3. for an Aid called a Fifteenth. And of these in order.

Cultuma antiqua five magna.

Cultuma antiqua five magna was by Act of Parliament granted to King E. 1. his Heirs and Successors for transportation of three things, viz. Wool, Woolfels, and Leather, viz. for every lack of Wool 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, Prelates, magnates, & toa communitas concefforum quondam novam commutationem nobis de lanis, pellibus & coria dimid. mar., de 300, pellibus dimid. mar., & de laeta coriorem unam marcam. In the nature called confirmationes cartarum Anno 25 E. 1. there is a saving in these words. Sava a nos., & nous heirs in cultume des leynes, peals & quares grant, per la Commodity du realm. See also the like in the Preamble: "Sava tamen nobis & hercelides nostri cultuma lanarium, pellium & corium per Comunitatem dicti regni nobis prim. concess."

"8. Fot it is laid in divers Records, per Comunitatem Anglici nobis concessi, 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, reputed both come from the Commons."

In the 31 year of E. 1. the Merchant Strangers in consideration of certain liberties and priviledges granted to them, and a release to them of all pastes and takings, gave to the King and his Heirs, three shillings four pence, ultra antiquam cultum aut prior concess. So as where the Subject paid a Noble, the Stranger paid ten shillings, &c. See the statutes of 1 H. 7. ch. 2. 11 H. 7. ch. 14. 22 H. 8. cap. 8.

Cultuma 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 pastes and takings, gave to the King and his Heirs, three shillings four pence, ultra antiquam cultum aut prior concess. So as where the Subject paid a Noble, the Stranger paid ten shillings, &c. See the statutes of 1 H. 7. ch. 2. 11 H. 7. ch. 14. 22 H. 8. cap. 8.

Cultume of what things, ex antiquo.

It is to be observed, that of ancient time no Cultume was paid by English or Stranger, but for Wool, Woolfels, and Leather. Perdy it appeared how necessary the knowledge of ancient Records, and of the true original of every thing. In the Reign of E. 3. a great part of the Wool was converted into Cloths: whereby upon question given, whether upon the transfiguration of the Cloth, into which the Wool was converted, Cultume should be proportionably paid, having regard to the quantity of the Wool so converted into Cloth: and it was resolved, that no Cultume should in that case be paid, because the Wool by the labour and industry of many was changed into another kind of Merchandize: whereby with the King held himself satisfied, and so it appeared in the Kings own Writs and Records enrolled in Cerbequer. The first Act of Parliament that gave any Subsidy of Cloth was in Anno 21 E. 3. (not printed) viz. fourteen pence of Leidges, and one and twenty pence of Wool deputed into Cloth no Cultume was due.
of Strangers, for every Cloth of Assile, 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, Qvia jam magna pars pane regni nostri in eodem regno panificatur, de qua Cultuma aliqua non est soluta, per quod proponent quod de Cultumis & Subsidis farsarum, si extra dictum regnum ducercentur, precerim debentus, in multo diminuuntur, &c. And per se in any case the king might by his Prerogative have for any imposition, he might have for one in that case, for what as it appeared by that Record, by making of Cloth the king lost his Custumis of Assile: and therefore for further satisfaction of the king for the Custume of Assile at the Parliament held in Anno 27 E. 3. a Subsidy was granted to the king, his Heirs and Successors, viz. (over the Custumes thereof) of every whole Cloth of Assile not ingrated, four pence, and for the half of such Cloth, two pence, and of every Cloth ingrated five pence, and of the half two pence half pence, and of every Cloth of Scarlet six pence, and of the half two pence: and the Alangers fee is granted to him by Act of Parliament, viz. for the measuring of every Cloth of Assile of the seller a halfpenny, and of half a Cloth a farthing for his office, and no more; no shall they take any thing for a Cloth that is left: 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 same Acts in the reign of H. 3. Conuentudines & Cultumes, which are English, Cultumes, are taken for the Subsidies that were granted by Parliament, for berslip hose were ancient and right Custumes of Subsidies. And in the nature of 11 H. 4. Cultumes and Subsidies are used as Synonymes.

Butlerage.

Butlerage is a Custume due to the king of two shillings for every Run of Wines brought into this Realm by Strangers: but English men pay not it.

In libro Rubeco in Scaccario in custodia Remenroratis Regis, fol. 265. the grant of King John to the Merchants of Aquitaine trading for Wines thence into England of divers liberties, viz. De libertatibus concessis mercatoribus vasetrioris de Ducentis Aquitana, reddendo regis & heredibus suis 2 s. de quolibet eto vini ducti per coddem infra regnum Angliae vel potestate regis.

All Merchants Strangers in consideration of the grant to them by the King of divers liberties and freedoms, concesserunt quod de quolibet eto vini quod aduentum vel adductam facerent infra regnum, &c. solvent nobis & heredibus nostris nomine Cultumes duos solidos, &c.

Priseage.

Prisage is a Custume 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 Bati, and the other behind, paying twenty shillings for each Tum: and this is called certa prisa, and recta prisa, and regia prisa, as in the Record inquiring appeareth, and hereof Merchant Strangers are dischargd per caram mercatoriam, 31 E. 1. Ubi supra.

Memorandum quod Rex habet ex antiqua constitutio de quibuscumque nostris vinis vi, carcer, applican. infra aliquem portum Angliae de viniis duobus duobus, & de decem duobus unum de prisa regia pro quotdam certo ab antiquo constituit solvere.

Per hanc it appears that Prisage is due by prescription, and that it was a certain of ancient time ordained to be paid.

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

In Hilary Term, Anno 2, Jac. Regis, upon a suit made to the King by the Duke of Lenox, question was moved concerning new Draperies, as Fryers.
Cap. 1. The High Court of Parliament.

boes, Bays, Northern Cottons, Northern Denims, Cloth rath, Durances, Perpetuarius, Fustians, Canvas, Sackcloth, Woffheads, and Stuff made of Woffhead yarn, whether the King might grant the Alnage of them with a reasonable fee, or whether they were within the said Statute of 27 E. 3. And these questions were by the King's commandment in this Hilary Term referred to all the Judges of England to certify their opinions concerning the suit to the Lords of the 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 Most Honorable Privy Council. Our duties to your Lordships remembered. 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 meafurage, that is sought to be granted by his Majesty of sundry kinds, as well of new made Drapery, as of other Stuff 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 Shox, 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, Bays, Northern Denors, Northern Cottons, Cloth rath, and other like Drapery, of what new name soever, for the use of men body, are to yield Subidy 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 meedly of other Stuff they Wool, or being but mixed with Wool, we are of opinion, that no charge can be imposed for the search or meafurage thereof, but that all inch 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 amifs to set down to your Lordships, which is thus: The same King H. 4. granted the meafurage of all Woolen 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 leffer quantity, and one penny for the measuring of 100 ells 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 Skering by the fame Kings grant, and one Christopher 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 extortiun, and coercion, and without right, and that those Patents were in operationes, pressiones & depaginationes populi Dominii Regis, & non in conuallatiu m e n e r e f f a m ~ opulis, &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 worsted yarn, we are of opinion that it is not grantable, nor fit to be granted; for we cannot find, that there was ever any Almage upon Norwich worstheads. And for these Stuffes, 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 fates 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, 1659. Which Certificat being read by the Lords of the Privy Council (I being then Attorney 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.

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.
It is an observation proved by a great number of precedents, that never any good bill was preferred, or good motion made in Parliament, whereas any memorial was made in the Journal book, or otherwise, though sometime it succeeded nor 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 margin.

The Subsidy of Tunnage and Poundage.

As the subsequent Records you shall observe 13 things. 1. The grant of Poundage only. 2. Of Tunnage and Poundage. 3. Several rates, sometimes 6 d. 8. d. 12 d. for Poundage. 4. Sometimes 2s. 18 d. 3 s. 5. Hac vice, 1, 2, 3, 4, years for life. 6. To Merchants &c. 7. To have intermission and to bar, left the King should claim it as a duty. 8. Express 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 retrospective. 12. Sometimes double of Strangers. 13. Cloth excepted, that it be not subject to Tunnage and Poundage. 31 H. 6.

Sometimes to have intermission, and to bar, left the King should claim as duties.

The Subsidy of Tunnage only, and 6 d. in the pound, for two years upon condition.

Tunnage of Wine, 3 s. and 6 d. for Poundage for one year.

Tunnage of Wine, 12 d. for Poundage.

Tunnage of Wine, 7 d. for Poundage, and 12 d. for Tunnage of Wine for three years.

Tunnage of Wine, 8 d. for Poundage, and 28. for Tunnage of Wine.

Tunnage of Wine, and 2 d. for Poundage.

Tunnage of Wine, and 3 s. for Tunnage of Wine for three years.

Tunnage of Wine, and 3 d. for Poundage.

Tunnage of Wine, and 3 s. for Tunnage of Wine for three years.

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

Tunnage of Wine, and 3 d. for Poundage.

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

The like Subsidy is granted to the King for his life upon conditions, at which was the first grant of Tunnage and Poundage for life, which was a leading Grant, as hereafter appeared.

The Subsidy of Poundage only for two years.

Tunnage of Wine and Poundage granted for several years.

Tunnage and Poundage, at prises of Denizens, double of Strangers.

Tunnage of Wine and Poundage granted to H. 8. for life, with an exception of all woolen * Cloth: and here Cloth was first excepted, and was a leading exception in all subsequent Acts.

Tunnage of Wine and Poundage granted to E. 4. for life with no retrospective, but for the time to come.

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.

And the like Subsidy was granted to King H. 8. at the Parliament holden Anno 1. of his reign for his life.
Cap. 1. The High Court of Parliament.

The like grant was made to E. G. Arun May, Arun Eliz. and King James for their federal liberties, and in all these it is affirmed, that the like grants were made by Act of Parliament to King H. 7. and King e. 8.

The consideration of the grant of these Subsidies of Lunnage and Boundage is ever a small land, expressed in the grant for the keeping and safeguard of the seas, and for intercourse of merchandise safely to come into this real, and safely to pass out of the same. And this particularly proper to the office of the Lord Admiral, to be the consideration of the Act to be performed. They are granted of the free good will of the Subsiders, and to expressly set down in the Parliament Roll.

In King James’ reign, when I was a Commissioner of the Treasury, these Subsidies granted for life amount to One hundred and threescore thousand pounds per annum, and to letter to farm. The values of the merchandise for which the Subsidy of Boundage is paid, do appear in a book of Rates in print, wherein the Merchant knows what he is to pay. The Subsidy of Lunnage of Wine is certain in these Acts by the contents of the Seals: and none of these Acts do extend to any other liquid merchandise imported or exported, but unto Wines only: and being nothing is more uncertain than the continuance of the value of Merchandises, wherefore the Subsidy of Boundage is paid, it were good at every grant of them to set down the rates in a schedule annexed to the bill.

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 Act to be levied of every Subsidier of his domain 62 goods after the rate of all in the pound for lands, and 2d. for goods, and for Alters for goods double, to such ends, and for such considerations and to be paid at such times, as are in the Acts thereof (which are usual and frequent) do appear. And in former times in this kind of Subsidy, this other was observed, that over and above the Subsidy of Lunnage and Boundage, the Commons never gave above one Subsidy of this kind, and two Fiftens, (and sometime less) one Subsidy amounting to Seventy thousand pounds, and each Fifteen of Twenty nine thousand pounds, or near thereabout, not above one Subsidy, which did rise to twenty thousand pounds, the Clergy gave not.

At the Parlia ment holden in 31 Eliz. the Commons gave two Subsidies, and four Fiftens, which first base the Circle.

In 35 Eliz. these Subsidies and by Fiftens.

In 39 Eliz. these Subsidies and by Fiftens.

In 43 Eliz. four Subsidies and eight Fiftens, ac.

In 21 Jac. Regis. three Subsidies and by Fiftens in shorter times than had been before.

In 3 Car. Regis. the Subsidies in shorter time of all.

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

As that of 4 R. 2. a new invention of Subsidies of the Kings Subsidies of either sex be by the poll st. for the furnishing of the Earl of Bedingfield for his going into France, wherupon a strong and strange Rebellion ensued, wherein these great and worthy Officers were by the rash and barbarous and wickedly murdered, viz. Simon Sudbury, Archbishop of Canterbury, Chancelor of England, the Parson of St. John of Jerusalem, Treasurer of England, and Sir John Cawendish, Chief Justice of England.

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 caustically slain.

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The High Court of Parliament. Cap. 1.

In Anno 16 H.8. to furnish the King for his going in his royal person into France, a new devise for getting of money was let on foot, which made the head-letts and headlets multitudine to rise in rebellion, until Charles Brandon the noble Duke of Suff. quitted and dispersed them.

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 Counties and places, who had put them in credit, before they treated of any such matter.

Vide 9 H.6. n. 15. Every Knight fee to pay 20 s. and to according to the value under 2 s. over, and 50 of the Clergy for Lands purchased since 20 E. 1. And all other having 20 l. Lands not helden 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 shall much shall suffice.

Sepe tantum nova, non vetus orbis fallit.

Of Fifteens, Quinzims, &c.

Fifteens, Quinzims or Ticks, or Quinta-decima.

Second Part.

Of Tenibs.

There is decima pars of the Landed, and for the most part of Cities and Boroughs by their goods, (Vide 1 R. 2. n. 26.) which proportionally is, secondum decimam quamnam partem. That which we call tax, Tallage, Tenth, and Fifteen, the Saxons called Geldinn, * we use the word changing g to y, for gelding, yielding, at.

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


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 Perambulations (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 pulse Lord Seriatin, by the word of [content.] or not content.

A bill was preferred at the Parliament holden in Anno 6 H 6 that no man should contract or marry himself to any man Dowager of England without special licence 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 the 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 Abots, and 2 Pryors, (albeit in truth the number was many times uncertain, as in the close Roll it appeared) which severally held per Baroniam, and were Lords of Parliament, and so continued until they were disbolted 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, or on pain to lose all his goods and lands. The Bishops and Clergy attented to this Bill, as far forth as the same proposed not from the Law of God, and of the Church, and so as the same imported no deadly sin.

This is holde 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 the Church, nor imposed any deadly sin to make this Law by authority of Parliament, as it appeared by Magna Carta c. 7, which had by 52 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 Grono (descended of the Prince of Wales) by whom she had issue Edmond of Hadham afterseised, Earl of Richmond, and Jasper of Harsfield, after Carl of Pembroke, and Duke of Bedford.

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

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.

[1] 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 Archbishops 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 toward his Commons: Whereunto the three noble Kings attented with these effectual words. The same prayeth the King: and many times the like petitions for the Lords. [2] How the King in all his weighty affairs had used the advice of his Lords and Commons, (to great a trust and confidence he had in them.) Always provided, that both Lords and Commons keep them within the circle of the Law and custom of the Parliament.

[3] For the second: at the Parliament held 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 Parliament in court at that Parliament, and that little of no moment.

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

[5] The like controversy 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 antipathy was made between the Standards of the Realm by bickering of hands and bickering, and sometimes by submission.

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, frivous, iniparables, & fictitious iniparables. Expolum est illud diversibus;
The High Court of Parliament.

Cap. 1.

Divide, & impera: cum radix & vertex impetis in obedientium consensu rate 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 Judgments. Quem homo unius, cadem mente, uno conuivo.

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 Bishops, according to the example of King David, and likewise the Nobles and Commons should prepare; for preparatio meditatio est. Tempus fames & meliores quam propriae, 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 confer 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.


The power and jurisdiction of the Parliament.

[4] 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, [5] Si antiquatem spectes, eit vetustissima, ei dignitatem, ei honoratissima, ei jurisdicionem, ei capacissima.


Yet some examples are desired. [4] Daughters and Heirs apparent of a man or woman, may by Act of Parliament inherit during the life of the Ancestors.

[5] It may adjudge an Infant, or Minors of full age.


[7] To naturalize a mere Alien, and make him a Subject born. [8] It may bastardize a child that by law is legitimate, viz. begotten by an Adulteress, the husband being within the four Seas.

To legitimate one that is illegitimate, and born before marriage absolutely, and to legitimize a bastard child, but not simplex. As to take one example f. 3.

[9] I have of Gaunt Duke of Lancaster had by Katherine Swinford before marriage four illegitimate children, viz. Henry, John, and Joan. And because they were born at [4] Beaufort in France, they were vulgarly called Henry de Beaufort, &c. John before the 20th of 12. 2. was Knighted, and Henry became Prince. [10] At the Parliament held in 20. 2. the third by Act of Parliament in form of a Charter both legitimate those three sons, and Joan the daughter; and the Charter began thus: Rex, &c. Charismatis confirmarunt nostris nobilibus viris [i,] Johanni Militari: [j] Henrico Clerico: [k] Thomae de miscello, ac duce nobili mulieri [g] Johanne Beaufort domicelle, Germanis pracharissemi avunculi nostri, Johanne Ducis Lancastriatis legis legitimam formam ac nostrae cognatione dedegisse.


notris salutem, & c. Nos dicti avunculi nostri genitori vestri precebus inclinati, va- 
bigarem qui (ut afferitur) defectu naturam perpetuam, ut haue in defectu quem ejun-
qualitatibus quaeeque, praeventibus habere volumus pro sufficienter expressis) non ob-
423 aente ad quaequeque honoris dignitates, (excepta dignitate regali) praehominum,
status, gradus, & officia publica & privata tam perpetua quam temporalis, auge
feudal ac noble qvisque quicunque nominibus nuncupatur, etiamis ductus, princi-
patis, comites. Baronia, vel alia feuda fuerint, etiamis mediate, vel immediae, vel
a nobis dependant feu teneantur, prafci, promoveri, eligi, aulami & admitter, illa-
que recipere, retinere, perinde liber & licet vectariis, ac fi de legitimo thoro natu
exsisteretis, qvisque quicunque fideturis feu confuetudinis regni nostri Anglor in con-
trahum editis fei observatis (quae hic habemus pro totaliter expressis) nequaquam ob-
flamibus; de plenitudine nostrz regalis potestate, ac de aedifici Parlamenti nostrz

tenore praeventionis dispensamus, voque & vectum quemlibet Naturales restituis-
& legitimamus. In eis rei testimonium. Teile Rege apud Wein' die Febr.
Per ipsum Regem in Parliamento.

In this Act are divers things worthy of observation. 1. The names whereby
they were legitimated. 2. That this legitimation was not simplitieer, but sec-
condum quid: for they were legitimated and made capable of all dignitaries ex-
cept the Royal Dignity: so as this legitimation extended not to make them of
their potestiees 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
particulars were expressed, and with a brief non obstante, and with as little
blesms as may be. 5. And hereby it appears, that [4] H. 7, being son of Edmond
off-Hadham E. of Richam and, and Margaret his wife, daughter and heir of John de
Beaufort, D. of Somerset; which Margaret generally descended from the faid John
de Beaufort, legitimated and made capable of all dignities, as is aforesaid, excepta
regali dignitate, that the beft 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 Parlia-
ment intailed to H. 7. and to the heirs of his body, the right of the Crown then
being in the faid Elizabeth, eldest daughter of E. 4. 6. In this Act, the faid
Thomas before his legitimation could not be called esquire, and therefore he
hath this addition of * Domicell, either derived from the French word Domi-
cell, which signifies a young Souther not per knighted, or signifies nobly born.
And note, Johan, the daughter had the addition of de Beaufort and Domicella,
in that tense also.

And the same in an attainer by Parliament of a suitor of High Treason
being committed to the Tower, and being 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 attainer should be of force
in law: yet this I say of the manner of the proceeding, without obviou, si potest s; si
non unaquaeque sitentum regari: 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 inferior Courts. But it is demanded, since he was
attained 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 Gwynp 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 for-
touching might be attained 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 inferior Courts
for proceeding according to Justice, and no inferior 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 faid Earl
to give a direct answer: they said, that if he be attained by Parliament, it could
not come in question afterward, whether he were called or not called to answer.

And
And albeit their opinion was according to Law, yet might they have made a better answer, for by the Statutes of Mag.Carr. c. 29.5 E.3.c.9. & 28 E.3. c. 5. no man ought to be condemned without answer, etc. which they might have certified, but for a tenent multa, quae fieri prohibentur; the Act of Attainder being passed by Parliament, did bind, as they refuted. The party against whom this was intended, was never called in question, but the first man after the said resolution, that was attained, and never called to answer, was the said Earl of Hesk, whereby that erroneous and vulgar opinion amongst our Historians grew, that it laid by the same law which he himself had made. The rehearsal of the said Attainder can work no prejudice, for that I am confidently persuaded, 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.

[1] Namque lex nostra judicat hominem, nisi prius audiarta ab ipso, & cognovebit quid faciat? Doth our law judge any man, before he hear him and know what he doth? [3] It is not the manner of the Romans to deliver any man to die, before he which is accused have the accusers face to face, and have license to answer for himself concerning the crime laid against him.


[9] Interrogatus Levita maritus mulieris interfecerat quodam tempore scelus perpetuum esset. &c. And the conclusion is after hearing and discerning the cause. Consider, confute, and then give sentence.

[12] And as evil was the proceeding in Parliament against Sir John Mortimer, third son of Edmond the second Earl of March (defended 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, whereas if the said Earl would not take it upon him, he would: and that he would go into Wales, and raise an Army of 2000 men, &c. which indictment (without any arraignment or pleading) being merely signified to blemish the title of the Mortimers, and withal being insufficient in Law, as by the same appeared, 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 Tiberius, 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 Records of Parliament appeared.

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 misdemeanor, the King's Writ was directed to the Sheriffs to summon and enjoin the party to appear before the King in the next Parliament. For example.
Cap. 1
The High Court of Parliament.

de Daventry, Roberto de Gray de Wollaston, & Radulpho de Normacull quatuor mile, &c. in propria persona sua accedit apud Stowe ad manerium predicti Nicholai, & in presentia coram in militum summot praedicti Nicholai, & eis iterum injunxit quod esset coram Domino Regne in ipso Parliamento nunc juxta formam & tenorem mandati præd., &c.

Almaricus de Sancho Amando, Magister Johannes de Sancho Amando, Wilhelmos de monte acuto, Richardus Attewh constabularius castri Oxon. Ricardus de Hurle, Thomas de Carleton capellanus, Johannes de Ros, Johannes de Trenbrigg, Wilhelmos Attewhede frater ejus, & Philippus de Wigenton attachat sit venit per Vie in castro Oxon. per præcept Dominii Regis respectively eidem Domino Regi in Parlamentum suum in Castello Sancho Matthei Apostoli Anno regni sui xxxii., super quibusdam criminiis & transgressionibus infra scriptis, & inde per manumissionem sufficienti adjurat coram ipso Domino Regi hic ad hunc diem, sibiicit a die Pasch. in xv. dies, &c.

De a visita being directed to the party himself, when any complaint was made against him. De injuriis, gravaminibus, aut molestationibus, to appear in his proper person before the king and his Council. As for example.

Dominus Rex mandavit breve suum Roberto de Burgherhouse in hoc verbis, Edwardus Dei gratia, &c. Dilecto & sideli suo Roberto de Burgherhouse constabularius castri sui Dover & eundo quinquies postumum, saltem. Quia dilectus nobis in Christo Abbas de Faversham & Robertus de Guerne balivis suis ejusdem villae coram Concilio nostro apud Ebormus existente de diversis injuriis, gravaminibus & molestationibus est per vos voluntate & absque causa rationabilis multipliciter illatis gravibus quimoniae deponuntur, petentes infansiter ut eis super hoc fieri faceremus remedium opportunnunm, propter quod declarit ei die coram nobis & concilio nostro a die Pasch. in xvi. dies, &c. ad querelas suas predicatas tune ostendit & ad faciendam super prehoc ulterius & recipiendam quod justitia suadetur: Vobis mandamus, quod in propria persona vestra sitis coram nobis & concilio nostro ad diem predicti praestat Abbati & balivis suis & super præmissae responsios & recepturus quod curia nostra confideraverit in hac parte, & ab injuriis, gravaminibus, molestationibus & distritionibus indebitis praestatis Abbati & balivis suis interim inercendis penitus desidendo. Et habeatis hui us brevem. Teste meipso apud Linlithguem xxx, die Jamarii, Anno regni nostri xxx. Virtute ejus brevis praedictus Robertus venit, & brevem illud protulit ad diem in eodem contentum. Et praedictis Abbes vestris & querelas suas protulit in quodam rotulo scriptos, & quas in curia hic querebantur ostendit & legere fecit, de quibus prima est hic, &c.


And where by order of law a man cannot be attained of high treason, unless the offence be in law high treason, he ought not to be attained by general words of high treason by Authority of Parliament (as sometime hath been used) but the high treason ought to be specially expressed, being that the Court of Parliament is the highest and most honourable Court of Justice, and ought (as hath been said) give example to inferior Courts.

There was an Act of Parliament made in the 11 year of King H. 7. which had a fair flattering preamble, pretending to avoid divers mischief, which were. 1. To the high displeasure of Almighty God. 2. The great leat of the Commons.


A mischief 2. with a lattering Preamble in 11 H. 7.
Common law, and 3. The great lot of the wealth of this land: And the proceedings of that Act tended in the execution contrary, ex diametro, viz. to the high displeasure of Almighty God, the great lot, nay the utter subversion of the Common law, and the great lot of the wealth of this land, as hereafter shall manifestly appear. Which Act followeth in these words:

The King our Soveraign Lord calling to his remembrance that many good Statutes & Ordinances be made for the punishment of riots, unlawful assemblies, reteiners in giving and receiving of liveries, signs and tokens unlawfully, extortions, maintenances, imbracery, excessive taking of wages contrary to the Statute of Labouurers 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 behooweful considerations severally made and ordained, to the displeasure of Almighty God, and the great lot 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 truth which any lettered 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 Affile 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 perfon or perfons 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 process against the said offenders and every of them, as they should or might make against such person or perfons as been present and indicted before them of trespass 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 perfon which shall give the said information for the King shall by the direction of the said Justices content and pay to the said perfon or perfons 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.
him, that so giveth or maketh any such information. Provided al-
ways, 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 informa-
tion. Provided also, that the said informations shall not extend to
any person dwelling in any other shire, than there, as the said infor-
mation 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.

By Precept of this law Empson and Dudley did commit upon the Subject mis-
sasurable precepts and oppositions, 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 Parliament to leave all causes to be measured by the golden
and strict metes and bounds of the law, and not to the uncertain and crooked copd of dis-
cretion.

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 in-
conveniences do follow, which most expressly appeared by this most unjust and
strange Act of 1 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 obsoleto or unito for the time) by
information only without any presentment or trial by Jury, being the ancient
birthright of the Subject, but to bear and determine the same by their discre-
tion, inflicting such penalty, as the Statutes not repealed imposed: These and
other like oppressions and exactions by of or by the means of Empson and Dudley
and their instruments, brought infinite treasures to the Kings Coers, whereas
the King himself in the end with great grief and composition repented, as in
* another place we have observed.

This Statute of 1 H.7. we have recited, and beheld 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 scarful end of those two time-
servers, Empson and Dudley. Qui exost vetit, inuitat, eorum exitus pec-
horrelantes.

See the Statute of 8 E.4. cap.2. the Statute of Liberties, an Information, et
by the discretion of the Judges to stand as an original, et. This Act is deter-
minedly repealed.

Vide 12 R.2. cap.11. Punishment by discretion, et. Vide 5 H.4. ca.6.8. See
the * Commission of Sewers. Discretion ought to be thus described. Di-
cretion et dicernere per legem quid et sit justum. And this description is proved by
the Common law of the land, for when a Jury do doubt of the law, and de-
side to do that which is just, they find the special matter, and the entry is. Et
super tua materia, &c. petent discretionem Jusiciariorum, et sometime,
advisementum & discretionem Jusiciariorum in praemiss, &c. that is, they desire
that the Judges would discern by law what is just, and give judgment ac-
dingly.

* In the Chap-
ter of the Court
of Wards and
Liverys.

* Lib.5. fo.100.
Roots cafe.
Lib.10.f.128. &c
Pl. Com. 348.
Esmonds cafe.

G 2.  A81
Acts against the power of the Parliament subsequent bind not.

An Article of the Statute made in 11 R. 2. cap. 5. 12, 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 Bill and Statute of King R. 2. under the Great Seal, Privy Seal, and Privy Signer, whereby he deputed certain money, treasure, &c. to his successors upon condition to observe all the Acts and Sederat at the Parliament holden in Anno 21 of his reign, was bolden unjust and unlawful, for that it restrained the Souverain liberty of the Kings his Successors.

Sunday Lords of Parliament (but no Bishops) &c of them, and certain Knights of shires of the Commons &c 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 bolden to against the dignity of a Parliament, and that no such Commission ought to be granted.

An Act in 11 R. 2. cap. 3. that no man against whom any judgment or forfeiture was granted should have fine for pardon or grace, &c. was bolden to be unreasonable without example, and against the law and custom of Parliament, and therefore that branch by Authority of Parliament was abdicated, and made void.

Alfo I find that in times past the House 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 cases 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 Convenations acknowledged him Supreme Head of the Church of England, thought it no difficult matter to have the same corrodiged and confirmed by Authority of Parliament, but withal secretly and earnestly desired that the impugners and drawers 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 Art by words closely couched, though the former Art of Supremacy had been the proper place. And therefore in the Art of recognition of his Supremacy it is enacted, that he should have annulled and united to the Crown of this Realm the Title and Store thereof: and afterwards towards the end of the Parliament, a bill was preferred whereby many offences be High Treason, and therefor is enacted, That if any person or persons by [a] word or writing, practice or attempt any bodily harm to the King, the [b] Queen or their heirs apparent, 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] Heretic, Schismatic, Tyrant, Injuder or usurper of the Crown, &c. that every such person to offending should be adjudged Treason, &c. So now by this latter Art, he that by word or writing attempts to depriue the King of the title of his royal estate is a Traitor, but the former Art had annexed to the Crown the title of the Art of Supremacy, and therefore he that should by word or writing attempt to depriue the King thereof should be a Traitor. And [f] upon this law of 26 H. 8. c. 13. for depriving of the Kings Supremacy bidders suffered death as in case of High Treason, whereas all laws, especially penal, and principally those that are penal in the highest degree, ought to be so plainly and perspicuously pruned, as every Member of both Houses may understand the same, and according to his knowledge and conscience give his vote. [h] Erat suam lex honesta, justa, possibilis, secundum naturam & secundum contutendum in patriae, temperique conveniens, necessaria & utilis, manifesta quoque, nec aliquid per obscuritatem incutium capit.
The High Court of Parliament.


tion contrata; nullo privato commodo, sed pro communi civium utilitate conscrip-pta, idea in ipi conditio constiteri tanta consideratione fure, qua cum legis inimica fuerit non est liberum arbitrium judicatae de jure, sed unanime judicatum secundum iudicatum, which be excellent rules for all Parliaments to follow. But the Statute of 5 Eliz. c. 3. hath concerning the Supreme Court distinctly and perspicuously as by the same appeared.


And albeit it appeared by these examples a 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, qualify, or make void subsequent Parliaments, yet could they never effect it, for the latter Parliaments have ever power to abrogate, suspend, qualify, explain, or make void the former in the whole or in any part thereof, notwithstanding any words of restraint, prohibition, or penalties in the former; for it is a maxim in the law of the Parliament, quod leges posteriores priores contrarias abrogant.

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 Judgement in Parliament, or the like, and to encourage the Judges that the same may be duly executed, the same may be enrolled in the Courts of Justice in this manner. The tenor of the record must be removed into the Chancery by writ of Declaratarum, and delivered into the Kings Bench by the bands of the Chancels, or Lord Keeper, and sent by Minitimus to the Court of Common pleas, and by like Minitimus 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 appeared by these two precedents. Ex Rexvs Cletv. An. 28 E. 1. m. 2. Dorf. Rex Theifaur. & Baronibus suis de Scaccarum, salutem. Qvis volatus quod Magna Carta Donini Henrici quondam Regis Angliae patris nostrae de libertatibus Angliae quas confirmavit etiam innovavit in omnibus & singulis articulis suis firmitate & inviolabilitate obseruaret. Vobis mandamus quod Cartam pradictam in omnibus & singulis articulis quantum in vobis eff coram vobis in diete Scaccarii observabili facias firmitate & tenere. T. R. apud Dunestre 23. die Octobris.

Rex Juticus, sui de Banco salutem. Cum in aliellamiatione gravaminum quo populis regiis nostris 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 libertatis libitudo faciat in futurum, quodam articulis eodem populo plurimum (amnume Domino) profuturos de gratia nostra speciali duxerimus concedendos. Vobis mandamus quod dictis articulis quos vobis mittimus figuram non significat coram vobis in banc pradicto quantum in vobis est justa vim, formam & effectum corundem observabili facias firmitate & tenei. T. R. apud Dunestre 30 die Octobris.

Every Member of the Parliament ought to come.

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

By the Statute of 6 H. 8. c. 16. no Knight, Citizen or Burgess of the House of Commons shall depart from the Parliament without licence of the Speaker and Commons, the same to be entered of record in the book of the Clerk of the Parliament, upon pain to lose their lives.
The High Court of Parliament.

If a Lord depart from Parliament without licence, it is an offence done out of the Parliament, and is punishable 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 retouncing 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.

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 moveth 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 perform 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, So live of his own, and be able to defend his Kingdom upon any sudden invasion or insurrection. 2. So aid his Confederates, otherwise they would never assist him. 3. To reward his well deserving servants. So the project was, that if the Parliament would give unto him all the Abbes, Priories, Frizeses, Humeries, and other Monasteries, that for ever in time then 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 soldiers with skilful Captains and Commanders. Thirdly, for the benefit and safety of the Subject, who never afterwards (as was projected) in any time to come should be charged with Subsidies, Pistlethues, 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 Abbes and Priories (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 factendum popularis; 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.

* How 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 Lay; 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.

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

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, Pastor, 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 anti quam consortiam in creaturum statutum. * of regular Prelates that hold per Baroniam.

Parliament
Parliament, because quod fecularia, he was mortuary in leges, and therefore not capable to have place and voice in Parliament, unless he did hold per Baroniain, and were to that Common Council called by Merito, which made him capable: and though such a Sextar Regular had been often called by Merito, and had de facto had place and voice in Parliament, yet if in an earlier he held not per Baroniain, he ought to be discharged of that office, and to sit in Parlia mould no more.

[a] That the Abbey of Leicester was founded by Robert Fitz-Robert Earl of Leicester, (albeit the patronage came to the Croton by the feoffete of Simon de Montford Earl of Lich.) put being of a nobler foundation, it could not be held per Baroniain, and therefore the Abbay had no capacity to be called to the Parliament, and therefore upon the king did grant, quod idem Abbas & successores de veniendo ad Parliamentum & Concilium nostra vel hereditem nostriunm quieti sint & exonerati imperpeius.

[b] De jure & consuetudine Anglia ad Archidioecetum Cantuaricum, ecc. Abates, Priores, deos. Praetos, quosque per Baroniain de Domino Regis tenentes pertinere in Parliamentum Regis quibusque ut Parae regni praddici personam interesse, insigne de regni negotiis ac alios tractari consueus cum ceteris dieti regni Parae ac alios ibidem intendent habenter consulere & tractare, ordinarie, Haureae & assimile, ac cetera facere que Parliamenti temore ibid. immunitatem faciend.

So man ought to sit in that High Court of Parliament, but he had right to sit there: for it is not only a personal offence to him that siteth there without authorip, but a public offence to the Court of Parliament, and consequently, to the whole Realm. But all the cases above said, and others that may be remembered touching this point, as little Rivers to flow from the fountain of Modius tenendi Parliamentum, where it is laid: Ad Parliamentum fammonii & venire debent ratione tenue fuere omnes & singali Archiepiscopi, Episcopi, Abates, Priores, & ali magis Cleri qui tenent per comitatum vel baroniam rationem haussendi tenue, & nulli minores, nisi eorum praestantia necessaria vel utibus reperatur.

One rare and strange creation of a Lord regular of Parliament we cannot pass over, which was, that being H. 8. in the fifth year of his reign, by his Letters Patens under the Great Seal, did grant unto Richard Baldwin Abbot of Tavistock in the County of Devon, being of his patronage, and to the succesors of the said Abbot, ut eorum unjustly, qui pro tempore ibidem fuerit Abbas, sit & erit unus de ipse religiosis & dominus Parliaments nostri, haeredum & sucessionis nostriorum, gaudend. honorum, priviligio & libertatis eodem.

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 Baroniain, &c. And if the King might create Abbots or Bishops Lords of Parliament in this manner, by the same reason he might create Deans and Archdeacones Lords of Parliament, which without question he cannot.

By the Act of Parliament of 10 & 11. called the Affid of Clerendon, it is declared, ut pars confederationis & libertatis antecessoris regius, vis. Henrici primi & aitorum, qui observari debent in regno & ad omnissim us teniert, vis. Archi-episcopi, Episcopi, & universi persona regni, qui de Rege tenent in capite, habens possessiones suas de rege fict baroniam, & inde respondent Justiciariis & ministris regii, & sequantur in faciunt omnes confederationes regias, & ficti cetera barones debent interesse judicis Carie regis cum bironibus, quamque perveniatur ad diminutionem membrorum vel ad mortem. So as by this Act a tenure of the King in chief was in equipage with a Baronry.

And being John by his great Charter made Anno 17 of his reign, granariable, quod faciemus amnonneri Archiepiscopos, Episcopos, Abates, Comites, & Majores Barones regni singulatim per literas notiss. But of this Clause we are to observe these things: First, that these Barons called here Majors, were Lords of Parliament, and called thereunto by the Kings Abbots. Secondly, that they were called Majors comparatively, and the was respect of
of others which were called Barones minores, or Nobles minores, and were Freholders that * hold by Knight's Service and Esnagage, 1. Servitium Scuti, of three foals, 2. Milties, Armigeri, & Generosi, Knights, Esquires, and Gentilhoomes, or barons. These Barones minores were Lords of Manors, and had not the dignity of Lords, but had Courts of their Freholders, which to this day are called Court Barons, Curia Baronum. Of this Baron it is said in that law made by King Edward before the Conquest: Barones qui iam habent * Curiam de suis hominibus, videant ut sic de eis agant, quatenus ega Diaum retinu non incurrant, & Regemi non offendant.

Boro à Bar, Germanica lingua liberum & sui juris significat, 1. which agreeth well with that which hath been said. 2. That Boro 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.

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 hec verba. Johannes Shortichus tumultum commutatis Medievalis veniendum ad Parliamentum tentavit apud Wiltm. in Castr. Animaru, ultimo praeterebatur habet allocacionem 4 li. & 4 s. pro 21 diebus pro expense suis veniendo ad Parliamentum praedicto 40s. morando, et exinde ad proprium redeundo, capiendo per diem 4 s. Tellie Rege apud Wiltm. 24 die Novembr., Anno 46. Every Citizen and Burgess is to have 2 s. per diem, ut supra, mutatis mutandis.

* [Note the Devis ex mits militum, &c. both comprehended the same according to the above laid computation, and a commandment to the Sheriffs to levy the same.] [b] De commutatis commutatis praedictis, tam infra libertates, quam extra Civitatis & Bargas de quibus cives & burgenses ad Parliamentum nonruit, &c. veniunt dux litterar exceptus. The like writs to the Sheriffs De expenses Civium & Burgenium, to levy the same in Cities and Boroughs.

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

[d] Also there is a Writ in the register De expenses militis non levandis ab hominiis de antiquo domino, nec ab nativo. [e] Other dischargs Ele De expenses militum.

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

[g] H. 4. An. 14. of his reign summoned a Parliament Gratiano Purisica, and he decreed 20 Martin following, so as the Parliament was dissolved by his decafe. Thereupon it was a question, whether the Knights and Burgesses should have their wages, seeing nothing paid in that Parliament. And it was resolved, that if upon view of the Kings Records any like presidents may be found, allowances of their fees shall be made. [i] Also the Clergy were contributary by reason of their Benefices to the expenses of the procurators of the Clergy.

[k] But Chaplains which are Officers of the Chantry and attendants at the Parliament, shall not be contributary by reason of their Benefices to the expenses of the Clergy, as by the Register abi 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.

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

A Knight Banneret being no Lord of Parliament is eligible to be Knight, Citizen, or Burgess of the House of Commons being under the degree of a Baron, who is of the lowest degree of the Lords House. But Thomas Cavendish was not one


+ Vide supra p. 4.s., Rotber. R. 2.
only a knight Bannet, 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 disfranchised. 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.

An Alien cannot be elected of the Parliament, because he is not the king's liege Subject, and do it is alibit he be made Denizen by Letters Patent, ac. for there he be made quain, seu eunquam ligeus; but that will not serve, for he must be ligeus reus, and not quain, &c. And we have such a one chosen and followed 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.

But it is objected that, Gilbert de Umphrevill Earl of Andegos in Scotland, was called by the Kings Writ to the Parliament in 39 E. 3. by the name of Gilbert Earl of Andegos, and in a Writ of Reparation of War brought against him, by the name of Gilbert Umphrevill Chivaler, he pleaded to the Writ that he was Earl of Andegos not named in the Writ: and for that he was summoned to every Parliament by the name of the Earl of Andegos, and the King sent to him a Writ of Parliament under the Great Seal, as a Peer of the Land: by Judgment of the Court the Writ bid above. We have searched for the truth of this Case, and do find it in the Plain Rolls in this manner.

Richard de Umphrevill Baron of Pridlowe and Redefele 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 Maw daughter and heir of the Earl of Andegos in Scotland, who by her had issue Gilbert, who was Earl of Andegos as heir to his mother, and Baron of Pridlowe and Redefele as heir to his father: he late in Parliament upon summons by a Writ in 27 E. 1. 28 E. 1. 30 E. 1. 35 E. 1. E. 2. and E. 2. by the name of Gilbert Earl of Andegos. Robert his son late in Parliament, Anno 12 E. 2. by the same name of dignity, and to forth, all E. the Seconds reign. And Gilbert his son late 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 surname of Umphrevill ceased. Hereby it appears that the said Richard Umphrevill and his posterity, from whence father they originally descended, were liege Englishmen: for if they had been aliens, they could not have enjoyed the Lordships of Pridlowe, Ocrerborne, Harbecue, and Redefele in England, nor the Barons of Kine in Lincolnhire, which the two last Gilberts enjoyed. And note, the Book in 39 E. 3. concluded, that Gilbert Umphrevill was summoned to the Parliament under the Great Seal, Come an Peer of the Realm.

A Bishop elect may sit in Parliament as a Lord thereof.

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 Thorpe Baron of the Exchequer was Speaker of the Parliament. But now that judicial places in the Court of Exchequer, Court of Dutches, or other Courts Ecclesiastical, or Civil, being no Lord of Parliament are eligible.

[1] 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 man attainted of treason or felony, ac. is not eligible: for concerning the election of two Knights, the words of the Writ be, Duos milites gladiis cicetus magis idoneos & discreto eligi fac. And for the election of Citizens and Burgesses.
the words of the Writ be, Duos, &c. de discretionibus & magis sufficientibus, which they cannot be said to be, when they are attainted of Treason or Felony, &c.

Prisons and Barracks of Colons Corporate are eligible against the opinion in Brook. Anno 35 H. 8. tit. Parliament.

Any of the protection 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.

At a Parliament held in 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 being 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 although the prohibitory clauses 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.

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

At the Parliament held i. Caroli Regis, the Sheriff for the County of Buckingham was chosen Knight for the County of North, and returned into the Chanter: and having a Subpoena 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, bow 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.

So knight, Citizen, or Burgess can sit in Parliament before he hath taken the Oath of Supremacy.

Vide Rot. Clau. 7 R. 2. 7. Octob. in Dorst. 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.

So Election can be made of any Knight of the Shire but between 5 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.

So for the election of the Knights, if the party of the freetholders demand the Poll, the Sheriff cannot deny the granting, for he cannot answer who be freetholders by the view: and though the party would have the Poll, yet the Sheriff must proceed in the granting.

If the King hath newly incorporated an ancient Borough (which sent Burgesses to the Parliament), and granted, that certain selected Burgesses shall make election of the Burgesses of Parliament, where all the Burgesses elected before, this Charter takes not the election of the other Burgesses. And if to, if a City, &c. hath power to make Burgesses, they cannot make an Ordinance that a less number shall elect Burgesses, for the Parliament then made the election before;
Cap. 1. The High Court of Parliament.

before; for free elections of Members of the High Court of Parliament are pro bono publico, and not to be compared to other acts of election of Popes, Bishops, &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.

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 inferior 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 such Charters of exemption from their service in Parliament, yet those Charters are held 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 Patentes. And if he be but tenement phantasmal, or as extremely sick, or of the like, these be good causes of his excuse not coming, but no cause of exemption, for he may recede 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 Assize in a City or Borough, or of a Jury in an Assize, for the mischief that may follow in those private actions; & a 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 absent from the same during the continuance of the Parliament; he, or if the real person 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 nature of R. 2.

After the precept of the Sheriff directed to the City or Borough for making of election, there ought secundum legem & convenientiorem 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 themselues and be present at the election.

Any election of 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 & convenientiorem Parl.

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

How to treat more in particular (as hath been much desired) of the Laws, Customs, Liberties, and Privileges of this Court of Parliament (which are the deep heart-strings of the Common-wealth, whereas we have remembered some; and you may be some other examples in the margin, to long here to be

See before pag.

24, 25,

* 16 B. 2. Rot.

Claus. in dorc.

Ro. Par. 11 B. 2,

no. 7.

1 H. 5. n. g. c. 1

4 H. 8. c. 8. verf. finem, a general Law. 6 H. 8. c. 6. in the Preamb.

repealed)
The High Court of Parliament.

Cap. 1.

The decay of the Navy.

The Navy, even when it was at its height, was never a source of national pride. It was often in a state of disrepair and underfunded. The decay of the Navy was a concern for many reasons.

Per varios actus legem experimentia fecit.
Multa multo exercitamentis facitus, quam regulis percepitis.

Consultations in Parliament for maintenance of the Navy.

In many Parliaments consultations have been had for the maintenance of the Navy of England, and remedies provided against the decay of the same: as taking one example for many. In the Parliament held in Anno 45 E. 3. the Commons amongst their Petitions do affirm, that the decay of the Navy both arise by these causes. First, for that lording men ships are leased for the king, long before they serve, whereby the owners are driven at their charges to find their Partners, 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 Vessels of other ships as good as themselves are, whereby the most of those ships doe 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 in these things, viz. beauty, strength, and safety. For beauty, they are to many Royal Palaces; for strength, (no part of the World being such Iron and Timber as England hath) to many moving Castles and Barbicans: And for safety, they are the most defendable walls of the Realm. Amongst the ships of other Nations, they are like Lions amongst sly Beasts, or Falcons amongst fearful Fowls.

In the reign of Queen Elizabeth (when being acquainted with both this business) there were 33 besides Vessars; which so guarded and reserved the Navigation of the Merchants, as they had safe vent for their Commodities, and Trade and文章的Nourished A wealthy Subject for Parliaments to take into consideration, and to provide remedy as often as and shall require. For Navigation, see Gen. 6. 14. Sapient. 14. 6. *Remp. quam navem eximiam debemus, quam omnium manibus officiis, indicet, &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 Commonwealth. Non morbus in plerisque fed morbi neglecti curato corpus imperfect. And thus much for consultations in Parliament concerning the Navy of England.


* Patricius, L. De inquisitione Republica.

Of the Burgess's of Parliament. About 300 Sessions of Parliament since the Conquest.

And of every of those taking some examples; for to handle all at large would require
The High Court of Parliament.

require a whole Treatise, which (we having broken the Ze) some good man and loser of his Country (we hope) will undertake to make thence.


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, etc. by authority of Parliament: 3 R.2, cap.39. concerning Judges of Peace, a probable law for them. 8 R.2, cap.31. concerning the jurisdiction of the Constable and Ward: 20 R.2, concerning the legitimation of the children of John of Gaunt D. of Lanc. by Kath. Swinford: 5 H.4, cap.24. a Commission of Act of Parliament for arraigning and muttering of men: 8 H.4, cap.12. Clergy exempted from arraigning and muttering of men: 9 H.4, cap.28. against Bishops and Prokeage in great Officers, Judges, etc. 11 H.4, cap.63. concerning Attorneys, etc. 6 H.6, cap.27. that a Queen of England Dowager, shall not contract her self or marry without the Kings license: 9 H.6, cap.25. concerning fies of Privy Counsellours, and other head Officers. And here many others.

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 Purposes, in the clause of the penalty, the steward, Treasurer and Comptroller are expressly named, but omitted in the print: 2 R.2, cap.2. 4. in confirmation of liberties, etc. 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 provosts: 14 R.2, cap.4,9. concerning Regressors of Woods, high prices omitted in the print: 17 R.2, cap.4. of Palat, laying out Herefordshire: 2 H.5, cap.3.3. concerning Exchequer: 2 H.5, cap.1. concerning Justices of Peace: 9 H.4, cap.8, cap.43. concerning provosts: 8 H.6, cap.5. cap.10. concerning proctor during the Kings will, omitted in the print.

As to the fourth: In these there is more in the print than in the Record: 9 H.4, cap.4,3. touching provosts: 2 H.5, cap.2. 3. concerning Jurors, etc.

The sth: In these the print out of the Record in some particular thing. Generally mall the statutes made concerning provosts, or other the usurpations of the Hope, the bung and bitter words are left out in the print. As to take an example 22 Vict. E.2. in print: c.1,2,3,4, and in the Roll, no.9. &c. 3 R.2, c.3. in print: Rot no.37. &c. the Bishops being Lord Chancellor: 9 R.2, no.1. the print repeats the beginning of the Parliament, viz. the Monday after St. Luke, for Friday: 9 H.4, cap.2, no.26. concerning Attorneys, etc. A Roll of Parliament instituted 14 E.4, where it should be 13 E.4. 9 H.5, cap.2. & 3. printed as perpetual in some Rolls, where they were to endure but until the next Parliament.

The fifth: Statutes pretended to be enacted, and after disaffirmed, and yet printed: 5 R.2, cap.2,3. touching inquiries of Perskies: An. 6 R.2, no.52. disaffirmed by the Commons, so that they pretended it was never the ir meaning to be justified, and to bind themselves and their successors to the present law, no more then their ancestors had done before them. Robert Brabrooke Bishop of London was then Lord Chancellor. By this and that which follows, it appears 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 appears Rot.Parl.An.6 H.4, no.56. H.7. H.4, no 65. &c.8. Mode tendend. Parl. c.8. 2 H.4, c.15. disaffirmed by the Commons, and yet the pretended Act printed: 2 H.5, c.6. against Preachers, disaffirmed the next Parliament by the Commons, so that they never attended, and yet the supposed Act printed.

Rot.Parl. 11 H.4, no.12. vide 7 H.4, no.11.
The High Court of Parliament.

Cap. 1.


The eighth: whole Parliaments repealed and made void by subsequent Parliaments: 1 H. 4. c. 3. repeated 23 R. 2. which had repealed the Parliament of 11 R. 2. and revived 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. & regiominos regni sui primus, is repaired, and revived. Vide the Parliament of 15 E. 3. repeated: 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 prerogatives: and that some Articles there more 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 Judges.

[5] Some Records of Parliament can hardly be understood, unless you sign thereto the History of that time. For example: [c] The Cardinal of Winchester, Uncle to the King, declared in open Parliament, that he being in Flanders, in his journey to Rome, returned back of his own will to purge himself of a lawsuit, that he should be a party to the Beadsm, whereas (no accusation being against him) he was easily purged by the Duke of Gloucester, by the King's commandment. But add the History thereto, that the Cardinal having certain of the King's jewels in a great sight, meant to have them brought after him: but these jewels being arrested and layed at Sandwich by the King's commandment, and the suit hereof coming to the Cardinals ear (he being therewith exceedingly troubled) for the recovery of them, returned in haste to the Parliament. Now after he was purged of the lawsuit of supposed treason, touching the said jewels layed at Sandwich to the great hindrance of the Cardinal, as he complained; it was on a motion on his behalf, ordered that the Cardinal should pay to the King five thousand pound more for them, and lend to the King thirteen thousand pound, which was done.

And for a conclusion hereof, and of this Chapter of the High Court of Parliament, it is to be remembered, that by the Statute of 42 E. 3. cap. 1. all Statutes are repealed that are against Magna Carta, 02 Carta de Foresa.

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.
C A P. II.

Of the Council Board, or Table.

This is a most noble, Honourable, and Reverend Assembly of the King and his Privy Council in the Kings Court or Palace: [a] With this Council the King himself both sits at his pleasure. These Councilors, like good Gentlemen and Watchmen, consult of, and for the [b] publique good, and the honour, defence, safety, and profit of the Realm. A concludendo concilium excellentium, it is called the Council Table. [c] Private causes, left they would hinder the publique, they leave to the Justices of the Kings Courts of Justice and muster 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.

Sir Rot. Pat. 42 E.3. parte i. m. 13. de concilio Regis.


The King E.3. would have his Councilors to have four properties. 1. That he be parcus lui, knowing that he would never be prodigose for him, that would not be a good husband for himself. 2. That he should not be cupidus rei alienae, no covetous, nos gravius man, for si nihil cupes, currumiliatis. 3. That he should be avarus repubblicae, covetous for the Kings Treasure and Commonwealth: and 4. That he super omnias stet expertus; in what place the King shall employ him, that he may expert; for great Officers are never well managed by Deputy, where the Officer himself is but a Cypfer.

To these Councilors 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 proudest instruments of the State. Such honour was given to Councilors of State in ancient time. [e] that if one did strike in a Senators or Councilors house, or elsewhere in his presence, he was fined.

[f] See Ver. Mag. Car. 61. 51. parte Hugh Spencer the Father, Lord Spencer Earl of Wincleter, and the Kings Chamberlain, and Hugh his Son Earl of Gloc were adjudged in Parliament to be exile, as. among other Articles, be were. First, for that they by their evil counsels would not suffer the Grands or the Realm, nor the Kings good Councilors to speak with or come near the King, or to give him good Council, ox the Kings may 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 majesty and covetousness to the dishonour of the great men of the Realm, and the destruction of the people, put out good and Covenable Ministers, which had their places by attractiveness, and to among others, false and evil of their Couns, that they should not come right to be done. And Sheriffs, Eleecutors, Constables of Castles, and others in the Offices of the King, not Covenabie for the King, nor to the people they did make, and caused Justices to be made not Councilors in the Laws of the Land, to hear and determine things touching the great men and people of the Realm, &c. that ought which to be for the maintenance of the peace.

Stanf. 7 E. Senators sant partes corporis regis.


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

evil Councilors.
peace, and of good men, and punishment of evil, was turned to the destruction of
the great men, and destruction of the people. Fourthly, that they falsely and ma-
ticipiously did counsel the King to raise Hoise 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 assault
of the Peers of the Land, to the dishonour of the King, and against right and rea-
on. Sixthly, they would not suffer the King to take reasonable fines, upon alien-
ations, &c. Read the whole.

Hereby 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,

Haud quaequam poteris tu fortiter omnia solus,
Namque aliis divi bello pollere dederunt,
Hunc ialangi artem, voces hauc, citaraque canendi,
Interique sagax ali sub pectore magnus
Jupiter ingenium, ac multae eff utilis ille.

[2] The duty of a Privy Counsellor appeareth by his oath, which consists on
these Articles at parts.

1. That he shall as far forth as cunning and discretion suffereth, truly, justly,
and evenly counsel and advise the King in all matters to be commended, treated,
and determined in the Kings Counsel, as by him as the Kings Counsellors.

2. Generally in all things that may be to the Kings honour and behoof, and to
the god of his Realms, Lordsips and Subjects, without partiality, or exception
of persons, not leasing, &c. or helping to do to do for affection, love, money, double,
or dread of any person or persons.

3. That he shall keep secret the Kings Counsel, and that all shall be communi-
ced by way of counsel in the same, without that he shall commit, 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 partly
thereof.

4. That he shall not for gift, money, or 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.

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 universal
good of the King and his Land, and for the peace, rest and tranquillity 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 fear, 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.

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 appeared.

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


This office was never granted but by Letters Patents under the Great Seal during beneficience, and is very ancient: for John Bishop of Norwich was President of the Council in 1370, Regis Johannis, Holinsh. fol. 169. Math. Paris 205, & Math. Wetlin. Documit tamen hoc officium regesque magnae Elizabethae.

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

Next to the President of the Council, (as most fully appeared in the Chapter of precedence) literally, the Lord Privy Seal, who besides his oath of a Privy Councilor takes a particular oath of the Privy Seal, which consists on four parts: i. That he, as far forth as his cunning and discretion shall serve, true, just, and firmly, and duly execute, and exercise the office of the Keeper of the rings Privy Seal to him by his Highness committed. 2. Not leaving or neglecting to do so for affection, love, need, doubt, or hazard of any person or persons. 3. That he shall take special regard, that the said Privy Seal in all places where he shall be kept under, may be in such substantial use as well to be kept, that no persons without the King's special commandment or his assent, to knowledge, shall move, seal or impri. any thing with the same. 4. Generally, he shall observe, full, shall do all and every thing, which to the office of the Keeper of the Privy Seal duly belong and appertained.

This is an office of great trust and skill, but no person to this office without good warrant, not with warrant, if he be against law, undue, or inconvenient, but that he acquaint the King therewith.

Upon the Lord Privy Seal are attendant four Clerks of the Privy Seal: How bow, and in what voice the King's grants, warrants, 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 King's grants, &c. as you may read in the Statute of 27 H. 8. a law worthy of obsercation, and of this Act you may read Lib. 6. to 13. in the Prince's cause. This office is named in the statutes of 2 R. 2. cap. 5. and 12 R. 2. cap. 11. * Clerk of the Privy Seal. In Parl. Rot. Parl. 11 H. 4. to 25. Garden del Privy Seal; and in the statute of 34 H. 8. cap. 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, non of theings secret Seal shall be from henceforth sent in damage or prejudice of the Realm, non in disturbance of the law. Vide Manc. cap. 3. Seal. Exception al power de Jule.

In the statute of Articles super Cartas, cap. 6. 28 E. 1. It is called the little Seal, and likewise in the statute of 2 E. 3. cap. 8. It is so called. Register. fol. 186. Parmum Sigillam. 50 E. 3. ni. 186. P. N. B. 185. Fleta lib. 2. cap. 12. Sec. Int. &c. Cultus privati Sigilli, Clerici of the Signet, Clerici Signieti are named in

Principalis consiliarius. Capitalis consiliarius. You shall have what we have observed by our own reading, of others learn that which is here wanting.
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 his Seal, or Signet, for sealing of the Kings Privy Letters; these four Clerks sit at the Secretaries Board. He that believeth to read more of the duty of Privy 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.


See hereafter pa. in the Chapter of the Chancery in the Articles against Cardinal Wolsey, Artic.9,16,15, &c. concerning Privy Counsellors.

It appeareth by the Writs and Records of Parliament, that the high Court of Parliament is resolved to be held by the King per adviamentum consiliium, that is, by advice of his Privy Council.

Writers of Parliament for the Privy Counsel, and other things concerning them in the Parliament Roll, 50 E. 3. nu. 10. 12. 15. 21. 34. 42 E. 3. nu. 27. Sir John Lees. I R. 2. nu. 87. 112. Rot. Pat. 1 R. 2. parte 1. m. 16. 2 R. 2. nat. 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. 11 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 (among which the eleventh is, that all officers and benefits of the Kings gift, such as had served him or his father, should be preferred hereunto) are established by the King, the Bishops, and Lords. 9 H. 6. m. 25. 11 H. 6. m. 19. Sir John Lees, whereas the last was, that a Roll should be made of such as at anytime had served in the wars, or otherwise, to the end they should be preferred to officers and benefits. 12 H. 6. nu. 4. De intendentis consiliariis. 31 H. 6. nu. 30. Vide Rot. Pat. 32 H. 6. parte 1. m. 22.


Of these Arts of Parliament, orders in Parliament, and Arts of Council we have referred you (for avoiding of tediousness) to the originals. Qui ambulat fraudulentem revelat arcana, qui autem fidemis eit celat, &c.

Borum esse abscindere sacramentum regis, opera autem Dei revelare honorificum.

Nil magis optandum, quam ut rerum gerendarum consilium, quod ejus fieri poterit, quam maxime occulta sint.

**Eximia est virtus praefare silentia rebus.**
**Ad contra gravior eπισ πα ταυε δωκα λογι.**

Vegetius lib. 3.

Ovid.

Vegetius lib. 3.

de re militaris.

Erasimus in Ep.

* Curtius.

**Plinie.**

Vegetius lib. 3.

Erasimus in Ep.

* Curtius.

**Tactius.**

Nulla sunt meliora consilia, quam quae ignoraverit adversarius antiquam facias, &c. Quid fieri debeat, tractato cum multis; quid facturus sit, cum pactis, ac fidellismis, &c. Consilia nisi sint abhondata, exitium raro propiciunt.

Consilia callida & audacia prima fronte iara, tracca dura, eventum triuilia.

In consiliario imprimis requiritur temperantia, quia * novando, quae gerundis rebus aptiora ingenia illa ignea. And it is certain that men of deep and curious spirits easily become furious.

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

Privatae res temperoffecere, officientiue publics consilii, pellium vehic affinis & iudicii venenum sua cuique utilitas.
The Council Board.

Ta civen patremque geris, tu consule cunctis,
Non sub nec uta to movant, sed publica voca.

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

Some rules of Council which in Council we have observed, we will add.
First, that it is faiest to give a King counsel, where he demnogirth it. Secondly, the truest and best counsel is ever given to a King, when the question is so simply propounded, as the Councilmen knoweth not which way the King himself inclined. Thirdly, that: *specta fumita sunt cor proposita: for resolution should never go before deliberation, nor execution before resolution. Fourthly, when upon debate and deliberation it is by the Council 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 pleasantly, and fully propounded to the whole board. Sixthly, [c] goodcounsel is the soul of the State. Severales, when Councilors do hide or dissemble the truth, it is full of danger, both to the King and to [d] themselves. Eighthly, violent courses are like to hot waters that may do good in an extremity, but the use of them both spoil the monarch, and it will require them stronger and stronger, and by little and little they will lessen their own operation. Lastly, such fear as both not fail, in confluetem virum, is an enemy to good counsel: for what is fear, [e] but a betraying of such fucourse, as reason (and counsel) should add.

No Lord of Parliament takes any place of precedence in respect he is a Privy Councilour. But under that degree such place a Privy Councilor shall take, as is set down in the ordinam remove H. 7: hereafter remembered in the Chapter of Precedency.
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 Hollinsheelds Chronicle, pa.1669, 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 Corona coram Thom, Duca N. Seneschallo Angliae.

His title is Seneschallus Angliae. This Office is very ancient, and was before the Conquest. For I read in an ancient and authentical Manuscript, intituled Authoritas Seneschallic Angliae: where putting an example of his authority, faith: Sicut accidit Godwino Comiti Kancia tempore regis Edwardi antecessoris Willelmis Duci Normandiae pro hujusmodi male getitis & consilis suis (per Seneschallum Angliae) adjudicatus & foris existit Comitivism suam.

In the time of the Conqueror William Fitz-Eustace was Steward of England.

And in the reign of William Rufus and H. I. Hugh Grantlemenel Baron of Hinkley held that Baron by the said Office.

Of ancient time this Office was of inheritance, and appertainned to the Carldom of Leicestershire, as it also appearred by the said Records: Seneschallic Angliae pertinet ad Comitiam de Leicestere, & pertinuit ab antiquo. That is, that the Carldom of Leicestere, 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 Leicestershire, for Robert Bellomont Earl of Leicestershire in the reign of H. 2. married with Petronilla daughter and heir of the said Hugh Grantlemenel 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 Montord it came to King H. 3. who in the 50 year of his reign, created Edmund his second son Earl of Leicestere, Baron of Hinkley, and High Steward of England, which continued in his Line until Henry of Bollinbrooke, * son and heir of John of Gaunt Duke of Lancaster and Earl of Leicestershire, 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 only had vice. And the reden was, for that the power
power of the Steward of England was so transendent, that it was not bolden to be in any suacer's hands: for the said Record, by  [b] 4. 6. lexiconum en quod ejus officium est supercivere, & regulari hab Rege, & immediate poit regem. 4. totem regnum Anglicum, & omnes minimi legum idem regnum temporibus pacis & guerrarum, &c. and procedeth particularly with duties exceeding High powers and Authoritie 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 it is that hac vice limited and appointed. As when a Lord of Parliament is  [d] indicatus of treason et sequens, then the grant of this Office under the Great Seal is to a Lord of Parliament, reciting the Indictment.  [c] Nos conferderantes quod judicium est virtus excellent & Altutimo complacens, qui præ omniibus usi volentes, ac præ præ. officium Senechallii Angliae, ejus praestantiae pra administratione judiciu & executione iudicium in hac parte facien' requirantur, ut acceperimus, jam vacat: De seditari, arteuisiatur, provide circumspicentio, & industria velitris plurimum confidens ordininium & constitutissimus vos ex hac causa & causa Senechallam nostrum Anglicam ad officium illud cum omnibus sidem officio in hac parte debitis & pertinentibus hac vice gerendi' acceptand' & exercend'  [e] dan- tes' & concedentes obiis tenere praesentium plenam & sufficientem prosequantur & autoritatem, ac mandatam speciale indicantium predict. &c. So that it appereoth, that this great Office is wholly restrained to proceed only upon the recited Indictment. And be to whom this Office is granted, must be a Lord of Parliament, and his proceding is to be  [f] lexiconum et constitutissimus Angliae, hoc fo to his Commission. And heretofore 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, and vice, to hear and determine the claims for grand Sirianentes and other honourable services to be done at the Coronation for the solemnization thereof: for which purpose the High Steward both hold his Court some continuance 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 clausum before him was sittet' Trethor able Seignior Roy de Calibre & Leon, & Senechall Dangeliterre) and held his Court in Alba Aula apud Vitriam, die Jovis proximo ante coronationem. Quae quidem coronation habitu & solemnizata sunt die Jovis sequentem, viz. 16 Juli Anno R. 2.

The first that was created his 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 Huntington, the first that was created Steward of England hac vice, was Edward Carl of Devon.

Ror. Par. 37 H. 6. del. 49. Thomas Courtoy Earl of Devon was arraigned of High Treason before Humphrey Duke of Gloce. hac vice Steward of England, and acquitted. And so was  [k] the Lord Dares of the North arraigned of High Treason before Thomas Duke of North, hac vice Steward of England, and acquitted by 20 Wees.

When he stretch by force of his Office, he sitteth under a Cloth of estate, and such as direct their speech unto him, say, Ae, please your Grace my Lord High Steward of England. The title of the fair John of Gaunt was Johannes ilius Regis Angliae, Rex Legiones & Caestellar, Dux Aquitaniae & Lucanoffrie, Comes Derbie, Lincolnia & Leicestria, Senechallas Anglicae. And in respect his power before it was limited was so transendent, I finde no mention made of this great Office in any of our ancient Authours, the Mirror, Bracton, Britton, or Pleta. It seemeth they liked not to treat of his authority. Neither do I finde him in any Act of Parliament, nor in any Book cafe 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 proceding upon the arraignment of a Peer of the Parliament, by judicial record and resolution of the Judges, agreeable with constant experience.

For the Etymology and signification of  [Senechallus] see the first part of the Institutes,

His authority hac vice: & therefore he is not mentioned in the Stat. of 31 H. 8.C.-i. concerning the placing of great Officers.

[c] His authori- (hac vice) limited.
[d] See the sec- ond part of the Institutes Mag. Car. 9. cap. 1.
[e] He is sole judge by the Common law, and can make no Deputy.
[g] His rule.
[h] His further authority.

[i] V. H. 4. fol. 1. Therefore Tho. Walsingham P. 563. and others who af- firm that he was beheaded at 1 lefts in Ewre by the Com- mons, do erre.
The Honourable Court of Star-chamber, Coram Rege & Concilio suo; Of ancient time, Coram Rege in Camera, &c.

[Page 39] the 28 year of the reign of E. 3. it appeareth, that the records Coram nobis are in these manneres. Coram nobis in Camera (which, it is said, was afterwards called Camera Stellata.) 2. Coram nobis ubique hierinmus in Anglia, which is the Kings Bench: and Coram nobis in Cancelleria. And of all the High and Honourable courts of Justices, this ought to be kept within his proper bounds and jurisdiction.

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

[c] In 39 E. 3. Ralph Brantingham one of the Chamberlains of the Exchequer complained before the King and his Council of Richard Ceterfield Clerk Deputy of the Kings Treasurer, in the receipt, for divers allowances, payments, &c. unduly made, and for false records. 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.

[d] The Abbot de Buena, Raggi his Donk sentenced coram Rege & Concilio, for rating of letters Patensis, and inferring other words: and the Letters Patensis by sentence cancelled.

[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 Recettes.

[f] A suit depending before the King and Council between the Abbot of Saint Austin of Canterbury and others concerning Wrecks, &c. The Abbot brought his action at the Common law against the parties, who being therupon arrested and imprisoned, the Sheriff was commanded by the Kings Mace to deliver them, and to forbear to serve any other process against them, and the reason there pleaded is notable, Quia non est ius communum, aut honestum, quod alius de his que coram nobis & concilio nutro in dicussion pendent, alibi inde interim placitari debest aut apparet.

[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 composition is ordered for the preservation of the things in question.

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

Cap. 5.

the remblent packing and transpoting of Wood, with a Sirit to the Sheriffs of London to let him on the Billow.

The Abbot of Westminster exhibited his Bill to the King against the Sheriffs of London for arresting and putting out with force a privileged person out of the Sanctuary of St. Martin's le Grand belonging to the Said Abbot: which matter after due proceedings being heard in the Court of Star-chamber before the Lords and others of the Kings Council, and Hody and Newton Chief Justices, which Justices determining, that by law the party ought to enjoy the privilege 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, lay upon a reference to him and Justice Suthcote out of the Star-chamber. Trim. 11 Regnae Eliz. concerning the Sanctuary of Westm. for Hampton and Witescres being in for debt. And the Lord Dier made this same with his own hand. Nota, per le Star-chamber. And this is a notable proof of the Jurisdiction of the Court for fines, &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.

For divers riots, Excitements, 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 Men under the Great Seal (which continue until this day) to appear before the King in the Chancery, 03 before him and his Council at certain days to answer to the premises, which commandment hath been many times disobeyed. Provision is made by that Act for the punishment of such disobedience, as by that Act appeared. True it is, that this Act was but temporary, yet it affirmed to such as before hath been said.

Anno 35 H. 6. a Sirit of Ceritorari was directed: Thomae Kent Clerico Conclii : Volentes certis de causis certiorari super tenorem causam adunam Actus Prach. ultima præterito apud Westm. in camera stellata concernere Johanne Decem North. And see there proces rebellion against the said Duke.

Robert Davys a Counsellor a law by bill exhibited to the King, &c. for declaration of raising a record. And the said Robert by the Kings Council in Camera stellata was acquit, and John Broke: that made the rasure sentence.

The Kings Council assembled in the Star-chamber. The Lord Cromwells case.

An order in the Star-chamber for the Duke of Yorks: Council to have access to him, because called into the Chancery by Paper Seal, &c.

An eysmification of a complaint by Richard Heron against John Prouet, Coram rege & consiliarius suas in Camera stellata, for a great mischief and concern concerning Woods.

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

Anno 20 E. 4. a sentence in the Star-chamber for turbulent and undue elections between the Abbot of Bury and the inhabitatnts.

We have omitted many other Records, but because they be of like nature, we have contracted our self with these. And now we will confine both 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 a. pl. 1. 40 a. 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 stellata, 1 H. 7. 3. in camera stellata. This Court in ancient times sat but rarely, for these 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 condignly punish, or dignitas juris curiae vifi ceret. Thirdly, it very rarely did sit, left it should draw the Kings Pri by Council from matters of State, pro bono publico, to hear private causes, and the principal Judges from their ordinary Courts of Justice.

That
That which now is next to be considered, is the nature of the Act of 3 H. 7. The Letter whereof followeth:

It is ordained that the Chancellour and Treasurer of England, and the Keeper of the Kings Privy Seal, or two of them calling to them a Bishopp 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 Chancellour or any other against any person for unlawful maintenance, giving of live- ries, 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 returns by taking of money, by injuries, by great riots, and unlawful assem- blies, 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.

Camden Brit.

Cameræ stellate authoritatem prudentissimæ princeps Henricus septi- mus ita Parliamentaria adauxit & constabilivit, nonnullis primum inju- tuijfe falsa opinatur.

Upon this nature 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 High Council Judges of the same. Foz 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 assisants, and attendants, and no Judges; for the Statute of 31 E. 3. cap. 12. which raised a new Court, and before new Judges, is introductory of a new law, by having constable of errors in the Exchequer, which shall be returned in the Exchequer Chamber before the Chancellour and Treasurer, or calling to them two Judges, there the Chancellour and Treasurer are only Judges in the Writ of Error, and so in the like. But it is clear that the two Judges 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 Judges should be but assisants and no Judges in the Star-chamber, for that they are to be called, as, &c. then, and for the same reason should neither Lord Spiritual nor Temporal, nor other of the High Council be Judges, nor have voices in the Court of Star-chamber. And therefore the said 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 calling 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 directed that the Bill or Information should be put to the Lord Chancellour, &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 pretences in another for) 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 than an Act of Parliament. And where there be no such pretences, 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 Privy Seal to sit in the Star-Chamber, Ne Curia deficeret in justicia exhinda.

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 manifested by authority, and daily experience, and this need 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 laid in this Act, And to punish them after their demerits after the form and effect of statutes made, &c. The Plaintiff may chose whether he will inform upon such Statutes as this Act directs, or for the offence at the Common Law, as he might have done before this Act: which proveth that this Act took 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 prohibita, against some Statute.

It is to be observed, that neither the Statutes of 37 Eliz. ca. 1, 8. 38 Eliz. cap. 9. 42 Eliz. ca. 3. 17 R. 2. ca. 6. nor any other statute taketh away the jurisdiction of any settled 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.


And seeing the proceeding according to the Laws and Customs of this Realm cannot by one rule of law justice to punish in every case the robbery and enormity of some great horrid 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. It passes ad paucos, multas ad omnes perveniat, without respect of persons, be they public or private, great or small.

As for oppression, and other robloitant offences of great men, (whom inferior Judges and Jurores (though they should not) would in respect of their greatness be afraid to offend,) bribery, extortion, maintenance, clampery, unbaccy, roguey, perjury, dispenses of false and dangerous rumours, news, and scannous libelling, false and partial misdemeanours of Sheriffs and Justices of Liberty, frauds, deceits, great and horrid riots, tents, and unlawful assemblies, single combats, challenges, duels, and other vainous and extraordinary offences and misdemeanours; but ordinary, and such offences as may be sufficiently and conditionally punished by the proceeding of the Common Laws, this Court leadeth to the ordinary Courts of Justice and dealeth not with them, ne digitaris hauses Curiae videceret, as before is said.

The proceeding in this Court is by Bill or Information, by examination of the Defendant upon Interrogatories and by examination of witnesses, and rarely are terms, 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 both proceed. But if his Confession be set down to chat, or otherwise than he mean, he may deny it, and then they cannot proceed against him but by Bill or Information, which is the fairest way.

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

Camden Brit.
130. In Camera Helvete traditores, criminalia, perjuria, impudicium, delitos malos, excusabatur, &c.

For proceeding are terms, see hoc fored Roc. Claus. 47 H. 6. John Fore cafe. Roc. Claus. 48 E. 3. the Abbots of Breecies cafe, &c. in notaris ord. off ordinam justice ne Tercave.
The Court of Star-chamber. Cap. 5

this Court are indicted in a suit Bok with the names of the Lords and others of the Kings Council and Justices that were present and gave their voices.

In an Information in this Court by the Attorney General against Sir Stephen Procter, Birkinhead and others for conspiracy against, and scandal of the City of Northampton, and Edward Lord Wotton two of his Majesty's Privy 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 King's Learned Council, that when the voices be equal, that in that case, of which part the Lord Chancellor was, on that side it should be declared, 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 holoth in the High Court of Parliament, and all other Courts, according to the old rule, Paribus sententiis secum absolvitur. And therefore the Presidents of this Court were to be heard; for except presidents could make a difference between 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 King's Learned Council to view presidents, whether by the custom of this Court the Common Rule in other Courts is altered. Before whom in the presence of the King's Learned Counsel two presidents were produced for proofs of the said custom, viz. one Termino Hil. Anno 39 Eliz. between Gibbon Plaintiff, and Griffith and other Defendants; wherein the complaint was for a riot. And upon hearing of the cause eight in Court, and four gave their sentence that the Defendants were guilty, and the other four, whereas the Lord Chancellor was one, did acquit the Defendants, and no sentence of condemnation was ever entered. But the Justices took it, that that president tended not to prove any such custom, for it agreed with the rule in other Courts. Another president was added, Termino Hil. 45 Eliz. in an Information by the Bishops Attorney General against Batherne and others for fogging of a Mill. Qu. Upon the hearing of the cause, the presence consisting of eight, whereof four gave sentence against the Defendant for fogging, and to be punished according to the Statute of 5 Eliz. the other four, whereas the Lord Chancellor was one, found him guilty of a Bishoemoan, and not of the Fogging, and imposed a fine of five hundred pounds only, and imprisonment, and that was entered according to the Lord Chancellor's voice. But no rule of Court was obeyed for entering thereof in that manner: fo 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 judgment of this honourable Court; And sentence was never given against Sir Stephen Procter agreeable to the general rule in other Courts. D & R.; Par. 8 H. 6, pr. 28.

Lawrence Hide and Henry Hide Esquires, exhibited a Bill of complaint against George Coire and others upon the Statute of 32 H. 8, cap. 9, for unlawful maintenance; and complained for that several Leases for certain years of the Patronage of Dyson in the County of Wiltz. whereas the Leases, not any of his Ancestral were in possession within a year before, &c. and pursu'd the Statute: Upon which part of the Bill (for the Bill concerned Riots and other things) the Defendant remitted in Law, and the cause 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, 
Cap.5. The Court of Star-Chamber.

There can be no evasion, protection, or favor of law or injustice, prevailing in this Court. The second objection was, this Court had no power to give the Plaintiff's remedy to have execution in this Court of the penalty given by this Act. Whereunto upon great advice given it was answered and resolved, as to the first, that the nature of the Act, and the Act of this Court, doth declare, that this Court hath jurisdiction of maintenance, and this Act of 32 H. 8. both does not a greater penalty; and as to the clause of evasion, it must be construed reddendo singula singulis, &c., as being an evasion, and hath in this Court, so no injunction is allowed 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 May, 37 Eliz. between Robert Bardsley Esquire plaintiff, and Robert Charnock Esquire defendant, upon this Statute, and the case decided accordingly, and a Commision awarded out of this Court, to enquire of the value, &c. And so these causes by the rule of the whole Court, the remitter was over ruled, and the defendant ordered to answer.

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

It is the most honourable Court (excepting Parliament) that is in the Christian kingdom, both in respect of the Judges of the Court, and of their honourable proceeding according to their just jurisdiction, and the ancient and just prerogatives of the Court. For the Judges of the same are, as you have heard, the Judges of the Realm, the Lord Chancellor, the Lord Treasurer, the Lord President of the Kings Council, the Lord Privy Seal, the Lords Spiritual, Temporal, and others of the Kings most honourable Privy Council, and the principal Judges of the Realm, and such other Lords of Parliament as the King shall name, and they judge upon confession, &c. deposition of witnesses; and the Court cannot be, for hearing of causes under the number of eight at the least. And it is true it said, June Camera Astella, &c. vetere rerum spectemus, et antiquitatem, &c. dignitatem, honosatatem. This Court, the right institution and ancient order thereof being observed, hath kept a 1 England in quiet.

Albeit the title of the Court be Coram Regis & Concilio, yet the King's Council of that Court hear and determine causes there; and the King in judgment of Law is always in Court. As in the King Bench the style of the Court is Coram Regis, and yet his Justices who are his Council of that Court do hear and determine, and do Coram Regis in Cancellaria, and the like.

So this Court being held Coram Regis & Concilio, it is may be compounded of three federal Councils. That is to say, of the Lords and others of his Privy Council, always Judges without appointment, as before it appeared, 2. The Judges of either Bench and Barons of the Exchequer are of the Kings Council for matter of Law, &c. and the two Chief Justices, &c. in their absence other two Judges are standing Judges of this Court. 3. The Lords of Parliament are properly De magnis concilio regis, but neither these, being not of the Kings Privy Council, nor any of the rest of the Judges of the Kings and of the Exchequer are standing Judges of this Court.


It is now, and of ancient bath been called the Chamber of the 4 Stars, the

Dier Mich. 6. &c. 7 Eliz. 1. 2661.

Dier 13 El. 7. 125, in Camera Astella. 14 El. 3. 17. in Camera Astella. 15 El. 4. 1475, in Camera Astella.
The Court of Star-Chamber.  Cap. 5.

In this Court there is the Clerk of the Court, which is an Office of great account and trust, for he is to receive, enoise, enter, keep, and certify 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: so to give you a little taste thereof: King H. 6. by his Letters Patent, 15 July Anno regni sui 22. granted the same to Thomas Kent Doctor of the Law; for his life, calling him Clericu m concilia notarii, and son after screw him of his Printer, King H. 7. Anno 7. of his Reign, granted the same Office to John Blackwell Doctor of Laws for term 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 flogging, whipping, loss of ears, cutting of ears, ligature in the face, &c. (For it extends not to any offence that concerns the life or man 90; but any of any member, the ears only excepted, and those rare and in most haunches and detectable offences.) But herein the counsel rule is, that being it is an ancient Court, the presidents of the Court are to be followed, and the rather so that the Court consists of such learned and honourable Judges. And not those without warrant of presidents of the Court are not to be allowed: generally some certain rules are to be followed, especially where no presidents are present in the case. *Quod arbitrio judicis relinquatur, non facile habita ad effusionem languinis: * For general Acts of Parliament which inflict punishment, viz. for forfeiture de corps & de avoir, &c. these are expounded not to extend to life, member, but to imprisonment, &c.

*See the first part of the Institutes, sect. 74. 5. Verb. Felony. Major poena affectus, quam legibus statut us est, non est infamia. Poena gravior ultra legem postea atitationem conservat. Consecutus in jure pro judicato habetur, cum quodammodo suo sententia damnatur. Cum confiteente sponne mutius est agentum. In hac Curia non agitur de delictis ordinários, ne dignitas hujus curiae videsceret. Quicquid Judicis authori tati subjicitur, novitati non subjicitur.

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*Ecclesiastum 20. 8. Quis potestatem habere sumis injustis adversus. * See Status, de morte tempore E. 35. 4. de Carisfo, 30 E. 3. ca. 4. Vid. 13 Eliz. ca. 2. And note where he shall lose his ears for defamation of the Queen.
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.

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 attented, established, and accorded, that from henceforth 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 Proceffes of such Judgements so delayed, and to cause the same Judgements 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 of the Kings Council, 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 cause it seemeth to them that the difficulty be so great, that it may not 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 judgment ought to be given in this cause, 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.

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. is required, that Plena & celeria justicia sit paribus, &c. not plena alone, nor celeris alone, but both plena & celeris. All writs of Praecipe quod reddat, are quod jude & celeri ditione reddat, &c. All judicial Writs are fine ditione, &c. 2. Where did and not both 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, remandante or tenant, and would not give Judgement: and thereupon an Alias, Plus, and an Attachment, &c. both lie. And the words of the
For redress of Delays of Judgments. Ca. 6.

Write be, Quia reddido judicii loquere quae est coram vobis, &c. de quadam transgressione eadem A. per puellam E. illam, ut dicitur, disturnnem cepit dilationem ad grave damnum ipsius A. sintut ex querela sua acceptibus; Vobis praebimus quod ad judicium inde reddendum cum ex ceriterate quae secundum legem & confuetudinem regni notitas, procedas, &c.

3. Likewise when Justices or Judges of any Court of record, or not of records, 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 super redditi, &c. de loquela que fuerit, &c. per breve notitias, &c. fine dilatione fieri sci. And thereupon an Alias, Pla and Attachment, &c. de lie.

4. By the meeting together upon assornment 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 statute before this statute; and the frequent use of this Court of Exchequer chamber hath been the cause that this Court upon the Act 14. E. 3. hath been rarely put in use.

5. By the Writ comprehending quod is difficult as aliqua inter is, that the Record Coutes be erethed into the Parliament, and to adjourn the parties to be there at a certain day. Sic obscurum & difficile sit judicium, persarnum judicium in respect quae magnam canam. An excellent Record, whereof you may read in the Parliament bores at Westminster the Tuesday after the translation of Secres. Anno 14 E. 3.

Secondly, by Act of Parliament, Nulli vendemus, nulli negamus, aut dissemus judicium in re judicanda.

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 commandment come, that by the Right the Justices ferre nec not to do right in no manner. Vide 2. E. 3. cap. 8. 14. E. 3. cap. 14. 18. E. 3. cap. 14. 2. R. 2 a statute Nep in print. Rot. Parl. in m. 51, whereby it is enacted, that no Justice shall have justice for any Writ, Letter of the Great Seal, or Petty Seal, or other command whatsoever from the laws and statutes before that time made. Rot. Parl. in m. 64. Anno 5 H. 4. no. 33. all which are set atop of the Common Law. And upon the said Act of 2 F. 3. a Writ is framed, directed to the Justices, by which the are commanded, Quod ad justitiam pertinent, &c. scire, virtute atque auctoritate mandant, de magnis sigillis, & parvo sigilla se directe non dispenderent, &c. And thus much for the Common Law and Acts of Parliament.

The Statute of 14. E. 3. cap. 5, consists of two general parts, viz. the Parliament and the Ord of the Act. In the preamble these things are to be observed.

1. That notwithstanding the provision of the Common Law of militias be begun by delay of judgments. 2. It enumerateth in what Courts these delays 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 disputes. 3. It declareth how these delays have grown, viz. sometime for difficulty of the matter in law, at other times for delay of opinion of the Judges, and sometimes for some other causes, that is, by Commandments, Letters, and Pledges, of the King or Great Seal, &c. In the body of the Act we have collected many observations. 4. That at every Parliament there shall be chosen an able, two Earls, and two Barons, (or one Bishop, two Earls, and two Barons,) viz. At this Parliament were chosen: 1. John Sturtard Archbishop of Canterbury, (a man famous for learning, loyalty, and benvolent living.) 2. Rich. Fitzalan Earl of Arundell, a man of great wisdom, probity, and integrity. 3. William Clayton, Earl of Huntingdon, and Admiral of England; a man lately before advanced for his singular bounty, wisdom, and benvolence. 4. The Lord Wake of Lidel. And Ralph Lord Bole of Drayton, and of the most renowned Barons of England, who cometh博览会 cause coming.

3. This
For redress of delays of judgments.

2. This Act both appoint that the Preslate, two Carls, 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 consisted on ten parts. 1. Ad Audiendum, to hear the petition delivered to them; the complaints of those that will complain them of such delays or grievances made. 2. Ad venire faciendum, to come before them at Westminster, or elsewhere, the tenors of the Records and Process of such Judgments so delayed; and this is to be done by the Kings' Writ of Certiorari. 3. Ad venire faciendum, to cause the same Justices to come before them. 4. Ad audientias rationes & causas talium dilatationum, to hear their reasons and causes of such delays which ought to be entered of Record. 5. Which causes and reasons to hear. 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 shall be accorded. Lastly, that those Justices shall presently give judgment 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 appeared, at a Parliament held in die Marchi proxim' post medium Quattuorvatere Anno 14 E. 3, regni Anglie & Francie primo, there being two Parliaments in that year, which you may read, being worthy of observation, for its good exposition of this Act.

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

It is better that the demandant be delayed, than the tenant dispossessed; or that the law be altered. Shar'd, we cannot noe; will delay any man in respect of our oath. 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. Delay in a Quarre impedit, though it be by divine, is a disturbance. Semper esse et in aeterna. In circuito inimicus. In divers cases the party griev'd shall have an action for unjust delay. Tolle morum, semper occurrat discrepantia paratis.

But being neither the Common Law, nor any of the Acts of Parliament do extend to Ecclesiastical Courts, it is then demanded. What if an infectious Disease be. If it refuse, or delay to admit and institute a Clerk present by the right Patron to a Church within his Diocese, or the like; Or delay, or refuse to give warrants in a case depending before him? It is answered, that the Arch bishop of the Province may grant his Letters under his Seal to all and singular Clerks of his Province, to command the Ordinary, within nine days to perform that which by Justice is desired, or otherwise to cite him to appear before him, or his Officer at a day in those Letters prescribed, and to cite the party that had suffered such delay, and then there likewise to appear, and further to intimate to the said Ordinary, that if he neither perform that which is enjoined, 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 Quarter impedit, but that is thought not to be so speedy a remedy.
The Court of Kings Bench, Coram Rege

Racket both make in few words a notable expellation of this Court. Habere Rex plures Curtias in quibus diversa actiones terminantur, & illorum curiam habet aum propriam, siue Aulam regiam, & Justiciarios capitales qui propriae causas Regias terminant, & aliorum omnium per quatem, vel per privilégium, seu libertatem. And soo after speaking of the justices of this Court faith: Item Justiciariurn quidam sunt capitales, generales, perpetui, & mixtiores a latere Regis sedentientes, qui omnium aliorum corrigere tenentur, & errores.

And Britton faith: In droit des Justices que son assignes de nous suelt & tener notter lieu ou que nous seons en Anglisterre. * Voulons que eux euent consHumne de amender faus jugements, & de terminer apelles & auters trepaflay cette enconter notre peace, & enconter notre juridiction, & lour record ce effant solone ce que nous manderons per notre breve.

Fleta in describing this Court faith, Haber & Rex Curiam suam & Justiciarios suos tam milites quam clericios locum suam tenentes in Anglia, coram quibus, & non alibi nisi coram fempti & concilio suo vel Auditoribus specialibus tali justicia & errores Justiciarium revertuntur & corriguntur: ibidem etiam terminantur brevia de appellis, & alia brevia super actiones criminalibus & iniquitatem contra pacem Regis illarum imparata, & omnia, in quibus continentur ubi tunc fuerimus in Anglia.

In the Black Book of the Exchequer, it is thus laid of the Chief Justice of this Court: Capitalis Justicia praestet primam in regno. Most of these ancient antitheses we observe these for conclusions.

Flect, where Racket faith, Haber Rex plures curias in quibus diversa actiones terminantur. Henceby, and in effect by Britton, this conclusion followeth, that the King hath committed and distributed all his whole power of Judicature, to severall Courts of Justice, and therefore the judgement must be. Idea consideration et per Curiam. And herewith no agree where Ans of Parliament and Book Cases, some whereof, for Illustration, we will bettie remember, & lead the judicious Reader to the rest.

* Provisum, concordatam & consensum et, quod tam majoris, quam minoris justiciam habeant & recipiant in Curia Domini Regis, * That the Latins Ecclesiastical and Temporal were and yet are administratif, adjudicated, and executed by sundry Judges, &c. * Expedite etiam magistratus reipublica constitu, qui per eos qui jure dicuntur praetor et effectus rei accipitur; param et enim jus in civitate esse, nisi sint qui possint jura gerere.

For the pleasure of God and quietness of our subjects, as to sake our conscience, and to keep our Oath, by the affent 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.

Agraeable to that great Canon of the Law anno 3 E. 1. which we have translated into Latin: Rex præcipit quod pax sanctificæ Ecclesie & regni sediæ conservatur & securitatem in omnibus, quodque; justicia tunc pauperis quam dividibus
The Court of Kings Bench.

The fourth is, that under these words [propris causis] are included these things. First all pleas of the Crown; as all manner of treasons, felonies, and other pleas of the Crown, which ex conuenio, are aptly called proper cause regis, because they are placitura corone regis. Secondly, regularly to examine and correct all and all manner of errors in fact, 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 heretofore shall appear.) And this is proper quarto modo to the King in this Court; for regularly no other Court hath the like jurisdiction, and therefore may be well called proper causa regis. And these two be of high and sovereign jurisdiction. Thirdly, this Court hath not only Jurisdiction to correct errors in judicial proceeding, but other errors and misdeemours extrajudicial tending to the breach of the peace, or opposition of the Subjects, or raising of faction, controversy, 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 to justify, and relieve the party wronged. And this may be done though the party grieved hath no privilege in this Court. If granteth prohibitions to Courts Temporal and Ecclesiastical, to keep them within their proper Jurisdiction. Also this Court may hold any person for any offence whatsoever, and if a Freeman in City, Borough, or Town Corporate be disfranchised unjustly, albeit he hath no privilege in this Court, yet this Court may relieve the party, as it appeared in James Bagges case, ubi supra, & sic in similis.

Fourthly, this Court may hold plea by Writ out of the Chancery of all trespasses done vi et armis, of Replevin, of Quare impedit, &c. See the Second part of the Institutes, the 11. Chapter of Magna Carta, Commania placita non sequitur curiam nostram. Fitzhugh, this Court hath power to hold plea by Bill for debt, detinue, covenant, promise, and all other personal Actions, ejection, fine, and the like, against any that is in custodia Marechalli, 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 sapler of Justice (which is so much abhorred in law) they shall be impeached 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 impede others by Bill in the actions aforesaid. And all this appeareth by
Bracton, who saith when Magna Charta was made, ubi supra: where he saith, Et
horum omnium per querelam vel per privilegium libre libertatem. And continual
experience confirmed both antiquity herein.

H. P. Captus per quorum omnium mercatorum Flandriae & imprunatus offerit Do-
mino Regi Hu. & Hau. in piaggio ad blandium recto, & ad respondendum praedi-
chi mercatoribus, & omnia alia qui versa est iure voluerint, etc. This plea
was after the statute of Magna Carta, Anno 9 H. 3. Of these words Hu. &
Hau., two French words, Hu. signifying an Ecurier, and Hau. the State of
a Halbert, 32 I leave the construction 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 [oeel.] And it is observable, that then putting in Bail at one
man's suit, he was in custodia Maiestatis to answer all others which would sue
him by Bill, and this continueth to this day. If any person be in custodia Mai-
estatis, etc. be it by commitment, or by Latrun. bill of Midd'c 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 being none but Serjeants at
Law can practice in the Court of Common Pleas, it is necessary that in this
Court of Kings Bench Apprentices and other Councillors of law might by expe-
rience enable themselves to be called Serjeants afterwards; otherwise Serje-
ants must want experience, which is the life of their profession. And the pro-
ceedings 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 with-
out an Act of Parliament be shaken. And the errors in the Kings Bench cannot
be reformed (but in certain particular actions by the statute of 27 Eliz. c. 8 where
in 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.

Sixthly, if a Writ in real action be abated by judgment in the Court of Com-
mon 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.

This Court may hold pleas in Morte of novel cause without any patent, for
it is a mater and not placentum, and so not within these words, commumia placita,
as it hath been expounded and warranted by continual experience.

A Scire fac is to repeal a Patent of the King may be brought in this Court. And
where Fleta saith Nisi coram demetypo & concilio duo, vel Auditoribus specialibus
fita judicia & errores justiciorum reverterunt: 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 reclaimable before Commissioners ap-
pointed by the Kings Writ under his Great Seal, which Fleta here calleth Au-
ditories speciali. But now by the statute of 31 Eliz. 3. the Chancellors and Treasur-
er taking to them the Justicis and other fage persons, such as to them seemeth
to be taken, shall examine the errors in the Exchequer, etc.

In ancient time, when Pleas were held in Parliament, when the parties
defended to issue, the Record was adjourned into the Kings Bench to be tried
there.

I See the statute of W. I. against preposterous hearings in this Court, and the
exposition of the same in the Second part of the Institutes.

II By the statute of Articlus super Cor, the Chancellor and the Justices of the
Kings Bench were to follow the Court; but notwithstanding both the Chanc-
exty and the Kings Bench were at this time settled Courts, during the several
king's reign in every several Term in the year. And in all those times and Terms the Court of Chancery did sit.
Terms of the year, as by infinite Records, both before and after this statute both 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 household 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 presence, as if he had continued still as one of the Household, until he and all others, but those of the Kings, Dukes, or Princes household only, were restrained by Act of Parliament. 34 E. 3. cap. 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 tried to be held in Coram Regis as to this day they are, and this appeared by Fitch. A judgement, in the Times of Corone, of Brief, of Walie, &c. and by Bracon lothe in many places bouched Judgments in the reign of H. 3. in Terms Coram Regis. And this appeared also in other times; but hereof this much shall suffice to prove, that at the making of the said Act of 28 E. 1. and long before this Court in Term time sat with the Kings other Courts, especially 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 where they were required.

It is truly said that the Justices de Banco Regis have supreme authority, the King himself sitting there, as the Law intends. They be more then Justices in syn.
The Court of King's Bench. Cap. 7.

But the Justices of the King's Bench of their own authority may grant a Nisi prius in cause of treason, felony, and other pleas; for there they send but the transcript of the record, and not the record itself, as shall be said in the Chapter of Justices of Nisi prius. But if the Justices of the King's 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 entered of record, and remand the same back again for justice to be done.

By the nature of St. 4, the Clerk of the Crown of this Court, ifq courage of an hundred men be indicted of felony or treasons, of one felony, or one treasons, and they plead to an issue, as not guilty, the said Clerk ought not to take for the Venus sec. not for the entering of the plea but two shillings only, and not two shillings for every one, which is made in allowance of the common law. So if one man be indicted of two several felonies or treasons, and is acquitted, he shall pay but so; one delibeurance.

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. Justiiciarii itius caritatis originali sunt ordinariae, & 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, *Justiciarci, Justiciarii, locum tenentes Domini Regis, &c. The Chief Justice, Justicia Anglia, Justicia prima, Justiciarum Angliae, Justiciarum Angliae capitalis, and Justiciarii notorius capitalis ad placita coram nobis terminandae, to observe the changes of these names, and the reason and change thereof, is too lofty of obserbation.

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.


Herein are things are to be observed. 1. That the creation of his Office was by Letters Patents. 2. That this Office was originally instituted for these things. 3. Pro conservatione nostra. 2. Tranquillitatis regni nostri. 3. * Ad justitiarum universis & singulis de regno nostro exhibendum. The third thing to be observed is, that he was Etio Justiciarum Angliae capitalis. 4. That Philip Basset was constituted Chief Justice of England, and after made Knight, so he was not Knight at the making of the Letters Patents. This Philip was of Welleighty in the County of Northampton, and was excellently learned in the Laws of the Realm; he was younger brother of Barson Basset of Draityon Basset in the County of Stafford. 5. That he was confirmed quondam 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 Letters Patents, and he died Chief Justice near to the end of the reign of H. 3. King E. 1, being a wise and prudent Prince, knowing that Cuius plus licet quam par est, plus vult quam licet, (as most of these Summi Justiciariorum did) made these alterations. 1. By limitation of his Authority. 2. By changing Summi Justiciariorum, to Capitatis Justicium. 3. By a new kind of creation, viz. by Writ, lest if he had continued his former manner of creation, he might...
The Court of Kings Bench

might have had a desire of his former Authority, which this did expressly appear by the writ still in use, viz.


Which writ being called Brevi, both in few words comprehend the substance of the former Letters Patents: for Capitall Justiciarius nother and ad placita coronis tenenda includes all that which was truly intended to be granted to him in the former Letters Patents, which alternation 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 approved, that many incursions of ages without intermission, they have been, and yet are called by the false writ, Et optimus legum interes consequens. But after the false alteration, viz. in anno 25 E. 1. Regumis de Grey (then styled) Justiciarius Angliae, and he was in legal proceedings called Capitall Justiciarius nother, when his Patent was, Capitall Justiciarius Angliae.

We have seen a fine in these words: Hac est finalis concordiausta in curis domini Regis apud Wiltam diocesani Michaelis in tre subsidiam, anno regni Regii Henrici filii Regis Johannis 3, coronam dominum Hubertum de Burgi capitalli Justiciario Angliae & alius domini Regis filiis suis. 

As in the writ De homine replegend, he (which was formerly called Justiciarius Angliae) is called Capitall Justiciarius nother, and sometime Capitall Regis. The use of this Court of Kings Bench is Anglia in the margin: and in divers Acts of Parliament he is called Chief Justice of England. 34 H. 8. C. 26. 35 H. 8. C. 2. 2 E. G. 13. 5 E. G. 11.

The Chief Justice in Ireland is called Capitall Justiciarius Hibernise at this day. Peach. 15 E. 1. (the plea in this Court are Coram Regis) then were filed thus, Placita cum locum coronis tenentes, &c. Ideo venit inde jus et coram regis et eum locum tenentes, 15 Peach. 2, &c. Within which words all the Judges of the Kings Bench were included.

b Annal domini 969, in the Abbey of Ramsey this Cetaph was ingraven, &c.

D. Adivinus inclytu regis Edgar cognatus totius Anglie & Aldermanus, &c. who was without question Chief Justice of all England. Inter leges Alvered cap. 24. he is called Cyninger Elfordonian, & Regis Aldermanus five Senator, five Judex, Vide cap. 3. 13. & 38. Et inter leges Edwards cap. 35.

The rest of the Judges of the Kings Bench have their Offices by Letters Patents in these words. Rex omnibus ad quos praetentres literae pervenerint, falso rem, Sciatis quod constituitimus dilectum & fidelem Johannis Dodderidge militum et justiciarum ad Placita coronis tenenda, durante beneficicio nostro. Teste, &c. Chief Judges of the Kings Bench are styled, 1. Capitales. 2. Generales. 3. Perpetui. 4. Majores a late regis residentes: But the Chief Justice is only called by the King, Capitall Justiciarius nother. They are called 1. Capitales, in respect of their supreme 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 late regis residentes, for their honour and safety, that they should be protected by the King in administration of Justice, for that they are a late Regis.

And where in 5 E. 4. it is holden by all the Judges in the Erchequer Chamber, that a man cannot be Justice by Will, but by Patent or Commission, it is to be understood of all the Judges, being the Chief Justice of this Court. But both the Chief Justice, and the rest of the Judges may be discharged by Will under the Great Seal.

None can be a Judge of this Court unless he be a Serjeant of the degree of the Cohe; and yet in the Writ or Patent to them to be so named, they are not named Serjeants.

See in the chapter of the Constable and Marshal for this point.
If a Writ be remittable Cram. &c. it shall be returned in the Common Pleas: but if it be remittable in this Court, it must by Coram nobis ab initio to the suit in Argolis. See the Second part of the Institutes, Mag. Curt. cap. 11, and the Concession upon the same.

In former time some ill-disposed Clerks of this Court, because they could have an original out of the Chancery for debt remittable in this Court, they would sue out an original Action of trespass (a mere reigned action) remittable into this Court, and so proceed to a Sumptuary where in truth the cause of the action is for debt, and when the Defendant appeared at all, the former proceedings were waived, 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 Nature of W. 1. c. 29. When it is found out: Vide in the Chart, the Court of the Common Pleas in the end thereof.

Now that we may here lay somewhat to a vulgar objection of the multiplication of suits in law both in this Court, of his Majesty's Courts at Westminster, more then had been in the reign 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 cases 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, Chanceries, &c. and the dispersing of them into so many federal hands. 2. The swarm of Informers. 3. The number of Conciliators. 4. The multitude of Attorneys.

For the first general: In the reign 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 rest 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 alarms within the bounds of this Kingdom, 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, Chanceries, &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 increased. 2. Informers and Relations raised many suits, by Informations, Malt, &c. in the Kings Courts at Westminster, upon penal Statutes, many whereof were oblique, inconvenient, and not fit for those days, and yet remained as incumbrances upon the subject, so as the subject might every day with Tacitus, Pras vitis laboravi, nunc legibus. 3. Conciliators, Hellenones, that endeavoured to swallow up Cathedral Churches, and the Ecclesiastical possessions of Churchmen, and the livings of many others of the Kings Subiects. Lastly, the multitude of Attorneys, more then is admitted by law, is a great cause of increase of suits.

But now on the other side, to shew what great hopes there is, that suits in law shall decrease, for that in effect all the particulars 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 27 Jac. cap. 3. hath given a plenary leave for the whole mischief, whereas you may read at large in the third part of the Institutes, cap. 87. against Conciliators, turbacium 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 veracious swarm of Informers who are best fitted where they are least known, are vanquished and turned again to their former occupations. d Concerning Attorneys, the number are let down, and that they ought to be learned and versed, and as I understand, the Judges at this time have this matter in consideration. But besides these, there are some other Statutes made for abridging and decreasing of vexatious suits. As an Act in 21 Jac. Regis cap. 16. for limitation of actions, and abridging suits in Law, a good and beneficial Law. Another Act Parliament, cap. 13. for the further reformation of False...
The Court of Kings Bench.

fails, a good law for ending of suits. Another at the same Parliament, cap. 8.
to prevent and punish abuses in procuring of process of Supersedeas of the
peace and God Behaviour, out of his Parieties Court at Wemminster, &c.
whereby infinite vexations, troubles and charges of the Subjects are prevent-
ted. Another at the same Parliament, cap. 23. for avoiding of vexations de-
lays in causes by removing of actions and suits out of inferior Courts, where
in the former abuse was vexations, grievous, and chargeable to the Subject. A
branch of an Act at the same Parliament, cap. 18. for pleading of tender of
amends in an action of trespasses, Quæ claur. regis, for a trespass by negli-
gence, or involuntary, wherein the Defendant made no title, &c. an excel-
 lent and necessary Law for avoiding of trifling and vexations suits, especially
in Champion Countries. An Act at the same Parliament, cap. 2. against Mo-
nopolies and new projects, &c. a great quiet for the time to come. Anno 3 Ca-
roli Regis nunc, cap. 1. The petition of Right concerning the Rights and Liber-
ties of all the Subjects of this Realm for their repos and quiet. Lastly, the
repeal of so many obsolete penal Statutes is a great mean of diminution of
suits.

For the abovesaid general causes, viz. Peace and Plenty, long may they
happily by the goodness 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; whereas you
may read many precedents in the Third part of the Institutes, pag. 19, 20.
Of the Court of Chancery.

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 Banors, Lands, &c. and franchises to the Abbots of Westminster, and edited his Charter thus; Ad ultimum, cartam isam sigillari jussi, & ipse manu mea propriis signis Crucis impressi, & idoneos teetes annotari purcep; & amongst those witnesses this you shall find; Swordus notarius ad vicem Reinbaldi Regis dignitatis Cancellarii hanc cartam scripsit & subsciptis. He had also Lefrick to his Chancellor.

King Etheldred also had a worthy name, and a worthy man to his Chancellor. Rex Etheldredus statut atque concilium quattuor Ecclesiasticum de Ely ex tuno & temper in Regis curis Cancellarie ageret dignitatem, &c. This King began his reign Anno Domini 978, which albeit it was soon in law to grant the Chancellorship of England in succession, yet it probeth that then there was a Court of Chancery.

King Edgar had Adolph; King Edred had Thuretelle; King Edmund the fame King Athelstan Wolfe's, 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; here what the Mirror faith, Le primer constitutions ordines per les viols toys, &c. ordaineth that checun eyt del Chancery le Roy brief remedial a son plente sans difficulty. 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 use, and enacted that out of that Court writs remedial should be granted without difficulty, which Labo continued 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, peremptor erravit.

In a Charter to the Abbot of Westminster by William the Conqueror, amongst the witnesses it is written thus, Ego Mauritus Regis Cancellarius favendo legi, & sigillari, Arthuflis Bishop of Northumberland in Norff. who translated his scour to Thetford, was also Chancellor to the Conqueror.

Cancellarii Anglie dignitatis est, ut secutus a Regis in Regno habeatur, ut alia parte figurii regii, quod & ad eum pertinet custodiam, propriam signet mandata, &c.

Omnia brevia de pace, &c. irreputabile domen in rotulo Cancellaria.

Filiae faith, Est inter cetera quodam officium quod dictum Cancellaria, quod uno proviso & diserto, ut Episcopo vel Clerico, magnae dignitatis debet committii, illum cum cura magni sigilli regni, cujus substitutio sunt Cancellar's omnes in Anglia, Hibernia, Wallia, & Scotiamque sigilla regis cutoudentes ubique prater culmod figurii privati. Cu.authentication Clerici beneficii, circumplecti Domino Regis jurati, qui in legibus & confuentibus Anglicis notitiam habebant pleniam, quorum officium fit supplicationes & querelas conquenterium audire & examinare, & eis super qualitatem in jurisdicton oftentam debet remedy hospitium exhibere per brevia Regis.

Breve de forma donationis in revertere fats est in usu in Cancellaria.

In Cancellaria & in regisfllo Cancellaria,
The Court of Chancery.

For the antiquity and authority of this book of the Register of the Chancery, is the first part of the Intentions, Verb. per le Register, and to the Title to the ninth book of my Commentaries.

But to proceed (omitting many others) Robert Parling took the state and degree of a Serjeant at law in 3 & 4, and became the King's Serjeant, and for his profound and excellent knowledge of the laws, in Trin. Term 15 E. 3, was 24 July 25 by 25 created Chief Justice of England; in which office he remained until 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 Chancellor. This man knowing that he 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 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 that in the 30 year of E. 3. Sir Robert Thorpe Chief Justice of the Common Pleas (not Sir William Thorpe Chief Justice of England, confused by John Hyder) a man of singular judgment in the laws of this Realm, was constituted Lord Chancellor 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 bishtorion of the Crown, and desired that Laymen only be principal Officers, &c.


In pursuing the Rolls of Parliament in the times of these Lord Chancellors, we have no complaint at all of any proceeding before them. But soon after when a Chancellor was no protector of the law, we find 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 (Sir) to redress the enormities of the Chancery. But leading many other reasons 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 Chancery against the Clerks of the Hammer in the Chancery upon his account in the Chancery, when it was heard by all the Judges in the Chancery 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 ancient Court. And Justice Yong the plaintiff demanded of the Justices, what if the Chancellor command me upon a paper, that I shall not sue him? To whom Billing the chief Justice answered, You are not bound to obey it, because that command is against law; But seeing that toucheth upon the jurisdiction of the Court, let us in the next place handle that point.

The Jurisdiction of the Courts.

In the Chancery are two Courts, one ordinary, Coram Domino Regis in Chancelleria, wherein the Lord Chancellor or Lord Keeper of the Great Seal processes according to the right line of the laws and Statutes of the Realm, secundum legem & consequendum Anglico, another extraordinary according to the rule of equity, secundum aquam & bomun. And here of the former Court.

He hath power to hold plea of Scire facias to repeal of the Royal Letters patents, of petitions, montantes de diuitiis, processus in Chancery, of Scire facias upon recognisances in this Court, Writs of Audiencia and Scire facias in the nature of an Audiencia to avoid executions in this Court, documents in Chancery, the suit de idolatria upon under writs found, execution upon the Statute Staple, or Recognition in nature of a Statute Staple upon the act of 45, 46, 47, but the execution upon a Statute merchant, in all punishable either into the King's bench, or into the Common pleas, and all
personal actions by or against any Officer or Minister of this Court in respect of their service or attendance there. In these if the parties descend to sue, this Court cannot try it by Jury, but the Lord Chancellor or Lord Keeper doth record by his proper hands into the Kings Bench to be tried there, because that purpose both Courts are accounted but one, and after trial had to be remanded into the Chancery, and there judgment to be given. But if there be a demurrer in law, it shall be argued and abdigned in this Court. Note, the legal proceedings of this Court be not enrolled in Rolls, but remain in filacis being filed up in the Office of the Pet-rog. Upon a judgement given in this Court a Writ of Error both is returnable into the Kings Bench. The Title of the Court of the Kings Bench is coram Rege (as hath been said) and the title of this Court of Chancery is coram domino rege in Cancellaria, & additto probat minoritate. And in this Court the Lord Chancellor or the Lord Keeper is the sole Judge; and in the Kings Bench there are four Judges at the least.

This Court is Officina Justitia, out of which all original Writs, and all Commissions which paffe under the Great Seal go forth, which Great Seal is Clavis regni, and for those ends this Court is ever open.

Of this Court Fleta ubi supra, fath, Dictitur Brevia cum sunt formata ad milites inimicis regis, quos brevieret, & paucis verbis intentionem presentem exponens, scitum regulae juris, quae est brevieret exaret: non tamen ita debet esse breve quam rationem & vim intentionem continet. Et sunt quaedam Brevia formata sub suis causibus, & quaedam de curia quae consilium totius regni sunt approbata, quae quidem mutari non poterunt ab usque eorundem contra voluntate, Sunt & Brevia ex eis sequentia quae dicuntur judicialia, & suis variis vellum secundum varietatem placiturus proponunt & respondent, petentis & expicentis & secundum varietatem responsum. Sunt & quaedam dicuntur magistra & fidelis variata secundum diversitatem causarum, factorum, & querellerum, & quorum quaedam sunt personalia, & quaedam resilia, & quaedam mixta, secundum quod sunt actions diversae vel varia, quae tot erunt formare haevelim, hoc sunt genera actionum, quae non potest quis sine brevi agere, praecipue de libere tenemento suo, quia non tenetur quis respondere fine brevi, nisi gratis velbat, & cam se fecertibus, ex hoc & in injustitiae: volentes enim & scienti non sit in jure, De eadem autem re, plures alicui competere poterunt actions, ob diffe autem, ut convenire, obviatur. Brevia quidem regis in se nullam debet continere falsitatem, nec aliqua errorem: apparebit debet vel in prius sit figura non vitiosum, maxime si fuerint patens five apertum, quae originalia quaedam sunt falsitatem, & quaedam aperta. Et si aperta, five clausa, apparenet non debent abrae, nec aboluta: & si inventarium abrae, tunc referat quo loco, ad quo, & quando. Quo loco videlicet utrum in narratione falsi vel juris, si autem in narratione falsi, cadet coram Jut iudicis superium. Facta enim & nomina mutari non debent, sed jura ubi quiescere posseunt. A quo utrum videlicet per Clericum Canceller cui autoritas dura fuerit, vel autem temerarii per alium sicet Clericum Jutic, vel Vic'ad procuracionem alicujus partis: quo Caesar omnium agents & confidentes tanquam falsi puritancnt. Item quando? videlicet utrum hoc sit ante quam breve in curia refutetur & publicatur, vel poit. Si autem poit, erit breve falsum & cadet, si tenente fuerit hoc cumplicationis. Siunt autem brevia judicialia in Cancellaria ex recognitionibus & contrahibus habitis & in Rotula Cancellaria irrotulatis & ex recordo Cancellerio & Clericii ibi asociati per hanc constitutionem concepio. Quin de his quia recorda sunt coram Cancelleri, damini regis, & ejus Jutic qui recordandum habent & in rotulis coram irrotulantis, not debet fieri processus placiti per summationem, vel attachmentem, & contrahentur, & aliis solenphatis Cur sicet hici conuenit ex contrahibus, & conventionibus falsis extra curiam, Observandum est de caudio quod ea in inventarii irrotulati coram his qui recordandum habent vel in finibus contentae, cum sunt contrahit falsum contractiones vel obligationes five servicia ant contractationem recognitse five ali quaeconce irrotulata quin Cur't regis fine juris et constitutionis offensae autoritatatem praetare potest, talen de caudio haebeet vigorum, quod non
Cap. 8. The Court of Chancery.

fit necesse de his placitare in posternum, sed cum veniret quosdam ad curiam domini regis, si recens sit cognitio, vel finis, viz. infra annum per breve levatus, statim habeat brevem de executione illius recognitionis factae: et si postea a majorre tempore transacto facta fuerit illa recognitio, vel finis levatus: praepositur Vic. quod sic faci' parti de quae fit querimonia, quod sit ad certum dieum, obtent. si quid sit dicere quare hujus irrotulata vel in fine contentam executionem habere non debeat. Et si ad diem veniunt, nihil facit dicere quare executo fieri non debeat, praepositur Vic. quod rem irrotulatum vel in fine contentam exequi faci'. Ex eodem modo mandetur ordinario in suo cafu, observato nihilominus quod inferius dictum est in statuto de medio qui per judicium aut recognoscendum est obligatus. Ex hac quidem constitutione orientur brevissima jurisdictione Cancelleriae et coram ipsis jussis. Ipsa autem collaterales & faci Cancelleriae esse dicuntur praepositor, eo quod brevius facta examinantur, & hoc quoque cum fine desinat ad opus domini regis, et quoque fine fine, eo quod omnia brevissima non sunt quies tempora aquapollentia. De brevibus autem coram Jusitie ad primum Assissius cum in partes illas venient, fines capere non conueniente, eo quod ad tempus intem Jusitie, legit constitutio Magnae Carta que tales eff; Nulii sustinimi negabimus, vendemus, vel differamus: sed non inhibet quin fines empantur prae brevius possidendum, & actionem personam, pro celebore Jusitiabenda; qui quidem pro qualitatis & quantitatis positione nec fasti in eodem brevibus impreviatur, & in rotulis Cancelleriae irrotulat. Qui quidem rotuli singulis annis ad Scaccari liberabantur, & fines hujus extrainatur & per summo' Scaccarii levantur. Claustula vero fines tales eff, Et eaca secvriratem a praeato tali de qua solida, ad opus nostrarum ut hoc brevii. Verba autem extrae' de Scaccario sunt hac, De A. de B., pro brevi habend, 'dim'mare' vel amplius pristii finis factus fuerit. Conceduntur aliquidam sua convenientiis ob favorem puerperatis quod ubi praestum poterit faci quod plegiosis inventi non posse de profecti quem clamamur suam quod securitatem praeerit Vic. per fidei interpositionem suam, non tamen in actionibus personalibus hoc concedendum eff. Habet & Rex Clericos in ecclesiis officio expertos & leges qui formulam brevissimum cognoscat, qui approbans administrant & detectiva omissio repellant, quibus omnia brevissima principium ad figillum provenientium cum deliberatione distincte & aperte in ratione, dictione, littera & syllaba examinantur injunctum eff. Et tamen quod nullum breve nisi per manus corundem ad figillum debet admittere. Habet etiam lex Clericos suis praeceptis in officio includit, qui cum Clericos memorat familiaribus, &c. esse conuenient et praeposuit ad videndum & vestitum qui ad brevium fibrandam secundum diversitates quaelibet sunt intuitori. Et qui omnes pro visu & vestitu de profecto figllii in capitaque usus per pervenient debet honeste inventi. Sunt etiam nihilominus Clerici j uvenes et pedites quibus de gratia Cancelleria concessium eff pro expeditione populi brevi esse curiunt, damn tamen & sub advocatio Clericorum superiorum fuerint qui eorum facta in eorum receperint pericula. Et in quolibet breve debet scribi nomen inbrevarii qui warrantiari potenter in praeceptores si necesse fuerit. Et ne praefati Clerici superius perant si praeceptura fus,constitutur eff quod idem Clerici Jusitie' quam Cancelleria de solo denario pro scriptura unius brevis eff tencens contentos.

And this Court is the rather allones open, for that if a man be wongfully imprisoned in the Nacement, the Lord Chancellor may grant a Habear Corpus and do him Jusitie 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 Nacement. So likewise this Court may grant Prohibitions at any time either in Term or Nacement: which Writs of Prohibition are not removable: but if they be not obeyed, then may this Court grant an Attachment upon the Prohibition removable 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, faith, Curia Cancelleriae Regiae est curia ordinaria pro brevisbus originibus emanandis, sed non placentis communibus recondendis.

Diversius Alius de Parliament give authority to the Lord Chancellors to have
and determine divers offenses and causes in the Court of Chancery, which is ever intended in this Court proceeding in Latin, secundum legem & convenientem Angliae, and the Defendant shall not be sworn to his answer, nor examined upon Interrogatories, and upon issue joined it shall be tried in the King's Bench, ut in similibus causis iura. But our purpose is not to enumerate all these Statutes, for our aim is principally at the general jurisdiction of this Court.

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, whereas 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 fix the forming and framing of original Writs according to Law, which are not of course; whereupon such are called in our ancient Authors Brevia Magistralis. The Clerk of the Crown, the Clerk of the Exchequer, the Sealer, the Chase war, the Controller of the Chancery, twenty-four Custos of 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 writs, and the Fine Attorneys. The proceeding in this Court is under the Great Seal according to the course of the Common Law.

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 aquam & bonum, wherein we will pursue our former order.

Albeit our ancient Authors, the Mirror, Glanvil, Bradston, Britton and Fleta, do treat of the former Court in Chancery, and of Original Writs and Committees sitting 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 Parliament, and Parliament Rolls.

Some have thought that the nature of 36 E. 3. gave the Chancellor his full authority for his proceeding in course of equity, by which it is enacted, That if any man think himself grievous 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 gives 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.

In the Parliament held in 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 process of Law, Whereunto the Kings answer was, The slages hereof 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, having his regality.

In the Parliament held in 17 R. 2., it is enacted at the petition of the Commons, That so much as people were 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 extended to the Chancellor, proceeding in course of equity, and extended not to a remitter in law upon a bill, but upon hearing of the cause upon the's bado in the Act [duly found and proved]; and this is the first Parliament that I find touching this matter. And in the Roll of the same Parliament, I find the first decree in Chancery that ever I observed, the effect whereof was; J for de Windor complained and required to be referred to the Mannas of Kampion, Cornsirn and Well sick with their appurtenances in the County of Cambridge, the which were adjudge to him by the Kings award, then in the possession of Sir John Lasey, and now withheld by Sir Richard le Scrope, who by Chancery bought the same; the cause was this; Upon a petition of Windor against Lisley, they both compassed the matter to the Kings order, the King committed the same to the Council, therafter digesting of the same made a decree for Windor under the Piety Seal, they send warrant to the Chancellor to confirm the same, which was done under the Great Seal by a special Intention to Lisley, and to write to the Sheriff to execute the same. After this, Lisley by petition to the King required that the same may be determined at the Common Law, notwithstanding any former matter; the King accordingly by Piety Seal gibs Warrant to the Chancellor to make a Supervisor, the which was done by Piety Seal, after which Sir Richard le Scrope bought the same. Upon the riping of the whole matter, this cause was thought no Chancery, whereupon it was adjudge, that the said Windor should take nothing by his said suit, but to hand to the Common Law, and that the said Richard should go without bag.

The Commons petitioned that no Writs or Piety Seals be issued out of the Chancery, Orchequer, or other places to any man to appear at a day upon a pain, either before the King and his Council, 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.

Amongst the petition of the Commons you shall find, That all Writs of Subpoena and Certis de causa, going out of the Chancery and the Orchequer, 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.

It is enacted, to endure until the next Parliament, That the exception (how that the party hath sufficient remedy at the Common Law) shall discharge any matter in Chancery. At the next Parliament you shall find a petition in these words. No man to be called by Piety Seal or Subpoena to answer any matters but such as have no remedy by the Common Law, and to appear so by the testimony of two Justices of either Bench, and by Indenture between them and the Plaintiff, which Plaintiff shall always appear in proper person, and not surety by recognizance to prosecute with effect the matters of the Bill only, and to answer damages if the same fail out against the Plaintiff.

But in anno 15 H.6. for a perpetual Law, and for the true jurisdiction of this Court it is enacted in these words.

Item, forasmuch as divers persons have before this time been greatly grieved by Writs of Subpoena, purchased for matters determinable by the Common Law of this Land, to the great damage of such persons so vexed, in subversion and impendence 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 Subpoena be granted from henceforth till further be found to satisfie the party so grieved and vexed for his damages and expenses, 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 Realm...
The Court of Chancery.  

Realms shall be by the said Act determined in other form than after the course of the same law in the Kings Courts having determination of the same law.

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 concerned his damages and costs, and the Court was to set down the form and manner of the obligation, and in the end the suit prevailed not.

† Pisc. 29 Eliz. in Saccario. In Woods case adjudged upon the Statute of 15 H. 6. cap. 13. for the like reason, that the forfeiture for non-payment of either shall go to the party grieved.

1. Rot. Par. 2 R. 1. no. 18. The High Court of Parliament relieved but such as cannot have remedy but in Parliament.

The Parliament for matters determinable at the Common Law doth remit the parties thenceunto.

2. Nuncupam dec图纸 ad extraordinarium, sed ubi deficit ordinarium.

3. Whereas matters of fact by the Common Law are triable by a Jury of twelve men, this Court should know the matter ad infinitum, which is, to judge upon deposition of witnesses, which should be but evidence to a Jury in actions real, personal, or mixt.

This Court of Equity proceeding by English Bill is no Court of Record, and therefore it can bind but the person only, and neither the estate of the Defendants, nor property of his goods or chattels.

Egeron Lord Chancellor, imposed a fine upon Sir Thos. Themithorp Knight, for not performing his decree in Chancery concerning lands of inheritance, and attainted the same into the Exchequer: and upon proceeding the party appearing pleased, that the fine was imposed by the Lord Chancellor; for not performance of his decree, and that he had no power to attaint the same. The Attorney General confessed the plea to be true, & petit advisement causa, concerning the power of the Chancellor; in this case: and upon debate of the question in Court, and good advisement taken, it was adjourned. That the Lord Chancellor had no power to attaint any such fine, so then by a mean by might bind the interest of the land where he had no power, but of the person only, and thereupon the said Sir Thomas Themithorp was discharged of the said fine.

Afterward the said Lord Chancellor decreed against Waller certain lands, and for not performance of the decree imposed a fine upon him, and upon porces out of the Court of Chancery extenuate the lands that Waller had in Midde-kerne, whereupon Waller brought his Affidavit in the Court of Common Pleas, where the Opinion of the whole Court agreed in omnius with the Court of Exchequer. 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, That things are to be judged in Court of Conference: Convin, Accident, and breach of confidence.

All covens, frauds, and decrees, for which is no remedy by the ordinary course of Law.

Accident. As when a servant an Obligo, Hoscages, &c. is lent 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, therefore you have plentiful authorities in our Books.
The case in the Chancery between the Count of Worcesters and other Plaintiff, and Sir Moly Finch and Eliz, his wife, Defendant, was this. The Queen being raised of the Manor of Raveston, and of certain lands in Stokgoldington, (which the Plaintiff pretended to be a Manor, either in right of reversion or in right of representation) granted by her Letters Patent the Manors of Raveston and Stokgoldington to the said Sir Moly and John Andelye, and their heirs; but this was upon confidence, that they would grant the Manor of Raveston to Sir Thomas Henerge and Anne his wife, and to the heirs of Anne; and the Manors of Stokgoldington to Sir Thomas and Anne, and the heirs of Sir Thomas. Sir Moly and Andelye by deed indented and enrolled Temino Tint. 1388. 30 Eliz. In this court for a thousand pounds bargained and sold to Sir Thomas Henerge and his wife the Manors of Raveston and Stokgoldington, and the suit of the prize of Raveston in the County of Buck, and all other their lands, tenements and hereditaments in Raveston, Weston, Pedington, and Stokgoldington in the County of Buck. To have and to hold the Manors of Raveston and the suit of the said prize, and all the premises in Raveston, Weston, Pedington, and Stokgoldington, (other than the said Manors of Stokgoldington) to the said Sir Thomas and Dame Anne, and the heirs of the said Dame Anne; and to have and to hold the said Manors of Stokgoldington 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 only child, and afterwards the said Dame Anne died: the Defendant alleged that Sir Thomas was discharged of Stokgoldington, and the Plaintiff denied it. And after Sir Thomas by deed indented and enrolled, bargained and sold the Manors of Stokgoldington to the Plaintiff for payment of his debts and died: and for payment of his debts, they exhibited their bill against Sir Moly, and the said Eliz. his wife, for the said Manors of Stokgoldington, and the Lord Chancellor decreed it for the Plaintiff. And upon a petition preferred by the Defendants to Queen Elizabeth, the Speaker referred the consideration of the whole Case to all the Judges of England: and after hearing of the Council of both parts on several days, and conference between themselves, these points for rule in equity were resolved. First, that if there were any division that nothing passed to the Plaintiff either in right of reversion, or for the divorce, was subject to no suit; no any subject was maintainable against him, not only because he was in the suit, but because the right of Inheritance of Freehold was determinable at the Common law, and not in the Chancery, neither had Cetique use (while he had his being) any remedy in that case. Secondly, it was resolved by all the Justices, that admitting that Sir Thomas Henerge had a suit, he could not assign the same over to the Plaintiff, because it was a matter in pitty between them, and was in nature of a chose in action, for he had no power of the Land, but only to such remedy by Subpoena, and not like to such use, for thereof there should be nosseisci traris, and he should be bound on Jurisdiction in respect of the use, and he had power over the Land, by the Statute of R. 3. cap. 25. 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 Brother, and the trust descended to her from her Father, the trust was dissolved and extinguished. Fourthly, when any Title of Freehold or 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 equity, attain'd, or by action of higher nature. And when the Suit is for evidence, the certainty, knoweth the Plaintiff, 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 had not jurisdiction to proceed for the evidence; but if he make title to the Land by his Answer, then the Plaintiff ought not to proceed, for otherwise by such a furnish, inheritances, freeholds, and matters determinable by
by the Common law shall be decided in Chancery in this Court of Equity. And these were these points resolved by Sir John Popham, Sir Edmond Anderson, Sir William Periam, and Walmelly, Gawdy, Fenner, and Kinge of the Justices, and Clarke and Savil Barons of the Exchequer, and all this amongst other things they certified under their hands into the Chancery, and therupon the former decree was reversed, And in debating of this case it was resolved by the two Chief Justices, Chief Baron, and others, that a man make a conveyance, and express an use, the party himself or his heirs shall not be received to suceed to a secret trust, other than the express limitation of the use, unless such trust or confidence appear in writing, or otherwise declared by some apparent matter. And Popham said, that shock accident and breach of confidence were within the proper jurisdiction of this Court.

Thomas Throckmorton Esquire exhibited a Bill in this Court against Sir Myl Finch Knight, claiming a Lease of the Manores of R. and S. for many years to come, and whose clear matter in equity to be relieved against a successor pretended by Sir Myle 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 succession of which Lease, he made a Lease for years to one privileged in Exchequer, who bought an Ejectment from against the Plaintiff, and upon pleading a demurrer in Law, the Court had judgement to recover against Thomas Throckmorton (now Plaintiff in Chancery) whereupon his motion brought a writ of Error in the Exchequer Chamber, where upon the proceeding the judgment was affirmed. A demanded judgment, if after those judgments given aye Common law he ought to be drawn to make any further answer in this Court of Equity. And Eyerton Lord Chancellor delivered his opinion in Court, that the Defendant should answer to the Bill; and as much 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 Council of Throckmorton, ton said, that the intent of the Lord Chancellor was not to impeach the said judgments, but confessing the said judgments, to be relieved upon matter in equity: As if a man hath (as he is advised) two matters to aid him, matter at the Common law, and matter in equity, and being involved at the Common law, both by advice of his Council and the Common law, where his adversary prevailed against him, and both judgment accordingly, yet in this case the party may, confessing the judgment, sue to be relieved upon a collateral matter in equity; and therupon the Queen allowed some presents in time of H. 8, E. 6, &c. and one in the point between Ward and Fullwood. But upon great deliberation it was resolved by all the Judges of England, that the plea of Sir Myl Finch was good, and that the Lord Chancellor ought not to examine the matter and equity after the judgment at the Common law; so forth the Lord Chancellor, as hath been said, would not examine the judgment, yet the judge would by his decree take away the effect of the judgment: and for the Precedents, they were grounded upon the sole opinion of the Lord Chancellor, and passed subj临e. But that such a course should be permitted, it should not only be full of inconvenience, but directly against the laws and Statutes of the Realm against which no precedents 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 signed by Popham Chief Justice to the Lord Chancellor, and thereupon no further proceeding was against Sir Myl Finch, but his plea was void.

In a Case depending in Chancery by English Bill between Mears Plaintiff, and Saint John and his Wife Administratrix of John Almon Defender, the Case was this: That the intestate took the profits of the Lands of the Plaintiff being within age by force of a trust vested in him by the Father of the Plaintiff, by his will, the yearly value of which Lands was four-score pounds per annum, and the intestate took the profits from the 35 year of Edward III, until the 35 year of her reign, and with parcel of the pious purchased lands in fee which descended to his wife, and left to his Administratrix one of the Defendants.
The Court of Chancery.

The question was, whether in this case the Administrator might not be charged in equity for the said mean profits. And Sir Thomas Egerton Master of the Rolls said, that he had been a case in Chancery in Anno 34 H. 6, resolved by all the Judges of England remaining in the Tower, where the Pestiles to use took the profits of the land, and received the rents, and made their Executops and died, leaving Mells to satisfy all debts aforesaid and above the said rents and profits, that the Executors should be charged to satisfy their use for the said rents and profits, and accordingly it was decreed in Mears case against the Defendant: but whether the debt should be contributory or no, it was doubted.

Witham's case in the Chancery was, that a team for years was granted to the use of a certain sole; the said husband and wife, whether the husband should have the use, or the Administrators of the same, 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 team was a thing in privity, and in nature of an Act, for which no remedy was but by Writ of Subpoena. And so it was resolved by the Judges in Waterhouse's Cafe, Hil. 6. Eliz. Eborum, that the trust was a thing in privity in this case, and a husband should not be tenant by the curtesy of an use, nor the Lord of the Manor should have it at the Common Law.

A man possessed of a team for years in land, by his last will devised the same to one and the heirs of his body begotten, made his Executors and died; the Devise entailed by the assent of the Executors, hath issue and allens the team and debt: this alienation barreth the use, for a team of years cannot be enfeated. And afterwards An. 31 Eliz. in a case depending in Chancery between Higgins and Miles, it was certified by the Lord Anderson and Justice Walmsey (to whom it was referred) that no estate tail could be of a team, and that the alienation of the Devise did bar the issue.

In a Pramunire 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 King's Bench, that the Queen could not raise a Court of Equity by her Letters Patent, 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 placiti de minibus 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.

These cases which upon 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 magna & sub Domini Regem, and by taking his Oath. Forma Cancellariae continentis regnante Henrico secundo fuit appendendo manu Anglicae sigillam ad collum Cancellarii electi.

Some have gotten it by Letters Patent, a at will, and b one for term of his life; but it was held void, because an ancient office must be granted, as it hath been accustomed.

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 appeared in 15 El. 3, m. 41. that the Lord Chancellor of Lord Keeper for the time ought to have conuance.
The Court of Chancery. Cap. 8.


f Cancellaria unde.

f E. 4. 9. 17 E. 15. 137. 2 E. 3. 7. 17 E. 2. 59. 21 E. 3. 47. Libr. 2. no. 16. 8c.

The Lord Chancellours Oath.
a Rot. Pat. 20 R. 3. Rot. 3. The Oath recited. Vide Rot. Parl. 18 H. 1. nu. 28. b Because he hath power of Judicature as is before. c 20 R. 2. Rot. Parl. nu. 10. 2 H. 4. 51. 15 E. 3. nu. 16. 25,37,41,42. d Layne is an ancient French word, and signifyeth to hide. e Rot. Parl. 10 R. 2. nu. 6. 7. 8c. The Case of Mt. de la Pole Chancellor of England.

Articles
Articles against Cardinal Wollsey.

Now so as much as the Articles exhibited to King H. 8. 1 die Decembere Anno 21 of his reign, by the Lords and others of his Privy Council (whereof Sir Thomas More Lord Chancellor was one) and by two of the principal Judges of the Realm against Cardinal Wollsey, 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 truly and truly to transcribe from the very Original, under the proper hands of the Lords and others of the Privy Council, 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 verbo without omission of any thing, as matters of that nature ought to be; and the rather, for that in our Chronicles they are very untarily reprehended: and before this time (that we find) the true Articles were never printed.

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 Chancellor, presuming to take upon him the authority of the Popes Legate De Latere, hath by divers and many sundry ways 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 ineffimable great hinderance, diminution, and decay of the universal wealth of this your Graces Realm. And it is touched summitarily 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 Sovereign, but immediate subject to Almighty God in all things touching the Legality of your Crown of England, and the same preservation, prerogative, jurisdiction, lawful and peaceable possession your Grace and your Noble Progenitors have had, used, and enjoyed, without interruption of business therefore by the space of 200. years and more: whereby your Grace may preferibe against the Popes Vicinise, that he should not, nor ought to tend or make any Legate, to exercise any authority Legatine contrary to your Grace’s Prerogative within this your Realm. Now the Lord Cardinal of York being your Subject and natural Liege born, hath of his high, of exaltation, and incommunicable mind, for his own singular advancement and profit, in derogation, and to the great shame and dishonour 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 whereby he hath not only hurt your said Prefecture, but also by the said Authority Legatine, hath spoiled 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 Primacies, Prelats, and Religions.

2. Also the said Lord Cardinal being your Ambassador in France, made a Treaty with the French King for the Pope, your Majesty not knowing any part thereof, not named in the same; and binding the said French King to abide his order and award if any controversy or doubt should arise upon the same, betwixt the said Pope and the French King.

3. Also the said Lord Cardinal being your Ambassador in France, sent a Commission to Sir Gregory de Cailliis under your Great Seal in your Grace’s name, to conclude a Treaty of Amity with the Duke of Ferarre, without any command.
commandment; Warrant of your Highness, no; your said Highness advertis'd; make privy 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 formed 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, Wherein it is apparent that he used himself more like a Fellow to your Highness, than like a Subject.

5. Also, where it hath ever been accustomed within this Realm, that when Noble Sen do wear their Gown and Swords, the first part of their Dath hath been, 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 shown to him, so if there had been no Sovereign above him.

6. And whereas your Grace is our Sovereign Lord and Head, in whom standeth all the safety and wealth of this Realm; the same Lord Cardinal knowing himself to have the soul and contagious Dilease of the Great Pox broken out upon him in divers places of his Body, came daily to your Grace, roving in your ear, and blushing upon your neck Noble Grace with his perilous and infectious 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 Imposition in his Head, and of none other thing.

7. Also the said Lord Cardinal by his Authority Legitine, hath given by permission the Benefices of divers persons, as well Spiritual as Temporal, contrary to your Crown and Dignity, and your Laws and Statutes therefore prohibited; by reason whereof he is in danger to your Grace of forfeiture of his Lands and Goods, and his Body at your pleasure.

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 to 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 Grace's mouth to him given: and also to other persons sent to him by your Grace.

9. Also the said Lord Cardinal hath provided so, that all manner of Letters sent from beyond the Sea to your Highness hath been first sent 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, no; your Council had knowledge of me matters but of such as it pleased him to shew them, whereupon by your Highness and your Council have been compelled of deep force to follow his behests, which oftentimes were set forth by him under such crafty and covert meanings, that your Highness and your Council have oftentimes been abused: insomuch that when your Council have found and put divers doubts to things which after they had enquired, he to abuse them have used these words, [I will lay my Head that no such thing shall happen.]

10. And the said Lord Cardinal hath practised, that no manner of person having charge to make espien of things done beyond the Sea, should at their return come first to your Grace, nor to any other of your Council, but only to himself; and in case they did the contrary, he punished them for their so doing.

11. Also the said Lord Cardinal hath granted Licences under your Great Seal, for carrying out of Spain and other Utensils after the restraint hath been made thereof, for his own Lucrative and singular advantage of him and his Servants for to send thither as he bare secret favour, without your Grace's Warrant or knowledge thereof.

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 Grace's affairs being in their charge, and in the same his Letters wrote many things of his own mind without your Grace's pleasure.
pleasure known, concealing divers things which had been necessary for them to know; but also caused them to write their advertisements unto him. And of the same letters he used to conceal for the compassing of his purposes many things both from all your other Counsellours, and from your self also.

13. Also where good hospitality hath been used to be kept in houses and places of Religion of this Realm, so many poor people thereby relieved, the said hospitality, and relief is now decayed: and not also; and it is commonly reported that the occasion thereof is, because the said Lord Cardinal hath taken such impositions of the Royers of the said houses, as well for his labour in making of Abbots and Priests, and for his vitiation by his authority Legatine. And yet nevertheless they taketh yearly of such religious houses, such yearly and continual charges, as they be not able to keep hospitality as they were used to do: which is a great cause that there be so many vagabonds, beggers, and thieves.

14. Also where the same cardinals said before the suppression of such houses as he hath suppressed, that the possessions of them should be set to form among your ly-subjects after such reasonable yearly rent as they should well thereby live, he keep good hospitality: and now the same possession of the same houses since the suppression of them has been curvaged, mete, and measured by the Act; and be not set above the value of the old rent. And also such as were former by Covent seal, and Coppholders be put out and amortised of their terms, else compelled to make new fine contrary to all equity and conscience.

15. Also the said Lord Cardinal sitting among the Lords and other of your most Honorable Privy Council, used himself, that if any man would have his mind, according to his only, 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 bear 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.

16. Also the said Lord Cardinal by his ambition and pride hath hindered and undone many of your poor subjects for want of dispatch of matters: so he would no man should meddle but himself, insomuch that it hath been affirmed by many wise men, that ten of the most wise and most expert men in England were not sufficient in convenient time to order the matters that he would return to himself. And many times he deferred the ending of matters, because that fathers should attend and wait upon him, whereas he had no small pleasure, that his house might be replenished with suitors.

17. Also the said Lord Cardinal by his authority Legatine hath also, if any spiritual man having any riches or substance deceased, he hath taken their goods as his own, by reason whereas their wills be not performed; and one mean he had to put them in fear, that were made Executors, to refuse to meddle.

18. Also the said Lord Cardinal constrained all Dignitaries in England partly to compound with him, or else he will use half of the whole of their jurisdiction by prevention, not for god order of the Dioceses, but to exact tithes: for there is never a pos. Archdeacon in England, but that he paid yearly to him a portion of his living.

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 one man of religion in number above the number of 6 0 7, he hath suppressed divers houses that had above the number. And these upon hath caused divers Offices to be found by verdict contrary, that the Religious persons so suppressed had voluntarily forsaken their said houses, which was untrue, and so hath caused upon perjury to be committed, to the high displeasure of Almighty God.

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
of your Laws, and made some persons restaure again to the other party condemned that, that they had in execution by virtue of the Judgement at the Common Law.

21. Also the said Lord Cardinal hath granted many Injunctions by Writ; and the parties never called thereunto, nor put in against them: and by reason thereof, divers of your Subjects have been put from their lawful possession of their Lands and Tenements. And by such means he hath bought the more part of the sufters of this your Realm before himself, whereby he and divers of his servants have gotten much riches, and your Subjects suffered great wrongs.

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.

23. Also the said Lord Cardinal not regarding your Laws nor Justice, of his erect power hath put out divers and many tenants of the lands, and also Patents of the Archbishop of York, and the Bishops of Wincheister, and of the Abbey of St. Albans, which had good and sufficient grant thereof by your Laws.

24. Also the same Lord Cardinal, at many times when any Houses of Religion have been void, he hath sent his Officers thither, and with crafty persuasives one hath induced them to commit their election in him: And that before he was named or confirmed any of them, he and his servants received so much great goods of them, that in manner it hath been to the undoing of the House.

25. Also by his Authority Legatine, the same Lord Cardinal hath visited the most part of the Religious Houses and Colleges of this your Realm, and hath taken from them the twenty fifth part of their livelihood, to the great exception of your Subjects, and derogation of your Laws and Pecuniary, and no Law to bear him so to do.

26. Also when matters have been 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 expressly by threats commanding them to defer the judgment, to the evident subversion of your Laws, if the Judges would so have ceased.

27. Also whereas neither the Bishop of York nor; Wincheister; nor the Abbey of St. Albans, 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 had made his Son Winter to spend seven and twenty hundred pounds by the year, which he took to his own use, and giveth him not but two hundred pounds yearly to live upon.

28. Also whereas the said Lord Cardinal did first see 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 not attempt by the virtue 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 or 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 borne in his suit at Rome to bull all the Clergy of England both exempt and not exempt.

29. Also upon the suit of the said Lord Cardinal at Rome to have his authonty Legatine, he made untrue formes to the Papes Holiness against the Clergy of your Realm: which was, that the regular persons of the said Clergy had given themselves in reprobus semen; which would St. Paul writing to the Romans applied to abominable name: which snder to your Church of England shall for ever remain in the Register at Rome, against the Clergy of this your Realm.
The Court of Chancery

31. Also the said Lord Cardinal had the most part of the goods of Doctor Smith late Bishop of Lincoln, Bishop Savage of York, Master Dibbe Archdeacon of Richmond, Master Storrs, Doctor Roffill late Bishop of Durham, and of Doctor Foxe late Bishop of Winchester, contrary to their Wills, and your Laws and Justice.

32. Also at the Oyer and Terminer at York, Proclamation was made, that every man should put in their Bills for restitution of Ordinaries, and when divers Bills were put in against the Officers of the said Lord Cardinal of restitution, for taking twelve pence of the pound for probation of Willaments, whereas divers Bills were found before Justice Fitzherbert and other Commissioners, the said Lord Cardinal removed the said Indictments into the Chancery by Certiorari, and rebuked the said Fitzherbert for the same cause.

33. Also the said Lord Cardinal hath abused and endeavoured himself by craft and untrue Tales to make dissention and debate among your Nobles of your Realm, which is ready to be proved.

34. Also the said Lord Cardinals Officers haves divers times compelled your Subjects to serve him with Cars for carriage, and also his servants have taken both Coin and Cattle, Fish, and all other Vittual, at your Graces price, or under, as though it had been for your Grace, which is contrary to your Laws.

35. Also the said Lord Cardinal hath misused himself in your mostHonorable Court, in keeping of as great estate there in your absence, as your Grace would have done if you had been there present in your own person.

36. Also his Servants by verity of your Commission under your Great Seal by him to them given, have taken Cattle and all other Vittual at as low a price as your Purveyors have done for your Grace by your Prerogative, against the Laws of your Realm.

37. Also where it hath been accustomed that your Purveyors for your Honorable Household, have had yearly out of your Town and Liberty of St. Albans this of 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.

38. Also he hath divers times given Injunctions to your Servants that have been for Causis before him in the Star-chamber, that they, no other for them, should make, by labour in any manner of way, directly or indirectly, to your Grace, to obtain your Graces labour or pardon; which was a presumptuous intent for any Subject.

39. Also the said Lord Cardinal did call before him Sir John Stanley Knight, which had taken a Farm by Covenant Seal of the Abbot and Convent of Chelmer, and afterwards by his power and might command to right committed the said Sir John Stanley to the prison of Hare by the space of a year unto such time as he compelled the said Sir John to release his Covenant 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 Stanley upon displeasure taken in his heart made himself Monk in Westminster, and there died.

40. Also on a time your Grace being at St. Albans according to the ancient custom used within your Jurisdiction, your Clerk of the Market doing his office, did present unto your Officers of your most Honorable Household the prices of all manner of Vittuals 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 Household, and within the Market place within the Town of St. Albans, as of ancient custom had 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, unaccustomedly 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 Seal, and
would if it had not been letted in semblable manner, as your Seal standing upon your gates. And also would of his presumptuous mind have openly set in the Church within you 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.

40. Also the said Lord Cardinal of his further pompous and presumptuous mind hath entertained to sop and impute the Cardinals Hat under your Arms in your coin of Greats made at your City of York, which like said hath not been lain to be done by any Subject in your Realm before this time.

41. Also where one Sir Edward Jones Clerk, Parson of Orwely in the County of Buck in the Eighteenth year of your most Noble Reign let his said Parsonage with all Tithe and other profits of the same to one William John- son by Indenture for certain years, within which years, the Dean of the said Cardinals College in Oxford pretended title to a certain portion of the Tithe within the said Parsonage, supposing the said portion to belong to the Parsonage of Chichely, which was appointed to the Priory of Tykeford lately suppressed, where (of truth) the Parsons of Orwely have been peaceably possessed of the said portion out of the time of mind. Whereupon a Subpoena was directed to the said Johnson to appear afore the Lord Cardinal at Hampton-Court, out of any reason, 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 Fleet, where he remained by the space of twelve weeks, 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 whenever he was commanded, he was delivered out of the Fleet; however as yet the said portion is so kept from him that he dare not deal with it.

42. Also where one Martin Decowa had a lease of the Mannor of Ballall in the County of Warwick for term of certain years, an Injunction came to him out of the Chancery by Writ upon pain of a thousand pounds, that he should abate the possession of the said Mannor, and suffer Sir George Throckmorton to take the profits of the same Mannor, to the time the matter depending in the Chancery between the Lord of St. Johns and the said Decowa were discussed. And yet the said Decowa 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.

43. Also whereas in the Parliament Chamber, and in open Parliament communication and debates were had and moved, wherein mention was an incident made of matters touching Heresies, and erroneous Sees; 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 designed to repair unto the University of Cambridge for examination, reformation and correction of such errors as then demised, and were reported to reign amongst the Students and Scholars of the same, as well touching the Lutheran See 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 to go. By means whereof, the same errors, as they affirmed, crept more abroad and took greater place; proving 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 of such should be attributed to them for his offence; whereby it evidently appeareth that the said Lord Cardinal, besides all other his heinous offences, hath been the impenitent 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, so much as by the aforesaid Articles is evidently declared to
to your most Royal Majesty, That the Lord Cardinal by his outrageous pride hath greatly shadowed a long time on your Grace's honour, which is most highly to be regarded, and by his intractable and inconsiderate behaviour, hath to grievously oppressed your poor subjects with manifold crafts of bribery and extortion, that the commonwealth of this your Grace's realm is thereby greatly decayed and impoverished. And also by his cruelty, inquietude, affront, and partiality, hath subverted the use course and order of your Grace's laws, to the undoing of a great number of poor living people.

Please it your most Royal Majesty therefore of your excellent goodness towards the interest 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 to so 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 commonwealth of this your realm, as he hath done hereof, to the great hurt and damage of every man almost high and low, and which for your grace so doing, will daily grow, as their duty is, to Almighty God for the prosperous estate of your most Royal Majesty, long to ensure in honour and good health, to the pleasure of God, and your hearty most before. Subscribe the first day of December the 21st year of the reign of our Sovereign Lord King Henry the 8th.


So these Articles began to be subscribed by Sir Thomas More Lord Chancellor, and ended with the two Judges of this Law.

There be in this Court many officers, ministers, and clerks of this court, the principal whereof is the Master of the Rolls, anciently called the Garden des Rolles, Clements Rotulorum, Cafulos Rotulorum. And this is an ancient office, and grantable either for life of at will, at the pleasure of the King. The house answered to his office, is called Domus Conferentam, 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 continued to this day. King E. 3. anno 15. of his reign, by Letters Patents annexed this house to the office of Cafulos Rotulorum, and this Office is grantable by Letters Patents: for the more assurance of it, and of divers things most of observation, we have thought good to set down an Act of Parliament concerning this matter in these words:

*King E. 3. by this Charter anno 51 of his reign did grant after the death of William Burghall then Keeper of the Rolls and all the house of Convent of the Rolls grant to the Keeper of the Rolls, for the time being, and annexed it to the said office impermanently, and further granted that after the decease of the said William, the Chancellor be Keeper of the Great Seal after the vacancy of the said Office of keeping of the Rolls to institute successively the keepers of the Rolls, in dicta domo Conferentam, &c.

This Charter was confirmed by Act of Parliament, as by that which followeth appearing.

"A nostre tresdoucet H. le Roy et son honorable conseil en cet Parlement supplie en petit: Clerke William de Burghall Gardeiner des Rolles de la Concellarie, & Gardeiner de la Meaun des Converces de Londres que est de nostre honorable Patronage que come le dit William a ses tresgraves enflages & repariller la Chappelle de les edifices du dit meaun, & nostre Seignior le Roy daceine (que Dieu acons) pur maintenance de la dit Chappelle & meaun a la prier du dit William grant par luy & ses heires par
The Court of Chancery.

Cap. 8.

After which Act of Parliament John de Waltham Gardein, & Keeper of the Rolls obtained of R. 2. in the sixth year of his reign Letters Patent, whereby the King granted to him & successoribus suis Cuftodibus Rotulorum the said house of Converbs; and the reason thereof severally to be, for that in the said Charter of 51 E. 2. Sibi & successoribus suis wanted. This John de Waltham was in 72 R. 2. Bishop of Salisbury, and after Treasurer of England. Whereby it appears what estate the Baker 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 Patent, Commissions, Deeds enrolled, Recognizances, &c.

These Records since the beginning of H. 7. remain in the Rolls, and all before were transmitted into the Toles, and there remain.

Also for further manifestation hereof, we have thought good to set down a Letters Patent 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 Angliae, & Franciae, & Dominus Hibernie, omnibus ad quos praefenter litterae pergaverunt. Sciaris quod eum nos tercio die Navem de Novembris, anno regni nostri decimo septimo constitutum diecimum Clericum nostrum Hennem Stopen- den Cuftodem Rotulorum & Librarium Cancellarie nostre cum omnibus ad officium illud spectantibus, percepieris in eodem officio foeda, commoditates, & proficia confuent, quodquid nobis placuerit. Et uterius dedimus, & concessimus eodem Hennem cuftodiam dominas nostras Conversorum præfato officio pro inhabitatione dicti Cuftodis per progenitores nostros quando Reges Angliae ab antiquo deposita, & annexa: Habendum & tenendum cuftodiam illam cum omnibus juribus & pertinentiis spectantibus ad eadem, prout in litteris nostris patentibus inde confecdis plene continere. Nos bonum & gratuitum servitium quod diecimus clericus vobis Thomas Kirkby nobis ante hanc tempora multipliciter impedit, inde subinde impendere non defuit merite contemptantes, ac de fidelitate, circumseceptione & induitura ipsius Thomae plenius confidentes, constitutum ipsum Thomam Cuftodom rotulorum & librarium Cancellarie nostre cum omnibus ad officium illud spectantibus, percepiente in eodem officio foeda, commoditates, & proficia confuent a tempore quo officium illud per Cellisnon & alio modo quoquomodo proximo vacare continget, quodquid nobis placuerit, & uterius dedimus & concessimus, ac per presentes domus & concedimus eodem Thomae, cuftodiam diecimus domus nostras Conversorum præfato officio pro habitatione ejusdem cuftodis per dictos progenitores nostros ab antiquo (ut praemittitur) dispositione & annexa. Habendus & tenendum eadem Thomae cuftodiam illam cum omnibus juribus & pertinentiis spectantibus ad eadem quodquid ipsum Thomam dictum officium Cuftodis rotulorum & librarium praedictorum habere & tenere five occupare continget. Et quod expressa mentio de vero valore anno officii praedicti & ceterorum praemissorum feu alicujus eorum, aut de aliis donis seu concessionibus per nos præfato Thomae ante hanc tempora factis in praenuntiis facta non exigit, aut alicujus aedibus five Ordinationibus in contrarium editis five ordinatis, aut aliqua alia causa, re, seu materia in aliqua non obstantibus. In qua rei testimonium habemus litteras nostras fieri fecimus patentes. Telle meipso apud Maiditon vicecimo nono die Martii, Anno regni nostri vicecimo quinto, Authori- tate Parliamenti.
The Court of Requests:

Having spoken of the Court of Chancery, moved and governed by the Lord Chancellor, and Keeper of the Great Seal: It shall be fit in this place to treat of the Jurisdiction of the Court of Requests, whereas the Lord Privy 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 therefore they were called Magistri libelli supplicationis: 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 Controverse.

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 quam Requestrarum, i.e. supplicationum patantium magistri vocant, et quid sit quam sanctam eam dicta, vel privilegio donativa sancta, hujus curiae judicis eodem sancto. 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 desire to be absolute and uncontrollable. But neither of these are warranted by Law, as shall evidently appear.

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) was vanished, for that it had neither Act of Parliament, nor prescription time out of mind of man to establish it.

* 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 Privy Seal, to Stepney then Sheriff of Camberwell, who by force of the said Writ attached Flood, and would not let him go, until he had entered into an Obligation to the Sheriff to appear before his Majesties Council 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 Jurisdiction, but all the proceedings thereupon were Coram non Juroice, and the arrest of Flood was false imprisonment, so as he might abate the bond by Duces at the Common Law, without and of the Statute of 33 H.6, c.10.

The punishment of Perjury in the Court of Whitehall by the Statutes of 33 H.6,c.9. and 5 Eliz. c. 9. both not give it any Jurisdiction of Judicature, no more than the Statutes that give against a Clerk an action so; an escape, or

punished
punished a Butler of his own wrong for erotion, 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 justice in the Parliaments to punish perjury in the Whitehall, although the Court were held by usurpation; and so before it appeared to be by the Judgement in Steep's case. See Beverley's 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 current money pass even with the proper Artificer, though it hath so much Alloyn, until he hath tried it with the Touchstone; even so this nominative Court may pass with the Learned as insusceptible in respect of the outside by vulgar allowance, until he adviseably looketh into the roots of it, and try it by the rule of Law; as (to say the truth) I my self did: But errors ad sua principia referre, eft reiellere. To bring errors to their first, is to see their last.

The Author of the Book of diversity of Courts written in 1604, hath not so much as mention any such Court: no, the Doctor and Student who wrote in 1618, treating of matters of Equity never mentioneth any such Court: nor in any of the Reports of H. 8. 9. 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 redundant or scientific, which we (by God's special Grace) have performed, without any spark of contradiction, or respect of any private whatsoever: That charge ever founds in mine ear, that is given to all that take upon them to write, Ne quid falsum audient, ne quid verum non audient. And although the Law be such as we have set down; yet in respect of the contumacy 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 it shall be thought convenient to that High Court) for the time to come: Et sic liberavi animam meam.
CAP. X.

The Court of Common Pleas.

B

yp the Statute of Magna Carta cap. 11. it is noted, Quod

communia platea non sequatur curiam nostram, sed teneatur loco certo. Habet Rex

etiam curiam, & Justitiarios in banco residentes, qui cognoscunt de omni

bus placitis, de quibus authoritatem habent cognoscendi, & sine warranto jurisdic-

tionem non habent nec conversionem. Ex parte host. Sunt etiam alii Justitiarii

*perpetui, certo loco residentes, sic ut in Banco, loquelas omnes de quibus habent

warrantum terminantes, qui omnes jurisdictionem habere incipiant præstiti sacrà-

mento.

Outre ceo voilons que Justices demoragentcontinualment a Westm' ou ailleurs, 
ou nous voudrons ordinaire, a pléader communes pleas solonque ceo que nous les

manderons per nos briefes; j'lent que des paroles deduces devant eux per nos

briefes euyent record,

Out of these, three things are to be observed: First, what shall be laid com-

munia 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 Criminal and Felony, and Suspensions of Criminal and Felony, &c. This Court

is the lock and key of the Common Law in Common Pleas, for herein are ræy-

al Actions, whereupon Suits and Recoveries (the Common Affirmances of the

Realm) do pass, and all other real Actions by Original Writs are to be deter-

mined, and also of all Common Pleas more 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.

* Robert Paring, the Kings Serjeant at Law 24 July 1. E. 3. was created

Chief Justice of England, in which Office he remained until the tenth of

December following, and then he was made Lord Treasurer of England; In

which Office he continued until the eighth 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 afo-

rable; and there debate matters in Law of greatest difficulty, as it appeareth in

the Report of the year of 17 E. 3. fo. 1. 14. 23. 37. &c. knowing assuredly, that

de that knows not the Common Law, can never rightly judge of matters in

Equity: wherof at that time very few matters were depending before him in

Chancery.

2. These words of Bracton, [sine warranto jurisdictionem non habent.] well

exemplified by Britton, that what Warrant is by the Kings Writs. Solonque ceo

que nous les manderons per nos briefes. 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 against any Officer, Minister, or priviledges per

per 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

where in those cases is a prohibition of it self fends in head of as Original,

whereof there be infinite presidents in this Court. And Sir Thomas Egerton,

LORD
The Court of Common Pleas, Cap. io

Lord Chancellor; Mich. 7 Jac. Regis called Fleming Chief Justice and all the Judges of the King's Bench, and Tanfield 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 precedents. 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.

4. This Court upon an Adjournment upon a forsaken voucher may hold plea likewise upon other forsaken pleas, and upon general bail upon in loyal matrimony, &c. to none but the King's Courts, and no inferior Court shall issue to the Bishop, So likewise upon ancient demesne pleaded, &c.


And each of the Justices of this Court hath Letters Patents, Scissati quod constitutimus dilectam & fidelem P. W. militem, unam Juxttuarium nonnullorum de Communibus banco, &c. But none can be constituted Judge of this Court unless he be Serjeant at Law of the degree of the Court, 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.

For the Antiquity of this Court was before in the Chapter of the King's Bench adjoining thereunto, 6 E. 3, where a fine was levied in this Court 6 R. I. 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 King's Bench, or of this Court of the Common Bench, that they observe the ancient rule of Law, Nemo duobus utarum officiis, for none of them can take any other Office, or any other, or reward but of the king only. And it were behooved to the Commonwealth and advancement of Justice and Right, and preferment of well deserving men, if the like course were held concerning all offices, so well Ecclesiastical as Temporal and Civil: and that no man following the example of the revere Judges should enjoy two offices. For several offices were never instituted to be used by one man.

The jurisdiction of this Court for punishment of their Officers & Ministers.

Petrus de Lussumham in diestas quod ipsum in Curia bishop is die Sancti Hillarii in 15 dies Anno regni regis nomine 19, salt et malisife deleuit adiornationem ejusdem essein ad diem illum intrat de Com. Telte. pro Roberto Atlete de South-Lussumham potente & Radolph. de Kirkeby tenente de placita terre, &c. Et quaestus qualiter se vellet inde acquiat et dixit quod in nullo esto inde culpabili, & de hoc pont se super juravit de socii in Cur. is. Et qui juravit dicam super Sacramentum suum, quod praeclara Radulphus praeclara dixit & annojuit in Cur. in Cur. bice, & dixit praecto Petro quod praeclara effolium fuit adjornat, et praecutus Petrus intravit infra Bancum et rutulos de essoin, et cum perpendij et quod le aff. fuit appositione molvol se poli come suum et inde fratri super le aff. quosit, illud fere amniss delectat ut se seceret praecto Robertum amissesse brevi subuns, &c. Ideo consideret: et quod praectus Petrus committitur Gaude de Flete custodiendo per annum annum et annum diem pro falsitate et deceptione praecutus, et tene redimendus pro
The Court of Common Pleas.

provolontate dominij Regis, &c. Et sequia quod liberatus fuit Gaole die Mercurij proo, ante sejum Sancta Margareta virginis hoc anno, &c.


Et quia pradictus Johannes de Upton ne Cur hie recognovit quod hoc anno in justitia cessit: quod pradictum desistam remitteret, &c. pro illa concessione recept 20. s. in Antumopno, & posse ad pradictum tertiam septimam Sancti Michaelis idem Johannes remisit pradictam desistam, per quam pradictus Williwm recerpisse potui pradictum tenere in fraudem & deceptionem pradicta Williemi. Ideo ipse pro falsitate pradicta committerit Gaole de Flee & commoratorum per annum & diem, &c. per formam falsati, &c. Posse poti annum & diem, &c. pradictum Johannes venit & deliberatur eis secundum statutum, &c. & inhibitum est et, &c. & servavit pro una marca.

Bene examinatur fraus de Brevis in Jur per Vic retorurn Termin Trin & per quendam alium paucum ejusdem mutatum & contemptum, unde contemptor per Jur et culpabilis, & adjudicatur Gaole de Flee per annum & diem. Et quia scriptor ejusdem brevis licet de falsitate & malitia non fuit parteus, nec aliquis malo faciessi putavit, &c. Custodiatur, &c. & non facit per annum marcam.


The Officers of this Court are many, viz. Custos Brevium, tres Prothonotarii, &c. & Prothonotaries: Clericus Warrantorum, Clerk of the Warrants: Clericus Agentis Regis, Clerk of the King's Silver; Quaorun Exequendi, Exequentes: Quaeruodeem Fazarii, Filiares: Clericus Juniorum, Clerk of the Judges: Clericus Solicitorum, Clerk of the Offices: Clericus Ulteriorum, Clerk of the Outlaws: this belongs to the Office of the Attorney General, who execravit it by Deputy.

In former times great abuses have been by Attorneys of this Court, by taking without 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 made a Capias directed to the Sheriff of York; whereas there was no Original, at which day of the return an Attachment was awarded by the Court against the Attorney to answer the deceit, whereupon he was taken and examined, and confessed it, and thereupon by the Court he was committed to the Fleet, imprisoned for a month, 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 therefore he was drawn. Note, the severity of this Judgement show the haziness of the offence.
The Court of Common Pleas. Cap. 10.

An Attorney sued out an Habere facias seinitam against one, by force whereof the true Tenant was put out of his freehold; where in truth there was no recovery of any rent. The party grieved brought an action of Deceit against the Attorney, and recovered damages, and the Attorney imprisoned.

Memorandum quod Magister Johannes Lovell qui sunt Custos Rotulorum & Breviaria Domini Regis de Banco per maxima su a proprietatis liberavit Johanni Bacon Clerico de mandato Domini Regis in hac verba, Edwardus, &c; Dilecto Clerico suo Johani Lovel salutem. Cum commiserimus dilecto Clerico nostro Johanni Bacon cusodal Rotulorum & Breviaria nostrorum de Banco, Habendum dum quondam nobis placuerit: Vobis mandamus quod eadem Johanni Rotulos & Breviaria prae militia sunt in custodia vobis ex commissione nostra per Chirographum inde inter vos & ipsam conscientiae sine dilatatione libertis cusodal in forma prae militia. T. meipso apud Stedenbeth 17 Aprilis Anno Re- ni nostri 20.

Super quo prae militia Johannes liberavit dicto Johanni Bacon Rotulos & Breviaria de Termine Sandi Michaelis Anno 17, usque hunc Termimum, & simuliter Rotulos de Essex. Et scripta dedita & suspensa cum tali est dedita, una cum compositis dedita. Acti sunt 160 rot. finium, duas legulas de recordis fine die, & 14 Certificat Episcoporum.
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 King's person saith, Volons nous que a nous Echechers a Westmin & sizlo cuyent nous Treasurers, & nous c Barons illoguez Jurisdiction & record choises que touchent leur office a'ier & determiner tous les causes que touchent nous debits, & aux vo neues, & les incident choises, sans que eux riels choises se purront etre tries, & que ils cuyent power a constituer de deits que lon doit a nous dettons per ou nous puissions plus toit approcher a notoire der.

En droit de propriete volons nous que le noisances soient oustues aux colllages des purprechours, & les suffrables soient prise en noistre maine a la value par an foit inrolle, et solonque le discretion des Treasurers & des Barons de nos Echechers soient arrenee a fee farne a eux qui plus voilent donec.

Et fait aussi enquis de nos culltumes de quites & de leynes que les oont colles, & combien les colles sont bien suffet de pafer de taxees de leyne sans payer cuftome, & combien est valu la cuftome checun au checun moinsere de cuftome a nous appartenue & ces articles soient terminus a notoire Echecker selon la discretion de nos Barons.

Et the Cultumes of Nomandy, cap.5. & 6. touching the Ethchequer ther, both of another Jurisdiction, and of other Judges, and Officers, then our Court of Ethchequer is.

Lescherer est un place quarte que solemalement est ordinaire par le pou le roy on deux Chivaliers, a Clerks, ou a homes, lit sont assignes par Oter & Terminer, les torts faits au roy & a la corone en droit des ces fes & ces franchises, et les accounts des Bailiffs, et des receveurs de demiers le roy & des administrateurs de ces biens per la view de une Sovereign qualit Treasourer de Anglietrie. Des deux Chivaliers soient etre appelues deux Barons par affeter les amerciament de Countes, & des Barons & des tenant counties & baronies cy qui nul ne fait affeter foistice per ces Pieris.

A celle place estoit assigne un Scel Troy gardien par fur ent acquittance de checun payment que avoir le volont, & de fester les breves & les effets southe ceree verfant enfant de celle place par le pou le roy. En celle place sont aussi Chambellains & plus cters auynstiers que ne touchy moy mult a la ley.

Ordene fuit Lescherer in manner comme enquis, & les paines pecuniales de Countees & Barons en cetier, & aussi de tenants, Countues & * Baronies dimentibles; & que ceux amerciament fussent afferter per les Barons del Echequer, & que lein envoist les effets de leur amerciament al Ethchequer ou que ils fussent amerciats en la Court le roy.

On alter ceo nul Common plez ne soit deformed tenus en Lescherer encouter la form of the grand Charter.

Fleta (for Braden treateth not of this Court saith Habec & Rex Curtam sam, & Jurisdiction suis residentes ad Scecarum. And this is all I find in him. This Court is divided into two parts, viz. judicial Accounts, called Scecarum comptorum, and into the receipt of the Ethchequer. Una origo utique Scecarum, superioris foliciet, & inferioris, sed guinquid in superiori comprehens, in inferiori solviere.

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
other Officers and Ministers of this Court, as they be at this day.

F. In one fence is taken for the Exchequer properly it is Spores a Hamper, wherein the confiscations, sequestrations, and other monies of the King were carried into the Treasury.

1. Dominus Thesaurarius Angliae: which Office he hath at this day by the delivery of a white staff, 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 staff served to rest him upon it, or to drive away imposture suitors.

2. Thesaurarius Scaccarii, anciently called Arcarius ab arce, and this Office he hath by Letters Patent. For both these Offices he hath 16s. 11d. 1s. 2d. out of the Wardrobe 15 l. 7 s. 6 d. In total 30 l. 7 s. 8 d. * Hugo Presthull was first Treasurer of the Exchequer, and after him Marcus Thesaurarius.


5. Thesaurarius Scaccarii, anciently called Locum tenens Theaurarii. Petrus de Willebye locum tenens Theaurarii, Anno 30 E.1. et pluribus: he nameth the two parties of all the goods feit in or customed, and whereas whether the parties shall have them at the price or not, he appointed the Steward, Cook and Butler for the provision of the Bar. Chamber; he in the vacancy of the Treasurer doth all things in the receipt, that the Treasurer doth. In the nature of 39 El. cap. 7. and 43 El. in the Subsidy of the Clergy he is called Unius Treasurer of England. Concerning this matter I kind of bleed, this writ following.


The Office and duty of the Lord Treasurer of England both appear by his Oath, which standeth upon eight Articles.

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 King's Treasure he shall truly keep and dispense.

4. He shall truly counsel the King.

5. The Kings Counsel he shall keep and keep.

6. That he shall neither know nor suffer the Kings hurt, nor his disquieting, nor that the rights of the Crown be decreased by any mean, as far forth as he may.

7. And if he may not let it, he shall make knowledge thereof clearly and expressly to the King with his true advice and counsel.

8. And he shall do and purchase the King's profit in all that he may reasonably do: which in effect agree with the oath of the Lord Chancellor, as you may read ubi supra.

Imprimis
The Court of Exchequer.

Imprimis post sigillationem potestatem de illo officio vocatur in ceteris Cancellar\iae, coram domino Cancellerio genibus his fiset sacramentum, ut iuribus scribatur, & deinde sigillatum erit breve regis directum Baronibus & Camerariis de Scaccario de attendente recitante effectum dictum literarum potestatem. Et inde successit dictus dominus Cancellerio ad Canam Scaccarii & ibidem (dicto Therarius ante) ad haren legatur fitere Patentes pridie \& similiter pridie breve, \& vocatus eis idem Thesaurarius ad illum suum per dictum dominum Cancellerium accipiens cessionem, \& liberae curae tunc \& ibidem claves officii Thesaurarius, \& omnes officiarii sub se recedunt cum ipso Thesaurario in Thesaurum \& dantes ei attendente. 

This text transcribed de verbo in verbum in eadem veribus.

The Lord Treasurer of England hath also granted to him by Letters Patent under the Great Seal, the Thesaurarius Scaccarii Regis Angliae, which of ancient time was a distinct office by itself. The office of the Treasurer of the Exchequer did principally take care of the green law, fees, and tenures, as it is said; he hath also with the Barons the custody of Records, as by this indent appears.

In an Information of trespass in the Exchequer against Bracke, judgment was given for the Dean against Bracke, who bought a writ of Error directed to the Lord Chancellor and Lord Treasurer, and made a warrant under their seals to the Barons to bring the Record before them. And Mynwood Chief Baron objected against both the writ and the warrant, for that the Nature of 31 El. 3 c. 13 that giveth this writ of Error is general, that the Lord Chancellor and Lord Treasurer shall cause to come before them the record and process of the Exchequer, and in as much as no special writ was given by the nature, 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 so; that the Treasurer of the Exchequer and Barons have the keeping of the Records of the Exchequer, the writ of Error 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 premisses all the writs of Error from the making of the nature until 7 El. were directed to the Treasurer of the Exchequer, and Barons to bring the Record before the Lord Chancellor and Lord Treasurer; but in 7 El. and since divers writs have been directed as this writ was, 9c. But it was resolved by the Lord Chancellor, Lord Treasurer, and the two Chief Justices Martial, 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 premisses, and thereupon this writ abated.

Here four things are to be observed. 1. That albeit the Barons, as hath been said, are the sole Judges, yet the Treasurer of the Exchequer is joined with them in keeping of the Records, whereof the Barons are Judges, for they are part of the King's Judges. 2. That writs of Error are to be directed to them that have the custody of the Record wherein any judgment is given; as a writ of Error to reverse a judgement in the Court of Common Pleas, shall be directed to the Chief Justice only who hath the custody of the body of the Record wherein the judgement is given, but the original writ and warrant of Atturny are not in his custody. 3. That albeit the Lord Treasurer is also Treasurer of the Exchequer, yet the writ of Error is directed to him as Treasurer of the Exchequer, and the Barons, to have the Record before himself as Treasurer of England and the Chancellor. 4. That the making of the Nature of 31 El. 3 that giveth the writ of Error, the offices of Treasurer of England and the Treasurer of the Exchequer were in several hands, as by the writs of Error brought since after appeared. Before the said Nature of 31 El. 5c. the Errors in the Exchequer were sometimes examined in Parliament, and sometimes before Commissioners by force of the king's writ under the great Seal.

It was petitioned in Parliament in 25 El. 3.25, that erroneous judgements in
The Court of Exchequer.

Cap. 11.

in the Exchequer might be referred in the King's Bench, but it succeeded not.

Vide Term. Patich. 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 Countzine of Kent against theAbbott of Ramsey, upon which judgement the Abbots brought his Writ of Error. Fitzherbert for another purpose abridged the case, Tit. Sicere fac. 132.

Hill. 11 E. 3, in libro robec in Scaccario fol. 322, the case of John de Lecestre Chamberlain of the Exchequer, a notable president to the like effect, Lege, quia optime.

Note in the Act of 31 E. 3, that is called the Connectz Chamber, which now is called the Exchequer Chamber, because there was the assembly of all the Judges being the Kings Council for deciding of matters in law.

C. The Chamberlains of the Exchequer. For these officers see in the last part of the Inst. lib. 2, cap. Grand' Serjeanty, Sess. 135, the Office mentioned in the Lett. Patens, Officium unius Camerarium de Receipt; 'Scaccari, sine officiuno Camerariun de Scaccario, and is granted for term of life to be erected by him or his Deputy. To this office belongs the office of one of the Donors of the Receipt.

C. Contrafacturus. Of to 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.

C. Remembrances 3, viz. Regis Theaurarii, & Primorium fundum.

C. Clevius Pipe. Of this Officer somewhat is necessary to be said. The original institution of this Court was taken from a Convict of conveyance of water into a Citizen; so an AVater is conveyed from many fountains and springs by a Pipe into a Citizen of a House, and from thence into the several offices of the name: so this golden and silver stream is drawn from several Courts, as fountains of Justice, and other springs of revenue reduced and collected into one Pipe, and by that conveyed into the Citizen of his Majesties Receipt. Therefore all accounts and debts to the King are delivered and collected out of the offices of the Kings Remembrance, and Treasurers Remembrance, and by that drawn down and put in charge in the Pipe. So as whatsoever is in charge in this Roll of Pipe, is said in law to be only in charge. The Clerk of the Pipe in the Patent of his office, is called Registrator major Rot. in Scaccario.

Also the Treasurers Remembrance is by his office to charge and enter from the Dignitary into the Annuit, otherwise called the Great Roll, all the taxes rents and other rents whatsoever upon leaves of lands within the forbe of this Court: and whatsoever is in charge in this Roll is said to be only in charge. As to be ought to keep another Roll, commonly called a Roll of reburbations, as of grants of lands and offices in tale, for life or years abique compotu, ut aliquid inde reddendo, to the end, as often as need shall require, Writs may be granted to enquire whether the issue be spent, the loss dead, &c.

C. There be five Auditors of the Kings revenues within the forbe of this Court, and their office is to take the accounts of the Kings receivers, Sheriffs,EScheatours, Collectors, and Customiers, and to audit and perfect them. But an Auditor cannot allow any license or grant for the Auditor; knowing 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, &c. de familis. Neither can the Auditor put any thing in charge, for his Office is (as hath been laid) but to take and audit accounts: for the words of the Patent be, Concessimus B. officium unius Auditorum Scaccarii notiti quod I. S. prior habuit & occupavit Habendum et tenendum preceptum officium prestat. B. quammadie se bene gestisse in eodem per se vel sufficient, deput, summ, sap the though the Barons do order upon light 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 only in charge (until it be recovered, received, and accounted for of Record; for it is not judicially done,
dine because it may be done in the absence of the party. Neither can any Auditor make a Super, but of that hath been received and accounted for before.

1. Auditor of the Receipts, both take and audit the accounts office and Batwick, the mint, and of any money impounded to any man.

2. Auditor of the Receipts. First, he is a kind of Filayer, for he seeth the Tellers Bills and entrench them. Secondly, he is a Remembrancer, for he giveth to the Lord Treasurer a Certificate of the money received the book before. Thirdly, he is an Auditor, for he maketh Debentures to every Teller before they pay any money, and taketh and audieth their Accounts. Before all these he keepeth the Black book of receipts, and the Lord Treasurer's key of the Treasury, and both every Teller's money locked up in the new Treasury.

3. For the Opposers, the Forrein Opposers, he both opposeth all Sheriffs and Bailiffs of Liberties of their green war. Under these words [Green war] are included Finnes, Illuses, and Americanities, Recognizances for the peace, Recognizances for appearance in any other Court, and good behaviour, and such like in-certainities certified in several treaties into the office of the Lord Treasurer's Remembrancer, who delivereth the same to the Clerk of the Treaties to be put into Proces. And because the Treaties annexed to the Writ are under a Seal in green war, they are vulgarly called Greenbore. But Seals good, Wafes, 7 H.4.cap.3. Stapes, Bulletts good, Deodands, and such like, are within the Sheriffs Accounts, with which the Echeator was wont to deal.

4. Clericus Extraordinaire, Clerk of the Treaties, his office is partly touched before.

Here it may be demanded what the meaning of these words (of Echeat that soon he not) is. The Act of 4 H.5.cap.2, being original in French, is in proper idiomate, Des Eteats sont souveaus, which by turning the two single v v into a w was first made souven, and afterwards souvern. Now souvern properly signifies to be remembered, and such casualities as are not to be remembered run not in demand, that is, are not levable.

5. Clericus Nihilominus maketh a Roll of all such summonses as the Sheriff upon Processes for the Greenbore return Nihil, and delivereth that Roll into the office of the Lord Treasurer's Remembrancer to have execution done of it for the King. See the Stat. of Rotel. viii. secem.

6. Clericus Placitourum, Clerk of the Pleas. In this man's office all the officers and priviledges persons in this Court are to see and be sued. Of this matter more hereafter.

7. Marechallus, Marshall. To this officer the Court committed the keeping of the King's debts during the sitting of the Term, to the end they may provide to pay the King's debts, or else to be further impredoned. Such offices are found Virtue offici, and brought into the Echeate, are delivereth to him, to be delivereth over to the Lord Treasurer's Remembrancer. He also appointeth Auditors to Sheriffs, Echeate, Customers, and Collectors for taking their accounts.


9. Deputati Camerarii duo, called Under chamberlains of the Echeate: they cleave the Tails written by the Clerk of the Tails, and read the same, that the Clerk of the Pell and the Controller thereof may see their entries be true: they also search for all Records in the Treasury.

10. Secundarii Rememoratoris Regis duo.

11. Secundarii Rememoratoris Thefaurarini duo.

12. Secundarii Pipe duo.

In the other part of the Echeate which is called the Receipt. Concerning the accounts of the Receipt of the Echeate, see Rot. Clau. 39 E.3,m.26.


14. Clericus Taliarum. There be two kind of Tails of Tails, the one is called...
called a Tally of a debt, and the other is called a Tally of a reward, of both which you may read in divers Acts of Parliament.

Clericis 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.

C Numeratores, or Tellers. The office of a Teller consists 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 petty and workshop books of their receipts and payments, which they deliver to the Lord Treasurer.


The duty of the Kings Remembrancer.

The office of the Kings Remembrancer consisted principally in eight duties. His first is to write Process against Collectors of Customs, subsidies, and Fifteens. 2. He enthrall in his Office all Recognisances before the Barons, and take bonds for any of the Kings debts, so observing of others, or for appearances, and his duty is to make out Process upon every of them. 3. He maketh Process upon Information upon penal statutes, all which Information are entered in his office. 4. He maketh Bills of composition upon informations upon penal statutes. 5. He taketh the Sealing of debts and enthrall them. 6. The Clerk of the Star-chamber certifieth into his office the acts set in the Star-chamber; this officer maketh a Record thereof, and delivereth them down into the Pipe. 7. Into this office ought to be delivered to be safely kept all Assurances, Condemnations, and Evidences, whereby any Lands, Tenements, Reversions, 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 processings thereupon are entered into the office of this officer. See the Nature of 5 R. 2, cap. 14, fol. 1.

The office of the Lords Treasurers Remembrancer principally consists in eight duties. 1. His duty is to preserve the broad-spreading and fruitful tree of Tenures so many ways beneficial to the crown, and the jurisdiction of the Court of Wards, which sometimes were within the purvey of this Court, but once taken from it. He maketh out Process for the Kings revenue by reason of the Tenures of the King (Wards excepted). 2. He maketh Process of Fieri faci and Extent for debts due to the King either in the Pipe, or with the Auditor. 3. If a Clerk of this Office make any Writ of Process for a debt which hath been paid and the Parties thereof joined and allowed, he shall lose his office, and be imprisoned until he be satisfie the party as much as by the direction of the Treasurer and Barons be enjoined. 4. He maketh another Entry of Record, to the end it may be known to other Sheriffs and other Accountants keep their days of prefission. 5. The Writs are certified unto his office, and are by him delivered to the Clerk of the Exchequer, as path
The Court of Exchequer.

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 said business, as the statute of 5 Edw. I. cap. 14. requires.

Concerning the said Officers, there is an excellent Law made in 5 R. I. 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 Exchequer, can or shall be made, unless he be well learned in the Law, or otherwise very skillful in the causes and stages of the Exchequer.] Here is the heart of this Court: for albeit the laws and orders thereof be most excellent, yet the benefit thereof consists in good and skillful Officers and Masters.

These things being understood, let us now peruse our ancient Authors, for out of the old Atlas must come the new Coins.

Thus our Treasurers. Hereby it appeared being in the plural number, that there be two Treasurers, whereas we have spoken before. There is also a Treasurer of the King’s Chamber, the Scouaursus Came & Regis, which is not accounts able in the Exchequer, but to the King himself. If the King appoint some man whom he trusts to take his account, this is allowed to be done by the King himself, Qui per alium facer, per ipsum facere videatur.

In Eras, Barons illorumque jurisdiction. All judicial proceedings according to law in the Exchequer, are coram Brornibus, and not coram Theaurarui & Brornibus: 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 numbered as in other Courts.

The Oath of the Barons of the Exchequer expressing their duties considerate upon ten Articles. 1. That well and truly he shall serve in the Office of Baron of the King’s Chamber, 2. That truly he shall charge and disburse all manner of people, as well poor as rich, 3. That for highest, no for richest, no for second, no for third, no for fourth, no for any other, gift, no promise of any person the which is made to him, nor by craft, nor by any other means, I let the Kings right. 4. No other persons right he shall dispute, let it or dispute contrary to the Laws of the Land. 5. No for the Kings debt he shall put in respite, where that they may pay we shall be bid. 6. That the Kings and he shall swear before all others. 7. That neither for gift, wages, no good deed, he shall dispute, nor shall no for any other, gift or promise of any person, nor of himself. 8. That nothing he shall take of any person for so to do wrong or right, to delay or to deliver, to delay the people that have to do before him; but as hastily as he may them truly to deliver the forth part 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 to redress, 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 have and layne in all things.

In the Exchequer at the Suit of the King in an Information of intrusion of lands, where an issue is joined, which may be tried by the Country, yet where the King hath a direct Record or Perjury, for the manifestaion of his title, the Kings Attorney may pray that the trial may be by Records, whereof you may read a notable Case. 27 & 28 Eliz. in the Exchequer, where the case was, That in an Information of intrusion into certain lands, &c. against Savid, the issue was, Whether certain lands belonged to a house of no. And upon a trial by Record judgment was given against Savid. Afterwards Savid the Defendant died, and his sonne and heir brought a Suit or Cright in the Exchequer Chamber, where it was holden, that this kind of Legal by Records was before the Nature of

Trial by Record.
The Court of Exchequer. Cap. 12.

33 H. 8. cap. 39. the words whereof be, That all and every trial 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 Witnesses, Writings, Proofs, or by such other ways 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, conditions, and purposes. And yet, notwithstanding the generality of these words, if a Judgment be given upon a trial by Record, a Writ of Error both by thereupon; because, as to this point, this Act is but in affirmance of the Common Law.

It was petitioned in Parliament, that remedy might be found, that no Account in the Exchequer be run in issues before he be seawed. The Kings answer was, The Process therein shall be first a Venire fac. and then a Distress, and after a Writ out of the Chancery to the Treasurer and Barons.

It was also petitioned in Parliament, That such a one 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, That 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 exprim commandement by Writ or Letter of the Great Seal. But by the statute of R. 1. 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 disquietness, 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 of immoveable 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 prohibited.

And into the Exchequer Chamber or the like, all cases of greatest difficulty in the Kings Bench or Common Pleas 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. So more of this Court infra cap. 13. pag. 1. 2.


That is, by his Attorney: and therefore the admissibility of an Attorney in these cases, is not ex gratia cuire (as is laid in the common pleading) but ex debito justitiae.

The Treasurer, the Abbot of Crowland, and Sir Robert Monsoni and others burgesses of London, have obtained this Act.

4 H. 6. 11 b.

If a man doth hold, is here the tenure 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 Serjeant of some Honour, or Hanno, &c. Yet there be many more by the error, or negligence of Solicitors, by suing out of licenses of persons of alienation, where in truth the Hanno or Lands were not holden of the King in Capite.

But Mich. 39 & 40 Eliz. it was resolved by all the Judges of England, when I was Attorney-General; That if a man purchases a License of a Baron, and after
Cap. 11. The Court of Exchequer.

after being called into the Exchequer do plead the licence or pardon, that neither
the purchase nor pleading is any conclusion, but the tenure may afterwards upon
another alienation be transferred or denied. For the words of the licence or par-
don be, Que de nobis remenens in capite (ut dicitur,) for neither the charge in this
case be direct being grounded upon a licence or pardon, nor the plea; for the li-
cence or pardon is pleaded, as it is ut dicitur: and therefore neither the one nor
the other both conclude. But if he in his plea both by express words (with a
bene & verum eff, &c.) confess a tenure, in Capite, and in discharge thereof plead
the pardon or licence in discharge thereof, there is a conclusion thereof to be
ought; and so are the books to be intended: Which Resolution I heard and observed, and have
reported it for truth and right.

Concerning licences of alienation, and the short pleading of licences and
pardon, there is a profitable statute made Anno 18 Jac. Regis, and another An-
1 Jac. Reg. cap. 26. con. the causes of the Exchequer.

E. Les incident choses sans les queus, &c. Quand lex aliquid aliqui concepe
concedit videtur & id fine quo res ipsa efficet non potest.

C. Et que il est entre power a soncert de dettes que fendoit a nous deserts per ou
nous pussem plai re vo et approcher notre dett. This is the ancient Prerogative
of the King, as it appears in our Books.

The King bought an action of debt in this Court against a Prior alien. The
Prior had Procès against A, who obtained goods from him, without which he
could not afflict the King: A gave and claimed the goods as his tithe as Par-
don of D. the Prior claimed the tithes as Pardon of 5; and therefore this case
for the King trouble in the Exchequer.

If he that in execution will in this Court confess himself debtor to the
King, where he is no debtor of Records, he shall be reclaimed to the first person,
and after the creditor be satisfied, then he to be committed unto the Just until he
have that the same confessed.

Sulonque d'dedication des Treasurers & Bishops, &c. solent a rents a form a
eux que plais voient dans
To the end that no Lands in the Kings hands,
which ought to be to the Kings profit, Should be Without a Farm: that should
yield a rent to the King, the Treasurer in certain cases, and in certain cir-
stances ought to make a Warrant to the Great Ward for demise thereof, that is to
say, not only at lands extended, of lands during the vacation of any Abbey, and
of lands sold for an alienation without licence, and before 23 H. 8. of land in
ward, as the like upon uncertainties, but also of the bennets of the Crown out
of lease, &c.

The lease will be better expressed by an example, first of lands extended.

Rex

18 Jac. cap.
1 Jas Reg. cap. 26. con.
20 E. 3. Ley 52.
38 Aff. p. 30.
1 R. 2. exp. 18.

In Original.
Anno 16 E. 4.
Rot. 13.
Not here, five
things.
1. Per manuva-

Evangelion.
2. Communion,
3. Cofissumus,
4. Yeibling a

rout.
5. Petritis, quod
siqui alius plus
dare voluerint.
Nora Britton,
sap. A cerv ex
plu voluit diner.
Sec 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 quidem in manubus notis is fore contentious.
The Lord Treasurer made a Warrant to the Lord Chancellour to demise to
John Pempson land parcell of the Ducty of Comwall for the term of fifteen
years.

Note es in cap.

27 H. 6.
The Court of Exchequer.

112

pears in the like form of woods as the before recited Leafe was. This Leafe was pleaded in 11 H.6. and though the Leafe was by the words of Commissarius and Commissarius custodiam terre, &c. in pleading the Leafe pleaded a demerit of the Land it self, and there allowed to be good, which is worthy of obser-

Vide in Original in Scaccario de Anno 21 & 22 H. 7. Rot. 4. & ibid. 23 H. 7. Rot. 13. many such Leaves. But of ancient time, as it appeareth by Britton, both the Treasurer and Barons did demur, &c. Lettere Patent of the Alnage shall pass only by the Lord Treasurers warrant, and the gift of the office of the Ex-

By the statutes of 8 H. 6. cap. 16. and 13 H. 6. cap. 6. it appeareth that the Chancellor, or Treasurer had power to make leaves in certain cases of Ward's lands: but that is altered by the statute of 32 H. 8. of erection of the Court of Wards. *Note the statute of 13 H. 6. cap. 1 extends only to the Kings Warrant, and not to the Warrant of the Lord Treasurer.

It is to be observed, that when in any Act of Parliament or other Record the Treasurer is named for demurres, or other intermeddling with any of the Kings Revenue, it is to be intended of the Treasurer of the Exchequer.

De nos customs de quire & leynes, &c. What these customs were appearath in the Second part of the Institutes, by the Nature of Confirmation Carucum, the last branch, and the Exposition upon the same, whereby it appeareth that the King had no Custume but such as was granted to him by Act of Parliament.

The Exchequer is a place quare, It is a square, and the Carpet that sometime lay upon it has been throwed in the form of a Chess board, and thereon 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 build: Fourscore and one persons (whereof the Abbot of Westminster and forty eight of his monks were part) brake into the Receipt, and feloniously robbed the King of a hundred thousand pounds, ad damnum inestimabile, falsi the Record. All these foure and one were indicted of this felonie, and committed to the Tolbores of Westminster, and this was the occasion of the new building of both these parts of the Exchequer.

Q. It is to be observed, that the King's Revenue is such as he grants to the Officers of the Exchequer. It is to be observed, that the King's Revenue is such as he grants to the Officers of the Exchequer. It is to be observed, that the King's Revenue is such as he grants to the Officers of the Exchequer.

C. On deu Chivaliers, & 2 Clerks, on 2 homes letters, 2 Chivaliers by hereafter explained, 2 Clerks, on 2 homes letters, the one is intended to be the Baron of Court, the other the Clerk of the Pipe.
Cap. 11. The Court of Exchequer.

De les fees & franchises. Of fees, 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 King's benefit. The Warden of the Wardrobe is to make his account once in the year in the Exchequer. Once in the year the Treasurer of Ireland shall account in the Exchequer of England.

The accounts of the Exchequer to be more shortly heard, made and accounted for.

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, both take account thereof, as before is said.

Vide recordum & Processum contra Petrum de Rivalles alias Petrum de Oriall, Thesaurarium & Camerarius Regis totius Angliae & Hiberniae, &c. et omnium territorum, & omnium portuum, maris de compoto redditus de officiis praebendis, & de judicio contra ipsum redditum per delitam, qua venire recusat nisi salvo regis condicionibus, quod rex denegaret, quasi intolium & indebitum.

Per le view de un Sovereign que est Treasurier Denglittere. Of this great Officer we have spoken before.

Le 2 Chivaliers se lention de 2 Barons, &c. And herewith agreeably Bradon, Cotiterio vero Barones non sunt americanidi, nisi per pares suos secundum modum deicti, & hoc per Barones de Scaccario vel coram rege.

En cet place sont aussi Chamberleins, & plaiors autres ministres, que ne touchent mon motra la ley. Pereso we have spoken before.

Nul Common plea ne soit dite sans en Grand Charter. Upon this Act four several opinions have been conceived. That this Court might originally have been held of all common pleas; and this they think to prove by the title of Glanvill Book, which taking it altogether is this, Tralesatus de legisbus, &c. tempore Henrici 2, comparunt, judiciori gubernacula tenente illius viro Ramulphi de Glanvillia, juris regni & antiquarum constituendum eo tempore pertinentis, & illas solum leges continet & constituentes, secundum quas placitator in curia regis ad Seccarium coram Justiciis ubi circumsit fuerint. 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 held in the Exchequer against the great Charter.

In which Charter Curia nostra is only intended of the Kings Bench. That is in Magna Carta, to which this statute refers, there is no restraint, and therefore this statute of Artic super Cartas restrained not. That the Ordinance of Rutland is no statute, but made by the King for the other of this Court. In the Second part of the Institutes, in the Explication 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.

As to the first: it appeareth by the said ancient Authors, and by the authority of our books, that the Institution and institution of this Court have been only for the Kings business and profit, &c. as hath been said. For the Title of Glanvill 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 pertinenti. 2. He that added the title speecheith of the three Courts, viz. 1. In Curia Regis. 2. ad Seccarium. 3. Coram Justiciis ubi circumsit fuerint. For the first, viz. in Curia Regis, he intended Justice in Erie, &c. For example, Inquirentur purpura et in Capitale Curia, vel coram Justiciis Regis ad tales Inquisitiones faciend' in diversis regni partes transmissas per Jurassam patriae five Vicenct. 2. Ad Seccarium, this Court be both mention but once (that I remember) in all his book in these words. Si vero dominus Rex aliquam custodia aliqui comminisset, tunc distinguuit utram e custodia pleno jure comminisset, sua quod nullum eum inde reddere compotum opporret ad Seccarium,
which agreeth with the original institution and jurisdiction of the Court concerning the profit of the King. 3. Coram Justiciis ubinque fuerint in 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. Glanvil who wrote in the Reign of H. 2. doth (as hath been said) name the Escheuer as a distinct Court for the accounts to be made to the King. 2. In the "Black Book of the Escheuer dedicated to H. 2. of the observation of the Escheuer, it is said, Nullici littera Sacconii inhiieruntus, vel es quisvis communicare referre, haber in hoc commune cum ipse Dominus Regis Curia, in quippe in propriis persona juris discernit, nec recordationis nec fomentia in eis latecit alicui contradicere. Whereby it appears that the Kings Bench and Escheuer were distinct Courts in the Reign of H. 2.

To the third, our Statute is intituled Articuli super Carti, that is, Articles upon Magna Charta & Carta de Foresa: so as the sense of this Act is, that the Escheuer should hold no common plea no more then the Kings Bench: for the form of the Great Charter is, Quod communi placita non sequantur Curiam nostram. Secondly, our Statute is but an assurance of the Common Law concerning the jurisdiction of this Court, and this both expressly and notably appears in the Register in these words, Rex Thefarius & Barinous de Scaccario Salutem. Com secundum legem & confuetudinem regni nostri communia placita coram vobis ad Scaccarium praebat placitari non debemus, nisi placita illa nos vel aliquem ministrorum nostrorum ejusdem Scaccarii specialiter targeret, &c. Here it is to be observed, that this Writ of prohibition is not grounded upon the Statute of Articuli super Carti, or any other Statute, but upon the Common Law and Customs of the Kingdom, which concerning the jurisdiction of this Court both in common agree with our ancient Authors; and per-bills, wherein you shall observe an admirable harmony and consent in so many successions of ages.

This is a Statute profib is by the title thereof, and so that it is entered in the Parliament Rolls, and in the Register 178 b. it is called Statutum de Rotland.

Now it is good to know, how the Law commonly called Respondent superior, holdeth in this Court and in other Courts, and first by the Records of this Court, and then by Acts of Parliament.


How it holdeth in other Courts, Vid. 11 E. 2, tit. dec. 172, where the Sheriff be removable as in London for their insufficience, respondent superior, that is, the Starre and Commonalty of London.


There is a general Statute concerning all the Courts of the King, worthy of observation in these words:

Item,
Cap. 11. The Court of Exchequer.

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 Patent, Royall, within the said Courts, which have power and authority by virtue 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 peril, 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 expressly charged them in our presence, that they shall do right and reason to all our subjeets, 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 carrying as hath been done in times past.

It was resolved in the case of Auditor Provic, 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, good reprobatur in juce, and it appeared in our books.

For assignments of debts made to the King, see in my Reports.

By the Statute of 7 Jac. no debt shall be assigned to the King by his Heirs of Successors by or from any debtor or Accountant to his Majesty, by his heirs or successors, other than such debts as did before grow but originally to the Kings debt.

No obligation, recognizance or Statute made for paying harmless or performance of Covenants, etc. though it be forfeited, for any estate, other than 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 debtors are able to pay his debt: for the assignment at the Kings suit, the body, lands and goods of the debtor to the Kings debtors are liable to the King, whereas at the assignment, he could have done but his body only by capias ad satisfaciendum, or his goods only by Fieri fac; or half his lands and goods by Elig. By the Statute of 1 R.2: a penalty is provided for him who confesseth a debt to the King (that is not debtors to the King of Record) to delay the execution of other.

The Barons of the Exchequer are the Sovereign Auditors of England, for if a man assign Auditors to a Bapilfs receiver to account, and the Auditors will not allure just and reasonable allowances but commit the Bapilfs receiver to prison, such prisoner may have an Original Writ of Ex parte calls returnable before the Treasurer and Barons of the Exchequer, for his relief in that behalf.

Upon the Account in the Exchequer of B. Fulham the Kings Butler, he des Ramondamento allowance of certain parcels of Wines given by the King to certain persones by word of mouth without writing, and it was disallowed by the Rule of the Court.

Upon the account in the Exchequer of Richard Bury keeper of the Wardrobe, he demanded allowance for certain Veetels of gold and silver, and certain Veetels given by the King on tenes 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.
The Court of Exchequer. Cap. 11.

Hill, 6 E.4. Rot. 14. in Scaccario Inter Brevia in Dor. Petitionis case. A warrant under the signet is not sufficient to issue any Exchequer of the King out of the Receipt, but it must be under the Great or Privy Seal.

If the Barons do not allow unto an accountant before them such false demands as he maketh, he may have a Writ De allocandis faciendi directed to the Treasurer and Barons, commanding them to allow the same.

Of a Liberate for payment of a pension or debt, etc.

A Liberate is an Original Writ issuing out of the Chancery, and is directed to some Officers that have of the King's money 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 descriptio. But such a Writ cannot be directed to the King's Fermo, to pay a pension, etc., because, though the term of rent be behind yet it is not the King's until it be paid, and all the Writs in the Register are directed as aforesaid to Officers, as to the Treasurer and Chamberlain, to a Customer, etc. The form of the Writ appears in the Register 192, 193. And there it appeareth that there be two kinds of Writs of Liberate, one datant of current and continual, and another that is 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, 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 issue out, and before the deliverer, the King may discharge the Officer of the King's money in his hands. And if the King decrees before the deliverer of the Liberate, the Officer hath no warrant to pay it.

If the Officer at the time of the deliverer of the Liberate have of the King's money to pay, but part, and not the whole, the writ is no warrant to him to pay part. *& 21 H.6. ter. det. 43. 27 H.6.9. 37 H.6.4.15. 9 E.4.13.14. 1 H.7. 8. 2 H.7.9. F. N. B. 124. B. 14. Tin. Tale Dechecquer.

Vid. Mag. Cart. cap. 22. Liberationem antiquitatem habet, id est, precium antiquissimum statutum.

The course of the Exchequer is, that as soon as a Sheriff or Excheater enter into his account for, issues, amercements and mean profits, to mark upon his head O. Ni. that is as much as to say, as One, and if he have sufficient in expectation, and presently he is become the King's debtor, and a Debet set upon his head, and then upon the parties derived are become debtors to the Sheriff or Excheater, and discharged against the King.

The ancient course of the Exchequer hath been, that if in an Information of Intrusion into lands, etc., 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 King's 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 whole possessions the lands, etc., were; but if the Defendant plead not guilty, the King's learned Council cannot know the Defendant's title, to provide to answer the same, as the Defendant may do the King's title.
A Court to enquire of, and certify 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 tenure of the accounts, to the most unlawful and discreet persons in the Counties, where the Accountants be Officers, to enquire and certify the profits which the Sheriffs, Escheators, Attorneys, Controllers, and other the Kings Officers have received, &c. by them upon their said accounts deceitfully concealed, &c., and being attained of the said frauds and deceipts, they shall forthwith treble the value, and their bodies to prison, until they have made fine and ransom to the King, after the discretion of the Judges.

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 & praebet, quod de cetero angiis amisit femel in anno commutus Valsout & Hibernie per Confabulatum Burdegaliae, & Theaurarium Hibernie reddantur ad Securitam Anglie, & ibid. audiantur per Theaurari & Baronos suis. A sorteni of Accounts within the Realm.

And of the Court of the Exchequer we will end with an old Verse ingraven in Stone in the Exchequer Will,

Ingrediam Jini, rediturus es amulus Asgi.

The Chief Baron is created by Letters Patents, and the Office is granted to him Quamdiu se bene gesserit, wherein he hath a more fixed estate (it being an estate for life) then the Judges 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 implied, 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 Attorney General, and Solicitor are also Quamdiu se bene gesserit.
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 matters 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 iseth a Prohibition, which, as is, accordingly, apparent in the Register: for all are said Community Placita, which are not Placita Contra.

By the statute of 33 H. 8. cap. 39., they have full power and authority to discharge, cancel, 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 the giving 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 appearance or other contempt. And that if any person of whom any such debt or duty is demanded, allege, 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 King's debts in the custom and possession of others and upon presents, the same shall be wholly and * interestly, 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 mortgages for term of life, are excepted.

By the said Act of 33 H. 8., special jurisdiction is given to the Court of Augmentation, when title is pretended to any Barony, Land, Tenures or Reversions, bargained, sold, or exchanged by the King, upon which Letters Patents are given; or shall be registered 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 new-answered 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, so that the Court of Augmentations is dissolved.

J. S. bought, Lands of the King by estate 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 privilege in respect of the rent, for that the King can have no prejudice or benefit thereby; for whether A. or B. both prevale, yet must the Kent be paid: and if this were a good cause of privilege, all the lands in England belonging of the King by Rent, &c. might be brought into this Court.

But if black-ace be extended to the King for debt of A. as the land of A. and the King leaseth the same to B. for years, receiving a rent: C. pretends that A. had
had nothing in the land, but that he was seized thereof, &c. this case is within the
privilege of this Court; for if C prevails the King loses his rent.

The King maketh a lease to A of Black acre for years reserving a rent, and A
is possessed of a team 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 howe, where our Lords say, that the King may distrain for his rent in
all the other lands of his tenant, of whomsoever the land be held, it is then to
be understood, that the other lands must be in the actual possession of the tenant
for; he cannot distrain in those lands in the possession of his tenant for life, ten-
ant for years, or at will.

Some are of opinion that a Court of Equity was held in the Exchequer
Chamber before the Nativity of 33 H. 8. And then it must be a Court of Equity by
prescription; for we find no statute of parliament that doth create or establish
any such Court; and if it be by prescription, then judicial proceedings in courts of
equity must guide the same: as to the Jurisdiction, it is there that had
been of ancient time an Officer of the Exchequer called Cancellarius Secrærii, of
whom amongst other Officers of the Exchequer Flea hath faith thus: Officium vero
Cancellarii, est sigillum regis cultutrium foemini cum contrasoluta de proficuo regni.
And the Prerog. brevire, et purgare por la ou sui Chanceler del Exchequer vet
(tiqui a fair buy acquittance de tant que a voir pay al Exchequer de la dite le Roy south
esle sele del Exchequer ou de lay a fair acquittance de tief jour tang; a tief jour, &c.
His ancient fix is 40 Marks, Libert out of the Wardrobe at 12 l., 17s. 4d. in to-
to 39 l., 10s. 3d. at 15 H. 8. cap. 16.

* The Exchequer hath a Chancellor and Seal, and the Writs usual in the
Chancery in the Exchequer to seize land, are more ancient than Prerog. Regis.
Hereunto it is collected, that being 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.

Wherefore I come to stand 23 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 Lord 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, who have the custody of the
Registars, &c.

* We find a Petition of the Commons in 2 H. 4. that no Writs of Privy
Seals be issued out of the Chancery, Exchequer, or other place, to any man to appear up
on 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 ne-
cessity.

* Ann. 3 H. 5. the Commons petitioned that all Writs of Subpoena and Certis
de causa going out of the Chancery and the Exchequer might be intted, and not
granted of matters determinable at the Common law on pain of 40 l. The King's
answer was, That he would be advised.

* 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 Ex-
chequer 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. 3. & 31 Eliz.ca. 1. Co. pl. Inst. fo. 2. 34. 37. And 7. This
Court of Equity in the Exchequer Chamber.

**CAP. XIV.**

Of First-fruits and Tenths Ecclesiastical.

A Court of the First-fruits and Tenths was raised, Officers constitted, of Chancellor, Treasurer, Kings Attorney, two Auditors, and two Clerks: Authority given them to compound for First-fruits, Bonds taken thereon should be of like force as a Statute Staple; but this Court was disolved by Queen Mary Parl. 1 Sess. 2. cap. 10.

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 3 & 4 Phil. & Mar. cap. 4.

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, supervision, and government of the Exchequer, and created a new Office, and Officer, viz. Arememberancer of the First-fruits and Tenths of the Clergy, who taketh all compositions for the said First-fruits, and Tenths, and maketh prices against such as pay not the same.

First-fruits, &c. Annates, Primate, are the First-fruits after abstinence of every Spiritual Living for one whole year except Vicarages not exceeding 10l, and Personages not exceeding 100l., but all are to pay Tenths.

Ecclesiastical Livings were sometimes valued by a tax on the tithe made in 20 E. 1. which remained in the Exchequer, and by another taxation in 26 H. 8. which also remained in that Court. And according to that latter taxation are the values of Ecclesiastical Livings computed for the First-fruits and Tenths. What Pope first imposed First-fruits, until 1 Histories do agree, I will not trouble myself.

What we find of record concerning First-fruits, we will summarily relate.

b The King forbidding H. P. the Popes Antioch to collect First-fruits, &c.

c That the Pope Collects; he is not longer to gather the First-fruits of Benefices within this Realm being a very nobility, and that person do no longer pay them.

d The Commons do petition that provision may be made against the Popes Collectors for levying of the First-fruits of Ecclesiastical 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 novelties.

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.

e Against First-fruits by Archbishops and Bishops to the Pope of Rome, terming it a horrible mischief and damnable Custom.

b It is enacted, that the Popes Collectors should not from henceforth levy any money within the Realm for First-fruits of any Ecclesiastical dignity by any provision from Rome upon pain of the Statute of Prohibition: but this is omitted out of the print of 9 H. 4. cap. 8.

f The Bishop of Norwich had in 19 E. 3. by prescription time out of mind of man First-fruits within his Diocese of all Churches after every abstinence. But these also were given to the Crown by the Statute of 26 Hen. 3. cap. 3.

Tenths Ecclesiastical, Decims, these are the Tenth part of the value of all Ecclesiastical
The Court of Augmentations

This Court was erected by authority of Parliament in Anno 27 H. 8. consisting of a Chancellor, Treasurer, Attorney, Solicitor, and all land, &c. belonging to Monasteries, and purchased lands were within the Jurisdiction and government of this Court. This Court could not be erected but by Parliament, because a Chancellor, and a Court of Equity were constituted. Pope hereof in the next Chapter.
CAP. XVI.

The Court of Generall Surveyors of divers of the Kings Lands, with power to make Leaves for twenty one years, erected by Act of Parliament in 33 H. 8.

But 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 rehearseall of the Statute of 7 E.6 cap.3, 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.

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.
The Honorable Court of Chivalry before
the Constable and Marshall.

Rot. Pat. 12. H. 4. m. This Court is called Curia Militaris, and Rot. Pat. 2 H. 6. m. 9. the Marshall Court.

The Judges 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 Judges, and to see execution be done.

Constable of Constable is compounded of two Sarum words, Caimig per contrationem Kinge and fable, id est, columnen, quas columnen regis, antiquitatem Cuniculitatem. Marshall antiquitatem iustitiae Martiscale Lizius of two Sarum words, viz. Marcus for equus; and State curator, quas curator equorum: For the Marshall Marischallus, and the derivation thereof, see the Fifth part of the Institutes Sect. 102. fol. 74. Sect. 154. fol. 106. Sect. 745. fol. 391.

The Court of Chivalry was anciently held in the Kings Hall.

This jurisdiction is declared by the Statute of 12 R. 2. Stat. 1.

Because the Commons do make a grievous complaint, that the Court of the Constable and Marshall have incroached upon them, and daily 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 oppreッション 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 Spiritual and Temporal, the power and jurisdiction of the said Constable in the form that followeth.

To the Constable it appertaineth to have consuance 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 customs to the same matters pertaining, which other Constables have heretofore duly and reasonably used in their time, joyning to the same that every Plaintiff shall declare plainly his matter in his Petition aforesaid 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 Council, 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.

The Court of Chivalry.

Cap. 17.

* Dec. 19. 18. The Judges shall make diligent inquiry, and if the accused be found false, and that he hath given false witness against his brother, they shall do him as he had thought to do to his brother, and shoo that put evil away from the midst of thee.

See 1 E. 6. cap. 12.

5 E. 6. cap. 11.

in the 3 part of the Inst. pt. 23.

See 3 El. 6. cap. 5.


37 H. 8. cap. 1.

5 E. 6. cap. 11.

* Out of the Realm. This is to be understood in any sorest part beyond the Seas. In partibus exterius & transmarinos. For upon the Sea the Admiral hath jurisdiction, which Admiral (our English Neptune) cannot meddle with any thing done beyond the Sea upon the Land, and the Constable and Marshal have no cognisance of any thing done upon the Sea.

Where by these Acts it is provided, That all treasons, misprision of treasons, or concealments of treasons committed out of this Realm of England, should be inquired of, heard and determined in the Kings Bench by good and lawful 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 lawful 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 both take away the jurisdiction of the Constable and Marshal, where one accuses 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 Realm the Constable and Marshal should have cognisance thereof; because High Treason is not triable by Jury according to the course of the Common laws of the Realm in that case; want of proof, as by all the proceedings aforesaid it appeared. Neither both the said Act of 35 H. 8. 6 E. 6. take away the Statute of 38 H. 8. cap. 15. for trial of treason done upon the Sea; whereas 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 concerning the trial of them. See the preamble of the Statute of 35 H. 8. and of 6 E. 6.

* If any Merchant English be spoilt, or his goods taken from him beyond Sea by any Merchants strangers, and the English cannot, upon such attaint
attain to justice there, he shall have upon testimony thereof a suit out of the Chancery to arrest the Merchants strangers if they enter into England, or their goods, &c. until they be satisfied. See hereafter the Chapter of Admirals.

Before this Act at 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 Sheriff.

No addition either of persons or of jurisdiction can be added to this Court, unless it be by Act of Parliament, for ancient Courts ought to be exercised according to the ancient and right institution.

In the Appeal aforesaid between Upton and Down in 8 H. 6. after battel joyed, the kings writs went out of the Court of Chancery to the Sheriffs of London, as we find it entered and recorded in the great book of the Abbey of Bury, fol. 57, as followeth.

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.

By the statute of 1 H. 4. all Appeals of things done within therealm 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 Marshal of England for the time being, and that no appeal be pursed in Parliament.

They proceed according to the Customes and usages of the Court, and in cases omitted, according to the Civil law. &c. And hereupon Attainder before the Constable and Marshal of England for the time being, no land is forfeited, its good debt being paid.

For reasons, such as, and other Authorities in law as well for the explication of the said statutes, as for the jurisdiction and proceedings of this Court, as the First part of the Institutes, Sect. 1. 2. and 7. 4. and peruse those Authorities there cited. See also the petition of Right, 3 Car, cap. 1.

It is to be observed that after sentence pronounced in this Court of Chivalry in cause of Arms the party gyved may appeal to the King, whereas you may read a notable record, Rot. Par. 13 R. 2. parte 3. Note also a special Roll, An. 1. 4. R. 2. intituled Rot. proceds in curia militari in causa Armorum, Int. Ric. le Scoop Chivalier, & Robertus Grovenor Chivalier.

And for this cause (among others) the Heralds are Attendants upon this Court. Of these Heralds there be tres Regis, viz. Garter Rex armatorum, Cla. for arraying and murthering of men, which at this day is of force, and no other. Vide 8 H. 4. 48. out of that. See also 14 H. 3. /sec. 5. 1. a Commission of Lieutenancy. See hereafter amongst the Ecclesiastics! Concerns, Tit. Appeals, Vide, Glover 6, 83. Saxoniae Echold, &k. horneman tenens, Lateine faciales, 5 E. 4. 6. b. P. Com. 75. 7.
senceur Rex Armorum ex parte Aureli, Norroy Rex Armorum ex parte Berkeley; & Sex Alii Heraldi. These English heralds are messengers of war and peace, shielders in deaths, penengers, and armories; they marshall the solemnities at Coronations, they manage combats before the Constable and Marshal, and upon request they solemnize the funerals of noble, honourable, reheren, and widowfull parsonages. They were first incorporated by King R. 2, and afterwardes newly incorporated by King Philip and Queen Mary. Their learning and faithfull dealing in deaths and pedigrees upon just post may be a mean to quiet many controversies about the titles of house, dignities, and inherances.

In the Prophet Ezekiel it is thus written: Dicit dominus Deus, & erit manus mea super Prophetae, qui vident van, & divinum mendacium: in concilio populi mei non habebitur, & in scriptura domus Israhel non scriberetur.

Upon these latter words Bibines to hold, Quod mos erat in Israel, quod unumque familia genealogiam ejus scriberebat, in quia dignoscerebat quilibet de quibus erat, & de quibus familia & quae hereditas ejus esse debet, & ille qui penitus declararet, non scriberetur.

These heralds are discharged of Subsidies. Tolls, and other charges of the Common-wealth by Letters Patents of E.S. Anno 7, of this reign,

See the First part of the Institutes for degrees, and creations of Nobility, and trials thereof, Sect. 9, fol. 19. & Sect. 94, fol. 69. whereunto you may add a notable test in the Register, when a Baron 92 and higher degree of Nobility is sued in the Court of Common pleas, and process awarded against him by Cap. 92 of Ignominy, then may he sue out this writ.

Rex justiciariss sui de Banco Solatium. Mandamus vobis, quod G. T. miles coram vobis felicis aliusquis per aliorum personales implicatissimis, extile, talis processum et non alium versus ipsius in obione pridibus servificiatis, qual versus dominos, magistrates, Comitis sine Batarum regni nostri Anglo, qui ad Parliamnnum nostrum de sommatione nostri urum bene
debent aut corum aliquem fecandum legem et consuetudinem regni nostri Anglo fuerunt faciendo, quia prididi G. T. annum Barabani regni nostri pra
didit ad Parliamnnum nostrum de sommatione regia venientium recordari, &c.

The Barony of Edmond de Eincourt commonly Deincourt of Lingely in Lincolnshire originally created by Writ, had long continued in his Sir-name, and having no issue male, a tresson that his Sir-name, Arms, and Barony, all which he held in fee simple might continue, by humble suit impostumed King E. 2, so that he conceivd, Quod cognomen suum & arma post mortem suam deleteretur, & cordeis assestatur ut post mortem ejus in memoria habentur, ut de manerios & armis suis sequatur quemquevolucere: and in the end he obtained his suit by the Kinges 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 assignes sat in Parliament in 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 Queens commandment between Edward Nevill and Lord Mary Vane daughter and heire of Henry Lord of Aburgaveny for the right of the Barony of Aburgaveny, found 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
The Court of Chivalry

vd under his seal, granted his name, arms and dignity over, but having not the Kings Licence and Warrant, the same was in Parliament as surveyed 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 ordained 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 Heretochis 29 Here-
togis, i. dux turribus exercitus, ab Heri exercitus, & cetera ducere.

Herecitos agricola with either of these great Officers, Constablaries of Mars-
challus: Iti vero eligebatur per commune concilium pro communis habitatione regni
per provincias & patres in pleno Falk note.

This Office of the Constable of England was afterwards by inheritance by the
ancestors of the Hailey, Newman, and Wittenhurst by Grand Ser-
Iants, in the line of the Bohuns Earls of Hereford and Essex, and afterwards
of right in the line of the Stafford and Dukes of Buckingham, as heirs gen-
eral to them: at the talk by the Opinion of * all the judges it was lawfully
decided to Edward Duke of Buckingham, who was a tainted of Creason,
in Anno 13 H. 8, whereby this Office became forfeited to the Crotom, 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 has vice.

For the Office of the Earl Marshal, see the First part of the Institutes, Sect. 101.

The effect of the grant of this Office of Constable of England is in very few
words, viz. Officium Constablarii Anglie uni cum omnibus foedibus, proficuis,
 commodatatibus, & emolumentis quibusque officio praebito quatuor tertiis
 pertinentibus, & ad antiquo debits & conuets.

And by no means are we to follow
the irregular president of the grant thereof by King E. 4. in the Seventeenth
year of his Reign to Richard Wilewile Esq. Rivers and Lord of Grafton and De la
tate for his life; which Patent you shall find Rot. Pat. Anno 7 El. 4, part 1.
and is directly against the Common Law and the Statutes concerning the jurisdiction
of this Office; and therein to observe all the goods and wholesalque labors
made for the declaration of the jurisdiction of _this_ great Office, poner was
given to the Earl Rivers to have comnonse in case of High Creason, and other
causes and affairs; Quia in curia Constablarii Anglie ad antiquo, viz. Domini
Guilielmis Conquestoribus proponentibus regni, feu aliquo tempore cita,
tralari, audit, examinari & decidiri contentur, feu de jure debentur iure debeat, & diversa alia
perperram. And therefore by no means the same as the like is to be Eaton into
example.

For grants of this great Office of Constable of England, see the precedents,
and by that which hath been laid chaste the best. Rot. Pat. 1 H. 4, parte 1. Hen-
nrico Comhair North, prov. Ero. Rot. Pat. 4 H. 4, parte 2. Johanni filio regis, ad placi-
Johanni Ducis Bedford, pro via. Rot. Pat. 8 H. 6, parte 1. Richardo Ducis Eborum
Pat. 1 E. 4, parte 3, m. 188. Johanni Com. Wigorn. Rot. Pat. 7 E. 4, parte 1.
E. 4, parte 1. Pat. 9 E. 4. Georgio Ducis Clare. Pat. 9 E. 4, parte 2. Rich-
Pat. 16 E. 4, parte 1. Richardo Ducis Bedford. Henricus Stafford Dux Buckingham
jure hereditario. Pat. 1 R. 3. Thomas dominus Stanley, Edwardus Dux Back, jure
hereditario.
This great Office hath been usually granted, as by the proceedings aforesaid appeareth. Exercendum per se vel per sufficiens deputatos fuit, et per sufficiens, deputatum fuit.

There is also an Office of Subconstabularius granted to Thomas Kent Dodor, of Linnes. Pat. 23 H.6, parte 2. Simile Pat. 23 E.4, m. 1.

There is also Clericus Constabularia Anglie, & Promotor causarum & negotiorum regiam majestatem tangan. This Office was granted to Thomas Appariton with a fee of five marks, Pat. 8 E.4, parte 1.

Concerning the Grants of the Office of Earl Marshal 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.

Res, &c. Scitis quod cum nos nuper de gratia nostra speciali conceferimus dicto constangineo nostro Thome Comiti Nottingham Officium Marechalli Anglie, habendum ad totam vitam fum: Nos jam de ulteriori gratia nostra concessimus praefato constangineo nostro officium predictum * Iuna cum nomine & honore Comitis Marechalli. Habendum ibi & hereditibus suis masculis de corpore suo exercitibus, cum omnibus feodis, proficiis & pertinientibus quibusque dicto officio qualitatisque spectantibus imperpetuum. His testibus, &c. Dic. 12 Jum. 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.

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. 7, parte 3.
1 H. 7, parte 4.
1 H. 7, parte 5.
Vide Rot. Parl. 1 E. parte 1. m. 19 & 22.
19 Jac. parte 13, nu. 5.
3 H. 6, m. 18.
1 Matrit. nu. 34.
1 R. 3, m. 2 & 3.
20 R. 2, nu. 33.
13 R. 2, m. 19 & 20.
1 Parl. 21 E. 1. Rot. 1. One pertinent ad officium Comitis Marechalli, &c.

There was also Vicemarechallus, which Office was granted to Tho. Grey huc vice.

Vid. Lib. magn. de Scaccario, concerning the Offices of the Constable and Marshall, & Lib. rubro fo. 36.

See also the Marshal of England, Flota lib. 2. cap. 45, and Britton in principio libri.

Sec Mich. 13 E. 2. in Scaccario pro feodis Constabularii Anglie.


Hereflitta signisset a Soldier hired and departing without license, deriving of Here, exercitius, & litter, to depart.

If any Souther have obediently to ferue the King in his War, and appeare not at the time and place appointed, there is by the Common Law an original writ of Capias conducted ad proficium, directed to two of the Knights Servants.
Cap. 17. The Court of Chivalry.

Sergeants at Arms to arrest and take him wherefoever he may be found, and to bring him Coram concilio noto with a clause of assistance: but of this matter, see the Third part of the Institutes, Cap. [Soulterer that depart, &c.] 129. 1 Car. 3.

The petition of Right concerning special law, and the Commission to Lieutenant, &c.

To conclude with some short touch concerning right of war. Si quando accessoris ad expugnandum civitatem, offerent pugnam pacem, et sed there many things concerning right of war. Quae res suis commiserit bellum adversus alienum regem, non sedens prius cogitaret si potuit cum decreti militiae occurrere et qui cum viginti militibus venit ad illum, tamen illa adhuc longe agente legationem mittens rogavit ea quae pacis fuit.

Haud tacite vincitur qui de justi & adversarii copias, vere potest judicaret. Quia colloquium offerit, semper pavelit, he that offereth partly is able afraid. Nulla sunt meliora consilia quam quae ignoravit adversarius antequam factas. Nullum bellum est jactum, nisi aut pro robis perpetui geratur, aut ante denunciationem sit, & indiciatum.

Jure gentium non licet inimicius exerceret bellum gerere, suas quam ille a quo injusta sit oris mensurar aliquam injustam retinere, et ab injusta abstinere.

Justum autem bellum est quod tria habet, Authorem, Caufam, Finem.

Semper in praefidio his maximum periculum, qui maximim timent.

Longa belli preparato celerem sic victoriam.

Ideo subiuganda sunt bella, ut sine injusta in pace vivatur.

In republica maxime controversia sunt jura belli.

† Olim veteri leges armorum, cives et burgenses militiae tractare prohibebant se-

erunt.

Sic a touch Vegetius for his own honour and worthiness, and for that Fortescue fo. 79. b. citeth him.
CAP. XVIII.
The Court of the Marshalsea.

By the derivation of Marschallus & Marschalis, we 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.

Albeit in this Court the Steward and Marshal of the household are Judges, and the Steward hath the precedence, yet the Court is called the Court of Marshalsea for these causes. First, he is not only a Judge, but with 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 precedence of the Marshal of England, yet the Court holdeth 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. no. 32. that the Court of the Marshal can hold no plea but such as were holden in the reign of E. 7.

For the jurisdiction of this Court, and within what precinct, see in my Reports, Lib. 10. fo. 68, 69, &c. Le cafe del Marshalsea, Lib. 6. fo. 10, 10, 21. Michelbornes Cafe. 7 H. 4. 15. in Calvins Cafe. Lib. 4. fo. 46, 47. Swifts Cafe. Rot. Parl. 30 E. 1. Rot. 2. All inquisitions concerning any Citizen of London shall be taken in London.

Pertinent ad Marshallum Cur. hic venire fac. juratores super selones captos cum manusopere in Aula regis.

This Court hath his foundation from the Common Law of England. 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 Stare-bearers, and Servitors of bills, see the statute of 5 H. 4. cap. 22.

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 Urge. See Par. 30 E. 3. no. 91, 163.
CAP. XIX.

The Counting-house of the Kings

Houyhnhn. Domus Composita Hospitii Regis.

It is commonly called the Checeloth, in respect of the Elyon 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 Houyhnhn, 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 Houyhnhn. Secondly, for making of provisions for the said Houyhnhn, 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 Houyhnhn. Fifthly, the Cofferer is to pay the wages to the Kings servants beneath the Nairn, and the Lord Chamberlain above the Nairs of the Kings Houyhnhn. Vide 39 Eliz cap. 7. and he is to account in the Exchequer, for about 40,000l.

Sue Pleta de officio Theofurani Hospitii Regis, &c. Habet enim Rex alios clericos in hospitio suo, ut Theaur, Gardnerob, &c. quae est locum Clericis tantum assignatum, quod in Francia Camera Clericorum appellatur. Hoc enim Theofurani circumspectum Regis & familiae non committeri, qui cum Clerico pro visis scilicet auctoritate pro Comptore recordetur habere et in his qui officium sicut contingat.


Item de expensis. Gardnerob in quibus emptiones panorum, pelure, cere, pecorum esse, & huymodii comprehenduntur. Item de jocibus. Item de expensiis, in quibus diversi onerant. in comper reddend. Item de Nuncius. Item de Falarcon.


Item doos magistratos Curorum, lardenar, poletar, scutellar, falsar, & clericis coquinis qui de eisdem officiis pro omnibus in eorum praesidio de expensiis illius dieta reddat, rationem, quorum omnium praesidio necessaria est. Item Eleemosynar, ianitor, servientem ad custodiam summare. & carectarum deputarum & clericum de Mariecauli cum Mariecali fratres eorum, qui quidem clericis de expensiis, & alii aven, littere fratriorum & harnice pro equis & carectis ac de vadiis servient. scutiferarum clericorum & gare respondet, cujus interest seire tam de his qui de novo sunt admissi ad vad. Regis, quam de vagariis & in his vadiis minuere & augere. Vadis autem absintibas sine speciali praecepto regis nisi obsequia regi fuerint minime concedunt; praesidia autem Coronatoria Regis necessario cxl.
erit in pleno compoto, compoti auditores super foro frumenti & aven. infruent & edocent qualit. proclamat, in citiend partibus per quod melius ince po frument quom quae nobili fieri debent de quart, frument. qui quibus omnibus congregatis audire debeb. expend. & rationebem compot. illius datae.

C. Marechalli autem de supervenenibus debent inferiori Mar. testimoniium pertinere. Hostiarius miles hostiarius alius de numero seculorum Iward, coe, camera, hostiario canter. Regis, & se quibus alii, & sic audiat compot. de datae dieta.

And then followeth a description of the duties of the several of them above

laid, lasten by the reposing.

The Coster is in Fleta called Coster of the Coster: because he would have money in his Coster to pay wages, &c. as is aforesaid. It is enacted by the statute of 28 E. 1, cap. 2, that all pursuors shall account in the 2 Howdole, and in the Wardrobe, Rot. Par. 28 E. 3, m. 34. no pursuor arrears shall be brought before the Counsel, &c. but take his remedy by the Common Law, be the third part of the Institutes. Cap. Purveyants.

* See the Statutes concerning Purveyours, Ann. 36 E. 3, cap. 2, 3, 4, 5, 6, &c. But observe that there is left out of the print the name on the Steward, Treasurer, Controller, and other Officers of the Household at the Kings will, for not executing the statute: which omission hath made those of the Green cloth the holder.

At that Parliament it was also enacted, that the Kings Carriages should be made in as easy 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. per se, 1 E. 4, cap. 1. Clerk of the Wardrobe, Rot. Parl. 7 E. 7. the expenses of the Kings Household 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 suits the Kings Judges are to direct into the Wardrobe: more of the Wardrobe, Rot. Claunt. 33 E. 1, m. 3. Rot. Liberation. 1 E. 2, m. 4. To conclude, see Rot. Claunt. 18 E. 4, m. 13. Where it appears, 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 leasues were and ought to be, as it appears in 19 E. 4. 6. And thus much of the Wardrobe being mentioned in Fleta.

The Officers of the Counting-house never held plea of any thing.
CAP. XX.

The Court of the Lord Steward, Treasurer, and Controller of the Kings Household, concerning felony, by compassing or conspiracy to kill the King, or any Lord or other of the Kings Councill, &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.

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, PILFROSTION of Treasons, Murders, Murderers, Blasphemy, and other mischievous strikings, whereby blood 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, 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 itself, for Compendia sunt dispensia.

CAP.
CAP. XXII.
The Court of the Admiralty proceeding according to the Civil Law.

Articuli Admiralitatis.

Articuli Admiralitatis. 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. 

The Process and proceedings in this Court are in the name of the Lord Admiral.

The Title of the Complaint.

1. Objection.

That whereas the conscience 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 Cheshire, and such places.

By the Laws of this Realm the Court of the Admiral hath no conscience, power, 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, disallowed, and remedied by the Laws of the Land and not before, by the Admiral nor his Lieutenant in any manner. So as it is not material whether the place be upon the water infra fluminum & refluxum aquarum: but whether it be upon any water within any County. Therefore we acknowledge, that of contracts, pleas, and quereles made upon the Sea, or any part thereof which is not within any County (from whence no trial can be had by the be men) the Admiral hath and ought to have jurisdiction. And no person can be accused 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 declared to be out of any County. See more of this matter in the Answer to the first Article.

When Actions are brought in the Admiralty upon bargaining and contracts made beyond the Seas, wherein the Common Law cannot administer justice, yet in these cases Prohibitions are advanced against the Admiralty Court.

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 Constables and Sheriff; 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 or any payment of any money within this Realm, or otherwise, wherein the Common Law can administer
Cap. 22. The Court of the Admiralty.

minister justice, and give ordinary remedy; in these cases neither the Constable and Sargent, nor the Court of the Admiralty hath any jurisdiction. And therefore when this Court of the Admiralty hath dealt thereby 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 Arts and Judgements of the said Court: It is now affirmed by the Judges of the Common Law that the Admiral Court is not a Court of Record, and therefore not able to take such stipulations: and therefore Prohibitions are granted to the utter overthrow of that Jurisdiction.

The Court of the Admiralty proceeding by the Civil Law is not a Court of Record, and therefore cannot take any such Recognisances 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 Chief of Cyrus, but an appeal before certain Delegates do lie, as it appeared by the Statute of 3 Eliz. Regias, cap. 5. 3 Eliz. cap. 5.

which proved that it is no Court of Record.

That Charter-parties made only to be performed upon the Seas, are daily

The 3. Objection

The Answer.

that Charter-parties made only to be performed upon the Seas, are daily

by virtue of an Act, from that Court by Prohibitions. The 4. Objection

The Answer.

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 Judges 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.

That the Clause of Non obstante Statuto, which had foundation in his Majesty's prerogative, and is current in all other grants yet in the Lord Admirals Patent, is said to be of no force to warrant the determination of the cases committed to him in the Lords' Ships Patent, and so rejected by the Judges of the Common Law.

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 dispens'd 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 encroached upon the jurisdiction of the Common Law, to the intolerable grievance of the Subjects, which hath oftentimes urged them to complain in your Majesties Courts of ordinary Justice as Weelm. for their relief in that behalf. The 5 Objection

The Answer.

To the end that the Admiral Jurisdiction may receive all manner of impeach-

The 6 Objection

The Answer.

ment and interruption, the Rivers beneath the first Bridges, where it ebbs and flows, 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 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 hoarding in the main stream only beneath the points of the same Rivers right to the sea, and no other place of the same rivers, no; in other causes, but in those two only, the Admiral hath cognizance. But for all contracts, pleas, and quarrels made or done upon a River, Have, or Creek, within any County of this Realm, the Admiral without question hath not any jurisdiction, for then he would hold pleas of things done within the body of the County, which are triable by twelve men, and merely determinable by the Common Law, not within.
within the Court of the Admiralty according to the Civil Laws. For that were to change and alter the Laws of the Realm in those cases, and make those contracts, pleas and quarrels liable by the Common Laws of the Realm to be framed and tried in the manner and form of the Common Laws, and to be sentenced by the Judges of the Admiralty according to the Civil Laws. And how dangerous and penal it is for them to deal in these cases, it appereth by judicial Presidents of former ages. See the answer to the fist 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 so far as much thereof as differs from these answers, it is against the Laws and Statutes of this Realm; and therefore the Judges of the Kings Bench never attested thereunto, as is pretended, neither both the phase thereof agree with the terms of the Laws of the Realm.

The 8. Object. Many other grievances there are, which in discussing of these former we'll easily appear worthy also of reformation.

The Answer. This Article is so general, as no particular answer can be made thereunto, only that it appears by that which hath been said, that the Lord Admiral and his Officers and Ministers principally by colour of the said void Non obstante, and for want of learned advice have unjustly intrusted upon the Common Laws of this Realm, whereas the mortmain is the less, for that the Lord Admiral, his Lieutenants, Officers, and Ministers have without all colour intrusted and intrusted 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 Prize at Sea, and other goods and chattels which in no sort appertain unto his Lordship by his Letters Patent, wherein the said Non obstante is contained, and for the which he and his Officers remain accountable to his Majesty. And they now wanting in this blessed time of peace, causeth appertaining to their natural Jurisdiction, they now intrusted upon the Jurisdiction of the Common Law, let them stand 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 intrusions upon the Jurisdiction of the Common Law. So as they do not only unjustly intrude, 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 poor Justice 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 Term time. Ex officio, but upon motion made in open Court by learned Counsel, and after a day presceded, and warning given to the adverse party, and upon reading of the Libel in open Court, and hearing of the Counsel Learned of such of the parties as were warned and did attend.

The said answers were proved and confirmed (as is aforesaid) by these kind of Authorities in Law. First, by Authority of the High Courts of Parliament. Secondly, by Judgments and judicial Presidents. Thirdly, by Book-cases, and the Authority of our Books.

Concerning the Acts of Parliament: It is enacted by the Statute made in 13 R. 24. 5. That the Admirals and their Deputies shall not meddle from henceforth with any thing done within the Realm of England, but only 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
Cap. 22. The Court of the Admiralty.

that the Jurisdiction of the Court of Admiralty is only confined to things done upon the Sea, which the adverse party yielded, but claimed by colour of a Non obstante, &c., which is utterly void, as hath been said.

By the Statute of 15 R. 2. cap. 7, it is enacted and declared, That the Court of the Admiralty hath no manner of consunption, power nor jurisdiction of any manner of contract, plea or querel, or of any other thing done or riving 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 riving 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, termed and discussed, and remedied by the Laws of the Land, and not before, nor by the Admiral nor his Lieutenants in no manner. Nevertheless of the death of a man, and of a mayhem done in great Ships, being and hovering in the main stream of the great Rivers only beneath the points of the same Rivers, and in no other place of the same Rivers, the Admiral shall have consunption.

This latter clause gives the Admiralty greater Jurisdiction in case of death and mayhem, (but neither of which is 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 Admiralty of all manner of Jurisdiction within any water which lieth within any County of the Realm.

The Statute of 2 H. 4. cap. 11, enacted, That the said Act of 15 R. 2. cap. 5, be firmly held, and be put in due execution; and further at the prayer of the Commons, that as touching the pain to be set upon the Admiral or his Lieutenant, that the Statute and Common Law shall be held against them, and the party grieved shall recover his double damages. By which Act it appeareth, that the Statute of 15 R. 2. is to put an Amendment of the Common Law, as shall also manifestly appear hereafter.

Which this Act cannot be dispensed with all, 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. describes 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 coast of the sea, being no part of the Body of any County of this Realm, and without any pension, jurisdiction, or liberty of the Cinque-port, and out of any Haven or Port 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.

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, hereafter shall be 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 seen the Sea within certain bounds and bounds, Qvis conclusit othi mare, quando eram peperat, quasi de vulva procedens: circumdedit ille terminis maris, & populi veste & offia, & dixi, Utique hic venies, & hic procedes amplius, & hic confingens numeres & fluctus ejus.

Concerning the second kind of proof, viz. by Judgement and Judicial pre- visions, every of them in all successions of ages in sine tempore, taking some in every age for many that might be cited.

Reg. after Origin, fo. 139. 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 seize on their goods to the value which proboeth that the Admiral cannot hold plea thereof, for that
the party hath remedy by the Common Law, and the Admirals power is only Super altum mare.

Hil. 6 H. 6. Rot. 303. in the Court of Common pleas between John Burton Plaintiff, and Bartholomew Put Defendant, the Case was on the said Statutes. The said Bartholomew then 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 Merchandises to the value of 960 Marks, 5 s. 5. ob. in the said 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 in the said corpus Comitus in Britolfo (the said Ships lying in the Haven of Britolfo) and not upon the high Sea, contrary to the form and effect of the said Statutes, the parties defended to an issue, which was found for the Plaintiff, and damages assessed for the Plaintiff to 700l. And it appeared 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 abidement and deliberation eight Terms: and then the Report is this, Et super hoc audito tam recordo quam veredicto praedicto, & per Curiam pleniissimus intellecti. Considerandum est quod praevi Johannes Burton recuperet versi praedicti Bartholomaeum damnos suos praedicta occasione attinienti, professionis, & vexationis quid minimum & custodiorem ad septingentes libras per juratores praedicti superius afferit. in duplum per Statutum, & quo damnas in duplo se extendat ad mille & 400. & idem Barthi pannam decomm libram erga dominum regem nunc per idem Statutum incurrit, & capitur, & quernam remitterit 460l. Upon which Judgment four things are to be observed. First, that it is contemporanea exposicio, being made within twenty years of the making of one of the said Statutes, and contemporanea exposicio est optima. Secondly, that the said three Ships with the Prisoners and Merchandises in them lay in the Haven, inter fluxum & refluxum aquae, & infra primos pontes, yet that the Haven is in the said Comitus, and that for taking of the ships and prisoners, and merchants in the same, no suit ought to be in the Admirial Court, but at the Common Law. Thirdly, that the Court of Admirality 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 merchandise in the same, did lie in the said Britolfo, & non super altum mare, as the Plaintiff in the Admirial Court supposed the same to be. Lastly, that Judgement so solemnly, and with such abidement given, if it were alone, were sufficient to give full satisfaction in this point; for Judicium est tanquam jurisdiciam, et Judicium pro veritate acceptur. But to proceed.


In Parieti,

In the same Term in the same Court a like Action between John Widewell and the said John Rayner, Rot. 123, in which with many others, being to one effect we omit.

a Mich. 3 H. 6. Rot. 217, between William Hore, and Jeffery Utton for a suit in the Court of Admirality before Henry Duke of Exeter, Admiral of England, concerning a contract of fourteen pounds upon a Charter-party of a freight of a Ship of the said Jeffery called the Trinity of Harlau, to go from the Port of Pole
Cap. 22. The Court of the Admiralty.

Pole towards the partes of Ireland, cum contractus ille apud novam Sarum infra corpus Comitatus, & non super altum mare, sectus & jactatus fuit, contra formam statutorum praed. The Defendant pleaded to issue, which was found against him, and damages assessed to an hundred marks, and costs to forty pounds: and thereupon judgement is given by the Court, that he should recover his damages in duplo, according to the Statute, &c. Which judgement directly prospeth, that it a Charterparty or any other contract be made within City, Town, or County of the Realm, though the performance thereof is 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 whereas 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 rights of ships given to the Lord Admiral or his Deputy power to make certificate concerning the ships of Aliens in Port, &c. And if the Lord Admiral or his Deputy be not resident, 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 rights of ships more then he had before, no more than it both 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 affirm, that the Customer & Controller can hold plea of rights.

Mich. 32 H. 6. Rot. 26. cr. A Praemunire brought by John Caflf Elyrique, Qui tam, &c. against Richard Beatchamp, Thomas Pance Elyrique, and others upon the Statute of 16 R. 2. for being 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 Caflf did take and carry away certain Selves super altum mare, ubi idem Johannes Caflf bona illa apud Stratford at Bow infra corpus Comitatus Medd & non super altum mare cepit, which is so evident, and of so dangerous consequence, as no application shall be made thereof.

In the Book of Entries, fol. 23. tit. Admirality, 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 Kent. And therefore a suit for the taking of that Ship lying there in the Admiral Court before John Carle of Huntingdon Admiral of England appeareth to be against the said Statutes, and yet no question that taking was infra fluxum & refluxum mare, & infra primos pontes.

9 H. 7. A Praemunire brought for a suit in the Admiral Court before John Carle of Oxford for taking and carrying away quanam naviculam apud Horton ubi supra, Key at Southlyn, &c. supposing the same to be super altum mare, where it was infra corpus Comitatus,

Mich. 16 H. 8. Rot. 140. The River of Thames at Bèlinggate is not within the Jurisdiction of the Admiral, but infra corpus Comitatus,

35 H. 8. A prohibition to John Dudley Knight, Account Lisle, for holding plea in the Court of Admiralty for a contract made in Rivo Thamese, supposing the same to be super altum mare, where in truth it was in Rivo Thamese, apud B. in Com. Effex, which notwithstanding was infra fluxum & refluxum aquae, & infra primos pontes.

Hil. 36 H. 8. Rot. 38. cr. The like prohibition inter Wheel & Warner, Eodem termino Rot. inter Tolly & Lawes, a Prohibition for a contract made at Danisck, 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 exteri & transmarinis, granted a Prohibition.

Trin. 38 H. 8. Rot. 126. Between Crane and Bell a promise made at Dartmouth, that Ship called the Mary Fortune should pass safely without taking and entering, &c. which ship was after taken by the Spaniards super altum mare,
not determinable in the Court of the Admiralty, for that albeit the taking was upon the high sea, yet the omium was made upon the land, whereupon an action both lie at the Common Law.

Tr. 3 & 4. Ph. & Mar. Rot. 709, betwix Lawrence Makehode, 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.

Tr. 3 & 4. Ph. & Mar. Rot. 81r, the like Prohibition granted out of the same Court to the Court of Admiralty between Robert Inne Plaintiff, and Roger Garland Defendant.

Hil. 4 & 5. Ph. & Mar. Rot. 83r, the like Prohibition.

Hil. 4 & 5. Ph. & Mar. Rot. 83r, the like Prohibition.

Many are the Presidents in the reign of the late Queen 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 do lie at the Common Law, agreeable with the president in the reign of H. 8.

Mich. 39 & 40. El. R. 315s. 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 Goods, for that the Bill was made beyond sea.

And Mich. 3 Jac. A prohibition was granted in the like case to the Admiral Court by the Court of Exchequer, for Sir John Swinmorton 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.

For causes of Actions which are transit violent 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 Common and Marshal only.

Concerning the last manner of proof, viz. by writs, cases, and authorities of our laws.

In the Register the most ancient Act of the Law, fo. F. N. E. fo. 87. I. & 88. F.

In Temp. E. 1. Tit. Avowry 192. A Replevin was brought for the taking of a ship in the Coast of Scarbrough in the sea, and for carrying the same from thence into the County of N. Multoni the Plaintiff counteth a taking in the Coast of Scarbrough, 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 comformance, for certain Judgement is given thereof to Martines. Berry Chief Justice of the Common Pleas; the king bullized, 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 another. 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 confined 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. It is no part of the Sea, where one may lie what is done of the one part of the water, and of the other, as to take from one land to the other, that the Commoner shall exercise his office in this case, and of this the Country may have knowledge, whereby it appeared that things done there are triable by the Country (that is, by Jury) and consequently not in the Admiral Court.

3 E. 3. Nos. as the Lord Vice Duxth the Record in Mich. 15 & 16 El. 4s. (Quod visi) the Case was, that the Abbot of Ramsey was sen from the Sanna of Bannister in Norf., bounding upon the sea, upon forty Acres of March of which Sanna the Sea did flow and refill; and yet it was assigned peace of the Abbot's Sanna, and by consequent within the body of the Country unto the low water mark.

And it was abjudgets. 17 El. in the Exchequer, Digges being Plaintiff, that
that the land between the flooding and ebbing of the sea belonged to the Lord of the Manors adjoining, as the Lord Deere both there report.

48 E. 3. 3.

If a Mariner makes a Covenant with me to serve me in a ship, or on the sea, yet if later he say not, he shall be demanded in this Court by the Common Law, & not per la ley de mariner.

46 E. 3. tit. Conuants 36. An action of trespass was brought for taking of a ship in the Haven of Hull against certain Persons: the Savages and Earls of Hull demanded consunance by the Charter of the King granted unto them, that the Citizens and Burgesses of Hull should not be impendled abdi de aegibus transgressiobibus, conventionibus & contractibus intra Burgum, &c. quaem infra Burgum. And the Conuants was granted; which proved that the Haven of Hull where the Ship did ride was infra Burgum de Hull, and by consequence infera corpus comitatus, and determinable by the Common Law, and not in the Admiralty Court.

7 R. 2. tit. Trespass in Statham pl. 54. In trespass for a ship and certain merchandize taken away in the Haven of Hull and County in some lieu or Haven, the Defendant pleaded, that he did take them in the harbor more over let Normans quiex fontes enemies le toy. And it is ruled a good plea, which concurred with the other Bills.

7 H. 6. 22. 35. An action fithe at the Common Law for forealling, &c. in a Port of Haven, for it is infra corpus comitatus, and tryable by the Common Law, and by consequence the Admiralty hath no Jurisdiction there.

19 H. 6. 7. The Statute both restrain that the Admiral shall not hold plea of any thing rising with in and of the Counties of the Realm, but Eecutore he may make upon the land. And therefore where it is said in 22 &c. et 93. that every water which flows and revisit is an arm of the sea, yet it followeth not that the Admiral shall have Jurisdiction there, unless it be out of the County, or else such a place whereof the County cannot take knowledge, as it appears in the Bill of 8 E. 2. before cited. But of this more hereafter.

Fortescue cap. 34. fo. 38. Nam si que super altum mare extra corpus comitatus regni illius sunt que posterior in placito coram Admirallo Angliae decuendarum per testes, illa justa legum Anglicarum Sanctorum terminari debent; which proved by express words that the Jurisdiction of the Admiral is confined to the high Sea, which is not within any County of the Realm.

2 R. 3. fo. 12. Hiberni. fo. 3. de rebus super altum mare, which agreeth with the former, viz. that the Jurisdiction of the Admiral is super altum mare, as

Stanford, lib. 1. pl. cor. fo. 51. b. If one be taken upon any Arm of the Sea, where a man may be the land of the one part and of the other, the Coroner shall inquire of this, and not the Admiral, because the County may take consunance of it, and both borough the said Authority of 8 E. 2. wherupon he concludes in these words: So this proved, 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.

4 & 5 Phil. & Mar. Dier 159. b. By the Libel in the Admiralty Court the cause is supposed to commence Sur le haute mer & infra jurisdiccion del Admiral, ubi reversa 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;

Patch, 28 Eliz. in the Rings Bench the case was, that a Charter-party by deed contented, was made at Thetford in the County of Norfolk, between Evangelist Constable of the one part, and Hugh Grynne of the other part, by which Certain time did covenant with Grynne that a certain ship should fail with珍珠s and Goods of Hugh Grynne to Mattriel in Spain, and there should remain by certain wages, &c. Upon the breach of which Covenant Grynne brought an
The Court of the Admiralty.

Cap. 22.

Action of Debt of 500 l. upon a clause in the same Chapter, and alleged the breach of the Covenant, so that the ship did not remain at Marseilles in Spain by so many parts 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 decreed, that this issue did rise out of a place totally and merely in a foreign Kingdom out of the Realm, from whence no jury of twelve men could come, and therefore the trial was insufficient. But it was adjudged by Sir Christopher Wray, Sir Thomas Gage, and the whole Court of Kings Bench after great deliberation, that the Plaintiff might recover 500 l. before his damages and costs, for that the Charter-party whereupon the Action is brought was made at Thetford within this Realm, and that the trial being in the same place where the Action was brought was sufficient.

And the like case was also adjudged in the same Court, Mich. 30 & 31 Eliz. in an action upon the case upon an Affirmpt grounded upon an instrument called a Policy, commonly made between Merchants for assurance of their goods, whereby the Underwriters did assure that such a ship should fall from Melcombe Regis in the County of Dorset unto Abidie in France safely without violence, & declared that the said ship in falling towards Abidie, that is to say, in the River of Somme in the Realm of France, was arrested by the French King, and whereupon issue was taken and tried, where the Action upon the Affirmpt was brought, and again the validity of the trial was 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.

Where Authors were answered to King James, magna est veritas & pravitas.

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 Angliae et juris officii Admiralis in codem, * so much whereof as we find in Archivis Regis, we shall transcribe de verbo in verbum, as it is in the Record it itself.

A vous Seigneurs Auditeurs Deputes par le Roy des Engleterre & de France a redre lez damazes faictz as gens de lor Ralames & des autres terres subgiz a lor seignuries per mer & per terre en temps de pees & de tremes. Monstre les procurors de Prelats & Nobles, & del Admirall de la micr d'Engleterre & de Commanlilies des Cites & des Villles, & des Merchant, Mariner, Meffagiers, & pelerins et des haults autres du dit Royalme de d'Engleterre, et des haults terres subgiz a la seignurie du dit Roy d'Engleterre et daillors fisme de la marine de Groat, Catalogne, Espagne, Alemaigne, Sceland, Houland, Frise, Demenmarch, & Norwazy & de plusieurs haults lieux de l'Empire, que come les Royalz d'Engleterre per raizon du dit Royalme du temps dont il ny a memoire du contrario cesse et eft en paizable possifion de la souveraine Seignurie de la micr d'Engleterre et des Ifles teoiz en yelle per ordination et establiment des lois, effatus, et defonfes, et des vesilz autrement garnies que vesilz de merchandife et de feruez pru- dre et faute gardes doner en tous cas que moyster serra et par ordinance entretuant maniere des gens saults dautre signurie comme de lor propre de...
tous autres faiz nécessaires a la garde de pees, droiture & equité par elon-ques palzants & per souveraigne garde & toute manere de consiance et Justice baaille & baffe sur les dites lois, eliatives, ordenances, & defenses, & per tous autres faiz que veaux a le gouvernement de souveraign Seigneurie appartenir parrent et lieux avantditis. Et A de B Admiral de la dit mier deputey per le Roy d'Englitterre, & tous les autres Admirals par mesme celuy Roy d'En- glitterre & ces ascenors jadis Royes d'Engligterre esfuient elle en paisable pof- session de la dit souveraigne garde ou la consiance & Justice & tous les autres apperances avanditiz, forprize en casse dapelle & le quemere fait de eux a leur souveraigne Roy d'Englitterre de defalte de droit ou de multains judgment, & specialmeant par empecheant mettre & justice faire seure prendre de la pees de tout manere de gens uants armes en la dit mier ou me- nans miefs autrement apparence ou garnees que napperten au neif de mar- chants & en tous autres points en queux homme poit avoir reasonable cause de l'offision vers eux de roblers, ou des autres mestaiz. Et come le maistre de Niefs du dit roylame d'Engligterre en absence des ditz Admirals essur- ete en paisable pofsession de constiuer & juger des tous faits en la dit mier en- tre tous manere de gens felon les lois, eliatives & les defenses, franchises & custumaz.

Et come en le premier article de lalliance madgaires faizte entre les ditz Rois en les traites sur le darveine pees de Paris soient comprizte les paroles que se- suizent en une sedule annexe a yscelle.

Primerment il est traiet & accordce entre nous & les messagers & les proc- curours de sordiz, en nom de ditz Roy que jezex Roys serront lun a laurere des- forses en avant bons cez voeux & loyaux amis & eydans contre tout homo sayve Legistte de Rome en tiels manere que si avent ou pluszus quisquingez ilz fussent vouluiz departizcer, empecher, ou troubler les ditz Roys en franch- isses & libertez, privilages es droits, & droitzures, ou es custumaz de eux & de leur roylames quils serront bons & loyaux amis & aidans contre toute homme que puisse veurir & morir a defendre, garder & maintenier les fran- chises, les libertez, les privilages, les droits, les droitzures, & les custumaz de fuizties, except le dit Roy d'Engligterre, Monsieur John Duc de Breban en Brabant & ses heires descendus de lui & de la fille le Roy d'Engligterre, & except per le dit nostre Seignor le Roy de France excellent Prince Dubert Roy d'Alemaignez, heirs Roy d'Alemaigne, & Monsieur Johan Comte de Henan en Hanan, & que lun ne ferra en confainte ne en aid ou laud perdiz vie- membre, elles ne bonour temporel. Monsieur Roymer Grimbalot maistre de la navie du dit Roy de France que zez dit eire Admiral de la dit mier depute per son Seignor avanddit per sa guerre contre les Flemings apres le ditte alliance faizte & affirme contre le forme & la force de mesme lalliance & lin- tection de cieux qui la firent l'offizial Admiral en la dit mier d'Englig- terre per commision du dit Roy de France tournesemment empriaz & yfz au an & plus en pernant le gens et marchants du roylame d'Engligterre et dalbours per la dit mier palzants atque vulen leur biens et les gens ainsy pris es fiera a la prison de son dit Seignor, le Roy de France leur biens et marchandizes a les refizuez per mesme celuy roy de France, a cee deputey en les Ports de son dit roylame comme a lay forfait et acquis s'il amener per son jugement et agard, & la prise et deteue des dites gens ouv leur dites biens & marchandizes et son dit jugement, et

De Botetott, Admiral of the Sea. 
Note for the antiquity of the Admiral of England. 
The said De Botetott was Admiral of the seas, consulting upon Yarmouth in Norfolk (right over against France) and of that Bation in Anno 22 E. 1.

The league between R. I. and the French King.

Margaret the third daughter of E. I. was married to John the Duke of Brabant. 
& 16 E. 1.

Monsieur Roy- mer Grimbalot 
Master of the French Navy.
The Court of the Admiralty. Cap. 22.

agard sur la forfaiture de eaux & acquêt ait justifie devant vous seigneurs Auditeurs en ecriptes per my lautortie de fa dite commissioun sur l'Admiralte avandite per lui ainsî surpe et per une defense commuenement fait per le Roy d'Engiltere per my son por fulone la forme de le tiers articule de lalliance avandite qui contient les paroles desucriptes en requerant que de ceo il en sufe quiz & absolus en grand damage & prejudiciue dite Roy d'Englittere & dite Prelats & Nobles et autres desuommes. Purquoy les dits procurateurs et les noms de lour dits. Seigneurs a vous Seigneurs Auditeurs avanditz prent que deliverence dewe & bailiene des dites gens ouesque leur biens & marchandizes ainsi pris es et detenus fairez eftre fait al Admiral du dit roy d'Engilite a qui la cognisance de ceo appartient de droit sicome dessus est dit ainsî quiz fauns disturbanse de vam & d'autre puisse de ceo consister & faire ceo qui appartient a fon office avanditz. Et que eel le dit Monseuer Reymer soit con-demnez et disreint a faire du satisfacion a tous les dits damages fauveant come il purra juyvre & en sa desalte son dit seigneur le Roy de France per que il eftoit depute al dit office, & que apres deue satisfacion faiiz a dit damages le dit Monseuer Reymer soit si dument puniz per le blemissement de ladite alliance, que la punission de luz soit at autrues example pur temps a venir.

Item in alio Roto lu annoxo.

Item, a la fin que venes & consideres les formes des process & les lettres or-denees per les consilier le Aiel nostrre seignior le Roy, &c. especiallement aver-tenir & maintenir la force aina que les dits anceissors Roys d'Engiliterre loyem avoir en la dite mier d'Engiliterre, quant-al amendement declaration & interpretation des loiz per eux faites a governer tous manere des gens pas-sants per la dite mier. Et primerement a son Admiral & as Maistres & Masoners des Niefes de Cyne ports d'Engiliterre, et des autres terres annexes a la cor-rone d'Engiliterre emendant a sa armee en la dite mier pur retenir & maintenir la garde des loos avanditz, et la punission de tous faitz al encontre en la mier susdite.

Item in alio Roto lu de Articulis supers quibus Justiciarii Domini Regis sunt consulendi de Anno regni regis E. 3. 12.

Item ad fineum quod resumatur & continuatur ad subdivitum processionem forma procedendi quodam ordinata et inchoata per * auctum dominii nostri re-gis et eis consilium ad retinendum et conservandum antiquam superiortatem maris Angliae, et nos effict Admirabilitas in eodem quod corrigendum, inter-pretandum, declarandum & conservandum leges et statuta per eis antecessores Anglici Reges dedum ordinata ad conservandum pacem & justitiam inter-nes gentes nationis eyscufende, et male Anglia transientes, & ad cognoscentam super omnium in contrarium attemptatis in eodem, & ad puniendum de-linquentes & damna pallas satisfacionem. Que quidem leges & statuta per dominium Richardum quodam rege Anglia in reducta suo a Terra sancta correle fuerunt, interpretata & in insula Oleron publicata & nominata in Gailica lingua La ley Olyron.
And long before this King Edgar in his Charter faith this: Mihi conceditur propria Divinitas cum Anglorum imperio omnia regna intusrum Oceani cum suis feroxcellinis regibus usque Norwegiam ac maximum partem Hiberniae cum sua nobilissima civitate de Dublina Anglorum regno subjugar, &c.

We have also found a record in 10 E.3. in these inops.

*Excerpt from the Magna Carta*

*Rex dedito & fideli suo Galfrido de Say Admiralde Flore suae Navium ab ore aequo Thamseis usque partes occidentales, salutem. Cum nuper vobis per litteras nostras mandatum quod vos una cum qui fusidam navibus de quinque portibus nostris quas de guerra pro obsequio nostro muniri & parari mandavimus supra mare procul ferriermi ad obviandum & redirend, qui fusidam galeae in diversis partiibus exteris praevius & bominatis armatis munitum que ad partes domini nostri ad gravandum, nos & gentes nostras, vel ad partes Scotiae in inimicorum nostrorum ibidem succursum diversiter ut acceperimus proponentes. Et quia jam nobis ab aliquibus esset latum quod galeae huysmodi usque ad numerum viginti & sex ad partes Britann. & Norman. noviter accesserant & ibidem adducebant ad mala, ut credeamus, contra nos & nostras quae pertinere perpendam, vel ad succurrend, diissi nostris, ut predictissim, inimiciss.

Novi adverterentes quod progenitures nostri regis Angliae domini maris Anglicani circumpaquae & etiam defensores contra houstum invasiones ante hoc tempora existerent, & plurimum nos taderes, si honor nosser regim in defensione huysmodi nostri (quod absit) depererit temporibus, aut in aliquo minatu, cupientemque huysmodi periculis auxiliante domino obviare, de salvacione ac defenditione regni & populi nostrorum providere, mutatissime houstum nostrorum renarani: Vobis in fide & ligeancia quibus nobis atriisti esset, & fuit de vobis specialiter consilium, mandamus firmiter injungendo, quod statim vasis praefentium, & aliquo uteriore dictatione navis porium predictiorum, ac alius navibus quae jam parata exissent supra mare transacte, &c.*

And because the Reader by this Record shall discern, that at ancient time there were (some) Admirals for the illossome of those bases would not trust one man with to great a charge, no one 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 committit Galfrido de Lucy maritismam Anglie custodiend' quamdiu dominos Regi placuerit, &c.*

*Rex committit Richardo Anguillam maritism regis Notii. & Suff. &c. quamdiu nobis placuerit.*

*Petrus de Rival capitaneus Pictanian habet ad totam vitam suam custodial omnium Portuum & totius coeterae marine Anglie, excepto Portu de Dover, qui est in custodia Huberti de Bargo.*

*Willelmus de Leybourne constituitur capitaneus hactararum & manatariorum de regno & potestatis regis, quamdiu regi placuerit.*

*Willelmus de Leybourne Admiraress Anglie.*

*Willelmus de Leybourne capitaneus manatariorum, &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 Fleet from the mouth of the Thames Westward, and the other from the mouth of the Thames Eastward.*

*Johannes Baretot custos Regis Portuum maritimorum versus partes Boreales.*

*Martii.*

*Nicholas Kyriell constituitur Admiraress flottes omnia, Navium 10 oct. &c.*

*Thamesis tam quinque Portuum, quam aliquum Portuum & locorum per coeteram maris versus partes occidentales, quamdiu Regi placuerit, Tufte Rege apud Trinim Londin 8 Decembris.*

*U 2*}

*Robertus*
Robertus de Leyborn Admiraliss quarandum Navi Regis sup. marii occidentali, 
Robertus Battayli Admiraliss flota Naviun ab ore aquae Thamesis de Angulis 
Portus versus autum.

Johannes Perbome constituitur captanesus, & Admiraliss flota Naviun magn.
Gennemuth, & omnium aliorum locorum ab ore aquae Thamesis per cogeram 
marii versus partes Boreales, quadri, &c. Tefte Rege synp Stant, 21 Aprilis,
Warrossus de Valtioines constituitur captanesus & Admiraliss flota Naviun 
ab ore aquae Thamesis tam quinque, Portum quam aliorum Portum & locorum per 
cogeram marii versus partes occidentales, quadri, &c. ut supra.
Petrus Bard, Admiraliss Naviun ab ore aquae Thamesis versus partes occidentales, 
18 Anguli.

Thomas de Drayton Admiraliss ab ore aquae Thamesis versus partes Boreales, 18 
Anguli.

And in the reigns of R.3, H.4, H.5, H.6. But in these and in former times 
there was a great Admiral of England, Vide supra pa. 142, 143, 144.
The king did by Charter constitute John Holland Duke of Exeter and Henry 
his son to be Admiralis Anglæ, Hibernæ, & Aquitanæ, pro termino vitæ.

This Charter being of a judicial office and granted to two, we hold to be both 
for such antient offices must be granted as they formerly have been. This Duke 
is he that is mentioned in the former Records, who being a great part of the 
realm entwove to intercouch upon the Common law, but the subjects by 
courts of law were defended and recompened.

The Merchants, Spartines, and owners of ships undertook the safeguard 
of the Sea for the Subsidies of Tunnage and Pounding, &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.

All Statutes made concerning the Court of the Admiral shall be observed.

Sunday 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 another was, The Chancellor by the 
advise of the Justices upon hearing of the matter shall remit the matter to the 
Common law, and grant a prohibition.

The Earl of Northumberland Admiral of the North, and the Earl of Devon, 
Admiral of the West, to receive the Subsidy of Tunnage and Pounding, and 
to keep the Sea.

Addition of Books.

See the First part of the Institutes, Sect. 459. & Sect. 677, where Littleton 
spaketh of a man out of the Realm, as beyond Sea, and add thereunto the 
noble case in Mich. 11 H.4, fo. 11, pl. 85 Sivingsles case, the Defendant in an 
appeal of death being outlawed, brought his writ of Error, and assigned fo 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 Berkeley then Admiral, and had a writ unto 
him to certifie.

6 E.2, Th Protection 46, 7 R.2. Tit. Trefpasse Statatham. 10 H.7, fol. 7. a Vide 
de 18 H.6, nu. 52, where the owner of a ship shall answer for hurt done by his 
ship though he be not party therunto.

Vide Lacies case, Cr. 25. Eliz.2, fo. 93. Vid. li. 5, fo. 106, 107, and 108. See 
Henry Contables case. Lib. 6, fo. 47. Dowdales case, Brook tit. error 177.
6. 28 H.8, cap. 16.

The nature.

It appears by the former Records, that the Admiralty is sometime called 
Admiralties, sometime Admiraliss and sometime by other names, as Admiraliss, 
Captainus, diesel mariis, &c. Marinæ dæ. Maritime, &c. flota navium, that 

The Court of the Commission under the Great Seal by force of the Statute of 28 H. 8. cap. 15.

This Court must be holden corni Admiral; Anglae, &c. ut omne locum tenente, and 3. or 4. such other substantial persons, as shall be named by the Lord Chancellor for the time being.

Their jurisdiction is to hear and determine all Treasons, Felonies, Robberies, Murders, and confederacies committed or done upon the Sea, &c.

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.

The proceedings and proceedings herein are in the name of the King: Yet before Cap. Chivalry, p. 124. that the Statute of 35 H. 8. cap. 2. and that of 5 E. 6. cap. 11, taken 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 Laws of 35 H. 8. 5 E. 6. power and authority is given to hear and determine all treasons, &c. done upon the Sea.
CAP. XXIV.

Of Port-motes, alias Port Courts, alias Port-mote Courts.

A Portmote is a Court kept in certain Towns, or Posts, and there of ta-

teth his name Curia Portus, &c.

Portus est locus in quo exportantur & importantur merceres, a portando;

And they are Porte regni the gates of the Realm. a Hitha and Heda of-
ten in Domesday is taken for a Nabum; or Post, anciently written Hafie and

now Hafen, by changing the t into v, as is usual.

Every Haven is within the body of the County, &c. whereof the before plen-
tifull matter in the Chapter of the Court of the Admiralty proceeding ac-

cording to the Civil law. See 43 Eliz. cap. 15.

CAP. XXV.

The power and authority of Commissio-

ners and others for the maintaining

and erecting of Beacons, signs of the Sea, or Light-
houses, and Seamounts, and concerning Watches.

B Beacon, this word is derived of the Saxon word Beacon, i Speculum, unde

speculantur adventus noctium, and is often called Signum speculatum, and

Bechan in the Saxon language is signum dare, and we use the word to

brake to at this day.

Before the reign of E. 3. there were but scores of whom set upon high places,

which were fixed when the comming of enemies were descried, but in his reign

pitch holes, as now they be, were instead of these scores of whom set up, and this

properly is a Beacon.

Light-houses, Ignes speculatorii, seu monitorii, seu latem maritimum, seu * phar-

sus, unde vestit,

Lumina noctivage tollit Pharus amula Luna,

These Light-houses are properly to direct Seafaring men in the night when

they cannot see marks, and these are also Signa speculatoria.

Seamarks, as Stoppes, Churches, Castles, Tras, and such like for direction

of Seafaring men in the day time, and these are called Signa marina, o Signa

speculatoria, o Signa nautis, whereof Virgil 5. Alaeis.

Hi viridem & alteas frondenti ex ilice metam

Constituit * signum nautis parere, unde reverti

Severit, & longos, ubi circumflectere cursum, &c.

So as you may vide Specula o signa speculatoria, o Signa nautis, into these

branches, viz. into Beacons, Light-houses, and Seamounts.

At the Common law none but the King only could erect any of these thikes,

which ever was done by the Kings Commission under the Great Seal, as take-

ing some few examples for many.

De
Cap. 25. Com. for Beacons, Sea-marks, &c.

De figuris super montes per ignem factis,
De figuris super montes factis.


Vide Rot. Clau. r R.2. m. 31. in Dorf. pro vigilias & ignibus (speculatorius, & monitorioris.


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 Attendants of the Trinity house of Debdord (a company of the chiefly 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 th-ooses, and upland near the Sea-coasts, or foreland of the Sea only for Sea-marks, as to them shall seem most meet, where by the dangers may be avoided, and ships the better come to their Ports. And all such Beacons, marks and signs 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 Attendants. An excellent law that this power and authority was given to them which has greater skill, seeing they were look'd for the safety of the Realm, and safeguard of the lives of Sea-facing 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.

Beconiam legimus, mony one or payable for the maintenance of Beacons, or the watching of the same. What punishment they incur which take down, sell, or otherwise cut down any Sea-marks, see the said Act of § 8 El. ubi supra, whereas in it is 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 contraventions and purposes: the like whereof we have not observed in any other statute. Wardwise, alias warwise, or ward p(n)ey, to be free from contribution of money to watches and boards.

We take out of an ancient Manuscript transcribed this obligation that follows, which in the County of Norrif. hath been observed, and it is very probable that the like hath been done by like Authority in other maritime Counties.

Ordinatio pro Vigilias observand. in Com. prudicit. à Lyne etque Yermouth.


Rob. de Monte alto & Tho. de Bardolfe lat in Parliament.

46 E. 1. et Baronis de the Realm, as appeareth in the Parliament Rolls.
Com. for Beacons, Sea-marks, &c. Cap.25.

* 5 H.A. cap. 3.

Watches to be made upon the Sea built by the number of the people, in the places, and in manner and form as they were wont to be. Freebrigge, Clackeles.

**in locis periculo**s sicut *ante* que mares sierant juxta mare, Et quod omnes homines corpor, valid, de Com. Norf, contribuend, ad ill. faciendi, per quod ordinat. & confens, corum concordat, est quod due vigil, per sex homines de corpor potestiam per dies quam per noites sier in hundred, de Freebrigge, viz. apud Wolverton, & apud Clenchere, eo quod dix. hundred, jung, se mari à Rumbice ufque Beringsham per 14 leucat. Et quod quidet vigil, ilia capi per diem & per noitem pro centis suas 3 d. Et quod hundred, de Clackeles adijung, eidem hundred, de Freebrigge ad contribuend, ad vigil, illa faciendi, viz. pro qualibet septiman, 4s. 6 d. & idem hundred, de Freebrigge 6 s. pro septiman. Et faciendi, et 7s. vill. continuat in dii, hundredo quod a signatur ad dii, vigil, faciendi.

Smythdon.

Item quod una vigil, apud Southlyne in Clinton, &c.

Et fuit una vigil, in hundred, de Smithdon apud Thornham per sex homines, eo quod dix. hundred, jungit se mari de Beringsham ufque Deepeadal sejus per 12 leucas. Et quod hundred, de Southyngrebo, & Laundiche adijung, eidem hundred, de Smithdon ad contribuend, ad vigil, illa faciendi, viz. hundred, de Southgyngrebo 3 s. 6 d. per septiman. Et hundred, de Laundiche 4 s. per septiman. & de Smithdon 3 s. & continent. in dii, hundred. 79 vill. ad vigil, illa faciendi.

Gallow.

Et fuit una vigil, in hundred, de Gallow apud Burnham per 4 homines, eo quod dix. hundred, jungit se mari de Deepeadel ufque Holkham per 3 leucas. Et hundred, de Brothercrosse adijung, eidem bund, ad contribuend, ad vigil, illa faciendi, viz. hundred, de Brothercrosse 3 s. per septiman & idem hundred, de Gallow 4 s. per septiman. Et faciendi, et 45 vill. sunt in dii hundred, ad vigil, illa faciendi.

Brothercrosse.

Item fuit una vigil, in hundred, de Northgyme apud Holkham per 6 homines, eo quod dix. hundred, jungit se mari, de Holkham ufque Marston per 6 leucas. Et hundred, de Wyeland, Giltercrosse, Grimsbye, & Retham. adijung, eidem hundred, ad contribuend, ad vigil, illa faciendi, viz. Wyeland 2 s. per septiman, Grimsbye 2 s. per septiman. Giltercrosse 2 s. per septiman. & Retham 2 s. per septiman. & idem hundred, de Northgyme 2 s. per septiman. Et faciendi, et 76 vill. sunt in dii hundred, ad vigil, illa faciendi.

Northgyme.

Item fuit una vigil, in hundred, de Holt apud Waborn per sex homines, eo quod dix. hundred, jungit se mari de Marston ufque Seringham per 7 leucas. Et hundred, de Esnford et Hemstead adijung, eidem hundred, de Holt ad contribuend, ad vigil, faciendi, viz. Esnford 4 s. per septiman. Hemstead 3 s. 6 d. per septiman & idem hundred, de Holt 3 s. per septiman. Et faciendi, et 70 vill. sunt in dii hundred, ad vigil, illa faciendi.

Esnford.

Item fuit una vigil, in hundred, de Northberingham in duobus locis, viz. apud Ruston & Trimmingham per 5 homines, eo quod dix. hundred, jungit se mari de Seringham ufque Manbyke becke per decem leucas, & hundred, de Southberingham & Miford cum vill. infra liber adijung, eidem hundred, ad vigil, illa faciendi, viz. Southberingham 6 s. 8 d. per septiman. Miford 3 s. 6 d. per septiman & Northberingham 12 s. 6 d. per septiman. Et faciendi, et 77 vill. sunt in hundred praed ad vigil, illa faciendi.

Hemstead.

Item fuit una vigil, in hundred, de Tunstead apud Balswick per sex homines, eo quod dix. hundred, jungit se mari de Manbyke ufque Wallote per 4 leucat. Et hundred, de Humbleyarde & Fourhebe adijung, eidem hundred,
Cap. 25. Com. for Beacons, Sea-marks, &c.

Ad contribuend. ad vigil. ill. faciend. viz. Humbleyard 3 s. per sept.
Fowrebowe 3 s. per sept. & Tanfield 4 s. 6 d. per sept. & Scieud. est quod 76.

Vill. sunt in dict. Hurd. ad vigil. ill. faciend.

Item set unum vigil. in hundred. de Happing in duobus locis. viz. apud Happing.
Happisburne per 4 homines & apud Wallaebarn per 4 homines. ea quod dict.

Bund. jugis te mari a Wallote usque Wymbesdele in loco periculoso per 6. leu.

Cas. Et hundred. de Towerham. Depenad. Shropham & Diffes adjung. eadem

hund. de Happing ad contribuend. ad vigil. ill. faciend. viz. bund. de Towerham
2 s. per sept. Depenad. 3 s. per sept. Shropham 5 s. per septim. et Diffes
2 s. per sept. et dict. bund. de Happing 2 s. per sept. Et Scieud. est quod 60.

Vill. sunt in dict. pred. ill. faciend.

Item fat unum vigil. in hundred. de Easstlegge et Wefstlegge in tribus locis.

Viz. apud Winterton per 6 homines. apud Salitzvos havens per sex homines. &
apud Fordham per sex homines. ea quod dict. bund. jugis te mar. a Wykealock
usque Bunto in Mitford in loco periculoso per 7 leucai. Et bund. de Wallham.
Blowsfield. Lodon. et Clavering adjung. eadem bund. ad contribuend. ad vigil.

Illi. faciend. viz. Wallham 4 s. 6 d. per sept. Blowsfield 4 s. 6 d. per sept. Lodon
5 s. 6 d. per sept. Clavering 5 s. 6 d. per sept. Easstlegge 2 s. per sept.

Easstlegge 2 s. per sept. Et Scieud. est quod 102 vill. sunt in dict. bund. ad
vigil. ill. faciend.

Præcept. est omnium capital. Confiabul. de bund. adjung. mari in locie præ-
dici in forma prædicta has instanti die 'dominica prox. futur.' et similitur præ-
dicit. est eadem capital. Confiabul. et omnibus aliis subconfiabul. hundred. totius

Com. quod sine dilitatione levavi & reparavi fac signa et fierabere super mont.
alior in quolibet bund. Ita quod tota pars per illa signa quotiescumque ne-

esse sunt premuniri posset. Et quod ipse Confiabul. capital per anna. Confi-

abul. villarum et aliorum proliorum hominum agit. fac fidelter denar protocol,

vigil. in hundred. prædicti instat. quod ordinavi solvendi de septimana

in septim. ita quod defecit in vigil. prædicti nullo modo inventur. per e-

num defecit et similitur quod omnes qui agi. sunt ad armas et potest ad por-
tanda arma. & omnes illi qui loco potest. ad arma suas portanda signavit. sint

providi et parati. et facit indites. nolite ad vincend. solvere. defiendi et aperte

in praesent. Domini Wolteri de Norwic Episcopi justa nos aeterni sibi den

cur. Cancer totius Com. Norf. coram nobis un fecinus proclamar. Et simili-

tur præcept. est Vos quod levaver faci. denar. agi. in hundred. prædicti pro

cofis et vad præd solvere.

Vigilantiun.

F. Waches. and against night. walkers. See the statute of Winch. 13 E.1.


Vide Lamb. inter legis Edovardi regis. fol. 136. b. & inter leges Willemi Regis.

fo. 129. a.

Canc. tenentur facere vigilias in Romney Marth.
CAP. XXVI.
De Conservatore seu custode Trengarum, i. Induciarum & salvorum Regis Conductuum.

And incidently of the office, authority and priviledge of Ambassadors, and of Leagues, Treaties, and Truces.

By the statute of 2 H. 5. robbery, spoiling, breaking of Truces, and false Conunts 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 repealed 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 indiciarum & salvorum regis conductum 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 Cinqueports) as Admirals, of course, were wont.

It concerneth the Jurisdiction of divers Courts, and especially of the said Court before mentioned upon the said statute of 2 H. 5. and of the Court of the Admiralty, to know the rights of Leagues and Ambassadors, as far as the laws of England extend unto. 10 of them we will only treat.

All Leagues or safe conducts are, or ought to be of record, that is, they ought to be recorded in the Chancery to the end the subject may know, who is in amity with the King, and who are 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 equal.

A League may be broken by taking of war, or by Ambassadors, or by the law.

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 consent 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 Privy Council.

In the Duke of Norfolk case Hil. 14. Eliz. the question was whether the Land Heriots and other subjects of the King of Scots, that without his consent had warned and burnt divers Clauses 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 received that they were enemies.

And in the Bishop of Rosses case, An. 12. Eliz. the question being, An legates, qui rebellionem contra principem ad quem legatus concitat, legati priviligis gaudeat, et non ut habetos poenis subjacet. And it was resolved that he had lost the privilege of an Ambassador, and was subject to punishment.

Samuel Palache affirming himself to be the Subject and Ambassador of Mola 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 licenced him to leave men to furnish his Ships, &c. In June 1614, he took a Caravel of the Spaniards at the Cataries.
naryes laden with Sugar, and another ship there also laden with hides, of the goods of Spaniards; and after, with buttles of Wine, he with the said Prize was driven to Plymouth, there being at that time league both between England and Spain, and between England and the united Provinces, and wars between Spain and the united Provinces. And against this Samuel the Spanish Ambassadour here in England complained at the Council Table, and charged him with Piracy. The said Samuel and his company being arrested, and the goods seized, the Spanish Ambassadour prayed that he might proceed against him as a Pirate upon the said Statute of 28 H. 8. cap. 15. The Lords of the Council referred the consideration of this request to the Chief Justice of England being present at the Table, and to the Master of the Rolls, and Sir Daniel Dun, Judge of the Admiralty, to consider of the case, and to direct a course of Justice therein indifferent. And the said referred heard the Council learned both in the Common and Civil laws, on both sides on two several days in this Term; and after conference between themselves, and with others, these points were resolved.

First, that at this day there could be no Ambassadors without Letters of Credence of his in sovereign, to another that had sovereign authority. Legates per litteras de fide regum sancere deber, si exiguerint, et comminulum, s. Instructiones privatam for the Ambassadors himself for his direction.

Secondly, that of ancient time Ambassadors were called Graecores. Jamq; Oratores erant ex urbe Latina.

Veluti namus eet——

And afterw, they were called Legati Legando, Nuntii a nuntiando, and afterw, Ambassadors or Embassadors, at times Agents: for Omnis legates et agents, but Omnms agency is not legares: For if he be sent from a King as absolute Potentate; or State to assume absolute Potentate; or State to treat between them, although he in his Letters of Credence be termed an Agent or Nuntius, yet he is an Ambassador or Legate.

Thirdly, it was resolved, that Ambassadors 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 free in every place, in so much that it is not lawful to hurt the Ambassadors of our enemies or themselves with 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 against the Civil law.

The case (which we have been reported) in the reign of H. 8. was this. There being animity between King H. 8. and the French King, and enmity between H. 8. and the Pope. * R. Pole a Rebel and Traitor to the King of England went to Rome, whom the Pope being in animity with the French King, tended as an Ambassador to him. And the Pope of England demanded his Rebel of the French King, notwithstanding he was sent as Ambassador, Sec non pravantur. And it is truly said, inforber facit, Quia venit ad quaecunque dictur a Deo et, Sunt receptae apud Gentiles (qui nullam tenebant veres fidei rationem) inviolabile nomen Nuncii et Legati, etiam ab hostibus mitterentur super saevi, & hostes apud Saracenos et Turcos, & quiuque tute definitur legationes & litterae, etiam illas ad quos deferantur molestias sint & injuriis. But if a forien Ambassador being Proxem committed here any crime, which is contra jus gentium, as Treason, Felony, Adultery, or any other crime, which is against the law of Nations, he lotheth 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 remonstrated to his Sovereign but of course. And so of contracts that he good jus gentium, he must answer here. But if any thing be malum prohibibum by any Act of Parliament, private Law or Customs of this Realm, which is not malum in se jus gentium, not contra jus gentium, an Ambassador residing here shall not be bound by any of them: but otherwise it is of the Subjects of either Kingdom, etc.


L. & F. de Legati. In sunt de fan. chif. sed. iterum Coll. 9.

* See the third part of the Indis. etc. cap. 19. Treacons, etc. Oueues falsapes. Tempore H. 6.

other: It is said that merchants of London exhibited divers informations upon the nature of 19 H. 7, which prohibit the same, of whom the Frenchmen complained at the Council Table, and it was resolved by the Lord Treasurer Berlegh and the whole Council, that it was no breach of the league between this kingdom and France, for that in the Articles of the League the laws of either kingdom be excepted; and therefore if Tomlinson the subject being a French merchant should trade into France, he must observe the laws and customs of France.

Fourthly, it was resolved, that as the said Palache was no Ambassadour, notwithstanding because there was enmity between the King of Spain, and the King of Morocco, he could not be indicted as a pirate before the commissioners upon the said nature 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 been committed upon the land, and according to the course of the Common law.]

Sec 2 R. 3. By all the Justices, that this is no felony, which case is in his parts remembered 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 Spaniards could not proceed against him criminally, upon the said Act of 28 H. 8, yet the goods being in solo amici, that is, in the fort of the King of England, who was in league with both, that the Spaniards might proceed against Palache, civiliter in the Admiral Court: but that was resolved to the ordinary by Popham's Chief Just ce, and the whole Court of the King's Bench, Trin. 3 Jac. c. 26, 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, et. and there was enmity between the King of Spain, and those of Holland, et., and one of Holland upon the high sea, in a certain prato 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 Spaniards whole goods were taken for them civiliter in the Admiral Court. It was resolved by the whole Court of the King's Bench upon conference and deliberation, that the Spaniards had lost the property of the goods for ever, and had no remedy for them in England. And helped principally upon the Book in 2 R. 3. ubi sopra, 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 Sovereign of the Plaintiff 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 Sovereign of him whose goods were taken: for, if he which took them was in enmity with the Sovereign of him whose goods were taken, then was it no depredation or robbery, but a lawful taking, as every enemy might take of another: all which appears in the said Book, see the Nature of 27 E. 3, and 31 H. 6, well explained in 2 R. 3, ubi sopra. Vide 7 E. 4. 14. 13 E. 4. 22 E. 3. 16. 17. Regil. 129. F. N. B. 114. Prohibition. Nota.

31 H. 6. cap. 4.
7 E. 4. 24.
33 E. 4. 9.
F. N. B. 114.
Prohibition.
Nota.

Lib. 5. fo. 105.
Of Ambassadors, Leagues, &c.

John Imperial's case. Ambassador of Genoa. It appeareth in the Holy History, viz. in the first Book of the Chronicles, that injury and disgracees were offered to King David. Ambassadors which he sent to Hanoch King of the Moabites, Ad confo-land; et supra mortem patri sui, grandem etiam contumeliam inuictam, &c. was a just cause of Wilare by David against the Moabites, and was severely revenged, as by the Holy History it appeared.

There be four kinds of Leagues. 1. Fodeus pacis, and that a Christian Prince may have with an Infidel, St. a poi sis, quod ex evis cts. cum omnibus hominis- bus pacem haberis. 2. Fodeus congratulaticns five confusionis. And this may a Christian Prince make with an Infidel, as David did with Hanoch; ubi supra, 3. Fodeus commutations mercium five commercii. And this also may be made with an Infidel, as King Solomon did with Hiram an Infidel, and Josua did with the Gibonites. 4. Fodeus munii auxili, and this cannot be done with an Infidel or an Infodater. Jehovah, King of Juda, made Fodeus munii auxili with Achab King of Israel, an Infodater: For Achab said to Jehovah, Veri mecum in Ramoth Gilead. Cui ille respondeat, Urego & tu, & sicur populos tuis, sic & populos meos tecum erimus in bello: in which Wilare Achab was slain, and Jehovah was in extreme danger. And after, as the Wett faith, Reverens est aut- tem Jehovah rex Juda in domum domini pacifice in Jerusalem, cui occurrit Phen Sibus Hanani, & sit ad illam, Impio praebes auxilium, & his qui oederunt Dominum amicitia jangeris, & idcirco ut quidem Domini mercebris. And the Latites of England concerning these four Leagues are as you perceive grounded upon the Law of God.

But here arises a question, that being fodeus pacis, or fodeus commercii may be broken between a Christian Prince and an Infidel, Pagan, and Infodater, and those Leagues are to be established by oath, whether the Infodater Pagan Prince may swear in that case by false gods, being he thereby opposed to the true God by giving divine worship to false gods. This deep doubt was moved by Publicola to S. Augustine, who refuted the same thus: he that taketh the credit of him that sweareth by false gods not to any evil but god, he doth not justify himself to that sin of swearing by Devils, but is partaker with those idolatrous Leagues wherein the other keepeth his faith and oath. But if a Christian should any way induce another to swear by them, herein he doth grievously sin. And fodeus in these cases are warranted by the Word of God, &c. per praxim fandorum in sacra scriptura, all incidents thereunto are permitted; for per praxim fandorum the practice of holy men in scripture, may oftentimes be collected by the Commandments in it are to be understand, and praxis fandorum appear before.

And it is to be observed, that of ancient time, and until latter days no Ambas- sadour came into this Realm before he had a safe conduct. For as no King, &c. can come into this Realm without a license of safe conduct, so no Pope, &c. which representeth a Kings person can do it. For safe conducts for the Writs in the Register de salvo conducta, and the Statutes of 15 H. 6. 18 H. 6. and 20 H. 6. with all incidents thereunto. And King H. 7. that Use and politique King, would not in all his time under Leger Ambassadors of any foreign King of Prince within his Realm, nor any with them, but upon occasion used Ambassadors.

* Every Ambassador ought to have four qualities, expressed in this Writ.

Nuncio, fis veras, tactum, celer, atque mivit.

And of him another faith,
Federis orator, patis via, terminus ets.
Semen amicitiae, bellis in jura, libris bonus.

William de la Poole, Duke of Suff. by the Common was charged (amongst other things) with this, that he procured the King, in his presence only without any other of the Council, to have secret conference with the French Ambassadors, &c. for which (amongst other things) he was banished, &c. as by the Recop apperele.

Cardinal
Cardinal Wolsey was charged with those notable high and grievous offences (amongst others) viz. that he being the King’s 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 agreed, if any contrary or doubt should arise between the said Pope, and the said French King.

And so the said Lord Cardinal, being the King’s Ambassador in France, sent a Commission to Sir Gregory de Celsus under the Great Seal in the King’s name to conclude a Treaty of amity with the Duke of Ferrare, without the King’s commandment or warrant; nor the King advertised no make privy to the same.

And so the said Lord Cardinal taking upon him otherwise than a true King’s Councillor ought to do, both used to have all Ambassadors to come first to him alone, and to hear their charges and intents, &c.

And so the said Lord Cardinal used many means together not only to write to all the Kings Ambassadors in seaven 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 others 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, so 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 breaking of peace.

2 If a Truce we read in anno 19 E. 3. to this effect, Rex post mortem inulius cum Francorum Regum et mediationem Romani Pontifex, copias suis bellis dedum reduxit, præter deprehendens praetor regem Francii hostiam contra ipsum molliri, & nuncio præcipit Pontificis simulac pace diffidium suvere, promisit cujus cunlum per Litteras Patentes exponenda duxit, & bellum cum praefato rege restituit.

2 A League and alliance was made between King H. 5. his heirs and succesors, and Sigismund King of the Romans his heirs and succesors King of the Romans, and was confirmed by Act of Parliament. The instrument whereby is very long, but not so long as effectual and worthy of observation.

3 It is in 9 E. 4. that League made between two Kings (without naming of successors) both not extend to successors, although by our Law Rex non intermitter.

Julius Aitken is of Opinion, That no Ambassador ought to be sent to the Pope, but there may be many prefidents to the contrary; for besides his spiritual jurisdiction he is a Temporal Prince, whereof many a prince amongst many others, is elected Patriarch of Rome, and likewise the Pope sent Ambassadors into England, who were sworn not to attempt any thing prejudicial to the King or Kingdom.

And that we may give some taste of every kind: In times past the King of England sent Ambassadors to general Councils, as taking one example of that sort many.

1. Ad consilium Baltham’s sub Eugenio Papa, quorum dictum est per Regem Ambassadors & Oratores Episcopi Robertus London, Philippus Exonius, Johannes Roffens, Johannes Baccenas & Bernardus Aqueassus Ed. comes Morion, Abbatit Glatton, & Bertie Magne Eborum, Prior Nowici, Henricus Boardley miles, (dominus Venici) Thomas Browne legum Doctor, Decimus Saurus, Johannes Colville miles, & alii. Their authority was in these words, Dantes & damus eum & alium majori part petitiorem & mandatam tam magnae quam specie nonem nostri & pro nobis in eodem concilio interesserendi, tractandi, communicandi, & concludinge tam de his qua reformationem Ecclesiae universalis in capite & in membribus, quam in his quae fidei orthodoxoe fuculentum, regumque, ac principum pacificationem concernente pertinet, nec non de & super pace perpetua, gesseratm absolutionem inter nos &

Carolum
Carolum adversarium nostrum de Francia, ac etiam traetandi, communicandi, & appunetandi, consentiendo intuper, & flatus fuerit, diffentiendi huius quae juxta deliberatione rem conciliex in subitatem, & ordinari contingens, Promissiones & promittimus bona fide nos ratum, gratum, & firmum perpetuo habiturum totum & quicquid per dictos Ambassatores, Grotatores, & Procuratores nostros, aut majorem partem coram cum suo gelidum fuerit in praemissis, & in singulis praemissionibus, hoc idem cum de & super sis certiorari fierimus quantum ad nos ad Christianum princepem attiner, executioni debite curabimus demandar. In cujus rei testimonium has literas nostras fieri fecimus patentes. Dat' sub magni figilli nostri testimonio in Palatio nostro Weftm. 10 die Julii.

We have expressed this Ambassage the more particularly, for that, to this Council also I find that Henry Beauford (son of John of Gaunt by Katharine Swinford) Bishop of Winchester and Cardinal of S. Eulphy adressed himself and had license to transport and carry with him 2000 l. of gold and silver (made by missing Ambassados) notwithstanding the Statutes of 5 E.3, cap.1, and 5 R.2, cap. 2, &c. For the form of a safe conduct (which is called de salvo conductu) is the Register. And for the effect and validity thereof, in the Statutes of 15 H.6, c.3. 18 H.6, cap.4. 19 H.6, cap.1.

Recordum & process facela contra Petrum de Rivil Thefaurarium & Camerarium to- rius Angliae & Hiberniae, & cullos omnium Forstarium & omnium Portuum maris, &c; de compoto regi redditio de officiis praebet & de judicio contra ipsum redditio per definitum, qui venire recutavit, nisi salvo regis conductu, quod rex denegavit quasi inforam & indebitum.

What rewarde Legate have had in former times you may read Rot. Liberat. 11 H.3. m.13. Rot. Clafr. 11 H.3. m.11. in Dorf. Rot. Liberat. 3 E.1. m.9. Ecc- dem. Rot. 1 E.1. m. 2. Rot. Alman. 11 E.3. per totum Rotulum.

And Beda in his Hist. of England, Lib. 1, cap.11, hereafter Cap.75, of Scoth. and in fine, the danger of unwise and uncertain Leagues.
The Court of the Justices of Assize, and Nisi Prin.

F

The Writ of Assize, whereof the Justices take their name; in all ancient Authors, it is called Affisa nova desultoria, or Petit breve de novo desult. Of which writ Bradenfaith: Recognitio Affissae nova desultoria multis vigilias excogitata & inventa huit recuperandae postestationis gratia, ut per summariam cognitionem abisse magna juris veloniam, quasi per compendium, negotium terminaret.

And the Prior: faith, that for expedition of justice, and curbing of delates, it was ordained by Ranulph de Glanvill; but I find the writ more ancient, as it appeareth in 26 Ass. pl. 24.

At the Common Law of Assises were not taken but either in * Bank, or before Justices in Cure, and this was a great delay to the Plantif, and a great motive and detriment of the recognizans of the Assises. For remedy whereof, it is enacted by the Statute of Magna Charta, Quod recognitiones de nova desultoria, & de morte antecessoris non capiantur nisi in suis propriis comitatis, & hoc modo nos extra regnum fuere Capitales Justiciariori notitia, mittent Justiciarios notitias per unamqueque comitatus femel in anno, qui, &c. capiunt comitatus illis Assises predictas. By force of this Act, these three conclusions are to be observed. First, that no Assise can be returnable in the Kings Bench, or Common Bench, unless the deestin 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 ordinarily without any Patent. Thirdly, that upon the said Act of Magna Charta Letters Patent to Justises of Assises were framed for the taking of Assises in the proper Counties in these words.


By this writ the seisin and possession was recovered, and became most frequent, quos non est aliqui breve in Cancellaria, per quod querenues habet tam seinitium remedium, quam per Affisium. * And after the Statute of W.s. was made, and thereby it was prohibited, quod assignentur duo Justiciariorum, coram quibus, & non aliis, capiuntur Assises, &c. ad plus ter per annum.

Dominus Rex, &c. praecept, quod de caret Assignatur Ofta Justiciariori circumcepti & discreti ad Affisas, Jurat. & certificat. capiend. per totum regnum Angliae, &c. and divided the Realm into eight parts, and to every part assigneth two Justices.

But
Joan of the Barons

Chapter 27: Justices of Assise & Nisi prius

For copy of Parliament have given into Justices of Assise authority in many cases.

1. Per lef. de finibus ca. 3. Justiciarii ad Assises capiendaris assignati delibe-

rent Gaols in com. illos tam infra liberatarum quam extra de praferentia quibusque

Appeals of murder, robbery and rape may be commenced before Justices of Assise.

2. Power given to Justices of Assise to try the appeals of Approvers.

Justiciarii ad Assises capiend. assignati non compe!tant Juratores demersam prac
tice.

3. Justices of Assise shall enquire for non-returning, and false returns of

Sheriffs.

4. Justices of Assise may hear and determine of Conspiracies, false Informa-
tors, and wicked paviours of voiers, Conquests and Juris at the complaint of
any without IP. and without delay, and of confederacies and Chaniperties and
mainthangers, bearers, and alliances by bond, &c. Of defaults of Sheriffs, Sheriffs,
Escheators, Bailiffs, and other Officers.

5. Justices of Assise may enquire of defaults, &c. of punishment of Sheriffs,

6. Of defaults which fell at unreasonable prices.

7. They have power to hear and determine robbing and going armed, &c. and to

punish Justices of Peace, Sheriffs, Bailiffs, and others for not doing their

office in that case.

8. They may hear and determine treason in counterfeiting of money, &c.

9. They shall do execution of the nature of 13 H. 3. of riot done in their pre-

dence upon pain of an hundred pound. &c. By the nature of 2 H. 5. Commit-

tions shall be awarded to enquire of the defaults of Justices of Assise, and of Judg-

ments of Peace in that behalf.

10. They shall enquire of, hear, and determine all offences contrary to the Na-

tute of 23 H. 6. concerning Sheriffs, Under-Sheriffs, and their Clerks, Constabu-

lers, Steadsmen of Franchises, Bailiffs, and keepers of prisons for election, and

for letting to bail such as were not bailable, &c. for denying of bail to them

that ought to be bailed, &c.

11. Justices of Assise shall take bail of him that is acquitted of murder with

12. In the year to answer to the appeal of the party, &c. Eliz. cap. 5. Of Informers,


14. Of Justices of Assise, of Gaol-delivery, and of the Peace, shall enquire of the

default of Constables.

15. Of Justices of Assise, &c. shall enquire of false making of Leather. Of amend-

ing of high-towns. Of hunters in Parks. Of unlawful taking of Fishes.

16. Of forgery of false deeds. Against receipt in Linnen-cloth. Against pur-

ching. Of filth and other things.

17. Of Justices twice in the year ought to proclaim the nature of 52 H. 3. of

an unlawful sale, and unlawful replevin. They ought to proclaim the nature of unlawful games

in their circuit. See the Customs of Normandy, cap. 19.

18. Now concerning Justices of Nisi prius, they were first instituted by the Na-

tute of W. 2. of Assise, joined 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 joined them under one title. And the appearance in

the judicial writ of Nisi prius, which is


And by the said Act the Justices of Nisi prius have power to give judgement

in Assise of Distin Pencevent and Quo a m. Dict. 1.7.
Justices of Assise & Nisi prius. Cap. 27.

By the statute of 7 R. 2. Nisi prius shall be granted as well in the Exchequer as elsewhere.

Of suits joined in the King's Bench, Common Bench, and Exchequer, the Chief Justices, or Chief Baron, or in their absence the other Justices or Barons of the said several Courts, as Justices of Nisi prius for the County of Middlesex, within the Term, or four days after shall liberally try, &c, and that &c, motions, and writs of Nisi prius shall be allowed, &c. It is to be observed that there is but a transcript of the Record sent to the Justices of Nisi prius.

By the statute of 27 Eliz. 1 de Raisus ca. 4. It is provided, that inquisitiones & recognizances caputam tempestatem vacat, coram aliquo Juclatorio de atroque Burgo, coram qubis placitum deducat fuerit, See the statutes of York 2 E. 2. cap. 16. 4 E. 3. cap. 2. and the statute of 14 E. 3. cap. 16, which statute both provest, that Nisi prius may be taken in every plea real or personal before two, to that one be Justice of one of the Benches, or the Chief Baron or Deputy tain, without any regard where the plea depended, and this same ret at this day. Vol. 42 Eliz. 3. cap. 11. 19 H. 6. fol. 47. 33 H. 6. fol. 14. 16 H. 7. fol. 14. 3 M. 1 fol. 163.

Concordantia juris per totum concilium regis, quod nullus Viccomes ant Co-Corona cor Juristicium ad Illias capiendi, Gaudis delibere, transgressiff, aci. diend. & terminandum, sed ad aliquod alium officium Juristicum faciend. &c. quod dehent esse integremns atibi Juristicum. Which Act is declaratory of the Common law, for that (as by the reason proved in the Act it appears) these offices are incompatible, the one being attendant unto, and within the controlment of the other.

14 H. 6. cap. 1. Justices of Nisi prius have power in all cases of felony and treason to give judgment, as well where the prisoner is acquitted, as where he is attainted, and to abate execution.

Where the King is a party, a Nisi prius may be granted, if the Crown Attorn attend unto it.

In Appeal of murder, robbery, and rape brought in the King's Bench, if the parties be at issue a Nisi prius may be granted before Justices of Assise, 25 Eliz. 3. 30. 14 E. 3. Nisi prius 16. 22 E. 4. 44. 41 E. 5. 7. 21 H. 7. 36. 9 Eliz. 26. 42 E. 3. c. 11. 8 H. 5. 6. But it is to be observed, that if the Appellant be acquitted before Justices of Nisi prius, they have power to acquit. &c. and give judgment, as is aforesaid.

They may also enquire and judge of the abortion and damages by the statute of W. 2, c. 12, and not by the said Act of 14 H. 6. And so is it if the Appeal be brought before the Justices of Assise, they have also power to enquire and judge, &c. supra.

These Justices of Nisi prius were instituted for two causes, viz. 1. Propter inolerabilium jacturalium Jutorialium, & in exoneracionem Juralium. 2. Ad celestem jútiam in ea parte exhibendum, Inquisitiones & Jurat. in placto tempore capiendi, que magna non sunt examinationes, capiatur in patria, &c.

And hereinupon a prohibition is granted to Justices of Assise, Quod non caperit in patria inquisitiones que magna indigent examinations.

By the original institution of Justices of Assise and of Nisi prius, the trial should be before two at the least, as it were much for the advancement of Justice and right to have the law put in due execution, for plus vident oculi, quam oculii, and specially in pleas of the Crown concerning the life of man, in regard whereof they shall be worthy of greater allowance.

Before the Justices of Assise in pays a soprain pleas, viz. Willenage was pleaded, for trial whereof the Record was remanded into the Common Bench, and there a Venire fac. was awarded, and return service, and a Habee corpus with a Nisi prius was prayed. And it was objected, that the issue was not joined in Bank, no judgement to be given there, and yet in the end the prayer was granted, as
in a Certificate, upon an Assise a Nisi prius shall be granted; and so it is upon a forsworn Voucher. Receipt shall be granted, and a trial 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 parties, 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 attending of the King's Attorney, and so are the books to be intended.

d In Attain, the Plaintiff tendered a Nisi prius, and because one of the Petitioner was prisoner in Newgate, and came in bond and pleaded, and was remanded, and if a Nisi prius should be granted he should lose his challenges, the Court denied to grant any Nisi prius, otherwise a Nisi prius may be granted in an Attain.

e In trespass between the Duke of Exeter and the Lord Cromwell, the Council of the Duke moved for a Nisi prius, and for that the Duke was a Prepotent Prince in that Country, and the Venetians being returned, there was a great court in the Hall, so as if a Nisi prius should be granted great mischief might ensue, therefore no Nisi prius was granted.

Here you may read of the writs of Assise and of Nisi prius in our books, that which hath been laid concerning the jurisdiction map Justice. It is commonly called a writ of Nisi prius, but the words of the writ are Si prius, &c. And about 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 days 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.
The authority of Justices of Oyer and Terminer is by Commission. If Commissions of Oyer and Terminer there be two justices, one general, so
called because it is general, in respect of the persons, the offenses, and
the places where the offenses are committed, the which Commission follows
in these words:

Elizabeth Dei gratia Anglie, Franciæ, & Hibermiae Regina, filia de-
sensor, &c. Charitatis confanguniae suis Wilhelmo Marci, &c. Pinston,
Henrico Comiti South, &c. ad dilectis & fideliis suis Rogerio Manmood
nisi Justicie suorum de Banco, Johanni Jefferay, &c. ad placita coram
Walron, William Poul, Petro Edgcombe, Thoma Morton, &c. salutem
Sciatis quod assignavimus vos & tres velrum, quorum aliquem velrum
vos praefat Roregum Manmood & Johanne Jefferay unum esse volumin
Jusiciarios nostris ad inquirendum per sacramentum proborum & lega-
tiwm honinum de Com. &fris South. Wolfl. Duffet, Somerset, Devon. &
Corunb. & eorum qualitatem aliiis, modis, & modis quibus melius
secrevissis, aut potestis tam infra libertates quam extra, per quos vel ve-
ritas melius fecit poterit de quibusque productionibus, mispiritionibus
productionibus, insurrectionibus, rebellitionibus, murtheribus, homicidi-
bus, interfectionibus, burglaribus, rapibus muterum, congregacionibus, &e.
conventiculibus, dilectis, verborum probationibus, conspirationibus, mispiri-
otionibus, confederationibus, falsis allegationibus, transgressionibus, viotis, rontis,
retentionibus, escapi, contemptibus, falsificationibus, neglegentibus, concel-
mentibus, manumissionibus, oppressionibus, camopartibus, deceptionibus, &
aliis malafactis, offenxis, & suarioribus quibusque, necnon accipiam, conse-
dem infra Com. pradict. & eorum quemlibet, tam infra libertates, quam extra
per quosquinque & qualitatemque habis: facies perpetuat servos commissis.
Et

Notas, these

general words.

Et per quos vet per quem, cui vel quidem, quando, quando, &c. modo, ac
de alius articulis & circunspectis premis. & eorum aliquem vel aliquum
qualitatemque concerner. Et ad easdem productiones & alia praemissa (hoc
vice) inde terminand, secundum legem & consuetudinem regni nostri Angliae.
Etideo nos mandamus quod ad certos dies & loca, quos vos vet tres velrum, quorum aliquem velrum ex vos praefat Roregum Manmood & Johanne Jefferay unum esse volumin, ad hoc præsidium di-
ligenter fuer praemisit facta quisque, & praemissa omnia & singularitatem & temporis, ac ea facta & explica in forma pradicta. *falsi

Notas.
2. Particular Commissions of Oyer and Terminer, located in places of the persons, of the offences, on of the places, wherein the persons are accused in the Register.

1. Against the Bishop of Winchester and his Ministers.
2. On rivers, if the goods ought to be taken for Wreck.
3. Of other oppressions, &c. extortions, &c. by the King's Ministers.
4. Of Oyer and Terminer for the Peace of Devinity. And 5. For the King in time of vacation, which you may read there.

Concerning Commissions of Oyer and Terminer Ten Conclusions are to be observed. 1. That Oyer and Terminer shall not be granted, but before the Justices of the one Bench or the other, as the Justices think, and that for great, horrible trespasses, of the King's especial grace, according to the nature of the time of his Grandfather.

And in the Register there is a Superedes, Quis non enim est qui ego, which word (enormis) is in the phrase of W. ab. sup. 4 to Commissioners of Oyer and Terminer a Writ of Superedes was delivered. Quis non enim est qui ego was transfigured into id est supercedes, for it was not but for cutting off the motion of the And afterward a Writ of Procedendo under the Great Seal of later date was delivered to them to proceed sequestum legem & consuetudinem Angliae obstante aliqua mandata, &c. by virtue whereof, notwithstanding the former Writ, they did proceed by advice of all the Justices. For a Writ of Superedes is one thing, and an absolute repeal or countermand of the Commission it is another. A Superedes is but to stay, or forbear the proceedings, that is, to supersede the proceedings, and is not mere surcease of the commission. And may the cutting down of trees, as it may be done summarily, and therefore notwithstanding a Superedes the cause may proceed by a Writ of Proceedendo. But after an absolute repeal or countermand by the King of the Commission it fell, the Commissioners cannot proceed after by force of any Proceedendo, but must have a new Commission.

The second conclusion is, that Commissions are like to the Times which 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 unless they have allowance by Act of Parliament. Commissions of new invention are declared to be void: 6 Commissions to arrest Weights and Measures being of new invention are declared to be void, and that such Commissions should not be granted. So a Commission is a delegation by warrant of an Act of Parliament or of the Common law, whereby jurisdiction, either of authority is conferred upon others. Sapientes Judices et cognitores sunt in permissu quantum commissum & credimus. And it is a good rule for all Commissioners to hold the line, 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 Hulliners 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 such Commissions took no effect, appeared in this, that no further complaint was thereof made, and such Commission was ever after granted. At the petition of the Commons, the King granted that the Bennet Wilman, who was imprisoned and confined before the Constable and Marshal of England, should be tried according to the Common law of this Realm, notwithstanding any Commission to the contrary. And therefore a Writ was accordingly directed to the Justices of the King's Bench, as here it appears. Of these kinds
many more authorities might be cited, but let us return to our Justices of Oyer and Terminer.

In the reign of E. 3, the Justices were so careful, that no innovation could creep in concerning Commissions of Oyer 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 Knivet Chief Justice by the advice of all the Judges resolved, that the said Writ was contra legem. And here bivis Indictments were before them found against T.S. the same, and all that was done by colour of that Writ was banned.

The third conclusion is, that Justices of Oyer and Terminer cannot proceed upon any Indictment, but upon Indictments taken before themselves, for their authority is, Ad inquirendum.  

The fourth conclusion, that Justices of Oyer 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 Kelvy fo. 159, b. It is thus said, Mem. que in breve de Oyer & Terminer, P. 9 H. 8. for the insurrection in London ille determinare clerement per quos Justices Denglittere, que Justices D'oyer & Terminer ne puerquire in unum, & metine le jour determine, ment plaus que Justices de peace; met Justices de Gaol deliver & Justices in Eire poine bient. It may be that he that set down this case took it upon trust, for it agreed in effect to dem delivis with the Chronicle in 9 H. 8. fo. 843, and it is erroneous in divers main points. 1. That the Oyer and Terminer was by Writ, where it was and ought to be by Commission, as hath been said. 2. That Justices of Oyer and Terminer cannot inquire one day, and determine in the same day, which without their question they may do: for proof whereof we will cite some few Records instead of many.

Thomas Marks Bishop of Carlisle before Commissioners of Oyer and Terminer was indicted, tried and adjudged all in one day, for High Treason.


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 Oyer 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 Oyer and Terminer at Reading in the County of Berkshire. Thomas Bonham was indicted of High Treason and tried the same day. 4 August 10 Eliz. John Felton was before Commissioners of Oyer and Terminer in London indicted of High Treason, and tried the same day by the advice of all the Judges of England. A Nota, The award of the Royal by the Justices of Oyer and Terminer to the Sheriff to return a Jury is not sufficient; but there ought to be a process to the Sheriff, under the Seal of the Commissioners for the returning of a Jury, but otherwise it is in the Kings Bench.

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 Oyer and Terminer; and whereas Justices of Oyer and Terminer should not try the same day, as well as Justices of Gaol-delivery, and Justices in Oyer, no found reason can be given.

The fifth conclusion is, that if any offence be prohibited by any statute, and name not to be held a 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 by Justices of Oyer and Terminer. And so it seemeth to me.
if the statute appoint the penalty to be recovered in any of the Kings Courts of Record, according to the opinion of Carlin, Sanders, and Whidden; for the Court of Oyer and Terminer is the Kings Court of Record.

The first conclusion is, that the King may make a Commission of Association directed to others to join with the Justices of Oyer and Terminer, and a Writ of Admonition to the Justices of Oyer 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 Oyer and Terminer and to their Associates: the forms of all which you may read in the Register abo 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 pertinent secundum legem & consuetudinem Angliae, which is a true mark of a lawful Commission.

The seventh. If the Justices sit by force of the Commission, and do not adjourn the Commission, it is determined.

The eighth. Justices of Oyer 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.

The ninth. Justices of Oyer and Terminer shall lend their records, and process determined, and put in execution to the Exchequer at Mich. every year, to be delievered there to the Treasurer and Chamberlain, to keep them in the Treasury.

The tenth. None of these Commissioners, or of Affire, Gaol delivery, or of the Peace, or other of the Kings Commissioners are countermanded by any new Commission, unless 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.

And a right profitable Estate is made concerning this matter, vide. That 1 E. 6, cap. 7, no Process or Suit before any Justices of Affire, Gaol delivery, Oyer 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 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.
CAP. XXIX.

The Courts of Special Justices of Oier

And first 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 complain of them.

These Commissions are to be granted ex mero jure, and cannot be deniaed. And it is to be observed, that the action of 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 certify 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 Horfes of the said two Houses, as against the buyers or takers before named.

2. Concerning misdemeanours, &c. of Villains.

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.

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, judgments, and executions shall remain good and available in lathe, without any respite 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.

It is lawfull for the Lord Chancellor or Lord Keeper of the Great Seal,
Cap. 29. Special Justices of Oyer, &c.

Seal, and for the Chancellor of the Duchy 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 found behaviour, to enquire by the oaths of twelve lawful men, &c., as by all other good and lawful means of all and singular Colleges, Hospitals, and other places, founded or ordained for the charitable relief of poor aged, and impotent people, maimed Soldiers, 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 inquire of the abuses and misdemeanours, misemployments, fallacies, defrauding the truth, 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.

This is to be observed, that when any Act of Parliament both authorize the Lord Chancellor 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 Chancellor, &c. than the Act of Parliament.
CAP. XXXX.

Justices of Gaol-delivery.

Their Authority is by Commission in these words.

Sciatis quod consititimus vos, tres, & duos vestrum, quorum aliquem
vestrum vos presat' A.B. &c. unum esse volumus; Justiciarios nostris
ad Gaolam nostram castris nostris de C. de * prisone in ea exist' hac vice
deliberandum. Et ideo vosis mandamus gd' ad certium diem quem vos, tres vel
duo vestrum (quorum vos presat' A.B. &c. unum esse volumus) ad hoc pro-
videritis, conveniatis opud vestrum predict ad gaolam illam deliberandum
* sa-
fatur inde quod ad justitiam pertinent secundum legem & consuetudinem regni
nostri Anglie. Salvis nobis americamentis & alis ad nos inde presentibus,
Mandavimus enim Vid nostra Com nostri M. quod ad certium diem quem vos,
tres vel duo vestrum, (quorum vos presat' A.B. & C.D. unum esse volumus)
ei sicere securitis, annue prisiones ejusdem gaolae & eorum attachmenta coram
obis, tribus, vel duobus vestrum, (quorum aliumque vestrum ex vosis presat)
A.B. & C.D. unum esse volumus) siadem venire faci. In cujus rei testimonio-
num has literas nostras fieri secrimus patentes. Teste, &c.

See the second part of the Inst. Stat. de Gloce.x.9.
† 4 E. 3.cap.2.
17 R. s. cap.9.
6 Thrice in the
year, and otherwise
if need be.
6 Noto, few but
effectual words.
2 & 4 E. 3. cap.2.
2 & 4 E. 3. cap.2.
3 Mar.Bl. Com-
misions 23.
2 R.3. Coron.47.
3 H.5. Esquells.f5
2 R.3. Coron.47.

* By the Law of the land, ne homines diu detineantur in prisons, but that they
might receive pleam & celestum justitiam, this Commission was instituted;
and by this Commission Gaols ought to be delivered thrice in the year, and
oftimes it neeth.

Their authority is by this Commission, which consists in d few words,
Consititimus vos Justiciarios nostros ad Gaolam nostram castris nostris de C. de priso-
nibus in ea existitibus hac vice deliberandum. * These Justices ought to be,Bone-
gents & fages auters que des places, &c.

Upon this authority, and by Statutes given unto them, thirtain conclusions
do follow.

1. * Justices of Gaol-delivery may arraign any man that is in prison in that
Gaol upon an Indictment of Felony, Trepass, &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 Indict-
ments 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 command-
ment is move 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
Hankford.

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 pilferers before them,
and proceed upon them. And to it was resolv'd in an appeal of Surber brought
by Aphyary against Morgan, who pleaded that he was altogether indicted and
convicted of the same felony, and his Clerk before Justices of Gaol-delivery,
and pleaded over to the felony (the plea allowed.) And to say 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.

6. They may assign a Coroner to an Approbation, and make Proces against the Apprizer in a forest County.

7. They may punish those that let men to Wall or Mainprize, which are not bailable by Law, or suffer them to escape.

By the Statute of 2 E. 6, it is prohibited in these words.

And be it, &c. That in all cases where any petition or persons herefore 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 King's 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. Hereby the judgment of the whole Parliament: this conclusion both 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 Peace.

9. * Justices of Gaol-delivery shall send their Records and Proces determinat, 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.

10. * Justices of Gaol-delivery may receive Appeals of robbery and murder by Writ, but the Apprizers shall be in prison before them.

11. * To these Justices Commissions of Aliination, and Write of Assistance, and Simonomies (as hath been laid of Justices of Oyer and Terminer) are directed.

12. * 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.

13. By the Statute of 2 & 3 Phil & Mar. it is prohibited, 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.

See in the Chapter of Oyer and Terminer Conclusions 5. more concerning Justices of Gaol-delivery. Vide 44 Aff. 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.

To the former Treatises are necessary to be added certain Acts of Parliament made in the 31st year of our late Sovereign Lord King James, and certain Cates, Additions, and Observations necessary to be known, De pace violata, vide inter alios Alverredi, 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 security under his peace in their bodies & goods; and that the husbandry of all this land may increase and be upheld, which must be had by due execution of Laws and Ordinances, charge 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 premisses, 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 execute their said authority in any manner or form above said, 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 Assize 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 before the coming of the Justices of Assize, 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 premisses, according to his
high commandment, he shall do to him so offending to be put out of the Commission, and furthermore to be punished according to his de-
merits. And over that his said Highness shall not let for any favour,
affection, coft, charge, nor none other cause, but that he shall see his
laws to have plain and true execution, and his subjects to live in
safety 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 ac-
cording to his demerits. These words are to be understood, that he shall be
punished in an ordinary course of Justice by way of Judgement upon this Act,
for his contempt, &c. and not by any absolute power, as hath been often observed.

It is to be observed, that when Justice Fitzhebert and some others did
write of the authority of Justices of Peace, the Commission of the Peace
would overburdened and incumbered with divers Statutes, some wherefore were
before, and some since repealed: and with some, whereas there was none such,
and erred with many vain and unnecessary repetitions, and many other corrup-
tions crept into it by mistake of Clerks, &c. For amendment and correction
whereof (being a matter of so great importance) Sir Christopher Wray Chief
and upon perusal had of the former Commission of the Peace, and upon due
consideration had thereupon, and often conferences between 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 never
thet yet another reformation of that also; for since that time divers Statutes then
in force have been repealed, and divers have expired: as for example, All the Sta-
tutes of Liberties 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 Assize, Vide supra, pa. 159. Also the Statute of 27 H. 8, cap. 22, that the owner
of any tenement or freehold, of any dissolved religious house under the value
of 5 l. per annum, for the kipping of honest and continual household thereupon,
and inquirable by Justices of Peace is repealed by 21 Jac. Regis cap. 28. And
the Statute of 2 R. 2, cap. 8, and 4 H. 4, cap. 25, for taking by any Indebtor
in gain above a half penny in a boll of Watts 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 husband and tis-
lage, which being but a probationer for a time, was discontinued 21 Jac. And
the Statutes concerning husbands of husband and tislage in 4 H. 7, 7 H. 8, 27H. 8
5 E. 6. and 5 Eliz. are all repealed by 21 Jac. and divers others, &c.

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 been con-
tinned or made perpetual: and if it were at the first made perpetual, neither it
be not repealed or altered by any later Statute, Erudimus qui judicet terram
Sic in the Second part of the Institutes the Exposition upon the Statute of
22 H. 8, cap. 9.

Justices of Peace may inquire if Offrets be not cleared by Sheriffs, &c. to the
party indebted and tortured. A necessary Law for the sake of the Subject.

Concerning the nomination of Justices of Peace, for the Statutes of 12 R. 2. 7
H. 4, cap. 5. cap. 2. 2 H. 5, stat. 3, 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 nomina-
tion, as how and by whom they shall be bidgearth. Certain it is, that be that is
named in the Commission of Peace under the Great Seal to be a Justice of
Peace, is a lawful Justice of Peace.
At the Parliament held in Anno 23 Jac. Regis, there was an excellent Law made, entitled, 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 these words, as followeth.

Whereas the offences against divers and sundry penal 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 penal laws and statutes, or else to compound with them for the same.

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 the Peace, 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, tried, recovered and determined by way of Action, Plaint, Bill, Information or Indictment before Justices of the Peace, 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 above said 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.

2. (c) And that like process 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 in et armis at the Common Law.

3. (f) And that all and all manner of Informations, Actions, Bills, was added, and that the Kings Majesty should be bound expressly 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,

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, to be committed against any penal statute, the offence (b) shall be laid and alleged 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.

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 beliefeth in his confidence 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 entered of Record.

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 ge-

The Reasons of this clause were,
1. For that in the Courts afore, specially before Justices of the peace, there are not such able Proctors 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 sake and benefit of the Subiects great charge, growing by special pleading. 3. For avoiding of demurrers upon fret and nice points of pleading. 4. For avoiding of Writs of Error, which often are brought in respect of special pleading.
noral 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 purpo-
ses, as if he or they had sufficiently pleaded, set forth, or alleged
the same matter in barre, or discharge of such information, suit, or
action.

Provided always 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 concern-
ing popish Recusancy, or against thosc that shall not frequent the
Church and hear Divine Service, nor to any Information, Suit, or Ac-
tion for Maintenance, Chancery, 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, Wool, &c. nor for, or concerning the
concealing or detrauding the King his heirs or successors of any Ca-
tton, Tunnage, Poundage, Subsidy, Import, or Priage, or for transpor-
ting of Gold, Silver, Ordnance, Powder, Short, munition of all sorts, wool,
Woolfels, or Leather, but that such offence may be laid or alleged to
be in * any County at the pleasure of any Informer, any thing in this
Act to the contrary notwithstanding.

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 fears upon the people, and at this day could not be performed; For
example: That a yard of Broad-cloth of the smallest making, Scarlet-grained, or
other cloth grained, what colour fester it be, should not be bold above the va-
ues 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 Par-
liament utterly repealed, and made void. We advise therefore the Justice of
Peace (for to him too principally direct our speech, though it concern the rest of
the Justices before named) seriously to read over that Act, where all those obso-
lete Laws are particularly mentioned and repealed, and therefore no Informa-
tion, &c. can be commenced, &c. upon any of them.

At the same Parliament also anno 21 Jac. Regis, another good and profitable
Law was made concerning Justices of Peace and others, the tenor whereof is
as followeth.

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 Maj-
eties 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 trou-
blesome and contentious suits prosecuted against Justices of the Peace,
Mayors
Majors, Constables, and certain others his Majesties Officers for the lawful 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 Majestie, 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 be from and after the end of the present Session of Parliament be perpetual, and have contintuance for ever,

Subsidies, and Fifteenths, and not to any Officer not named in the 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 virtue of the said Act, to all intents, constructions and purposes, as if they had been specially named therein.

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 foreign County, at his choice, which hath proved very inconvenient unto many of the Officers, and persons aforesaid, that have been impleaded by some contentious, and troublesome persons in Countries far remote from their places of habitation.

Be it therefore further enacted by the Authority aforesaid, That if any Action, Bill, Plaint, or Suit upon the Cafe, Trespaß, Batter, or false Imprisonment shall be brought after the end of this present Session of Parliament against any Justice of Peace, Major, or Bailiff of City, or Town corporate, Headborough, Portreeve, 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 virtue 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 trial of any such action, bill, or suit, the Plaintiff or Plaintiffs therein shall
not prove to the Jury which shall try the same, that the trespass, 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 trespass, 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 non sui, 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.

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.

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 authorized, and enabled upon inquiry to give restitution of possession unto tenants of any estate of freehold, of their lands or tenements which shall be ented upon with force, or from them withheld by force, shall by reason of this 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 term of years, Tenants by copy of Court-roll, Guardians by Knights service, Tenants by E legit, Statute merchant and staple of lands, or tenements by them to holden, which shall be ented upon by force, or holden from them by force.

See 8 H. 6. cap. 9. & 31 El. cap. 11.

In Termino Pach. 6 E. 1. Coram rege prima fuit institutio Justiciarium pro pace conservanda.

Rot. Parl. 18 E. 1. fo. 3. n. 41. Homines de Cheshireique qui non habent ad forum suum, potius servientes suos et suam legem, Winton, &c. Et non habent comitiu murandos comitatibus suis, nec statutum sua revocandum. The Lord Chancellor and others of the Privy Council do remit to others 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 Justices of Peace cannot make a warrant upon a bare suspicion, to break any man's house to search for a felon, &c. for stolen 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 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 forever, and at what time forever, 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 break open the house, etc. and apprehend the Felon, for that the Kings writ is a Non omittas proper aliquid libertatem; but if the Kings process be in debt, trespass, etc. at the suit of a party, there the Sheriff by force of the Kings writ cannot break open the house of the subject. And so is the book in 13 E. 4. fo. 9. which last: It was holden, that for felon or suspicion of felon a man may break the house to take the Felon, and two reasons are pleaded in the book. 1. Because it is for the Commonwealth to take them. 2. Because the King hath an interest in the felon, and in such case the writ is a Non omittas proper aliquid libertatem; but otherwise it is for debt, or trespass, the Sheriff or any other cannot break the house to take him. And yet it is to be understood, that if one be indicted of felon, the Sheriff may proceed thereupon after dengal made, etc. break the house for his apprehension, or upon his and cry of one that is slain or wounded, to be in danger of death; or robbed, the Kings Officer that put forth may (if dengal be made) break a house to apprehend the delinquent: but for Justices of Peace to make warrant upon surmises, for breaking the houses of any subject to search for felons or stolen goods, is against Magna Carta, Nee super eum ibimus, nunc super eum mittamus, nisi per legal judicium Parium suorum, vel per legem Terrae: and against the Statute of 42 E. 3. cap. 3. &c. And we hold the resolution of the Court, viz. of Brudnell, Pollard, Brooke, and Fuzerbert in 14 H. 8. to be law, that a Justice of Peace could not make a warrant to take a man for felon, unless he be indicted thereof, and that must be done in open Session of the Peace. For the Justice himself cannot arrest one for felon, unless by himself suspect him, (as any other may) and by the same reason he cannot make a warrant to another. And all this appears in that book, and is agreeable both with our former books in 42. 43. & 44. 4. 5. tit. comm. Br. 3. and with reason, for this warrant to take a Felon to be in nature of a Capias for felon, 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 break and arrest charged with felon or suspicion to bail; or mainprise, because Justices of Peace are Judges of Record, and ought to proceed upon Record, and not upon surmises. Sed distinguedant tempora, & concordanties leges: Not 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 felon or suspicion of felon and feareth that the Kings peace may be broken in apprehending him, the said Justice may make a warrant to the Constable of the town to break 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 gives the information of his knowledge of suspicion to 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 17 & 18. 3. that a Justice of Peace may have his warrant for the subduing of the peace, meaning to subdue the party that knoweth of either suspicion of the felon, but in this case neither the Constable, nor any other can break open any house for the apprehending of the party suspected of, charged with the felon, for to take the arrest of the party that hath the knowledge of suspicion, who cannot break open.

177

13 E. 4. 10 E. 4. 6 b. He may enter into the house the door being open.

7 E. 3. 16.

12 E. 3. 9, E. 4. 16 E. 4. 7. 16.

Mag. Cart. c. 29.

Read the 1st.

14 H. 8. 16. 2.

Vid. 1 R. 5. 3.

3 H. 7. cap. 3.

1 & 2 Ph. & Ma.

c. 13. & 8, & 3.

Ph. & Mat. c. 16.
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 add. For though commonly the houses; Cottages of poor: and base people be by such Warranties searched, &c. yet if it be made lawful, the houses of any subject, be he never so great, may be searched by such Warrant upon bare suspicions.

Concerning bailment and mainprize, and what offenders were bailable by the Common law, you may read in the Second part of the Institutes, W.t.c. 75. How something is necessary to be added in respect of some variety of opinions touching the true use, usage, and signification of Bailment Mainprize, Fidelj. jurat, Bursary, Pledges, Plevan, Plevana Replevin, Bosung, and the like. And first of all.

Some derive this word from the French word Bailier, id est Trutere, to deliver, because the prisoner is delivered out of prison; but it cannot to be derived: for the entry is, trahio in 02 per ballium, and then the fines (02 nonfines) should be, he is delivered into deliverer. But this word Ballium is truly fetched from the French Bon Bail, that signifies a Gardian, Bearer, 03 Gaoler; and herewith agreeeth Braden, who saith, Nonire utulius per ballium dimittendas. And again, Per ballium dimittatun uisque adventum justitiarium, aliqua regnum manecat in prisionibus: and in the same place, tradas in ballium 02 probis hominibus. We read not in Bonn of this word Bailium, but of some other words hereafter following. Que plebiums corpus de home cuncte ne font my properplements mest font manipulose per cunto que il suppositor que cuncte plebians font sommers a tax per bail corps pur corps.

Bailment is called a leasing prison.

A man arrested or imprisoned (and bailable) for felony shall be bailed before it appears whether he be guilty or no. But if a man be convicted be certes or confession, &c. he is not bailable, because it appears that he is guilty. So, if upon examination a man confesseth a felony, if the Sittimus be for felony confessed, he cannot be bailed.

There is a diversity between Bail and mainprize; for the entry of the bail is, that such one a traladur in ballium, in which case they be his Sarrians: and if they suffer him to escape, they shall answer for it.

And where it is said there, Expe, quodam in terra pende, it was spoken but in terrorem, and therupon a Quo is made of it. And that it was no felony in ancient time, hear what the Sitter faith: It is absurd to think that such pain should be adored to the Bail, as to the principal which made default, whereas they were but answerable in that case.

And where any man is delivered in ballium, he may safely be kept by his Bail for their indemnity, because the Court of Justice both 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 attained unto by observation of presidents, and the court 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 recognizance in a certain summe, that the prisoners shall appear at a certain day, &c. Et ultra quilibet eum corpus pro corpore, &c.

The bail of a felony before two Justices of the peace, whereas one to be of the Commons: 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 these things. 1. Ad comprehensio at the next Gaol-delivery. 2. Ad fiandation de felono prasdicta. 3. Ad respondendum dicto Domino Regi, &c. See the second part of the Institutes, the statutes of Marlbridge, cap. 27, if the party bailed Propper privilege Clericas respondere nonerit, non amerciatur illi quibus traditus in ballium. There must be also a Liberat in that case to the Gaoler, if the felon be former committed to prison, to deliver him out of prison.
Before the said statutes of 2 E. r. cap. 15. 27 E. t. 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 2 l. But by the statute of 1 & 2 Ph. & Mar. the Justices of Goal-delivery Hall in that case let what fine upon the Justices of Peace, et they shall think fit. Upon a Copias, and a Copi corporis returnes, the entrie is, in full in ballum 8 die Man Anno 16 Regis H. 8, fo. Long, &c. audiendem Mercurii pro. funtis. & sic de die in diem. & termino in terminio, quia quae placent cum terruis, & sic quilibet eorum corporis pro corpore.

3. If a custodia Marechal, in the Kings Bench, a Bill of debt be brought against him; and the defendant find 8 for his bail, 8 entereth a Recognisance to the plaintiff with this condition precedent, Quod si contingat praed. defendantem debet, & damnis illis praebeta quern diem minime solvere, aut se priscis Marechalli in occasione non reddere, that then he would satisfied the same.

Nota. In these personal actions the bail is only bound, their recognizance is general, and of no certain term, as it is in cases of felony; and against that bail the king's bench, any stranger in the same term may sue him by Bill in any personal action; otherwise it is if he were by Mainpise die in diem. But if A be outlawed in any personal action, and taken by foice of a Copi, &c. and pleadable to the County in avoidance of the outlawry, as he that was commissed in another County, &c. In this case A hath been bailed, and the entry is, Super hoc, T. B. & B T. mancunferamt praeferat. A habeandum corpus ejus hic. &c. et sic de die in diem in qualibet diei placiti, quaequae placent praeferat terminus, & judicium inde redditum fuerit. &c. quilibet eorum corporis pro corpore. Et qualibet A, ad quampli nemin diei placiti, pro pena 40 l. &c. si contra ipsum A ad ali quem diei, &c. desistat, taceat, aut iuctum in bux parte non proleque. Note. Whereofovere the principal is bound, is in a certain term.

And where some do hold, that in all cases when any statute enacts that the body of the Delinquent shall be committed to prison at the will of the King, he cannot be let to Mainpise before the Kings will be known. The rule is good if it be rightly understood, for he cannot in that case by force of such statute be imprisoned, before he be indicted, convicted, and judgement given, and then he cannot be bailed or let to Mainpise, because his offence appeareth, as hath been said.

And the case there cited in 2 E. 3. upon the statute of 2 E. 3. cap. 3. for going armed in Welfam, Hall, &c. the Book faith, That Thomas Figgott Chivaler was arrested per Shard, &c. which proved 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 Figgott might have been bailed before conviction.

In the next place we are to speak of Mainpise, Manumacpitio, which verityeth is self, and signifies a taking into the hand.

Every bail is Mainpise, (for that is a bail that take the person bailed into their hands and custody) but every Mainpise is not a bail, because no man is bailed, but he that is arrested, is in prison; for he that is not in custody of prison cannot be delivered out, as before it appeared. But a man may be mainpised which never was in prison, and therefore Mainpise is more large than bail.

As in an Appeal of felony, the defendant wage battle, &c. and a day appointed, &c. the plaintiff shall find Mainpise, &c. to appear, &c. And yet he never was in prison or under custody. And sometimes these mainpises are called pledges. Also if A be in execution for debt, &c. at the suit of T. buth a Scire fac. upon a release of the like, the Enterp is, Et super hoc procediet A. damittur per manusprin. D. E. F. qui cum mancunferant, ad habeandum corpus ejus hic ad praeventum terminum, & sic de die in diem, &c. quaeque inde judicium redditum fuerit. Et si pro predict. A. transferit, extinguat, &c. quilibet sub pena 40 l. quibus &c. H. 8. 30. quilibet
Justices of Peace: Cap. 31

... If there be as many as three justices of peace in the same parish, they shall meet and consult together, and determine what liberty or liberty of the peace to do, and to whom it shall be granted. But if there be but one justice of peace in the parish, he shall have all the power of the liberty or liberty of the peace. And if there be but one justice of peace in the parish, and he be absent or unable to attend, the same liberty or liberty of the peace shall be granted by the other justices of peace in the same manner as before. And if there be but one justice of peace in the parish, and he be absent or unable to attend, the same liberty or liberty of the peace shall be granted by the other justices of peace in the same manner as before.

* Regd.
F.N.B. 1849, 370
Bras. lib. 3.154.

31. 33-35, main-

31. 2-3. 153
12. 15. 3-17. 3. 9
17. 3. 4. 39
8. 4. 8. 42
37. 3. 9. 38
42. 4. 8. 43
11. 3. 4. 39

2. 3. 4. 39

18. 3. 4. 39

11. 3. 6. 42

27. 3. 6. 42

6. 4. 8. 42

4. 4. 8. 42

1. 4. 8. 42

17. 3. 4. 39

17. 3. 4. 39

17. 3. 4. 39

6. 4. 8. 42

Regd. 6.

Regd. 4.

Regd. 6.

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Regd. 4.
DANGEROUS WOORDS SPOKEN UNDER HIS BINDING, viz. FOR SAVING AT ONE TIME TO EDW. KYRTON EQ., THOU ART A PETER, THOU ART A Liar, AND HAFT TOLD MY LORD LIES, AND I WILL MAKE THEE A POOR . AND HE WAS FURTHER INSISTED, THAT SINC THE SAIN RECOGNISANCE, CLAUDIUM CAYDJHIM JOHANNIS WICH, VI & ARMIS FEGIR & INTRAVIR & AVE- RIA & CATALLA SPHUS JOHANNIS IN CLAUDI PRECIDIO DE PATIENT, ILLICIT VEXAT & CHAS- VIAT. AND AFTERWARDS AT ANOTHER TIME HE SAI TO THE SAID KYRTON, THOU ART A DRUNKEN KNAVE: WHICH INSULTMENT WAS REMOVED INTO THE BINGE BENCH. AND HERE-UPON TWO QUESTIONS WERE DEBATED DIVERS TIMES BOTH AT THE BARE 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 INSULTMENT WAS GOED IN LAW. AS TO THE FIRST, IT WAS RELIEVED, THAT NEITHER ANY OF THE WOORDS, NOT THE TRESPASS, WERE ANY BREACH OF THE GOED BEHAVIOUR, FOR THAT NONE OF THEM DID TEND IMMEDIATELY TO THE BREACH OF THE PEACE, FOR, THOUGH THE SAID WOORDS (ESPECIALLY THOU ART A Lyr, THOUS ART A DRUNKEN KNAVE) ARE MOTIVES AND MEDICATE PROVOCATIONS FOR BREACH OF THE PEACE, YET TEND THEY NOT IMMEDIATELY TO THE BREACH OF THE PEACE: AS IT WILLIAM KING HAS CHALLENGED KYRTON, OR SENT HIM A CHALLENGE TO FIGHT WITH HIM, OR HAS THREATENED 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 DIVERGENCY WAS JUSTLY COLLECTED UPON THE CONFESSION AND CONTEXT OF THE STATUTE OF 34 E.3, WHEREBY JUVICES OF PEACE ARE ALLOWED FOR KEEPING OF THE PEACE, AND TO RESTRAIN THE DEFENDERS, KILOTOS, AND ALL OTHER VESTIGIOS, AND TO CHALLENGE THEM ACCORDING TO THEIR TRESPASS AND OFFENCE; AND TO ENQUIRE OF VILLAGE AND VILLAGERS, IN THE PARTS BEYOND THE SEAS, AND BE NOW COME AGAIN, AND GO WANDERING A WILL NOT LABOUR, &C. AND THIS MUST; FOR PUNISHMENT OF OFFENCES AGAINST THE PEACE AFTER THEY BE DONE, NOW FOLLOWED AN EXPRESS AUTHORITY GIVEN TO THE JUVICES, FOR PREVENTION OF SUCH OFFENCES BEFORE THEY BE DONE.) VIZ. AND TO TAKE OF ALL THEM THAT BE NOT OF GOOD NAME, (THAT IS, THAT BE DEFAMED AND JUSTLY SUSPECTED THAT THEY INTEND TO BREAK THE PEACE,) WHERE THEY SHALL BE FOUND, (Sufficient fury and ministrations of their good behaviour towards the King and his people (which much concern the King's peace, as is also provided by the laws subsequent) to the intent that the people be not by such rioters troubled or injured, nor the peace disturbed, nor Merchants nor other passing by the High-ways, disturbed, nor put in the peril that may happen to such offenders. For the trespass, &c. Although every wrongfull trespass is quare vi & armes & contra pacem, yet these force and arms, or contra pacem impiled in Law are not taken to be such as shall make a breach of the good behaviour; because they are trespass upon the land; or touching goods or chattels, and not the person of a man.

As to the second point it was held, that the Indictment concerning the words was void and coram non judice, and good only for the trespass, Quare clausum, &c. BUT IF THERE BE ANY JUST CAUSE OF BREACH, he ought to have a Sure facias, &c., on the Recognisance.

In an Account, if a Capias ad computand be awarded against the Defendant, and thereupon he is outlawed, and rendeth himself to the prison of the first, and Auditor be assigned to him, before whom they be at issue, and the Auditor brings the Record into the Common Pleas, and the Defendant found guilty in 200 l. To appear in proper person every day pendent plentia, and if the issue pass against him, that he rendere himself to prison.

A fine for conuince of droit was levied to an Infant, and because the Infant ought to pay the fine to the King, he found securitatem de fine folendo. There is also a writ De securitate pacs, & de bene gerendo.

In homine regalegando the Defendant avowed so that the Plaintiff is his billiant regardant. The Plaintiff said that he is free, and thereupon they were at issue; the plaintiff proved that he might gage deliverance. And it was averred that he should have deliverance of his goods, and no surety that the abductant should have the goods again if it were found for him. But note when the abductant be at issue upon the billegage, then the Plaintiff shall find surety to the sum effect, Surety;
Surety; By Statutes, the statute of W.1. cap.20. De malefactoribus in Partibus in the Second part of the Institutes in the exposition of the same; the nature of Gluc. cap.4. and W.2. cap.21. of finding of surety by tenant by Receipt. See the Second part of the Institutes the exposition of the same. And many other whereas we need not to make mention; only this is observable, that when any statute both require pledges or surety to be found, they ought to be insufficient; for insufficient pledges are no pledges in judgment of Law; and surety cannot be ex vi termini unless it be sufficient.

It appears by W.2. cap. 29. that the "Writ De odiario et aetate concerning the bailment of prisoners is grounded upon Magna Carta. And it is hidden by some, that the 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. cap. cap.26. which were unnecessary here to be rehearsed. This Writ De odiario et aetate is omitted by Fasham in his N.B. Concerning the Writ De manumissioni, one kind thereof directed to the sheriff is a Writ grounded upon, and rehearsed the statute of W.1. cap.15, and how that before him by a certain inquisition of office A.B. Sandboth inquired De quodam latrocini caputdam 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 manumissioni ceased. But the Writ of manumission 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 manumission may in other cases be directed to the Sheriff. Vide the statute of 42 E.3. cap.2, for the Court of the Marche. F.N.B. 25. 1.


So obvious was unjust imprisonment, or unjust detaining of any Freeman in prison, as in ancient time there lay a Writ De pace & impressamento, &c. ubi liber homo, &c. uno modo proper injustitiam captiomentum, & allo modo proper injustitiam detentionem, &c. And there you may read the form of the Writ of Appeal, De pace & impressamento, which we have the rather remembered, that it may be observed what federal remedies the Law hath allowed for the relief and ease of the wrong prisoner. But the closest 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. Cap. cap. 29. and atamt. de Gluc. c. 9. and the Exposition upon the same.

The Clerk of the Crown, Clerk of the Peace, and Clerk of the Peace shall certify briefly a transcript of such Attainder, Disturbay or Conviction as is had for any kind of felony before Justices of Oier and Terminer, Justices of Goal-delivery, and Justices of Peace before the King in his Bench, there to be a remain of Recod. &c. See the nature, a very necessary Law for the plea of uttercourse against or combat for suiting of Clergy, &c. and for sequestrations and forfeitures to the King.

b For the better understanding of this Act of Parliament, it is to be understood, that such Attainders of Disturbay 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 nature of 9 E.3. cap.5. by which it is ordained and established, that Justices of Goal-delivery, and of Oier and Terminer, shall send all their records and processes determined, and put in execution to the Chief or other places where the Chief places where the
Justices of Peace.

shall keep them in the Treasury as the manner is; so that the Justices always do first take out the decrees of the said Records and Processes against them to send to the Treasurers, as they were wont before.

By the statute of 11 H. 4. cap. 3. Justices aizaigned (id est, Justices of the Peace) shall cause to be delivered into the King's Treasury all the Records of Assizes, Grandjuries, and all certification before them determined every second year.

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 process, &c.

After the murder or manslaughter found before the Coroners, they shall deliver their inquisitions before the Justices of the next Assize-delivery.

If any person be murdered in the day, and the Purse, or escape not taken, the County shall be arrested, and the Justices shall power to enquire thereof upon view of the body, and the Justices of Peace have power to enquire of such escapes, and to certify the same to the King in his Bench.

And (that we may say) in what that of every thing) as much as the charge to be given at the Sessions of the peace consists of 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 lay as a foundation of the charge, that excellent Law established by Authority of Parliament, which we have translated in Latin, Imprimis Rex vult, & praecepit eodem Pax, Suefradia Ecclesie, & tera solidus custodiam & conservet in omnibus, quoque Juxta vultus, cum pauperibus, quam divisus administrat, nulla habita periculum ratum.

First of all, the King himself 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.e. Justice) be done to all, as well poor as rich, without respect of persons.

Hereupon the charge to consist upon two parts, 1. Of Laws Ecclesiastical, and 2. Of Laws Civil or Temporal, with an obligation to do justice.

Do another Actum or Principle of the Law may be the foundation of the charge. Imprimis interest republica ut pax in regno concertatur, et quaecumque pacemur provide declinatur.

It is most necessary in a Commonwealth to provide, that tranquility and peace be continued in the Realm, and that all things being contrary thereto may by force be redressed.

Do that of 37 H. 8. There is nothing within this Realm that concerneth the Subjects in more quietness, rest, peace, and good concord than the due administration of his Laws.

Do the like, for the Third part of the Institutes, in Epilog.
CAP. XXXII.


Concerning Riots, Assemblies, and Routs.

This Court is called by the Statute of 2 H.5, and is a Court only of Inquiry, and to certify the inquests incontinent into the Chancery, as by the said Statute more at large appeareth.

CAP. XXXIII.

Justices in Eire.

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 I'mire, or Itinerantes, in respect of other justices that were residentes: In the black book in the Chichever, cap. 8. they are called Justiciarii deambulantes, & perambulantes. See Vet., Mag. Cart. 2, part, fo. 72. Artic. & sacramenta in I'mire.

Their Authority was by the stringe Writ in nature of a Commission, they had jurisdiction of all pleas of the Crown, and of all Actions, real, personal, and mixed: 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, Sec. 514. and read the ancient Books and other Authorities there quoted for their antiquity and jurisdiction, and the causes wherefore they vanished away. But the other justices of Eire, viz. of the Forell, continue to this day according to their original institutions. See the Chapter of the Court of the Forell. 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.

What Franchises and Liberties ought to be claimed before justices in Eire, &c. lib. 9. fol. 24. the case of the Abbot of Strata Marcella.

The Life of their Court was, Placita de Jurisij & Assisij & Coron. de I'mire, Johannis de Vallibus & socioram Justic. Itiner. apud Oxoniam in Com. Rutland in cratino Epiphanie Domini, Anna regni Regis Edw. 14.

These justices in Eire did hold their Courts, as hath been said, from seven years.
Cap. 33: Justices in Eire

peace to seven years, and first they began with Pleas of the Crown, for faith. By reason of a thing, the Pleas of the Crown, done before the last Eire: for it appeared by Braden, Non erit quae tandem de Placitis illis Corone: quae emeru-ferant ante alii iter Judiciorium, & quae eoram eis proposita non fuerant. And by Fletas, Ex capitis de veteribus Placitis Corone alis praetentatis & nondum terminatis, folet excepto quibusdam indicisbus. om quod de novo judicamento de fato, ante ultimum iter imposito non tenetur respondere; & si non sit allocabiliis, sequitur quod Juratores hancend iusum invadium sunt de concelebram, vel de perspectio conveniendum.

And it was to be wished that in criminal causes at the Kings suit, there were a limitation of time, specially in causes concerning the life of man. The Common law in appeals at the suit of the party hath in such cases limited a time, viz. that they must be brought within the year and a day after the offence committed: and the reason thereof was, that the cause might be tried, whilst it was fresh in memory, and that such as could testify are living. Vid. Hil. 15 E, 1. in Banco Rce, 56: they could adjourn into another County. The Justices in Eire might inquire of the deaths of Justices of Gaols delivery. But fad, post inter vallum accutare velis, non eet de jure audiendas, nisi docere potest ex usu jusris rationibus impedimus. And Braden also said, that after the charge given the Justices in Eire, desentis fieri in locum qui se ad convocatis ad se quatuor vel sex, vel pluribus de misioribus de com. qui dicemur * Blones com, ad quorum mutam dependent vota alia omnium qui de Domini Regis & confolet &h aditum aditum, quod omnes tam minores quin et quin sunt, et annuit & amplius jure debent, &c.

He that brings the suit, rules the suit, which is alleged with a certain description here, Ad unam mutam dependent vota alia omnium. So volumnly called, which also be well insinuated, when he brings. &c. it is multiplied, and should be: 5, annum: 2 for 5. See the 2. part of the Index. Mag. Cart. cap. 7 & 33.

So great was authority of Justices in Eire, that if they came into the County where the Justices of the Court of Common Pleas late the jurisdiction of that Court being the Kings seal, but they yielded to the King's Bench.


Reg. 1. B. 2

* Pic. W. a. c. 10.

* Nota the Registe-errer is a good exposition of this nature. See the 2. part of the Index. W. W. cap. 12.

See also another writ in the Register, Ubi supra, De clamore admissum, in Ut-nera, &c.
The Court of Justices of Trailbaston.

These Justices sat by force of the King's Commission of Oyer and Terminer grounded, as some hold, upon an Ordinance made by King E. I. and the Lords at a Parliament, held in Anno 33 E. I. for the better proceeding. And therefore they were called Justices of Trailbaston, because they proceeded as sparsely as one might have to Trail a Naff, they sat upon the said Ordinance in the same year, viz. 33 E. I. a Commission of Oyer and Terminer Vocal. Trailbaston secundum ordinamenti inde 42. in Parlamento de Anno 33 E. I. It appeared, as some have conceived, that this Commission was built upon a Ordinance in Parliament, and not upon an Act of Parliament.

Others say that this Commission was grounded upon an Act of Parliament in Anno 33 E. I., intituled Statutum quod vocatur Ragan de Jusiciarius insignis. See the statute, and that the Ordinance mentioned in the Commission of 33 E. I. is the statute of Ragan, statutes being often called by the name of Ordinances, for every statute is an Ordinance, sed non e converso.

But let us now consider what light our books have given us, the statute being somewhat obscure and dark.

In this, 2 E. 3, we read this case: William de B. sued a writ of Error returnable in the Kings Bench upon a judgment 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 fend only the record of the plea, they were commanded to fend the transcript of their Commission, and the bill also with the passalet, 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 anfinder without making of processe against him, and therefore they ered in receiving the plea without processe, quod non allocatur. Secondly, for the Justices of Trailbaston be in their case as Justices in Circe; and in Circe when the party puts in his bill against another which is present in Court, the Justices in Circe 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 circumstantiis which came not in by processe to give their verdict; and also it appeared by the record, that the Twelfth gave their verdict super faciamorium finum, without lapsing de consentiunt partium, sed non allocatur. For in Trailbaston and in Circe certain men are made to come by whom these Justices do inquire ex officio, that is, without process wherebyunto the parties which have pleaded to issue are to be tried by them, the Court ereth 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 appears no dissent. Fourthly, the errors assigned being no error, the Court did receive for error, and to affirm the judgment so 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 pontit in super patriam, where John de Hodey which was Plaintiff did not join with him, & praeclitus quern similiter
Cap. 34. 

**Justices of Trailbaston.**

limiter, which forming 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 unlawful jurisdiction, but a writ of Error brought upon their Judgement, whereby, and by all the context of this case their jurisdiction was affirmed, the Judges of the King's 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.

Vide: 14 E. 3, part 3, m. 8, & 2. A Commission of Trailbaston was granted to Robert Paring Treasurer and others in London, Middlesex and Surrey, and like Commissions were granted in other Counties.

A Petition was exhibited by the Commons in full Parliament, who prayed, that no manner of Error or Trailbaston might be held during the years, 20 years, &c, but it was not granted.

But Præcipitatio est Nover ca Justitie: and both in respect of the precipitation and of some reference to the next Parliament by the Statute of Magna, this Commission wholly long since banished, and is left out of the Register as not to be put in execution. But the Commission of Die and Terminer there remained as necessary and useful for the punishment of horrid and enormious offences, See before the Chapter of Die and Terminer.
The Courts of Wards and Liveries raised

by Authority of Parliament.

First, the King our said Soveraign Lord by authority aforesaid Ordaineth, maketh, establisheth, and createth 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 Highness; and shall remain and be ordered, as hereafter shall be declared.

Also be it enacted by authority aforesaid, that all Wards which the Kings Highness now is, or hereafter shall be intituled to have, with their Manors, Lands, Tenements, Rents, Reminders, Reversions, Services, and all other Hereditaments whatsoever they be, as well in possession as reversion, and all Revenues, Inffues, 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.

Alfo 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 Lancarter 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 Successflors, of, or for any Wards, Lands, Tenements, Rents, Account, Receipt, Services, or other cause in any wise touching or concerning any thing apponted 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.

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, terms, profits, casualties, improvements, and other emoluments of the Wards, marriages, Ideos, 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 Highness without concealing any part thereof. And shall also cause and procure Processe to be made against such as shall be indebted.
Cap. 35. The Court of Wards & Liveries.

No Process out of the Exchequer for or concerning any Ward, &c.

No Process out of the Exchequer for or concerning any Ward, &c.

to the Kings Highness and their suetries of and for any part thereof, from time to time, as the time and case shall require without any delay.

Also be it enacted by the authority aforesaid, That all manner of Proceedings 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.

Also be it enacted by the authority aforesaid, That the said Matter by the advice of the said Attorney, Receiver General, and Auditors, or three of them, whereof the said Matter 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 Prerogativa Regis: the same fines to be paid to the Receiver General of the Wards lands, as the same may appear yearly in his account.

Also be it enacted by the authority aforesaid, That the said Matter 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 use, 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 Attorney, 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 always to be considered in the doing thereof; the same rents and fines referred to the Kings Grace to be paid always 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.

And also be it enacted by the authority aforesaid, That the said Matter for the time being shall have power and authority to take Recognizances of all and every person and persons that shall be called into the Court of Wards and Liveries to answer to any matter alleged 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 alleged. And that all such Recognizances of what summe soever they be, shall be as good and effectual in the Law to all intents and purposes, as Recognizances taken in the Kings High Court of
The Court of Wards & Liveries. Cap. 35.

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 Recognizances as be or shall be there forfeited, and to set fines for the same to the Kings use under the sumnes contained in the said Recognizances; the said fines to be levied by like Process of Seire factis, as by the statute made in the 27 year of our Sovereign 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 petitions 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 prifon, 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 which any such Recognizances 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.

And also shall have full power and authority to hear and determine all and all manner of Debits, Debts, Trespasses, Accounts, Reckonings, Waifs, Deceits, Negligences, Defaults, Contempts, Complaints, Riots, Quarrels, Suits, Suits, Controversies, Possessions, Offences, and other things whatsoever they shall be, which shall hereafter grow, be moved, settled, procured, pursued, or arise in, for, or upon any matter, cause, or other thing, and shall have power and authority 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 suits for term 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 Treasures, Murders, Felonies, Estates, Rights, Titles, and Interests as well of Inheritance as Freehold, other then Joynatures for term of life, only excepted and always foreprised.)

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 Reign of H. 8.
Cap. 35. The Court of Wards and Liveries.

The first contains three things, Time, Title, and Cause. And in all these should Polydor, and such as follow him, do rec: For Polydor saith that

Ex cognoceio nova vestigialis genere
a Utero conceptu
b Quam rex effect Dominus,

Henry the third Anno Domini 1219, which was in the third year of his reign,

Lib. 7. cap. 10.
And other Lords: to the King in these words. Notandum tamen quod si quis in capite tenere debeat, tunc ejus custodia ad dominium regem plene pertinet, five alios dominos habere debeat five non, quia dominus rex nullum potest habere parum, multo minus tenorem, & c. And he treatheth ubi supra of Wardships then bue, (which holdseth law till this act) and speaketh nothing of the beginning of them.

King John in the fiftenth year of his reign made a great Charter, and granted Concilio Britonum, quod curtus terra harcides qui infra latem fuerat non capitis de terra haresis nisi rationabiles exitus, & rationabiles confteeudes, & rationabiles fercittia, & hae fin destructio & vaso hominum vel rerum. Et si nos committerimus custodiem alie naliis alia terre vicecomites vel alie alicuii su, qui de exitibus terrae illius nobis debent respondere, & ille distructionem de curfodiam seceret vel vatum, nos ab illo capiemus emendem, & terra committatur dubius legalibus & discretes hominum de feudo illo, qui simillim nobis respondant, fictur prædictum est. Curtus autem quiaduen custodiem terrae haberet, sicut domos, parces, vivorum, flania, molendina, & catena ad illam terram pertinens de exitibus terrae ejusdem. Et redde haret, cum ad plenum atatem perveniret, terram suam total instituiret de cenris, & omnibus aliis rebus, ad minus sequendum quod illa recepti.

2. Where Polydore faith, Ulte concomitant at quoutes, &c. he affirmeth that it came from the grant of the subiect to the King. The truth is, that all Tenures by Knight service, which was since the Conquest divided and marriage (for relief was due before) were either created and restored by the King, or before of 15 E.1. Quia emptores terraeum 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, Cajus et dure, ejus et disponeste. And all the lands in England originally moved from the King, and are helden of him mediate or immediately.

3. He utterly misakes the end of the creation of these Tenures by Knight service, which were originally created for the defence of the Realm by his own subiects, which is more safe, than to trust to foreigners. But hereof you may read at large in Littleton Sect. 95. 96. & 103. & Lib. Rub. Maust enim princes domesticos, quam hereditarios bellicos apportione calibus. This Tenure which now is called Eccles, or Servicium Scuti, was of ancient time named expediendo hominum cum cuitis, as you may read in the Charter of King Kenelphus, who Anno domini 831 & regni sui 25 granted to the Abbot of Abydon manys Manors and lands, and referred quod expediendum duodecim vizorum cum tantis cuitis exercant, antiquos pontes, & arcas renoven, &c. Of all other services and Charges he and his succedors were discharged.

In nomine excelis Tamiitis, curit nuti & miferatione a piato patre predictis, ego Ethelred Rex totum Insubulium cum consentia & licentia Optimatum morum aliorumque morum fideli infinit dabo, & liberti animo concedo Cliche. quum etiam partire, hoc est, 20 manios in loco quem curriculce vocant in ycean tun in hereditatem perpetuam, & semper liber permanent notis & signatis, magni & modiciis, ad habendi & tradendi qualisque voluerit relinquat ad omni tributo & * servici regali, nisi constructione pontis, & arcet aedifici- one, & bellium expeditione. Actum est autem hoc mere concessius donum Anno Dominice Incarnationis 1001, &c.

In this Book of Domesday you shall find it thus recorded. Sudric.

Episcopus Baro.
Ille qui tenet de Wodaro redit eto, & servicium unius militis, and in other places. And in Domesday mention is often made of Denchys or Dronges, which is so much to say as Tenentes per serviciem militare.
Cap. 35. The Court of Wards and Liveries. 193

Many others of this kind might be cited to prove that prudent Antiquity ever
proverb by relaxation of tenure (amongst other things) for the defence of the
Realm against the Inviolations of Enemies.

All our ancient Authors treat hereof. See the First part of the Institutes, Sect.
123, and see the Giano Custumer of Normandy, Cap. 33, &c. fo. 49.

You have heard before de regali servicio, before the Conquest, but that re-
gale servicium (which was Knight's servitium) drew unto it relief, but neither
wardship of the body or of the land, as hath been said; it is true that the Con-
queror in respect of that royal service as a badge of the Conquest took the war-
dship of the land and the marriage of the heirs within age of such tenants, but
this extended not to the tenures of the subjeets by Knight's servitium, as it appeared
by Bradon: Dicitur Reges servcium, quis spectat ad dominium regem, & non a-
lium, & secundum quod in Conquestu fuit adventum; & hujusmodi servitium per-
solvuntur ratiome tenementorum, & non personarum, quis ex tenementis pro-
municat, ut & dicatur taciendo inde honore servitum, vel regale servitium, five
servitium dominii regis, &c. So as the Conqueror profided for himself, but
other Lords at the first by special relaxation since the Conquest provided upon
gift of lands to themselves: Regis ad exemplum totus componit orbis, in quibus
in which he which we truly have confest, and which which the Normans had from us, we have true relation in other places.

The good King H. 1. son of the Conqueror adding that the warship of the
body and lands of his Tenants by Knight servitium enacted by his Father was
both grievous and unprofitable to his great Charter Amo primo regni sui, retituit
Quod regnum suam opprimitur erat injustis exactionibus, &c. (and particularly
tempore patri sui) did grant (amongst other things) Quod si auxor cum liberis
remanerat, detenat suum & maritagon habebit dupre corpus suum legitime serva-
tur, & eam non dabat nisi secundum valle suam, & tenet & liberorum cuitos
est sine auxo, sine aliis propensitys, &c. To be short, by that golden Charter,
Omnis male confudicitudes, quibus regnum Anglie injuste opprimebatur, inde
abolit, et Iegam regis Edovardi redidit. These were called King Edwards
laws, not that King Edward made them, sed quia extribus legibus, &c. Angloe-
rum, Danorum, & Merciorum unam legem communitatem edidit: Vide Ranulph Ce-
stricin, lib. 1. cap. 30.

And whereas some have objected that warship is a badge of servitude, for that
in the writ of Nativo habendo, one of the Clerics (amongst others) is capien-
do redemptionem ab eo pro filios & filiabus maritandis, & aliis Villanis servi-
cius. That is, taking random of him for the marriage of his sons and daughters,
and other billets servicium. To this it is answered, that the King for marriages
of his wards by such Romans, but such moderate sums of money, as in
respect of the quality and state of the Ward, he, or the, all circumstances con-
cluded, is able to pay, and in regard thereof he hath the protection of the Court of
Wards during minority; but if romances should be taken, it should not only be
against the right institution of Warships before remembered, but also a badge of
servitude: and therefore by the Statute of Magna Charta of H. 3. cap. 4. 5. 6.
(being the Cronon had a long possession of the Warship of the body and lands
of the King tenant by Knight's servitium) it was provided, that, the King
or his Grantee or Committee should not take of the lands of the heir * but
reasonable issues, reasonable customs and reasonable services, without destruc-
tion, &c. (and all unreasonable and servile things are against the Common
law, Excellium omne in jure repugnatur.) Secondly, that lay up the houses
and other inheritance of the heir, and deliver to the heir, all his lands served with
ploughs and all other things (worns and all) at least as he received them;
whereby it appears, 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 tell either
lords or gods. Thirdly, that he shall marry, that he be advanced there-
by, and not disbarred.

John Earl of Oxford being the Kings Ward married without the Kings li-
ence.  

Glani. l. 7. c. 9. l. 9.  

Ockham in decret.

Mort. c. 165,  

Brenton lib. 1.  

Bract. l. 6. fo. 36.  

Bract. l. 3. fo. 28.  

Fleta. l. 1. c. 8.  

Brenton fo. 164,  

26.  

Usi supra.  

The tenure (as before it appears) was not then invented, but the fruits of the
tenure of the King, war-
ship and marriage, which was Brentones mean-

* Note, reasonable choice repeated, that it might be obtained.
The Court of Wards and Liveries. Chap. 35.

cence, for the which, both for the content, &c, and for the bulk 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 be 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 King's Revenue.

As to the third: there were of ancient and latter times Masters or Keepers of the King's Wards for the King's part and advantage, and the profit and revenue thereof were authorized in the King's Court of Exchequer; as taking one example of two instead of many for both the points.

* Rex committit Radulpho de Nova vila Episcopo Ciregii, & Stephano de Segreve custodiari omnium Echeatarum iuorum qui accidunt per annum regnum Angliae, tam in Wards, quam in omnibus aliis Echearis que regis accidere possint, & respondendi, inde ad Secacarium.

See the Nature of 5 H. 3, Art. de Secacario. 

* * *

What care there was of ancient time to preserve the ten of pious, honorable and profitable territories of the King, and for profit especially tenures in Capite and by Knights' service, and that the King should be truly authorized of Wardships, and other fruits and profita bene unto him by reason thereof, it notably appeared by the Articles inquirable by the Judges in Coire, and by our ancient books.

* De Eshartoribus et Sulsehastoribus in seifina domini regis faciinentibus iacuum, vel de distributionem in parces, bofes, curvaris, vel varennes infra cadulis et comitissimias per dominum regem, quantum & de quibus, & a quo tempore. Item de eisdem qui occasione huysmodi ceperint, bona desfundarunt, vel harkend in manu domini regis injurias donec restitutionur ad eum et quid, et quantum pro huysmodi redemptione et quid ad opus suum inde retinuerint, & a quo tempore. Item de eisdem qui misit sufficere terras alienas in favorem ejusdem, vel alterius occasione, cu qui cadulus a terrarum ilium da, vendi vel concedi debuerint, in decepcionem domini regis, et ubi, et quando, & quid inde ceperint, & a quo tempore. Item de eisdem qui praecit, praecit, vel aucludi vel favore confesserint, vel covaluerint quid cadulus domini regis venderentur pro minore precio, quam vendi debenter fessum vel maritugia ad dominum regem proficerint. Et si aliquo modo concelevarint, cu domini regis, vel maritugia harkend, vel testamentum de regis in capite, vel maritugia dominarum, viduarum maritatorum sine licentia regis, & si quid propter hoc ceperint et quantum, & a quo tempore. Item de bis qui refereaverint ad opus proprium cadulam vel maritugiam per lae previem, frue per concelevarium factum versus dominum regem, & capismodi dominum rex inde habuerint, & a quo tempore. Item capismodi sefererint terras, & per quantum tempus cas in manu dominii regis tenearint. Item de terris capitis in manu dominii regis; que capi non debeerint, & polles repellatur per perceptum dominii regis quod perceptus, qui percepta rejumentur ad mandata dominii regis, vel non. Et de omnibus predictis factis & commissis infra origini & quinque annos proxime praelatos predictis justiciarier se iudicant. Et omnes illi qui sentent se super bis gravatos, et inde conqueri voluerint, audiantur. & si et super hoc juticier, & ipsi justiciarier pro bis que dominium regem. continuer diligent inquirant, &c.


Primo & principaliter inquiratur de fudis militiam, & advoconzium Echestrarum ad dominium regem pertinentium, viz, quo sunt, & qualis sunt tenemta, & quanm teneat, & per quae servicia. Item
Item si free alta integra sint vel demembrata, non habendo respectum ad tempus. Item si demembrata, per quem, quando, quis, qualiter, quomodo, & quantum valent per annum. Item si tradantur aliquis ad terminum vi- te, vel annum sine licentia regis, tunc qui, quando, qualiter, & quomodo, & quantum valent per annum. Et si tenetur per medium, per quem medium.

Item de tenementis que tenentur de rege in capite, vel teneri debent, si aliquis faciat se medium inter dominorum regem, & verum tenentem suum, tunc quater ubi, quando, qualiter, & quomodo, & ad quod damnum regis, vel si modo tenetam mutaverint.

Item de alitis qui tenent de corona per magnam Seriaciam, vel parvam, antiquam dominium domini regis, loci, &c. si dedit, si per aliud servitium, si solum tenentes aliquis alienaverint, vel demembraverint, cui, quando, quomodo, a quibus, quae, &c. se solum inde aliud bonum, se de corona, & de valor anum. Et si aliquis, qui de rege tenentur per antiquum dominium vel loci, alienaverit tenetam suum, & ad damnnum regis, cui, ubi, quando, qualiter, & quomodo, & ad quod damnnum regis, & quantum beneficii modo tenementum valet per annum.

Item si aliquis concelevarit aliquem reddidit, se in aliud servitium, seu aliquem confectudines domino regi debitas, tunc qui, quando, qualiter, & quomodo, & que serviticia, & quem reddidit, & quas confectudines, & que tenementa tenat de quibus debentur beneficii, & quantum valent per annum, & ad quod damnnum regis & quantum beneficii concelevarit sunt.

Item, de bæredibus quorum custodia & maritagiurn pertinent ad dominum regem, & dominus rex ea bæredit, quando debet et habere. Et si aliquis bæ- rediis bæredum ingrediens fuerit sine autoritate curiae, & alibi legiisse at sit sua probatisse, si infra aestem, & si plena estatis, ob quod habendo regi bæredium, vel alia serviticia quod ei debet. Et tunc qui si quale bæres, quo tempore intravit, & poa mortem causam & per quod servitium illa bæredias tenetur, & quantum valet per annum.

Item de viduis sibiitter quorum maritagiurn pertinent ad regem, si se maritaverint sine licentia regis, cui, quando, cujus conthen, & ad quod damnnum regis, & quantum tenementa valent que tenent in domo de primo mari- rus suo.

Item de bæredibus qui debent esse in custodia regis, & quos custodiem usi paraverit super regem, & à quo tempore, & quantum tenementa que tenent valent per annum.

Item si aliquis bærediis bæredum causas antecessor de rege tentuit in capita, se de aliquo bæredem in custodia regis excipiat, maritati fuerit sine licen- tia regis, tunc qui, quando, & per cujus conthen, & quantum terrae illa valent per annum, & quantum cepit pro maritagiurn.

Item si dominica terrae domini regis in ius veniatur, si in talu feat esse decretum, vel si tradantur ad firmam, si dimittantur secundum valorem annum earundem, & si custodes vel firmarii cales vel deletationem, conditionem seu exitium fecerint in eisdem, vel in terris excipientibus in ma- nus dominii regis, per custodiem, vel alto modo, quis, ubi, quando, &c.

Pro fo pisciorum tenente immediate tenures of the King, as you read in the Parliamont Roll in the E. 1, in these words.

Gilbertus
The Court of Wards and Liveries. Cap. 35.

Gilbertus de Uphewill, petit licentiam quad posito festfare Gilbertum sili-um suum primogenitum, & Margaret, uxorem ejus de maurio suo, de Over-ten, Tenenda de ipso Gilberto parte durante tota vita ipius patris, & post eum decessitum de capitalibus dominii seosi. Responsor. Rex non vult aliquem medium, Ideo non concescit.

By the nature of 14 E. 3, if the heir of the Kings tenant in Chief, as he is found within age, and the next friend of the heir, to whom the inheritance cannot descend, shall make 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 between the Chancellor, the Treasurer, they shall have Commission to keep 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.

Amongst the petitions of the Commons, they pray that the said nature of 14 E. 3. may be observed, which the King granted.

It is provided by Act of Parliament in Anne 22 E. 4. that where lands of the Kings tenants holding of him immediately, as of his Ditch of Linc, by sale, by deed restoratives, fines and forfeitures in use, defeated the King of Wards 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 wit, if he be of full age or if tail of any hereditaments so holden shall grow as heirs by the death of any of his Auncle's, and if they be of full age to have relief notwithstanding any such conveyance.

An exact provision is made for the grants out of the Chancery for the embossing of any such heir upon such pursuit of the Attorney of the Ditch.

By the nature of 4 H. 7. it is provided that the Lord of Cetti que vide, no will being declared, 4 and shall have a Writ of right of ward for the body and land, and the heir of Cetti que vide being of full age at the death of his Auncle shall pay relief. And the heir of Cetti que vide shall have the like action of ward, as if the Auncle had died seised, 46.

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 Cetti que vide of lands in fee by Knight's serjeice in Capet, and of lands helden of another Lord in loco being seised to those of the use of both, his heir within age, and no will by him declared, that the prerogatives shall hold place; which resolution if it had been published in print, the tedious and chargeable suit had not so long continued.

Now for Travellers. Monfrans de droit, &c. to be relieved against offices found for the King, you may read at large in our books, and especially in the Sadoles case in the Fourth book of our Reports. This was the offence of Sir Richard Empon and Edmund Dudley Bishop Counsellors to King H. 7. and Masters of his forgeries (a new and unaccommodated office) who causing secret and false offices (as shall appeare hereafter to be found, the parties grievances were denied to have their trade, Monfrans de droit, &c. the King H. 7. a little before his death being far gone into a consummation, with great remorse of conscience amongst other things repeated, and by Proclamation under the Great Seal in print (amongst other things) published in these words.

And that none of his subjects ne make no doubt nor difficulty in all cases to full to make travellers, for his Highness will expressly and strictly chargeth and commandeth the his Chancellour and Treasurur that they not onely admit such travellers, but also grants them, where the case shall require, according to the true course of his laws.
Cap. 35. The Court of Wards and Liveries.

Hereupon many men were admitted to their traveles, and many on the other side were without remedy; so be the practice of Empson and Dudley, many were not onely vebred to travele, but inforced upon such false Offices to fer out their general Liveries, whereby they were not only vebred, but could not by Law be admitted to their traveles.

King H.8. in the first year of his reign intending to give remedy against such Offices, both by Act of Parliament provide, * that every Echeator and Commissioner shall sit in convenient and open places, according to the Statute heretofore made; and that the said Echeatours and Commissioners shall suffer every petition to give evidence openly in their presence, to such Inquirers as shall be taken before any of them, upon pain of xl. li.

And by the preamble and other parts of this Act of H.8. the minister and unjust dealing of the said Empson and Dudley concerning the finding of Offices, are portrayed out, whereby the Kings Subjects then of late had beene loose, hurt, troubled, and wronged, and some disquieted by Nine other warses. 1. In cauing untrite Offices to be found. 2. In returning of Offices that never were found. 3. In charging of the Offices that were true found. 4. That Echeatours and Commissioners were men of no libertie, but ingendi and untrusti persons, ready to ferre tunes, and haling nothing to lose, to make faitaation to the party grieved. 5. That Jurores were returned for the finding of Offices of no habilitie, or behaviour. 6. That the Echeator or Commissioner, when the Jury were aggred of their verdict, would not receive the same, but therein use delays. 7. That the Clerk of the Petie Bag, &c. would refuse to receiue, and his such inquisitions as were found and offered to them. 8. The like of the Officer in the Chequer, of Offices returnable into the Chequer. 9. The Clerk of the Petie Bag would refuse to tranfere the Offices, &c. into the Chequer. For which, and the other two before named, remedy is provisied by this Act, as by the same appareth. At the same Parliament for the returne of parties grieved for suiting out of Liveries, another Act is made, entitled, An Act concerning untrue Inquisitions procured by Empson and Dudley, in these years.

Shewen to your discreet widomes, 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 Patent of the late King, King H.7. as before his Echeatours, as well by vertue of Writs of the said late King, as by vertue of their office, by the which Inquisitions, sometime parr'el 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 Capit, were of his Progenitors: To the which Inquisitions the parties then grieved by the same, could not, nor might not take their trasverce to the same according to the Law of the Land, but were inforced and constrained to use ther * Livery of the same out of the hands of the said late King, whereby they were, and be * concluded to say, that the said Lands be holden of the King in Chief, to their great loffe and hinderance, where in truth they were not holden of the said late King, ne of any of his Progenitors. Wherefore be it enacted, ordained and esta-

* This is inten-
ded of a general Livery.

Bart. and the Court of Warde in Holme Caf. 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 this, as to the tenure, is but, or dictur.

2. That this conclusion or Elloppel continueth but during the life of the heir that forth the General Livery; for Jurors are sworn ad virem iuris dicti, and are not bound by Elloppels. 1. That by suing of Livery, and the death of the heirs, the office is executed, and hath taken his final effect, and therefore the Elloppel expires therewith, and after the office cannot be trasvered. Vide 46 E.3. fol. 12. 44 Af. p. 38. Nisi dicimus Muses habeat, Si na tunc 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.
The Court of Wards and Liveries. Chap. 35.

blished by the King our Sovereign 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.

How touching Liveries which in those days were general, what a world of troubles the subjects suffered for missing of Liberty in respect of pretended omissions, and the like, what charging the subjects with crimes not found by any Office, no appearing by any Mulus inquisition with mean rates where none were, or for longer time, than they were due, and the like, and those not recovered by course of Law, but sending for the parties by Protests, and by their awful countenance must with menace and threats, drive them to compositions; which, and other like oppressions and injustice, sith 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 foreign coins, which in those days was not of least value. Notwithstanding King H. 8. at his Parliament held in Anno 5. of his reign, Cap. 7. moved for a subsidy, and was denied it; whereupon an Act was made for taking out of general Parliaments, as a mean to bring money to the King. But I persuade my self the Reader will inquire what became of these two wicked men, Empson and Dudley. The answer is, that first they were federally indicted as followeth.

Juratores presentant quod Richardus Empson esqum de London Miles, suer Confiliarius excellence Primipolus Henrici regis Anglie Septembris die Maius anno regni dixit suer regis vice regum, ac diversi vicibus antea posita apud London, &c. Deum pra occidit non habens, sed ut filius doliabos imaginis bonorum, dignitatem, & prosperitatem dixit suer regis, & prosperitatem regni sui Anglie minime valere, sed ut ipsi magis singularis favore, dixit suer regis adhibere unde magnam sibi potuisse, & totum regnum Anglie secum ejus voluntatem gubernare, falsa, deceptione & prodirius legem Anglie subvertens, (inter alia) idem Richardus dixit die & anno apud London in Parochia & Ward pred. &c. diversi salsabils, Inquisitiones, & Officia de intrusionsibus & alienationibus, de maneria, terris, & tenementis, diversi leges ipsius suer regis inventi prouocavit & excitavit, quod ipsi maneria, terras & tenementa in Inquisitionibus illis specifica de domino Regis in Capite vel aliter tenerem, cum illa non sibi, & posse cum dixi legi dixi suer regis ad Inquisitiones illas sic false traversantes in curia ipsius suer regis fecundum legem Anglie teniere & allegare voluisse fens, idem legi ad traversant illas admissin non potuisset, sed de debitis & legitiimis
Cap. 35. The Court of Wards and Liveries.

... The Court of Wards and Liveries. 

The Causes of Wards and Liveries. 

Wards and Liveries are instituted for the benefit of the Crown, and are a means of preventing the misuse of public money. 

The Court of Wards and Liveries is a court of law in England that has jurisdiction over the government's holdings and is responsible for safeguarding the government's financial interests. 

The Court of Wards and Liveries was established in 1397 and is one of the oldest courts in the English legal system. 

The court's jurisdiction includes the management of public funds, the protection of the Crown's estates, and the administration of the estates of deceased nobles and officers of the Crown. 

The court has the power to appoint guardians, curators, and administrators for property held in Ward and Liveries, and to issue writs, summonses, and writs of habeas corpus. 

The court also has the power to hear and determine cases involving the estates of deceased nobles and officers of the Crown, and to issue writs of prohibition, mandamuses, and certiorari to prevent the unauthorized sale or disposal of public property. 

The court's jurisdiction is extensive, and its decisions have far-reaching consequences for the management of public funds and the protection of the Crown's estates. 

The Court of Wards and Liveries is an important part of the English legal system and is essential for the proper administration of public funds and the protection of the Crown's estates. 

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The Court of Wards and Liveries. Chap. 35.

Sero nostro, Richardo de Kaville, Betroano de Verdano, Radulpho filio God-
fredi camerario nostro, Datum per manus Magistri R. mati catuli Clerici no-
si. Anno regni nostri secundo, xxiiij, 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 Texts, we
will observe what alterations these two Acts have made.

I Ordaineth, makest, establisheth, and createth a Court, &c.
Herein these things are to be observed. 1. That this new Court could not be es-
created 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 crea-
tion, for this new Court cannot prescribe.

This is 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 Office
of the Warden, was this. Hing E.4. by his Letters Patents in French, bearing
date 10 Octobris, An. 15. of his reign, reciting, that there where was no Of-
Fice of the Chancellor of the Warden, that there should be such an Office of the
Chancellor of the Warden, and that none should have it but the Bishop of Salisbury
for the time being: WE will and ordain, that Richard Beccampe, now Bishop
of Salisbury, should have it for his life, and after his decease, that his Successor
should have it for ever. And amongst divers other points it was resolved unani-
mously, 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 uncertainty it was void. Which being reported to the Lords, they were
well satisfied therewith, and thereupon the Office was granted to Sir John Heis-
bert the King's Secretary.

A Court of Record.) Where it is to be noted, that albeit the proceed-
ing in this Court in English, yet it is a Court of Record by express words
of the Act.

And shall have also a Seal, &c.) This is also necessary to a Court.

That all Wards, &c.) This Clause extendseth as well to the Counties
Palatines of Lancaster, Chester, and Dureime, as to any other parts of the
Realm of England, but in several manneres. For as to the Wards within the
Realm of England (out of the said Counties Palatines) the Writ for the Annin-
g of the Office, &c. must out of the Chancery of England, returnable in the
Chancery of England. And as to the Wards in the Counties Palatines of Lancas-
ter and Dureime, the Writ likewise must out of the Chancery of England, but is
returnable into the Chancery respectively of these two Counties Palatines, and
the Chancellor thereof are to transcript them into the Court of Wards.

But for Wards in the County Palatine of Chester, no writ must out of
the Chancery of England, but it must be found by force of a Writ or Com-
mission out of the Chancery there in the Exchequer, and transcripted by the
Chamberlain of that County Palatine into the Court of Wards. And by this Clause of this Act of 32 H.8, the power that the Lord Chancel-
lo and Treasurer had for letting of Wards lands, &c. is taken away.

By the nature of 1 8 Eliz. it is enacted, That all inquisitions and offices to be
found before any Eichestor or Commissioners, by virtue of any Writ or Commission,
or otherwise within the said County Palatines of the said Duchy of Lanc', Che-
ster, and Dureime, or any of them, shall be returned by the said Eichestors or
Commissioners within one month next after the taking of any such Office or In-
quision 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 1/, ii, to the use of our said Sovereign Lady, her heirs
and
and Successors. And that the Clerk of the said Duchy of Lancaster, the Vicechamberlain of the said Earldom of Chester, and the Chancellor of the said County Palatine of the said Bishopric of Durham, 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 certify 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 Eichelors or Commissioners unto the Master of the said Court of Wards and Liveries, in such like manner, form and fort, as is limited and appointed the Clerks of the Petits Bag in her Highness's said Court of Chancery to transcript the same, upon pain to forfeit for every such default 5l. to the use of the said Sovereign Lady, her Heirs and Successors: which transcript 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 Petits Clerks of the Petits Bag in her Majesty's high Court of Chancery, are used; any Custome, Statute, Act, Provisio or Provisions heretofore had, made, or used to the contrary in any wise notwithstanding.

The Nature of 32 H. 8. for erection of the Court of Wards extended only to Wales: but the Nature of 33 H. 8. annexed to this Court Libraries also. Now in what cases the Seal shall be in Ward; or in his Library, either by the Common Law, or by the Statutes and especially 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. Elcusa, & 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 Highness) being spoken in his Royal and politic capacity, which never died, both extend to his Successors: otherwise this Court had been abolished by the demise of H. 8.

b All the Justices in Ireland certified, Quod homagium tantum dat secundum confutundem tenes Hiberniae cufcius & maritat, licet tràvium militare, non debeat.

b Intituled to have That is by Office to be found.

With their Manors and Lands, &c.] This Clause extendeth only to the Inheritances of the Ward, and not to any of his goods or chattels, debts, or duties, &c. but hereof more shall be said hereafter in his proper place.

In the order, survey and government of the said Court.] The general words of this Act extend not into Ireland, for that is a divided, and distinct Kingdom, and hath a proper Seal. No, 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.

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 Duchy Chamber of Lancaster being at Westminster.] Note, the Duchy of Lancaster was created a County Palatine by Act of Parliament in Anno 50 E. 3. Adeo plene & integre factum comes Cestrie infra eundem com. Cestrier dignitatis et obtinere. And hereupon the Court of Wards is well warranted to be a Court of Equity, and accordingly from the creation hereof it hath proceeded.

For or concerning the Title of the Kings Majesty.] This is evident.

And that the Master of the Court of Wards for the time being shall make and appoint all and singulare 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 always removable at the discretion of the said Court.]
The Court of Wards and Liveries. Chap. 35.

Feodarius; Feodarius is derived from Feudo, in Latin, which, in one sense signifies a "Seignior of Tenure; His Office consists principally in three things: 1. And principally to be skilful in the knowledge of the King's Tenures within his Office out of Records and authentic Books. 2. At the finding of Offices to do his uttermost to labour to manifest the truth concerning the King's Tenures. 3. After the Office found to survey the Wards lands, and rate it.

If or other cause in any wise touching or concerning any thing appointed to the order of the said Court, or, and on the behalf of our Sovereign 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 established by his Majesty in Attorney of his wards for his Majesty on the behalf of the Heir; for this both 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 season is certain, no suit can be in this Court for any goods, chattels, debts, etc., belonging to the Heir of full age; for this both not in any wise concern any thing appointed to the order of this Court, viz. neither the Wardship of the body, nor of the lands of the Heir.

Also be it enacted that the said Attorney Receiver General, and Auditors, etc. The Judges of this Court are the Master, the Survevyor, the Attorney, Receiver General, and the Auditors of that Court. For the words of the Nature of 32 H. 8, are. 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; etc., and the Nature of 33 H. 8, hath added the Surveyyor in the second place in that Court: and albeit honorius cause, they are to attend on the Master, as the chief and principal Officer of the said Court, for he is held by both the said Statutes; yet such attendance is for the hearing and ordering of matters and causes, etc., which make them Judges. And the the Dand of the Surveyyor which proveth his Office to be judicial; for by the Nature 33 H. 8, his Dand is (inter alia) That he shall minister equal justice to rich and poor, etc., and that he take no gift or reward for any matter depending, etc., in that Court. And the like Dand in effect taketh the Attorney, the Receiver General, and Auditors, by the said Act of 35 H. 8, and so it was resolved in Auditor's Case when Robert Earl of Salisbury was Master of the Wards and Lord Treasurer of England.


At the Parliament held 18 Jacobis Regis it was moved on the King's behalf, and commanded by the King to the Parliament for a competent yearly rent to be suffered to this Majesty's heirs a succession, that the King would assent that all Wards, prime seasons, relics for tenures in capite, etc., by Knights Service should be discharged, etc., 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,
Land, Tenements, Rents, or Herditaments of the King, his Heirs, or Successors by any other tenure than by sealty 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 sealty and rent, or without rent upon any estate in fee-simple, fee-tan, or otherwise.

6. In respect of the same discharge and freedom of the Subjects and their posterities, and that they shall be also discharged thereby of fines and licensed of alienations, respect of homage and reliefs; * a Competent rent to be ascertained 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.

7. A convenient rent to be ascertained 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. Scots and Saxons 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 Penions to the present Defeaters.

11. Provision to be made for regulating of Gardian in Socrine, and that the Anceller 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 Socrine.

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 to 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.

And we will conclude this Chapter with holy Scripture: Deus est pater Orphanorum, & Judex viduarum. And again, Deus custodit adversas, pupillam, & viduam succipiet. And lastly, in Deuteronomy 27. 19. Maledietus est qui pervertit judicium adevres, pupilli, & viduar.

*First search must be made where this King hath been answered for these, &c.

* Eter ego eieci
tis formation.
Hope is the dream of a waking man.

CAP.
C A P. XXXVI.

The Court of the Dutchy Chamber of Lancaster at Newm.

Frasmuch (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 Palatine, it shall be necessary to them the beginning and erection thereof.

King Edward the 3. created John his fourth son Earl of Richmond, Anna Domini 1355. He 19 Mai. Anna Domini 1359, married Blanche youngest daughter of Henry Duke of Lancaster (the second Duke that England saw.) Duke Henry aged of the plague, Anna 35 E.3. At the Parliament helden Anna 36 E.6. the King in full Parliament did gird his son John with a sword, and set on his head a Cap of Furrie, 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.

In full Parliament, Anna 50 E.3. the King erected the County of Lancaster a County Palatine, and honored the Duke of Lancaster therewith for tream of his life in these words.

Edwardus Dei gratia, &c. Scitis quod fi nos debita consideratione pensantes genes magnificis candidiorum qui nobis in guerra nostra lababilerit & litterae servirentur, ipsos decenturam honoribus atollere, & pro viribus justa merita premiere, quanto magis filios nostras, quos tam in sapientia, quam in gestu nobii alias praelatera conipicimur, & qui nobis locum tenentur, tenere potuerunt potiorum, nos convenit majoribus honoribus & gratias praestare? Considerantes itaque probatam litteram, & sapientiam praeclaram caritatis illi filii nostri Johanne Regis Castellae & Legiiosus, Ducis Lancastriae, qui laboribus & expendiis temperat se nobis obsequiolum exhibuit pro nobis plurium in necessitatibus integredes se guerarum dictiim ministrum exponendo, & volentes eo praetextu, ac desiderantes eundem filium nostrum aliquid commercio & honore ad praefens (licet non ad plenum prout digna merita exhibita) remunerare; ex certa scientia nostra, & lato corde de aestiva Praetorium & processum in infantiis Parlamento nostro apud Westminster, convocatis, exiisse. &c. Conceissus pro nobis & hereditibus nostris praetato filio nostro quod ipsa ad toam vitam summa beat infra Comitatus Lancastriae Cancellariam sitam, ac Brevia sua sub sigillo suo pro officio Cancellarii, deputando, confidando justiciariorum suas tam ad Placita Coronae, quam ad placentiam alia placita commanem legem tanguientia, tenenda, & cognitioe eorumdem, & quaecumque executiones per brevia sua & munituros suas faciendas. Et quemcumque alia libertates & jura regalia ad comitatum Palatinum pertinentia, adeo libre & integre sit comites Ceziria infra eundem Comitatutum Ceziria dignitos obtinere, &c.

But it appeared by the Book of 26 E.3. 59. b. that the said Henry Duke of Lancaster had the like grant; for there in a Parche the tenant touched. and that he might be summoned in the County of Lanc., and the Wouther challenged, because in the County of Lancaster the Kings writ did not run, fed non allocatur, but a writ sent to the Duke 02 to his Lieutenant to summon the Wouther in the same manner as it should be done in Chetn. Vid. 39 E.3. Voucher 198.

It is called Comitatus Palatina, a County Palatine, not a Comite in respect of the dignity of an Earl, but a Comita, & a Palatio regis, because the owner thereof be he Duke or Earl, &c. hath in that County Jura regalia, as fully as the King
Cap. 36. The Court of the Dutchy Chamber.

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 County Palatine. The power and authority of those that had County Palatine was King's like; for they might pardon treasons, murders, felonies, and outlawries thereupon. They might also make Justices of Peace, Justices of Assize, of Goal-delivery, and of the Peace. And all original, and judicial writs, and all manner of instrument of treasons and felonies, and the process thereupon were made in the name of the persons having such County Palatine. And in every lust and inquisition within any County Palatine, it was supposed to be under the power of them 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 Tete 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 accrued by the Common law. But for treasons or forfeitures given after the creation of the County Palatine by any Act of Parliament, they shall not have them.

Justices of Assize, of Goal-delivery, and of the Peace are and ever since the creation of the County Palatine of Lancaster have been made and appointed by Commission under the Seal of the County Palatine of Lancaster,

In the County Palatine of Lancaster fines were levied with three Proclamation, or before the Justices of Assize there, or of one of them: and all recovers 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 Wiltun.

In treasons in the County Palatine of Lancaster, the Defendant pleaded a writ release, the Court presided a day to the parties in Bank, the record must be moved by Carrieri in Chancery, and by Minimus into the Bench, there to be tried.

If there be joined in the King's Bench, or Common Bench, tryable in the County Palatine of Lancaster, it shall be tried in the County of Lancashire, and remanded further.

Where a release or other special writ is pleaded in Writ in any Court at Westminster, within a franchise where the King's Writ cannot not, it shall be tried where the writ is brought. See the books quoted in the margin. And in this variety of opinions I hold the Law to be, that this statute of E. 3. extends not to cases when any other issue is joined tryable in the County Palatine; other franchise: And I ground my opinion upon the resolution of all the Judges of England in the Chequer Chamber, in Anno 32 H. 6.25. See 39 H. 6.21.22, 21 H. 7.33. 21 E. 4.33.14.35.56.

Vid. Lib. Intr. fo. 61.81.84. pl. S. Henry Parayes case in debt, in Camera Guildhall Civitates London.

King H. 4. by his Charter by Authority of Parliament, Anno primo of his reign, both seuer the possessions of the Dutchy, &c. from the Crown: And that which John of Gaunt held by life, is established for ever; and specially by the Statutes of E. 4. and H. 7. hereafter mentioned: and this separation H. 4. made, for that he knew he had the Dutchy of Lancaster (par mutis regnovs) by free and indefeasible title: and he could not be both Rex and Dux, but specially that his title to the Crown was not so altered, for that after the decease of R., 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, but that he should be feigned thereof in right of the Crown, as the King afterward gave the possessions of the Dutchy of York, Caroubone of March, and others.

Humphrey de Bohun Earl of Hereford, Effex, and Northampton being the Art, and last Earl of that name, and feigned of large possessions in England and Wales, had issue two daughters; " Eleanor the eldest married to Thomas Duke of Gloucester, and Mary married to the Earl of Hereford."
**CAP. XXXVI.**

**The Court of the Dutchy Chamber of Lancaster at Westm.**

Dasmuch (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 Palatine, it shall be necessary to shew the beginning and erection thereof.

King Edward the 3. created John his fourth son Earl of Richmond, Anno Domini 1355. He 19 May Anno Domini 1359. married Blanche youngest daughter of Henry Duke of Lancaster (the second Duke that England lab.). Duke Henry died of the plague, Anno 35 E. 3. At the Parliament holden Anno 36 E. 6. the King in full Parliament did give his son John with a sword, and set on his head a Cap of Honour, 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.

In full Parliament, Anno 50 E. 3. the King erected the County of Lancaster & County Palatine, and honored the Duke of Lancaster therewith for term of his life in these woode.

Edwardus Dei gratia, &c. Scutatis quod si nos debita consideratione penesantes gen-

F

ius magnificis cunctorum qui nobis in guerra nostra laudabiliter & strenue servie-

funt, ipso desideramus honoribus atollere, & pro viribus justa merita premiare,

quanto magis filios nostrorum, quos in fapiaentia, quam in genio nobili alios praecel-

ere conspicimus, & qui nobis locum temerunt, tenere potenter potiorem, nos

convenient majoribus honoribus & gratis praestare: Considerantes itaque probo

remum, & fapiaentiam praecellentium charismi filii nostri Johannis Regis Castellie &

Legionis, Duci Lancastriae, qui laboribus & expensis temper & nobis obsequiis ex-

hibit, pro nobis plurum in necessitatibus intrepide & guerrarum diclinumibus ex-

ponendo, & volentes co praetate, ac desiderantes eundum filium nostrum aliqui-

cummodo & honore ad praestas (licet non ad plenum prout digna merita exporsu-

temerata; ex certa scienza nostra, & lato corde de affecto Praetorium & pro-

cerum in instante Parlamento nostro apud Westminster. convocat. existit. b Concessimus

pro nobis & heredibus nostris praefato filio nostro quod ipse ad tantum vitam suam ha-

beat infra Comitatum Lancastriae Cancellarium suam, ac Brevia sua sub sigillo suo pro

officio Cancellarii, deputando, consignando Jujiciarius suos tam ad Placita Corona,

quam ad quocumque alia placitum communem legem tangantia, tenenda, ac cognitio-

nes eorumdem, & quascunque executiones per breviam & ministros suos faciendas.

Et quocumque alia libertates & iura regalia ad comitatum Palatinum pertinentias, adeo

libere & integre sicut comes Cæsaris infra eundem Comitatum Cæsaris dignificitus

obtine, &c.

But it appeareth by the Book of 26 E. 3. 59 b. that the said Henry Duke of

Lancaster had the like grant, so there in a Praetice the tenant bounded, and that

he might be summoned in the County of Lan," and the Woucher challenged, be-
Cap. 36. The Court of the Dutchy Chamber.

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 outlaws thereupon. They might also make Judges of Fire, Judges of Alien, of God-delivery, and of the Peace. And all original, and judicial writs, and all manner of inquisition of treasons and felony, and the process thereupon were made in the name of the persons having such County Palatine. And in every writ and inquisition 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 King's name, but the Title 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 is by the Common Law. But for treasons or forfeits given after the creation of the County Palatine by any Act of Parliament, they shall not have them.

Judges of Alien, of God-delivery, and of the Peace are and ever since the creation of the Count Palatine of Lancaster have been made and appointed by Commission under the Seal of the Count Palatine of Lancaster.

In the County Palatine of Lancaster alone were levies with three Proclamations, &c. before the Judges of Alien 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 Westminster.

In treasuries in the County Palatine of Lancaster, the Defendant pleaded a false release, brought a day to the parties in Bank, the Record must be moved by Certiorari in Chancery, and by Mutimus into the Bench, there to be tried.

If he be joined in the King's Bench; or Common Bench, tryable in the County Palatine of Lancaster, it shall be tryed in the County of Lancashire, and not, as now is.

Where a release of other special dial is pleaded in Bar in any Court at Westminster, within a franchise where the Lords were, it cannot not, it shall be tried where the writ is brought. See the books quoted in the margin. 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 Duke is joined tryable in the County Palatine, 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. De 39 H. 6, 21, 22.

Ibid. 7 H. 7, 56. 1 E. 4, 33, 34, 35. 56. Vid. Lib. Int. fo. 81, 82, pl. 8, Henry Parry's cafe in debt. In Camera Guild-hall Civitatis London.

King H. 4 by his Charter by Authority of Parliament, Anonimo of his reign, both sever the possessions of the Dutchy, &c. from the Crown: And that which John of Gaunt held for life, is established so; and, 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 mutus regnis) by lurer and incorruptible title: and he could not be both Rex and Duc, but specially that his title to the Crown was not so affixed, that for the decease of R. 2, the right of the Crown was in the heir of Lionell Duke of Clarence, second son of 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, but that he should be feigned thereof in right of the Crown, as the King afterwards abs by the possessions of the Dutchy of York, Carlomne of March, and others.

Humphrey de Bohun Earl of Hereford, Etten, and Northampton being the first and last Earl of that name, and feigned of large possessions in England and Wales, had issue two daughters: * Eleanor the eldest married to Thomas Duke of Gloucester, and Mary married to the Earl of Hertford.

* Vide Rol. Par.
The Court of the Dutchy Chamber. Chap. 36.

It is enacted that all the fawnoys and hereditaments which descended to H. 5. after the decease of the said Mary, his mother, as son and heir unto her, should be inherited from the Crown of England, and annexed to the Dutchy of Lancaster, and to be of the same nature, as by the Kings Letters Patent established by Parliament there appeared; where you may read of many franchises and liberties belonging to the Dutchy.

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 Coarum, and therefore this Act dispossesses them from the Crown.

The Dutchy of Lancaster as separated, 4. is by Act of Parliament affurred to E. 4. and his heir Kings of England. By this Act all intails of the Dutchy, of any land annexed thereunto are cut off, and by this made so simple to E. 4. and his heirs Kings of England. In an Act of Parliament without question this imputation of a fee simple is good. See the whole Act.

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, etc. By which Act all former intails are cut off, and in this State both the Dutchy and this Act. All lands, &c. parcel of this Dutchy given to the King by the Statute of Donations. Chanteries are still within the liberty of the Dutchy. Within the County Palatine of Lancaster the Duke having Juris Regalis, his jurisdiction and privileges therein were very great.

The Duke of Lanc' complained by month to the King, Bishops, and Lords in full Parliament, that where after the death of Thomas of Lathom, whom held the Manor of Lathom in the County of Lanc' of the said Duke in Cheveage, whereby the Manor was seised into the hands of the said Lancaster according to his County Palatine of Lancaster, yet notwithstanding John Stanley Knight as in the right of Isabella, his wife, daughter and heir of the said Thomas had entered, and taken the profits of the said Manor without any liberty or other suit made in the Chancery of the said Duke, for which he was made remedy. After which upon full advice of the Judges of both Benches, and of the Lords learned Council, it was declared in the said Parliament, that the entry of the said John into the Manor, as aforesaid, was unlawful, and that the said John ought to make suit by petition, or otherwise in the Chancery of the said Duke for the liberty of the said Manor; in such case to be fixed for.

Of the franchises and liberties belonging to the County Palatine of Lanc', you may read Rot. Par. 2 H. 5. Ubi supra.

Land to be annulled to this Dutchy under the Great Seal shall be as good, as if it had been annulled by Parliament.

See the Statute of 5 El. cap. 23. concerning writs of Significant, and Excommunicato capiendo.

Land within the County Palatine should pass by the Dutchy Charter without liberty of seisin or attornment, but of Lands parcel of a Manor annexed to the Dutchy without the County Palatine, there ought to be liberty of seisin, and attornment oftentant, and in the same degree is it in the Kings case. The reason hereof, is that the County of Lanc' was a County Palatine, and the Duke then had Jura Regalis.

The proceeding in this Court of the Dutchy Chamber at Westminster, is as in a Court of Chancer for lands, etc. within the furth of that Court by English, bill, etc. and decree, but this Chancery Court is not a mist 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 practice is by Platy Seal, Attachment, etc. as in the Chancery.

The Officers of this Court are the Chancellor, the Steward, the Receiver general, Clerk of the Court, the Auditor, the Overseer, the Messenger. There is an Attorney of the Dutchy in Chancery, and another in the Cherequer. There be four learned in the law Assists, and of Council with the Court.

Whereby office a tenure is found of the King, Ute de Dacata Lancastris 3. in trust
Cap. 36. The Court of the Dutchy Chamber.

truth it is not so, there needeth no traversee, for the King hath the Dutchy *as Duke, and not as King, and a man that not traversee, but where it is found i for the King: Sed alter utitur in debus nostris, as it appeareth in the cafe following.

Le Roy (in droit de son Duchie de Lanc.) Signior, Rich. Hulme seise del Mannor de Male in le Comtrey de Lanc, tenens del roy come de son dit. Duchy per service de chivalry Mefjes & Robert, Male (seise des terres in Male tenens del Mefje come de son dit. Mannor per service de chivalry) Ten. Rich. Hulme mortis Apres que mort Anno 31 H.S. fuit trave que il morris seise del dit mefjalite, et que cee descend al Edmonde son fui deins age, & trave le tenure avandit, & c. et durant le temps que il fuit in gared Robert Male le ten, mortis: apres que mort Anno 35 H. S. fuit trave per office que Robert Male seise del dit tenancy peravant, et que cee descend al son fui & heire deins age, et que le dit tenancy est del roy come de dit Duchy per service de chivalry (ou in veritie cee fuit tenen del Edmonde Hulme adonques in gared in le roy come de dit mefjalite,) per que le roy sefis il le gared del heire le ten, & puis 4 Jac. Regis num apres le mort de Rich. Male que fuit lineal del heire dit Robert Male, per un alter office trave fuit que le dit Rich, morris seise del dit tenancy, et ceo teignoit del roy come de son Duchy per service de chivalry, que seise del dit heire deins age, sur cee Rich. Hulme confin & heire del dit Rich. Hulme, ad preterre un bulle adtre admiss a son traversee de ceo durare office trave in Anno 4 Jac. Le question fuit, le quel llofice trave in 35 H.S. fuit asceau esfoppe al dit Hulme a traversee le durare office, ou il le dit Hulme fera chasse primener a traversee llofice de 35 H.S. Et fuit obser que il doit primener traversee llofice in 35 H.S. come in le cafe de 26 Ed. 3, fol. 65. 16 Ed. 3. fol. 65.

que 2, fues sont lecy de terre in antient demesne, le Signior de que la terre est tenen, doit avoir briefe de desent a reever le premier fines, et in cee le 2. fune ne ferra barre. Et que le premier office esfopperay longe comme cee remaingne in force. Aque fuit respondre & refolwe per les 2. Chief Justices, et Chief Baron, et le Court de Gards, que le trover dans office nefis pas asceau esfoppe, car cee nefis que enquest doffice, & le party greve aвро traversee ceo come ad esre certifie, & pur cee sans question ceo nefis pas esfoppe, mes quant office esfis faumeux que terce est tenen del roy per service de chivalry in cap. & ou in veritie la terre est tenen del auter Signior, ou del roy mesmo in Socage, si le heire fai general livery, est tenen in 46 E. 3. 12. per Monbray & Percey, que il navera fuit apres a durre que la terre nefis pas tenen del roy, &c.

mes cee nefis, forsque esfoppe al heire meme que siia la livery & ne conclusera son heire. Car il fuit dit Monbray mismo, expresmente in autiel cafe in 44 All. pl. 55. que esfoppe per fuer de livery esfoppea solemente mesmo le heire durare son vie; Et in 1 H. 4. fo. 6. b. la le cafe est myse de expresse confession fuer de livery per lieue in taille sur faux office, et la est tenen que les furors sur nouel Diem clautit extremum apres le mort de tiel heire soient alangue solongue leur confession a trover que la terre nefis pas tenen, &c. car il fult faine ad veritatem dicendam, et leur trover est appel veredictum quali dictum veritatis, quel reazon au seuwe pendant que le heir in free simple fuer livery sur faux office que les furors apres son mort, doy transmi trover, solongue le verit, ijsit est dit in 33 H. 6. fo. 7. per Laicon 33 H. 6. fol. 7. que si il furent fume heires, dont il est bastard, fult jaine in title de livery, cee que jaine oue le bastard in livery ne sallena bastard in la que.
mes nat. Livre dit que le sopep indurer plus longement que durante son vis.
Et quant livrem est fuer per un heure, le force et effet du record de cef livrem est execute & determine per son mort & pur cef le sopep esperer que le mort le heire, mescie est desirre intend dum general livrem, car special livrem ne considera omnino, comme appear apres. Les parols de general livrem, quant le heire est truite de pleine age, font. Rex Efectori, &c. Scias quod cepimus homagium I, filii & heredis B, defunsti de omnibus terris & tenementis quae idem B, pater fuus tenuit de nobis in Capite die quo obiit, et terras & tenementa reddidimus, Et ido tibi praepmipmus, &c. cedit I, de omnibus terris & tenementis praedicti, &c. plenam lissinam habere fac. &c. Et quant le heire fuit in gard a son plein age, le brief de livrem dirra. Rex, &c. Qula I, filius & heres B, defuncti, qui de nobis teniit in capite, atatem suam coram se sufficien te provabilit, &c. cepimus homagium ipnus I, de omnibus terris & tenementis quae idem B, pater fuus tenuit de nobis in Capite die quo obiit, et terras & tenementa reddidimus : Et ido tibi praepmipmus, ut supr. Quel brief est le sute del heire & pur ceo comment que tous les parols del briefs sont les parols le roy (come tout les briefs le roy font) et comment que le brief de livrem est general, de omnibus terris & tenementis de quisbus B. pater J. tenuit de nobis in capite die quo obiit, sans direct, affirmac que aefan Munnor in particular est tenus in capite, et nent obliant que ceo fest for the profession le brief le roy, et naul judgment far ceo : unceo intant que general livrem est foundus per leffice, et per leffette fuit trovate que divers terres & tenementf fuers tenus del roy in capite, a ceo cause le sute de ceo brief conclur le heire solemente que fuist le livrem, et apres son mort lese fuit in novel brief de Diem claunt extremum sunt alarge, come est arvandit, et si ceo furc trovate faussemente tenere del roy, auxx le Seignior de que la terre est tenus per travers cef office, ou si terre fuit tenus del roy, &c. in Sucoage, le brief per travers cest darrein office, car per ceo il est greve solemente, et ne travers le primer office, & quant le pier futur livrem & mort, le conclusion est execute & pass comme est dit adovcant. Et nota, la cef special livrem, mescie oproceede de grace le roy, et neph pas fute le heire, et le roy mort grant ceo ou al plein age demant alaste probanda &c. ou al heir deins age come appier in 21 E. 40. et ceo est general, et ne affirm directment aefan tenure come le general livrem fuit, mescie un, ut dicituri, et pur ceo hef aefan esoppel sans question. Et al common le special livrem per avoir estre grant devant aefan office trove, mescie per l'estattie de 33 H. 8. cap. 22. es pursico, That no persoes or perfonenn having Lands or Tenements above the yearly value of 5 l. shall have or fce any livrem before Inquisition or Office found before the Efectior or other Commissioner, mes per un expresse classe in smefme lattes, Livery may be made of the Lands and Tenements comprisfit or not comprisfit in such offices. Just si office fuit trove dafan parcels &c. ceo suffit, et si le terre trove, in office nexte cade 20 l. donques le brief per fuer general livrem apres office est trove, come est arvandit; mes si la terre nexte cade 5 l. per minimo donques general livrem per fuer siens office est trove per garrant del Master de yards &c. Vide Dier 23 El. 377. que le Roigne ex debito Jutitia, neit lie a cesso jour puis le dit All de 33 H. 8. a grantier special livrem, mes es a son election a grant, special livrem, ou a chasfer le heir a un general livrem.
Cap. 36. The Court of the Dutchy Chamber.

What leaves may be made of lands, &c., within the survey of the Dutchy of Lancaster, See the Doixinance of the Court of Dutchy concerning Leases to be made, &e. Anno 20 H 6.

See also Diec. 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 Rector a dictione & ostentit concilii Ducatus Lancastriam dimittit, &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 Palantine of lands within the same, are of as great force as lands of the Crown under the Great Seal.

Writ by special provision and construction, to a grant of lands and tenements parcel of the Dutchy of Lancaster that lay out of the County Palatine, there must be liviby of Seisin and Attornment; as the case required, 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 ne'ereth no liviby to make it a deed (as deeds between subjectis ought to have) and if the same be denied, Non est titulus cannot be passed, but Non est Record.

And if the King be his Letters Patents under the Seal of the Dutchy both a grant and a reversion executed upon an estate for life or years of lands parcel of the said Dutchy lying out of the County Palatine, the reversion both, sale, maintenancy to the Lessee by force of the Letters Patents: but he shall not have an Action of Winkle or distraint before Attornment. 

If this case be like to the case of a fine between subjectis, which is matter of record: and to the Kings Letters Patents under the Dutchy 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 reversion of the King, that the State of the reversion should passe by those Letters Patents: otherwise if the Patents be before Attornment, the Letters Patents should be void, and the validity of the King's grant depend upon the pleasure of the lesser, and many inconveniences should thereupon follow. And all this appeared by that great and grave resolution of the Case of the Dutchy of Lancaster reported by Sir Powdren, that no Statute now in force both 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 joined to the person of H. 7. and to his heirs, and the person of the King remain as it did before, for nothing is laid 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 involved because the Dutchy is given to the King & his Heirs, but remain allways 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.

Mich. 6 & 7 Eliz. 70. 2. 23 2. 7. & M. cap. 10.

1 E. 4. fo. 60. Rot. Par. 1 H. 4. n°. 81.


Rot. Par. 1 H. 4. n°. 30.

2 C. L. n°. 12. 1 4. 7. n°. 7.


Rot. Par. 1 H. 4. n°. 30. 23 H. 6. n°. 17. 7 E. 4. 7. 8. 25 Diec. Mic. & 7 Eliz. ubi supra. 7 Lit. is. 53. 1 part of the In. 53. 2. 2. 10. Com. 

Vide Rot. Par. 1 H. 4. n°. 81. 37 H. 8. cap. 16.
The County Palatine of Chester, Cap. 37.


First by 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 its self) of very ancient time before the reign of King H. 3. hath been, and yet is a County Palatine, with other members therunto 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 are to be preferred and maintained.

It further evidently appeared, 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.

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.

We also see that all pleas of lands, tenements, and all other contracts, causes, and matters arising and growing within the same County Palatine are pleasurable, and ought to be pleased, heard, and judicially determined within the said County Palatine, and not elsewhere out of the said County Palatine: And if any be pleased, heard, or judged out of the said County Palatine, the same is void, and common justice, except it be in case of error, for error, or for error in. bower.

We also see that no inhabitant of the same County Palatine by the liberties, lands, and usages of the said County Palatine ought to be called or compelled by any writ or process to appear or answer any matter or cause out of the same County Palatine for any cause aforesaid, but only in causes of treason and error. And the Misericourths doth not come, nor ought to be allowed or used within the said County Palatine, and under the seal of the said County Palatine, except with the proclamation by the nature of E. 3. Anno regni sui primo.

It doth further appear unto us by good matter of record to be proved, that the Court of the Exchequer is the Chancery Court of the said 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 virtue of the same office, and hath like powers, authority, precedence, jurisdiction, execution of law, and all other customs, usages, and advantages pertaining to the jurisdiction of a Chancellor within the said County Palatine of Chester, as the Chancellor of the Duchy of Lancaster hath used, had, and ought to have used and executed by him the said County Palatine of Lancaster; which more evidently appeared 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, sicum comes Cestrii infra eundem Comitatum Cestrii dignificatur obtineat.

Also it appeared unto us, that the Vice Chamberlain did laboriously and openly commit to prison Thomas Radford named in the cause presented unto us, for that
be refused to put in force of the peace within the said Chequeter uppon Afsdavit made in that behalf. And that the proceedings of the Council of the Marches touching the enlargement of the said Radnor from the said imprisonment, and also their further order and dealing against the said Aice-chamberlain law, 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.

And we do also affirm, That the Statute of 34 and 35 H. 8. called the Obediences of Wales, whereby the authority of the Lord President and Council within the Dominion and Principality of Wales and Marches of the same is established and hath the force of a Law, for 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.

Between Sir John Egerton Plaintiff, and William Earl of Derby Chamberlain of Chester, and others Defendants, for the trust of an interest of a tenant in lands in the County of Chester these points were resolved by the Lord Chancels and by the Chief Justice of England, Justice Dodderidge, and Justice Winch, whom the Lord Chancellor called to be his Attaints, as followeth.

Fifth, That the Chamberlain of Chester being solo Judge in Equity, as his Deputy cannot decree any cause wherein he himself is party; for he cannot be Jusde in propria causa, but in that case he may complain in the Chancery of England.


2. If the Defendant dwell out of the County Palatine, if any of the County Palatine have cause to complain against them for matters 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 bin but the proton, 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, no Cur at Regis deficient in justicia exhinda.

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 had had continual allowance; and so was it resolved in 1 Petrus Cale.

4. Upon consideration had of the said Certificate of the Lord Die, 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 allege these to be done in one County where he will, and the defendant cannot plead to the jurisdiction of the Court, that they were done in 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.

In Office found by Commission in the nature of a Mandamus issuing out of the Chancery at Westminster before the Commissioners in Com. Celtria for lands held in Capite in the same County, was helden bold in consilium curiae Walestram, so it ought to be by Writ of Commission out of the Chequeter in the County Palatine, which is the Court of Chancery there.

If an erroneous judgment be given before the Chamberlain in the Chequeter in any matter wherein he proceedeth according to the course of the Common laws, the writ of Certiorari shall be directed. Certiorari et jus locum tenere, but if the judgment be given before the Justice of Chester, then the writ is directed.

Council of the Marches.

The President and Council of Wales and the Marches of the same.

The Counties of Chester, and the City of Chester to part of the Marches of Wales.

Hill 14 Jac. in the Chancery.

Vid. in the Chancery of Durham.

Anno 30 E. 1.

Coram Rege.

11. H. 8. breve 832.

18 Aff. 322.


38 H. 6. 6. 7 H. 6. 37. 8 E. 8.

11 H. 4. 27. &c.

† See this Case in the Chapter of the Chancery, pt. 67.

See in the Chapter of the County Palatine of Dorch.
The County Palatine of Chester. Cap. 37.

Justia cies five ejus locum tenenti. And note, that in a Writ of Error; to the County of Chester, one shall be given by so long time, that these Counties may be shown before the return of the same Writ in the Kings Bench, which is four months, by which time the Justices or Lieutenants within the same County may redress the error, if they will, and this by the usage 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 Tenor, and there it shall be read, Coram Judicandis ratione tenarum factum ibidem: and the Plaintiff shall assign the Error without paying process against the Tenant or Defendant, but only to pay Judges or to examine the error, and if Error be found they may adjudge thereon, or presently reform it, and award restitution, or by their discretion they may award process returnable at the next County against the Tenant or Defendant, et alien. errors, which is reasonable, and necessary to be granted, and for return their own judgment given by them, or their Predicatores, and then there is an end of the business, and the Record shall remain there without removing; and by this means they shall save an hundred pounds of value, and 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 thereby; and if their affirmation be erroneous, although their first judgment was given by their Predicatores, notwithstanding they shall forfeit the hundred pounds. And the party grieved by their affirmation or reverse, ought to bring a special Writ of Error, or pretense; 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 fact be assigned, as death of one of the parties, hanging the plea, or the like, which is capable of 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 process, and all this both notably appear in our laws, 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.

Egerton the Queen Solicitor, moved in the Chancery to have a Certiorari to the County Palatine of Chester, for the removing of a Record of Error taken in that County between Cotton and others, Plaintiff, and Venables and others, Defendants, wherein the Recognizance of Affidavit, gave a false veridic, and to the instant, 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 Mainwood 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 another Court; they resolved and do certify the Lord Chancellor, That so a false veridic 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.

Hill, 29 Eliz. AC 2. The case was, That Queen Elizabeth by her Letters Patent granted the custody of the Castle of Chester to John Paton, and Richard Haddellone, and the undorto of them; John Paton died, and in a Scire facias against Haddellone in the Exchequer before the Chamberlain, (Glasier then being Deputy Chamberlain) to repeal the said Grant, the Judge was given against Haddellone, that the Patent should be annulled and cancelled; and hereupon Haddellone brought his Writ of Error. And it was objected, That before any Writ of Error ought to have been granted, Haddellone ought to have sued to the Queen by petition to have a Writ of Error according to the Law in 23 Eliz. 10, 12, 14. But it was answered, That here in this case no inheritance was recovered by the judgment, and if Haddellone that claimed the office...
The County Palatine of Chester.

Office but for the term of his life should be di

record in praesentia Justiciariorum.

Before the statute of 34 H. 8, neither the County Palatine of Chester sent 34 H. 8. cap. 12.

Before the statute of 27 H. 8, the Lord Chancelor of England appointed no

Justices of Peace, Justices of Qvorum or Goal delivery within the County of Chester.

The Panos of C. in the County of York was helden of the Prince, as of the

City of Chester, and that all pleas real and personal rising within the County,

within any parcel of land helden of the County ought to be impuned 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.

The City of Chester was made a County of it self by King Henry 7. by Letters Patents, dat. 6 April 27 of his reign.

See the statute of 5 El. cap. 23. Concerning jus by Significavit and Excom, capiend. See the statute of 18 El. cap. 8, making of more Justices than one.

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 enforcing, &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.

In an Appeal in the Kings Bench in the County of Dorset where the Appellee 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.

Cap. XXXVIII.

Of the County Palatine of Durham.

This is also a County Palatine by prescription parcel of the Bishopric 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 success.) For at the Parliament helden Anno 11 H.6. Thomas Bishop of Durham prayed a Commission under the Great Seal to certain there named, who by virtue thereof sat and inquired at Hartlepole being within his County Palatine of the rights of the County Palatine with all the Dependents. Whereupon Sir William Eure Knight the King's Attorney made divers objections, that the Bishop ought to have no County Palatine, neither liberties royal. On the contrary the Bishop produced 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 of 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 case: See a notable Record intituled thus. Recordam coram dominno rege porreccion per manum Willielmi de Bereford & Rogeri de Heimham: dominii regis ad queralas infra libertatem Episcopatus Dunelm, auditio & terminand, aissignat. in hac verba,

Placita apud Dunelm, coram Willielmo de Bereford & Rogerio de Heimham: justitiarum domini Regis ad veteres querelas Ricardi Prioris Dunelm, & aliorum hominum Episcopatus ejusdem dominii regis prius porreccas & non determinatas auditio. & terminand, aissignat.

Ricardi de Horon 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 joined, and verdict given against the Bishop, and judgements given worth the reading. By which Record it appeareth that the Bishop had within the County of Dunelm Regaliamentum suum.

I find also another Record in the same King's time, viz.

Placita coram dominio Rege apud Westm. de Termino Sancti Michaelis Anno regni Regis E. filii Regis Henticii 33. finiente, 34. Ro. 32.

Cap. 38. The County Palatine of Durham.


THE COUNTY PALATINE OF DURHAM. CAP. 38.


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 cum jure trae vocat. the Bishoprick of Durham, & habet omnis Jura regalia quae ad Comitem Palatinum & dominum regalem pertinent, per se, Juist, & ministros suis exercet.

In the County Palatine there is a Court of Chancery which is a mist 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 or from the rest, that an erroneous judgement be given either in 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.

In a Formdon in Durham the tenant pleaded the warranty of the Assessors of the Demandant, with assises in a forest County, whereupon the Court awarded that the tenant should go quit without pay. 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 go quit without pay, where they ought to have continued the plea by adjournment until the Record had been removed. And for this error the Bishop reversed the judgement, and pay given to the parties before his Justices where the plea was pleaded. At which
which day the tenant was attainted, 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 faciundo issued out of the Common Bank to try the issue joined at Durham.

If a man in the County Palatine of Durham bough a fosseiner to warranty, the defendant may counterplead that the boughie hath alied within the County Palatine for the delay.

In a Writ of Trepasso Des biens emportes deins un certaine 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 runnest not, but is a franchise Royal Judgement de breve. Whereunto the plaintiff said, that the defendant came in by mistake, and in the Court feated of the plea. Enchdren giving the rule of the Court said, the Court is not in this case feated of the plea, but that should be where conusance of franchise to challenged, which writ not in this case, but the Bishop hath franchise royal into which the kings Writ runnest not, and therefore for not denying of the exception the Writ abated. Pate the Town wherein the transitory trepasso was allowed by the plaintiff was within the County Palatine.

If the tenant bough two, one within the County Palatine of Durham, and the other at the Common law, summons shall be assuaded to the L.O.D. of the County Palatine, commanding him to summon the boughie to be at a certain day before the Justices here to try the warranty: in this case if the tenant recive in hand, the Justices shall write to the Lord of the County Palatine to render in value, quod fuit concedum.

Sic Dier 12 El. where he that hath jura regalia shall have forseiture of High Treason, whereas Vide before in the Chap. of the County Palatine of Lanca.

* If the one be bough, and the tenant ipsweth that he may be summed in the County of York, and the County Palatine of Durham, the boughie shall stand, for if he be summoned in the County of York, it is sufficient.

* Dominus Rex habebit cuitadium omnium terrarum comum qui de ipso tenent in capite per serviciun militare, de quibus ipsi tenentes fuerit, feitis in dominico suae de leodo die quia obierant de quacunque tenuesun per hujusmodi serviciun, et c. exceptis feodiis Episcopi Danelm, inter Tene & Tele.

1. This exception extendeth not to the body. 2. If the Bishop did after this Nature purchase any Seigniory between Tene and Tele, it extendeth not to that.

3. That before this nature, the King ought to have had the warship of the land, as appeareth in our books, contrary to Poles opinion in this case.

* The third Chapter of the said Nature of prorogativa regis both gave the king primer feallon, se, without any taxing of the Bishop of Durham.

Sir Thomas Gray Knight was fealled in se of the Manor of Chillingham in the County of Northumberland holder of the Duen by Knights service in Capite, and of the Manor of Rosse in the County Palatine of Durham holder of the Bishop of Durham by Knights service in Capite, and died fealled of both, his son and heir of full age. And although on the behalf of the Bishop some presevents were shewed in like case, yet the two Chief Justices Popham and Anderson prima facie did hold, that the primer feallon of and for the Manor of Rosse belonged to the King.

The Town of Creke in the County of York holder of the Bishop of Durham, se, shall be implead within the County Palatine of Durham, and in no other place: and so is the Manor of Howden in the County of York.

The King shall have the temporalities of the Bishop of Durham, and for a Church that becometh him the King shall have a Quere impediment.

We the Statute of 5 El. cap. 23. concerning the writs of Significavit and Excom. capiendo.

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 of.
Of the Royal Franchise of Ely.

I

No divers Statutes it is named the County Palatine of Ely. King H. 1, in the 10 year of his reign, of the rich Sonnallery of Ely made a Cathedal Church, and of the Abby made a Bishoprick, and for his Dicere he assigned unto him the County of Cambridge, which before was within the Diocess 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. Spaldwich, Bicklewlth, and Bagden. And for the Chapter of this new Bishop, he instituted that there should be a Prior and Cobent. But in respect of the Revenues, for that their principal Canons were granted away, the number of Munks being 70, were brought down to 40. And King H. 1 granted to this new Bishop and his Successors out of Regalia within the Isle of Ely. But the said Prior and Cobent 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.

The liberty of the Bishop of Ely hath been anciently allowed by the Court of Common pleas for lands in Wibisch, within the Isle whereof a Pracipe quod reddat was brought.

Again, Allocatur libertas Episcopo Eliensi pro terris infra Insulam de Ely proct alias, collocet in roulo 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 trespass the Defendant pleaded an arbitriment made at A. in the Isle of Ely, and thereupon issue was formed, the Plaintiff shewed that Ely is a Franchise Royal, and they of the Isle shall not be empanneled out, and played a Venire fac. to the Sheriff of Cambridge.

Issue being joined and the Writ to come out of Ely, the Count is, Super quo praeidet. (querens) dict quod E. praeidet, et infra Insulam Eliensi, quodque Episcopus Elieni, tales habes libertatem in Insula praeidet, quod nullus Justicier. nee aliquis minifter domini regis Insulam illam ingredi debet ad aliquod (ficum ibi excedat, nee liber tenentes nee reidentes in eadem Insula illam ingredi debent ad aliquam Juratam extra Insulam illam faciendo, & petit breve domini regis de Venire fac, hic 12, de vicinato de Soham, que ess propinquior Villa in praeid. E. Com. Cantab. extra Insulam praeidet, adjacen, praeidet. Villa de Ely ad hiendum extra praeid. Et quia videatur Justiciariss hic quod petitio illa eff ratione conjionans, Ideo praecept. eff Vic. Cant, quod venire fac. hic tali die 12 de vicinato illo, per quos, &c.

Sentence was given in the Ecclesiastical Court in Cambridge, and the Defendant was summoned at Hadlington in the Isle and Franchise of Ely,
The County Palatine of Pembroke. 221

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 socleization hereof was taken away by the Acte of 27 H.8. cap.26. the County Palatine then being in the Kings hands.

And for further proof that this was a County Palatine, see the Charter of E.3. to Lawrence de Hasting in these words.

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. At the Parliament holden in 1 H. 5. it is resolved that Hexamshire was a Franchise where the Kings writ went not. And in the Nature 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 while in the time of the Archbishop it was termed and named a County Palatine, where in right of 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 between parties and parties shall receive like trial, 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, as within Hexam and Hexamshire, so as whatsoever it was before 14 Eliz. it is now no County Palatine, no Franchise royal.

CAP. XLII.

Of the Courts of the Cinque Ports.

At the first the privileged Ports were but thir. For at the making of the book Domesday, which was in the 14 year of the Conqueror, there are but three named in that book, viz. Dover, Sandwich, and Romney, and that thir were in the time of Edward the Confessor were exempted from all charges and burdens, as others did bear; after two Ports were added to them by the Conquerors, viz. Hastings and Hotham. Bradston 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 these Ports, called the Cinque Ports, as it appeared by a writ which Bradston rehearsed in the same place, viz.


In Duro Curr. Anno 1 Reg. Jo. parte a. m. 13.


After two mores, viz. Winchelsey and Rye were added; for 3 and a Record Anno 1 Regis Johannis, quod Winchelsey & Rye debeat &c in auxilium Villae de Haflings ad sectem, regis servicium 20 Navium, &c.

And these have the same Franchises and Liberties that the former have; and every one of these send two Burgess by the name of Baron of the Cinque Ports.
Cap. 42. The Courts of the Cinque Ports.

Posta to the Parliament, as by the Records of the return of them remaining in Chancery at every Parliament both 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 Governo, 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 Ability, 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 Articul Super Charters, Anno 28 E.1, which you may read, and the Position thereof in the Second part of the Institutes.

The Franchise of the Cinque Ports hath been time out of mind parts by ancient Parliaments, partly by ancient Charters, &c. and confirmed by express name by the Statute of Magna Carta c. 9, and were made free by William the Conqueror.

For the better understanding of our Lords, it is to be known that there is a great diversitv 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 above-mentioned as a regnum non currus, but have not Jura Regalia, and therefore regularly no part of the Crown; but a Judgement is given there of lands in Wales within the County Palatines; a Judgement here of lands in Wales within the County Palatines is void; but a Judgement given here of lands in the Cinque Ports to good if the pledge be not pleased, for they be part of the County, and the Franchise may be demanded in another action.

And it is to be observed, that within the Cinque Ports there be divers Courts, one before the Constable of the Castle of Dover, whereas somewhat has been said before there be other Courts within the Ports themselves before the Papists and the Jurats, and another which is called Curia Quinque Portuum apud Shipway, whereof we shall speak hereafter.

If any of the Kings Courts do write to have a Record in the Cinque Ports, or for doing any thing within the same, the Writ that be directed Constatuliano Caii 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:

If a man plead a Record within the Cinque Ports, and the other plead Natural Record, there shall go a Writ to the Constable of Dover to certify the Record; for the Courts are to the Kings Courts to write to the Constable, and he shall send to the Baron, that is, to the Papists and Jurats, to certify him of the Record which is before them, and he shall certify the Kings Court, and so the Constable is the immediate Officer to the Kings Court.

Note, though Lords say that the Writs shall be directed to the Constable of Dover, yet the Writ is to be directed Constatuliano Caii de Dover, & Gardiano Quinque Portuum.

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.

Et quia in quidam Carta dominii regis nunc continetur, et omnes quaedera verba in ipsas Baronis Quinque Portuum apud Shipway termini debent certam Curiam Quinque Portuum; Praeceptum est Stephano de Penecost nunc Cusfiti quod partibus pradictis certam et certum diem assignetur & fac justicie complementum.

If an erroneous judgement be given in the Cinque ports before any of the Popos or Jures, it shall be redressed before the Constable of Dover at the Court at Shepway, which Court was raised of ancient time by Letters Patents of E. 1.

b The Court of the Cinque ports holden at Shepway adjudged the Abbot of Feverham (which Abbe was within the Cinque ports) for his offence to be imprisoned, for 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 approbatum, & ratione juris Regni, ministri Regis pro aliquibus que fecerunt ratione officii sui, trahi non debeant, Rex prohibuit Archiepiscopo Cant, ne molestari faciat ministros suos Dover. de eo quod Abbatem de Feverham pro delitto suo incarcerasset per considerationem. c Curia Quinque Portum de Shepway, &c. The whole Record is worthy to be read over; this shall suffice for the end that I aim at.

Vide Flea. lib. 2. cap. 48. the Hufhings and Shepway.

d The Jurisdiction of the Cinque ports is general, and extends as well to personal Actions, as to Actions real and mixt, o2 which touch the freehold, but so it is not in ancient times, so regularly that jurisdiction extends not to personal Actions.

As a Precipe 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 compans, 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 compants; but in the other case the Defendant may plead it to the Writ.

e The Pano of P. within the Cinque ports was holden of the King as of the honor of Egle, and elected to the King for want of heir, the King granted the Pano of P to another. And it is adjudged, that the section of the King in this case doth not make it of another nature than it was afore; for the privilege runneth with the land.
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 Will. He is to continue in his Office but one year, or one in three years.

For the verification of his name, his antiquity, and some part of this office, see the first part of the Institutes, Sect. 4, wherein the ancient Authors, and many Authorities be quoted: He ought to be sealed of 40 Parks land, except Escheators in Cities and Counties Palatine.

All Writs Original of Diem clasti extremum, Mandamus, Devenament, Melius inquirendi, Qua plurali, &c. are directed to him to find an Office for the King after the death of his Tenant, which help by Knights Service in Capite, or otherwise by Knights Service.

This Officer in case of Escheats for Creason, Felony, or in case of Warships, if the Warmer feison, may find an Office virtue of Office. But in case of Warships, if the Warmer feison, if he find an Office virtue of Office, if the Land be of the yearly value of five pounds (or above) he shall lose every time he shall sit five pounds.

Offices found before him virtue of Office, he may return either into the Court of Chancery, or into the Escheater, sitting at this day for Warships, if the Warmer feison, which he must return into the Chancery; so by the Stat. 3 & 4 H. 8, cap. 46. the Court of Escheater is barred to deal with the same. And Offices found before him virtue of Brevis, are to be returned by him into the Chancery.

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 month after he shall have or delivered it, either by Writ, or virtue of Office.

See Capit Echeatriz, whereof the Escheater; may inquire: and the Statute De Echeatoribus, Anno 25 E. 1. Vide Diet, 248, 249. He is accountable pro culatis felomon, fugitivorum, & hujusmodi. All Offices found before him, or Commissioners ought to be found by the oaths of twelve men, every Paro; to have Lands, &c. to the yearly value of 40 s. in the same County, and in desert, 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 absolved in Law, full of veracity and charge, and never have good success.

Neither he nor the Commissioners can take any Enquest of inquity of any other persons, but such as be impeached and returned by the Sheriff.

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; or the finding of an Office, he shall forfeit 40l. If he, or the Commissioners, or any of them shall refuse to take a heretic of the Enquest offering to present the same, he shall lose 100l, to the party grieved.

An Office found before Commissioners is as susceptible in Law, as it had been found before the Escheator.

The Escheator ought to take no fee by the Statute of W. 1, but of the King only; but if he find an Office by force of any Writ, and according to the same to the King, he shall have a fee of 40s. by the Statute of 23 H. 6, but if it be found 1 H. 8, cap. 8.

See the 1 part of the Institutes, W. 2. cap. 26. 23 H. 6. cap. 7.
The Court of the Escheator, &c. Cap. 43.

found before him by Writ, or ex Officio, that the Lands are helden of a Subject, or if he find an Office for the King vituper Office, there is no fee due to him. But the Commissioners ought to take no fee at all, though an Office be found for the King, because they are not within the Statute.

* The Escheator finding an Office for the King by force of any Writ, not exceeding the value of £1. shall not take above £5. and the Commissioners can take nothing; but the Master of the Wards may allow Commissioners, Constables, and Sequestrors their Costs. * The Escheator may make Deputy, but such able men, to whom he will answer, and that have sufficient Lands in the same County, &c. and the Escheator shall certify the name; names of his Deputy or Deputies, under his Letters Patents into the Exchequer within twenty days after the deputation made. And no Deputy shall take upon him to occupy that Office, except the Escheator; hath lands to the value of 20l. And if any Sub-escheator be made, not having sufficient, he may be removed by the Kings Writ directed to the Escheator, De Sub-escheatorum movendo.

* If he the Escheator, Sub-escheator, or Commissioner, return a false Office, an action upon the Case both lie against them by the party grieved, although they be Offices of Record, besides the penalty of 100l. by the Statutes of 1 H. 8. and 3 H. 8. * The oath of the Escheator, expelling his duty, appeareth in the Register fol. 301.

* If I be possessor of the goods of a man outlawed in trespas, 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.
CAP. XLIV.

Court in the Universities of Cambridge, and Oxford.

It is true that each of these Universities hath divers Courses, 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 signed, Queen Elizabeth, (who could (we speak it of knowledge) not only speak the Languages of French, Italian, and Spanish, but was learned in the Latin and Greek learned tongues, and excelled all others of her Sex in knowledge both Divine and Human,) for the great love and favour that her Majestie bore to her Highness 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 Privileges, Liberties and Franchises of either of the said Universities, granted, ratified and confirmed by the Queens highness, 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 supplanting 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 Highness, or by any of her Progenitors or Predecessors, made to either of the said Corporated bodies corporately, or to any of their Predecessors of either of the said Universities, by whatsoever name or names, the Chancellor, Masters, Scholars of either of the said Universities, in any of the said Letters Patents had been named, should be good and effectual, and available in Law, to all intents, constructions and purposes, &c. as ample, fully, and largely, * as if the said Letters Patents were sealed in that Act of Parliament, any thing to the contrary notwithstanding. 3. That the Chancellor, Masters and Scholars of either of the said Universities, and their Successors for ever, should liberally have, hold, possess, and enjoy, and use to them and their Successors for ever, all manner of Monies, &c. and Precediments, and all manner of Liberties, Franchises, Immunities, Quietances, and Privileges, both of Frankpledge, Law Dapes, and other things whatsoever they be, which either of the said Corporations 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, Willage, Custom, or other thing or things, made or done to the contrary notwithstanding. 4. That all Letters Patents of the Queens Highness, or any of her Progenitors or Predecessors, and all manner of Liberties, Franchises, Immunities, Quietances, and Privileges, Wills, Law Dapes, * and all other things whatsoever therein expressed, given or granted to either of the said Universities, by what name soever, be and by virtue of this Act should be established and confirmed, any Statute, Law, Willage, Custom, Constitution, or other thing to the contrary notwithstanding.

By this blessed Act of Parliament, all the Courts, Franchises, Liberties, Privileges, 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 quietness, are established, made good and effectual in Law, against any approximation, State faction, or other suit, 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 University of

* Note the several general binding and effectual words.

* Hardly write emr-
of Oxford; and other Letters Patents bearing date 26 Aprilis, Anno 3. Regi- 
nae Eliz. made to the University of Cambridge, both which are by express name 
established and confirmed by the said Act of 13 Eliz. In which Act there is a Sa- 
ving to all, other then to the Queens Majesty, her heirs and successors. Et sic 
omnia in tuto.

Touched the Jurisdiction and Connivance of divers things belonging to the 
University of Cambridge, for the Parliament Roll of 5 R. 2. nu. 45, &c. till nu. 66.

The Popo, Bishops, and Comminalty of Cambridge were accused, for 
that they in the late Commons and upon consideration with divers other mis-
deers, broke up the Treasury of the University of Cambridge, and thereout took, 
and burned sundry of the Charters, &c. of the said University, and also compelled 
the Chancellor; and Scholars of the said University, under their Common Seals 
to release to the said Papo, and Burgess, all manner of liberties, and all those 
privileges and personal, and further to be bound to them in great sumnes of 
money; whereupon it was agreed in form following: That one Writ should 
be directed to the Papo, Bishops, and Comminality of Cambridge that 
there were to appear in the Parliament, and to answer, (the form thereof both there 
appear,) And that another Writ in form aforesaid should be directed to the 
Papo; & Bishops that were at the time of the offense, (the form whereof both 
there appear also;) The Papo and Bishops that then were appeared in pro-
per person, and pleaded not guilty, as waving thereto; the Comminality by 
their Attorney appeared at the day. The Papo; & Bishops, that before were 
at the time of the offense, appeared also in proper person, and the said Papo answ- 
ered that he was not privy to such act, but only by compulsion of others, if 
any thing were therein done, the which the Kings learned Counsel thus did 
dispose, as by the Record appears. The Burgess of Cambridge delivered into 
the Parliament the said two Deus sealed by the Chancellor; and Scholars, the 
one Deus contained a release of all Liberties and Privileges, with a Bond of 
3000 l. to release all suits against the said Burgess. The other was a Re- 
lease of all Actions real and personal, as there both appear. Upon the reading of 
which the two Deus, they both were commanded to be cancelled for the causes a- 
foresaid. After this the Chancellor; & Scholars aforesaid by way of petition, and 
in form of sundry Articles exhibited, before the beginning of whose discourse of 
the said Papo, and Bishops essentially a large. Upon reading of which Bill, it 
was demanded of the said Burgess who might it saw, wherefore their liberties 
were not seized by the king confirmed should not be seized into the kings hands as seized.

They require these things, viz. 1. A copy of the bill. 2. Council, and 3. reptite 
to answer: to the copy of the bill was answered, that whereas the said bill, 
it should suffice, for by law they ought to have no copy. To Council, it was said, 
that wherein Counsel was to be had, they should have wherefore they then were 
appointed to answer to no crime or offense, but only touching their liberties. As- 
ter many dilatory shifts and subterfuges, the said Burgess touching their lib- 
erties only, having no colour of defence, submitted themselves to the Kings mer-
dy grace, saving their answers to all other matters. The King therupon by com-
mon consent of the Parliament, and by authority of the same, seized the said lib- 
erties into the hands as foreseized. And after the King granted to the Chancellor; 
and Scholars aforesaid, within the said Town of Cambridge & * suburbs of the 
place the Mile, comain, and corretion of Bread, Me. Weights, Measures, Neg- 
 ratedors, and Stockeholders, with the fines a amercements of the same, paying 
therefore yearly at the Exchequer 10 l. And certain Liberties the King after 
granted to the said Papo, and Bishops, and increased their former farm.

This University of Cambridge hath power to Print within the same omnes & 
ominos libros, which the University of Oxford hath not. See a notable Re- 
ord in Parliament 12 H. 4. concerning the University of Oxford, by the which 
it was decreed and adjudged by authority of Parliament, that the Popo shall 
not impinge, or after the right and custom of any thing concerning that 
University, and therefore was disallowed, to long to be here inserted.
The Courts of the Stanneries in Cornwall and Devon.

The style of the Court of Stannery is, and always hath been, Magna Curia Domini Regis Ducatus sui Cornubiæ spusu Creekerton in Corn. Devon, coram A.B. Cullode Stannariae dicti Domini Regis in dicto Com. Devon. The Officers of this Court be the Steward, Under-warden, &c.

It is called Stannaria a Stanno, because the Lord Warden hath jurisdiction of all the Cynne in Cornwall and Devon. Cynne is a Saxon word, and deriv'd à sinita, and the Tinners are called Stannatoris.

The jurisdiction of this Court is guided by special Laws, byCustomes, 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.


The 14 day of October last past, the matter in question touching the allowing of disallowing of Writs of Error, as well between the parties aforesaid, 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 Codel Knight, Speaker of the Rolls, and Sir James Dier Knight, Chief Justice of the Common Pleas, and Justice Welfin; 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 Judgments 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 Counsel learned of both sides, and upon the perusing and consideration of the ancient preceptions, 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 so as much as the said Plaintiff could not, no, not thew forth any Record or President, whereby any judgments or executions heretofore passed in any of the said Stannery Courts have been revolved by writ of Error; in any of the Duisa Paytacies Courts of her Bench or Common Pleas: And so that it appeared unto them that divers and sundrie inconveniences 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 verify any of the said judgments 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 contents contained in the same Order supposed by
The Courts of the Stanneries, &c. Cap. 45.

by them to be committed, concerning the not allowing of any writ; or writing of errors 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 to be had in any of the said Stannery Courts, according to the custom of the same Courts, without let or impediment of any writ; or writing of errors as is aforesaid, or of false judgement sued to be sued in any of the said Courts of the King's Bench; or Common Pleas, and that from henceforth, no writ or writing of errors as is aforesaid, or false judgement be hereafter sued to be had in any of the said Courts of the King's Bench; or Common Pleas to reverse any judgement or judgements in any of the said Courts of Stannery heretofoe given, or hereafter to be given, until upon further consideration of the ancient grants and liberties of the said Courts of Stannery, or upon some other sufficient cause of matter, it shall be otherwise ordered and determined by this Court of the Chancery.


Where a matter in variance hath been heretofore moved, and depending in this honourable Court, between Martin Trewe and plaintiff, a John Raskarock, William Gilbert, John Killigrew the younger, James Drew, and other Defendants by two several Bills exhibited into this Court, wherein the said Bill contains another matters of effect being not mentioned in the said Bill, other than the taking of certain cattell of the said complainant and others. And where also it appeared this present day, that the taking of the said cattell was by certain of the said Defendants lawfully authorised for that purpose by the Steward of the Stannery Court of Penwith, and carried into the County of Cornwall; an execution upon a condemnation by judgement had in the said Court against the said plaintiff. Touching which condemnation the said complaint hath complained as well in the Court of Chancery by Bill, and in the King's 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 laws to call in question the validity of the said Judgement, and was out of the said several Courts by order discharged and dismissed, 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 both also appear that the making of the said cattell, whereupon the said said Bill in this Court is exhibited was only for the execution of the said recovery, and where also it both further appear, that by the Laws and Ordinances of the said Stannery (if any such cause of complaint be ministered) the same is to be resisted by application in several degrees, viz. first to the Steward of the Stannery Court where the matter lies, 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.
The Resolution of all the Judges (by force of his Majesties Letters) concerning the Stanneries in Devonshire and Cornwall upon the hearing of the Council learned of both parties at several days, and what could be allledged 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 59 E. 3.

First, We are of Opinion, That as well Brewers as all other labourers and workmen (without fraud or covet) in or about the Stanneries in Cornwall and Devon, are to have the privilege 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 custom of the same time out of mind of man used.

Thirdly, That all trespassory actions between Tymer and Tymer, or Wosker and Wosker (though the causes be Collateral, and not pertaining to the Stannery) may be heard and determined within the Courts of the Stanneries according to the custom 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 such at the Common Law at the election of the plaintiff. But if the one party only be Tymer or Wosker, and the cause of Action being trespassory and collateral to the Stannery do rise out of the said Stanneries, then the defendant may by the custom 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 custom 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, but to be delivered, to be prosecuted, at the suit of any person 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 cause 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 late have any action of false imprisonment, but the execution is good by the custom of that Court. But if in that cause it doth appear by the plaintiff's own shewing, that the contract of 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 whereinupon 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, or for substance of matter. As if an Action be brought there for 1000 which will bear no Action, or an Action of debt upon a contract against Executors or Administrators, or such like; In such cases a demur may be upon the matter. And that the proceedings there must be according to the custom of those Courts used out of time out of mind of man: so that no Writ of Error, or any judgment given there, but the remedy given to the party grievous is by appeal, as hath been 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 privilege of the workmen 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 pleas of land are by express words excepted in their Charters) and no man can be exempt from justice.

The COURTS of the STANNERS, &c. Cap. 45.

Such Charters, Records, and Acts of Parliament as we have obtained concerning the Stanners, we will according as we have done throughout this Treatise recite in these temperis.


* Rex, &c. Sciatis quod committimus Ricco, dilecto fratris nostrarum Stanneriam nostram Cornubia cum omnibus pertinenti, &c.

c There be two severall Charters of liberties and privileges both bearing date 10. Aprilis, Anno 33 E. 1. the one made ad emanationem Statuarii notarum in Com. Devon, and the other ad emanationem Statuarii notarum in Com. Cornubia, a which you may read at large in Pl. Com. * Those Charters were allowed in Anno 35 E. 1.

f The Charter of 33 E. 1. was confirmed to the Lyppers of Devon in verbo in verbo, and the like in 1 E. 3, and 17 E. 3.


A Letter made to Tideman de Linbergh de Canagio Stanneria & de empione toonis Stanni in Com. Devon. & Cornubi. pro fine mile castarium & 3500. maracum. debitum. These were things done de facto; but let us turn our thoughts to that, which hath the force of a Law, viz. b An excellent declaration, limitation and Coposition of the said Charters of 33 E. 1. that was made in the Parliament held in Anno 50 E. 3. by authority of the same, but never printed, (which we have set down in this volume, to the end that no falsifiable of the same should be omitted.) it is enated as follows,

A tresexcellent & tresredunt Seigneur le roy, supplie sa pouvre Commune del County de Devon, pour que luy pleuse per l'ayns des Prelats, Courtes, Barons, & autres sages en cej present Parlement ordiner remedie de ceo que les Esleyers, et les Ministres del Esleyery del dit County on long temps a la dit Commune siben as Seigneurs come a autres faict et, font de jour en autre diverses extortions, oppreffions & grievances per colour de les Franches, a eux grantes per les Chartres nostre Seigneur le rois, et de ses progenitores encontre la ley et le purpur de los dit Chartres, & per leur malwise interpretation dicelles; et que les dit Chartres & les Francises comprises en yeules puissent leuez et declarez d'artike in article si que la Commune du dit County puissent etre apres droiturement d'yeelles, et que est declaration soit mys en record. Et si nul article y fai en les dit Chartres que touche ennomes ou sfages, que plese a nofrit dit Seigneur le Roy d. ordiner et mande en brief temps suffisant les Seignieurs et autres apres de la ley a celles parties devenir des dites ennomes et sfages, et quils envoient depuy d'once et terminer tous les conspiraries, confederations, aliances, champertes, extortions, oppreffions, grievances, fausses et maintenances qu'aus les dit Esleyers et leur Ministres ont fait a la dit Commune, ou a nul de eux qui plendir se vorra, et ce aussi bien a folit le roy, comme de la party entendans que le roy nostre seigneur.
Cap. 45. The Courts of the Stanneries, &c.

niors ent guignera molt, et d’autre parade se remedie ne tour y soit ore fait ilz
servent en brièfe temps par la griender party differentes et deffruits a toutz
jours, que Dieu ne voilla. Le tenoar d’aucuns des articles de les dites Char-
trées que lors beignent de declaration sensent cy apres premerement, Celfas-
favor.

Sciatis non ad emendationem Stannar, nostr. in Com’ Devon. ad
transquillitatem & utilitatem Statillatorum nostrorum prædictorum co-
rundem concepisse pro nobis & hereditibus nostris, quod omnes Stan-
natores præd. operantes in Stannariss illis que sunt dominica nostra,
dum operantur in eisdem Stannariss liberis fin & quieti de Placitis Na-
tivorum, & de omnibus Placitis & querelis Curiam nostram et hered-
dum nostrorum qualiterunque tangentibus, Ira quotid non responsable-
art coram aliquibus Justiciariss vel Ministris nostris fecu heredum no-
strorum de aliquo Placito feu querela infra praedium. Stannariss emerg-
entibus, nisi coram Custode nostro Statillatorum nostrarum, prædicta-
rum qui pro tempore fueritis, (exceptis placitis terrae, vitae, et mem-
brorum) nec non recedant ab operationibus suis per summonitionem
alicujus ministorum nostrorum fecu heredum nostrorum, nisi per sum-
monitionem dicti custodis nostri. Et quotid quiecti fint de omnibus tali-
giis, theoloniis, taillegis, auxiliis et alius custumis quibuscunque in
Villis, Portibus, Ferris et Mercatis infra Com, praedictum de bonis suis
propriis, &c.

Sur quoi plese declarer si autres personnes que les Effainors ouerants in les
Effayneris aceront et emoyeront la Franchisse grante per la dite Chartre
du roy descome la dite Chartre voet, quod omnes Statillatorum prædiçô
operantes in Stannariss illis fint liberi, &c. Et autres personnes que les
operazors, celofavor vons maistres que los levont et leurs servants et autres
claymont mesme la Franchisse. Et auxzint plese declarer si les ditz operzors y
aceront les Franchises en autre temps que quand ilz aceront in mesme l’
Effayner, descome la Chartre voet dum operantur in eisdem Stannariis li-
beri fint, &c.

Endroit de les dites paroles. Operantes in Stannariis illis, et dum ope-
rantur in eisdem Stannariis, soient clerement entendus, de operazors labo-
rantibus duntaxat in Stannariis illis fine fraude et dolos, et non de alisis,
ne alibi laborantibus.

Item font de clarer si mesmes les operazors aceront mesme les Franchises tant
comme ilz aceront ailleurs que in les desmesnes que feuvrent au Roy laiell nostre
Seignior le Roy que ore est. La quel Roy Ayell leur granta la dite Chartre
au temps del dit grant des Franchises descome la Chartre voet, quod omnes
Statillatorum prædicti operantes in Stannariis illis que sunt dominica
nostra, dum operantur eisdem Stannariss sint liberi, &c. Et ilz clay-
mont d’avoir sont fect ilz sinsqu’ ozeront ailleurs qu’en les dites desmesnes
le roy Layel.

En droit de cet article pur ce que il y a une autre article en mesme le
Chartre, que leur donne congé et licence de fouer, et sebris, moris, et va-
fis iplius dominii regis et alliorum quorumuneque in Com’ prædicto,
et aquas, et curfus aquarum ad operationes Statillatorum prædictarum
divertere ubi et quotiens opus fuerit, et emere butsum ad funduram
Stanni, fotum antiquitatis fieri confuevit, fine impedimento dominii re-
gis, heredum fuorum, Episcoporum, Abbatum, Comitum, Barohnum,
Hh a

feu
feu alicorum quorumcumque, &c. Il semble un besoignable chose en ce case que leur custumes & usages soient diligemment enquizz & que le Gardeine de Lefaynerie soit charge que il ne sefvere nel ouverur del dit Estaynerie en pres, ne autry boys, neve abate autry boys on autry mesfons, ne beffover eau ou cours de eau per malicie. Et si per case le dit gardein se y vorra escuer que les dits Esaynor ny vuident obterre a ses maunements, ne celier leur malicie per luy que tant tost il se face manifir al grand conseil le roy, & due & bafizve remeyx est ferra ordeignes.

Item soit declares un special comen les justices que are servant afsignes d'al\ ter celles Marchers par ent faire la dite enquiere prendant liisse au pays si afeun y chiete entre parties, & coment este article precedent touchant les cus\ stumes et usages estoit asys devant la sefance de la dite Chartre l'air, et per queux gens tielle juis ferra triesy, cesla cezavoir le quel per forsions solement, ou per Estaynoy seulement, ou per ambideux, &c.

Endroit de ces article, en soit la ves pris du grant conseil et y soient les re\ cords en Eyre si nulles y soient, et autres evidences & remembrances deins le treasors le roy & aulours, et aucuns les remembrances des feignors queux y ont effer par le temps ferches et durement examinaz, et aucuns soient les liures et evides ces ques les dits Esaynoy ent ont enviers eux vices et regardez; si\ fent que le y parra le mielx venir al droit verity.

Item soit declane si le Gardeine del Esaynerys puisse tenir plect entre Esaynoy et forein de querelle foudrant que in les lieux ou ilz font ouverurs de sicome la Chartre veut, quod cultos nofser praeditus vel eju locum tenens tenet omnia placita inter Stannatorres praeditos emergen' & etiam inter ipso et aliis fortinccos de omnibus transgressionibus, querelis, & con\ traetibus factis in locis in quibus operantur infra Stannarias praeditas similliter emergen'; &c. Quar il tient plect de tenez querelles foudrant chas\ cune parte deins la dite comune.

Endroit de cest article. Se ont extende la jurisdiction clerement solon les paroles del dit chartre, cesla cezavoir, In locis ubi idem operarii operantur, et nemi aulours, ne en autre maner.

Item plese declarer de ceo que la dite Chartre veut einsi. Et siis Stannat\ rorum praeditorum in aliquo delicanter per quod incarcerari debant per cullodem praeditum arreletur, et in prifona nostra de Leidford et non alibi detineantur, quoquou secundum legem & confuentindem regni noftri deliberantur. Et en cest case que esaynor soit prise par seules et siverez au Gardeine, il est suffisant se sont aller a larga de quoy grand peril auz\ ment monti de fons et aussy de ceo que la deliverance del dit Galle nel passe fait une soiz en dis ans. Et que pis ell par colour de meme ceste article le dit Gar\ deine pren hors doucre priven les emprisons par aurre ur ilz accompts, et les mette a Lydford ou ilz sont inst ant forores quizy, my se force de paymays fai\ gre alors seignor.

Endroit de ceste article en soit enquizz diligemment devant les justices que ore y serront prochemenem afsignes denigueure per quelle authority ils y faiz einsi de puis que en meme la Chartre sont exceptes per special toutz, plecs de terre et de vies, et de membres, et celle enquexe retourne soit declar e en especial fill besoigne.

And according to this Act a Commission was out in these words.

Edwardus Des gratia Angliae et Franciae Rex et dominus Hiberniae di-

Ro. Pet. 50 E.J.
leitis & fideliis suis * Guidoni de Brian & Johanni de Montaigue, Roberto de Belknap, Hugoni de Segante, Henrico Parchais, & Walter de Clifton, Salwarum. Cum dominis Eduardus quondam Rex Anglie Auri noster per Carum suam quam confirmavitum ad emendationem Stannriarum suarum in Com' Devon ad tranquilitatem & utilitatem Stannarorum suorum eamindum conceperit pro se & hereditibus suis, quod omnes Stannarii pradiis operatis in Stannariis illis quo fuerant dominica sua, dam operentur in eisdem Stannariis etiam liberi & quiestii de omnibus Placitis Natiorum, et de omnibus Placitis & querelis curiam suam & heredem suorum qualiternque tangentiis: Iba quod non responderent coram aliquibus justiciaribus vel ministriis ipsius; Auci nostri vel heredum suorum de aliquo Placiti vel querela infra praditas Stannaris emergen nisi coram custode Stannariorum praditarum qui pro tempore fuerit; (exceptis Placitis terrae, siti, & membrorum, nec recedentibus ab operationibus suis per summonitiosem aliquorum ministrarum dicti Auci nostri seu heredum suorum nisi per summationem communiem dicti custodis, et quod qui est de omnibus taliagis, theologis, auxiliis, filiagogis, et aliis causis quibusque in Viliis, Portuibus, Ferris et Mercatis infra Com' praditum de bonis suis proprioris. Concessisset etiam eisdem Stannariorum quo pudere possint Stannum & turbas ad stannum fundendum ubique in terris, moris & valetuis suis & aliorum quorumcumque in Com' pradito, & aquas, & cursum aquarum ad operationes Stannariorum praditum diverserex, ubi & questis opus fuerit, et emere & buyum ad judicium Stanni sicut antiquitus fieri conuerit, sine impedimento ipsius Auci nostri vel heredum suorum, Episcoporum, Abbatum, Priorum, Comitum, Barum, seu aliorum quorumcumque. Et quod causas praditas vel ejus locum tenens tenet omnia Placita inter Stannarios praditum emergentia, et ejus inter ipsos & alios foris & de omnibus transgressi luminos, querelis & contraelitaciones falsis in locis in quibus operentur infra Stannarias praditias simuliter emergunt, et quod idem causas haberet plenam potestatem ad Stannarii praditam & alios foriscono in bujusmodi Placitis justiciando & partibus justitiam faciendo, prosto j staging, et pruis in Stannariis illis suiffet usitatum. Et si quia Stannariorum praditarum in alio delingentur per quod intarcessari deberebim, per custodem praditum arreiparentur, et in prifona de Lydford, et non ubi cusffodirentur, et deliberebim quosque secundum legem & consuetudinem regni Anglie deliberaetum. Et si aliqui Stannorium praditum superr aliofa facta infra Com' praditum non tangente Stannariar praditi, se posuerint in Inquisitionem patria, una medietas jurarum Inquisitionis suis praditati exjet de Stannariorum praditis, et alia medietas de foriscis. Et de facta totaliter tangente Stannariar praditias sint inquisitiones sint fieri configuerentur, siue per inspiciationem rotulorum cancellariae nostra nobis contat. Ac etiam ex clamofo insinuazione tamen magnum quum Comnuntiat, Com. praditi, in prefentari Parlamento nostro graviter conquerentur ad nostrum pervicuerim auditiis, quod Stannario praditi ac officiarii, balivi & ministrii diti. Stannaria Cartam praditi pro libito sive voluntatis interpretantes, et debita intellegi ejusdem Cartae pervicenter, et etiam excedentes, ac quidam aliis in magno numero afferentes se fore Stannarios cum non fuerint, habitis inter eos conspirationibus, confederationibus, & allegantias, quamplurima exstiones, oppressiones, falsitates, deceptions, Cambiapartias, ambiduebus, manutenen-
The Courts of the Stanneries, &c. Cap. 45.

manutenencias, transgressiones, damna, gravamina &c excessus diversis subditis nostris dedit. Com. colore Caritatis praedicta per plures viciss fecerunt, et induere quod nisi desistat in nostris contemptum & ipsorum consequentium grave praedictum, dicit Com. vertificentium de magnificiam & ceremoniam manusfem. Nos affiantes singulos subditos nostros sub quies & debito regimine gubernare, et nullates tanta maleficia, si per praedicta Stannarii, Officialia, Ballicos, vel Ministris, aut aliis quoqueque perpetra existint, aliquamque transe impunea; A si ignorantus vos, quingue, quatuor, tres et duo verseum, (quorum vos praefat, Robert. aut unum eis volumus) Jus siti nostri ad ingenium per sacramento proborum & legalium hominum de Com. praedicta, tam infra libertates quam extra, per quos regi veritas melius sciri poterat, et alius visis et modis quibus melius fore videritis de quibusque conspirationibus, conformationibus, aligantibus, exceptionibus, opprobriobibus, falsatibus, deceptionibus, cambiorum, ambidextris, manuntenencias, transgressionibus, damnum, gravamationibus, et excessibus per quoscunque Stannarii vel alios in Com. praedicta factis, et per quos vel per quos quisque personis, ubi & quibus temporibus, qualler et quamodo, et de alius articulis & circumstantiis praefat qua quotidemque targentibus plenus eratatem; et ad praemisit omnia & singula tam ad se quam nostram quem ad ilorum consequentiam & eorum singulorum & aliorum quorumcumque pro sebus, aut pro sepsis prof. qui volentiam, audient, & terminand, secundum legem et consuetudinem regni nostrorum Angliae: Salvis semper dictis Stannariis libertatis & privilegii eis per cartam praedictam concussit. Et ideo vos mandamus quod ad certos diem et loca quos vos, quingue, quatuor, tres vel duo verseum (quorum vos praefat, Robert. aut unum eis volumus) ad hoc providetis diligenter super prasmia factis inquisitionibus & conspersionibus, conformationibus, aligantibus, exceptionibus, opprobriobibus, falsatibus, deceptionibus, cambiorum, ambidextris, manuntenencias, transgressionibus, damnum, gravamationibus, et excessibus praedicta auditibus et terminatis in forma praedicta, facti erat inde quod ad jutilissim peritem, secundum legem et consuetudinem regni nostri Angliae. Salvis nobis amicis & amits, et alios ad nos inde spectantibus: Mandatum enim Vis. Com. praedicta, quod ad certos diem & loca quos vos, quingue, quatuor, tres vel duo verseum (quorum vos praefat. Robert. aut unum eis volumus) ei seire faci, Venire faci, coram voibus quingue, quatuor, tres vel douos verseum tot et tales probos et legales bonos de balaqua faci tam infra libertates quam extra, per quos res veritas melius sciri poterat et inquire. In quibus rei testimonium bas literas nostras fere fecimus patentes. Telle me ipsa apud Wesum. Sexta die Julii. Anno regni nostri Angliae 50. Regni vero nostri Franciae 37. Per consilium in Parlamento.
The Court of the Mayor of the Staple.

The Court is regulated by the Law of Merchants, which is the law of the Staple, and is held at the Woll-staple, at Weym, and there are also two Constables, and a certain number of Constables to do that which pertineth to their Office, as in other Stables is accustomed.

This Court (though it was far more ancient) is strengthened and warranted by Act of Parliament, which can best express the jurisdiction thereof, and followed in those places.

Item, because the Staples cannot long continue, nor the Ordinances thereof made and to be made be kept, it good Executors and Justices be not established 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 of Merchants, 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 pertineth to their Office, as in other Stables is accustomed, and when they shall be dead or changed, then other shall be chosen by the Comminality of the Merchants of the said places. And that no Mayor hold the Office over the year, unless he be newly chosen by the Comminality 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, trespass, or other contract, and them to put in prison, and punish after the law of the Staple. And a prizon shall be ordained for the safe keeping of them that shall be imprisoned. And the Mayors, Sheriffs, and Bay’riffes 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

CAP. XLVI.

The Court of the Mayor of the Staple.

metal gold or silver, but that is as the fab or strength of the base metal, which being extracted becomes despicable.

There be five kinds of base metals, viz. Aes, five Caputum (because it was found out, as some hold, in Cyprio) Copper, Stannum, Lensum, Ferrum, Iron, Plumbum, Lead, & Orchialcum Latum. Polybus 203, years before Christ, wrote that the Island was abundantly roved with Lynne, Britannia qui juxta Belerium promotorum inclement mercatorum usus, qui ad Sinum grata navigant, humaniores reliquis hospites habitantur, hic ex terra facia causas venas fecinti effodiunt Stannum igne educunt in quandam Insulam ibant Britannicum juxta, quam Vetus vocant, Ex ibis Insulis mercatores emipient Hannum in Galliam portant, inde diebus fecinti- ginta cum equis ad fontem Eridani fluminis perduntur. 

Saxp H. Camden, p. 134. in Cornwall.

And for as much as Lynne is a Staple commodity, let us in the next place treat of the Court of the Staple of the Staple.
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 counsel them when need shall be to the good governance of the Staple, and to redres at every mans complaint 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 Councill, and there declared by good advice.

See the Statute of 36 E. 3, cap. 7. That Merchant strangers may either live before the Mayor of the Staple according to the law Merchant, or at the Common-law.

The bounds of the Staple at Weftin, 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.

See 27 E. 3, how triall shall be had per medietatem linguae: & vide 21 E. 1, Cart. Mercator.

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.

The Mayor of the Staple at Weftin, and the Recorder of the City of London, in the absence of the two Chief Justices, out of Term have power to take recogniscances of debts according to the form of the Statute of 23 H. 8. And this is in nature of a Nature Staple, but it hath besides the seal of those that take it, the seal of the party.

The Mayor and the Constables shall be sworn in the Chancery to do lawfully that which pertain unto them.

There are five Staple Merchandises of England, viz. Tulwll, Wolsteles, Leather, Lead, and Lyn.

This word Staple, anciently written b Etele, cometh of the French word Etele, which signifies a Part 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, 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 Lake Merchant) and at several times in many places within England, and now (as hath been said) is kept at Weftin.

We use for this word Staple, Stapula, as Major Stapula, Statuum Stapula, &c. And we may truly say that we have not unbramale Stapulam, which in times past was so renowned and benefical, as it enriched every place where it was sold, 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 Secocciano.

Of the legal Courts and their Jurisdiction within the Principality of Wales.

This Principality consists of 12 Counties, whereas 6 viz. Anglesey, Carnarvon, Merioneth, Flint, Carmarthen, and Cardigan were created by the Act intituled Statutum Walliae Anno 12 E. I. and the rest by the Statute of 27 H. 8.

Wallia, so called by the Saxons Bryneddaus, under Wallenius, Walli, exter fei peregrini; and the Britons call Englishmen to this day Saxons: these are of the posterity of the ancient Britons inhabiting on the West part of great Britain. This was sometime d a Realm or Kingdom and governed periosis regulos. e Rex E. dedit Regi Griffin totam terram qua jacobat trans aquam vocatur.

f Sed posquam ipse Griffin forisrectct ei, absulit ab eo hanc terram, et reddidit Episcopo Celfnix & omnibus suis hominibus, qui ante ipsam tenebant.

By force of a Commission directed to divers districts and learned men as well English as Welsh viz. Griffin ap Luellin, 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. S. was lineally descended from Cadwaller King of the Britains, and gave the Armies of the Princes of Wales.

And here we are justly occasioned to discover the errors of those that have given to our late Sovereign Lady Queen Elizabeth of ever glorious and blessed memory, the surname of Tudor, 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 surname at all it was Theodore and not Tudor, which is a nick or by-name. But we rather take it to grow out of ignorance, for that in truth she had no surname at all; for this Owen her Ancestors had no surname: and therefore was called Owen ap Meredith, that is, the son of Meredith ap Theodore, (the son of Theodore) ap Grono, &c. All which were Christian names: so as they ought 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 surname, because by his grace and goodness he would desire for her Imperial births to be called Elizabeth the Great.

But more secolial the kingdom of Wales was holden of the Crown of England: and thereby as Bracon faith, was sub potestate regis. And so it continued until the 11 year of the reign of King E. I. when he subdued the Prince of Wales riding against him, and executed him for treason, whereas Fleta who lived in those pages speaketh thus. Et unico malefactoris plura potentem infligere tormenta, fuit contingi de Davide Princeps Walliae cum erat Dumwater qui judicis mortuus torquebatur, fuit namque meritus exigentibus; detractus, fulpenus, dilemmabat hanc, et combatus, cujus caput principali Civitatis, quamque quartas ad quatuor partes regni in odium tradit, deferebantur fulpenus.

The next year, viz. in the 12 year of King E. I. by authority of Parliament it is declared thus, speaking in the person of the King (as ancient statutes were

See W. I. cap. 17, the second part of the Institutes, p. 197.


Lamb. Verb. Wallia.

E. 5. 3. Record. 38. & t. 4. Errors. 1 H. 5. cap. 5.


This blessed Queen raigned the years of Augus tus, and lived the age of David, a King elder than any King of the British race since the Conquest, and yet had senetus corporis & visum ingenium.

4 Lib. 7. fo. 21. b. m Calvis eca.

Tr. 5. 2. 43.


The Legal Courts within Wales. Cap. 47.

Wont to go) Divina providentia, qua in tua dispositions non fallitur, inter alia suae dispensations munera, quibus nos & regnum suum Angliae decerari dignata et, terram Walliae cum indecius suis prius nobis. * Iuxta feudali subjectam his suis gratia in proprietatis nostri dominium, obtulit quibuscusque cessitibus, totaliter & cum integritate convertit & corona regni praeclari, quamquam partem corpus ejusdem amnestiae & univit. Petit his wife & United nation was long after this not satisfied not contented, and especially, that they true and constantly took part with their rightfull Soberain & Legis Lord King Richard the Second; In revenge whereof they had many fierce and inductive labs made against them in the regnas of H.4. H.5, &c. All which as unjust are repeated and abandoned. 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 to really reduced in his time, as in the reign of his son King H.8. in whose time by certain just labs 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 Subjects naturally born within this Realm should have and inherit, and that they should have Knights of Shires and Burgesses of Parliament, &c. By which the jurisdiction of the legal Courts are thereby to perfectly and plainly established and declared, and their proceedings to be according to the Laws and Customs of England, as we have thought good to refer the judicious reader to those Acts of Parliament without recital 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 Severn, whereby all men's causes are justly and evenly measured. Only we will add certain things which have not been published before.

By the said Statute 34 H. 8. it is enacted that there shall be helden and kept Sessions twice every year in every of the said twelve Shires, that is to say, Glamorgan, Brecon, Radnor, Carmarthen, Pembroke, Cardigan, Montgomery, Denby, Flint, Carnarvon, Merioneth, and Anglesey, which Sessions shall be called the Kings Great Sessions of Wales.

A fine was levied of lands in the County of Carmarthen, and the Writ of Covenants was Coram Justiciarissimo nostri magno Affixe in com. Carmarthen, and because all the judicial prelvetica were in that form ever since the making of the Statute, it was adjudged to be good, fo Commissis error facit jus.

Also in the said Act of 34 H. 8. it was enacted, that the Kings most royal Patents should run from time to time change, &c. all manner of things before in that Act reserved, as to his most excellent wisdom and discretion should be thought convenient, and also to make Labs and Ordinances for the Common-wealth of his said Dominion of Wales at his Majesties pleasure, &c. And although the common opinion was that the same power in so high a degree of truth, as the alteration of labs, &c. was personal to H.8. and referred to his wisdom, discretion, and pleasure, and therefore extended not to his successor, yet for that the Subjects of the Country and Dominion of Wales had been constantly loyal and obedient, and had labored in all dutiful submission 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 Council upon consideration had upon the statutes of 34 H. 8 cap.26. and 18 Eliz. cap. 8, that the Justices in VVales 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 Snice was constituted and made by Patent accordingly.

Rex dilecto & silei tuo Rico. Diomory Justiciar, tuo Northwaller Salutem. Mandamus vobis quod habito advitamento cum illis hominibus de partibus praedixit, cum quibus melius fore videnti faciend, diversimode fine dilatione venire facitis
Cap. 47. The Legal Courts within Wales.

Sociatis ad praetens Parliamentum apud Welfm. convocat. in 24 homines de pa ribus illis tam Anglicos quam Wallenses ad conscientiam bis quae ibid, pro communi commodo & pace & tranquillitatem regni nostrri, & partum praed, favor Domino consistenter ordinari, Et habeatis ibi nomina præd. 24 hominum, & hoc breue. Tete Regi apud Kenilworth 11 Januarii Anno 20 E. 2, Rot. Clau. m. 3.

By this and others of like nature it appeareth that Welshmen were in the reign of E. 2. E. 3. as called to our Parliaments.

But notwithstanding there be Sheriffs throughout all Wales, the Writers 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.

We have seen a Charter of the Earl of Arundell probing, that by the ancient customs of Wales, females could not inherit.

Omnibus Christi fideli.bus praetens scriptum indepturis, Johannes Comes Arundel, & Dominus de Mutavvers, Salutem in Domino, Sociatis ad praetens Parliamentum apud Welfm. convocat. in 24 homines de pa ribus illis tam Anglicos quam Wallenses ad conscientiam bis quae ibid, pro communi commodo & pace & tranquillitatem regni nostrri, & partum praed, favor Domino consistenter ordinari, Et habeatis ibi nomina præd. 24 hominum, & hoc breue. Tete Regi apud Kenilworth 11 Januarii Anno 20 E. 2, Rot. Clau. m. 3.

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The Court of the President and Council in the Dominion and Principality of Wales, and the Marches of the same.

Lading note the Legal Courts in the Dominion of Wales, to proceed by the right rule, secundum legem & consequendum Anglice. Let us speak somewhat of the Court of Equity before the President and Council there.

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.

Item, that there shall be, and remain a President and Council 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 Council shall have power and authority to hear and determine by their wisdomes and discretions such causes and matters as be, or hereafter shall be assign'd 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 the manner of paying.

First, by express Acts, viz. 18 E. 3, Att. 83, 1 E. 3, 14, in Dower. 7 E. 3, 9 E. 3, in Dower. 6 H. 4, 10, 11, in Scire fac. F.N.B. 168.


Thirdly, by Records of Parliament, 3 R. 2, no. 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 Council: and this were to be seen in their inheritances, goods, &c., ad alium examen. 2. At one and the same time there were in former times Courts of the Marches of Wales, and several Courts of these four Counties, and therefore they could not be one and the same.

Fifthly, by the resolution aforesaid of those four Judges concerning Cheshire and Flintshire (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 Council, and so to remain until this day: For a Commissioners without an Act of Parliament cannot raise a Court of Equity, as often hath been said before.

Lastly, by the commandment of the King, all the Justices of England, and Baron of the Exchequer were assembled concerning the jurisdiction of the President and Council of Wales, and the Marches of the same, who upon hearing of Council learned on divers cases, and upon mature deliberation resolved une voces, that the said four Counties were not within the jurisdiction of the President and Council. 2. That so far as much as the President and Council 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 by the Parliament 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.

Rodry Maure, oz Rodry the great, King of Wales, son of Merlyn Fryth had issue three sons, Mervyn, Anarawd, and Cadell. In the year wherein he died, viz. Anno Dom. 877, (King Alfred, alas Alured, then reigning in England) this great Rodry divided his kingdom of Wales into thos Principalities. The first he called Guyoneth, the English North-wales, the Latinum Venetoria. The second Principality was called Powis land, in Latin Powini, of some Welsh-wales, bordering upon England. The third he called Deheuvarth, the English South-wales, in Latin Demetia. The first Principalip, some pass, he gave to Mervyn, after others, to Anarawd. The second to Anarawd, some pass, to Cadell. The third to Cadell, some pass, 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 Flemings. The division of this kingdom (Godsober it was) brought in process of time such a division between these Princes, as it was never quiet till it came under one Monarch and King again: For the royal dignity of a Monarch, from whence all other subordinate dignities, tarn quam lumen de lume, are derived without any diminution, will suffer no division. Regia dignitas est indivisibilis, & qualibet alia derivativa dignitas est unfitabilis

The most useful event that fell out in this Realm, when Godboad divided this kingdom between his two sons, Ferrex and Porex, and what heavy event came to pass, until it was reduced again under one Monarch, let our Historer tell you: And letting pass others, I cannot over-pass the miserable estate with which this kingdom was under the Deheuvarth, until all was reunited under one Sovereign. And this is the reason, that in England, Scotland, and Ireland, the royal dignity is descendable to the eldest daughter or sister, &c.

But let us look a little into foreign parts. Oedipus King of the Thebans had issue two sons, Polyneices and Eteocles: he ordained, that after his decease, his two sons should alternate by course, &c. reign in his kingdom. But that was the event: Fratres de regni hereditate dividentes singulari cernere conscripsit munus: cum vulneribus cedentibus. But to return again to our Wales.

It was divided from England by a ditch, after the name of that King that made it, called King Off his ditch.

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 Concio Praetorum, Comitum, Barorum & Commune in generali Parlamento nostro apud Westm. die Lingu in Quindes Pascha proxime praetent convocato ipsum Edw. Principem Walliae reiuniam & creaviun, & dictum Principatum sibi dediunm & concediunm, & per Curtum nostram confirmaviunm, ac ipsum de dicto Principatu, ut ibidem praeficendi, praeficendi, & praedici deictis pactes dictif & defendif, per securum in Capite, & annullo in digito aereum, ac per virgin argenteum ineliminatum juxta moneon: Habeendum & tenendum de nobis sibi & hereditibus sibi Regibus Anglia imperpetuan, &c. Out of this Charter we observe, that in this Creation there is a great nympe, so that then an estate of inheritance so great a Prince could not have, and an absolute estate of inheritance in great a Principality as Wales; the Kings meaning was (this Principality being so dear unto him he would not have; therefore a qualified for therein he had in this form, sibi & hereditibus suis Regibus Angliae, that by his decease, or attaining to the Crown this dignity might be extinguished in the Crown, to the end that the King

Cambden in the County of Radnor.


B This ving, rod, or Scepper in later creations for more honor is changed from a Silver to a Silver or Scepper of gold.

Scepper of gold.

Sibi & hereditibus regibus Angliae.
The Court of the President of Wales. Ca. 48.

King for the time being should ever have the honour and power to create his heir apparent Prince of Wales, as he himself had been by his Progenitors. But otherwise it is in case of the Duchy of Cornwall as in the Princes' case, unipart. appear.

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 & hereditibus suis Regibus Anglor.

* Ob quam plurimos excessus more hostili vexillo diplicato per Gibertermum de Clare Comitem Gloce, Hertif & hom nes sous de Mortgannon illatos contra Humbledum de Bohun Comit & Here. & Effex & homines suis de Breckenock, dominus rex assignavit † Episcopum Elyent, & alios Commissionis ad inquirendum, &c. Mandavit etiam dominus rex per literas suas dedit et denebubus suis Johanni Haftings, Johanni fil, Regionaldi, Edmundo de Mortuo mari, Roger de Mortuo mari, Theobaldo de Verdon, Johanni Tregefe & Galfride de Canun, quod interfet apud Breckenock, &c. Et postea venerate apud Laudon. Voluit idem dominus rex pro fitit & jure suo per ipsos Jusificacios quod inde res venit inquisition per facultatem magnam quum aliquorn probationum, & legalum hominum de partibus Walliae et Com. Gloce, & Herif. per quos, &c. cujeuerque conditions sufficient, ita quod nulli parceretur in hac parte, eo quod res ita dominum regem & Coronam & dignitatem suas tangit, &c. Dicitum est ex parte domini regis Johanni de Haftings & omnibus alius magnatibus supra nominatis quod pro statu & jure regno, & pro conservatione dignitatis Coronae & pacis hác apponant manum ad hibum, &c. Ad quod eis ex parte domini regis injungetur: Qui ommes unamiter respondent, quod iudicium est quod eis iphi omne antecellores haestens in hujusmodi causa ad praestandum aliquid factamentum coacti fuer. &c. Ac pluribus eisdem magnatibus ex parte ipius Regis conjunctum & separatum, libroque eis parceret, injunctum est quod faciant facrum. Respondentur dum omnes singulatim quod nihil inde facientes sine consideratione Parium fuerun. Demum Comes Gloce, fecit finem cum domino regio pro decem milibus Marcarum, & Comes Effex pro mille marcis, & uertere eorum committitur Marechallo. (Recordum perlongum eff. & continet tres Rotulos.) Et ob afflictatem, & confunguinlinetatem cum rego pardonantur plurima. Tammen foris fecerunt libertates suas durante vita ipsum. Et post decem eorum, heredes sui rehaebant.

But note to take our leave of this Principality of Wales, that is that the Romans called by the name of Britania Secunda, and sometimes of Valentia, and by the Britains themselves called Cambria. And we will conclude this Treatise of Wales, &c. But that which is excellent in the speaking of the things between the Roman and the ancient Britan, fith, Nec alius adversus e validissimos gentes pro nobis utilius, quam quod in commune non confalunt, rara ad propugnandum commune periculum convinctus: ita dixit singuli pigniant, universi vincuntur.

f See 2 part. Pat. 9 E. 2. m. 3. Ordinat. de confuetud. North-wallia & West-wallia.

* Vid. Lib. Int. Co. fo. 549. 550. These notable matters concerning Wales. 1. Of the government of Wales before 27 H. 8. 2. Of Lordship, Parishes, and their authorities and liberties. 3. The Act of 1 & 2 Ph. & Mr. concerning the same.
The President and Council in the North,

This Council 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 Sonasteries of the yearly value of two hundred pounds, or under, which was by Act of Parliament 4 Feb., Anno 37 H. 8. in the beginning of 28 H. 8. there was a great interruption of the Lord Hussey and 20,000 persons in Lincolnshire pretending it to be for the cause of Religion; against whom Charles Brandon Duke of Suffolk went and appealed them. As soon as they were appealed, a great rebellion for the same pretence of 40,000 of that County, of whom Sir Robert Ask, was Leader against whom the Duke of Norfolk, and others went, and dispersed them. Soon after a great Commotion for the same pretence was raised in Lincolnshire of men in that County, and in Camberland, Westmoreland, and Northumberland; against whom the Earl of Derby was appeared, and quieted them. After this Mowbray Tilly and others to a great multitude did rise, and assaulted Carlisle, whom the Duke of Norfolk overthrew. Soon after Sir Francis Bigot with a great number of people rose at Settrington, Pickering, Leigh, and Scarborough in Yorkshire, whom the Duke of Norfolk pacified. And after this the Lord Darcy, Ask, Constable, Bulmer, and others began a new rebellion about Hull in Yorkshire, whom the Duke of Norfolk 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 Sonasteries, which in effect he thought to pass in Anno 34 H. 8. for preventing of future dangers, and keeping those Northern Counties in quiet. In Anno 32 of his reign raised a President and Council there, and gave them before two liberal powers and authorities under one Great Seal, the one of Oyer and Terminer, De quibus et legecongregationibus & conventiculis illicitis coadunationibus, conciderationibus, Lollardis, mihi, non licet, falls allegantiss, transgreffionibus, riosti, fusticii, retentionibus, contemptibus, falsibus, manum, oppreessionibus, violentos, extortionibus, & aliis maleficiis, offendis, & injustis quibuscumque, per quos pac & tranquillitas fidebrorum notorum in Com. Eborum, Northumberland, Westmorland, Durham, & Com. civitatis Eborum, Kingston super Hull, & Newcastle super Tumam gravetur, &c. secundum legem & confuetudinem regni nostri Anglicar, vel aliter secundum fanas discretiones vestras audiend. & terminand. The authority was, &c. non quibusque actiones falsae, seu de libero tenemento, & personales causa debitorum & demandorum quorumcumque in Com. prædictis, quando ambo partes vel altera pars sic pauperata gravata fuer, quod commodo judicium secundum legem regni nostri aliter prosequi non posset, fumilier secundum leges & confuetudines regni nostri Anglicar, vel aliter secundum sanas discretiones vestras audiend. & terminand. 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 Patent or Commission under the Great Seal, without any reference to instructions, or any injunctions at all. But afterwards, so that the said Commission was against law; and to the end, that their authority should not be known the cause aforesaid, but also for that actions real and personal were not to be heard and determined by Commission, but according to the laws of the Realm. Vid. a Aliz. Distr. 175.
The President, &c. in the North. Cap.49.

they procured the said institution to be ex diametro alterata, viz. that their Commission should not give them any express authority at all, but thereby did refer their authority to certain injunctions which they kept themselves in private, and were not involv'd in any Court whatever to the subject might have recourse. Sed mira 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 Council,) gave order that their injunctions should be enrolled, to the end that the subject might take advice of learned Counsel what courts he might take to enjoy the benefit of the laws of the Realm, his best birthright.

And it appeareth in the Subsidy in Anno 32. H. 8. cap. 50. that H. 8. raised not only this President and Council, but a President and Council also having like authority in the Western parts, pretending it to be for their sake, to receive justice at their own hands, but they of Cornwall, 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 Nature of 32 El. where the President and Council of York is mentioned, and no man doubteth, but that there is a President and Council did, but what satisfaction they have in the question.

This much (having taken upon us to write) we have clearly and plainly delivered our opinion, and be that searcheth the secrets of hearts, knoweth that we have published nothing herein; so in any other of our works, sollicitante conicita,

And in respect of some continuance, it hath had, and many decrees made, it were worthy of the wilfulness of a Parliament for some establishment to be had therein.
The Courts and their Jurisdictions within the City of London; And first of
The Court of Husting.

Of the Antiquity and Name of this Noble City, you may read in Lambarde Inter leges Edovardi Regis, fol. 136 b. Sed utere tuo judicio, nihil enim impendio. * 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) afterwerm, Quod Londinum tempore Neronis (which is above 1500 years past) fuit copia negotiorum & commentu maxime celebre. To be short, it is Camera regis, Reipublicae cor, & totius regni Epitome.

And in searching among such records as we have observed, of or concerning this Noble City, we have observed a Charter in the Saxon tongue made by William the Conqueror in these words; pillam Cyng gneir, pilum Bircop, Geoffroyre poppegeperan * calle hy Buphapan sc on Lunden beon, &c. i. William the King grætet William the Bishop and Godfrey the Postrewe, and all the Burgesses that in London be, &c.

This is the highest Court and of the greatest celebrity within London. It is holten before the Mayor and Sheriffs, of all pleas, real, civil, and personal.

Regist. 2. b. Note, the rule of the Register is, Quodibet breve, quod tangit liberum tenementum in London, dirigitur Majoris five Cushodi & Vicecomitibus; & alia brevia tamquam Vicecomitibus.

This word Hustings is derived of the Saxon words; viz. Hus which signifies a house, or bench, and things, that is, causes or pleas, as much to cap as the Bench, or Court of pleas; for Banci or Bench is taken for a Court, as the King's Bench, the Common Bench &c.


b For Writs of Error to be brought of any judgment in the Hustings; see the Register and F.N.B.

c Concerning soxain Wouchers, and soxain pleas, see F. N. B. fo. 6 E. & Stat. de Glac, cap. 12.

Of London holten, no Writ both lie but in London according to the custom, Dier 15 El. 317. Judgement of the outlaws in the Hustings is not given by the Mayor, who is Cononer of his Deputy, but by the Recorder by the custom of this City.

2, 3. The two Courts of the Sheriffs.

In Curia Civitates predicta coram Vicecomi five brevi nostro secundum constitutinem ejusdem Civitatis. If an erroneous judgement be given before the Sheriff, &c.
The Courts in the City of London. Cap. 50.

Sheriffs the party grieuen shall sue a Writ of Cessio, and remove this before the Mayor, and Sheriffs the Huslinges.

For the antiquity of the Sheriffs and their Courts, Fiz Stephen, who wrote of the government of London in the reign of King Stephen, of this City faith:

Hic Civitas Urbe Roma, secundum Chronicum fideum, satis antiquior est, &e. Unde & adhuc eis antiquis eisdem mortuis legibus communibus institutis, hæc familiaris illi regionibus est diffusa, habet annnos pro Contopolibus Vicecomites, habet Senatores dignitatem, & Magistratos minores, &e. ad generat Iustitiam, deliberative, deliberative, judiciales loca licet non singula, habet iuris publici substitui Comitias.

In the End of the Abbey of Ramley to a convenient of conceits, without bate, made in the Court of the Huslinges of London of a certain house in Walbrook within the City, between Wילהmæus de Walbrook, and Rênaudum Albategn de Ramley, the witnesses were (amongst others) Williæmus de Einsford Vicecomes de London, & Johannes Subvicecomes ejus, &c. Gervasius Clericus eis. Fere 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. Here we within the Walls of this City 97 Parishes, and out of the Walls 17 Parishes, standing partly within the Liberties of the City, and partly without Cities and Surrey,

4. The Court of Equity before the Lord Mayor, commonly called, The Court of Conscience.

The Custom of London is, and hath been time out of mind, that when a man is displeased 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 held by the Court to be a good Custom, but by no Custom can he examine after judgement. No 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.

This is a Court of Record, and consists of the Lord Mayor, the Recorder and 2 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 receive 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, et. 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,

6. The Court of Orphans.

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 reduction of Ward, if the Orphan be taken away.

It is enacted, that the Mayor and Chamberlain of London do the time being, shall
Cap. 50. The Courts in the City of London.

Halls have the keeping of all the lands and goods of such Dyphans 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 Recognition may be acknowledged in this Court before the Sopo; and Aldermen to the Chamberlain for Dyphans.

The Chamberlain is a sole Corporation to him and his successors for Dyphans; and a recognition or bond made to him and his successors concerning Dyphans, hall by custom go to his successor.

The government of Dyphans belong to the Sopo and Aldermen, and they have interdiction of them, and therefore if any Dyphan sue in the Ecclesiastical Court, or elsewhere for a legacy, or duty due to them by the Custom, a prohibition both 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.

It would ask a Treatise by it self to handle at large the other Authorities and powers of the Sopo 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.

7. The Court of the Common Council.

This Court hath some resemblance of the High Court of Parliament, for it consists of two Houses, viz. the one of the Sopo and Aldermen, and the other of such as be of the Common Assembly, resembling the whole Communion of London. In this Court they may make constitutions and laws for the advancement of trade and traffic; 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 do not contravert to the laws and Statutes of the Realm. And this being made by the Sopo, Aldermen, and Commonalty, do bind within this City and the Liberties thereof. They of the Common Assembly do give their assent by holding up their hands.

8. The Court of the Ward-mote.

Ward-mote is derived from Ward and Mote, that is, the Ward Court. In 7 H. 6, 36, 38, London the Parishes are as Towns, and the Wards are as Hundreds, and there 12 of these dietus Gard was a good challenge at the Common Law.

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 of more of every Ward, shall inquire of such persons as have not paid or amended their parts and portions of the Streets and Lanes within the said City, etc.

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.
The Courts in the City of London. Cap. 50.

10. The Court of the Chamberlain for Apprentices.

This Court concerning the making free of Apprentices. One may be free of London three manner of ways, viz. by Service, as here in case of Apprentices: 1. By Birthright, the son of a Freeman; and 2. By Redemption, by order of the Court of Aldermen.

How to treat of the great and notable Franchises, Liberties, and Customs of the City of London, would require a whole Volume of it itself. But there is a most beneficial Statute made for the strengthening and preservation of the same, which I know no other Corporation hath. It is enacted that the Citizens of London shall enjoy all their whole Liberties whatsoever with this Clause, Licet non fuerant vel absit fuerant, and notwithstanding any Statute to the contrary, et Lege Statutum, fo 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.

The Mayo of London for the time being hath the conservation and rule of the Water and River of the Thames, and the quays, breasches, and lands overflowed, &c. from the Bridges of Staines unto the Water of Yendell and Medway, and authority as touching partition for using unlawful nets, and other unlawful Engines in fishing, and to all correction and punishment there concerning unlawful nets and Engines there. In all Commissions touching the water of Ley, the Mayo of London shall be one. See hereafter Cap. Commission of Sewers 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 Mayo 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 Mayo is also Escheator within the City, and this Court is holden before him or his Deputy. See before in the Chapter of Escheator.


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 traffic, the benefit whereof appeareth there, and is too 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 held within the Ward of London before the Steward there by prescription of debt, trespasses and other actions of any summe greater or lesser, whereas you may read in 4 El. 4.to. 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 appeared) extendeth through the Tower, and all that is in and about the said Wall, viz. on the West part thereof, is 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 Oeverby, who was poiston in a Chamber in the Tower on the West part of that old Wall. And therefore Welfton the principal murderer was tried before Commissioners of Oyer and Terminer in London, and so was Sir Gervase Elvice, Lieutenant of the Tower, as necessary.

16: Of the Jurisdiction and Authority of the President, Censors, and Comminality of the College of Physicians, situate in Knignt-Rider-street in the Ward of Castle Barnard within the City of London, and seven miles compass.

Of this College, and of their jurisdiction and authority, sufficient hath been said in the 8. Book of Reports in Doct; Bonhams case, whereunto we refer the judicious Reader. Hereunto we will add for the safety of physicians, especially of the Kings Physicians a Record worthy of observation.


Upon this, four things are to be observed. First, that no Physician ought to be given to the King without good warrant. 2. That this Warrant ought to be made by the advice of his Council. 3. They ought to minister no other Physician than that which is set down in writing. 4. That they may use the aid of those Chirurgians 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 previous 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.

If one that is of the mystery of a Physician take a man in care, and given him such Physick as within those days he die thereof, without any felonious intent, and against his will, it is no Homicide.

But Britton saith, that if one that is not of the mystery of a Physician or Chirurgeon, take upon him that care of a man, and he die of the Poison or Medicine, this (if faith he) covert felony.

Physicians and Chirurgians sive sagres, en leu facultres, enant lances les Mirrors, cap. 4, confinences, cy que rien ne eant suffi a faire cure, unrelated to a bone chier, on il a bone chef: scavoient et fonte mettent de quidam follement ou negligement
negligentem sint qua ilz mittant foide pur chaude ou le revers, ou troppe peu de cure, ou nemi mettre un due diligence, & nofmenement en arions & abſcifions que font defendus a faire forçer a peril des meffiers a leur patients moitront ou perdent memore, en tels cafes sont ils homicides ou mayhemers.

And thus much concerning Physicians.

For Courts holden in other Cities, Towns Corporate, and Burgage, our purpose is not to treat of them, because they are private and insufﬁciently known; but let us lay somewhat of the Liberties, Franchises and Immunities of this noble City.

It is enacted, that the Statute of a 3 E. 3. cap. 10. shall not extend to any erroneous judgment given oz to be given in the City of London.

See after, cap. 54. the ancient office of garbling of spices, &c.

There is a writ in the Register necessary to be put in execution for the wholesomeness of Air in London, and in all other Cities, &c. De vires & venelles mutandis.

Lourglary or Lourglary is an ofence when any call any corrupt thing appro\n\nsing the water in or about London, compounded of these two words Lord co\n\nruption, and Laron a Thief or Felon, as * Lourglary: and if any be by reason of any such ofence within a year after, it is felony, and extendeth to other Cities, Burghes, &c.

It was petitioned to the King, that no man in Cities, Towns, or elsewhere, do carry Places of Silver, but only the Kings Servants at Arms, but that they do carry Places of Copper and of no other metals, Whereunto the King answered, [The same shall be so, except the Servants of the City of London, who may carry their Places of Silver within the Liberties of London before the Papo, in the presence of the King.]

Omens homines London sint quieti & liberi, & omnes res eorum per totam Angliam, & per portus maris de theolomio & pasagio, & ab omnibus alius consuetudinibus.

In the Charter of H. 3. bearing Tệfe 18 Febr. Anno regni sui 11. the King granted to the City of London Vicecomitatum London & Medd. &c. And in that Charter thys special Franchise and Privilege is granted to the Sheriff of London and Middlesex for the time being in these words. In fidelicet quod si illi qui pro tempore fuerint Vicecomites constiuiti aliquod delictum necerint, unde mistericordiam pecunie debeant incurrere, non judicentur ad plaus nihil ad mistericordiam viginti Ibr & hoc sine danno aliquo civium si Vicecomit non sufficent ad mistericordiam suarum solutionem. Si vero aliquod delictum necerint, per quod percussa vita vel membrorum incurrere debeant, judicentur siucti judicati debeat per legem civitatis: De his autem quod ad prædictum Vicecomitatum pertinent respondent Vicecomites ad Scaccarium notarum coram Justicionis notarii, Salvis eisdem Vicecomitiis liberantibus quas ali cives London habent.

In the Charter of the same King bearing date 16 Martii Anno regni sui unde cimo supracheto, the King granted to the City of London. Quod nullus civis civitatis praedict furnat duellum, & quod de placitis ad coronam pertinente fe nofint distinctione secundum antiquam confuetudinem civitatis, & quod infra muris civitatis, neque in portoflaxe nemo capiat houbitum per vim vel per librationem Marechal &c. & si quis in aliqua terrarum notarum cita mare, vel utra, fiue in portibus maris cita mare, vel utra, theolomio vel aliquamiam confuetudinem ab hominibus London ceperit potquam ipso a re po sto decesserit, Vic London namin inde upud London capiunt.

In another Charter of the same King bearing date 18 Augusti Anno 11. su praedict, the King did dispose and dilivaran the Foyston and Warren of Stanes in the County of Middlesex.

And by another Charter of the same King bearing date 26 Martii Anno regni sui 52, the King granted to the Civitizens of London in these words, Conceivimus eisdem civibus, quod de placitis ad coronam pertinente & his maxime, que infra civitatem praedictam & ejus suburbium fieri contingent, fe poftint distinctione secundum
Cap. 50. The Courts in the City of London.

The Citizens of Burgesses of London were before and after the Conquest governed by Portgraves or Porteaux until the reign of Rich. I., by whose Charter they were governed by two Bishops: and yet 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 Sherif. And so almost as sometimes the Mayors appointed by the King was no Citizen of London, King John in the Ninth year of his reign granted to the Citizens liberty and authority to chuse de seipins a Mayor, &c. And so it continued unto this day.

The Aldermen of London were changed by election every year until E. 3. Then it was ordered they should not be removed without some special cause. Whi Rot. Parl. 17 R. 2. no. 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 continues.

R. Rot. Parl. Anno 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 King's hands. Rot. Parl. E. 4. Authoritatem Parliamenti, &c. 


Albeit by the Statutes of Magna Carta and other Acts of Parliament, the liberties, privileges, and franchises of the City of London be confirmed; yet the most beneficial of them all is that of before mentioned: whereby it is granted, that the Citizens of London shall enjoy the same, with this clause, that no forest in the City of London shall be taken at the same time, and notwithstanding any Statute to the contrary.

Whose notable, rare, and special liberties and privileges 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, to long here to be recited.

The Court of the Justices assigned for the Government of the Jewes.

Justiciarii ad custodiam Judaeorum assignati.

Omnes Judæi abiacunque in regno sunt, sub tutela & defensione Regis ligae debent esse, nec quislibet eorum alicui divitiæ, potest subdere sine Regis licentia: Judæi enim & omnia sua Regis sunt. Quod si quispiam detinuet eos, vel pecuniam eorum, perquirat Rex, si velit, tarnquam suam propriam.

These Justices did hold a Court concerning the custody and government of the Jewes, as (amongst many other becayde) it appereath Rot.Pat.An.41 H.3. m. 4. m. 6. And that then Philip Basset, Philip Luvell, Henry de Bichan, and Simon Pascel, &c. were then Justices ad Custodiam Judaorum assignat. But when the Jewes were utterly (as hath been said) banished, this Court ceased, which was in 18 E. 1. Anno Domini 1293. See the Second part of the Institutes Stat. de Judæismo. Rot. Clau. 18 E. 1. memb. 6. See Tho. Walf, in Hypodigmate Næustriz 18 E. 1.

The Courts of Staincliffe and Frendles Wapentakes.

Because I have mention made in Actes of Parliament of the Courts of Staincliffe and Frendles Wapentakes, &c. I thought good to referre you to those Actes.
Of the City of Westminster.

I. hath his name of the Monastery, which Swithin signifieth, and it is called Westminster in respect of the Eastminster not far from the Tower of London. This Westminster Sebright the first King of the Saxons that was Christened, founded; and he founded also the University of Cambridge, as works and witnesses of his Christianity.

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 Ward, out of which there are elected one Burgessor and one Assistant in every several Ward; and out of these twelve, two are elected yearly in the Christmas in the Easter week for Chief Burgisser to continue for one whole year following. To these Burgisser's 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 Laws of the Realm and lawful Customs of the City of London, matters of incivility, common oaths, inanities, and common annuances, 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.

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 twice worthy Assembly of the Knights, Citizens, and Burgisser of Parliament (when the Parliament was held in Westminster) was in the Chapter-house of the Abbot of Westminster, there to debate and consult De adais & urgentios negotis regno, & Itarum regno & Ecclesiæ Anglicanae concernentibus, &c. And this continued until the nature of 1 E. c. 14. Which gave to the Kings Colleges, few Chappels, Chanteries, 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 105 /. 10s. 5d.) Since which time the Chappel thereof hath ministered for the House of Commons, when Parliament have been held at Westminster.

Radulphus de Iongham Chief Justice of England, (a bep pag) man being slain before him at 12 s. 4d.) in another Ease, moved with pity caused the Record to be read 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 continued unto this day, which sum was entered into the Roll. And almost in the like case in the reign of Queen Elizabeth, Sir Robert Carlyl Chief Justice of England would have had Justice Southcote (one of his companions Justice of the Kings Bench) to have altered a Record, which the Justice denied to do, and laid openly in Court, That he meant not to build a Clock-house.

This Monastery in Anno 30 H.8. was surrendered to the King, who erected thereof a Dean and Chapter. Anno 33 H.8. it was called to a Bishoprick, and Thomas Thirby made thereof the first and last Bishop, & Queen Eliz. made it a College consisting of a Dean, twelve Prebends, a School-master, an Other, 40 Scholars, and 12 Almshemen, and so it was named the Collegiate Church of Westminster.

In Anno 37 H.8. the Kings Monas of Westminster was made an University.
CAP. LII.

Of the City of Norwich, &c.

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 30 s. and four Prebendaries and six Hieratics of honey, a Beer, and Sir Doge to bat him. Now it paleseth 70 l. to the King, and a 100 l. to the Queen, and a halfpenny, and twenty pound of white rent to the Earl.

The foundation of the Incorporation of this City is very ancient, for in ancient Manuscripts it appears that In tempore Steph. Regis de nova fundata & ut Villa populata communites fact.

This City is highly commended for many things, for it is truly said of it, Quod titi ophias, frequentia, aedificium elegantia, Templorum pulchritudine & numero, (Parccias enim plus minus 30, complectitur) Civam felicitate, in principium, in extremo humanitate, inter celeberrimas Britanniae usque metito communitera, &c. Moxibus validis (in quibus credite disposita curtes, & indecim Portae) unique objecta, nisi ad eumqua Buman (cum bono flex eum. Pontibus perium Septentrionalem ubis partem interiuscet) profendo alveo & precativitis ripis deedit. * It is preferred before all the Cities in England, except London. It lieth above 30 Parishes, and it is as large within the Walls as London, it had within it the Liberties Sir Religious Houses, and one Hospital.

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 improper to set down the true state of this Bishoprick.

In Anno 27 H. 8. and before William Rugge Dodo of Divinity of the University of Cambridge was Abbot of the a Monastery of S. Bennets de Holmo in the County of Nor. and the Bishoprick of Norwich becoming both 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.

But 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 should be Abbots of the Monastery of S. Bennets, and have the dignities of the said Abbey united, incorporated, and knit to the Sea of the said Bishop, &c.

But peruse the Statute, and you shall find that Dodo: Rugge had Beneficium visciatum, for the Bishoprick lost much more by that Act than it gained. And afterwards this Dodo 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 Dido acknowledged and enrolled 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 heredita-
Of the City of Norwich, &c.

Herein are the several constellations (templorum heli- 
lonos) by pretense and colour of the fales general house passed the petition and 
hereditaments of the said monastery of St. Benet's de Holme, in a book of concilia-
tions under certain obscure words (which appear in the Act of Parliament here-
after mentioned) by Letters Patent of concealing bearing date the 2. day of 
August, Anno 17 Eliz. and William Redman Doctor of Divinity, and Bishop of 
Norwich, came toHammond, a friend of his to take an estate to him and his 
heirs of and from the said Concelors of all or the greatest part of the said Ho-
monastery: which I (being then her clerk) undertook to give his understanding, 
and utterly witholding 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 
ought to pass for the establishment of the fales Bishop-piscish and of the pos-
tions thereof, which Act (whereby to I was well acquainted) passed at the Par-
liament held on in Anno 39 El., and is in print, which you may read at large, 
wherein you shall observe the fraud and falsehood of the Concelors.

What attempts these Concelors (graceless 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 (inventor Deo & utilissime Chri-
si) nisi heliunos non praevalentur. Which I have the rather remembered both 
for the establishment of the fales Bishop-piscish, as for the repose and quiet of very 
many persons, Officers, and other persons claiming interest in the said pos-
tions in my native Country.

And if any question shall hereafter be made either concerning any of the 
pollinations of this Bishop-piscish, or any other, of any Dean and Chapter, of the 
Colleges in either of the Universities, or by any Concelor of other; their 
pollinations are established by the Act of Parliament of 21 Jac, cap. 2, intituled, 
An Act for the general quiet of the subject against all pretense of concealment 
whatsoever.

For the Courts of Justice within this City (which is our principal aim) 
we have treated of the like before in the City of London. To this we will add 
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 follow-
eth:

It is enacted for the Citizens of Norwich, That if their Customes and 
Usages, heretofore used, or hercforth to be used, be difficult or defe-
cive in part or in all, or that the same find any due amendment for any 
matter arising, whereof remedy was not aforetime heard, 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 remedys which are most 
agreeable to faith and reaon, and for the most profit, the good and 
peaceable government of the same Town, and of strangers thereto re-
pairing, as to them shall seem best; so as such Ordinances be profitable 
for the King and his people.

It is a County of it self, and hath two Sheriffs and large libertys without 
the Walls. See the statute of 33 H.6, cap. 7, how many Attorneys should be in 
this City. See before in the Chapter of the High Court of Parliament con-
cerning new Diocesies, &c. and Worship得出, as made in this City. See Rot. Parl. 
13 H.4, fo. 5, concerning the ancient Liberties of this City.

* Burgi & Civitates fundat & edificat * sunt ad tuitionem gentium, & populorum 
regni, & idcirco observati debent cum omnii liberaete, integrate & ratiune.

* 14 H.4. It is enacted, That the Merchants and Artificers of Wor-
ship in Norf. may sell their single Worship to any place or persons 
being of the Kings amity notwithstanding any Inhibition or Liberty to 
the contrary.
Of the City of Norwich, &c. Cap. 52.


The beautiful Cathedral or Mother Church of Norwich was begun to be built by Herbert Bishop of Norwich, Anno 9 Willielmi Ruli.

The Bishops of this See had the first-fruits of Ecclesiastical Livings within their Dioceses before the Statute of 26 H. 3. ca. 3. which no Bishop, 93 Arch-bishop of this Realm had. It hath also a famous River abounding with Fish, especially the Poarch. The strong and noble Castle of Norwich called Blackewater incurred about with the City, but no part thereof but of the County of Norf. was not (as some suppose) built by Biger Earl of Norf. which some upon view thereof have conjectured, for that the Arms of Earl Biger are graven on the Walls thereof. For we find a Charter of King Stephen in these words, Stephanus Rex Anglorum Archiepiscopis,Episcopis,Abbat',Justicii Comitibus,Baronibus,Vicecomitibus,Ministris, & omnibus fideliis suis Angliae,Salutem. Scitis me dedisse in feodo & hereditate * Willielmo Comiti Warren. filio meo Castellum Norwicium cum toto Burgo, &c.

And Rate de Waret 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 Biger 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 repairation is ready to fall.

So 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 books of Charity.

This is the chief City of my Native Country.

Nescio quo natale solum dulcissime cunctos
Ducit, & immemores non sinit esse suos.
The Court of the Tower

W e have spoken of this Court (being a Court of Record) in the second part of the Institutes, Mag. Cart, cap. 35. In this chapter we shall add a Charter of William the Conqueror, which we have intitled, 2 R. 2, no. 5. pro Decano & capitulo Ecclesiae beatae Marie de Lincoln.

Williamus gratia dei Rex Anglorum, Comitibus, Viccomitibus, & omnibus Francigenis, & qui in Episcopatu Remigii Episcopi terras habent; Saluten, Scitiss vos omnes, & ceteri mei fideles qui in Anglia manent, quod Episcopales leges que non bene, nec secundum sanctorum Canones praecepta usque ad mes temporis in regno Anglorum fuerunt, communi Concilio & Concilio Archiepiscoporum medio & ceterorum Episcoporum & Abbatum, et omnium Principium regni mei emendandas judicavi. Properpes mundo, et regia autoritate praecipio, ut nullus Episcopus vel Archidiaconus de legibus Episcopalius amplius in * Hundreto Placita tuent, nec cauam que ad regimin animarum pertinet ad judicium secularium hominum aduant, sed quicunque secundum Episcopales leges de quacunque causa vel culpa interpellatus fuerint, ad locum quem ad hoc Episcopus elegerit, & nominaverit, veniant, ibique de causa sua respondiscat, et non secundum * Hundredum, sed secundum Canones & Episcopales leges reatum deo & Episcopo suo faciat. Si vero aliquis per superbia claras ad Jutiam Episcopalem venire non voluerit, vocietur semel, et secundo, et tertio; quod si nec sic ad emendationem venire, & communicaretur: Et si opus fuerit, ad hoc vindicandum, fortissimo, et Jutisia regis vel Vico-comitis adhibeatur: Illa autem qui vocaveris ad Jutiam Episcopali venire noluit pro anaque vocatione legem Episcopalem emendare: hoc etiam detendo, et mea auctoritate interdico, ne ullus Viccomem aut prapostibus, aut ministrer regis, nec aliquis lacus homo de legisbus quae ad Episcopum pertinent, s se intromittere: nec alios lacus hominum solum hominum fine Juticia Episcopi ad judicium aduant; Judicium vero in nullo loco portetur nisi in Episcopali sede, aut in illo loco quem ad hoc Episcopalius consecutetur.

For the confirmation of this Charter, I carter to the Register of the Bishop of London. Williamus dei gratia Rex Anglorum R. Biamaro, & S. de magna Villa, P. de Vabines, ceterique mei fideibus de Essex & de Hertfordh., & de Mid- delex, Saluten. Scitiss vos omnes, &c. Tenor istius Carta est in Anglico de verbo in verbum in eadem Carta. Confimis Carta ante ut ex libro Cartarum Archiepiscopi Cantui. Against this Charter it is objected. First, the time of the enrolling thereof, viz. in 2 R. 2. being neither heard of before. Secondly, out of the Red book, Inter leges H. R. cap. 8. de generalibus Placitiis Comitatum. I. As well of this, as of the County Court.

*Sicut antiquum fuerit institutione firmatum, salutaris regis imperio, vera nuper est b recordatione firmatum, generalia Comitatuum Placita certis locis & vicibus & definito tempore per singulas Anglia provincias convenire debere, nec illis ultra litigationibus agitari, nisi propriis regis necessitas, vel commune regni commendum fapiaus adjacient. Interim autem Episcopi, Comites, Viccomitii, Vicarii, Centenarii, Aldermanni, praefecti, prapostiti, Barones, Vavasores, Tangveii
The Court of the Town.

Cap. 53.

grevii & ceteri terrarum domini diligenter intendentes ne malorum impunias, aut
Gravionum pravitas, vel judicum subvertit solum minus lacremone confiniant.
Agantur itaque primo debita vera * Christianiatis juris; Secundo * regis placita;
Postremo * causa singulorum dignis satisfactionibus expleantur. Whereupon they
conclude, That Ecclesiastical causes were handled in the Town in the reign of
H. r. long after the said supposed Charter. And certain it is, that the Bishops
Chirographies were exceed, and causes Ecclesiastical removed from the Town
to the Consistory after the making of the said Red Book: Ideo pene. Lectorem
fit judicium,

In the same Chapter of the said Red Book it is further said, Et quosque
Shiregemo discordes invenier, vel amore congreget, vel sequerert judiceto,
debet enim Shiregemo et bis, hundred, & Wapentacke 2 duodecies in anno congre-
get.

The Town is a Court of Record, held before the Sheriff: the ancient In-
stitution thereof was before Magna Carta * to hear and determine all felonies
(both of men excepted) and common nuisances. * See the Statute of Magna
Carta, cap. 17. and the Exposition upon the same in the Second part of the In-
stitutes.

The Site of this Court is Curia vicus Franc. domini regis spud B. Coram Vice-
comite in Turno tuo, &c. and not Turnum Vicecom * tent, &c. for Turnum et nisi
perambulatio. The Articles inquerible in the Town are known, and need not
to be here rehearsed.
CAP. LIV.

The Court of the Lett or view of Frankpledge.

This is a Court of Record, and at the first derived and taken out of the Crown, and is held 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 Lett was, you shall also read in the Second part of the Institutes, Magna Carta cap. 17.

Lett. Leth, or Lett is a Sarum Word, and cometh of the Word gelebhan [being added Euphonios gratis] 1. convene, to assemble together, unde convenus.

If a common nuisance, &c. done within the jurisdiction of the Lett be not presented in the Lett, the Sheriff in his Crown cannot enquire of it, for that which is within the precinct of the Lett is exempt from the Crown; 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 Fines in 12 H. 7. if his Opinion be not misreported. And by the Statute of 29 E. 3. This Writ is not taken away by the Nature of 28 E. 3. cap. 9. made the year before, which was then fresh in the Judges memory.


The Commons petitioned that execeutive fines set on the Kings Succestors by such as have Letts may be reduced; whereunto the King answered, The King would the same.

See a notable case concerning the jurisdiction of the Lett & Court Baron, Mich. 18 E. 1. in Banco Rot. 156. Nor. Et ibi tenetur quod Clerici ad Letam venire non habet necessit, nisi ejus praepatent ex certis causis & considerationibus fit necessit.

This Court of the Lett may enquire of corrupt Vitiatus as a common nuisance, whereof some have doubted, both for that it is omitted in the Nature of the Lett, and of the local authority of the Book of 9 H. 6. where Martyn and Neal, in 9 H. 9. agreeing with him said truly, fo by the Nature of 9 H. 3. Star, Pillor & Tumbrel, & Alleis Paris & Cervis; and by the Nature made in the reigne of E. 1. intituled, Star de Pilgorius & Bafatorius, & alle Vicellarius, It is ordained, that none shall fall corrupt Vitiatus. And by the Nature of 14 E. 3. it appeareth that this Act was ordained in the time of his Grandfather, which was E. 1.

Britton who wrote after the Nature of 9 H. 3. and following the same Act thus; Puiss ilot inquire de ceux queus achacent per un manner, de mesure & vendent per meindre mesureiaux, & ceux sont pointes come vendors des vins, & aux quils que feront attains de deux ans, & dix pois. Et aux les Macgieues, & les gens que de usage vendent a trepasseurs muevans vains consumpus & vexatifs, & autrement pesilleurs a la dune de home. Et lesFortallers, &c. Et lo. 33. he both conclude the afo passage with these words, Enocher le forme de nos dictes.
Eft etiam atrox injuria que perpetuum inducit infamiam cum pena Pilotali & Tumbrelli, quae quandoque fit per Pictores, Brasstares, & alias qui falsis pondeoribus ueniam & mentus, quae etiam fit per obdarea corrupta, & semecdla vendentes, &c. Put none of these statutes gave the compliance to turpae and coerced 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.

By the Statute of 12 E. 4. cap. 8. It is reheard, That Mayors, Bayliffs, and other like Governors of every City, Borough, and Town of Subsidence within this Realm of England for the most part have Courts of Leets and Views of Frankpledge holden yearly within the same, and surveying of all Victuallers there, and correction and punishment of the offenders, and breakers of the Aisle 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 oppress the said Victuallers, and to enter and break the liberty of divers places in this Realm having Franchises (that is, Leets aformentioned) 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, Beer, Wine, and other Victuals, &c. in a wrongful derogation of the Liberties and Franchises of the said Cities, Boroughs, and other 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 Victual, shall be utterly void and of no effect. And no person other than such Governors 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 as gainst 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 abovesaid, 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 Consequence of any former Court by consequent hath a large extent, and therefore we have cited the same the more at large.

Some do hold that it is within the Statutes of 7 E. 2. some say as an incident to the Aisle of Bread and Ale; and others hold, that by that Act power is given to the Lord of the Leet to enquire of that Aisle of Bread and Ale, that is to say, of the Lattae intitulated, the Aisle of Bread and Ale, which is the said Act of 7 E. 2. in which Act sellers of corrupt Victuals are to be punished. And hereafter (say they) agrerate the Law in r. 3. fo. 1. that of corrupt Victual the Law had jurisdiction by the Statute, boldower that is conceived, it is the Law that hath compliance thereof.

And albeit Malt, Braium, be no Victual of it itself, as it is adjudged in Anno 18 E. 2. Quod venditio brahi non est venditio Victualium, nec debet puniri sicut venditio Panis, Vinis, & Cervicia, &c. &c. &c. for the same, because the principal ingredient of Beer, and thereunto the Law doth not wholesome to the great hinderance of health and increase of diseases, we will examine the said Law mandeth therein at this day.
Malt or Male is a Saxon word, in Latin we call it Baratum derived of bracto, 
\[\text{challo, name.}\] In the ancient statutes Brafator is taken for a Brewer. In 
\[\text{Fleta, ubi supra, Brasattrix, x Britton, ubi supra, Bracerettes, for Brewer.}\] In 
\[\text{Latin we use the word Pandonator or Potter, and Brafator at this day is used}\] 
\[\text{for a Maltmaker or Molster.}\]

\[\text{Malt is made of Barlet, and cannot be well and perfectly made, unless it hath}\]
\[\text{the time of 13 haves in the making thereof, and both in the making thereof in the}\]
\[\text{Fat, daw, keeping, and sufficient drying of the said Malt 3 weeks at the least, accept it be in the months of June, July, and August, and in those months by the}\]
\[\text{space of 17 days at the least.}\]

\[\text{The Maltmaker ought not rashly and becuiously to by the Malt, to the intent to}\]
\[\text{have an immediate increase thereof by swelling of the same, which being not}\]
\[\text{sufficiently dried, within a short time will be musty and full of *Mefels.}\]

\[\text{If no peron ought to put to sale any Malt which shall not be well and sufficiently}\]
\[\text{being broden, rubbed, and well fanned, whereby there may be conveniently fanned out of one Quarter thereof half a peck of dust, or more.}\]

\[\text{If no peron shall mingle any Malt not being well and sufficiently made, or}\]
\[\text{being made of now burnt or spired Barlet, with other good Malt, and after put the same to sale. All these be male in se, and punishable by the Common law.}\]

\[\text{And this statute of 2 E. 6. hath added a penalty, if the suit be brought upon}\]
\[\text{this statute. And if the Brewer put to sale any beer, which he hath brewed with}\]
\[\text{unlawful (as all that have not the qualities aforesaid) and unwhole-}\]
\[\text{some Malt, he may be prosecuted for the same in the Lat, as, by selling of corrupt and unwholesomm virtues. And by this statute power is given that the Justice of peace in every of their Sessions, and also the Steward in every Lat shall hear and determine, as well by presentment of 2 men, as by accusation or information of two honest witnesses, of 3, and upon all and every the offences and forfeitures in that Act, as, so as the Justice of peace of Stewards in Lat, may either proceed at the Common law or upon this statute. It is further provided by this Act, that the Bailiffs and Constables of every Borough, and Market town or other Town where Malt shall be made or put to sell, shall from time to time search and surfe the same; and if the same be found to be evil made or mingled with evil Malt, then by the advice of one Justice of Peace shall cause the same to be sold at such reasonable price, and under the common price in the market, as to his discretion shall seem expedient. This Act extends not to the making of any Malt for a man's own provision for his own house or family. And the offences against this Act are to be presented within a year.}\]

\[\text{This Act of 2 E. 6. cap. 10, is continued, and yet Sandtheth in force. \text{27 Eliz.}}\]
\[\text{cap. 4. 1 Jac. cap. 25. 8 &c, 4 Car. cap. 4.}\]

\[\text{What which hath been laid (de male) of Malt, may also be applied to Hops another ingredient into Beer, and punishable by the Common law. But again}\]
\[\text{against driers and many falsechase practised in packing of soer Hops, for that}\]
\[\text{the subject of the Realm have been by reason thereof of late years abused and des-}\]
\[\text{cribed unto the value of 20 thousand pounds yearly at the least (for that in lack of}\]
\[\text{soer Hops there is not found one third part to be good and clean Hops, the rest being brode and foul,) A good law is made Ann 1 Jac. and every person offending therein shall forfeit the fame Hops so brought into the Realm. And it is further enacted by the same Act, that if any Brewer of Beer or Ale shall employ and spend any Hops unclean, corrupt, or mixt with any powder, dust, sloe, sand, or any other soil whatsoever, he shall forfeit the value of those Hops so employed to be recovered, &c, in any of the Kings Courts of Record.}\]

\[\text{The reason whereof these Courts of the Town and Lat are Courts of Record, and not the Courts of the County, of the Hundred, and of the Court Baron, (whereof we shall here in other treat) is, for that the Town and the Lat are instituted for the Common weal, as for conservation of the Kings peace, and punishment of common nuisances, &c. And for conservation of the peace, the Sheriff in the Town, and the Steward in the Lat, may take Recognisances, for}\]

\[\text{Pm}\]

\[\text{keeping}\]
The Court of the Leet. Cap. 54.

Keeping of the peace. But the fain inferior Courts of the County Hundred, and the Court Baron have jurisdiction of private causes under the value of 40s. between party and party.

Fuit hie sapientia quondam
Publica privatis secerere, sacra profanis.

And forasmuch as unclean, corrupted, and mingled Spices and Drugs be to unwholesome and hurtful, as they tend to the jeopardy of man's body, we will hereunto add the explication 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 sales sundry sorts of unclean, corrupt and mingled Spices, &c. garbleable, to the jeopardy of his Majesties person, &c.

Garbleable.] To garble, signifies in our legal understanding, to make 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 Bowlsabdes shall be sold ungarbled, &c., that is, until the good and sufficient be severed and divided from the bad and insufficient: and this garbling of Bolus hath reference to the statute of 2 E. 4, cap. 2, where garbling of Bolus is well expounded, that is, that the Bowlsabdes be searched and surveyed, &c., and that such be not good and sufficient be marked, &c. Some think that it is derived from the French Verbe, Gribre, to make fine, neat, clean, &c. Others fetch it from Tribuler and that of Cribcare, to sift or separate the god from the bad, unde Cribrum, sic ditum, qua crebris perturbatione ad res purgandis a pulvere et impudicis (unde Cribarinus, the Garbler) which well agreeth with our Act.

And to set forth, do come from the Barons, viz. pp. p. 52. This Act consisteth of a Preamble and a Body. In the Preamble it is rehearsed, that unclean, corrupt, and mingled Spices, Drugs, Wares, and Merchandizes 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 madam in i.e., and (as hath been said) in divers like cases punishable by the Common law. But this Act tendeth to the prevention of such deceits 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 cleaned and cleared by the Garbler before sale, upon pain of forfeiture of the same or value thereof, for which an Action popular is given.

1 Pepper, 2 Cloves, 3 Fice, 4 Nutmegs, 5 Cinnamon, 6 Ginger, 7 Long-pepper, 8 Worm-seds, 9 Co-
mint-seds, 10 Aniseeds, 11 Collander-seds, 12 Sper-
Spices and Drugs nary pepper, 13 Almonds, 14 Dates, 15 Calla, 16 Spices-
be of special name men-
tioned in this Act,
17 Calingall, 18 Turmericke, 19 Dettwell, 20
Calla i. Calla, 21 Ginnep-perre, 22 Heme, 23 Barm-
24 Rice, 25 Cori, 26 Stavufare, 27 Calamus,
28 Fennepvic, 29 Calla, 30 Lignum, 31 Cains, 32
Cedar-ship-seds.

And in general words, 1. Some of all sorts and kinds garbleable. 2. All other Spices, Drugs, Wares, and Merchandizes 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.

* Note Garbles signify the dust or soil or un-
cleanness that is ferreved.
Cap. 54: The Court of the Leet.

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 gives 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.

There is a Provisto, that if any Merchant or other person (other than Merchants alien, or made or to be made Denizens) 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 months (accounting 28 days to the moneth) after his first landing, &c., shall not incure any of the penalties of this Act.

And this Provisto was added in respect of a general law made in 16 R. 2., that no manner of Spices, after that it be brought into the Realm, shall be carried out of the same by Alien or Denizen, upon pain of forfeitour of the same. And this Provisto extendeth only to the natural born Subjects, and not to Merchants alien, or made or to be made Denizens.

And by the Act of 16 R. 2. cap. 1. it is enacted, that Aliens Hall sell Wines by whole vessels and spicerie 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 vitis franc. Articles of the Leet, to which we will add.
Concerning tracing and killing of Hares.
Of Hottlers making Hoste bread under the alitie.
Of bigbeders of Horses under Nature.
Of Artillery, Bats, and Bolts.
Concerning Shoting in Crossbows and Handguns.
Concerning Vintailers, Artificers, Woodmen, and Labourers.
Against great prices and excess of Wines.

For amendment of High ways. 2 & 3 Phil. & Mar. cap. 3. Eliz. 13. 13 Eliz. 9.
Concerning Butlers.
For the preservation of the spawm and fry of Fish.
Against taking of Phoebants and Partridges.
Against the erection of Cottages and Inmates. Hereof see before in this Chapter.

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 Subilter might have remedy and justice at his own doors: and therefore it is requisite that the Standard of this Court be learned in the law, for Ignorant Judicis et calamitas innocentis. Sec. Ro. Parl. 51 E. 3. m. 49. concerning Tabeners.

The Style of this Court of the Leet is, Curia vitis franc. pleg. tent. apud B. cam. A.B. Seneschallo, &c.

Francus plegius Saxonice planebog Frenboe, Anglice, Fræpleshegg.

The Constables or petty Constables are chosen by the Common Law at the Leet of Leet, and are by the Common law conservators of the peace, and may take surety of the peace by Obligation, and are as recent as Leet or Leetse be and began not about the beginning of Eliz. as some have supposed: Vide the Chapter of the Hundred Court for the Chief Constables, & 9 E. 4. 58. 5 H. 7. 6. 11 H. 4. 12. 35 E. 3. 3.

But to lay once for all: Repetition without addition is but loss of time, and altogether unprofitable.
The Court of the County.

The style of this Court is: Buck. Curia prima Comitatus E.C., Milites vicecomitis Com., prad. tert., apud B., &c. And the next Court, Curia secunda E.C., vicecom. Com., prad. &c. And so forth.

See the Nature of W. 2. cap. 36. against procurement of Suits in this Court. This Court is not Court of Recomp., and the Suitors are the Judges thereof. But in a Redielen son the Sheriff is Judge by the Nature of Merton cap. 3. and a Writ of error 1peth of his judgement.

Of the antiquity and jurisdiction of this Court, you shall read in the Nature of Magna Carta, cap. 35. It hath no plea of any debt or damages to the value of 40s. or above, nor of any trespass done vi et armis because a fine is due therefor by the King. But of debt, detinue, trespass, and other actions personal above 40s. the Sheriff may hold plea by force of a Writ of Justices to him directed, for that is in nature of a Commission to him, and is Vicarious, and not retoruable. And he may before any County Court award a Summons to his Bailee responsible within 2 or 3 days at his discretion, to summon the defendant by his goods, &c. to answer; and if the Bailee return Nihil, and the plaintiff removeth the same by a P sewer into the Common pleas, that Court shall not grant a Capacis for the nature of the Writ doth not warrant a Capacis, and the Sheriff could not grant the same, neither whether the Writ of Justices 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 both lye, and not a Writ of error. And in divers real actions a Writ of Justices both lye as it appeareth in our books, as in Brexit D' admonishment of dover 03 pasture, in Customs & Services, Maine Quod permittas, Rationabilibus divisibus, Sect. ad molend. De millians, de Curia claudenda, Annuity, &c.

In the County Court upon the Exigent after 5 exact, the Cozenors give judgment, ideo utigeat per judicium Coronatorum. But by this Judgment 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 Cozenors 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 retoroped.
The Court of the Hundred.

This is no Court of Record, and the Suits are thereof Judges. Of the antiquity and jurisdiction hereof vide Magna Carta, ubi sup. And as the List was derived out of the Court 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.

By the nature of 14 E. 3. Hundreeds (except such as then were of estate in fee) are responed (as to the Bailiwick of the same) to the Counties, and all grants made of the Bailiwick of Hundreeds since that Nature 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 Leg. and all the Barons of the Exchequer, and so decreed in the Exchequer Chamber, between Foreseine of Buckinghamshire plaintiff, and the Sheriff of the same defendant Term. 2. Caroli Regis, the plaintiff having of late divers Hundreeds granted to him for life in the County of Buck, revalidating a rent, which the Sheriff disallowed, and put in Bailiffs of his own. And a commandement was given by the Court to the Atty and 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 delays and hindrances of Justice. See the Nature of W. 2. cap. 36. against procurement of suits in this Court.

The style of this Court is Curia E.C. militiae hundredi sui de B. in Com. Buck., rent, &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, Wapenteke, or Eything, 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 petty Constables. These Constables of Hundreds were created by the statute of 1 3 E. 1. and their authority limited to five things. 1. To make the view of armours. 2. To present before Justices assigned such defaults as they do see in the County about armours. 3. To present defaults of suits of Towns. 4. Of high wages. 5. To present all such as lodge Strangers in uppish townes, for whom they will not allow. 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 both give him, for he cannot prescribe as the Officer by the Common law may. Nota 10 E. 4. fo. 17. the petty Constable was an Officer by the Common law per Curiam, Vid. 4 E. 3. cap. 3. 25 E. 3. ca. 2. So in the Chapter of Huez and Cyc in the Third part of the Institutes, Huez and Cyc always by the Common law made by the Constables of Towns, &c.

Fleta lib. 1. cap. 2. Sez, De Vic. & Consabulariis, &c.
CAP. LVII.

The Court Baron.

This is a Court incident to every Pannoz, and is not of Record, and the Suits be thereof Judges, although the Plea be holden by force of a writ of right.

There is also a Customary Pannoz, whereof you may read in the First part of the Institutes Sect. 73, Verbd, Court, &c.

And this was first instituted for the ease of the Tenants, and for the ending of debts and damages under 40 s. at home, as it were at their own doors.

See there for the antiquity and institution of this Court, and the Articles inquirable therein are usual and well known.

The title of the Court is, Curia Baronis E. C, Militis manerii qui predicti habes the Pannoz name written in the Sargent) ten. tali die, &c. coram A. B. Senechalho ibidem.

In the reign of E. I. we have the Court Rolls having the Pannoz name in the margent. Aula ibidem en, tali die, &c. the Court of the Pannoz being so called, because it was holden in the Hall of the Pannoz: as the Court of the Marshal is called Curia Aulæ Hospitii Domini Regis; because of ancient time it was holden in the Kings Hall.

CAP.
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 Conqueror, and so expressed in the Book of Domesday made or begun in the 14 year of William the Conqueror; for so we find it in Libro Rubro Scaccarii in Custodia Regnus, fo. 47. quod liber vocatus Domesday compositus fuist Anno 14. Wilhelmi Regis Conquestoris. And Radulphe Niger spek of Cogis Hall in Essex in vita Wilhelmi Conquestoris hath these words. Annis 1081, 1082, 1083, 1084, 1085, 1086, Rex Wilhelmus describit freces Barones & feudos. Ilites, & quot carucatus terra quique habebat & redditus posthuminum. And Anno Domini 1081, was the 14 year of William the Conqueror, and this great and excellent furdev lasted 6 years. And in Lucubrat. Okham, it is worthly called Liber Judicatariorum, because it is the only trial of ancient Demesne; against which, for the uncontrollable truth and verity thereof, there can be taken no argument. And therefore in that respect like the damn and judgement at Domesday.

In Chent, Archie. Cant, Sandwic in anno quo facta est hae description. In Domesday it self lege librum, fo hereby it appeareth that it was made in the time of the Conqueror.

All those that hold of these Manors in socage are tenants in ancient Demesne; and they plowed the Kings Demeases of his Manors, when and how they plowed the same, mowed and made his herbs, and other such servises of husbandry for the sustenance of the King and his honorables household, 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 his privileges. First, that they should not be impleaded for; any their lands, &c. out of the said Manor; but have justice administered to them at their own law by the little court 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 have the Right. 2. They cannot be inpannelled to appear at Welle. or elsewhere in any other Court upon any inquest or trial of any cause. 3. They are safe and quiet from all manner of Calls in Fairs and Markets for all things concerning husbandry and sustenance. 4. And of Taxes and Tollages by Parliament, unless they be specially named. 5. And of contribution to the exences of the Knights of the Parliament, &c. 6. If they be severally displeased of other servises, they all for bearing of charges may join in a Unit of Monstraverunt, although they be several Tenants.

These privileges remain still, although the Manors be come to the hands of subjects, and although their servise of the plough is for the most part altered and turned into money; Avera in Domesday Grentbrigh Rex fordham, set rem semper inventari averam vel d. in servicio Regis. that is a pays work of a Ploughman, 93 8 d.

This Court is in nature of a Court Baron, wherein the sutes are Judges, and is no Court of Record; for Brevia Claus Recodium non habente.

Note. The Demandant in a unit 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 Commonem legem. As if a fine and recovery be levied or suffered thereof in the Court of Common pleas, this maketh the
The Court of Ancient Demesne. Cap. 58.

the land frank for so long as they stand in force. 2. If the land be not held
of the Spano, being ancient Demesne. 3. If the land be held by knightly ser-
vice: for, as hath been said, the service of the Plow and Husbandry is the cause
of the privilege. 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 safer of Justice within the Spano. 5. If the Tenant accept
a release of his Lord of his seignior, or the seignior be otherwise extinguished
by reason of the lesion of the King; otherwise. 6. Do if the Lord disfere his
Tenant and make a feoffment in fee. 7. If the Lord grant the services of his
Tenant, and the Tenant attorns.

* Arabant & hereditant ad curiam dominii. i. they did plough, and harrow at
the Spano of the Lord.

And this privilege both not extend to meer personal actions, as debt upon
a Leafe, Trespaalle, Quare clausum fugit, and the like, in which by common in-
tendment the title of the feodobo shall not come in debate. But otherwise it is
of all real actions, and also in actions of Account, Repetition, Ejendorne firmes,
Witt of Melfne and the like, where by common intentendment the reality shall
come in question.

Lands in ancient demesne are entituled upon a Nature Merchant, Staple
Elegit, and regularly all general statutes extend to ancient demesne.

But a Rebiseisin, although they concern the reality, doth not lie in ancient
demesne, because the proceeding in a Rebiseisin is appointed by the Statutes to
be made by the Sheriff, 없임 wasje pector Coronatoribus Comitattis, &c., and in
ancient demesne there are no Coroners; but otherwise it is in an action of
Waife.

And as the Tenants in ancient Demesne are careful to preferre their privi-
ledges to the Lord is as careful to preferre his seignior, and the tenure of this
tenancy in ancient demesne. And therefore if the Tenant leyed a fine, or suffer
a recovery in the Court of Common pleas, &c. whereby for the time the land is
become franker, the Lord by a witt of Dilict may not only recover himself to
his true seignior, but utterly abode 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 of levied before a com-
petent Judge in the right Court, which ought to have been in the Court of an-
cient demesne, and therefore after the reversal in the witt of Dilict, it is now
to bane coram non Judge, and the parties to the fine or recovery shall be fined
and imprisoned pro deceptione Curiae.

But if in a witt of sight close in ancient Demesne, the Demandant maketh
his protestation to sue in the nature of Action of Plow. the Tenant plead in abate-
ment of the witt, and the witt by judgement is abated, the Demesne being
a witt of false judgement, wherein the witt is affirmed to be bad, 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 franker, but remains ancient Demesne, because the beginning and founda-
tion thereof was in ancient Demesne.

They may leyb 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.

If the tenant remouve the plea for the cause mentioned in the Recorde, he
may come into the Kings Court, and allign other cause, and twenty, if he hath,
to maintain the jurisdiction of the Kings Court,
The Court of the Coroner.

This Coroner Coronator is so called, because he deals principally with the 17th Regis. 1647., by the freeholders of the County, and so continues to this day, as of ancient time the Sheriff and Conventor of the peace were, because the people had a great interest and safety in the true execution of their offices, and so long as they were eligible, they continued, notwithstanding the benefit of the King, as the Coroner both to this day. And of ancient time this office was of great estimation, for none could have it under the degree of a Knight. And it appeareth by the writ De Coronator coronando, that he must have two properties, viz. sufficient knowledge, ability and diligence in execution of his office, implied in these words, Et talem eligias facias, qui melius sciat, & petit officio illo intenderet. 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.

Now concerning his jurisdiction, what it was before the Statutes of Magna Charta, and what he hath at this day, and of his Antiquity, you may read in the 17th Regis. 1647., Second part of the Institutes, Mag. Cart. cap. 17., & Exemplum coronandi, and Stanf. Pl. Coronae fol. 48. 49 c. 49. 50.

And as the Sheriff in his Court may inquire of all felonies by the Common Law, saving of death of man, so the Coroner can inquire of no felony but of the death of man, and that supvisum corporis: He shall also inquire of the death of the murderer, of Treachery, Robe and 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.

He ought to deliver the Inquisition of death taken by him at the next Court, delivery, or certificate 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 Court-delivery in that County. He before in the Chapter of the Courts in London.

To conclude, besides his judicial place, he hath also authority ministerial as a Sheriff, viz. when there is slight 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 locus tenens Viccomitis, and in some special case the Kings Pl. Com. original writ shall be immediately directed unto him.

The Court of Pepondres, vulgarly Pipowders, Curia Pedis pulverisati.

This Court is incident to every Fair and Market, as a Court Baron to a Manor, and is derived of two Latin words, as is apparent, and is 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 Traffic, as the sun can fall from the sun, the proceeding there being de hora in horam, and therefore backon faith, item prudere qui celerem debebat habere justitiam, sect sunt mercatores quibus exhibetur Justitia Pepondres, &c.

This is a Court of Record to be held not 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 Plaintiffs must take an oath according to the nature of 17 E.4. cap. 2. but that concludes not the Defendant. And all this was resolved, and abjured in a writ of Treo brought by Hall against Jones, and the case was for 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; Walter Jones and his Clerks had by colour of his office extorted and gotten 300 l. per annum, by unlawfull means for many years together above their ordinary hire, for proving of Testaments and granting Administrations. And not unjustly being pleased, ye, it was tried 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 dangerous 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 both ye in that Court. 2. It appeared in the Record that the words were spoken the day before the Market; and no action ye 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 here we agree 3 Mar. Diet. 132. And it was resolved that this Court was incident as well to a Market as to a Fair.

And there may be a Court of Pipowders by custom without Fair or Market, and a Market without an owner. Another error was assigned, for that it is provided by the 4 Statutes of 17 E.4. and R.3, that no plea should be holden in the Court of Pipowders, except the Plaintiff or his Attorney 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.

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 served with Manna for his household than by Purveyors, the subject better fed, and the King at far lesse charge in respect of the multitude of Purveyors. And the Officer of the Market of the Kings household retained by his name still, although the good end thereof according to the Act institution celeth. The Clerk of the Market shall hold no plea but such as were holden in the reign of E. R. And at this day there is no great need of him, for the Judges of Assize, the Judges of Oyer and Terminer, Judges of peace, and the Sheriffs in their Courts, and the Lords in their Laws, may and do enquire of false weights and measures.

He doth keep a Court and inquireth about weights and measures whether they be according to the Kings Standard oz. no, and for that purpose he maketh process to Sheriffs and Wapsikes to return Panetals before him. And he is to deliver the Officers of those things which touch his officer into the Exchequer.

Of Drink (that is to say) of Wine, Ale, and Ewer, and of Coin and Grain there ought to be but one measure: Una mensura Vini, Cerisiz & Bledi, & Virge, and of all other Merchandizes per totum regnum, De pondenisbus vero scut de mensuris.

But notwithstanding these Statutes there be within this Realm two kind of weights, the one called Trop-weight, which is commanded by the Nature, and this derived from the grain oz. corn of barley from the middled of the Ear and dyp. 24 of these corns oz. grains make a penny weight, and 20 of these penny weights make an ounce, and 12 ounces make a pound Trop. A grain contains 20 minutes, a minute contains 24 dvoles, a dvoil contains 24 blanks; 12 grains of fine gold make a Carat, 24 Carats of fine gold make an ounce, and 12 ounces make a pound of fine gold. By this Trop weight are weighed according to last pearls, precious stones, gold and silver, bread, wheat, and such like.

There is another kind of weight called Aver de poes. A pound of this consists of 16 ounces, every ounce having twenty penny weights, every penny weight 21 grains, and of a grain. It is called Aver de poes, because thereby they have full measure. Hence are weighed all Physical drugs, Wae, Pitch, Tarre, Iron, Stiel, Lead, Hemp, Flar, Flesh, Butter, Cheese, and divers other commodities, but especially every commodity subject to wash. There was another weight called the Anseel oz. Ansel weight, which was when the Scales were fixed to a beam oz. Staff, and be that weighed by it, used his forefinger or hand in the middled, wherein was great deceit, and therefore it put out by the Nature 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 balance, and this weight was guided by the hand.

Of Measures of Trop be of these kinds, viz. of things that be dyp, of Liquor, and of Longitude, Latitude and Profoundity.
The Court of the Clerk of the Market. Cap. 61.

Of by things, 4 grains make a penny weight, 20 penny weight make an ounce, 12 ounces a pound or pint (so a pound weight is a pinte in measure) two pounds 0; pinte 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, 8 Quarters make a Mere, and ten Mavors 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 Quaters.


The F Merchin 8
The Hertick 8
The Ditberkin 16

Of Ale and Beer. The Barrel 32 Gallons.

The Doghead 8
0; Quarter 16
53 Et sic de ceteris.

Sec the Statute Compositio de Ponderibus.


Statut. Panis & Cervisia.

Of Longitude, Latitude and Profundity; 3 grains of Barly in length make an Inch, 12 Inches make a Foot, 3 Feet make a Yard and a Quarter make a Ell, 5 yards and a half make a Perche, 40 Perches in Length make a Furlong, 8 Furlongs make a Mile.

I may speake of the sellers by the weight of Aver de pays, as Tactus speake of the Augures in Rome: Hoc genus hominum semper viabilitur, & semper in Civitate retinebitur.

But now let us see what fates the Clerk of the Market ought to take. By the nature of W. 1. cap. 26. it is enacted that no Sheriff or other Winder of the King shall take any reward for doing his office, and the Kings Clerk of the Market is the Kings Winder, and therefore he is within the purview of this statute.

I find that in 8 R. 2. in open Parliament a Guat 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.

By the statute of 7 H. 7. the chief Officer of every City and Borough shall take for sealing of every bushell a penny, for every other measure a half penny, of every hundred weight 1d. and of every half hundred 6s. and of every weight under a fathching and not above.

The Clerk of the Market in the reign of Quin Eliz. claimed by custom for the examination and view of every bushell sealed before by the Clerk of the Market, whether it were lawful or unlawful 2d. and in like manner every lesser measure of wood 1d. and in like manner of Japhobles measures 4d. and of the measures of Winstalls 2d. and dibles other fees for examination and view of weights and measures whether they were lawful or unlawful, 3s. as is aforesaid. And it was rebuked by all the Judges of England, that no fee was due to the Clerk of the Market for view and examination only of weights and measures for these causes. 1. The said Parliament roll of 8 R. 2. allowed a fee for sealing, and of them 7 H. 7. and 11 H. 7. but no allowance for view or examination. 2. The weights and measures are either true, according as they were sealed, or false: if true, it should be against reason to charge the innocent, for that were dispertere iustum cum impio; if false, then by the nature of 13 R. 2. they ought to be burnt, and the end of the view and examination is to find out falsehood, to the end there might be punished, and fined to the King, as appereth by the statute of 13 R. 2. but no fee is to be taken therefore. V. Wherefore the Clerk of the Market affirmed that these fees had been of long time taken, and if not, it was to be taken therefore. 1. The said nature of 13 R. 2. he ought to take no common fine, for before that
CAP. LXII.

The Court of the Commissioners of Sewers.

Quando aqua profuit, that is, when water doth issue, vulgarly, lur; hereupon cometh the word Sueter, for; a sewer, passage, channel, or gutter of water.

At the complaint of Henry de Layce Earl of Lincoln, a Commission of Sewers was granted to Roger de Bradstone Papal, and the Sheriff of London.

Their authority is by Commission under the Great seal in hact verbis, at this day grounded and warranted by the Act of Parliament of 23 H. 8.

Of their jurisdiction you may read in my libretta, 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.


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.

1. This Commission shall be granted to such substantial and indifferent persons as shall be named by the Lord Chancellour, the Lord Treasurer, and the two Chief Justices, or any three of them, whereof the Lord Chancellour to be one.

2. Every Commissioner before he take upon the execution thereof shall take the corporal oath mentioned in that Act before the Lord Chancellour, or such as the Lord Chancellour shall direct by writing. Potestatem, or before the Justices of Peace in their Quarter Sessions, and ought to have lands or tenements of the clear yearly value of 40 marks, of some estate of freehold or except as in the statute is excepted upon pain of forfeiture of 40 l., and no farmer of lands within the precinct of the Commission, unless he hath lands of some estate of freehold of the yearly value of 40 l. and yet he not to meddle with the lands he hath in farm.

The abovv justifications for; a dispute taken by force of this Commission shall be general, that the said dispute 3c. was taken, 4c. by force of the Commission of Sewers for a lot 62, or as attested by the said Commission, or for such other Act as cause 3c.

There must be for Commissioners, 4c. at the least, which shall 5c. by force of the said Commission.

That the said Act of 23 H. 8. doth not extend to, nor give authority to the

Commissi
The Commissioners of Sewers. Cap. 62.

Commissioners of Sewers to reform the great hurt and nuisance by reason of the land rising out of the Sea, and by flood by toms and winds. A special provision is made for the County of Clamorgan.

It is adjoined by Act of Parliament anno 2 Jacobi regis cap. 14. That
Mails, Ditches, Banks, Cutters, Sewers, Gates, Canals, Bridges, and
Watercourses in or about the City of London, where no passage for Boats is
used, nor the water therein doth usually ebb and flow; which Mails, Ditches,
Banks, Cutters, Sewers, and other the premises, do fall into the River of
Thames, are not under the surer, correction and amendment of the Commis-
ioners of Sewers, nor of the Natives made fo. Sewers in anno 23 H. 8.
of any other statute of Sewers, as it is rehearsed by full content of Parliament; and therefore provision is made that those Mails, Ditches, Banks, Cutters, Sewers, and other the premises, shall be subject to the Commission of Sewers.

6. That a Commission of Sewers shall continue ten years, unless it be repea-
ted by determined by reason of any new Commission, or by Supererogation.

7. That Laws, Ordinances and Constitutions made or to be made by force
of any such Commission, and written in Parchment intended under the Heads of the said Commissioners or of them, whereof one part shall remain with the
Clerk, &c. and the other part in such place as of the said Commissioners shall appoint, shall without any Certificat, and without the Royal assent and
continue in full force notwithstanding any determination of any such Commis-
ion by Supererogation, until the same be altered by the Commissioners of Sewers
after to be assigned, &c.

8. And if any such Commission be determined by expiration of ten years next
 ensuing the Ten thereof; then such laws, &c. to inentent and sealed, &c. shall
continue for one whole year. And that the Justices of peace &c. of them, where-
of one of to be of the Quorum, shall have authority during that year to execute the said laws, &c.

9. That by the granting of a new Commission within that year, the power of
the Justices of peace to cease.

10. The said Commissioners shall not be compelled to make any Certificat or
rejoin the said Commissions, or any of their Ordinances, Laws; or doings, by
authority of the said Commissions.

11. See also an alteration by the nature of 23 Eliz. concerning fees.

12. Labip, 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.

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.

A general Commission of Sewers enacted by Parliament, and in print. But
the Commission by the nature of 23 H. 8. standeth now in force. And yet by di-
ligent perusal of the former, and by abstracting 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 un-
derstanding of that which now standeth.

See Hil. 13 E. 3. coram rege. Leges & confutudines approbatione pro reparatione
marium maritimum & mundatione Fastitium & Suerrantium in paludibus quae hic
exprimuntur per commissionem Regis ad hoc fieriendum in Merthland.

A particular Commission granted to Sir John de Sutton, & Sir Rob. de Scrope.

A Commission concerning the River of Lee.

Runnymede Marsh in the County of Kent containing 24000 acres, is at this
day, and long time hath been governed by certain ancient and equal Laws 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 direc-
tion: A. example: The said general Act of 23 H. 8. ca. 5. in the clause which

Note: no certificate or return of the Commissions or of any of the Ordi-
nances, Laws, or doings.
Cap. 63. Of the Statute of Bankrupts.

given power to the Commissioners to make Statutes, Ordinances, and Provisions, &c. necessary and behoefful after the laws and customs of Romney March in the County of Kent, or otherwise by any wayes or means, &c.

Both the Town and Parish of Romney took their name of one Robert Romney. This Robert (as it appeareth by the book of Domesday) held this Town of Odo, Bishop of Brecon, wherein he had 13 Burgesses, who for their servitude the said were discharged of all actions and customs of charge, except felony, breach of the peace and forfeiting.

See before in the Chapters of the Courts of London, &c. the jurisdiction that the Lord Pope 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 wickedness of Bankrupts from foreign nations: For; Banque in the French is bank, and a Banquerous or Changer is * mendicant, and roote is a sign of mark, as we say, a Cart coat is the sign of mark where the Cart hath gone: metaphysically it is taken for him that hath wasted his estate, and removed his Bank, so as there is left but a mention thereof. Some say it should be derived from Banque and rampage, as he that hath broken his Bank or state.

In former times as the name of a Bankrupt, so was the offence itself (as hath been said) a stranger to an Englishman, who of all other Nations was free 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 cleared 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 and 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 these kinds of cottenlines, viz. costly building, costly diet, and costly apparel, accompanied with neglect of his trade and creditors, and thereby consummated his wealth.

He is called in Latin * Decensor, a Decauendo, for confusing 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, & 31 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 confirmed, &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 both extend to all and every of the said descriptions and articles thereof.

* The authority of the Commissioners is by Commission under the Great Seal; their jurisdiction and power is by force of the said Acts of Parliament which ought to be used, * by else they are subject to the action of the party grieved, for he hath no other remedy. * The Lord Chancellor, Lord Keeper upon Complaint made unto him in writing hath authority to grant the said Commission.
The law hath provided that these Commissioners ought to have 3 qualities, viz. Wisdom, honesty, and discretion; which if it be observed, it is the best means for the due execution of the said Statute, and the life of these laws both consist in the due execution thereof: And for such Commissioners if any Acton shall be brought against them, etc. for doing of any thing by force of the said Statutes, they may plead generally, and not to be cited to any special pleading.

They had 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 had power to break any house, Chamber, Warehouse, etc. Trunks and Chests of such offenders. See the other parts of this Act of 1 Jacobi, which are plainly and expressively expressed, and need not here to be recited.


CHAPTER 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.

The Commissioners, albeit named by the parties reciprocally, ought to have indifferently, and do their utmost endeavours to find out by due examination the whole truth, and to suppress no part thereof; for their authority is to that end only and wholly from the King by force of his Commission.

Neither Commissioner nor Examiner are strictly bound to the letter of the Interrogatories, but ought to explain every other matter or thing which visibly necessitate their insertion, for manifestation of the whole truth concerning the matter in question.

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.

Neither Commissioner nor Examiner after the Examination begun, ought to confer with either party touching the examination, or take new instructions concerning the same.

Forasmuch as the witness 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 witness that which he shall depose; it is the duty both of the Commissioner and the Examiner gravely, temperately, and seriously to take the deposition of the witness, 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 Commissioners and Examiners 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 witnessesses, but they must ever give their testimony viva voce: * as in bowels, if the issue be who the husband be alive or no. Ut.

Witness is derived of the Baron Urban Wetten, i. Ser.: Qui de quibus sciant testaristi debeat, & omne sacramentum debet esse certa scientia. In Latinum Testis a te testando: & testari est testimonium perhibere: unde Regula juris, Plus valet unus oculatus testis, quam suini decem: Testis de vita preponderat aliis.

* An oath ought to be accompanied with the fear of God, and service of God for the advancement of truth, Dominum Deum tueum timebis, & illi foli servis, & per nomen illius jurabis.

Buton faith; that an Alien born cannot be a witness: * which is to be understood of an alien Infant: * for the Bishop of Rome being a Scot born, was admitted to be a witness, and * from Anno 1 Eliz., in the Case of the Duke of Norfolk by the opinion of the Justices aforesaid. * Testis talius non erit impunius.

Nec de dieque fium gestat sub peccore testem:

His Conscience allowed graving and being him: d Vox simplex nec probationem facit, nec prae summationem inducit.

Te testimonium numero nolite adjurare, sed uxor, et inde sapientem in judicio.

* Testibus deponentibus in pari numero dignioribus est creditendum.

* Testimonia, ne poeto testifici et negatives, nee laffirmataves.

* Allegem contrariam non est audirendum, veram vero conventiones est: fallum nec vero nec falsa.

Juramentum est indivisibile: * et non est admirendum in parte verum, & in parte falsum.

* Allegati faciant veritatem non est audirendus.

* Inde non potest esse testis in propria causa.

* Justiurandum inter alios facit nec nocere, nee profite se debet.

* Facultas probationem non est angitanda.

* De crimen in Lupanari committito, lupanarum testes esse possint.

Qui prodict in scernam mercedes ergo, in tantis est.

Witnesses ought to come to be depose untaught, and without instruction, and should witness the testory to the party that right bath, and that Justice should be administrated: and should far from his heart. Non sum doctus, nec instructus, nec curio de victoria, modo ministretur Justitia. * & Britton 134, 135.
CAP. LXV.
Curia cursus Aquae 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 served nothing for the publick, whereat our principal aim hath been.

CAP. LXVI.
The Kings Swanherd.

What authority the Kings Swanherd hath, being of ancient time by his Office Magister deducitur Cygnorum, you may read Rot. Patentium Anno 11 H. 4, part i. m. 14, Rot. Pat. 30 E. 3, part i. m. 20, and Lib. 7.6, 7. 15, &c. Le cas de Swannes; but Court he hath not: No Fowle can be a * Strap but a Swan.

So likewise there is an ancient Officer of the Kings Alengre of the Kings gift being before any Statute: As taking one example for many. * In 14 E. 3. Sir Thomas Darlington was by the Kings Letters Patents Alengre of Blood Cloth, and had a fee of the King for the exercise of his Office; For the see that he had of the Subject was (as it ought to be) by Act of Parliament, 27 E. 3. St. 1. cap. 4. b Alengre of Aulne in French, and that of ulna, ulnator. See before concerning the Alancing of new Draperies, Cap. Of the High Court of Parliament, pag. 31.

* Tr. 33 E. 1. Es-
ler corum Regis,
Rot. 124.
7 H. 6. see'.

The Kings
Aldengre,
The. Darlington
Miltit.
This appears also by the Statutes themselves, 7 E. 3.
Rot. Pat. 4.
Rot.
Clavi. 17 R. 2. m. 14. b The derivation of Aldengre.

CAP.
CAP. LXVII.

The Wardens Courts in the East, West, and middle Marches adjoining to Scotland.

They proceeded according to the Law called the March Law, or Border Law, but their jurisdiction was increased by Act of Parliament. The limits of their jurisdiction was within the Marches, which were confin'd to the Counties of Northumberland, Cumberland, Westmoreland, and the Town of Newcastle upon Tyne in the County of York.

For the Marches, see before Cap. President and Council 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 banished, 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.
Of Callais, or Callis, Caletum.

This strong Port-town, the famous and flourishing Port, Staple, and
vent of English Commodities was helden and kept by the space of 212
H.7. H.8. E.6. and holden and lost by King Philip and Mary the first Queen regi-
nant of this Realm, the Lord Wentworth then Deputy there.

It was governed by Englishmen and by English Laws, some particular cus-
toms excepted. And of a Judgement given there a Writ of Error did it re-
semble into the Kings Bench. Before the Staple at Callais, it was kept at
Bruges in Flanders.

The children born there were inheritable in England, and so declared by au-
thority of Parliament.

And there the King had his Mint in such manner as in the Tower of Lon-
don. Certain it is that riches followed the Staple wheresoeuer it was kept,
and it could not be appointed in any place but by Act of Parliament.

The Staple being at Callais, upon all Rodes forth of the Town by the Cap-
tain, the Sapbo of the Staple furnished him forth of Merchants and their Ser-
vants to the number of 100. Will. men, and 200. Archers without any wages.
And yet it appeareth in the Parliament Roll of 2 R.2. and 15. that Callais cost
the King yearly twenty thousand pounds.

See the Parliament Roll of 50 E.3. nu. 211. 212. for the Sapbo Courts, &c.
and Liberties, and Franchises, &c. there. Many Acts of Parliament have been
made concerning this Town, and the Staple therein, which now not here to
be recited, only be 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.
CAP. LXIX.
Of the Isle of Man, Insula Eubonice, modo Manniae, 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 nomem Insula, &c. cum patronatu Episcopatu. He had 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 Carle of Glouc, of the Bishoprick of Landaff. Vide Lib. M. S. in Recips’ Scaccarii, fol. 166. & Lib. Parl. in Turri London Temp. E. 1. fol. 19. 21.

William le Scrope emit de domino Willielliano de Monte acuto Insula Euboniz, (q. Matras;) Eft nempe jus iphus Insula ut quibus illius sit dominus Rex vocatur, cui etiam fas est Corona aurea coronari.

The Lord Scrope foresaw the same to H. 4. for High Treason. King H. 4. granted the same to Henry Carl of Northumberland in these words. Rex, &c. De gratia nostra speciali dedimus & concedimus Henrico Comiti Northumbriæ Insulam, Castrum, & Pelam, & Dominium de Man, ac omnia Insulis & Dominia eodem Insula pertinens, quæ fuerit Willielliano le Scrope Chivalier delinet, quem in vita sua conquessati fuerit, & ipsum sic Conquestum & Decretum, & poscit Conquestus illius tarnquam Conquestitatem cepimus in manum nostram. Quidem Conquestum & Decretum in praesenti Parlamento nostro de afferenti Dominorum Temporalium in eodem Parlamento existimationem quo ad personam praebuisse Willielliano, ac omnis, terras, tenementa, bona, & catalla sua tan infra regnum nostrum quam extra ad supplicationem Comunitatis regni nostri affirmata existimamus, &c. Habenda & tenenda eodem Comiti & heredes suis, &c. per servicii portandi diemus Coronationis nostra & heredem nostrorum ad finitim suum heredem nostram & finitos heredes hereditatem nostram per feipsum aut sufficientem & hono- rificum deputatum suum illum gradum nudum quo cuncti eramus quando in parte de Holdernes applicauimus, vocatum Lancræs Sword, durante proceffione & toro tempore pollemizationis Coronationis supradictae.

In this little Kingdome there are 2 Castles, 17 Parishes, 4 Market Towns, and many Villages, and in that Isle there is a Bishoprick, as hereafter shall be showed.

Anno 5 H. 4. the said Henry Carl 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 Episcopatu, to Sir John Stanley for life; and after in the same year he granted the same Isle una cum Patronatu Episcopatu, to the said Sir John Stanley and to his Heirs; Tenement de Rege heredibus & successoribus suis per homagium ligeam; Redendo nobis duos Falcones semel tantum, viz. immediare post homagium haecmodi facit: Et reddendo heredibus nostris regibus Anglie duos Falcones diebus Coronationis eorumdem heredum nostrorum pro omnibus his serviciis, confuciantibus, & demandis, adeo liberé, plené & integre ficit Williellimus Scrope Chivalier vel alquis alius, &c.

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
Carl 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 between these daughters being heirs general, and William Carl of Derby being heir male, question was moved concerning the title of the Isle of Man: which by Queen Elizabeth was referred to the Lord Keeper Egerton, and to divers Lords of the Council, and to Popham Chief Justice of England, Anderson Chief Justice of the Common Peace, and Peryam Chief Baron, who Trim, 40 Eliz. upon hearing of the Council of both sides, and mature deliberation, resolved these five points. 1. That the Isle of Man was an ancient Kingdom of its seise, 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 officer was found, that Thomas Carl of Derby at the time of his death was seised of the Isle of Man in seise, whereupon the Countess his Wife, by her Counsel, moved to have her Dowry in the Chancery; but it was resolved by Bradwell, Brook, and Fitch, Justices, and all the Kings Council, that the office was mortal void, because the Isle of Man was not part of the Realm of England, nor was governed by the Law of this Land, but was like to Tourny in Normandy, and Gafcogn in France, when there were in the king of Englands hands, which were merely out of the power of the Chancery; which was the place to endow the widow of the King, sc. 2. It was resolved by them that the Statute of W. 2. De donis conditionibus, no 27 H. 8. of 1660, and the Statutes of 22 and 34 H. 8. of Wills, no; 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 being no office could be found to entitle the King to the seise of treason, that the King might grant by Commission under the Great Seal to seise the same into the Kings hands, sc. which being done and returned of Record is sufficient to bring it into the Kings seisin and possession, and into charge, sc. 4. That the King might grant the same under the Great Seal, because he cannot grant it in any other manner. And herewith agreeable divers Grants under the Great Seal of this Isle, viz. 4 Junii, 18 E. 1, Rex E. 1. conceisit Vvalter de Huntercombe, &c, Rex E. 2. conceisit Petro de Gavefon, &c, 1 Maii, 5 E. 2. Gilberto Magaskill, and in the same year granted Henrico de Bello monte Infulam præsidiam cum omni Dominio & Justitia regali pro termino vire, &c. 5. It was resolved that a case simple in this Isle falling by the Letters Patents to Sir John Stanley and his Heirs, is descensible 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 Seigneuries and Commons in Wales were impresumable at the Common Law, but the lands helden 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.

By these Letters Patents it appeareth, that Simon Montacute had intruded into and occupied the said Isle in nother seisin than the King, but what proceeded thereupon we pet find not.

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 "Decemters, which they chose out of themselves. All controversies they determine without process, pleading, writing, or any charge or expense at all. If any case be ambiguous and of greater weight, it is referred to 12. which they call Claves Infulae, the keepers of the Island. The Overlords (quos Annos 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 hisSubjects there, the King might grant
Cap. 69. Of the Isle of Man.

A Commission for redress thereof: the like whereof we find, Rot. Pat. Anno 20 E. r. in these words: Rex dilectis & fidibus suis Nicholao de Segrave seniore, Osberto de Spaldington, & Johanni de Sutherwell, Salutem, Scitis quod assignavi-

mus vos Jusiciarios nostros, ad queralas omnim & singulorum de Insula de Man &

conqueri voluntatem de quibuscumque transgressionibus, & injuriae eis per quoscum-

que tam balivos & minimis nostris quam aliis in prædicta Insula illustri audienç &

terminand, & ad plenam & celarem Jusiciam, paribus unde saeculid secundum le-

gum & consuetudinem partium illarum. Et ideo vobis mandamus, quod ad certos

dies & loca quos, &c. in Insula prædicta queralas, &c. audientis & terminatis in for-

ma prædita facturi, &c. Salvis, &c. Mandavimus enim Custodi nostro Insula præ-

dicta, quod ad certos, &c. in Insula prædicta venire. fac' etiam vobis tot & tales,


So as albeit the King's Writ runneth not into the Isle of Man, yet the King's

Commission extendeth thither for redress of injustice and wrong: but the Com-

missioners must proceed according to law and justice of the Isle. They have pe-

culiar Laws or Customs; for example: If a man steal a Horse of an Dr., it is

no Felony, for the offender cannot * hide them, but if he steal a Capon; a Pig he shall be hanged, &c. Upon the sale of a Horse or any contract for any oth-

er thing, they make the stipulation perfect, per traditionem stipulæ. Note, the

true derivation of stipulation. And as they have peculiar Laws, so have they a

proper Language.

This Isle hath a Bishop instituted by Gregory the Fourth Bishop of Rome,

and he is under the Archbishops of York, but hath neither place nor voice in the

Parliament of England. In hoc Insula Judex Ecclesiasticus citatur, declaratus, & infra

Obisps dies parent, aut carceri intrudantur.

The Inhabitants of this Isle are religious, industrious, and true people with-

out begging or pleading.

* They have no

Wood.

Is H. S. fo. 7.a.
Of the Isles of Jersey alias Gearsye, olim Caæarea, and Garsney, olim Sarvia, and of the Law and Jurisdiction of the same.

Both these Isles did of ancient time belong to the Duchy 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 Duchy 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 faithful to the Crown of England: And the possessions of these Islands being parcel of the Duchy of Normandy, are a good reason for the King of England of the whole Dutchy.

Concerning the Jurisdiction and Customs of these Isles whereof we principally aim, it appeared by the Kings Records in the Tower, Quod Rex Johannes constituit 12 Coronatorum juratos ad Placita & Jura ad Coronam spectantia custodienda, & concefit pro secuturis Infaluarum, quod Bilivus de caetero per viam Coronatorum poterat placitare fine brevi de nova differenda scia infra annum, de morte antecedentium infra annum, de dote simulter infra annum. And for the most part they proceed according to the Customs of Normandy.

Drugo Bareynye dicit quod 40. Ann. et tempus extra memoriam secundum constatudinem partium illarum.

King E. 3. assigned Hen. de Guldeford and others, Justices Errants in the Isles of Garsney and C. by his Commission to enquire if he had right in the Bason of C, &c. and there it appears b, that they demanded assurance of the men of the Isles learned in their customs, who informed them of the customs of the Isles, which the Justices followed, and there it appeared, that if the Information was against the Laws of the Isles, they may be hbolpen by the Laws of the same. See the Book.

Quod in Cutsium & alias rebus tarnquam indigete & non alienigenae extractur, &c. Quod juratores in Infalua, &c. non protrahant judicia sua ulterius unnus armi speciem.

An Action of trespass was brought by A. in the King's Bench for a trespass done by B. in the Isle of Jersey: whereupon in the Record this Entry was made. Et quia negotium praedictum in Curia hic terminari non potest, eo quod Juratores Infalua prad. coram Jusiciar. hic venire non possunt, nec de jure debent, nec aliqua negotia de Infalua praedicta emergentia non debent terminari nisi secundum constudendum Infalua praedicta. Ie doat recordum negotii mittitur in Cancellariam domini regis, ut inde fit b commissio domini regis, cui vel quisbus domini regis placuerit ad negotium praedictum in Infalua praedicta audiend. & terminand secundum constudendum Infalua praedicta.

By this it appeared, that albeit the Kings Writ writeth not into these Isles, yet his Commission under the Great Seal both, but the Commissioners must judge according to the Laws and Customs of these Isles.

De Attornato generali in Infalus de Gernsey, Jersey, &c. Serk & Aureney sic virtute Brevis domini Regis, Rex omnibus Bilivus & fidelibus suis in Infalus de Gernsey, Jersey, Serk & Aureney ad quos, &c. Sciatis, &c. in quibus securitatis circiusnotiris Infalurn cumandem, &c. post adventum ipsius A. in Infalu pradict. & contempt
Cap. 71. Of the Isle of Wight.

contingat ipsum A. interim venire ad partes illar. Telle, &c. They are not bound Vid. 33 H. 8. by our Acts of Parliament, unless they be specially named.

The king hath granted to the men of the Isle of Gernsey, Sark, and Aureney, that they during the space of 20 years shall be free of all manner of Tolls, Customs and Customs within the Realm as his Lieutenants and Denizens.

Insumam petunt, qua sunt in mari continuus, quod non ulteriorius extra Insulas praedictas prosequerentur ad eorum partimem, & non facile possint sequi Cohors Regis in Anglia.


Within Gernsey there are ten Parishes, one Parish Town being the Port of Waven called S. Peter's Port by the Castle of Corne. Jersey hath S. Albones and Hillary two little Islands adjacent; it hath twelve Parishes, and four Castles.

CAP. LXXI.

De Insula Vexis or Vexa, of the Isle of Wight.

Of this we shall not need to say anything, because it is and never hath been part of Hampshire, 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 Inseta, of the Isle; or Isle, 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 Vexa.

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 Angliae. But of this it is truly said, Cuncta novum hic & infinitas titulus omnino evanuit.

So 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.

Camden.
CAP. LXXII.

Of the Island called Lindesfarne or Leidisfarne, situate 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 Blockhouse.

It is called the Holy Island, so, 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 Bishop's Seat, which was after translated to Durham, and is governed by the Laws of England.

Farn Isle.

For that this Isle of Farn hath neither Church nor Cobweb, but only a Castle, I passe it (and other like Isles) over.
CAP. LXXXIII.

Of the Forests, and the Jurisdiction of the Courts of the Forest.

For the derivation and description thereof, and some other things concerning the same, see the Part of the Instituten in Latin it is called Salvs or Sylvia. And so in Domestf, Sylvia est in defensoribus leficit, in Foreste Regis. A foresst both subject to law, and regulated by the great law the soil, game, and chase both pasture.

And since we are to treat of matters of state, and hunting, let us take the more carefully recreate our selves with the excellent description of Didoes Doe of the Forest wounded with a deadly arrow stricken in her, and not importune to our purpose.


And in another place using again the word Sylvia and describing a forest, faith that in antiquity sylvam tabula alta ferarum.

King John the 15. of June in the 18. year of his reign at Kammigis. The forest was granted the by Staines and Windsor, granted the the like Charter, as Carta de Foreste is.

And now let us set down the Courts of the Forest.

Within every forest there are two Courts.

1. The Court of the Attachments or the Swanmote Court, this is to be kept before the Verderers every four days throughout the year, and thereupon is called the forty day Court. At this Court the foresters being in the Attachments de Viidi & Veratone, and the presentment thereof, and the Verderars to 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 Wurt or Rentinon, unless 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 held every third year for expedition of taking of Dogs by that Court.

3. The Court of Swanmote is to be held before the Verderars as Judges by the Debono of the Swanmote twice in the year, and the foresters ought to present their Attachments at the next Swanmote Court, and the Freeholders within the Forest are to appear at the Swanmote to make Enquery and Jurors. And this Court may inquire of peroratione forestariam & aliorum ministriam Foreste, & de omnis oppressibus populo nostro illius. And this Court may not only enquire, but convict also, but not give judgment.

Domest in Com. Glouc. & alibi. 2 Mar. Dict. 169. 1 part of the Ink. sect. 373 f. 233. A. Ockham cap. Qued Regis Forestis Braslon fo. 23. & 316. Britton fo. 34. Ferr. 1. a. c. 34. 35. 1 part of the Ink. sect. 1. f. 5. 2 In the Saxons time Forests were called Woods, and Waldgrave, &c foresta. Virgil. Sylvia, as in Domestary Salubris, &c ferae ferae. Like to an evil conscience in the false and furious Officer of the Forest if any such be.

Carta de Foresta cap. 15. The Court of Attachments.


E. 3. a. 8. 50 E. 3. Mill. 492. Swanmore in derived of Sweden, that is, Saxwise.
For the Jurisdiction of this Court I have a notable Case in 45 E. 3. in a Writ of trespass of false imprisonment brought against J. de W. the Defendant, laid that he is Forester in his of the Forest, and that at a certain Swaminote it was presented by the * Foresters, Verderers, Regarders, and Agisters, that the plaintiff had chased and taken Deer within the Forest, whereupon the defendant, being Forester in the same to the plaintiff, and prayed him to send pledges to answer the same before the Justice in Eyre in this County (that is, at the Justice Seat) and that to do the plaintiff refused, by force whereof he retained him, until he had performed the Nature in that case produced, and justified the imprisonment. The plaintiff replied de for tort domenie tans ras culpa, and the suit was received by the Court. And it was laid, That before the Justice in Eyre he should have no averment against the presentment of the Foresters.

Out of this Case we do observe 6. conclusions. 1. That the Law of the Forest is allowed, and the bounds of the Forest are 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 Verderers be Judges of the Swaminote and the Steward but a Master, yet the presentment in that Court is as well by them as Verderers, as by Foresters, or Keepers, Regarders, and Agisters, by the Law of the Forest. 3. That a Forester or Keeper may arrest any man that kills or takes any Deer within the Forest when he is taken with the manner within the Forest, or if the offender be invited. But then it is demanded, what if a man be so imprisoned, and after offer sufficient pledges, and they are not taken, what remedy for the party, being there are very felonious Justice seeks for Foresters bolden? The answer to that, in the Term time he may have a writ to Justice a Habeeus Corpus out of the Justice Seat; or, if he have privilege, out of the Court of Common Pleas, or of the Chequer, 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, or. And may also be bailed by force of a * Writ De homine replegiando directed Cudro, Forester, if he be arrested by the Masters of the Forest for hunting, whereof he stands indicted or presentment taken with the manner, he finding 2. pledges: but if he be adjudged by the justices in Circ, and imprisoned, he cannot be bailed by that Writ De homine replegiando directed Cudro Forester, &c. and if he be unlegally 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 Nature of W. c. 15. to repeal any man imprisoned for the Forest, being taken with the manner as indicted, but this statute extends not to the Writ De homine replegiando directed Cudro Forester, &c.

The Fourth conclusion is, That the offender may be retained by him until he hath found pledges to appear before the Justice in Circ, because (as hath been laid) the Court of the Swaminote hath no power of Indicture, but if he offer sufficient sureties, he ought not to be imprisoned.

5. That this Justice in Circ at his Sessions may by the law of the Forest proceed upon the presentments or verdicts in the Court of the Swaminote, though they be taken in another Court, as the Justice in Circ might have done in like cases, as before in the Chapter of Justices in Circ appear.

6. Lastly: Note the issue joined upon the plea of the Forester, viz. de injuria sua propria aliquo tali causa, and allowed by the Court, and the consequent thereon. 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: and hereunto according to 50 E. 3. and note the presentment was in that case by 36. And herein this Reporter is to be observed, that if at the Swaminote the presentment of the Foresters be found true by the Jurp concerning Writ of Writon, the offender shall not commit in this, and cannot traverse the same: but an indictment of presentment before the Chief
Cap. 37. The Courts of the Forests.

Chief Justice of the Forest at a Court of Justice held by a Jury, and not found in the Savage time, may be traversed. 8 E. 3. Inns. of Court 1473. because it is not presented but by one Jury.

4. This Case also grewth in such occasion to speak of the Court of Justice held before the Chief Justice of the Forest, aptly called in the said Book Justice in Cite, so far to be, and hath authority and jurisdiction to bearer and determine concerning Wert and Vention, &c., by force of Letters Patent under the Great Seal, whereas there be two, one for the Forest on this side of Trent, the other beyond. By which Letters Patent the King both grant unto him Officiam Gardianum Capitallis Juciciarum ac Jucicaria sul Iuranaclns omnium & singularum Forestiarum, Paracorum, Chacearum, &c., and the same grants to him all such perquisites, episcopals, &c., as the King doth grant to the same Office in the same manner as is before said, and is mentioned in the Book of Jure Forest for many years.

The Court of Justice at Eber, and the Office of the same, is one of the great offices or dignities in the realm, and is held by the same Office in the same manner as is before said, and is mentioned in the Book of Jure Forest for many years.

And this Court of Justice cannot be kept other than three years, and other Jusices in Eire kept their Courts every seventh year. And as before other Jusices in Eire, it must be summoned forty days 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 heretofore in this Chapter.

There is another writ of Summons directed to the Forest of the Forest, and this writ must be directed upon two parts. First, to summon all the Officers of the Forest, and that they bring with them all the documents, &c., relating to the Forest. Secondly, all persons who claim any Liberty or Franchise within the Forest, and to know how they claim the same. And this Court of Justice Seel hath jurisdiction to inquire, hear and determine two things. 1. All trespases within the Forest according to the Laws of the Forests. 2. All the claims of Franchises, Privileges and Liberties within the Forests, as also to have Parks, Warrens, Libraries, and other such places, and all other such rights and privileges to be claimed within the Forests.

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 Jusices Jucicaria), and to this day is used in Deputato.

Before any Justice Seel be held, the Regarders of the Forest must make their regard by force of the King's Writ, and so the regard is obnoxious to go through and view the whole Forest, and every Ballybrick of the same, ad interim, inquisitionem, imperviandum, & certificandum all the trespasses in the Forest; his office extendeth through the whole Forest, and every part thereof, to inquire of all offenses concerning Wert and Vention, and of all concealments of any offences or default of the Officers, and all other Officers of the King's Forest. He is a ministerial Officer, and is constituted either by Letters Patent of the King, or by the Chief Justice at the Justice Seel, to be chosen by writ to the Sherif. The duty of this Office appears by the writ herebefore mentioned.

Before a Justice Seel there ought to be preparations for the same, to the end their duty is consonant with the time for the same. Namia feliciter.\end
end that good servlce may be done there, et quod Itinera non sunt umbratilis, as
taking one or two Exemplary in stead of many.

Rex Vic. Not. salutem. Præcipimus tibi quod Venire fac. certis die & loco quos
ad hoc duxerimus provident, omnes Forrestitors et Regaratorum de a Sherwood
ad loco regi the, in Forreft, prædicti. ante advent. Justiciariorum noftorum de For-
rest. et ad loco regi the, Regaratorum noftorum qui mortui sunt et infinni alios eligi fac. ita
quod b 12 dunt in quolibet Regard. et nonina illorum imbrivement. 4 Et Forre-
star, debet jurare quod 12 milites ducent per totem ballivam suam, ad videndum
omnes tranforetiones quas exprimuntur in 2 scriptis c capitulorum quae tibi mitrimum,
et hoc non omittent pro aliqua re. 6 Debet etiam milites jurare quod faciet rengard,
sic debet fieri et toles. 9 Et quod ibunt sicet Forreftar. eos ducent. ad pra-
dicta videnda. 1 Et si Forreistar, noluerint eos ducere, vel aliquid foris faciat, con-
celare noluerint, ipsi milites non omittent pro illis quam foris faciat. illud vident & im-
breviari facient; et hoc pro nulla re demittant. Et 9 quod Regard. sit circa Feft. 
beati Petri ad Vincula prox. futur. Tefte, &c.

The 12. Chapters above-
mentioned are thofe which
the Regarator's duty is to pre-
pare.

Not. All tifs 11. are to be
up in his view, &c. if fac.
and in this respect may be
resembled to a Coronet, &c.

Videntd. funt omnis Affar. &c. Aftaffs.
2 Videnda. funt omnes Purpoft. in bofces. &c. Purpoftiones in woods.
3 Videnda. funt omnes Purpoft. in terris arabilis. &c. In Arable.
3 Videnda. funt omnes Purpoft. in terris arabilis. &c. In Arable.
5 Videnda. funt omnes Vafia botocorum. &c. Walls of Woods.
6 Videnda. funt omnes Boesi domini Regis. &c. The Kings Woods.
7 Videnda. funt omnes H. domini Regis. &c. The Kings of the King.

Item omnes purpoftiones. et omnis affarita. et omnis vafia. &c. General
woods.
9 Acies of Paulises.
10 Videnda. funt omnes Forges et Mineries. &c. All Forges and Mines.
11 Videnda. funt Portus maris. &c. The Habens of the Sea.
12 Videnda. eff Mel. fi quid. &c. Hop.

Ordinaris Foresta. 34 E. 1.

Item milites debet attenté inquirere in inimico tuo quis habuerit arcus et fa-
git. vel ballices leporarum, buschetas, vel aliquid ingeniis ad maleficientum dominu
regi de terris tuis. Balista, o Acubulista, signifer a Crebello.

Leporaria, a Hurripe. Barcheta of the French wood. Berche, a kind of
Cume.

Imprimis ordinarium pro nobis et heredibus noftris quod de tranforis. in For-
regis noftris de Viridi et Venatione de cadere fæcit. Forestar, infra quiro bonnas hu-
fi modi tranfies. fieri contigerint, præsentant eadem ad pro. Swampton commod
super præsentationibus hujusmodi ibidem coeat Forrestar. Viridis. et omnibus aliis miniftritis supradictis per facram. illium quam aliorum proborum & lega-
emiam de paesis vicimobus, ubi tranforetiones sic præsentatae fæcit. fuer. non
supraventiorum, per quos rei veritas plenius inquiratur. Et sic inquisita veritate
praesentationes illae per communem concordiam & affinsum ministeriorum prædicto-
rum robuste et vigillis suis sigillentur. Et sic alio modo suis indimplent. pro null.
penitentia habeas.

This Ordinance being made by the King only without Authority of Parlia-
ment, albeit it was in affinence of the Law, did not bind, and therefore was
not executed; and that it was but an Ordinance, or Declaration made by King
E. 1. it appeareth expressly by the Statute of 1 E. 3. and by that Act of 1 E. 3.
The said Declaration is reheard as a Law, the observation whereof is also an
excellent preparation for a Justice Seat.

Viridarium 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 Forest or Laws
of the Forest, and to view, receive, and inroll the Attachments of pretentions
of all manner of trespasses of the forest of Wirt & Witenes, 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 Path which he taketh before the Sheriff. There be most commonly four
Wonders in every of the Kings Forests.

Agisator, so called, because he taketh beasts to agisment, that is, to departure
within the Forest, or to feed upon the pasture, and cometh of the French word,
Geyser, to lye, because the beasts that lye there are there leant and couchant, lyp-
ing and rising. And his office consisteth in agisando, recipiendo, imbrevando, &
certificando.

And this Office is constituted by the Kinges Letters Patents, and of those in
such Forests where there is any pasture, there be four in number.

Gruari, (of whom you shall read in Forest Records) is derived from the
French word Gruyer, which signifies generally the principal Officers of the
Forest. Et iphi Gruari vocatur ad similitudinem coram qui Ascupio Regis in
gres olim praeerat.

Foresterius is taken for a Woodward not only of the King within his Forest,
but ex vi termini of any subject of his Woods wheresoever they lye, which ap-
peareth by a Writ in Bradston in these to 206. Rex Vic. fetit. Scias quod proper
destitutionem que facta est in boico & terra quam A. de N. tenet in domino in tali villa
De b. De. Non. Provisum et in Curiis nota coram Justiciariis nostris. quod idem op-
opossum Foresterium surn ad praedictum boicium custodii, & quod praedict. A. non
habebat in eodem boico nisi rationabile eorum sits ad arrendum & claudendum
quantum super eandem terrarum quam ipse tenet in eodem &c. But in legal understand-
ing he is taken for a Swoon Officer ministerial of the Kings Forests, and his
duties appeareth by his eath, which consisteth on Five parts. 1. That he shall be
local and true to the Swoon of the Forest. 2. That he shall duly walk and
keep the Office of the Forestership, and true watch make both early and late both
of Uter and Venerion. 3. Truly attach and true presentation make of all mis-
ners of trespasses done within this Forest to his knowledge, and specially within
the keeping of his Battleswick. 4. The Kings counsel, his fellows, and his own,
he shall truly keep. 5. An concealment make for no labour, money or deed, but
well and truly to behave himself therein.

2. Officers of the Forest shall not swoon on enquestes out of the Forest.

Thestylis & rapido effici mettiriis adhibit.
Allia Serpyllumque herbis contundit oleantes.

Surcharge of the Forest. Supererogatio Forestier, is when a Com-
mover in the Forest puteth no more Beasts then he ought, and so surchargest the
Forest. It is taken from the Writ De supererogatione parturit in the same sense when the Commoner surchargest. Where it is said (tempore coronationis Regis Henrici a vi, that is, of H. 2.) It is to be known that he was crowned twice, viz the 20 of December in the 1st year; he caused his sons Henry to be
crowned being the 15 of June in the 10 year of his reign; Henry his son died the 11 of June in the 28 year of his reign; after whose death being Henry Fitz-Em-
prese was crowned again.

Defeatim, id quod ab hominibus desideri, & seris relinquitur.

Matura terra, cum in eodem maturis 60 dominis plus quam ante sunt. Mas
d terrae, that is, an exchange of land where there is an house.

Fugacis signifieth a Chief, and is in all one with Chiefes. De the Charter of
Mawde the Empresse, sitting her self Anglorum Domina, made to Miles of Glou-
cester, creating him thereby Carl of Hereford, wherein towards the end follow-
these words, Praecipuo quod haec domini supraedita tenenda de me libere & quere in
boico & plano, in forestis & fugacis, in postis & pasturis, &c. P. aecum autem con-
cedo, ut in propriis ipsibus praedictis quaque in agris quam in iubitu exspecta-ri seris; magnum autem sumptuarii, ut præstiterit in locis quos privilegio circumcipient
into cum praedictis pecunia.

That is, made at Woodstock a Park, which was, faith be, the first Park
in England. But it is out of doubt that there were Parks in the dapes of the
Saxons.

Gruarii.

See the C. de Norm.

Forestarius.

Braeston lib. 4. fo 316. a. 2. & 231. 2.

Domesday.

Sudler, Gresdr, & Lape.

Circa Maioris imperatoris Mi-
toni de Glauce.

In leges Canarii cap. 77. Lamb.

Johannes Radul

& ali quod e.
The Courts of the Forests. Cap.73.

Dorset, Folkestone.
Dover.
Chertsey.
Chichester.
Bishop, Burstow.
Bisham.
Aldric, forest.

cap. 1.

Haberd. B. E. 3. 1.

Hare's Park.
Guilbert of Acland.
Cafe.

By Artic. 21.
Campan venation.
Spes et oportet paulum in longitudo.
Magn. Ant. 16 Rea.

m 30.

Saxons, which were called Dorset, of two Saxon words, of Deor for Dear, and Fald, for a place enclosed with pale, hedge, or wall. And in the Book of Domey's day often mention is made by expresse name de Parciis. Parcus bietenarium. Parcus Sylvaticus, bietenarium.

Harl taken for Parcus of the French word Heye for an enclosure, Rot. Inquisit. 36 E. 3. in Scacc. d forest.

Harl de Kingelle in Hampshire.

Hulme, i. Infalt an Dic. C Beranges, Vid. i part. Inst. Sect. 1. C Matius mutalum is a Dwitsh expediatum? if latum, and not malted: for no Dog by the law of the foist ought to be malted. Mutalum cometh of the word Deumatu, i. demembre. B B A. i. Caro, of the French word Biche, for a Hind. C Mureages, a legende, motures, of getting of aice, a Wilbye Cat. C Tellones of the French word Leison, for a Cip, Bocbl, or Benger. C Belonges of Blin, a French word for a with Dene.

C Hain, Saxo no chimos, home, sometime Villa, as Muleham olm Mildham, because the air was mild and temperate.

C Huc and Cry. Hattchem and Clamo, the one being an expostulation of the other, each of them signifying crying and shouting; verba dolentius. And Huc is derived from the French word hoz, hiber, and which. But Huc and Cry by the forest law is not to be made for trespass in their, but in Hudson only, This Huc 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 parish. And this Huc and Cry may be made by any of the King's Ministers of the forest, for any of them may arrest the malefactor, and none can make Huc and Cry but that he may arrest in that case, and cannot. And so are the general words. Si quis videlicet, &c. to be understood.

Si quis videlicet, &c. If any Township or Village follow not the Huc and Cry, they shall be succed at the Justice Seat.

C Taken with the Mayner, a Man is in 4 kinds, viz Dog, whoso that is, taking after a Doe, which he hath hurt. Stable and, viz. at his standing with any Unse Gun, or Bob, or close with Greyhound in his Leash ready to shoot at it, &c. Hacking, that is carrying about the Doe which he killed, Blood hand, that is when he hath that of a courted, and is imbued with blood.

But what if injustice be done at the Justice Seat? For example, if a claim be made of any liberty at a Justice Seat, and is there allowed, what remedy hath the party given here 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 Exchequer, in any that have written of the forest law, and I find this question resolved by a notable French 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 other son of the Commons there; for that the Commons within the said Town of E. had the choice of the said Woodward, and all the windfalls for their reasonable hawks as belonging to their thralldom. Thereupon on the behalf of the Commons 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 King's Bench (which Court is above all others) and two of the Commissioners, viz. Robert de Scatburgh, and Robert the Wich. Gent. on a Scire fac, upon the said Record against the said A. & B. &c. And they declared upon the said Writ that all the Commons had the liberties aforesaid: Exception was taken to the Writ, that the grievance was as well supported to others, as to those two, which were plaintiff in the Scire fac. Whereunto it was anwiered, That although the grievance was to others, yet those two that would complain might maintain the same. And if the others be of Record with A. & B. ye these two may sue, and these two might have joined in this case. And there it is ordered, that if a profet be
be granted to a comminunity out of the Forest, the claim ought to be made by them all, but otherwise it is within the Forest, where every one hath 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 implied, for by the law of the Forest, when a claim is made of any liberty within the Forest, although no man be joined thereupon, yet the enterip is, Erquia video. Justiciarius quod expedient & necesse ad inquisitionem super praemium et veritatem antecedent ad allocationem clani praedi seu procedeat, inquisitione inde veritas per ministros ejudem forestie; & sometime tam per ministros forestie quam per alios libero & legales homines, at the discretion of the Justices for the advancement of truth, and accordingly the forestiers, Neretores, Regarders, and Sigillers do ensure thereof. * Also if a claim be made before the Justices of the Forest, whereupon there greweth difficulty, or if a demurrier in suit be thereupon joined, the Justices may adjourn the same into the Kings Bench to be there adjudged, and then the Enterip is, Ideo quod clameum praedi pro eo quod Justiciari praedi nondum adverterit de judicio inde reddendo, datas et dies eadem H. coram Domino Rege (in tali return.) ubique & de audiendo inde judiciurn, & de quia eadem H. quod interim sequatur brev. de Venire fac. inde recordatione. &c. Poetica Dominus Rex mandavit * Certiorari praedict. Justic. brev.Huac in hec verba. * Eidw. Dei gratia Rex Anglor. &c. Dilecto & fidelis tuo Rico, de Willobie salutem. Cum vos & socii vostrorum fidelium &c. ad placita forestie, &c. tenend. AFF. etiam, quoddam clameum de diversis libertatibus per dilectum & fidelem nostrum H. de Percye coram vobis & sociis versus praedictis in eadem forestie. fact. propter quidam difficultates in eodem. clameo content. coram nobis adjornaveritis, ut acceperitis, Vobis mandamus quod si ita est, tum omnia clamea praedicta nec non recorda & processi, inde coram vobis habita coram nobis ubi. cuneo fuerimus in Anglia sub sigillo vestró fine dilatatione militiae. sub adiunctam prædictionem ibidem vobis committimus. Tente. &c. Anno 12 E. 3.

Virtute cujus brevis claman praedict. nec non recorda & processi. praedict. mittentur coram Rege ad diem praedict. una cum brevi praedicto.


By all which cases the former question is resolved, which case and consequences thereupon is worthy of serious consideration.

Nicholas Gower thus indicated for that he killed the Kings Came in the Kings Forest, when he was the Kings Steward of the same, and also had taken some for Indictments, which Indictments were removed coram Rege, and the Steward was put to answer thereunto.
The Courts of the Forests. Cap. 73.


Observe
The Courts of the Forsetis

Observe well the parts of this record, and a ready way to help the king to his fines next the Cowe of the Forsetis 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 Bent, and cannot obtain the same to be allowed by the Judges of the Forsetis, what remedy have him that maketh such claim?

Whereunto the answer is, that he shall have by declaration of the Forsetis, which will both appear in the Register.

And any person that is to make any claim may the first day of the Foreset sit in person of by Attorney, F.N.B. 26. 3. And he that appears upon a presentation or indictment taken before the Judges in Cowe, and travels the indictment, may appear by Attorney. See before Cap. Judges in Cowe the writ in the Reg. 19. a. W. 2. cap. 10.

And the entry is, A. B. pos lic: fio T. B. vel L.N. de omnibus placitis et querelis mortis et movendis, et ad omnes libertates calaminandae, prosequend. & defendend. Duringe Inicene ilo: whereby it appeareth in what generall any Attorney may be made.

And this agreeth with the Register, fol. 19. b. by 5. kinds of Writs which are worthy of observation, viz. 1 breve de clamco admirant, in intimi per Aturnatnum primo de inicinis, &c. 2 de libertatibus exxendis in Inicinis; 3 de Aturnnat, in omnibus placitis & querelis in intimi, & ad libertates calaminandae; 4 Aliter in omnibus placitis & querelis in intimi justa formam flat. de Merton cap. 10, Gloue cap. 8, W. & Gloue cap. 10. 5 Aliter de Aturnnatis, &c.

And these Writs are to be granted ex merito Inicinis, without any denial, as well to the Judges in Cowe, as other Judges in Cowe for the admission of Attorneys. Vid. part of the Inicini W. 2. cap. 10.

And upon search made 3 and the like writ beginning, Omnibus Belli & Hidelibus suis, &c. in the Cowe of Pickering, fol. 19. b. for the Prius of St. Johns of Jerusalem to make an Attorney before the Judges of the Forsetis.

But what if the Justice in Cowe give an erroneous judgement, &c. what remedy hath the party grieved? He may have a writ of Coot, out of the Chancery returnable into the Kings Bench, and there Justice shall be done.

If a man make his claim by grant of prescription, and he or his Council misdaketh his right title in some material point, so the claim is found against him, it is good for him that his true title be found by the same body specially, for then may the party by petition make a fine and pay licence to make a new claim, and thereto he ought to be admitted.

And concerning claims it is specially to be observed, that by the Forset law a grant made of a privilege within the Forset to all the inhabitants being Freholders within the Forset of such other Commissalities not incorporated, is good. 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 Prius of York claimed by Charter to have the Right of all Mention, ran in carme quam in corio, where he ought to have it in corio, for which he was fined and enjoined it in corio.

In the Cowe of Pickering helden before Richard de Wlllowby, Robert de Hungeford and John de Hambury Judges in Cowe for the Forset of Pickering, Anno 8 E. 3. a claim was made by Thomas Pickering and Margaret his wife, viz. Pickering's case.

Habere in dominico boce fio de Londin Woodward ad custodiebundum Bohum suum, & quod nullus in eo ampriet ant prorlare faciat absumi aliquam fines voluntate sua, & quod ipsi in boce suo petriter prorlare & dare pro voluntate sua absumi virides & fecess, & dare & vendere absumi pro voluntate sua fine with Forsetarium, &c. and prescribed in the same in the right of the said Margaret, whereas this prescription was enquird of and allowed to be good in law, but it was found, as to the taking of the trees without the view of the Forseter, to be untrue.

*The like prescription made by Selinger to take and cut down timber trees within his own woods within the Forest of Haye in the County of Hereford.

Without

without the view of the Forester, and upon argument and long edification it was adjudged, that the prescription was good notwithstanding the Ordinance of 34 E.1. and the statute of 3 E.3. cap.2. And the reason was, because that statute was but in accordance 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, by F.N.B. 167.2. Registrator, Whose judgment was agreeable to Pickering's case above-land, and is of great consequence; for the statute of Cara de Forseta, 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 prefer the liberties.

And if a man hath a Wood in a forest, and hath no such prescription, the law both 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 wherein the king both licenses him, &c.

By the King's Commandement under his Signature and Signet, all the Judges were assembled about certain questions concerning his forests of Leicester in the County of Leicestershire, and of Bowland in the County of Warwick, to be moved to them by the Attorney of the Duchy. And the first question which was moved, was, whether the said forests were forests in name only, or in law, which being questioned, 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, Swainsmote, and Justice Bents, Officers of Record, as Forestors, Verderers, Registrars, Agisters, &c. who are made (as it appeared before) by matter of record, &c. but appellation or naming of them forests in offices, pleadings, grant or other concomitances, are no grounds, that they be forests in law.

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 suffice wood for the game, they shall be punished at the King's 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 buisle, as hath been accustomed, no more then the owners of Woods in which others have common of Chases, can deforest the whole Wood, but leave sufficient for the Chasers.

3. And being demanded whether in the King's free Chases a man might have common and feeding for sheep, and warnen by prescription or grant? It was resolved, clearly they might, but they must not suffer to prejudice the judging of the King's 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 King's forest: for, first, I find no authority in our books (that I remember) against it; and that generally a man may have 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 is much favoured in law, and particularly for Sheep, as well as for Boises and Hares, 13 H.3. Common 25. F. N.B. 230. 2. And to conclude this point, the Privileges of Wicham preferred to have Common in the Forest of Pickering, pra omnibus avertit jus, except, capessit, before the Justice in Cire 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 King's grant.

4. That be that hath a Warren within a free Chase may build upon his own inheritance within his Warren a convenient longe for preservation of his game. And Popham Chief Justice before all the rest of the Judges cited the said case of Sengler adjudged in the Treccheaver.

Some question being moved between the Earl of North, Justice in Cire in all
the Kings Forest, and the Earl of Dorset Treasurer of England, concerning the disposing of the kings Woods in his Forest, for reserving 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 Court, and the Kings Officers within his Forest have charge of Venison, and of Aert or Orne hay for the maintenance of preservation of the Kings game, and therein of all manner of trees for covert, brute and rawsting. But when need is to sell reasonable trees within his forest, or timber for his Household use, the same must be sold by the force of the Great Seal, or Chequeuer feal by the view of the Forester to the intent that the trees or the timber shall not be taken in places inconvenient for the game. But the Justice in Court, or any of the Kings Officers within the Forest cannot sell or dispose of any land within the Forest without Commission: and to the Chequeuer and the Forester have divinum imperium, the one for the profit of the King and the other for his pleasure.

2. That regularly neither the Court of the Chequeuer 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 hereafter for the Kings best profit.

3. That every man in his own Woods within the Forest may take Poulleshote and Poppote by the view of the Forester. The King's Farmers that have claus in their Leases to take timber, &c. by view, &c. may take the same according by law; and to may Fradsboler by prescription, and Coppholders, which by custom have used to take Poulleshote, &c. to take the same by view of the Forester, &c. otherwise according to the Custome.

4. It was resolved, that no Officer of the Forest could claim Wend Scaling or Settard trees for their use by prescription, because they were one parcel of the Kings inheritance, but they ought to be sold by Commission, as before it appeared, for the Kings best benefit.

5. That he, that hath the Verbage, or Palnage of a Park by the grant of the Kings, or any other, cannot take any Verbage or Palnage but of surplage over and above the competent and sufficient Pature, and feeding of the game; and if the owner of the same lost the game so to increase, as there is no surplage, then he that hath the Verbage and Palnage cannot put any Beasts in the Park.

6. That the owner of the Park may divide any competent parcel of the Park with Nail, Pale or Yenge for the use of the game in Winter, and he that hath the Verbage cannot put any Beasts therein.

Lastly, if the Pature and Palnage 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 Verbage and Palnage, and thereupon by like attest of all the Judges the Court of the Chequeuer took this order following with some reasonable additions.

Whereas heretofore some question hath been moved between the Lord Treasurer of England, and the Warden and Chief Justice, and Justice Lieutenant of all the Kings Statelles Forests, Close, Parks and Warrens on this side the water of Trent, what appertained to each of their offices and places concerning the dealing with and disposing of Woods, Erks, and Coppices within his Bishophale Parks, Forests, and Close, which being by his Excellency referred to the consideration and determination of his Judges, and Barons, they have resolved touching the same by one uniform consent, as hereafter followeth.

That as the Lord Treasurer of England for the time being, and Court of Chequeuer have the only ordinary power over the King to deal therein to the same concerns the inheritance and profit of the Crown, as in the case of Woods, Erks, Coppices and such like: so in like manner it concerns the Warden and Chief Justice, and Justice Lieutenant of all the Kings Statelles Forests, Close, Parks,
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, covert, patronage, 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 Copises within any the Kings Parks, Forests, or Chaises, (except windfalls, twistalls and marke dead and star trees) without the privy and allowance of the said Warden, and Chief Justice, and Justice Inlenar, within whose jurisdiction it is: No may cut down the dead and star trees, nor carry them of windfall or rowalls away, but at st 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 st and convenient times; and that no trees other than those that be dead and star: and marke windfalls and twistalls, may be thrown down or taken away without the privy and allowance of the Warden, and Chief Justice, and Justice Inlenar of his Majesties Parks, Forests, or Chaises.

And as for the Warden, and Chief Justice, and Justice Inlenar, and the Keepers and other ministers of Parks, Forests, and Chaises 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 shall for the making of small fences in old places or rails that are broken, so as the same do not exceed two or three timber trees in any one forest, path, or chase, in any one year, they may be permitted to take of trees in places st, without making what thereof, on any spoil or pretence to the Kings inheritance, making the Kings Surveyor of the Woods speedily acquainted, who is to see that the same hath been accordingly well improved; and useless boughs also in places st, and times reasonable the keepers may take for the Deer, not cutting down the limbs of great bushes 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 Coppises within any his Parks, Forests, or Chaises, that a Warrant in Commission in nature of an Act quod damnum shall be directed unto the Warden and Chief Justice, and Justice Inlenar within the Forests, within whose government the same is to be done, to enquire and certify what number of tents and what Coppises may be sold, and in what places with least prejudice to the Kings Game; and that upon the return thereof, the same shall be made of such trees and Coppises, as upon such Certificates 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 of his Majesties Parks, Forests, or Chaises, and the great repairs of old pales, rails, or Lodges in; about the same; that it is to be done upon Certificate of the Warden and Chief Justice, and Justice Inlenar, 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 Nature of carta de fores, 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 fores, shall be holden for void. And whereas H. 2. Fitz. Impreis claimed that he might make foresst not only within his own Woods and Grounds, but in the Woods and Grounds of his Subjects, and thereupon made divers such foresst 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 fores, which is but a declaratory law referring the Subject to this former right, is directly against that concept, in these words. b Inprimis omnes foresst, quam Henricus avus noiffer afferentavit, videantur per bonos et legales homines; et f bocum aliquem alium quam sum dominicum afferentavit ad damnum illius cujus boccus illa fuerit, statum desafforettavit; et f bocum simul proprium afferentavit, remaneat foresta, salva communa de herbage & alio in cadem foresta illis qui prior sam habere conuenverit. To the same effect is the third
Cap. 73. The Courts of the Forests.

third Chapter. Neither could H. 2, or any other king have made or raised a free Chafe, Park, or Warren for himself in any of the grounds of the subject, for it is truly said in 1 Com. that the common law hath so demeaned the Kings prerogatives, that they should not take away, nor prejudice the inheritance of any. But we agree, 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, woods and swampy 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 thereof: so 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 hereby labed and enacted to stand.

King H. 8. intending to make a Forest about his House at Hampton Court assigned and limited a certain Territorie of grounds for nourishing and generation of Beasts of Warne, and Fowls of Warren, extending over the lands and grounds of others and many Freholders, and Copholders, within the counties, Townships, and Villages of Batsmaley, Weymaley, Walton, Elher, Weybridge, and part of Cobham: and finding that he could not erect either Forest on Chale over other mens grounds without their consent, did agree with the Freholders and customary tenants, as by his Indenture bearing date the first day of October in the 29 year of his reign, between him on the one part, and Sir Richard Page Knight, Thomas Herage Esquire, and other the Freholders and customary tenants in the Counties and Villages aforesaid of the other part, wherein the King both name it (as faciendum popolam populus for the easier passage) Hampton Court Chafe. But afterwards (in close woods in several places) that it should have all such and like Liberties, Jurisdictions, and Prebeminences, Laws, Statutes, Officers, &c. * as any Chale or Forest within this Realm had, &c. And all offences done within the same, should be punished as if the same had been done within any Chale or Forest within this Realm. And the King did thereupon Covenant and grant, that the Freholders and Copholders aforesaid might sell and take their Wood, Grubes, and Coppices, at their will and pleasure without any bote, &c. and to make their hedges and fences about their Cop, &c. to keep out the Dier, &c. And (for recompence to both Freholders and Copholders, &c.) that the third part of the frecent of every Freholder should be deduced, and the moity of the sixe of the heri of every Copholder 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 others general clauses referring to Forests, the King intended to have it a Forest. But hereby it plainly appears both by the Kings said Indenture, and by the judgement of the whole Parliament, that the King could neither ere any Chale or Forest over any mens grounds without their consent and agreement. And yet King H. 8. did stand as much upon his Prerogative as any King of England ever did.

But to join this new with some that is ancient. In Rot. Parl. anno 12 Ed. there is a notable Record in these words:


* Notes.
The Courts of the Forests.

Cap. 73.


Doblerbe 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 Statutes of E. 3. cap. 1. flar. 2. in print; and by an Act of Parliament in 1 R. 2. nu. 61. in the Roll of Parliament. &c. Not in print. &c. And so let not the metes and bounds of the Forest, the thing what is within the Forest, and what to be extra forestam sequendum tenorem Magnæ Cartæ de Foresta, e loco accordatæ eant post coronationem Domini Regis Henrici Regis a, &c. In cujus rei testi- monium, &c.
The Courts of the Forsetis.

Note, the Charters be general and hot to this effect. Rex omnibus ad quos praesentes litterae pervenirent, salutem. Sceatis quod volumus & concedimus pro nobis & hæredibus nostris, quod perambulationes infra cornum A.B. C.D. & hoc aliquot per præcipuam septem de forsetis nostris in Comit Bborum de cetero teneantur & observentur per metas & bundas contentas in eadem perambulationibus, quorum tenor de verbo in verbo sequitur in hunc modum. Et rehaecere the whole perambulation.

A long complaint in Parliament against Forsetis, for afforestation of men's purlions, for undue trial, and for their extortions, too long here to be reheard, but doth not seem to be read, with a prayer that the great Charter may be kept, that all men may enjoy their purlions according to the perambulations made in the reign of King E.1. whereunto the King anwercd, [The King would the great Charter to be kept: and that such as will complain in the right of their purlions, may have writs out of the Chancery.] See Rot. Parl. 50 E.3. n. 80. & 1 R. 2. n. 60.

Purliuen containeth such grounds which H.2. R.1. 02 King John added to their ancient Forsetis over other mens grounds, and which were diassessed by force of the Statute of Carta de Forsetis, cap. 1. & cap. 3. and the perambulations and grants thereupon. And is derived from a French Adjective and a French Adven, viz. Pur, which signifies clear, entire, and stempit, and Lien, that is, a place entire, clear, or exempt from the forest, And both of these derived from the Latine Adjective and Adven, viz. purus locus; and in this sense the Civilians called that parum locum qui epulchorum religione non eft obstichus. And the perambulation whereby the purliuen is diassessed is called in French Poulalice, p. perambulation, fo as the purliuen and poulalice are two distinct things, and * 33 E.1. Act. 5. liuen in the right name of the place diassessed.

By this it appeared, that Chases that never were any Forsetis cannot have any purliuen, and consequently the case in 16 Eliz. Dier 326, 326, is mistaken for the Chase of Whaddon never was any Forset. Whereby it may be observed how necessary the derivatiuon of words is, according to the example of Littleton, as in other parts of the first part of the Institutes appears.

By this diassession the owners of the grounds within the purliuen may set their will and pleasure fell, cut down, eradicate, and fend 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 diassession, as they never had been assessed.

And whereas some have conceived, that quod to the owners of the soyl the purliuen is diassessed, but not as to others, but as to them it should remain a Forset, by reason of these words in the first Chapter, ad damnum illius cojus boicis illius sueit, those words were added to show the unlawfulness of the adversestion, because it was ad damnum, &c. as hath been proved before. And these men must make a diversity between a diassession by force of the first Chapter of diassessions in the reign of H.2. And diassessions made by force of the third Chapter of diassession in the reign of R.1. and King John, for there the clause of ad damnum is omitted, and therefore those diassessions are utterly made void against all men.

The Statute of Carta de Forsetis hath lien above 30 times, and lastly in 4 H.5. confirmed and enacted and commanded to be put in execution, and we have no authority in law that we remember against our opinion herein; therefore we proceed and do hold, that in any purliuen a man may as lawfully hunt to all intents and purposes within the purliuen within his own grounds, as any other owner may do in his grounds that never were diassessed at all.

Some have endeavoured to limit the purliuen man to hunt by custom or prescription, but all the said Statutes were made within time of memory against which they cannot prescribe. Some endevaour to maintain it to be by Forset law, but it is questioned whether there be any such Forset law, in that point, for...
The Courts of the Forests.  Cap. 73.

Quad 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. 3. Stat. 5. or some other Statute in the reign of E. I. E. 2. & 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 Corte de Foresta, repealed by the Statute of 42 E. 3. cap. 1. And all the Statutes of Wales, either that of Woodstock in the reign of H. 3. or any other in his time, or in the reigns of R. 1. & R. 2. John, are all abrogated by the Statute of Corte de Foresta made in 9 H. 3. cap. 1 & 3. as to the Desforestations, &c. And the Statute of Wales of Woodstock doth extend to Desforestations before, and not after, the bounds thereof being, Nullus facit aliquid installationem inter forestam & boscos, &c. per ipsum vel progenitores suos desforestatores. And for the same reason the Puritan man may keep his dogs with the puritan unexpendited, and using the wild beasts do belong to the puritan 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 puritans, and by the resolution of the Judges concerning Chafes, it appeareth that the makers of the Statute of 22 E. 4. miltook the law in both of them, viz. concerning Chafes and Puritans, but the Statute being in the affirmative wouldeth no prejudice to any. And if he chafe them with Greyhounds, and the Beasts of the forest do fly 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 chafe 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 for killing. But if the Dogs fall upon the Deer, before he recover the forest, and the Deer drag the dogs into the forest, there the Puritan man may follow his dogs and take the Deer.

In some Letters Patents of the perambulations of purities of forests made by King E. 3. to any County where lands are disafforested, which we have seen, there is referred to the King forty days for his wild beasts within the puritians to return again, and to his Rangers within that time to reclaim them into the forest, which is taken to be a convenient time for that purpose. And albeit these puritans 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 puritan, with his hounds reclase the same, and these Rangers have used to present unlawful hunting and Hunters of the Kings Deer within the puritan, as in the night, & at unseasonable Deer; killing of the Kings Deer in puritians by no puritan man, but unlawful Hunters; the like: such as should not take advantage of their own wrong both to the King and the puritan men, and that they are known to be Deer belonging to the Kings forest, because there are no other within the puritan, whoes in the best rule we can (so avoiding of redounds) give the Reader, to follow the judicial Records and Presidents of the Cyres holden before grave and learned Judges in Cyre, as those of Pickering, Lancaster, & the like concerning presentment of matters done within the puritians of the Rangers, whereunto we do rather incline, when we consider the Bath which the Rangers have lately taken, and continually in these topos. You shall truly execute the Office of a Ranger in the puritan of P. upon the border of the Kings forest of P. You shall reclase with your Hound and drive the wild Beasts of the forest, as often as they shall range out of the same forest into the puritan: You shall truly present all unlawful hunting and Hunters of wild Beasts of Venery and Chase as well within the puritan, as the forest, and those and all other offences you shall present at the Kings next Court of Attachments, or Swanimoate which shall first happen: So help you God. And it is to be noted, that in such forests, as have no puritians, there is no Ranger.

It was petitioned in Parliament, that no man be impeached for hunting within the puritan or without the bound of the forest, and that there be levied no alien rents.
This Petition consisting of two parts, i. Concerning hunting in the purliss; ii. of the bounds of the forest, the second concerning affair rents.

To the first: the King answered, That the Charter of the forest shall be kept, which is a yielding to the Petition for that part, for by that Charter the bounds of the forests are established, and no purliss excepted.

To the second: be answered, That the demand was unreasonable.

The Commons made Petition, that men might enjoy their purliss freely, and that perambulations might be made as was in the time of King H. 2.

Whereunto the King answered, The King thinketh the perambulations are duly made, and who will, may complain, and shall be heard.

The Abbots of Whalley had a forest called Whalley forest (by the grant of H. 2. And King John with all Officers incident thereunto) adjoining to the forest of the Earl of Lancaster, called Pickering forest, and the same of the forest of Pickering ranged into the forest of Whalley, Idem Abbas habens exploratoris suos latim ponere fecit retia, & alia ingenia tua juxta Hakensel & alibi distant à foresta ita pertinentium unus arcus & aliquando plus, & poëta cum canibus exciri fecit feras, ida quem excitationem illam plures forestarum illorum in redeundo & fugiendo verius forestarum de Pickering decidunt in retibus & ingeniosis praeliis & capitur, & annum annuat capere facit in destructionem serarum forestæ prædictæ de Pickering ad damnum domini, & neicitur qao Warranto; per quod praecipuum fuit Vicecomiti quod Venire faciat prædictum Abbatem. Whereupon the King came and pleaded his title to the forest, ut supra. Et quod omnes Abbas loci praedictæ virtute Concell. &c. praedictos cervos & cervas in locis praedictis ubi retia & ingenia praedicta posita fuerunt, & quod fuerunt infra limites Forestæ sui de Whalley, & quod idem habens exploratores super seras domini, &c. retia & ingenia suæ fecit prope Forestam de Pickering, &c. per quod in redeundo plures cap. fuerunt, quod omnino est contra Affili, Forelæ, idem Abbas dicet, quod ad hoc respondere non debet, &c. Et quia manufactus liquet Curiae, &c. quod cere de Foresta ad Forestam alter conferiri non possit, nihil ipsis in cuiusque Forestæ inventarum, eo quod fons aliquo non conserват signat nec divisis aliquas cognoscat. Idea considerarum est, quod idem Abbas est sine die.

By which Record and many others it both appear, that when the Kings came of the forest to range out of the forest (and purliss, if any be) they belong not to the King, but are at their natural liberty, & occupantes conceuntur.

And this is the reason that some have said, that where the King was seen of the forest of M. in &c., and that a custom was pleased time out of mind, that if any forest of the forest should range into the free Chace of the Abbots de Dian adjoining to the free Chace, that the foresters of the free forest, &c. might enter into the said Chace, 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 put in the Abbots of Whalley's case) immediately when they are out of the bounds of the forest, the property is out of the King, for 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 not, and yet aid was thereupon granted: and Dier 16 Eliz. 326, 327. agris in there with. But in the Abbots of Whalley's case there is no prescription for the King, but against him.

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 terms and words, the entry is (for example) by quæ non liquet carta manifesse caipiummodi liberatæs praedictæ vocabulorum idem Prior habebat intendit, dicitum est Prior quod praedicta vocabula declaravit, &c. And after he that maketh the claim, declarerat, that is, explaineth the same, and pleadeth further. Quod ipse & praecedentes suis temporis ad concoctione Carte praedictae fines interruptiones usf sunt & quae sunt libertas praedictæ (accedent to his declaration) & hoc paratus est venire in per minimos fictus forestes, &c. Ideo inquitur sev veritas per eosdem, &c. it the entry is after the declaration made, E. quia vitidur Justiciarist quod expedientis est & necesse, quod Curia certiorit...
tioetiam super possessionem ipsius Prioeis in hac parte, inquiratur inde veritas per minitos ejusdem Foreis, et thereupon the Forestiers, Werdererists, and legislature are doneon, 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 continuing possession is taken to be well as a fine, as for an amerciament.

If any example: "Siue quiete esse de micercordia Foreis, is to be quit of all amerciaments in which he in any part might fall within the Forest. And here micercordia is taken to be well as a fine, as for an amerciament.

Siue quiete esse de Vasso, if he did waste in his woods within the Forest he should not be amerced, no for any other waste.

Siue quiete esse de rewardo, that is to be quit of amerciament whereasover in any Earth within the Forest, if the usage had been accordingly.

Siue quiete de omnibus geldis, i.e., quiete esse de omni patura Foreiari & de omni praefatione, ad collectionem garbarum, signature & lanae ad opus Foreiari ejusdem foreis.

Siue De Vwoodgeldis, i.e., quiete esse de omni collectione in foresta pred' ad opus quorumcumque ministrorum foreis pred' ratione boscorum.

Siue De Hornigeldis, quiete esse de omni collet' in foresta de britinis cornutis affis.

Siue De Foregeldis, i.e., quiete esse de finibus & amerciamentis pro campus infra forestam inespressatis, 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.

Siue De Burcell, i.e., ubi homines convenire tenentur, ibidem convenire ad habitationem faciendi circa teras, & ad caedem congregand' quietiam esse de loco servitio, quando dominus chaceaverit.

Siue De Utris, anciently written traxit, and is deriv'd of traxit, I.e., and signis, ubi ali homines menentes in eadem foresta tempore quo dominus chaceaverit in eadem venire debeat, & confis sunt, Anglice are traxen, ad tenend' Loporios certis locis assignatis pro feris ibidem expectand' & capiend' quietiam esse de loco servitio.

Siue De Fledwite, of fled, a Saxon word, a fugitive, one that fleeth, an outlaw, and wire a Saxon word also, a freeborn.

Siue De Careyo, cum aliqua Carta, seu carecio cartare transeuntium per forestam, & fimuliter ilum magis vel minus ministris ibidem pro chemino, ibidem habend' Quietium esse de his juridici solutamibus. Summum quod Sommarg cometh of the French word sommer or sommer, which signifieth a take carrying any load. Chimagium, a Doll for the paying men through a forest, deriv'd from the French word Chemin for a load.

Siue De Scoor, seu Shoto, quando homines faciunt collectam inter se ad aliquod obnendum seu evitandum. Quienium esse de tali collet' Siue De tallagio, idem ut de Scoor.

Siue Extra regardum forestae. Si any man within a forest do hold his woods or lands by grant or prescription to be extra regardum forestae, the woods or lands are deasserted.

Siue quiete esse de aliis foreis pro transgressione viridis seu Venationis.

Siue De ecclipsio, secundum Assiam foreis si avera aliquus in landis vestris, vel tempore vixitio in eadem inventantr, prima vice pro quolibet pede avertorum praedict quorum fuerint amerciament ad unum denarium; & si fecundo ibidem inventantr, simili pro quolibet pede unum denarium, & si tertio ibidem inventantr, avera illa remanente domino forfaeata, de quibus amerciamentis & forfaeactis per hujusmodi vocabulum, de ecclipsio, exitere' quieti.

Siue De Pannaggio, that is, to be quit to pay any thing for patumage.

Siue Aclaram, Aclaiet, is so called of the effect (as some hold) and is deriv'd (by the) of ad and cetero, cetero, because of wood grounds, marches of woods grounds they
The Courts of the Forests.

They are converted to be town with Carn, and therefore in the Register, & P.N.B. 11.7. it is written assertive, with an E, and lo the in Carta de Foresta cap. 4. Bracton hereof faith. Illud quod fuit aliquando bosce, & locus vixit folioedam & commodia & jam inde efficiatur astraum, vel reducm in cultum. And hereunto agriclia Freta, Illud olm fuit foresta & bosce, &c. & jam efficiatur astraum, & reducm in cultum, & idei dii poterit de mariscis & alis vallatibus in cultum reducm.

Others fetch it otherwise, but we hold, that it was derived of the French word eschart, to grund up, or clear of a ground of wood, &c. and this appeared by Domesday, Herefordish. Mercelavex in codem maneri sunt 5 acuta terro provecta de sylva, twitter over the same eschart, de eschart Sylvex excent 17s. & 4d. E. being turned into A.

Rudolphus Episcopus Karlol petis versus Priorem Ecclesie Karleol de cimias duram placarum terra de novia astraum in Forese, de Inglewood, quoram una vocat Lythmay & alia Kirribingiates, quae sunt infra limites parochiae sue de Apseract. Et super hoc similiter venit Mr. Hen. de Burton per misc. Ecclesiae de Thersby, & eadem decimas clamat ut pertineat ad Ecclesiam jam. Et Prior venit & dicit, quod Hen. Rex vetus constet dito Deo & Ecclesiae sue beata Maria Karleol, omnes decimas de omnibus terris quas in culturam redigerent infra Forese, & inde eos prestavit per quaddam Corsa eburneum quod adeuis Ecclesiae sua praefuit, &c. Et William Inge quia sequitur pro Rege dicit, quod decima pretia pertinat ad Regem non ad alien, quia sunt infra fundos Forese de Inglewood. Et quod Rex in Forese sua praefuit potessus villas edificare, Ecclesias construire, terras astraun, & Ecclesias itatis cum decimas terrarum illarum pro voluntate sua inicunque volet restituere, &c. Et quia Dominus Rex super premis, uta serviori, ut unicunque tributarum quod fuit exassignetur, &c. & certificat Regem ad proxim Parliamantum, &c.

Q * Purpurea. For this and the derivation, see in the Second Section of the Institutes, Statuturum de Bigamia, cap. 4. and the Exposition upon the same, and Carta de Foresta, cap. 4.

b Cooparta, is a Thicket or Covert of Spleen.

c Mærcium is derived of the old Norman Word Mariscus for Timber.

d Scotaceis, Scotace, 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 contributary within the perambulation of the Forest, which thent was called potura, a Drinking. And after they claimed the same for all their works for themselves, their Servants, Horses and Dogs, which was called potura; and this both notably appear by a Record in 5 E. 3. in these woods.

Potura in Chace of Bowland, i.e., conuenta calitata per Forstarios, & alligando per bellivos hundredorum, recipere vitiula, tam pro febris, hominibus, equis & canibus de temenibus & inhabitibus intra perambulacione Forstae seu hundredi quando co perseverent, nihil inde solveniss. Where the Statute of Carta de Foresta speakeith. Nalus Forstarios facin oblata de castro facint Scotaceis, &c. 8 by the Statute of 25 E. 3. it is enacted, that no Forstier or Hipher of Forst or Cheese, nor any other Minister shall make or gather suffenence, no other gathering of Vitiulas, nor other thing by colour of their offices against any mans will within their Forstiblick without, but that which is due of old right, that is, those lands, which time out of mind they ought to have within that Forest, and as that appear to be due by the oath of 12 Regarders.

Prior de Eleretsone cafe. Quiet, de geldis is to be quit de potura, 3 15. E. 3. cap. 7. Stat. Statuetsa suffeneta, of the Saxen word filieux, or fullen, and ale, i.e., an Ale feath, wherein they were tailed with Ale. Bengrew lib. 3. fo. 127, in reciting of Capitla Exceto, calibus it Filikale. P. Filikale. ex castrosis Calae comparationis, Vide Forst 1. 16. 10. Carta de Forstae cap. 7.
Chablicia, Cablicia, or oyle wood, derived from the French word Chablis, as boys Chablis, either rent down from trees by the wind, or branches of trees cut for the house of War.

Parkbote, to be quit of enclosing of a Park, or any part thereof, derived of two English words, Park and bote.

Braghote to, be quit of making of Bridges.

Panmagium, or panagium, is derived from the French word paneage, i. palaea, pectorum in nemoribus de glandibus & alis fructibus Arborum.

Expagiate, canes, i. expeditare canes. Expeditatio is derived of ex et pede, because the Dog is lamed in the foot, inexpeditaris is unclean.

Canis in this Act is taken for Malignus by these words, tali expeditatio fact per Affiam communiter sustitutam, which hath reference to the Aff of the Forest, tempore H. a. Art. 8, which speaketh only de expeditione Malignorum, & Affinis & Confiniendi Foresta, 8. 2. cap. 9, speaketh only de malfico.

Orelles, this word is taken from the French word Oreilles, in English, Orelles.

Pellota, of the French word Pelote, and they from Pila: In this Act it is taken for the ball of the foot, the pelle, without the ball of the foot. And therefore by the express words of this Act the ball of the foot of the Halliff is not to be cut off, but the three claws of the foofet to the skin. This extendeth only to Halliffes, and to no other Dogs, for Ubri non est lex, ubi non est transgressio; and necessitatem it is, that such as dwell in fores and where there are coverts, that they should keep other Dogs unexpeditated, and the Halliff expeditated for the defence of their house, or for giving of warning of Thieves and Robbers, &c. Maloibus (the old British word) is a Sable thief, because he both male and a male.

M. S. Prior.


The words of this Act are de expeditione Canum existentium in foresta, and therefore in purissimis places destitutam, a man may keep a Halliff 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 leade the Reader to the Test it self being plain: for Saturni et petere fontes, quam sectari rivulos.

Who may keep Ceyponds or other Dogs to hunt, or Ingens, &c. either in a forest, or out of the forest, appeareth by divers statutes.

But if Ceyponds be found running ad noctum, the Forestel 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 Forest.

We find not that any Chapter or Article of Carta de Foresta, both extend to Chases or Parks, but only the 11. Chapter, Quincunque Archiepiscopos, Episcopos Comes vel Baro ad mandatum nostrum transiunt per forestam nostram, &c. which Chapter both not only extend to the Forestes 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 forest before this Act.

1. In respect of the persons, for every Lord of Parliament, be he Spiritual or Temporal, had this privileges besides those that be named in this Chapter, as such Abotts and Bishops, as were Lords of Parliament, and so of Dukes, Marquesses, Viscounts, which were erected and created, afterward being Lords of Parliament have the same privilege also.

2. By reason of the kind of commandment ad mandatum nostrum, faith the Statute, which words have reference to the Writ of Parliament directed to every Lord of Parliament. Ideo vos mandamus, &c. and is a legal commandment, by writ directed generally to each and every Lord of Parliament to appear at the Writs Court of Parliament, &c. to treat de arduis & urgentibus negotiis regni, statum & defensionem regni, & Ecclesiae Anglicanae concernentiis, and to reg create themselves veniendo, and after reading, they may passing by any of the Writs.
The Courts of the Forests.

Laws. Forests, Chases, or Parks, hunt and kill one or two of the Kings Deer. The Lords of Parliament may do it at other times excepted, but by law undo and redeemo, to and from the Parliament.

3. Here is implied that the Lord of Parliament may in the absence of the Forester or Keeper after the blooming of the horn, kill one or two of the Kings Deer, propriis suis canibus, aut arca suo proprio.

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 appears: And in Althia Foresta 6 Eliz. 1st it appears that the Abbot of Peterborough had a right of hunting in the Forest of Rockingham. And this appears 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 (interrata) Mutum sum canum, &c. his Kennel of Hounds, or a composition for the same, which and other things are in the Orcheque called multa.

5. The last conclusion is, that all Canons against the Laws of Customs of the Realm, are void and of none effect.

4. Of the drifts of the Forests, Agitatio Animalium in Foresta.

The drifts of the Forests are laid to be when all the Cattle as well of Commoners as of Strangers are driven by the Officers of the said to some certain pound or place inclosed, and the end thereof is that, the first to be whether those that ought toCommon do Common with such kind of Cattle as by prescription or grant they ought. Secondly, if they Common with such Cattle as they ought, whether they do surcharge or no. Thirdly, if the Cattle 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 days then next after, and to yearly be driven by the Lords, owners, and possessors of the said Forests or Chases, or by the Officers of the said, and by the Constables, Headboroughs, Bayliffs, Burtholders, and Tythingmen, within whole 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 Soveraing Lord the King by every of the said Officers, Bayliffs, Constables, Headboroughs, Burtholders and Tythingmen, as often, and at every time as the said drift shall be omitted, or left undone, or not effectually done within 15 days after the said Feast of St. Michael the Archangel, as is aforesaid. And it shall be also lawful to the Lords, owners and possessors of the said Forests and Chases by their Officers of the said, and by the Constables, Bayliffs, Headboroughs, Burtholders 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.

Out of this Act of Parliament, as to the drift of the Forest or Chase, these conclusions are to be obsered. 1. By what persona 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.
The Courts of the Forests.

The persons that ought to appear before the Justices in Eyre of the Forest, &c. Forests Hen. Com' Lane'.

* 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 For. ret. cap. 4.

Forestar, Virid.


ears of attendance in the forest, and by four men and the Rede of every Tolla within the forest, into that purpose are included under the name of Officers. And if they be in a subject's hands, then either by the owners or possessors of the said Forests, or Chasels, or by such Officers as is before said. 2. At what certain time such drift in forests or chasels is to be made? It appeareth by this Act that it ought to be effectually done yearly within 15 days after the Feast of St. Michael the Archangel. 3. The said drift may be made at other season of time of the year wenever, and as often as they shall think meet and convenient.

4. That Rane Yoles under fifteen handfools high are prohibited to Common in any forest. See the Statute. 5. For Commons, &c. out of any Forest or Chasle, in these woods are included Parliwews and other grounds wherein men have Common, and these are to be driven by the owners and possessors of the same, and by the Constables, Headboroughs, Barstiffs, Bartholders, and Eyriemen, within whose offices, precincts, and limits the said Commons, &c. being out of any forest, or chasle do lie at such times as are aforesaid.

The Statute I n react De Aerts Accipitrum, Elpervorum, Falconum, Aquila


A Foresty by Patent for his life is made Justice in Eyre of the same forest has vice, the Forestship is become void, for these offices be incompatible, because the Forestier is under the correction of the Justice in Eyre, and he cannot judge himself: the same Law is of a Warden of a foeste 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 Swanmore, or of the Eyre, he is under the correction of the Justice in Eyre, and therefore incompatible.

We have been requested to let down what persons and what Officers either that there were, or which have been since the last Eire, and how long lists of Officers, and what number do belong to a Forest, which we cannot better resolve and latitude, than by the Records of the Eires of Forests, and specially by the Writ of Summons of those Eires, 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 Eire of Pickering, with the rank and particular return of the same.

Edwardum Dei gratia Rex Angliae, Dominus Hiberniae, & Dux Aquitaniæ, Vic. Eborum. Summon' per bonus summoniores Archiepiscopal., Episcopos, Abbates, Priorres, Comites, Barones, Militos, & omnes libres tenentes, qui terras seu tenementa habent infra metas Forelæ dileiti confungeini & fidellis nostri Henrici Com' Lane, de Pick' in Com' prædicti, & de qualibet Villæ ejusdem Com' infra metas ejusdem Forelæ existent quator homines & Praepostorum & Forstræ Villarum, & omnes alios, qui coram Justiciar' ad placita Forelæ venire soleant & debent, quod sint apud Pickering die Lunæ proximæ post sef. Sancti Michaelis præx. futurum coram dileiti & fidellis nostri * Richardo de Willoughby, Jo. de Shardelow, Roberto de Hungerford, & Johanne de Hanbury, tribus vel duobus eorum quod ad requisitionem dicit confungeini nostri constitutum justici ad interimandum ut vice ad Placita Forelæ ipsius Comitis in Com' præditi a tempore quo Edmundum nuper Com' Lane pater prædii Henrici, cujus hares ipsa est Placita For. in eadem Forelæ virtute * concessionis fisci per Dominum E. super regem Angliae Avuum nostrum inde factum etiam emisit, auditur & factum praepsit nostri de his quæ ad placita prædii pertinunt. Fac etiam venire coram Justice præditi omnibus Forelar Viridibus & omnes illos qui fuerint Forstrar & Viridar. Forelæ, præditi, in Com' præditi, post ultima placita prædii.
Cap. 73. The Courts of the Forests.


Note, the punctual and direct answer to all the points of the Writ.
The Courts of the Forests. Cap. 73.

Agitatores in le Westward istics Foresta

Johannes Dringe.
Richardus Russell.

Agitatores in le Eastward istics Foresta

Williamus de Rosan.
Willelmus Russel.

Nomina Forestal, mult istics Foresta, et corum qui fuerant Forestal,
istics Foresta, et corum qui fuerunt Viridar, istics Foresta.

Alanus de Newton,

Capital. Forestal. Willelmi de Percheyus unius

Johannes de Wardesdon.

Forestar, de feodo Foresta de Pick in le Westward

ibidem.

Henry de Ripley,


Thomas de Daley.

de feodo Foresta de Pickering.

David de Newton,

Capital. Forestal. Hugon, de Teland For, Custodis Forestal

Thomas de Rippel.

in le Eastward.

Nomina Subforestaliorum Foresta pridie.

Johannes de Harley,

Johannes Mammene,

F.R. Har. Radolph.

Ricardus de Aleynofores,

Johannes Scot,

de Hastings Co.

Willelmu Gomer,

Willelmu Courtman.

de Foresta Isa.

Ricardus de Helmefy.

debis, mult.

Nomina Subforestal, qui fuer. InForesta Is. post ultimum iter, &c.

Galsridus de Harly,

Johannes Rouceby.

Adamus fil. Willelmi,

Robertus de Wigan,


Johannes de Nevil,

Petrus Lilly.

Alanus fil. Rad.

Thomas de Newton.

Bernardus de Bergh, qui obiit, fuit Viridar, in Foresta Isa, et Alexander de

Bergh filius ejus & haeres venit & redidit roulus suos tam de viridi quam
de venatune tanger. Forestar Isam de tempore pridie.

The Law of the Forest is, that if a Werder or, his heir is to bring in the

Kolle of his Antelevos time, which if he do, then the Enter is ut supra.

Adam de Bruis qui obiit, fuit Viridar, in Foresta pridie, et nullus est qui

venit ad Rotul. reddend. Ideo Vis seissi fac, omnia terras & tenementa que

suer. prad. Ade quantus &C. Postea venit Willelmu B. filius ejus & ha-

res & facet finem pro roulis pradiis, et admisitur per 40s. prout patet ex

rotal. de extratis.

If the Werder, alias his lands or the land, and no man bringeth in the

Kolle, then will the land by the law of the Forest be rented by the Sheriff, which

the Werder, but until the Kolle be brought in, and if the Kolle be lost, then

will he make his fine and have his Order the main, and the Enter is, as it next

above.

Ricardus de Shelton, qui obiit, fuit Constabular. castr. prad. & custos istics

Forest. & nullus est qui venit ad rotal. et munimenta ips. Foresta tanger. re-

dend. Ideo venant ejus terr. et tenementa tenentes ad respondendum. &c.
The Courts of the Forests.

If the Warden of the Forest be, and his heir, or Tenant being not in the
Hill, the Warden of the Forest shall allow for the same.

And here it is to be observed, that where the Forest of Pickering was appan-
dant or belonging to the Castle of Pickering, that he that is the Contable of the
Castle is to be 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 Contableship and Wardenship are in this book confounded one with the
other.

Philippus de Monte Gomeri qui sequitur pro Domino Regis, petit, quod Rad-
dolphus Quintin Baldizam cujusdam libere Haga Regis de Arceus necessi,
quid per se, quod Serjantiam Regis Seneschal, Forellae Regis de Canoco, & quod ab ea
dem Serjantiam alienata est sine officio praedecessorum Regis Regnum Angliae
et Radulphus certiss & per licentiam reddat Domino Regi, unde sejum
suum, &c. 

The duty of a Woodward both appear by his name, and by his oath, Nomina
functum non esse rem.

Hill, 13 E. 3, it is thus resolved, Quilibet Woodwardus secundum Altvam Fo-
restae deber portare arbeitum, & non annum & sagittis pro finito suipside ven-
nationis deponent, ab praestandum, tam de vindis quam de venatione. Et videtur
Justic, de & Concilio Regis quod * Capreli Anglice Roos, sunt belit a de War-
renna & non de Forresta, &o quod fujare ala feras.

C Bedellius is An Officer of the Forest, that both stand all the Courts of
the Forest, and both execute the Procs of the Forest, and make all Proclama-
tions as well within the Cones, as without, and is derived of the Baron wood Py-
ter, to call or warn, or of the French wood in Normandy Bedeous, a Baphtist of
Apparito.

A Saller of the Game of the Forest.

C. Met s etuus, fence month, or, defence month, so called, because it is the
fallowing month, when the Doges have Naumes, for the preservation whereof
they ought to be fenced, and defended from hurt and disquiet. It containeth a
month containing 31 days, and begins in the aeth noth day before Epistom-
mer (that is, the Nativity of St. John Baptist), in the beginning of which a Stan-
numote is to be holden, and yearly fifteen days after. See the Statute of Carta
de Foresta, cap. 8. whereof it is enacted, Quod teretium Swannomum teritur in
inatius, dierum ante femur Sanci Johannis Baptistae, quando Agistiores nostrati
convenient pro 1. samitoniis seu constonate befitiana nonitroam.

This wood in Natatorium 10 cemarr, is derived of the French word fansier, that is
to falione, &c. for Does to bring forth, &c.

* Sir Rot. Part, 18 E. 1, fo. 33, no. 37, the punishment of a Forester for doing
trespass in the Forest.

* But if the King or other Lord both pardon a trespass in a Forest, and the offen-
dee at a Justice seat by his learned Counsel plead the same; in the proceeding
thereunto we do observe these things. First, that by the law of the Baron
before any allowance thereof, the Justice charge the Ministers of the Forest to
enquire whether the delinquent hath done any trespass in Verto & Attention after
the Date of the pardon. Secondly, when the pardon is allowed, then the enter-
as, Quod inventi manu captes quod amode non forestac, nono deingit et at pec-
cetere, &c. But if an offender be convicted for trespass in the Forest in hunting,
and adjudged to be fined 20 imprisonments, which fine, though it be paid, yet shall
be fined courtesies for his good hearing, &c. in these words; * Quod amode bene
geret, & in Foresta praeclata non forestac, l. non deingit et at pecetere. Unde
forisactura pro delitto.

* By the violence or non venue of the Justices in Exe at the day of adjourn-
ment, the Justice seat is discontinued, and both and by what means it may be
recordis

16 Ass. p. 60.

Tein. 14 E. 1, in banco Rot. 7. 

Scrips.

C Fos foresta-

Hill, 13 E. 3, Ca-

ram Regem Rot.

fo. 3. Earchi.

8 E. 3. Lit. Pick.

* Ros buinis,

Capreli.
recontinued and resummoned, it appeared in 8 E.3. inmere Pickering.

So 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 they shall, by malice, menaces, or other due shall be constrained to give their verdict of a trespass in the Forest, otherwise than their conscience will clearly inform them. This Law extended to Forests only.

Albeit there be some beasts that have no beasts of Forest, as the Buck, etc., and some beasts and fowles that have no beasts and fowles of Warren, yet if any man hunt or hawk at them within the Forest, it is against the Laws of the Forest, and punishable by the Labours of the Forest, for all manner of hunting or hawking there without warrant is unlawful, because it disquieteth the Beasts of the Forest.

We read that King H. 1. by his Charter granted, Quod Cives Londoniae habeant fugitiones, quas ad fugandum habeat melius, & plenius habeatur. & antecessores suos, feliciter Sime, & Middlesex & Surrey.

The King being feigned a Forest, did grant the Forest to another in fee, the grantee shall have no Forest, because he hath no power to make Justice and Officers of Forests to hold Courts, etc., but yet though it cannot take effect in fee, as a Forest, yet together with the same shall pay as a free Chalze for the Sabages and Conies; so, as hath been said, every Forest is a free Chalze, & quoddam amplius.

Chacea off each communitatum legem, and is not to be guided by the Forest Labors, and to are Parks.

But if the King both 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 Whibye had the Forests of Whibye in the Countey of York, which being not unmeritoriously, hath been the cause that Reader and others have erred. Vide 2 H.7. Kelw. 13, & 14, & 4 E. 3. 55. Malis & cæs. 2 H.6.15. Forede de Esmote 27 H.8. cap.7. 1 E.3, cap.2, 22 E.4, cap.7. 32 H.8.cap.13.

Richardus de Cornubia & c. aliis attac, fuerunt ad respondendem. Johannes de Saldase quare ipsam cœperant, & in præsna detinerunt per decem septimannas apud Castrum de Knaresburg, etc. Richardus & aliis dicit quod Castrum & Honore de Knareburg, cum Foresta de Befaine situ aliquid in se sit, Donominus H. Regis, patria Domini Regis non esse, & co tempore situ talis confestudo in Foresta præsidia, quid quin indicium fuerit pro Forestariis coram Secretario eadem Honoris de transgressione de venatione saecl in cadem Forestam, idem Secretarius talis transferre foero utique fuerit inventa infra eadem libertatem præsidii Honoris licite potestaret arrexisare & imprisonare, & eos in præsna detinerent quosque sufficientes de transgressione, etc. Qui Rex Hen, dedit præsidii, Honorem cum Foresta &c. Richardus fratris suos Com. Cornwall. patria Edmundus Com. Cornwall, qui totum tempore suo usus est, talis libertate arrexaerat, &c. Johannes est contra dictis, nullum tales fuerit confusitutinem arrexaerat malefactors, nisi quando capit fuerant cum manuopere, & hoc ab antiquo tempore, quia idem Com. non habebat eadem Forestiam, fed Chaceam tantum. Et quod tempore Willemi de Stotevill Domini dictae Chaceae qui dedit Regis 3, dictum Chaceam, & tempore dictis Regis 3. & tempore Regis Ipatria, cum dicta Chaceae fuit in manu sua, nunquam arrexaerant aliquos de transgressione in Chaceae illa, nisi illos qui capis fuerant cum manuopere, & hoc esse verificare per patriam, etc. Richardus dicit quod non possit præsidii verificacionem sine præsidii Com. verificare. Irae præcis. sit Vic. quod sum, præsidii Com. &c. Consimile placitum & consimili respondeo in codem Roulo, Item al. in Rot. 163.
Cap. 73. The Courts of the Forests.

King R. z. granted to Thomas Duke of Gloucester in special tail, the Castle of St. Briolac, and the Forezt of Dean, (whereby nothing passed, as hath been said, but a Frank Chace) now by authority of Parliament it is enacted, That the said Duke should hold the said Forest as a Forezt, and to constitute such Justices and Officers, &c. as belong to a Forezt.

But what was the title of the Courts of Cire of Forset in the hands of subjects? We answer, taking one example of the Forezt of Pickering in the hands of Henry Earl of Lancaster; Placita Forezt: Henrici Comitis Lanc. de Pickering ten. aed Pickering coram Ricardo de Wилdoby, Ju. de Shadweloe, Roberto de Haronsford, & Johanne de Hanbury; Justiciar in ad interim, &c. ad placita Forezt, previa in Com. Eboram sicut, die Luna prox. post sextum Sancti Michaelis, Anno regni Regis E. z. post Conquestum 8.

If any felon be committed within the Forezt, it shall be inquired of before the Judges of the Common Law, and doth not belong to the comenance of the Forezt.


Nota, Before Scroop and other Justices in Cire, according to the course of the Common Law, a man claimed to be quit of patronage of the Kings Forezt, and also he claimed in the same Forezt patronage of his tenant pur agitatis; and for that this belonged to the Justices of the Forezt, they would not meddle with it.

And the reason of that is, the Lords of the Statute of Carta de Foresta, cap. 16, Præsententur capitalibus Justiciar ioribus notis de Foresta, cum erant illas venerunt, et coram eis terminatur. So as the termination and ending thereof belongeth to the Chief Justice of the Forezt, by the express words of the Statute. And where the Statute faileth, Coram capitalibus Justiciar ioribus notis, &c. It is to be known, that there is but one Chief Justice of the Forezt on this side Trent, and he is named Justiciar is iterum forestarum, &c. citra Trentum. And there is another Capitalis Justiciar ius, and he is Justiciar is iterum omnium forestarum, &c. ultra Trentum, who commonly is a man of a greater dignity than knowledge in the Laves of the Forezt. And therefore when Justice Saut are to be holden, there be associated to him such as the King shall appoint, who together with him shall determine omnia placita, &c. Foresta, with a Patent of Si non omnes, and a Writ De admittendo, &c. And the Chief Justice of the Forezt, and these associates, are Capitales Jusiciar i Forezae, and named Capitales, in respect of the Heredities and others, that to some purposes (as hath been said) have intestant judicial places.

And fixing, as it hath before appeared, the Forest Laws differ in many cases from the Common Laws of England, it is good reason that it should be determined before men learned in the Laves of the Forest, as in other cases. As if a trespass be done either in Cire or Coletum 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 Choses or Parks of a Subject, so by the Common Law Aeth personalis moritur cum persona.

If a man committed a trespass in a Forest, and pce, by the Forest Law the trespass is dispunishable, agreeable to the rule of the Common Law.

But by the Statute of 19 H. 7. he that shall stand with any beast in any Park, Chase, or Forezt, without license, &e. shall forest or every time he so shall be fined 10s. to any person that will sue for the same by action of debt, whereon no Wager of Law, Protection, or Custom 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 Infractor, cap. Felony.

* If a Forestership or a Balliwick of a Forezt be granted in fee, if it be found out at an Cire for the Forezt, that the grantee hath miswonne in his Balliwick, the Balliwick is forfeited. Nota, The Justices in Cire have power to enquire thereof. In these offices of Foresterships or Balliwicks in fee within a Forezt, albeit they have an absolute fee simple therein, yet are they of such kind that they For these associations and other Writs, see a notable presidem 8 E. 3. 1 in the case of William of Peria, &c. fol. 165.
They cannot be granted without the King's license, and before such license be granted, there goeth out a Writ of Ad quod damnum to the King, if such license shall be.

There be many beasts of the forest by the laws of the foresters of England. The Hart in Summer, the Hind 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 Wilde 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 Marten male and female: Capreolus the Doe, as it appears before, is no Beast of the Forest, but it is a Beast of Chace.

But I find that in 13 E. I. John de Clare was amerced in 100 l. pro uno cervo & ducibus * livris captis in foresta de Pek, and he petitioned to the King in Parliament to be discharged thereof and was denied. Yet I take an Eter is no beast of the Forest: but all hunting in the Forest, as hath been said, is unlawful.

The proceeds of the Hart and Hinde. The Male the first year a Calf, the second a Boket, the third a Spayd, the fourth a Staggard, the fifth a stag, the sixth a hart, and so ever. The Female, the first year a Calf, the second year a Boket's sifter, the third year a Hinde.

The proceeds of the Buck and Doe. The first year a Faton, the second year a Pochet, the third year a Boket, the fourth a Hinde, the fifth a Buck of the first head, the sixth a great Buck.

The proceeds of the Hare, the first year a Leveret, the second a Hare, the third a great Hare. Of the Wilde Boar, a Pigge, a Hogge, a Hogge-straw, a Lose, and after a Sangerl.

The reasons by the Law of the Forest, for the Beasts of the Forest are those. Of the Hart and the Buck, beginning at the feast of St. John Baptist, and onwards Holy Days day. Of the Hinde and Doe, beginning at Holy Days, and continually till Candlemas. Of the Hare, from Christmas and continually till the 1st of March. Of the Hare, from Shrovetide, and lasteth till Midsummer. Of the Boar, from Christmas till Candlemas.

In the Statute of Cawt de forsetta in divers places Venatio significeth Tenison, in French Venaison, and so is effect in Dutch and other Languages. It is called Tenison or Venaison, of the mean whereby the beasts are taken, quomod aut versione capitur, and being hunted are most wholesome. * They are called Veniata of Venai (not Venesay as some term it) because they are gotten by hunting. No beast of the Forest that is salivagam & nocivum is Tenison as the Fox, the Wolf, the Marten, because they be no meat, but carnem eum eff nocivum: A forini, the Boar is no Tenison not on y because he is Animal solivagam & nocivum, but because he is no beast of the Forest, and whatsoever is Tenison must be a beast of the Forest, fed non & converto. In the other fine Animalia gregalis non sunt nocivus, as the Wilde Boar; for naturally the first three years he is Animal gregalis, and after trusting to his own strength, and for the pleasure of man becomes solivagam. He is then called Sangerl, because he is singular, but he is Tenison, to be eaten. The Hare is Tenison al 9 which the poet preferreth before all other.

Inter quadrupedes gloria prima lepus.

So as the Red-owt, the Fallow-owt, the Wilde Boar, and the Hare, are Tenison, underupon these two conclusions in the law of the forest both follow.

First, whatsoever beast of the Forest is for the feed of man is Tenison, and therefore agrasath Vegil, describing a feast,

"Implentur veteris Bacchi, pinguisque ferinae."

They had their belte full of old wine, and fat Tenison. So Tenison was the principal dith of the feast.

2. whatsoever beast of the Forest is not for feed of man is no Tenison. Therefore Capreolus being no beast of the Forest, as hath been said, is not by the law of the forest Tenison, so though it be feed and taken by hunting, it is no Tenison. Nature hath enued the beasts of the Forest which are Tenison with two qualities, swilness, and fear, and their fear enchreathed their swinitis.

Pedibus
Cap. 73. The Courts of the Forests.

De viridi, viridum, &c. Curs. de For.

ists, cap. 2. & 3.

De viridi, viridum, &c. Curs. de For.

ists, cap. 2. & 3.

De viridi, viridum, &c. Curs. de For.

ists, cap. 2. & 3.

De viridi, viridum, &c. Curs. de For.

ists, cap. 2. & 3.

De viridi, viridum, &c. Curs. de For.

ists, cap. 2. & 3.

De viridi, viridum, &c. Curs. de For.

ists, cap. 2. & 3.

De viridi, viridum, &c. Curs. de For.

ists, cap. 2. & 3.

De viridi, viridum, &c. Curs. de For.

ists, cap. 2. & 3.

De viridi, viridum, &c. Curs. de For.

ists, cap. 2. & 3.

De viridi, viridum, &c. Curs. de For.

ists, cap. 2. & 3.

De viridi, viridum, &c. Curs. de For.

ists, cap. 2. & 3.

De viridi, viridum, &c. Curs. de For.

ists, cap. 2. & 3.

De viridi, viridum, &c. Curs. de For.

ists, cap. 2. & 3.

De viridi, viridum, &c. Curs. de For.

ists, cap. 2. & 3.

De viridi, viridum, &c. Curs. de For.

ists, cap. 2. & 3.

De viridi, viridum, &c. Curs. de For.

ists, cap. 2. & 3.

De viridi, viridum, &c. Curs. de For.

ists, cap. 2. & 3.

De viridi, viridum, &c. Curs. de For.

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De viridi, viridum, &c. Curs. de For.
The Courts of the Forests.

Chase without an inclosure in law, that is, by metes and bounds. Metes sunt clausurae Forestrum & Chaeareum: et Foresta est locus in quo fere includuntur, venandis ergo, solis metis. And where by the Statute of 6 El. 1 cap. 18, it is prohibited, good omnes metes Forester sunt integritatem domino regis, that is so to be understood, quod jurisdictionem & imperium, & non quod dominum: for if Rivers or High-ways be bounds, as most commonly they be, yet the King hath no more interest in the Soil, Map, River, or Fishing, than of Right he ought, but only for his jurisdiction of his Forest, which extendeth over the whole Map, Rivers, &c. And where Mills and other houses, tresse, etc., of other men, and such like, be metes and bounds of the Forest, yet thereby the King hath no interest in such Mills, houses, or tresse, etc. And therefore old Welshmen have divided metes, quod jurisdictionem & imperium, into metes inclusive, as Maps, Rivers, &c., and into metes exclusive, as Churches, Church-yards, Chapels, Mills, Houses, Tresses, etc., which bound the Forest, but are excluded from any jurisdiction, and that the said Law of 6 El. 1 is intended only of metes inclusive, if any man kill or hunt any of the Kings Fish in any part of the River, High-way, etc., 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 removable, because they are the inclusion of the Kings Forest, and if either of them be removed, it is punishable by the Ladies of the Forest. This said Forest is only used in this Statute: in ancient perambulations and records you shall read (suchum metas, etc., etc., marches foresta). Metes are fetched from the Saron wood metes, and that of no Grace, which signifieth to divide or bound. Banda a bound, is derived from the Saron wood Banda, signifying a higher thing, as Mills, Houses, Tresses, etc. Marcha is derived from the Saron wood March, now a mark. Said meta accipitur pro quaque termo, limite, etc., fine.

His ego nec metas remuit, nec temporum pono.

And it is to be observed, that a man may have a free Chase as belonging to his Band 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 situating out of the soil, as the Common, and therefore if a man hath a Chase in other mens grounds, and after purchase the grounds, the Chase remained.

After Catter following the Parliament holden in February, Anno 9 H. 2, according to the Statute of Casa de Foresta, High de Nevill, and Brian de Lille were appointed Commissioners to take Inquisitions of the ancient metes and bounds of such Forests, as either H. 2. or any King after had enlarged. And in the reign of H. 3, binges Perambulations, and Description were made, and many other in the Reigns of H. 3, El. 1, El. 2, and E. 3, &c. All which were returned into the Chancery, and remain of Record in the Tower.

The Commons of Herefordshire prayed remedie against the evil customs of the Forest of Easewyton; namely, for taking their Cattle coming thereto unto as forest. 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 fatæ & digna Plantaginis forum generis sententia, wherewith we will conclude, that new opinions of new Anons, or single opinions of Readers grounded upon the Authorities of our Books or Judicial Precedents, are not to be allowed, but the Ladies both good and old, and specially the Statute of Casa de Foresta, and other Statutes, and the relation of the Judges thereupon are to be duly observed, so also the old and just Articles of the charge in Fleta lib. 2, cap. 35, and reject all new inventions without warrant of Law.

Note, the charge, and Articles inquirable by the good old Law of

the Forest, which is worthy to be advisedly read and followed: Vide, Lib. 2, fo. 80. Lib. fo. 137.
Cap. 73. The Courts of the Forests.

Two of the principal and ancient Articles, the one concerning Eunicon, and the other concerning Net, be, First, the chief Forester at the Justice Seat ought to answer for all manner of Eunicon delivered by warrant, or otherwise, in this manner: The twelve Jurors ought to present before the Justices in the number of [sic] that have been killed since the last Sire, and then the chief Forester is to answer by what warrant the same were killed, and such warrants as are lawful ought to be allowed, and such as be unlawfull are to be disallowed. Secondly, the twelve Jurors shall present what Sires, Trees, and other knowes have been felled and delivered out of the forest by the Officers of the same, and they to answer and show 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 mission of the Forest are not to be returned of any jury out of the forest.

The Laws of the forests of England are certain, and established by Authority of Parliament, and not, as in other Countries, changeable and sliding in uncertainty, ad principis placitum.

For the antiquity of such forests within England as we have treated of, the best and forest argument thereof, is, that the forests in England (being in number 69) except the Conquest, and Hampton Court Forest by H. 8. by Authority of Parliament, are as ancient as no Record doth or history both make any mention of any of their creations and beginnings.

Our Ancestors the Saxonis called a Forest Backholt, i. sylva serina, or cervia; 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 Consuetudo of Normandy cap. 10, fo. 17 b. Le Seneschal au Prince visite les forestis & hayes au Prince & tenequant la forêt, &c do as we fetch not our Chief Justice of the forest from Normandy, where the Kings Steward was the Chief Judge of the forest.

And as forests are of great Antiquity, to the care and charge of them was in England always committed to great and honorable Personages, and the like was also in foreign Nations.

Si canimus sylvas, sylva sunt Consulis dignae.

For of ancient time the Consuls of Rome had the government of the Forests. sc. But take Saxonius as he is, Ab opimatisibus datam scribit operam ut Province futuras Consilium minimi negotii, i. sylva colloch decernemurq, 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, temptations of the spirit; but yet these pleasures are accounted most negocii, and of great nature of the forests. Nor shall no princes more venus studio ita corrupti, & corrupti sunt, ut ei omnia polihabebant magni decore. & in ingenti aliquor damnum.

Hic bisia, canes & aves, servi atque caballi,
Dicitum domino sepe vorare nos.

And to say the truth, the Hunter siteth on a Beak, he is compassed about with Beaks, and hunteth and chaseth Beaks: 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 caetero amicitiam videm pro venatione nothai. sc. Perrof John Salisbury speaking of hunting and Hunters faith, In tantum hujus vanitatis infirmae erupere, ut hostes nature fierent conditionis suas immemores, divini judicii contempores, dum in vindex est rerum imaginem dei exquisitus judicis subjugarent, nec veriti sunt hominem pro bestiò perdere quem Unigenitus Dei re demit tanguine suo.
Thus have we wandered in the wilderness of the Laws of the Forest: Wherein we have disagreed from others, we have produced our Authorities, and showed 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 Forester Laws, whereof we were not 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 Judgments in Cire, &c. for we have found many of them mistaken, vouched without warrant, or not understood, which the judicious Reader will soon finde: not to Carta de Foresta, of King Canutes granted (as it is published in print) at a Parliament holten at Winchester, Anno Domini 1016. We conceive that in the year, which was the first year of his reign, he held a Parliament at Winchester, and made divers Laws as well for the honour 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 Laws he never made any mention of this Carta de Foresta, or any these superfluous Laws of the Forest therein contained, which he had such occasion to do, for amongst his other laws at the same Parliament, he made this Law the 77. Chapter in the Saxon Tongue, which is thus translated into Latin: praeterea autem concedo ut in propriis ipsius praelis sibi tam in agris quam in silvis excitentur aliquot, feras autem meas ne venetur cum poena praecipuo. Now in the supposed Carta de Foresta of King Canutes, in the 70 Chapter, it is thus contained: Volo ut omnis liber homo pro libito suo habeat Venerem seu Viridem in planis suis, sine Chasela ramen et devinit omnes meam ubicunque eam habere volueris. 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 Canutes as justly suspected, till we receive better proof of them: whatsoever it be it is of little use, so for 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.

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; whereas (as the judicious Reader may well perceive) we have repeated matter more then method, See Carta de Foresta Anno 9 H. 3. & Carr. 17. Regis Johannis. March, Par. pag. 264.
CAP. LXXIV.

Of Ecclesiastical Courts, anciently called Halimons, (i.e. Holy Courts) Ciregemos, or Chiregemos.

Where some may doubt, how we that profess the Common Law should write of Ecclesiastical Courts, which proceed not by the rules of the Common Lawes. To this we answer by god authority in our Bibles, that the Kings Lawes of this Realm do bound the jurisdiction of Ecclesiastical Courts, and that the King is well apprized of all his Judges which be hath within his Realm, as well spiritual as temporal, as Archbishops, Bishops, and their Dicers, Deans, and other Ministers, which have spiritual jurisdiction. And that the Pope and Collect, or Priest (to say our ancient Bibles) had no jurisdiction within the Realm.

And it is declared by the King, the Lords Spiritual and Temporal, and the Commons in full Parliament, that the Spiritual and Temporal are being used called the Englych Church) always hath been reputed, and also found of that lost, that both for knowledge, integrity, and sufficiency of number it hath been always thought, and is also at this hour sufficient and most of it fell, without the intermedy of any creditor; person or persons, to declare and determine of such doubts and disputes administered and duties as to their minds spiritually both spiritual; for the due administration whereof, to keep them in corruption and finister attention, 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 administered, adjudged, and executed by sundry Judges and ministers of the other part of the said body politic, called the Temporal; and both their authorities and jurisdictions to concern together in the due administration of Justice, the one to help the other.

Of what things the Clergy hath spiritual jurisdiction, is evident in our Bibles, and particularly in Cawdrie's 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 encroaching 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 avoiding whereof, we have composed this Treatise of the Ecclesiastical Courts of the Realm.

The Adversary hath made divers objections against our Archbishops and Bishops made about the beginning of the reign of Dogeth Elisabeth, and by consequence against the Bishops ever since. First, that they were never consecrated according to the Law, because they had not three Bishops at the head of their Consecration, nor was it at all, as was pretended; because they were being Bishops in the reign of E. 6, were deprived in the reign of Dogeth May, and were not (as was pretended) refused before their presence at the Consecration. These pretences being (in extent) but mere 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 S Eliz, cap. 1., are fully answered by the said Statute, and provision made by authority of that Parliament for the establishing of the Archbishops and...

and Bishops both in present and in futurum, in their Ecclesiastical, i.e. in their Bishops, is stated: Archbishops Parker in his Book De antiquitate Britannica Ecclesiae speaking of himself faht, Anno Domini 1559. Cantuar. Episcopus electus est à Decano & capitulo Ecclesiæ Metropoliticae Cantuari. posteaque eodem Anno 17 Decembris adhibitis quatuor Episcopis, &c. lege quadam de hac re lata, requirus conlocatus est. Another objection was made against our Archbishops and Bishops, for that the Commission (being never inrolled) whereby the Bishops made in Queen Mary's time were sepique before the fourth year of the reign of Queen Elizabeth or the successor of the approbation of them cannot be found; g therefore it was pretended that the Archbishops and Bishops made by Queen Elizabeth, living there, should be no lawful Bishops. But by the Statute of 39 Eliz. cap. 8, the Archbishops and Bishops are adjudged lawful, as by the said Act appeared. 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 obibiturus ex inde locum.

Of the Court of Convocation.

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 Durham, Carlile, 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 consisted of two parts, viz., the Upper house, where the Archbishops and Bishops sit, and the Lower house, where the rest do sit.

Anno Domini 686, Augustine assembled in canecall the Brittan Bishops, and held a great Synod.

By what authority assembled. * 31 E. 4, 46.

Anno Domini 687, a Convocation of the Clergy called Magna fer- vanum Dei frequenit.

The Clergy was never assembled; called together at a Convocation but by the Kings *Erit, adjutoria Regis, as Beda faith, ubi supra, Vid. Parl. 18 E. 3, n. 1, Int. leges Inc. Anno Domini 717, a Convocation of the Clergy called Magna ser-

What their jurisdiction was.

Merton cap. 59. 2 1 E. 4, 5, per Vavasor & per. Starkey, Brown & Vavasor. 30 H. 6, 13.

What their jurisdiction was to deal with Heresies, Schismes, and other mischasticall causes and therein they did proceed just a legem divinam & Canones Ecclesiæ. And as they could never assemble together of themselves, but were always called together: * by the Kings *Erit, so were they oftentimes commanded by the Kings *Erit to deal with nothing that concerned the Kings lands of the land, his Crown and dignity, his person or his State or the fate of his Council or Kingdom: as to illustrate this matter to remember one or two examples.

Mandatum est omnibus Episcopis qui conveniunt fort spad Gloucefriam die Sabbathi in frango Sanctæ Katharinee finterum inibiendo, quod scit Baroniae suas (quas de Rege tenent) diligant, nullo modo praefatum concilium tenere de aliquibus quae ad coronam Regis pertinent, vel quod pertinat Regis vel statum suum, vel statum concilli sui contingat. Scitur pro certo quod si fecerint, Rex inde se capiet ad Baroniae suas, Teste Rege, &c.
Cap. 74. Of Ecclesiastical Courts.

Sec the Statute of Carlisle Anno 35 E. I.


De isto negotio iteriurum praedictis Prælatis per literas de credentia, ut in Rotulo clausurum sub eodem datu contenteretur.

Prohibito fæc. Archiepiscopo Cant. & Clero conventur. post festum Sancti Barth. quo nihil attempetum in praedictum Corone.

Vide Cap. Of the High Court of Parliament, pag. 4. & 5. a. foj Procureores Cleri, &c. 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 causation 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 prohibited, that no Canons, Constitution or Doctrines should be made or put in execution within the Realm by authority of the Convocation of the Clergy, which were contrary or repugnant to the Kings Prerogative, or to those, the Customs, Laws, and Statutes of this Realm) is but declaratory of the old Common law.

& Mar. cap. 3. the Prerogatives, and Laws of the Crown saved.

But by the said Act of 25 H. 8. their jurisdiction and power is much limited and restrained concerning their making of new Canons: for they must have both their cause 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 express Proviso, that such Canons as were made before that Act, which be not contrary nor repugnant to the Kings Prerogative, the Laws, Statutes of Customs of the Realm, should be still used and executed as they were before the making of that Act. But before that Act a Dispute between the Clergy at the Convocation do not bind the Clergy before the Kings Royal assent.

King H. 8. was acknowledged Supremet Judge in divers Convocations.

And if any cause shall depend in contentions in any Ecclesiastical Court which may or shall touch the King, his Heirs or Successors, the party pretended or may appeal to the Upper house of Convocation within days after sentence given.

If there be two houses of Convocation, so are there two Prolocutoris, 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 privilege in coming, tarrying, and going, as the great men, and Commons of this Realm, called to the Kings Parliament.

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.

By the Act of 13 Eliz. cap. 12, referring to Canons made by the Clergy of England at a Convocation held at London in Anno Domini 1562, containing 39 Articles of Religion, and ratified as is aforesaid.
The other is by Canons of the Church of England made and ratified by King James, as is also said.

The subscription hereby required is to these Articles.

The first is, that the Kings Majesty under God is the only uprtext Governor of the Realm, and of all other his Highest 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 52 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.

By the Statute of 13 Eliz. the Delinquent is disabled and deprived into fact but the Delinquent against the Canon of King James is to be proceeded withal by the canons of the Church. This statute of 12 is well expounded in Dier 23 Eliz. 377, & lib. 6 to 69, in Grenes case.

And I heard Way Chief Justice in the Kings Bench, * Patch, 23 Eliz. report, that where one Smith subscribed to the said 12 Articles of Religion, with this addition (to 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 nature 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 part might by his own private opinion take some of them to be against the Word of God, and by the 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.

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 be 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.

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 Eliz. cap. 1, and of the Letters Patent thereupon grounded.

Secondly, in what cases the High Commissioners by the said Act of 1 Eliz. cap. 1, and of the Letters Patent to them granted, may impose fine and imprisonment, and in what not.

It is said, by force of the Nature of 1 Eliz. For that before this Act it is agreed, that all Ordinarys and Ecclesiastical Judges whatsoever, ought in all Ecclesiastical causes to have proceeded according to the ceremonies of the Church, and could not in any case have punished any Delinquent by fine or imprisonment, unless they had authority to do so by Act of Parliament. And the Papal authority (as hath been confessed) did never fine or imprison in any case, but ever procured only by Ecclesiastical censures. Being then the State of the question concerning fine and imprisonment depended 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 only 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 both consist of the letter, and of the meaning of the makers of the Act.
Of Ecclesiastical Causes.

the Act of 1 Eliz. both neither by meaning no letter gives 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 being every Act of Parliament upon consideration had of all the parts thereof together, is the best Ex positor of it self, the parts of this Act of 1 Eliz. doe necessarily fall into considera-
tion.

First the Title of the Act is, An Act restoring to the Crown the ancient Juris-
dition, &c. By this nature of the Act both appeare to be an Act of Statute of the Act.

And this is also manifest by the preamble of the Act, where it is said:

Whereas divers good laws were made in the time of the late King Henry the Eighth, for the extinguisement of all forsaia power, and for the restoring unto the Crown of this Realm the ancient rights and Jurisdictions of the same.

From whence this reason is plainly, that being the express 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 punish any party by fine or imprisonment, otherwise then shall be hereafter expressed.

The first clause of the body of the Act (to let in the restitution of the ancient Right and Jurisdiction Ecclesiastical within the Realm) both abolish all forsaia 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 virement of the Ecclesiastical state and persons, and for reformation, order and correction of the same, and of all manner of Errors, Heresies, Schisms, 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 exprested in the Title and preamble, do the following clauses depend; Therefore this clause is especially to be confedered, and therein these things are to be observed.

First, that by this clause Queen Elizabeth was not declared Supreme 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. 7. and 35 H. 8. cap. 7. were repealed) was by this Act made utterly void, and consequently the Act of Kneipal being repealed, the Act of 26 H. 8. cap. 2. and 35 H. 8. cap. 2. were amongst others implicitly 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 Supreme 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 title thereof, as all honours, dignities, preheminences, jurisdictions, &c. to the said dignity of supreme Head belonging, &c. By which title, title, and dignity of supreme Head of the Church of England, King H. 8. his heirs and successors bad and have all Ecclesiastical Jurisdiction whatsoever. So as the next clause reviving the Act of 26 H. 8. &c. whereby Queen Elizabeth, her heirs and successors were supreme Head of the Church of England, and therefrom extending to raise a Commission for the necessity of the time, intended only to redress and answr to the Crown such Jurisdiction in some particular points as by the intent of the Statute, the Commissioners would create, and not to be.
Of Ecclesiastical Courts.

2. Ratio.

elst by this clause that her Majesty should be supreme Head of the Church, for that was provided for before.

Secondly, that no jurisdiction is by this Act restored united to the Crown, but such as before the Act had been, or lawfully might be exercised in use for the reformation, &c. correction, &c. Whereupon it is concluded, that seeing that no man could be fixed in imprisonment by force of any Jurisdiction Ecclesiastical, which had been used, or lawfully might be used before this Act, that therefore by this Act no power of finning and imprisoning in Ecclesiastical causes is given by this Act.

The third observation is, that this clause divideth it fell 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 depose them, that would not depose themselves, and in case of restitution of religion to have a more summary proceeding then by the ordinary and public course of law is required. This branch concerns only Ecclesiastical persons: so as, as necessity did cause this Commission, so it should be exercised but upon necessity; so as never intended that it should be a continual standing Commission, for that should prejudice all the Bishops of England in their Ecclesiastical jurisdiction, and be grievous to the subject to be called up from all the remote parts of the realm where before their own Diocesan they might receive justice at their own doors.

The Act Commission upon these Statutes, whereby about 26 Bishops were deposed, and many others of the Popish Clergy, is said to be took and inrolled it is not, as it ought to have been. And it is affirmed by some that have seen it, that it passed not above twenty sheets of paper copy wise; but none the Higher Commission contains above three hundred sheets of paper. And it is likewise affirmed, that never any High Commission was inrolled (as they all ought to have been) until the Lord Chancellor Egerton's 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, Schismes, abuses, offences, contempsts, 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 united by this Act, but only the visitation of the Ecclesiastical state and persons, and the reformation of the same of all Errors, Heresies, Schismes, abuses, offences, contempsts, and enormities which be criminal.

The Jurisdiction being restored to Queen Elizabeth, her heirs and successors, next and immediately both the Act, &c. give her power to assign and authorize Commissioners to execute this Jurisdiction restored and united to her, for which purpose it is further enacted, That your Highness, your heirs and successors shall have power and authority by virtue 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 Highness, 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 errors, heresies, schismes, abuses, offences, contempsts and enormities, which by any manner Spiritual or Ecclesiastical power, authority, or jurisdiction can or may lawfully be reformed, corrected, restrained or amended.

Out of this clause of assignation it is to be observed, that the substance of the Commission of assignation or deputation is described and put forth both for manner and matter by this clause.
1. That it ought to be under the Great Seal.

2. The Commissioners to be alligned 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 Highness, your heirs and successors, all manner of jurisdiction, &c. and to bill, and reform all such Errors, Heresies, Schismes, abusos, offenses, &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, &c. to punish them by Ecclesiastical censures, and by no warrant or meaning hurt no can punish by fine or imprisonment, so 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 certificated 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. An Excommunication certificated by Commissioners delegates hath been allowed, as it appeared in 23 Eliz. 1st 371. And in many cases Acts of Parliament have adjudged men excommunicated into facts. But if they be mere Laymen, the fault is not in the statute to the law, but in the nomination; and upon Certificature made of the Excommunication according to law, a Significant, 02 Cap. Excom. shall be awarded out of the Chancery, for the taking and impounding of the bodies of such excommunicated persons.

Now after the Letters Patents of the Commission are described, and limited, followed a clause of duration for the Commissioners to keep the places within their Commission in those words:

And that such persons so to be named, &c. after the said Letters Patents to them delivered shall have power and authority by virtue of this Act and the said Letters Patents under your Highness, your heirs and successors to exercise, use and execute all the premises according to the tenor and effect of the said Letters Patents, any matter or cause to the contrary in any wise notwithstanding.

This is a clause of reference merely 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, so first, the words be to exercise, use, and execute all the premises, which words (premises) 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, &c. for there be the express 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 bore by force of some Act of Parliament; therefore by these words in this clause (to execute the premises) the Commissioners cannot find any imprisonment. This word (premises) hath relation these words in the clause of allignation 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 lawfully be reformed, &c. corrected, &c. but no correction before this Act could be by fine or imprisonment, but in certain special cases.
When 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 manner of case 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.

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 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 alleged, that the nature of 1 Eliz. 13th, that the High Commissioners shall execute the premises by virtue of this Act according to their Commission indefinitely without reference to restraint, whereas the words of the Act be, according to the said Letters Patents, the effect whereby was limited and expressed before. And by the authority that is claimed by the Commissioners, who is not not, but that confiscation of lands, forfeiture of goods and chattels, &c. 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 unconveniency to make of these latter words this construction, viz. that the High Commissioners should create and punish all the Crosses, Hordes, Schisms, Offences Abuses, Contemps, and Offences, &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, the did impose and appoint fine and imprisonment, all 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, corporal punishment, loss of member, and of life also, for incontinency, solicitation of chastity, working on a holiday, or any inferior offence punishable by the Ecclesiastical Law, and yet the sentence of the Commissioners in such cases should be both fatal and final, and uncontrollable by any ordinary means, either by Appeal, Cross, Moderata, iudiciorum et alia: 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, &c. as other, 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 fine in cases where an executor or tenant a Legacy, or a Parishioner paid not his Tythes, or the like concerning Mean and Town, the Queen, &c. might have inflicted (as hath been said) what punishment the words, and the High Commissioners can and imprisonment (as it standeth at this day) without limitation of time, be it never to great; or time of imprisonment, be it never so long, and without controlment by any ordinary remedy, be the sentence never to unjust or erroneous, than which nothing could be more absurd and inconvenient. Thus in interpretation in ambiguous semper elicits, ut evitetur inconvenientia et absurditas. But this construction should not be in ambiguous, but directly against the words and meaning of this Act. And fixing it hath been granted that the Papal autho-
Cap. 74. Of Ecclesiastical Courts.

right or any other having Ecclesiastical jurisdiction could not fine and imprisonment before this Act of 1 Eliz. and that it is expressly laid in the preamble of this Act, that where in the reign of King H. 8. divers god's lawes were made as well for the extirpation of foreign authority, as for reducing to the Crown the ancient jurisdictions, &c. by reason whereof the subjects were kept in order, and disburdened of great and intolerable charges and exactions (which were laws being repealed by Queen Mary the said Act both revive and restore.) It followeth that, by the Act of this Act, that it was never the meaning of the makers thereof to extend the said clause to fines and imprisonment the subject for Ecclesiastical causes, and to make him subject to greater confinements, forfeitures, and punishments, where his body before this Act was not subject to imprisonment but upon the King's Writ De excom capiendo, no; 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 cause them of former intolerable charges (as the statute speaks) but by this Act to make them subject to greater and more heayy, pains, punishments, and charges, than ever they were before. And the nature of 27 H. 8. cap. 15. faith, that the Canons, &c. were overmuch onerous to his Highness subjects, but they were never so onerous as this Act should be. But the absolute date of a greater sequentur. We must therefore retive 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 virtue of this Act of 1 Eliz. give any power to the Commissioners to imprison, except it be in certain particular cases, which now fall under consideration. For example. The nature of 1 H. 7. cap. 4. both 1 H. 7. cap. 4. 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 being 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 vitiation of the Ecclesiastical State and persons, and for composition and correction of the same, and of all manner of Causes, Ecclesiastics, &c. And that every Bishop, &c. might punish such offenders by imprisonment according to the said 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 1 Eliz. act itself.

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 was repealed and annulled by a former Act of Parliament, and had no effect 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. both repeal and revive others Acts of Parliament, and therefore shall not be continued 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 to it was adjudged in the Lord Darcy's case in the Kings Bench Patch. 38 Eliz. where the case was, that the Lord of the Manor of Thorp Kirby was amongst other franchises and immunities disfranchised by the Letters Patents of King E. 4. of Purveyance: which Charter for the point of disfranchise of purveyance was annulled by the statute of 27 H. 8. cap. And after the Manor coming to the hands of King E. 6. he by his Letters Patents granted the said Manor to the Lord Dacre and his heirs: and further granted Tott, talia, eadem, hujusmodi &c. consimilib fera, jurisdictiones, manerii, privilege, &c. audit, quanta, qualia, & que, &c. prout aliquis dominus manueri habuit, tenetur, seu gavisus fuit virtus aliquis cartas, doni, seu concessions aut aliquarn literarium potestatem per praetorium regem, aut per aliquam progeniesium surnum accurruntur fact, concessi, seu confirmat, aliqo 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 such
such a general grant had been enacted and confirmed by Act of Parliament, yet had not those general words extended to revive any authority, franchise, privileges, &c. once granted, and which was after, and before the grant repealed or resumed by Act of Parliament unless there had been special words to revive the same, but should extend to other authorities, franchises, and privileges which had not then existed.

And there is a far stronger case reported in 1 H. 7, fo. 12, & 13. By authority of Parliament all prerogatives, prerogatives, franchises, and liberties were given to King H. 7, in tail generally without limitation or lapsing. And the question was, whether the franchises and liberties of Lords and other inferior 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 inferior subject wrong, but the general words were to be intended of such as might be injured without prejudice of the subject; which is a stronger case than this, for besides the prejudice of the inferior party to his jurisdiction and for the subject for taking away his appeal, and drawing him from remote parts to his intolerable charge, where he might receive justice at home, the clause preceding of uniting, and latter particular words to limit and exclude the generality of the former words.

Now that others 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 appears in our Books in cases of far less inconvenience and absurdity.

Pl. Com. in Stowes 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 mischief which they intend to remedy. The Judges of the Law have ever in such cases perused the intents of the meaning of the makers of Acts of Parliament, as they have expounded Acts general in words to be particular, where the intent hath been particular (which are the words of the Book:) and therefore upon that rule it is there adjudged, that where the statute of 7 & 8. is general, if any Receiver or Minister account, &c. receive of any person any summe of money for payment of any fees, &c. shall set 6 s. 8 d. for every penny, that this do not extend according to the generality of the word, to the Receiver of common persons, because those 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 Receivers only: so 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 expelling offences in particular, and the words in the same general sentence, viz. under your Highness, &c. and principally all the causes of the making of this Act do qualify the generality of the words. And yet notwithstanding it was resolved by all the Court in the said case of Strading, 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 redress 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 title 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. fo. 4, & 12. Where statute ought to be expounded 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 where 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, Quumvis lex generaliter loquitur, relinquens tamen eis, ut ceffeante ratione & ipsa cause, cum enim ratio est anima rigorosus ius legem, non videtur legislator id sensisse, quod ratione carere, etiam...
Of Ecclesiastical Courts.

etiam verborum generalitas prima facie alteri studiatur. Being then so many inconveniences against reason, and the meaning of the makers of the Act would follow, it is evident that the generality of the said words in the clause of Migration shall (as they ought) be limited by the clause of restitution, as hath been said. And it agreeth not well with the title of the High Commission to deal in petty and inferior causes. And for the recital of a branch of this Act in the Statute of 8 Eliz. cap. 1. It referred to the Act of primo it fell, and is only in the preamble, and therefore both neither increase nor diminish the same. But albeit they have concurrence and jurisdiction of enormis and heremis causes, according to the original institution, yet cannot they punish the offender in the same by fine or imprisonment, unless the same were punishable by fine or imprisonment before the making of the said Act of 1 Eliz. by some Act of Parliament unrepented at the making of this Act.

But it is said (enormis) is uncertain, Surely in an Act whereof many of the makers are Lay and unlearned men, it hath been expounded by law to be equivalent to enormis, horribile and erodibant. And this appeared by the Statute of 2 E.3. cap. 2 Commission of Dier and Terminer, &c. shall not go out, but where the trespass is horribilis. Now if such Commission be granted to a small cause, a revocation thereof, which is a flat prohibition, both in law, as it appeared in the Register 155, and the word thereof be, Quia non enormis. Lexis. Which word (enormis) in that writ doth express this word [horribile] in the said Act, and there is as great uncertainty in that case upon this word [enormis] to prohibit the Commissioners of Dier 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 horribile, erodibant, &c. extra omnem normam, for that the High Commissioners do claim to send for all degrees of men and women, and out of all the parts of England or Wales, be the place nearer or more remote, &c. But the Commission of Dier 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 supreme and jurisdiction Ecclesiastical as ever king of England had before them, and that had justice 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 Eliz. had never been inserted.

This Act of 1 Eliz. prohibit against them that should by printing, writing, or words, maintain or defend the jurisdiction spiritual of any person Prince, Prince, &c. within this Realm; that every such person being laboriously 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 l. then such person so convicted shall suffer imprisonment one whole year, &c. Now although upon the maintenance of the defence of the Popes Supreme depend so many mischiefs as the principal scope of this and other Acts was utterly to abolish and extingushi the same, and that it is High Treason in the second degree; yet (as how temperately this Act does 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, unless they be laboriously indicted within the space of one half a year. And if any person be imprisoned, and be not indicted to thin half a year, then the person so imprisoned, shall be set at liberty. Now if the party offending in so high and supreme an offence, as the maintaining of the Popes Supreme, 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 of imprisonment, or quantity of these crimes and offences, wherein he was not subject before the making of this Act. But
But if the meaning of the Makers of the Act had been to have inflicted newly upon the subject not only fine and imprisonment, but by the same reason confiscation of goods, forfeiture of lands, may any corporeal punishment, &c. they would not under such heavy 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 laws, to what end were the statutes of 23 Eliz. 2 and 3 Eliz. &c. made against men for obtaining and not coming to Divine service, &c. and why by those Acts is inflicted a penalty, of 20l. the month, and imprisonment 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 confession to escape themselves? And yet absence from Divine service is a mere Ecclesiastical cause, and the like may be said of divers other Acts of Parliament of like nature.

Thus hath this statute been plainly expounded by the parts of the same, according to the natural and genuine sense, and the original institution and jurisdic- tion 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 Queen Eliz. by lining and imprisoning for adultery, fornication, lewdness, adultery, &c. it may be that such fines have been imposed, but, as we be informed, not one of them levied in all the reign of Queen Eliz. by any judicial process 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 Jefferes, Sir Roger Minwood, or Sir William Peryam, Chief Barons of the Exchequer: So as in all the late Queens time (as we be informed) no fine was levied, or any subject in his body, lands or goods charged therewith, which would not have been by so many worthy men assisted with divers other grave and learned Barons permitted to be either levied or written for by the Court, if by law the same ought to have been levied. And the subjects (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 weakness of their Authority) kept the Commission secret, and contrary to law and justice suffered not the same to be inserted in the Chancery, so as the subject lived under an unknown Commission and Authority (as misera est servitus ubi jus est vagum aut inconscrum) until of late the Lord Chancellor (as hath been said)according to law caused the same to be inserted; 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: for the judgments 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 intolerably 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 been made, relieved them according to law and justice.

In Aimers case the whole Court of Exchequer in the late Queens reign, indiscretely 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 concurrence, but ought by the true meaning of the statute of 1 Eliz. to be punished by the Diocesan, which is to be seen of Records.

Alfo in the reign of Queen Eliz, William Taylor Clerk, Parson of Springfield in Essex did implead William Misty Cent, before the High Commissioners for giving unrespectful speeches to the Minister, &c for carrying his Cpsn on Holy days.
dopes, for not suffering the Parson and Parishioners to come through his yard in procession with the perambulation, and not giving them a repast as usually he has done, that he whipped and knocked on the Parsons Bar and, and said he did it to make him measure for his daughters marriage, and many other Articles of life 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 inferior offences, but are to be left to the proper Diocesan, who is to reform the same with less charge and travail in the proper Diocese. And thereupon a Prohibition was granted by the Court of Common pleas, whereby it appeared, 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, between Robert Pool Clerk Parson of Winchestey, and Thomas Gray, to the High Commissioners, for that they held plea for assaulting and lashing violent hands on the said Robert Pool being a Parson, upon open motion and argument by the whole Court.

Hil. 3 Jac, Regis, in Common Banco, between Lyn and Was for promise of a yearly sum in marriage.

* Tin 3 Jac. in Common Banco, between Jeneway Parson of T. in Essex, and Porter for defamation and lashing violent hands on a Clerk.

* And concerning fine and imprisonment. Anno 9. Reg. Eliz. Which was about eight years after the nature of 1 Eliz. Sir James Dier and divers other of the Judges were then living, that were present at the making of the said nature, Thomas Lee an Attorney of the Common pleas, being convicted before the High Commissioners for bearing of a false, 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.

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 convicted before the High Commissioners for urple to answer, &c. was thereupon imprisoned by them, by Habeas Corpus delivered; for that the imprisonment in that case was unlawful.

By Warrant from the High Commissioners in the reign of Queen Eliz, directed to Richard Buttle, Constable of Aldrington in the County of Northampton, for attacking and arresting the body of John Simpson of Aldrington after sale, and bringing his body before the High Commissioners in case of adultery with the wife of Edward Fulle, the Constable being assisted with one William Johnson servant of the said Edward Fulle, the said Constable with Johnson came to a Widow house in Aldrington where the said Simpson was, and the body being open would have at eight of the Clock at night arrested Simpson by the said Warrant, which the said Constable read unto him, notwithstanding the said Simpson resisted him, and in his own defence (and the body) into the said Johnson that came in aid of the said Constable, now the question before the Justices of Wife of that County, (Simpson being in the Soal therein) what his offence was? wherein the doubt rested in this, whether the Constable might lawfully arrest and arrest the body of the said Simpson, (which in law is an imprisonment,) for, if he had lawful authority to arrest him, then the offence was willful murder in killing one that came in aid of a Minster 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 a small offence, which doubt wholly consisted upon construction of the Nature of 1 Eliz, for by the Letters Patent express of authority is given to the High Commissioners to lend for the body of any offender, &c. by Purdon, &c. by Warrant. The matter being weighty, and the said Simpson being by the Commissioners indicted of willful murder, supposing the said Warrant to be lawful, the Justices of Wife thought not good to proceed against him at those Assises, but deferred it till the next Assizes: At what time, after this long time of deliberation,

Grays cafe.
Simile 4 Eliz.
R. 423. in Com. Banco.
The like in the Kings Bench.
Patish 29 Eliz. Rot. 100. & Patish. 41 Eliz. Ibid. Rot. 231.
Tr. 3. Jac. in Com. Banco.
Portors cafe.
Simpson cafe because the Judges of Wife in Northamptonshire, 45 El.
Of Ecclesiastical Courts.

Sagms pag. 133, 135, 137.
Grays cafe.

William Thicknes having the privilege of the Court of Common pleas, had a Habeas Corpus to the Sheriff of London for his body, with the cause, he being under his Custody, who returned that the High Commissioners had committed him to their Custody by force of his Statutes Commission for causes Ecclesiastical, and of the nature in that case provided, for that he was convicted before them of Adultery, and other contempts and enormities appertaining to Ecclesiastical Contumacy. And that case being debated in open Court, he was discharged of his imprisonment, for that by the nature of 1 Eliz they could not imprison him.

By the nature 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 King's 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 King's Highness, &c. which Commission shall be by the King's Highness, &c. to be named or appointed, shall have full power and authority to hear and finally determine such Appeal, and that such judgment 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 little 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 judgment and sentence as the said Commissioners shall make and decree) these general words have these words implicit annexed to them (according to the Ecclesiastical law) it shall be good, effectual, &c. So that in the nature of 1 Eliz. such words are implicit to be ascribed to the said clause, viz. That the High Commissioners shall execute the promises according to the said letters patent by the rule of the Ecclesiastical law; and the High Commission was involved and made public, 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 contemns and exorbitant causes, which if it were pursued would have been great quiet and repose within the Realm.

In the reign of the said late Queen a Prohibition was granted by Sir James Der Chief Justice, and the whole Court of Common pleas, 10 February Anne 2 Eliz, to the High Commissioners for that they did hold plea de Jurisdiction.

And in my Lord Anderstons time in the reign of Queen Elizabeth the Court of Common pleas granted divers Prohibitions, as it appeared before, and two of special note between Baker and Broughton, and another between Blackheath and the Bishop of Gloucester. And in my Lord Gandy's time who succeeded the Lord Anderson and enjoined his place but a short time, pet 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.

And we will conclude with the confession of the Lord Archbishop Ely, croft.
crost 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 contemptes, and another for abusing a Bishop of this Kingdom by threatening speeche, and sundry railing teame, 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 Habecas 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.

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 Habecas Corpus, the parties that were fined and imprisoned by the High Commissioners in case of Adultery and lewdness of a Bishop, &c. were by the Law discharged, for that the fining and imprisonment of them was unlawful.

And there were the resolutions of the whole Court of Common Pleas Patch, and Jacob Regis, upon open conference and mature deliberation, and accordingly they proceeded.

The Prerogative Court of the Archbishop of Canterbury.

This is the Court wherein all Testaments be proved, and all Administrations granted, where the party being within his Province hath bona notabilia, in some other Diocese than where he dieth, which regularly is to be to the value of 5 l. but in the Dioceses of London it is 10 l. by composition.

The Bishops, Lords and Commons assembled 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. Pat. 11 H. 5. m. 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. m. 18, the last Will and Executive of H. 5. 10 H. 6. m. 32.

When the King is made an Executor of the last Will and Testament of any other, the King both appoint certain persons to take the execution of the Will upon them (against whom such as have cause of suit may bring their Actio) and appointed other to take the Account. See Rot. Pat. 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 then upon the King appointed Robert Rollebor, Clerk, Bishop of the great Wardrobe, John Merston and Richard Alfred Esquire, to execute the said Will by the oversight of the Cardinal, the Duke of Gloucester, and the Bishop of Lincolne, two of them to whom they should account.

The Probate of every Bishops Testament or granting of Administration of his goods, although he hath not goods but within his own jurisdiction, both belong to the Archbishop.

The like Court the Archbishop of York hath.

From this Court the Appeal is to the King in Chancery. How touching the jurisdiction of this Court, and the Constipacies of Bishops, &c. such points as have been judicially resolved, are necessary to be remembered, both for the safety of the Judge, and the benefit of the party interested.
If a man die intestate having bona nominis in divers Dioceses, the Judge of this Court hath used to affect a convenient turn to be impioed in pios usus, but with these limitations following: It must be after Administration granted, and the Inventories made and returned, to the end the Estate of the Intestate may be known. 2. The Administrator before any aseaebment 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 success and relief there is great piety. 3. The aseaebment 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 to take any thing therefor to his own use, nor for the aseaebment thereof; or entering the publick Act, and if so be, it is aseaebtion.

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 aseaebtion, and fined at twenty thousand pounds, imprisoned, and declared never after to bear an office, as by the sentence appeared. 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 aseaebments in pios usus, upon granting of Administrations, as for commutation of penance, may serve for the direction of all the Administrators and Judges in Ecclesiastical Courts in England.

There was an Act made Anno 21 H. 8. concerning taxes for probate of Last Wills and Testaments, and granting of Administrations. In the case of James Rowie Commisary of the Arch-deacon of Huntington, in an information aganist him by Edmond Neale, for aseaebtion upon the said Statute of 21 H. 8, whereunto he pleased 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, Wardbton, Fester 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 Executors request any to ingross the Testament, he must agree with him, that he do 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 Commisary ought not to grant 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 Registering, Sealing, Writing, Praising, making of Inventories, &c. which word [writing] extends not to this case. Secondly, the word 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 beneficinal Lady should be illadvised and bain: so for the Ordinary or his Commisary 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 bain. And the Ordinary, if he may, may annex the Probate to the Testament it self, as being he can have no other fee than is in the Nature, it may be hereafter he will do: but for the miswriting of the Act of 21 H. 8, in the Information, Curia advisari 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.
The Court of the Archbishops of the Archbishop of Canterbury.

This Court is called Curia de Archibus, and hath been anciently holden in Bow Church of London. For I read of it in a Record of a Prohibition Termino Hl coram Rege Anno 7 E. 1. Rot. 8. in Curia Christianissimi coram Decano de Arcibus London. Of Bow Church in London, where the Court hath continually been kept, and which and 13 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.

The Judge of this Court is called the Deane of the Archbishops, unto whose officiale 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 Dioceses of any other, unless 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 Archbbs Anno of the Archbishop of Canterbury; and from this Court of the Archbbs the Appeal is to the King in Chancery by the said Act of 25 H. 8.

The Court of Audience. Curia Audientia Cantuariens.

This Court is kept by the Archbishop in his Palace, and medleth not with any matter between 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 Gelationship of the Spiritualities sede vacante of Bishops, admission and institution to Benefices, dispensing with banns of matrimony, and such like.

The Court of the Faculties.

This is also a Court, although it holdeth no plea of controversy (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 to marry every Diocese 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 signifies a dispensation. So as facultates, (in this sense) dispensations & indults are synonyma.

This authority was raised and given to the Archbishop of Canterbury by the Statute of 23 H. 8 cap. 21. whereby authority is given to the Archbishop and his successors to grant Dispensations, faculties, &c. by himself or his Suffragans, and substantial Communion 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. This branch of this Act you shall find pleased Lib. plac. Co. pag. 512, 513.

Concerning the power of the Archbishop to grant Dispensations to any to eat flesh on Fridays, Saturdays, Ember days, 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 37 Jac. cap. 28, and expressly by the Statute of 3 Car. cap. 4.

Hil. 7 E. 3. coram Rege Rot. 8.

VI. 1 H. 8. cap. 16

24 H. 8. cap. 12.

1 Eliz. cap. 1.

1 Eliz. cap. 19.

2 H. 8. cap. 9.

5 Eliz. cap. 45.

5 Eliz. cap. 5.

35 Eliz. cap. 5.

11 Eliz. cap. 11.

37 Eliz. cap. 13.

5 Caroli cap. 3.

Vid. 35 Eliz. c. 7.

Curia
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.

The Consistory Court of every Archbishop and Bishop of every Diocese in Ecclesiastical causes is held before his Chancellor in his Cathedral Church; or before his Commissary in places of the Dioceses far remote and distant from the Bishops Consistory, so as the Chancellor cannot call them to the Consistory, without great travail and version: and he is called Commissaries foraneans. From these the Appeal is to the Archbishop of either Province respectively: when Consistories of Archbishops and Bishops began within this Realm, so before in the Chapter of the Town of the Sheriff.

It appeareth by many Records in the reigns of H. 3, and E. r, (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 King's license. The Bishops that they might freely make their Wills, pleased to give to the King after their decease respectively for ever by things. 1. Their best Horses and Plate with Bible and Tabbard. 2. A Cloak with a Cape. 3. One Cup with a Cover. 4. One Bacon and Chaver. 5. One Ring of Gold. 6. His Paven and Hounds. For these a Writ issued out of the Exchequer after the decease of every Bishop: For example: Res., &c. Viz. Eborum, Præcipitam tibi, quod non omit propter aliquam libertatem, quin eiam ingræf & dirimem omnes executores testamenti & ultimæ voluntatis reverendissimi in Christo patris Matthias nuper Archiepiscopi Eborum defuncti, ac administratorem & occupatorem honorum & cattalorum quæ fueri dicti nuper Archiepiscopi, necnon hæredi & tenent terrarum & tenementorum quæ nuper suæ fueri per omnes terras & cattalas sua in balliva tua. In quod nec ipsi nec aliquis per ius ad ea man appos, donec al' inde tibi præceperimus. Et quod de eisibus earumdem terrarum nobis respondendis, & quod habebas corpora eorum cum Barohnibus de Scaccario nostrum apud Welfm à la Paîche in tres septimanas ad respondendum nobis de uno oppimo quoque five palfrodo cum cello & fiam. Una clamiyde five coca cum capella. Uno cipho cum cooperatorio. Uno pelle cum levaratorio five aquar & uno annulo aureo, nec non & mutam canum quæ nuper fueri ejsipem nuper Archiepiscopi tempore mortis suæ; & que ad nos ratione prorrogativa nostræ spectante & pertinent & de prezzo five valor inde, unde nobis nondum eft respondi. Et habebas ibi tunc nomina executorum & aliorum prædict & hoc Breve.

The most ancient of this kind that we find and remember (but certainly there were such Writts before) is inter Memorandum de Scaccario Anno 2 E. 2, the Bishop of Bath and Wells caele. Tr. 36 E. 3, ibid. Inter comia. The Bishop of Chester's caele. Hil. 5 E. 4, ibid. adjuge upon demnerree, that the duty being to the King after the decease of every Bishop. It extended to an Archbischop, the Archbishop of York's caele, for every Archbishop is a Bishop. It is sometimes called mulus ur, mulctura de Episcopis, sometime monnori, &c. The King by vertue of twelve recovered ten thousand Marks against the Bishop of Norwich so that he prosecuted against the Abbot of E. Edmonds Bury to appear before him against the kings prohibition, fo which it was adjugeed that his Tenamoyalties should be seiled, and his body taken.

Upon consideration had of the Statutes of 3 R. 2. 7 H. 4. I H. 5. & Rot.Parl. 6 H. 4. m. 48. 8 & H. 6. m. 29. If an Alien or Stranger be not presented to a Benefice, the Bishop ought not to admit him, but may lawfully refuse him; which we have added, for that the Abjudgements of late Impessions may deselve pon.
The Court of the Arch-deacon, or his Commisary,

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-deanry. And from him the Appeal is to the Diocesan. He is called Oculus Episcopi.

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 Wool, to be worn as Dodos Hoods be upon their shoulders, with four Crosses woven into it, &c. the form and colours thereof you may see in the Book De antiquitate Britanniae Ecclesiae pag. 1. for a Pall is the Cloth belonging to the See of Canterbury, and therefore expressed there and commonly in other places.

Palla est velatis qua Altare cooperitur, viz. ut lineas annus consecratus qui super Altare ponitur, super quem extenditur Corporale.

The Clerge petitioned in Parliament, that all every Consultation conditional, the Dominer may of himself take upon him the true understanding thereof, and therein proceed accordingly.

Whereunto the Kings answer was, That the King cannot depart with his right, but to yield to his Subjects according to Law. Nota bene, & sude bene.

The Court of Delegates, and consequently of Appeals.

It is so vulgarly called, because these Delegates do sit by force of the King's Commission under the Great Seal upon an Appeal to the King in the Court of Chancery in these Causes. 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 maritime by the order of the Civil Law. And these Commissioners are called Delegates, because they are delegated by the King's Commission for these purposes.

Note 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, Matrimonial, &c. from the Arch-deacon or his Official, if the matter be there commenced, to the Bishop of the Diocese, and from the Bishop Diocesan to his Commisary in such case, or if the matter be there commenced, within fifteen days after sentence given, to the Archbishops of the Province, and no further.

Item, From the Archdeacon or Commisary of the Archbishop, if the matter be there commenced within fifteen days, &c. to the Audience of Archde of the said Archbishops: and from thence within other fifteen days, &c. to the Archbishops himself, and no further. And if the case be commenced before the Archbishop, then to be there definitely determined without further appeal.

Item, Where the matter toucheth the King, the Appeal within fifteen days to be

Appeals Anno

See infra, this is altered by the House of 25 H. 8. in the next p.
be made to the higher Convocation house of that province, and no further, but finally to be there determined.

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 2.4 H. 8. in the three Causes aforesaid; And one further degree in Appeal for all manner of Causes is given, viz. from the Archbishops Court to the King in his Chancery, where a Commission shall be abridged for the determination of the said Appeal, and from thence no further.

Item, that persons exempt shall likewise pursue their Appeal in the Chancery, as supra, and not to the Archbishop.

Note, in case where a sentence is given by Commissioners delegates by the Prince, as by the late Visits, no Eliz. the party grieved appealing, such Appeal is out of the Overy prescribed by the said Statutes, and the Prince in that case may grant a new Commission to others to determine that Appeal. Et hoc fuit per lipsionem del plurorum des Justices in le cas de Goodman depri \[540\]
m of the Deane of Wells.

Rora, Stephen Gardener Everesque de Winton, fuit deprive al Lamberth per Com- mision del Roy E. & fuit a 10 persons proceeding fur cee ex officio merio mixto vel promoto omni appellacione remota summanate de plano, abique omni forma & figurà judicio, sola falsi veritate incepta.

Et vide Mich. 3 & 4 Eliz. Coveney President del Novel Colledge in Oxon, deprive per le Everesque de Winton, Visitor del dit Colledge, & exempt de tout juridiction ordinary fait appeale al Roy in son Chancery, & Commission illonque grant a A Browne & Wellington Justices, qui fuerat conference ove autres Justices & Civilians, refolere que le appeale ne gisit, ne scom auter remedie per le appellant pur cee que celi case fuit horsdit Statute de 24 & 25 H. 8. car celi deprivation et occid. temporal, & come per ley prov. Ex quo sequitur, que uni affie gisit, &c.

Nota, in appelli per Doctorem Lewes ‘Judic’ Admiral & all, &c. Fozalnach as an Appeal is a natural defence, it cannot be taken away by any Prince of 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 (appellations 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 (appellations remota) hath these 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 of further processes 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.

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 Subject, and so if the cause of the appeal be just and lawful, he ought to receive and res- boke all mean Acts done after the said appeal in prejudice of the appellant. Thus far the Report of my Lord Dier truly translated.

* At the Parliament helden at Clarenendon called affin de Clarenndon 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 appellatas ad dominum Papam. Rex se tuit appellas ad Papam in causa Baffardiz, ut contra dignitatem Regis de Consilio ignoto (the Secord) speaking in the person of the King) magnatum & fidem nobis asistent, vosis mandamus, finiter injun- gentes quatenus non oblitante appellazione praemissa non differatis pro eo sen- tentiam, &c. So as the First Article of the Statute of 25 H. 8. concerning the prob.
Cap. 74. Of Ecclesiastical Courts.

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 See of Rome out of England was by Anselm Bishop of Canterbury, in the reign of William Rufus, and yet it took no effect.

See 8 Eliz. cap. 5. an appeal in Civil and Maritime causes before the Lord Admiral, &c. a sentence before Commissioners delegates is final.

See 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.

See Rot. Cl. Anno 30 H. 3. part 2. m. 15. de Appellatione pro Rege faci' in electione Abbatiae de Shaftesbury.

The Court of the Commissioners of Review ad Revidendum.

Although the said Acts of 24. H. 8. and 35. H. 3. 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 revidendum, and such authority as the Pope had, claiming as supreme Head, both of right belong to the Crown, and is anerred therefore by the Statutes of 26. H. 8. cap. 1. and 1 Eliz. cap. 1. And so it was resold in the Kings Bench Trin. 39 Eliz. where the case was, that sentence being given in an Ecclesiastical cause in the Country, the party griev'd 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 35. H. 3. 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 revidendum, the sentence of the Delegates. And upon this matter a Prohibition was passed 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 aforesaid, was resolved to be lawfully granted. In this case 3 being then the Queen's Attorney, was of Counsel to maintain the Queen's power. And preents were cited in this Court in Michelots case, Anno 39 Eliz. and in Goodmans case, and Huets case, in 39 Eliz. also. See the Statute of 8 Eliz. cap. 5. and observe like words in that Statute, ut supra.

Upon a sentence given by the High Commissioners, a Commission of Review may be granted to, and for the party griev'd, as by an express clause within that Commission appeared. And if no such clause had been therein, yet a Commission of Review might have been granted: Quia hic dictum communicatis aquis fluminibus cumulative, non privativum; sic Rex subditus suis jurisdictionem communicat in causis Ecclesiasticis vigore Statuti in hujusmodi causa editi & provit cumulative, non privativum, by construction upon that Act.

Le Court des Conservatores des privilèges de St. Johns de Jerusalem, Cc.

There were two Courts holden cocom Conservatoribis privilegiorum, the one Hospitallerorum, and another Templariorum. Of those jurisdiction, and of their restraint to grant any general Citations prulquam expressum superst re

The High Commission.

14 H. 8. cap. 12.


Rot. Claus. f E. 1. m. 6.


Anno dom. 169.

W. W. 1. cap. 43.

fieri debet citatio, et si viderint hujusmodi conservatores quod petatur citatio de aliquo cujus cognitio pecuniar ad forum regium, hujusmodi conservatores nec citationes faciant nec cognoscant, as by the Statue of W. 2, appears.

See the Second part of the Institutes, the Exposition upon that Statute. The Templars were dissolved in 4 E. 2. and the Hospitallers in 32 H. 8. so as these Courts are determined.

Now for a conclusion concerning England. I have referred to (as somewhat for) the honour, a supreme Estate of both the Relatives of our Sovereign 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 gratefully and strengtheneth all the rest.

By the whole Parliament of 34 H. 8. wherein, besides, the Archbishops and Bishops of the Realm, there were 29 Abbots and Priests Lords of Parliament: It was resolved, and so declared by an Ac, 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.

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 histoy or Chronicle both not affirm the same.

As to the first I answer: that one Act of Parliament is of itself ominous, being a proof of the unalterable and highest nature, but this is not the only: for to 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 far at all times, that it hath been in no Earthly Subjection, but immediately subject to God in all things touching the regality of the same Crown, and to no other.

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.

And long before, these by the ancient Law of the Crown of England, were due to the King. Omnis quidem sub reges, & ipsa sub nullo, sed tantum sub Deo. (Et ibidem paulo post codem numero) Ipse autem rex non debet esse sub homine sed sub Deo, &c.

And therewith agræth the Law before the Conquest. Rex autem, quia Vicarius summí regis est, ad hoc est constitutus, ut regnum terræ, & populum domini, & super omnia manantiam veneretur Ecclesiæm ejus & regat, & ab injustis defendat, & maleficos ab eo evellat, & defuntur, & penitus desperat.

And long before that Anno 169. à passione Christi dominus Elutharius Papa Lucio regi Britanniae scriptum, ad petitionem regis & procerum regni Britanniae, Petitis á nobis leges Romanæ & Caesaris vobis transmittit, quibus in regno Britanniae uti voluistis: Leges Romanas & Caesaris semper reprobare potestis, legem Dei nequeant. Sæculeps enim nuper misteria divina in regno Britanniae legem & fidem Christi, habetis penes vos in regno utranque paginam, ex illis Dei gratia per consilium regni veluti sume legem, & per illam Dei patientia veritatem regis Britanniae regnum, Vicarium vero Dei estis in regno, &c. and higher I cannot go.

And by the law it is to be observed; in the several grants by Abbots and Bishops made to King E. 4. they severally style him by these very words, Supremus Dominus nostrer E. 4. Rex.

And by these other Acts of Parliament, viz. by the Statute of 25 H. 8. cap. 17, 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 man 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 sufficiency 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 Laws of any torear Prince, Potentate or Prelate, but as to the customned and ancient Laws of this Realm originally established as Laws of the same, by the said suffraence, consent and custome, and none otherwise.

And by the Statutes of 25 H.8. cap. 21. 1 El. cap. 1., 1 Jac. cap. 1., and 1 Jac. cap. 1., the Crown of this kingdom is affirmed to be an Imperial Crown. As to the second: I might answer, * that Le Cour de Parliament est de retre- grand, honor & justice, de que nul home doit imaginer chose dishonorable. And with the Doctors and Student upon the Statute of 35 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.

But to be short, King Edgar stiled and subscribed himself in his Charter, Basilicus, Imperator & Dominus, which you may read in the Preface to the Fourth part of my Reports. Vide Rot. Pat. 1 E.4. parte 6, m. 23.

Edward commonly called St. Edward son of King Edgar in a Charter which he made to the Abbey of Ramsey (which I have) stiled himself, Ego Edwardus totius Albionis Dei moderatae gubernatione basilicus.

Another Charter of King Edwine to the Abbey of Crowland; intituled, carta regis Edwini filii Regis Edmundi fiosis regis Edgari de terris in Jeccheles, Where in he is stiled Edwine Anglorum rex et totius Britanniae tellarius 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 Superem, such a one is our Sovereign Lady Elizabeth by the grace of God Queen of England, France and Ireland, which Sovereign Queen holdeth her Empire and Dominions in her people and Subjects immediately of the Lord of Heaven and Earth, without and other mean signify or attendance of corporal or bodily service or allegiance to any other in the Prince or Potentate, manage the head of either her fair vassals or intendants and homedom vassallous vassals, and also from her sentence (the and we all her faithful and loyal Subjects acknowledging to her estate no Superior) with no Appeal.

There is also a King, and he a Homager or Feudatory to the State and Sajesty of another King as to his superior Lord, &c. As that of Navar and Portugal to the King of Castell: the Kingdome of Gramado and Leon to Aragon; the Kingdome of Lombardy, Sicill, Naples, and Bohemia to the sacred Empire; the old kingdom of Burgundy, and now the late created title of the King of Arles, to the King of the Frenchmen, and so forth of the rest.

The King which is Superem and Imperial is equivalent within his Land to the power and authority that Caesar 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 signify the perfection and greatness of their estate; but to the other Kings homagers a Crown not elevated is due. And that we may (as that is) both with reverence and dutiful fear discern and judge the office and function of our Sovereign to be most holy and sacred; let us see with what honors a Sovereign King (such a one as is the Sajesty) is intollated and made crounated to his subjects, first, what great Sajesty, honor, power, and grace is intended by setting a Crown upon her head, so in the reverent and mystical Nation of Coronation, the he is first anointed, then bled, after that consecrated, to signify 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 Crownset on her head is called triumphant; and it is of gold to signify her excellent Sajesty; it is called triumphant, by reason that the like Crown in fashion and form was given the Emperors and Captains of the Romans in their triumphs over Kings and Nations. This Crown triumphant is most due to her excellent Sajesty ever.
by the strict course of laws of Arms, since that her Ancestors had triumphed ove
many Kings and mighty people, as H. r. over five Kings of Ireland; E. r. tri
umphed over the Scottish and Welsh Nations; E. s. and H. s. both of them ove
France. In the triumphant Crown of our Sovereign Lady there be placed (not
only for) the ornament of her regal Diadem, but also to signify the Prince
bishops of a King) twelve Gems or Stones of precious essent.
And so, this Kingdom of England, the other part of the Relative, hear what
an ancient Poet hath said,

Anglia gens torus, & fertilia angularis orbis:
Insula pravilve qua toto viex egret orbce,
Et cujus totus indiget orbis ope.
Anglia plena jocis, gens liberis & apta jocari,
Liberis gens, cui libera mens, & libera lingua;
Sed lingua melior liberisque manus.

The Answer to certain Objections against the Kings Stile of
Defender of the Faith.

This Bull you may see in Speed's Chronicle, p. 79-
na. 41. Anno Dom. 1531.
35 H. 8. See Lie-
ect. Cherub.
Bullar. tom. 3.
pag. 619.

And where some do object that the King our Sovereign Lord ought not de
jure to enjoy the title and Stile of Defender of the Faith, Defender of the Faith; for (as
they) Pope Leo decrees, Anno Pontificatus sui, by his Bull granted the same to
King H. 8. & potestas suos. Well, venias & quocumque, dicis, a Deo off. But they
see that by the Bull of Pope Paul the third, against King H. 8. upon his sup-
plection of the letter houses of Religion in Anno 27 H. 8. he did not only bestow
of him of this stile, 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 confess also that
by colour of that Bull. Pope July the third in his Bull to King Philip and Queen
Mary, in his Summation in Christi filii nostri Philippo regi & Maria Regina illius, wherein he omitted the title of Defender of the Faith: but
before the Popes Bull, which (as it seemeth) is countermandable at his pleasure,
the King hath a later right thereunto to this title, for by the full consent of all the
Popes Spiritual and Temporal, and the Commons assembled in Parliament,
and by Authority of the same, in Anno 35 H. 8. it is eneared, That all his Se-
jurates Subjects should from thenceforth accept and take his Sovereign title as
it is declared and set forth in manner and form following, that is to say, in the
Latin tongue by these words: Henricus edarius Dei gratia Anglorum, Francarum, &
Hiberniae Rex, hic Duci Defender, & in terra Ecclesiae Anglicae & Hiberniae imper-
ium 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 supreme head: and that
the said title should be from thenceforth by authority aforesaid united & annexed
to the Crown of his highness realm of England. Whereas 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 title and Stile of the Crown
without question remained of force uncreated, and accordingly Queen Mary in
all her several Sessions of Parliament before her marriage, & after her marriage,
and King Philip used the title and Stile of Defender of the Faith in all their
Parliaments, Letters Patent, &c. according to the said Act of 35 H. 8. and by
the way she used the title also of Supremum Capit in the second Session of her
Parliament in the first year of her reign. And by the rejection of the Judges
in anno 1 Mar., it appeared that the Statutes of 26 H. 8. cap. 1. & 35 H. 8. cap. 3,
concerning the title of the King remains in force, for thereupon did the question
depend: so as albeit Pope July in his Bull denounced not to give King Ph. and
Queen Mary their title of Defender of the faith, yet both the before, and both of
them after their marriage, according to their right take it upon them notwithstanding
the changing Bull of Pope Paul the third. Likewise, all the Kings and
Queens.
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.

2. That one Religion and Service of God is held and celebrated by both.

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 agreements between them, which evidently appeareth by many proofs. And that, the Laws of Scotland are divided as the Laws of England be into the Common Laws, 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.

The second Book is called Quaestum Attachamenti, because it beginneth with those two words.

The first Book both in substance agree with our * Glanvil, and most commonly de verbo in verbum, and many times our Glanvil is cited therein by special name.

Common Pleas Act 1st. 1654. 1 & 2 Ph. & Mar. Of whom hear what Hecaton faith Anno Dom. 1st. 1654. (Regn. 4, 5, 6, 7) Henricus Rex Anglorum pater constituit Raulphum de Glanville summum Justici. Henricus Anglorum, quo imperium conside sunt leges subiectae sua Anglicorum voce vocatur. Thus Frederick lived in the reign of N. S. and died in the time of King Jafa. See Pl. Com. 36, p. per Cali. in Epist. to the Eighth Book of Reports.

Secondly, the Crown of Scotland is descendable to the Daughter of that King male where there is no 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 initiato 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 met, the King or his Chancellor; and the Earl of being the dates of calling them together. But there of later times the Lords Spiritual do choose eight Temporal Lords, and the Lords Temporal all eight Spiritual Lords. These sit on make choice of eight chosen for the County, and eight of Cities and Burghs, in all thirty two. But whatsoever is agreed upon them, the King doth allow or decline by moving of his Majestates.

Fourthly, they have the same degrees of Nobility, as Dukes, Earls, Viscounts, Barons, &c.

Fifthly, they have the same great Officers, as Chancellor, that keepeth the Great Seal, Lords Treasurer, Lord Privy Seal, Secretary, &c.
Sixthly, and the same Ministers of Justice, as Sheriffs, Constables,
Seventhly, the same laws for the most part quarto modo appropriated to
England, viz. 1. Tenant by the curtesy, because they had the same laws that England had.
Eighthly, the like Writers, Brevia, as de Recho, Allis of Novel Dilieux, Mor-
danc. De gard, De Ideot, inquiring. De divina fac, Replegari, Attachm, &c.
Sixthly, they agree with Magna Carta concerning Lordships, &c.
Tenthly, with Carta de foresta cap. 11. for it is lawful for Bishops, Earls, and
Barons coming to returning through the Kings Jusicia at the Kings command to kill one or two Beasts in the light of the Forest, 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 held by Knights service per antiquis
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 appe-
areth in the tab Leves of Regim Majestatem, & quoniam anachronia, &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 Gades of both Kingdoms, as
Oerelium. 1. the Court of Water and Zon, Fulus mulcierat, Marcham, Se-
pliath, &c. Neppler, Jad exmena, &c. Marchium 1; Mahemum, Murnum 1; Mur-
 charms, Chanceley, Mote, Mitercordia, Meffagium, Flightward, Mederam,
Remanere, Minueram, Recognitio per Affian, Pipowdres, Pannagum, Ora, Non-
dayme, Soc 1. Sok, Ser jentia, grand Serjeanty, puyt Serjeanty, Sector, a Sut-
ter, Sheriffs of inheritance there, the Sheriffs Court of County Court, Toll,
Turbellum 1. Tumebillum, Thomas, Soccage, Burgacy, Servicium militare, Re-
lief 1. Reliefe, Them 1. Temere, Thehebote, In libera Elecromyna, Terra, Domin-
cales, Liberum tenementum, Vidiare dueillum, Warrena, 02 Varenas, Valfavores
02 Vavlores, Thaif, Stray, Castievane, Veredichum, Vicarii, Infanthief,
Destaingebt, Estelavpy, Estlawd Justice in Cir, Wreck of the Sea, Con-
ther, Vicenrom, Haernock, Huda tenez, Bovata terum, Herion 1. Hereged, Hau-
tenium 1. Huecum, Ugratorian, Forrefaliera, a Calthe, falsifying of domus 02
recovvy, Quatremen, Felonia, Foodum, Domage, Feally, Estoverreum, essonion,
enuria pars, Disparagement, Disselvome, Disclamer, Scaccerina, Collectivism,
Champerie, Maremens, Avera, Castilla, Bote, Bladovite, Grand Allis, Allis
of novel disselin, Varettoze, A. dabit, Adjournament, Responsals, Attorneys,
and many others.
There was an Episcopacy 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 Glaisco these.
There are there three Counties 1. Sheriffdoms.
The ancient Potto 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. Andrews, the other in
Glasco.
The length of Scotland from Twede to the uttermost Coal is 480. Miles, it
is longer than England, but narrower, and ended like a Square.
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 been alte-
red, diminished, and abrogated many of the old, and made new Lebres and other
proceedings: the distinct Kingdoms as they now stand have many different laws.
Items, 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 all-
nerly: and under no particular Laws, nor special priviledge, nor be no
Laws of other Countries nor Realms.
Of Scotland.

Item, It is statute and ordained, That all our Sovereigne Lordis Lieges beand under his obeisance, and in especial the Isles be ruled by our Sovereign Lordis own Laws, and the Common Laws of the Realm, and be none other laws.

King James at his Parliament helten Anno 1. of his Reign, enoboured to 1 Jac. cap.3, habit made an union of both Kingdoms, and to have erected a new Kingdom of Great Britain, And thereupon authority was given to certain Commissioners of the higher a 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 Britain, before there was an union of the Labour? Which question by the Kings commandement was refered to all the Judges of England in Trinity Term, Anno 2 Jac. who unanimously resold (I being then Attorney General, and present) That Anglia had labos, and Scotia had labos, but this new erected Kingdom of Britannia should have no Labo. And therefore where all the judicial proceedings in England are seconem legem & confustudinem Anglie, it could not be altered secundem legem & confustudinem Britannia, until there was an union of the labors of both Kingdoms, which could not be done but by * Authority of Parliament in either Kingdom.

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 edition of Parliament.

Anno 4 Jac. c.1. A repeal of hostile Labos and of Hostility between 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, until 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 state King of Great Britain, whereas 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 Labors, though that be a main one: As for example, the several Crowns are defensible to federal heirs of the blood, and question may be made who should be heir of this new Plantation.

But the learned Poet hath found out an union without danger, directing his verses to King James.

Cum triplici fulvam conjunge Leone Leonem,
Ut varias Atavas junxerat a te Rosas,
Majus opus, varios sine cede unire Leones,
Sanguin quae varias conjunxerit Rosas.

Who soever be disposed to know with Miscellanea as we have observed concerning Scotland, let him read these Records and Authorities following.


Of Scotland.

Cap. 75.


Thou haste all which we have observed in our reading concerning this matter, and which the benevolent reader may perceive at his pleasure; to whose senectye we wholly refer the same. Multi multa, nemo omnia novit.

You have observed, that those of Scotland do agree with us in language, and hath been said, differ in Lawes. On the other side, the Subjects of Ireland differ from us in Language, and agree with us in Lawes, and therefore of them we shall speak somewhat the more at large.

Amongst the 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 first Piets originally came. And there you shall read, that the Piets arriving in Britain, planted themselves in the South parts thereof, for the Britains had taken up the South part before. And whereas the Piets having no tribes did require the Scots to marry their daughters the Scots agreed to grant them their own, under condition, that as often as the matter was in doubt, they should chose their King rather of the next house of the woman than of the man.

And that Palladius in the eighth year of Honorius the Emperor, anno Domini 411, was sent by Celestius Bishop of Rome to the Scots that had received the Faith of Christ, to be their first Bishop.

That the Scots doe nothing differ from the Britains in their conversation.

Both these famous Kingdoms have found by woful experience, that untwist and uncertain making of leagues, greatly endangereth the Commonwealth, and the fatal danger of such leagues to the Princes themselves.
CAP. LXXVI.

Of the Kingdome of Ireland.

W. G. shall not need to undertake another work to write of the Courts of Justice there, for that they have the fame which we have in England, and the same laws, saving, where some that have written of them have in some main points mistaken the matter; we will confine the same by direct matter of Record, and we intend to add some things which are necessary to be known, which no man that hath written of that Country hath thought of; as if they have remembered the same, it is with so light a touch, as much is omitted out of the Record, as care refusal it self, worthily 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 inform'd 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 the more must of necessity be accompanied to them many others; and besides, they are descended of the ancient Britains, and therefore the more indebted unto us.

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 only King John, as a man agree, but H. 2. also the father of King John, as before it both appeared, and in the next page shall be touch'd, and 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 Dominions, and no part of the kingdom of England (as it directly appeared by many Authorities in Calvin's case) was to have Parliaments holden there as England; and therefore 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. 13.

Rex Comitibus, Baronibus, Militibus, & liberis hominibus, et omnibus alis de terra Hibernia, saltem. Quia manifeste est dignissimum cura coram cari & dignitate nostram, et coaequitatis, et leges regni nostri Angliae, quos bone memoris Dominus Johannes Rex pater noster, de communi omnium de Hibernia consuepsa teneri saecul in terra sila, quod placita non teneantur in curia Christianissatis de Advocationibus Ecclesiariam & Capellanam, vel de laico jure, vel de candidatique non sunt de justamento vel matrimonio. Vobis mandamus, prohibebites quatenus hujusmodi placita in curia Christianissatis nullatenos seque praesentias in manifestum dignitate et Corone nostrae pretiosissimae, eturis pro certo, quod si secessitis, deimitus in mandato juxta vester Hiberniae, Statuta curiae nostre in Anglia prae graffiones hujus mandati nostri cum justitia procedat, et quod nostrum est exequatur. In cuius &c. Tegile Rege apud Winchcomb 28, die Octobris Anna regni nostri d'ceimo obse. Et mandatim et juxta Hiberniae per literas clausas, quod predict. literas patentem publico legi et teneri facias. But as true it is, that the Father of King John, viz. H. 2. when he had conquered Ireland, sent that Tretite, instituted, Modus tenendi Parliamentum, in a later Parliament Roll, for their better holding of Parliaments there. Which you may read more at large before Cap. The High Court of Parliament. p. 12.
Rex Henricus 3. Anno regni sui 12, mandavit Justiciarum suorum, ut convocaret Archiepiscopos, Episcopos, Baronios & Militibus ibidem cum suis legi faciat Cartam Regis Johannis, quam legi fecit, & jurari à Magnatiis Hiberniae de legibus & confessudinibus Angliae observandis, & quod leges illas tenereat & observaret.

Quia pro communi utilitate terrae Hiberniae, & pro uniate terrarum, pro-visione est, quod omnibus leges et confectudines que in regno Angliae tenentur in Hibernia teneantur, & eadem terra eisdem legibus subjacent, ac per eisdem regnatur, facta Johannes Rex cum illieli esse statuit, et firmiter mandavit. Ideo volumus quod omnin Brevia de Communi Jure que currunt in Anglia similier currunt in Hibernia sub novo Sigillo Regis, Teste, &c. apud Wood stock.

Major Dublin, qui querebat versus Theaurarium Scaccarii Dublinae, et
vers. Barones Scaccarii de gravaminibus per ipsos illatis, remittitur Parliamento,
nonque inde hic: eis per curiam dictum est, quod gravamina suae proposito,
qui dicit quod non adhibe est consultus, super quo dixit datum est. Ad quem di-
em nullas propria quaeretas; Ideo committitur Turri London, et finem fecit
Domino Regi.

Sometimine the King of England called his Nobles of Ireland to come to his
may bind the Subjects of Ireland, as taking one example for many.

10. Othoensis Rex effeclatus pacificam statum terrae Hiberniae, mandavit
Ricardo de Burgo Com. Ulton, et alis Nobilibus terrae praedicti, quod sint ad
Parliamentum fuisse quod summonesi fecit apud Westminster I. Othoensis Sancti Hil-
arii prox., ad traidiam, ibid. cum Proceribus, &c. regni sui super statu terrae
praedictae.

An excellent President to be followed, whensoever any Act of Parliament
shall be made in England, concerning the Statute of Ireland, &c.

Anno 35 E. 3. De Consilio sumonitis, pro terr., habentibus in Hibernia,
Maria Comitissa Norf.,
Ælianora Comitissa Ormond,
Jana la Deskence,
Philippa Com. de la Marche,
Johanna Fitzwater,
Agnés Comitissa Penbrooke,
Margarera de Ross,
Matildis Comitissa Oxonie,
Catharina Comitissa Athol.,

a De Parliamentis singulis annis in Hibernia tenendis, et de legibus et con-
fessudinibus ibidem emendandis.

Hereby it appeared that there were Parliaments held in Ireland before
this time, and other taken at this Parliament that they should be held every
year, and the like Acts were made in England in 4 E. 3. & 36 E. 5. for Parlia-
ments to be held in England.

b In Othoensis Sancti Martini apud Nottingham Rex de consensa communis.
Confessi sui fuit certa ordinations pro reformatione status sui Hiberniae, et
ministratorum Regis ibidem.

c Volume et praecipium quod nostra et terrae nostra negotia, præterim ma-
jora & ardua, per petitos Consiliarios, ac Praetos, et Magnatos, et quoddam
d eferentioribus hominibus in Parliamentis transiuntur, diffuentur et termin-

This
This Ordinance both regulate the Parliaments in Ireland according to the institution and end of the Parliaments in England, as in the "Act of Parliament," which is to confer and treat De aditus "&" uenigenibus negotiis nos (te, Re- gen) & iatium & divisionem regni & Ecclesiæ Anglicanæ concemmentibus; the effect whereof is contained in the Ordinance of 27 E. 3, but that Ordinance both not erect any Parliament there, as some have (without any colour) supposed, Sec’t 10 H. 6. to 8, which began Mic. 18 H. 6. Rot. 46. coram Rege, &c 2 R. 3 to 12. See before in the Chapter of the High Court of Parliament.

And being good and profitable Acts of Parliament made in the Realm of England since the reign of King John extended not into Ireland, unless it were specially named; 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 Poyning then Deputy or Proxen in Ireland, and thereupon called Poyning’s law."

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 authorized, 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 adsum’d, 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 tence of [before] so that this Act extended to Magna Charta, 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 thenceunto; for that albeit it be governed by the same Law yet it is a distinct Realm or Kingdom, and (as hath been said) hath Parliaments there.


How and in what manner a Parliament is to be holden in Ireland, and how Bills ought to passe in the same.

The Lords of the Council did direct their Letters to the two Chief Justices and Chief Baron in these words.

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 Poyning’s 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 Kingdom, and having received allowance and approbation here, shall be put under the Great Seal of this Kingdom, and so returned thither to be preferred to the Parliament forasmuch as there are accordingly transmitted hither from thence divers
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 for avoidance of any question or inconvenience that may arise of the manner and form of proceeding in amending or altering these Bills hereby to pray and require you, calling to you his Majesty's Attorney and Solicitor to look into Paynings 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 Attorney and Solicitor, were assembled two several days at Serjeants Inn, and had consideration not only of the said Act of 10 H. 7, cap. 4, but of the Acts of 3 & 4 Ph. & Mar. cap. 4. Intituled, An Act declaring how Paynings Act shall be expediated and taken.

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 Council there first do certify the King under the Great Seal of that Land, the causes and considerations, and all such Acts as themseemeth should pass in the same Parliament, and such causes considerations, and Acts affirmed by the King and his Council to be good and expedient for that Land and his licence 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 noneeffect in Law.

Sur quel Act divers doubts et ambiguities fuer' conceiv' et ascuns de eux fuer' de greunders difficulty que autres.

1. Et primerment un doubt fuit conceive le qual le dit Act de 10 H. 7. extend al successors the Roy H. 7, intant que' ell' Act parle solennel del Roy generalement et ne de ses successors. 2. Si la roieng Marie fuit deins ces paral Roy. Et comment que ceux ne fuer' matters ascuns ambiguity, carr caral Roy que import fon politque capacity ne anques morts, et eftant parle infinde extend in ley a tous ses successors, antore c' est f' sint expound per le dit Act de 3 & 4 Ph. & Mar. Et que le dit Act de 10 H. 7, extendra to the King and Queen Majesty, her Heir and Successors.

2. Ou le Act de Paynings dit (th' Kings Lieutenant and Council there) scruple fuit conceyve, si le Roy appoint un per nomme de la Deputie, ou Lord Justice, ou ell' constitute 2 Lords Justices, chief Governors or Governor and the Council, &c. Et quant ac eux f' explaine per le Act de 3 et 4 Ph. et Mar. que le dit Act de paynings extend a tout ceux.

3. Le greunders et plus difficult doubt fuit sur ceux paroles in lait de Paynings. And such causes, considerations, and Acts affirmed by the King and his Council to be good and expedient for that Land, &c. Le quel le Roypois fair ascun change ou alteration des causes, considerations ou Act que fer' transmait' teype del Lieutenant et Counsell d' Ireland; car c' est pas affirmation mes correction et alteration de eux. Et pur c' est meref. fary defre explaine, que Lait de 3 et 4 Ph. et Mar. fuit in ceux paroles. 

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. After question fut sur les paroles del primer Act. &c. That done a Parliament to be had and holden, &c. Si a mesme le parlement, autres Acts que fuer affirm au alter icy point etre enaies per authority del Parlement la. Lequel est explique per le dit dorein Act in ceux paroliz, lor passing and agreeing upon such Acts, and no others, as shall be so returned under the Great Seal of England.

5. Grand doubt fut conceue sur les ditz paroles (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, transmisse aucun auters considerations, causes, tenors, provisions, et ordonances comme sembles a eux bone desirer enaient a mesme le Parliament desin le Realme d'Ireland, lequel est explaine per le dit Act de 3 et 4 Ph, et Mar. in expresse paroliz, que ils poient, &c.

Nota Lesdiers lorder del proceeding et sommons del Parliament in Ireland, Primeroent le Lieutenant et Councell la dont certesfer desoubt le Grand Seale de Ireland le causz et considerations de toutz ziels. Ais come semble a eux bone a paser en Parliament, isamb que le original couient a commencer la.


Mes le transcript desoubt le Seale d'Ireland que le reste nie le Chancery icy, ne sera amend, mes l'amendment sera desoubt le Grand Seale Danglisterre comme est avainst. 4. Les amendemounts ou alterations icy ferz come est avainst retorne in Ireland sans aucun signification ou certificatallowance de ceux per ceux de Ireland car siconme les Acts movent originalment de Ireland, isamb les amendements ou alterations movent icy in Anglisterre. 5. Tous les Bills que sont transmisse icy de Ireland sont ove le petition del Deputy et Councell le Roy tous ensemble desoubt un Grand Seale d'Ireland. 6. Tous les Bills que sont affirmer ou alter icy joient retorne en semble desoubt un Grand Seale Danglisterre.

And thus much concerning the Parliaments of Ireland.
The case of the Earl of Shrewsbury upon the Statute of 28 H. 8. of Abonentees.

28 Martii
Anno domini 1612.

Per force de certam Letters Patentes de 28 Martii 1612. del seignours del Privoce Councell direct al Sir Humfry Winche, Sir James Lea, Sir Ambrocy Sentelegier, et James Fullerston, sza certifion aux seignours le claim de Guillom Countee de Salop aux dignitiis del Countee de Waterford et Baron de Dongarvan in Irlande come ensuis. Le Roy, H. 6, per ses Letters Patentes Anno 24. de son reigne granta a son treschier coffin John Countee de Shrewsbury in consideration des ses approved & loyal services, in the City & County de Waterford in Irland, pro eo quaque quod per cunem confugineum nostrum pradicta terra nostrala Hibernia in partibusillis contra bujusmodi inimicorum & rebelium nostrorum infulus potenctius defendereus, ipsum in Comitatem Waterford una cum filio & titulo ac nomine & honore eodem debitis ordinamus, praecipimus, & creamus Habendum, al dit Countee, et a les heires males de son corps. Et outre per meisme les Letters Patentes granta les Caless, seignioris, honors, terres et Baronie de Dongarvon al dit John Coundee et a les heires males de son corpus, les premises delire tenus del Roy et ses heires per hommage et fealty, et le service destre sensechial a son Majestys in the Realm d'Ireland. Puis al Parlement communement appellée des Abonentees) tenus a Dublin in Irlande, 1 Mai. Anno 28 H. 8. fut enaist (per reason del long absence del George Countee de Salop hors de meisme le Realm) que le Roy, ses heires et assigns averca et enjoyna in droit de son Corone de Anglisterre tous honors, manors, Caless, seignioris, franchises, hundreds, liberties, County Palatines, Jurisdiction, annuitutes fees des chevaliers, terres, tenements, &c, et tous et singular pensions, hereditaments, et tous autres profits, cibien Spiritual come Temporal, que cunque queuex le dit George Countee de Shrewsbury, e Waterford, ou aulcun aulcun person ou personne a son use avoient, &c. Le Roy, H. 8, per ses Letters Patentes, Anno 29 de son reigne recitant le dit statute de Abonentees, Nos præmissa considerantes & polentes Itaum, honorem, & digniatem pradicti Comitis diminue, sed amplius augue, ex certa scientia & mero motu, &c. Granta al dit Coundee et ses heires l' Abby de Rofford ou les terres a eeo pertaynent in the County de Nottingham, et le seigniorie de Rotheram in the County de York, les Abbeys de Chelsfield Shirebrooke et Glosopdale in the County de Derby, oue divers autres terres et tenements de grand value destre tenus in capite, et les questions fueren. 1. Le quel per le longe absence del Countee de Salop hors de Irlande per que les Roy et subjests wanted leur defense et assinance la, enconter le express consideration del creation, le title del honor est perdue ou forfeit, le dit Countee estant Pier del amibaux Realms et residing 13. 2. Le quel per le dit statute del Abonentees, Anno 28 H. 8, le title del dignitiy del Countee de Waterford est prist del dit Countee de Shrewsbury citien comme les manors, terres, tenements et auters hereditaments in meisme Loi specifie. Et puis per auters Letters des seignours del Councell, 27 Septemb, 1612. les deux Chief Jusstices et Chief Baron fuere require a consider del dit case (que fut enclode deins leur Letters) et a certifie leur opinions de ces. Quel case fuist argue per Councell erudite del dit Countee devant les dit Chief Jusstices et Chief Baron, sur que ils preteront advisement (apres que sza,
Cap. 76. Of Ireland.

Ils ont diverses lois de le Preamble et tout le dit Acte de 28 H. 8. estoyté a Terma de St. Mich, Anno decimo Jacobi Regis, & donques fut unement resolu per ceux crom ensuit.

Quant al premier fust resolu, que iant qu'uy nappert que aefcan deffence fust requisit, et que le consideration executori neit troue per office destre enferim, ne jugeement done in Sure Fac, a cest cause que le dit Countee de Salop, ceoient obstre, remait Countee de Waterford.

Quant al fuit resolu, que le dit ABE de 28 H. 8. des Absentes naidolle solement les posessions, que fuit done a roy a temps de sa creation, mes aussi le dignitie missone, car comme que un pot aver dignitie sans aefcan posseffions encore ceo seroit pleine de inconveience et a cest cause le dit ABE de 28 H. 8. (come tous autors ABE doient etre) serra expound douxer tout inconveience, et pur que per les general paraols del ABE, (tc. des homens et heredita- ments) le dignitie missone que les terres donet un maintenance de ceo sont don al Roy, et le dignitie extitit in le Corone.

Et est digne de observation le cause de degradacion de George Nevill Duke de Bedfords, que fut fait per force dux ABE de Parliament, 16 Januarii, Anno 17 E. 4. quel ABE recitit la erection et making the said George Duke, expresse le cause de son degradacion in ceux paraols.

And for so much as it is openly known, that the said George hath not, no by inheritance may have any libelition to support the said name, estate, and dignitie, no any name of estate, as oftentimes it is seen, that when any Lord is called to high estate, and have not libelition conveient to support the same dignitie, it inducts great poverty and indigence, and causeth oftentimes great erectio

In quel ABE 3 choses fuer observa, 1. Que coment le dit Duke navies aefcan posseffions a supporter son dignitie, encore son dignitie ne pot eftre tolle de lais fans ABE de Parliament. 2. Les inconveiences appert on grand estate on dignitie neit pas accompanye oue livelihood. 3. Cee est bone cause a toller le dignitie per Parliament. Et pur ceo le dit ABE de 28 H. 8. serra expound felonque the generality del letter a toller tiel inconveience. Et contem que le dit Countee de Salop fuit non soletement de grand honor et vertue, mais aussi des general posseffions in Englisstere, uncorne ne fuit lention del ABE a conterius le Countee in Ireland quant les posseffions in Ireland fuer tolle de lais, mes que le Roy a son pleasure puis conserver cibien le dignitie, comme les posseffions a aefcan auter pur le deffence de mesme le Realm. Et les dit Letters Patents de Anno 29 H. 8. had paraols a refforer le dignitie que lais de Parliament ad tolle, aux ne fuit lention del Roy diminuere Statum, honor & dignitatem in plus, Comitis, fed augere, ceux font desre entendes des posseffions pur maintenance de son dignitie, car tant appert per cest paraol [augere] car il increafer per mesme les Letters Patents oue exceeding grand bounte, le revenues del dit Countee de Salop en Anglissere, quel le roy penfe a un increafer de son fuit, honor & dignitie, et fuit son dignitie in Anglissere fuit increafer oue large posseffions in Anglissere in lieu de tout ce qui fuit tolle de lais per Laie de 28 H. 8. Et ou fuit obste que les general paraols del honores
Of Ireland.

Cap. 76.

There is an Act made in 3 H. 7, woorthy 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 livings Ecclesiastical or Temporal within Ireland, shall reside or dwell upon the same. And that all such as have there any Captains or other Forces, shall fortify the same and furnish it with men able for defence, and therupon also dwelle. And if they at any time depart, then during their absence to appoint some able to supply their town, otherwise the Governor to dispose the half of their Living to such defence. And the Act at large, necessary to be put in execution in these cases.

Dom: REX: Vult & praetipit quod de cetero singulis annis femel in anno compotus Hibernie, &c, per Thefaur. Hibernie reddat ad Scaccarium Anglicæ, & ibidem ad instar per Thesaur. & Brotons fuit, A necessary law, and much for the benefit of the King to be observed.

A long breach toucheth the custody of the hundred of the towns within age, wherein these woods are contained. Et cum una & cedem lex esse debet tam in regno Anglicæ quam Hibernia. Like injust of Cre: 7 of judgement given in the Kings Bench in Ireland, Mich. 32 E. 1. com: Rego. The cold Verdon's cafe, Breve de errore supra brev, de errore Rot. 76. Pass, 30 E. 1. com: Rego Rot. 50. in breve de errore, &c, William de la Rivers cafe, Et Tr, 33 E. 1, Rot. 56. A Concodatum eft per omnes de Concilio regis, Episcopos & alios in Hibernia uninimiter, quod constoctudo uti: quar in Hibernia de bonis terratorum tales eft quod ubi, &c.

b Prifins vinorum in Hibernia, and the manner of the taking of the same.

At a synod holden in Ireland by Sr. Patrick their Apostle, it was unanimously agreed that Irish Priests should have wives.

c Tet Petitiones porcella Regi contra Eliam de Asburnham militem Jus: ciar, domini regis in Hibernia de diversis malefactis, &c, per ipsum perpetratis, qui duxit quod non debet tradere, nisi in Hibernia, & ibidem terminari; et quod oportet ipsum dominum regem informari per indictionem 12 fur: vel per Appellum formatum et Attachiam, ad feliam partis pecuniam legem et confuetudinem regni regis Anglicæ haec tens uti, curia vult inde advisari, et interim mancipatur. Poltea dominum rex mandavit breve quod caperit mancipiam, ad respondendum in Hibernia.

d Admissitnr Episcopus Exon, pro fine 200 Mar, pro contemptu in non admittere presentatum regis ad Ecclesiam de Southwell, pro quo contemptu omnia Temporalia seipsum fuerunt in manu regis, et tunc temporis ante fitem fact, vacat in Archidioconat, Cornubia ratione quod incumbens electus fuit in Archipresbeytorum Dubinis in Hibernia (temporalibus Episcopis Exon, ad tunc in manibus regis recitent,) per quod dominus rex recuperavit ver. Episcopum dict. Archidioconat.

In this Record two conclusions are to be observed. 1. Though Ireland (as hath been said) be a distant 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 Temporalities of the Bishop of Erex: Patron of the Archdeaconry and not by any prerogative. And so it is, if an Incumbent in Ireland be made a Bishop in England.

If a Bishop in England be made a Cardinal, the Bishoprick becomes void, and the King shall name the successor, because the Bishoprick is of his patronage.

This is upon the repeal of a Statification of the Incumbent, a Proceeding out of the Chancery here to the Judges in Ireland to proceed in the Quere impediment brought by the King.

I finde an ancient Record touching Ireland necessary to be explained, in these words:

4 Rex Thesaurario Hibernia, Salutem. Cum Edwardus primogenitus no-

The Like grant was made of the Land of Ireland by H. 3 to his Son John.

And so it appeareth by this Act that the King his progenitors had before this Act King's Jurisdi-

ction and Roy-

al authority. 

And before this Paragraph 13. 14. the grant of King. 

H. 3. 3. 9.

The Like grant was made of the Land of Ireland by H. 3 to his Son John.

And so it appeareth by this Act that the King his progenitors had before this Act King's Jurisdiction and Royal authority. See before this Paragraph 13. 14. the grant of King. 

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H. 3. 3. 9.
Of Ireland.

Cap. 76.

by consent of Parliament, and could not be granted by Letters Patent, because it was one of the titles and titles of his Royal Crown. And this also did first begin and end in him.

But now it is necessary to be known what this duty of Aurum Regine is, wherein these things are to be considered, first, what authority and warrant in law there is for this duty. Secondly, what it is. Thirdly, what it is due thereby. First, in Lib. Rub. in Scaccario fo. 46, de Auro Regine, where it is laid, that it is to be taken de his qui sponse fœ obligat Regi, &c. This present Recyord of 52 H. 3. Vet. Mag. Carta 2. part. fo. 67, Vide, to H. 3, Stat. de Roteland to the same effect.


2. In divers of these Recyords it appeared that the Auun should have de spon- te oblatis pro centum marcos argenti inan marcum ait solvend, per ipsum qui sponse fœ obligat. And Pitch, 4 Jacobii Regis the King did require the two Chief Justices and Chief Baron to certify him what belonged to the Auun for this duty at this day. And after many conferences, and hearing of Council learned on both sides, and view of Recyords, at last it was resolved by them all, and so in Popham Chief Justice report to the King, that the duty belonged to the Auun with these four limitations. 1. It must be sponse 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 not part of this duty. 2. It must be freely, without any consideration of any grant, sale or lease of any thing where in 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 sponse super aliqua consideration &c. For example, if the subject sponse offer to the King for a licence in Portmain, 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, estate, or interest, there Auum Regine is due to the Auun. 4. Of Subsidies, Fittënes, or any other gratuity of the mixt grace or benevolence of the subject, there is nothing due to the Auun, and so it was resolved, Hl. 4 E. r. &c. ubi supra. And so much upon this occasion de Auro Regine.

A Tainist was successfull; apparent under the chief Lord of Captain of every se- feral Country, and was eligible by the Country.

b Brethon, 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 Clarenc, Lieutenant there, Anno 40 E. 3. at Kilkenny, and therefore called the Statute of Kilkenny, the Brehon Law is no Law, but a few 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 comprehended Cailages and Illuminations.

ees Cuttings. Under that name they comprehended Cailages and Illuminations.

e The Parchments and letters of the chief Lord and his retinue, ye came to his Tenants hands, and fed upon their provisions till all were spent.

f Termondlands are the Glebe of the Church.

g Erick.

h Galloglassers, Kirness.

i Kirness.
Cap. 76. Of Ireland


As the Register, that is an Arch Hoppich or Bishopick in Ireland by word, that the Chapter shall due 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 Chapter here, to the Chief Justice of Ireland, or the Lieutenant, rehearing all this matter, and commanding him to take custody of the Bishop, and to restore him to his Compositions. But now the course is in 1cl. land to make such Writs in the name of the King. But the King names the Archbishops and Bishops there, as he hath in England, and then the Chapter chose him whom the King names to him, and thereupon Writs are made of course.

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. But after that the whole Dominion or Ireland (as well concerning the Church as the Commonwealth) was established to be governed by one law with the Kingdom of England, as is above said, then the course of the Register was changed, and the same course taken there, as it is in England.

And whereas hereof some not without scandal have divided this kingdom into the English Name, and with the intent, let oblivion wipe it, let silence cover it, for now 'tis are reduced to obedience and civil behaviour. So as a man may truly say of the old Britains, Sing in their groves, &c. in pace sedes. And so that some have given out that the Crown of England had this Country of Ireland of the donation of the Pope, we will ingeniously manifest the truth therein by the Recops and writings themselves at large.

Of Ireland.

360


And what Ecclesiastical jurisdiction the Archbishop of Canterbury had in Ireland of ancient time before it was bestowed to the Crown of England, you may read in Camden's Britannia, pag. 735. & 765, as namely in the Consecration and Confirmation of their Bishops, by reason of his Primary in Ireland.

A Justice 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 Patriarchy of Ireland:

South.
The Kingdom of Monomia had 7 counties, viz.

Kerry, Delmond, Corke, Waterford, Limricke, Tipperay, with the County of St. Croixes Tipperay.

East.
Lagena 7, viz.

Kilkenny, Caterlough, Queens County, Kings County, Kildare, Wathford, Dublary.

The mildest.

Medita. 3.

East, Meth, Wex Meth, Longford.

West.
Galloway, Monacha, Domagh, Minis, Doun, Siegro, Antrim, Le Trimm, Colran, Tiroon, Roftaman, Tircel, or Dontel.

Ireland hath 33 Counties, besides Cities, that are Counties of themselves.

King H. 2, at a Parliament held at Oxford, Anna regni sui 33, created his son John King of Ireland. But the ensuing Kings wrote themselves Dominus Hibernias, until the 33 year of H. 8. in which year he took upon him the name of King of Ireland.

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, at pushing to the King the ninth part thereof; so that they make Plate or Cogn thereof at the King's Coinage in Dublary, paying the tax; and that one carry thereout any of the said Gold, Silver or Bullion, but into England, without the King's licence, on pain to lose the same.

A grant of all Mines of Gold and Silver within England, &c. to the Duke of Bedford Regent of France, &c. rendering to the Church the tenth part of the King the fourteenth part, to the owner of the soil the twentieth part.

To conclude with something which tends to the honour of that Noble Nation, Certain it is, that whereas the Liberal Sciences in Europe lay in a manner buried in darkness, then did their lustre shine forth clearly here in Ireland, either did our English Saxon's repair, as to a Father of the good Letters.
Of the precedence of the great Officers, Nobility, and others of this Realm.

For 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 honor, reputation and place to his Counsellors and other his subjects, as should be seeming to his wisdom, which Prerogative was so declared by Act of Parliament.

* By this Prerogative, Henrico Beauchamp concepit Rex Henricus Sextus, ut primus & praeceptor esse Anglia Comes, & hoc titulus uteretur, Henricus Pecem totius Anglie & Comes Warwickici, Vecfae Infirma regum dixit; potestque Ducem Warwickici creavit, & concepit, ut habideret sedem in Parliamentis, & sihi proximam Duci Norf. & ante Ducem Buckinghamiae.

The same King created Edmond of Hadham to be Earl of Richmond, and granted him precedence before all other Earls. He also created Jasper of Hatfield Earl of Pembroke, and gave him precedence before all other Earls next to him his brother the said Edmond Earl of Richmond. But here of these examples shall suffice.

King H. 8. though standing as much upon his Prerogative as any of his Progenitors, yet standing how servile it was to himself, and how dishonourable to his ancient Nobility to have new raised degrees to have precedence of them, and finding that this kind of controversy for precedence was of that nature, that it had many partakers, spent long time, and hindered the serious, urgent and weighty affairs of the Parliament, was content to binde and limit his Prerogative by Act of Parliament concerning the precedence of his great Officers, and of his Nobility, and left it to the Lords Spiritual (who sit in Parliament on the King's right hand) amongst themselves.

1. The Archbishop of Canterbury. 2. The Archbishop of York on the same form. 3. The Bishop of London. 4. The Bishop of Durham. 5. The Bishop of Winchester, and then all the other Bishops of both provinces shall sit and be placed after their Ancients, 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, sitting in the House-chamber, the Lord Chancellor and Lord Treasurer both the precedence of them. But the other Bishops have place above all the Barons of the Realm, because they hold their Bishopricks of the King per Banciam, but they give place to Viscounts, Earls, Barony and Dukes.

Camden in Hibernia.
Concerning the great Officers of the Realm. 1. The Lord Chancellor, 2. Lord Keeper of the Great Seal, 3. The Lord Treasurer, 4. The Lord Privy Seal, being of the degree of Baron of Parliament, 5. 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, or the Kings Brothers or Sisters Sons. As an Act made in 3 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 Earl 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 Vances; if a Viscount, above all Viscounts; if a Earl, above all Earls, &c. 11. The Kings principal Secretary being a Baron of the Parliament shall sit above all Earls not having any of the offices aforesaid. But if it 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 wasresolved 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. All other Dukes not before mentioned, Marquesses, Earls, Viscounts and Barons, not having any of the offices aforesaid, shall sit and be placed after other Anciend, so both be accustomed. All other Dukes, &c. If the King should create a Duke to the estate of Arch- bishop, by force of these words he shall not take place of any Duke that was his Ancient, or of the same degree; otherwise this statute might be made of no force, and an Archbishop is some other Duke.

If any person being Lord Chancellor, 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 Parliament sit in the uppermost part of the House in the midst of the Parliament Chamber, &c. But in the Star Chamber, and all other Assemblies and conferences of Council, their shall sit and be placed, as is above rehearsed; and in no other place, save, the Lord Chancellor, 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 R. 2. cap. 1.

The that is desirous to understand the true Rules of Precedency, of the Houses of this Realm in the High Court of Parliament, &c. let him read the great case between John Earl Mar...
Cap. 77. Of Precedency.

shall have no other place but as a Duke or Earl, etc. Hereby you may perceive how necessary it was to set down by authority of Parliament in certain places a precedence 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 do ought to be named in the King's Writs: but the offices of Chancellor, Treasurer, and other offices are not parcel of their names, and therefore in the King's 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 Treasons by the peers of this Realm, the said great Offices 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 certain things necessary for precedence.

Thus far for abridging of content about precedence in Parliaments, Star Chamber, and all other Assemblies and Conferences of council, and upon trials by the peers of the Realm was necessary.

Now be that desired to know the places and precedence of the Nobility and Subjects of the Realm, as well men as women, and of their children: we for abridging of tediousness will refer to them to a Record of great authority in the reign of H. 7. (for we will not boast of Bristol, Cassiobury, or any other foreign Author.) 4 intituled, Series ordinum omnium procerum, magnatium, & nobilium, & aliorum quorumcumque infra hoc regnum tam virorum quam feminarum, publici & distincti per nobilissimum Jipiarum Ducem Bedford & suis nobilissimi appanatorum Domino Regis Henrici septimi: (but this Record doth not with the places of any of the great Offices) to which we will refer you: wherein you shall see what places both the Lords, Wives, and Daughters, of Lords of Parliament, as Dukes, Marquesses, Earls, Earls of March, and Dukes shall have, and of Dukes, Earls, Viscounts, and Baronets, Knights, Esquires, and Gentlemen, and of their Wives and Children shall have.

If any question be medled in Parliament for privilege or precedence of the Lords of Parliament, it is to be decided by the Lords of Parliament in the house of the Lords, as privileges, and other matters concerning the House of Commons 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 precedences of others both belong to the Court of the Constable and Marshal, unless any question touch upon the said Act of Parliament of 31 H. 8, so that being part of the law of the Realm (as all other statutes be) is to be decided by Judges of the Common Law.

Nobility et qui generis sui imagines profere potest, b Flavia gens oblitera quidem et fine imaginibus.

Tota licet veteres exornant 1 undique Cere
Aetra, nobilitis sola estque unica virtus.

Major est nobilitas quam virtus: virtus enim sine nobilitate esse potest, nobilitas autem sine virtute esse non potest.

1 Arma feu insignia gentilis ex antiquo habuerunt loco imaginum. So as now the best differing of antiquity of Centpur is per insignia.

Armaque fixae
Troja.

And by the Ladies of England as all the degrees of nobility and honour were derived from the King as the fountain of honour: 4 to all the Lands in England,

Of Precedency.

Cap. 77.

land were originally derived from the Crown of England, and are holden of the same mediatly 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 pedigre from the ancient Lord Cromwel, that he might bear his Coat, he answered that he would bear a Coat of his own, lest another man's Coat might be taken from him: unto whom the King so advanced by him gave this Coat, Quarterly indented per fesse, in 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. extended not to Archbishops and Bishops, therefore it is necessary to speak somewhat of them also. In ancient time they had great precedence, even before the brother of the king, as it appeared by the Parliament Roll of 18 E. 1. and many others, which continued until it was altered by Ordinance in Parliament in the reign of King H. 6. as it appeared by a Roll of Parliament of that Kings reign, entred in the back of the Parliament Roll. The precedence in Parliament, and other places of Council at this day, (whereunto we appr) is, the two Archbishops have the precedence 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 Almound and other Subject dignities. The Bishops between themselves have this precedence. First, the Bishop of London, and after him the Bishop of Durham, and then the Bishop of Winchefter, and after him every Bishop as he is in seigniority. But to this day, in all Acts, Ordinances, and Judgements, 4c. of Parliament is said, the Lords Spiritual and Temporal.

The first creation of Baronets was in Anno 9 Jacobi Regis: what place and precedence 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 dignitarum ord. do tervetur, si quis indebuit sibi locum usurparit, nulla se ignoratione defendat, sique plane sacrilegi reus.
The Epilogue.

Thus have we by the great goodness of the Almighty brought this painful 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 addes, principia referre, uestre referre, to bring errors to their first, is to see their last. Wherein we have strengthened 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 fatus est peter fontes, quam secessi rivos: 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 do, 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 statute 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 mind and body, and must be only intensive 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 clearly 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 than 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.

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 several Courts that reason should afford. And if you shall sincerely execute justice

Ps. 37. 38

Lib. Simp. 17

12. Nihil est, quod

meum non producat cogitationis salutis.
The Epilogue.

nice; 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 kindness of the Almighty, and be his Favorites. 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 kindness wilt thou defend him as with a shield.

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 Architeconi: Virtus) to amend both the method or uniformity, and the structure itself, wherein they shall find either want of windows, or sufficient lights, or other deficiency in the Architecture whatsoever: And we will conclude with the Aphorism of that great Lawyer and Sage of the Law (which we have heard him often say) Blessed be the amending hand.

Deo gloria & gratia.

FINIS.
# Table, To the fourth Part of the Institutes of the Laws of England, concerning the Jurisdiction of Courts.

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abatement of Writs, See Allign.</td>
<td>224</td>
</tr>
<tr>
<td>A Franchise abi breve Domini Regnis non currat, the Defendant may plead it to the Writ.</td>
<td>224</td>
</tr>
<tr>
<td>Otherwise of a Franchise to demand Confit dissent.</td>
<td>221</td>
</tr>
<tr>
<td>Abatement of Writs by Tenants in ancient Demesne.</td>
<td>269</td>
</tr>
<tr>
<td>Accessory.</td>
<td>317</td>
</tr>
<tr>
<td>Of Principal and Accessory in felony, trespass, &amp;c.</td>
<td>317</td>
</tr>
<tr>
<td>What proceeds against them.</td>
<td>110</td>
</tr>
<tr>
<td>What allowance they shall have.</td>
<td>110</td>
</tr>
<tr>
<td>How they may get their discharge.</td>
<td>110</td>
</tr>
<tr>
<td>Who accountable in the Exchequer, where not.</td>
<td>113</td>
</tr>
<tr>
<td>Best for the King to have accounts taken in the Exchequer.</td>
<td>113</td>
</tr>
<tr>
<td>All accounts to the King to be made upon Gaithe,</td>
<td>113</td>
</tr>
<tr>
<td>A Court to inquire of and certify unlawful, and untrue accounts into the Exchequer.</td>
<td>117</td>
</tr>
<tr>
<td>Alligns. See pleadings.</td>
<td>76</td>
</tr>
<tr>
<td>The causes of the multiplication of suits in law.</td>
<td>76</td>
</tr>
<tr>
<td>The means to prevent their encrease.</td>
<td>77</td>
</tr>
<tr>
<td>What actions lie at common Law, what not see trial.</td>
<td>140</td>
</tr>
<tr>
<td>Popular actions.</td>
<td>166</td>
</tr>
<tr>
<td>What actions to be laid in their proper counties.</td>
<td>172,175,176</td>
</tr>
<tr>
<td>The Plaintiff may addledge things tritorial to be done in any county.</td>
<td>213</td>
</tr>
<tr>
<td>If tritorial things emergent within a county Palatine, be addledged in another county, the defendant cannot avoid this to the jurisdiction of the court, otherwise, if it be addledged in the county Palatine.</td>
<td>213,219,231</td>
</tr>
<tr>
<td>See trial.</td>
<td></td>
</tr>
<tr>
<td>Where though part of the action arises within a franchise, it shall be tried at common Law, where not.</td>
<td>221</td>
</tr>
<tr>
<td>See trial.</td>
<td></td>
</tr>
<tr>
<td>An action upon the cause lies against the Exchequer, &amp;c. for returning a false office.</td>
<td>226</td>
</tr>
<tr>
<td>Alius persona mortuus cum persona, and where not.</td>
<td>315</td>
</tr>
<tr>
<td>All in law.</td>
<td>116</td>
</tr>
<tr>
<td>A debt contracted, by act in law.</td>
<td></td>
</tr>
<tr>
<td>See liberate.</td>
<td></td>
</tr>
<tr>
<td>Adjustment. See Parliament.</td>
<td></td>
</tr>
<tr>
<td>Adjourn, unde adjournare &amp; adjournamentum, &amp;c.</td>
<td></td>
</tr>
<tr>
<td>ad diem discere, or diem dare.</td>
<td>27</td>
</tr>
<tr>
<td>A case adjourned into parliament.</td>
<td>302</td>
</tr>
<tr>
<td>Difficult cases in the Forrest adjourned into the Kings Bench.</td>
<td>295</td>
</tr>
<tr>
<td>Of Exchequer Chamber cases adjourned thither from the Kings Bench, &amp;c.</td>
<td>110</td>
</tr>
<tr>
<td>Administration.</td>
<td>335</td>
</tr>
<tr>
<td>The Court of Admiralty proceeding according to the Civil Law.</td>
<td>33</td>
</tr>
<tr>
<td>What proper belongeth to his office.</td>
<td>33</td>
</tr>
<tr>
<td>The jurisdiction of the Admiralty our English Neptune.</td>
<td>124,125</td>
</tr>
<tr>
<td>The complaint of the Admiralty, to the King against the Judges, concerning prohibitions to the Court of Admiralty, and the Judges answer.</td>
<td>134,135</td>
</tr>
<tr>
<td>The Court of Admiralty no court of record.</td>
<td>135</td>
</tr>
<tr>
<td>Of the Clause Non obtine in the Lord Admirals Patent.</td>
<td>135,136</td>
</tr>
<tr>
<td>This Courts incroachment upon the Common Law, and the Kings prerogative to have goods taken from Pyrates, &amp;c.</td>
<td>136</td>
</tr>
<tr>
<td>The Jurisdiction of the Court of Admiralty, is only confined to things done upon the sea.</td>
<td>137,138,139,141,154</td>
</tr>
<tr>
<td>The Lord Admiral hath greater jurisdiction in case of the death of a man and mayhem, then in other cases.</td>
<td>137,138,141,144</td>
</tr>
<tr>
<td>The antiquity of this Court, and the Kings prerogative in the seas.</td>
<td>142,145</td>
</tr>
<tr>
<td>Of ancient time there were several Admirals.</td>
<td>145</td>
</tr>
<tr>
<td>Of the name of the Admiralty, and Court of Admiralty.</td>
<td>145,147</td>
</tr>
<tr>
<td>The Officers of this Court.</td>
<td></td>
</tr>
<tr>
<td>The court holden before the Admiralty, &amp;c. to determine offences done upon the sea.</td>
<td>147</td>
</tr>
<tr>
<td>His power to erect Beacon, Sea-marks, &amp;c. for the sea.</td>
<td>149</td>
</tr>
<tr>
<td>The Admiralty of the Cinque Ports except from the Admiralty of England.</td>
<td>149</td>
</tr>
<tr>
<td>Appeal to the King upon a sentence given in the Admiralty Court.</td>
<td>355,354</td>
</tr>
<tr>
<td>Admission and instituted to Benefices.</td>
<td>377</td>
</tr>
<tr>
<td>The Writ of Ad quod damnum.</td>
<td>300,316</td>
</tr>
<tr>
<td>Agitator.</td>
<td></td>
</tr>
<tr>
<td>So called because he taketh Bealls to Agitament.</td>
<td></td>
</tr>
<tr>
<td>The derivation of the word.</td>
<td></td>
</tr>
<tr>
<td>His office, and how constituted.</td>
<td></td>
</tr>
<tr>
<td>Alien.</td>
<td></td>
</tr>
<tr>
<td>An Alien cannot be elected to Parliament.</td>
<td>47</td>
</tr>
</tbody>
</table>
| Alien enemies can have no action here, so may (i) Alien (ii)
The TABLE.

Aliens in league. 152
Merchant strangers may sue either at Common
Law, or before the Mayor of the Staple. 238
Aliens to sell Wines and Spicery by whole Vessels.

Where they may transport Spicery brought in by
them, etc. 265
An Alien may be a Witness. 279
The Bishop may refuse an Alien preferment to E.
benefice. 338

Bailiff.
The pleading of a Licence of Pardon, for Alienation.

A licensing, Anlager. 110 to 111
The Anlagers fee. 30, 31, 280
Granted to the King. 30
What drapery to yield Alnage. 31
Alnage of Aulne, in French, and that of Alnag, Alnag.

Amercements.
The Bail amercable for letting the offenders es-
cape. 178
Where the King, Queen, Infants, etc., shall not be
amerced. 180
If a Murderer escape, the Township shall be am-
erced. 183

The Office, Authority and Privilege
of Ambassadors.
How they may lose their privilege. 154, 155
There can be no Ambassador without Letters of
credence from his Sovereign to another. 155
How Ambassadors have been called. 155
Ambassadors ought to be kept from all injuries.
etc. 155, 155
By what Laws they shall be bound, and what nor.
and how to be punished. 155
What offence to kill an Ambassador. 154, 155
Hence, he would not suffer a Legat Ambassador. 155
The four qualities Ambassadors ought to have.
155
How some privy Councillors have misbehaved
themselves towards Ambassadors. 155, 156
Ambassadors sent to general Councils, and to the
Pope. 156, 157

A wrong legat have had. 157
A banished man, a Bebel, etc., Ambassadors. 155

Appeals.
Appeals in the King's Bench. 70, 73
Before the Sheriff and Constables by Bill. 73
Where Appeals shall be tried and things
within and without the Realm. 125
Appeals from the King, from the Court of Chivalry,
125, 341
La Appeal de imprisonment. 182
Appeals must be brought within a year and a day
after the offence. 185
Appeals from the Courts of the Archbishops to the
Chancery. 334, 335, 337, 339
From the inferior Courts to the Arch-Bishop. 338
Appeal to the Arches. 337
Appeals from the Arch-Dean to the Diocesan.
339

Upon a sentence given in the Admiralty Court, 10
the King in the Court of Chancery. 335, 341
In what Cases, from what Courts, and in what
Time Appeals are to be made, etc. 335, 340
Where the Judge may proceed upon the sentence
after an Appeal, where not. 340
From the King there is no Appeal. 343

Arcabalista quid. 292

Arrest.
When the Constable, etc., apprehends a Felon, he
is the Arrest of the party that hath the knowledge or
fulfilling the sentence. 177
Where the Defendant going to plead, etc., ought
not to be arrested, cundo, undando, vel morando, 231
Where the Forrester may arrest any man, that chal-
eth a Dear. 250

Articles.
The Articles against Cardinal Wolsey. 89, 135
Articles inquirable by the Judges in Byre. 134

Assessment.
Assessment, quid, etc., undae. 306, 307
A summation of Debt. See Debt.

Affises of No Description, and Justhes of Assize.
It is Quo Vadis, and not Fluctum, and the Kings
Bench may hold plea thereof. 122
How called, and for what cause invented. 158
How taken at Common-Law, and how now by the
Statute. ibid.

The Jurisdiction of the Judges of Assize. 154, 273
Letters Patent to Judges of Assize, for taking of
Affises in the proper Counties. 168
None else allowed in Cancellaria per quod qua-
rentes habetam tam fessimam remedium quam per Assizes.
ibid.

When Affises may be returnable in other Bench.
158
Hereunto belong Commision of Assizes. Writs of
admissione, and of Si non amenis, and a Writ to the
Sheriff to bring before them, omnia brevia Assis-jurato,
etc., certificat, etc. 158
Of the Judges of Assize, and the times for taking
Affises. 158
A recital of diverse Acts of Parliament which have
given unto Judges of Assize authority, in many cases.
159
Judges of Assize to deliver into the Kings Treasury,
records of Affises. 165

Assistants.
Assistants, to the Court for redresst of delays of judg-
ments in the Kings Courts. 347, 348
Assistants to the Chancellor, and High Steward
of England. 84

Assistants to the Dutchy Court of Lancaster.

Attachment.
Where a man may be arrested by his body for
Veris or Trespass, where not but by his goods. 289

Attainder.
Strange unjust Attainders in Parliament, without
hearing the party. 39
The Treason ought to be specially expressed, when
a man is attained thereof, by authority of Parlia-
ment. 39

Upon what Attainders so land is forfeited, nor can
Corruption of blood wrought. 125

Attain
An Attain upon a false verdict in the County Pa-
lantine of Clifton.

Attornement.
Of Arrongements to grants of Reversions, of Dutchy
Lands.
Lands of Lancaster, where necessary, where not. 210

Attorney.
The number, and what persons they ought to be. 76
Attorneys punished, how, and for what offences. 104, 111, 162
An Action of deceit against an Attorney. 112
Where the admittance of an Attorney in the Exchequer is not ex gratia Curiae (as is said in common pleading) but ex debito justitiae. 110

Attorneys before the Justices in Eyre. 185, 197
How many Attorneys should be in Norwich. 257
The Entry of a Warrant of Attorney, whereby it appears in what generality an Attorney may be made. 297
Writs for making Attorneys to be granted ex merito justitiae. 297

Attorney general and Solicitor.
What belongs to the Office of Attorney General. 101
Where not Eligible to be a Member of the House of Commons. 48
The Attorney general and Solicitor have their Offices Quam dis fe bene gesserint. 117

Averment.
Where a secret Use may be averred, where not. 86
No Averment against Doomefday Book. 269

The Court of Augmentation.
The Jurisdiction of this Court. 118
Annexed in their, and not de jure to the Court of Exchequer. 118, 122
The Judges of this Court, and what Lands within the survey thereof. 122
Dissolved. 118, 122

Ancient Demesne.
A Fine in Ancient Demesne by custom, bars not an estate tail. 270
Ancient Demesne Land made Frank Fee. 270
How the Lord is to recover Fines of Land in Ancient Demesne. 207, 250
An Ancient Demesne Jurisdiction regularly extends not to personal actions. 224, 270
What Mannors called Ancient Demesne. 269
Tryable by the Book of Doomefday. 269
Those that hold of these Mannors in Sokeage, are Tenants in Ancient Demesne. 269, 270
The work, and privilege of Tenants in Ancient Demesne. 269, 270
The Suitors are Judges, and tis no Court of Record. 269, 270
Extendable upon a Statute, Merchants, &c. and general Statutes extend to Ancient Demesne. 270

A writ.
The general Avowry for a Difrefe by Commissioners of Sewers. 269

Aurum Regiae.
The Duty of Aurum Regiae. Quia? 358

Authority.
What good Authorities in Law, what not. 39, 420
Dis clarissima mundi lumina, Authoritas & ration. 430
An Act of Parliament, a proof of the unanswerable and highest nature. 342
Aids granted to the King, See Subsidizes. 342

Bail and Mainpripe.
The true diversity and significatio of Bailment, Mainpripe, Fiduciall, Surety, Pledges, Plevin, Replevin, &c. 178, 179, 180
The derivation of the word Bailie, being fetched from the French noun Bailis, a Guardian, Keeper or Goaler. 178
Bailment called a living prison. 178, 179, 180
Who Bailable, who not. 178, 179, 180
The punishment of the Bail to let the offender escape. 178
The Bail may keep the prisoner in custody. 178
The manner of the several Entries of the Bail. 179, 179
The Kings Bench may bail any person, for any offence. 71
Of the Common Bail in the Kings Bench. 72, 179
See Kings Bench.
Against him that is Bail in the Kings Bench, any stranger may sue by Bill the same terms. 179, 180
The derivation of the word Mainpripe. 179
Every Bail is Main-prize, but every Mainpripe is not Bail. 179
Why Bail is oftentimes termed Mainpripe in our books. 180
One imprisoned in the Forrest may be bailed to appear at the next Eyre. 290

Bayiff.
The making of Bayiffs of Hundres belong to the Sheriff. 267
The Write de Bailiff amouncens, Where it lies. 267
Bailiff said. 292
Banks of Matrimon. 337

The Court of the Commissioners upon the Statute of Bankrupts.
The Derivation and significatio of Bankrupts. 277
We have fetched as well the name as the wickedness of Bankrupts from foreign Nations. 277
What makes Merchants become Bankrupts. 277
He is in latine called decollator a decuendos, 277
The Commisition, Jurisdiction and Power of the Commissioners. 277, 278
The party grieved by them, can only have an Action against them, to which they may plead the general issue. 277
They ought to have three qualities, vtr. widows, honestly, and discretion. 277
Laws against Bankrupts, to be beneficially continued for relief of Creditors. 277

See Ufe.
The Commissioners upon the Statute for Bankrupts may examine the Bankrupt's Wife upon oath. 278

The Court Baron.
The Court-Baron Carus Baratier, are the Courts of those, heretofore called, Barons minores. 46
The style and jurisdiction of this Court. 268, 264
This Court is incident to every Mannor, is not of Record, and the Suitors be Judges. 268
Infringement for the case of Tenants. 181

The power of Commissioners, &c. for the maintaining and errecting Beacons, Light-houses, &c. 181
The derivation of the word Beacon. (a 2)
(Laid)
The Table.

Quid?  1649
Light-house, quid?  1649
Sea-marks, quid?  1649
At the Common Law none but the King could erect any of these, which was done by Commision.  1649
The Lord Admiral by Letters Patents, hath power to erect Beacons, &c. for the Sea.  1649
The Masters, Wardens and Adjutants of the Trinity house of Delford Stroud are now to erect Beacons and Marks, &c. for the Sea.  1649
Becomage quid?  1649
The punishment of them which cut down Beacons, &c.  1649
Ordinations for Watches in Norfolk.  1649

Beasts.
Of Beasts of the Forrest, &c.  1616
Animalia gratus non sunt mortis, sed animalia satis sunt mortis.  1616
Nature hath endowed beasts of the Forrests with two qualities, viz. swiftness and fear.  1616

Benedictus.
Unde derivatur his Office.  313

Beer.
Beer is a Saxon word Bier, not of so late time as some imagine.  262
Bierarius, quid?  294
Before, unde?  294

Bill.
Of Suits by Bill in the Kings Bench.  71
Against the Bail there.  179, 180
Of Suits by Bill in the common pleas.  112
In the Exchequer.  112
Bishop. See Ecclesiastical person.

By-laws.
An Ordinance in a City, &c. that a lefele number shall elect Burgelers, void.  48, 49
Bills, 1. cervus unde.  294

Bona notabilia.

Bona.
Bona lawes.  335
No Bonaslawes to be sold ungarbled.  264

Brewer.
Pandixator or Porter his punishment for brewing unlawful Malt.  263
Banda-quad & unde.  318
De Buretial.  308
Burechta quad?  292

Butlerage.
Quid?  30
The Eymology.  16

What bind not without the Kings attente.  323
Capia.
Where not grantable in the Common Pleas, &c.  266
De Carejo.
Cervatorii.
Records removed by Cervatorii in Chancery, and by Minimum into the Bench out of the County Palatine of Lancaster.  205
To remove a Record out of the County Palatine of Cheshire.  214
To remove Records out of the Forrest Courts.  294
To whom to be directed. See Writs.
Chastitiae or Chastisias.  308

Challenge.
Quiens dient gard, a good challenge.  249

Chamberlain of London.
See London.
His Court for making free of Apprentices.  259

The Court of Chancery.
The Antiquity of this Court.  78
The only Court out of which original Writs issue.  78, 80, 82
The jurisdiction of the Court.  79, 80, 81, 82, 284
In the Chancery are two Courts, one ordinary, the other extraordinary.  79, 206, 218
Of what the ordinary Court holds plea.  79, 80, 81
To what purposes the Kings Bench and Chancery are accounted but one Court.  80, 83
Ill us in Chancery tried in the Kings Bench.  285
The Stile of the Court.  285
Of Errors in this Court.  285
The Lord Chancellor, or Lord Keeper is sole judge.  84, 85

This Court is officina justice, out of which all commissions which pafs under the great Seal go forth.  84, 85
The legal proceedings of this Court are not rolled in Rolls, but remain in placent in the petty Bag.  80
This Court always open.  81, 80
Statutes which give authority to the Chancellor to determine offences in Chancery, is intended in the ordinary Court, secundum legem, &c.  82
The Procede of this Court is under the great Seal.  82
Of the Officers of this Court.  82, 85, 95, 97
Of the Antiquity of the Court of Equity proceeding secundum equum & bonum.  82, 85
The Jurisdiction of this Court.  83, 84
It proceeds by English Bill, and is no Court of Record.  84
What it can bind, what not.  84, 83, 213
The Lord Chancellor can impose no fine, for breach of a Decree.  84
The Chancellor is sole Judge of this Court of Equity, &c.  84
Of the Rule, viz. three things are to be judged in this Court; Covin, Accident and breach of Confidence.  84, 85
Matters determinable by the Common Law cannot be decided in Chancery.  85, 83, 84
Of a suit for evidence, where the Plaintiff cannot proceed in such suit.  85
After judgement at Common Law, the Chancellor ought not to examine the matter in Equity.  86, 91
Where Cestui que Use shall Charge the Executors, &c.  86

Of Callais, or Callais cæterum.
His Port, and Mart, kept by the space of 211 years, by 11. several Kings, and governed by English Laws.  282
The Kings right remains to it, &c.  282
Callais cith the King yearly 20,000l.  282
Cambridge. See University.

Causes.
Against the Laws or customs of the Realm are void.  309, 323
The T A B L E.

g. r. for profits received by the Feoffees in trust, in their life time. 85, 89
The first Decree in Chancery. 85

Lord Chancellor, and Lord Keeper.
When the Chancellor, &c. followed the Kings Court. 72, 73
Both the British and Saxon Kings had their Chancellors. 87
Of a Chancellor that did usually sit in the common Pleas, and why? 75, 78
This Officer ought to be well skilled in the Common Law. ib
For ubi non est scientia ibi non est conscientia. ib.
Complaints and Petitions by the whole body of the Realm, that able men might be chosen Chancellors. 79

The Chancellors commandment against Law, not to be obeyed. ib.
How the Lord Chancellor, or Lord Keeper of the great Seal, created. 87
The Authority of the Lord Keeper. 87, 88
There cannot be a Lord Chancellor, and Lord Keeper at one time, because both those are but one Office. ib
What is meant by the Lieutenant of the Chancellor. ibid.
He is called Cancellarius a Cancellariis. ib.
The Chancellors Oath. ib. ib
There cannot be a greater Warrant to the Lord Chancellor to make or grant any Commission, &c. then an Act of Parliament. 167
Charterable, See 327.
Charters of Exemption. Vide Exemption. 287

Charge.
What shall be laid in Law duly in charge, in the Exchequer. See Exchequer, and 284
See Debt.

Chafe.
The difference between a Chafe and a Forrest. 528
The owner may cut down his woods in a Chafe, leaving sufficient for covert. 528
He that hath a Warren within a free Chafe, may build a lodge, &c. 528
The King cannot make a Chafe in other mens grounds. 528
Chare of ad commodum Legem, and is not to be guided by the Forrest Laws. 314, 315
Butts of the Chafe. 316
Of the Meters, and bounds of a Chafe. 317, 318
The Chafe, Warren, and Park, are collateral Inheritances and notwithstanding the soil. 518
If a man hath a Chafe in another mans grounds, and after purchase the grounds, the Chafe remaineth. 518
Wheddon Chafe never was a Forrest. 503

Of the County Palatine of Chester.
Created by prescription. 211
The most ancient and most honourable County Palatine. 323
Of the Chamberlain, Justice and other Officers, and of the Courts of this County Palatine, and their jurisdiction. 211, 212, 215
The opinion of four Judges concerning the jurisdiction, and liberties of this County Palatine. 212
The City of Chester a County of it fell. 211, 212
In a Case which concerns the Chamberlain, he may expel in the Chancery of England. 215
Of Errors before the Chamberlain and Judges, how to be corrected. 213, 214, 217
An Attray upon a false verdict in Cheffet. 214
Of Justices of peace and Goal delivery, &c. within the County of Chester. 215

Chimacium.
The Honourable Court of Chimacium before the Confable and Marshal. 305

The file of the Court. 122
The Judges. 122
This Court anciently holden in the Kings Hall, ib. 122
The jurisdicton of this Court. 123, 124, 125, 126
Where by the Law of Arms the appellant is to be punished as the Defendant should, ib. &c. 124
Authors which have written of Combats. ib.
The proceedings of this Court. 125
The Heralds attennant upon this Court. ib.
This Court the Fountain of the Marshal Law. 123

Of the Courts of the Cinque-Parts. 224
The jurisdicton of the Cinque-Parts. 224
At the first the privileged Parts were but three, when the four other were added. 223
Every one of these lend two Burgesses by the names of Barons of the Cinque-Parts, to the Parliament. 223
The Lord Warden and keeper of the Cinque Parts, hath the jurisdicton of an Admiral amongst them, and is exempt from the Admiralty of England. ib.
He is also Confable of the Castle of Dover; his jurisdicton. 18
How he ought to be qualifed, his Office and Duty. ibid.
The Franchise of the Cinque-Parts. 223
The Cinque-Parts are parcel of the County of Kent, and yet not brave Dominus Regis mun carrius, but have not jura Regalia. ibid.
Of the several Courts within the Cinque-Parts. 223
The Kings Writs must be directed Confabularius caffri de Leves, & Gardinis quique Fortunam. 223
In what cases. ibid.
Error in the Cinque-Parts, how to be redressed. 224

Claim.
Of Claims within Forretts, what good, what not, and when to be made, &c. 291, 294, 295, 297, 305
The manner is when claims are made in obscure terms, to expound them. 305, 306
Clerk of the Market, See Market.

Commission.
Of Special Commissioners of Oyer & Terminer &c. 72
Commissions of Oyer & Terminer, either general or special. 165, 167
See Justices of Oyer & Terminer. 185, 187
Commissions are like to the Kings Writs such only are to be allowed which have Warrant of Law. 165, 166, 168

Several Commissions of new invention against Law. 165, 166
A Commission is a delegation by Warrant of an Act of Parliament, or of the Common Law, &c. ib.
{ Commissions determined for want of an Adjournment. 165
By a new Commission. 165, 166, 167
Prevented by Statute. 169
Commissions ex ministeri jussu upon the Statutes. 169
39 Eliz. c. 6, 35 H. 3, c. 4.
The Commission of Goal-delivery. 168
A Commission, to inquire of the rights of the County Palatine of Durham. 216
Of Commissions for finding of Office. 225
### The Table

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissioners for examination of Writs. Their Duty. 278.</td>
<td>There may be priority, but no superiority amongst Commissioners. 279.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Committees. Committees of grievances in Parliament, their proceedings. 11, 12.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common. Where all the Commoners need not join, but any may bring an Action. 294, 295.</td>
<td>Common may be held in Chafet. Forrests, &amp;c. but the Commoners must not pursue, &amp;c. 268.</td>
<td>Stron'ld-Horpes under fifteen handfuls high, are not to common in Forrests. 310.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common-Plant. The Court of Common-Plant, is not able to dispatch all the Subjects Causes. 72.</td>
<td>This Court is the Lock and Key of the Common-Law. 79, 89.</td>
<td>Of what this Court holds plea, and by what warrant. 99.</td>
<td>Called the Common-Bench in respect of the Common-Plant there holden. 100.</td>
<td>How the Justices are made by Letters Patent. ib.</td>
<td>They ought to be Serjeants. ib.</td>
<td>The jurisdiction of this Court is general, and extendeth throughout England. ib.</td>
<td>The Antiquity of this Court. ib.</td>
<td>The jurisdiction of this Court for punishment of their Officers and Ministers. 106, 107.</td>
<td>The Officers of the Court. 101.</td>
</tr>
<tr>
<td>Conclavers. The mischief of their Heterodox. Turbidum hominum genus. 76, 267. 76.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Condition. Where the Assent of the Clergy to an Act of Parliament could not be conditional. 75.</td>
<td>The Condition in the last Will of R. 2. unlawful. 42.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Safe Conduct. See Leagues.</td>
<td></td>
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<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conundar. Conuntions demanded by the Mayor and Bailiffs of Hull. 141.</td>
<td>Conundars challenged. 219.</td>
<td>The Defendant cannot plead, but the Lord of the Franchise must demand Conundars. 224.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conciliation. What pretension is a conviction in Law. 290.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td>Copartn. 587.</td>
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</tr>
<tr>
<td>Copy. A Copy of a Bill denied. 228.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coroners. The Court of the Coroners is a Court of Record. 271.</td>
<td>The Coroners to be chosen in full County. 2.</td>
<td>Appeals by Bill before them. 73.</td>
<td>The Justices of the King's Bench are the Sovereign Coroners. 128.</td>
<td>Where the Coroners may enquire of things done upon any Arm of the Sea. 141, 140.</td>
<td>The Coroners to deliver their Inquisitions to the Justices of Geal delivery. 182.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>For the County in England, and in Wales and Chester but two. ib.</td>
<td>His Jurisdiction, Office, Fees, Authority, and Antiquity. ib.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>The Council-Board, or Table. This is the most noble assembly of the King, and his privy Council, in the Kings Court or Palace. 53.</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>It is called the Council-Table, a Council, a Constable excellensiam. ib.</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>These Counsellors consult of publick Causes, private Causes they leave to the Justices andmediate not with them. 53, 176.</td>
<td>How called, and of what number. 53.</td>
<td>Their Oath and Duty, and how made. 54, 56.</td>
<td>The four properties King Ed. 3. would have his Counsellors to have. 55.</td>
<td>What honour is due to them. 55.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hugh Spencer the Father, and Hugh the Son evil Counsellors. 53, 54.</td>
<td>And to were Empeff and Dudley. 156, 157, 158, 199.</td>
<td>Their Fees. 54.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>They have voices and places in the Star-Chamber. 54.</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>H. 8. would wish that his Counsellors would commit Simulation, Diffamation, and Partiality to the Porters Lodge, when they came to sit in Council. ib.</td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Of the President of the Council. 55, 52.</td>
<td>How called. 55.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### The Table

| His Office, and how granted. | ib. |
| The Duty of the Clerks of the Council. | 56 |
| Concerning Acts of Council, and orders for them to observe. | 57 |
| Rules of Council, observed by my Lord Chief Justice, necessary for them to observe. | 57 |
| Non est locum, sed publica vom. Præ-considera consilia sunt. | ib. |
| The precedence of Counsellors. | 58-59 |
| Malum consilium, consilium felicissimum. | ib. |
| Council. |
| Privy Council. See Council Board. | 22 |
| The Judges, the Council for deciding matters in law. | 228 |
| In what Council may be had. | 228 |
| County. |
| What Ports, Havens and Rivers, &c. are within Counties. | 137-138, 139, 140, 141 |
| The Court of the County. |
| The Stile and Jurisdiction of this Court. | 254 |
| This Court is no Court of Record, and the Surors are the Judges. | 256 |
| In a Reddition the Sheriff is Judge, and a Writ of Error by John Smith, ibid. |
| Countermand. See Revocation. |
| The Courthouse of the Kings Household. |
| Domus comitatus Hiberniae Regni. |
| The Officers. | 131, 132 |
| They never held Plea of any thing. | 132 |
| To what purposes they sit; their Office and Duty. | 154 |
| Court. |
| No King in the world hath such Tribunals, as his Majesty. Vide Privation. |
| Court, hath two several significations, and accordingly it is severally derived; it signifies both the Kings Court or Palace, &c. to 2081, and a Court of Justice, &c. Vide Privation. |
| Every Court of Justice hath Laws and Customs for its direction. | 14, 15 |
| Of the High Court of Parliament. |
| See Parliaments and Acts. |
| Every offence committed in any Court, punishable by that Court, must be punished in the same Court, or in some higher. | ib. |
| The Court of Parliament hath no higher. | ib. |
| The House of Lords, and House of Commons Separate, and both together, are Courts. | 21, 22, 24 |
| The King may command any Court to observe and keep a Statute by Writ. |
| The more high and absolute the Jurisdiction of the Courts, the more just and honourable it ought to be in the proceeding, and to give examples of Justice to inferior Courts. |
| Certain Rules preferred, for Courts to follow. |
| The King hath committed all his power of Judicature to several Courts. |
| The Kings Courts have been out of memory, 10 as no man knoweth which is ancientest. |
| A Court of general Surveyor of the Kings Lands with power to make Leases, &c. |
| How dissolved. | 122 |
| What Courts may be raised by Letters Patent, or Commission, what not, but by Parliament. | 87, 97, 121, 223, 242, 248 |
| None but the Kings Courts can write to Bishops. |
| Two things principally support the Jurisdiction of Courts. | 112 |
| Courts created by Act of Parliament, not to be dissolved but by Act of Parliament. | 122 |
| Only Courts of Record to take Recognizances. | 135 |
| If any Statute prohibits any offence, and name not in what Court it shall be punished, or appoint the penalty to be recovered in any Court of Record, or in any of the Kings Courts of Record; what Courts are intended in the case. | 165, 164 |
| Of Courts newly created. | 260 |
| When particular Courts fail of justice, the general Courts shall give remedy. |
| Where the Kings Courts write to the Constable of Dover to certify Records, &c. who is the immediate officer to the Courts. |
| Barons or Benchmarks for a Court. |
| The King by Letters Patent may ordain a Court in any Country, which shall have jurisdiction through the whole Realm. | 215 |
| The Court of the Commission under the great Seal, by force of the Statute, 28 H. 8. c. 15. for punishing Treasons, &c. upon the Sea. |
| This Court is holden before the Admiral, and three or four other Commissioners. | 147 |
| The Jurisdiction. |
| The Proceeds and proceedings herein. |
| The Wardens Courts in the East, West, and Middle Marches adjoining to Scotland. |
| They proceeded according to the Law called the March Law. |
| The Court of the Lord Steward, &c. of the Kings Household, concerning Vc. by compounding, or conspiring to kill the king, or any Lord, or other of the Kings Council, &c. |
| The Court of the Lord Steward o' the Kings House, &c. to enquire of, hear and determine Treason, and other offences in the Kings Palace, &c. |
| A Court for redress of delays in judgments in the kings great Courts. See Delays. |
| A Court of inquiry of the Defaults of the Judges of peace, Judges of Assise, Sheriffs, and under Sheriffs touching the execution of the Statute of 13 H. 4. c. 27. concerning Rises, Assizes, and Routes. |
| The Courts of Stainleff and Friendes Weponsaker. |
| Crown. |
| The Crown entailed to H. 4. |
| Enfeoffed to H. 7. | 37 |
| The Sovereignty, Prerogative, regal Jurisdiction, and freedom of the Crown of England. | 89 |
| Why the Crown of England is defendable to the eldest Daughter. |
| The Crown of England subject to none but God. | 253-255 |
| A Triumphant Crown. | 345 |
| The manner of the Coronation. |
| Customs granted to the King. See Subsidies. |
| The Derivation of Customs. |
| Customs antiqua five magnae curae. |
| Customs parta, &c. nova qual. |
| Custom of what things ex Antiquo. | 30, 31 |
| Custom. |
| The Court of London touching the Court of Conscience. |

Debts.
# The Table

<table>
<thead>
<tr>
<th>Deferro.</th>
<th>Discretio est differente per legem quid sit iudicium.</th>
<th>41, 66</th>
</tr>
</thead>
<tbody>
<tr>
<td>All causes should be measured by the golden, and freight metewand of the Law, and not by the uncertain and crooked cord of discretion.</td>
<td>34</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Dispensa.</th>
<th>Concerning the power of the Arch-Bishop to grant Dispensations.</th>
<th>357</th>
</tr>
</thead>
<tbody>
<tr>
<td>The King may dilate in any other lands, in his Tenants pollution, though none holden of him.</td>
<td>119</td>
<td></td>
</tr>
<tr>
<td>Dogs, Who may keep Grey, hounds, and other Dogs unexpe ted to hunt.</td>
<td>308</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The Book of Doomsday.</th>
<th>Made in the 104-year of the Conquerour.</th>
<th>222, 266</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Authority thereof.</td>
<td>42</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Dover.</th>
<th>Dowments in Chancery.</th>
<th>75, 284</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drapery.</td>
<td>Of Draperies and Workheads in Norwich.</td>
<td>257, 248</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Durs.</th>
<th>A Bond avoided by Durex, of an Arreel, upon a Writ out of a Court, that had no jurisdiction.</th>
<th>97</th>
</tr>
</thead>
<tbody>
<tr>
<td>Of the County Palantine of Durham.</td>
<td>51</td>
<td></td>
</tr>
</tbody>
</table>

| Ecuador. | This is a County Palantine by prescription parted of the Bishoprick of Durham, 218 |
|----------|--------------------------------|--------|
| Plaints, Verdifs and Judgments against the Bishop, for injuries done by him. | 219 |
| Where he shall be punished. | 216, 217, 218 |
| His liberties, jurisdiction and privileges. | 215, 218 |
| In this County Palantine there is a Court of Chancery, which is a mixt Court, both of Law and Equity. | 219 |
| Of Errors in this Court, how to be corrected. | 218 |

| A Record removed from Durham into the common Bench, and a writ fac. to try the issue, joyned in Durham. | 219 |
| What Plea to be continued by adjournment till the Record be removed. | 218 |
| Where the King may command the Bishop of Durham, &c. | 220 |
| Of wardship primer felin, &c. due to the King for land in this County Palatine. | 219 |

<table>
<thead>
<tr>
<th>Ecclesiastical Persons and Livinges.</th>
<th>Which of them the King may call to be Lords of Parliament, whichnot.</th>
<th>44, 45</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ecclesiastical livings valued by a Book of Taxations.</td>
<td>120</td>
<td></td>
</tr>
<tr>
<td>Anthony Book of that state and greatness as never any Bishop was, Wofully excepted.</td>
<td>215</td>
<td></td>
</tr>
<tr>
<td>The true state of the Bishoprick of Norwich.</td>
<td>256, 257</td>
<td></td>
</tr>
<tr>
<td>The first Bishop of Lincoln.</td>
<td>259</td>
<td></td>
</tr>
<tr>
<td>Patrons of the Bishopricks of Sodor, Rochester, and London, &amp;c.</td>
<td>283</td>
<td></td>
</tr>
<tr>
<td>Spiritual persons may hunt, &amp;c. After the decease of every Bishop, the King is to have his kentel of hounds, &amp;c.</td>
<td>305, 439</td>
<td></td>
</tr>
</tbody>
</table>

| Objections against Bishops, made in Queen Elizabeth's time, touching their Consecration, &c. | 321, 322 |

<table>
<thead>
<tr>
<th>Deferro.</th>
<th>Discretio est differente per legem quid sit iudicium.</th>
<th>41, 66</th>
</tr>
</thead>
<tbody>
<tr>
<td>All causes should be measured by the golden, and freight metewand of the Law, and not by the uncertain and crooked cord of discretion.</td>
<td>34</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Dispensa.</th>
<th>Concerning the power of the Arch-Bishop to grant Dispensations.</th>
<th>357</th>
</tr>
</thead>
<tbody>
<tr>
<td>The King may dilate in any other lands, in his Tenants pollution, though none holden of him.</td>
<td>119</td>
<td></td>
</tr>
<tr>
<td>Dogs, Who may keep Grey, hounds, and other Dogs unexpe ted to hunt.</td>
<td>308</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The Book of Doomsday.</th>
<th>Made in the 104-year of the Conquerour.</th>
<th>222, 266</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Authority thereof.</td>
<td>42</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Dover.</th>
<th>Dowments in Chancery.</th>
<th>75, 284</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drapery.</td>
<td>Of Draperies and Workheads in Norwich.</td>
<td>257, 248</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Durs.</th>
<th>A Bond avoided by Durex, of an Arreel, upon a Writ out of a Court, that had no jurisdiction.</th>
<th>97</th>
</tr>
</thead>
<tbody>
<tr>
<td>Of the County Palantine of Durham.</td>
<td>51</td>
<td></td>
</tr>
</tbody>
</table>

| Ecuador. | This is a County Palantine by prescription parted of the Bishoprick of Durham, 218 |
|----------|--------------------------------|--------|
| Plaints, Verdifs and Judgments against the Bishop, for injuries done by him. | 219 |
| Where he shall be punished. | 216, 217, 218 |
| His liberties, jurisdiction and privileges. | 215, 218 |
| In this County Palantine there is a Court of Chancery, which is a mixt Court, both of Law and Equity. | 219 |
| Of Errors in this Court, how to be corrected. | 218 |

| A Record removed from Durham into the common Bench, and a writ fac. to try the issue, joyned in Durham. | 219 |
| What Plea to be continued by adjournment till the Record be removed. | 218 |
| Where the King may command the Bishop of Durham, &c. | 220 |
| Of wardship primer felin, &c. due to the King for land in this County Palatine. | 219 |

<table>
<thead>
<tr>
<th>Ecclesiastical Persons and Livinges.</th>
<th>Which of them the King may call to be Lords of Parliament, whichnot.</th>
<th>44, 45</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ecclesiastical livings valued by a Book of Taxations.</td>
<td>120</td>
<td></td>
</tr>
<tr>
<td>Anthony Book of that state and greatness as never any Bishop was, Wofully excepted.</td>
<td>215</td>
<td></td>
</tr>
<tr>
<td>The true state of the Bishoprick of Norwich.</td>
<td>256, 257</td>
<td></td>
</tr>
<tr>
<td>The first Bishop of Lincoln.</td>
<td>259</td>
<td></td>
</tr>
<tr>
<td>Patrons of the Bishopricks of Sodor, Rochester, and London, &amp;c.</td>
<td>283</td>
<td></td>
</tr>
<tr>
<td>Spiritual persons may hunt, &amp;c. After the decease of every Bishop, the King is to have his kentel of hounds, &amp;c.</td>
<td>305, 439</td>
<td></td>
</tr>
</tbody>
</table>

| Objections against Bishops, made in Queen Elizabeth's time, touching their Consecration, &c. | 321, 322 |

# Table of Debts

<table>
<thead>
<tr>
<th>Categories</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Accounts and debts to the King are collected out of the Offices and drawn down, and put in charge in the pipe. 106</td>
</tr>
<tr>
<td>B</td>
<td>What is laid in Law to be duly in charge. 18</td>
</tr>
<tr>
<td>C</td>
<td>The Kings Debts priviledge to sue in the Exchequer. 111, 112</td>
</tr>
<tr>
<td>D</td>
<td>Where the King may levy his debt, upon his Debtors, Debtor and how, where nor. 115</td>
</tr>
<tr>
<td>E</td>
<td>What Debts may be affigned to the King, what not id.</td>
</tr>
<tr>
<td>F</td>
<td>The penalty to confesse a debt to the King to delay others. 115, 111</td>
</tr>
<tr>
<td>G</td>
<td>A Debt contraried by act in Law. 18</td>
</tr>
<tr>
<td>H</td>
<td>As the Sheriff, &amp;c. becomes the Kings Debtor, when he entering into account. 116</td>
</tr>
<tr>
<td>I</td>
<td>Decency, what done for decency false. 21</td>
</tr>
</tbody>
</table>

## Debts

| Lawful to hunt Deer out of the Forrest, &c. and if the Dogs follow the Deer into the Forrest to kill them there. 204 |
| Why the Kings Deer are not branded. 205 |
| If the Kings Deer range out of the Forrest, they belong not to the King, but Occupants conceduntur. 305 |
| Nets called Deer-hayes forbidden. 315 |
| Deer a &y i. Fera bident, their theft is called caro ferina. 316 |

## Delays

| A Court for redres of delays of judgments in the Kings great Courts, raised by the Statute of E. 3. 11 |
| Delay of Judgments forbidden both by the common Law, and Acts of Parliament. 67, 68, 69 |
| Plena & eclair justitia juri paribus. 67 |
| Rules concerning delays. 169 |
| How to remedy delays in Ecclesiastical Courts. 28 |
| Dianuia dialis. 68 |
| Delegas. 339 |
| Demise of the King. 59 |
| Coroner, &c. continue notwithstanding the Demise of the King. 271 |

## Deodand

| The Coroner is to inquire of Deodands. 271 |
| Deodald quid? - 254 |

## Deputy

| Great Offices are never well managed by Deputy, where the Officer himself is but a Cipher. 18 |
| The Steward of England can make no Deputy. 59 |
| The Lord Chancellor can make no Deputy. 88 |
| Offices executed by Deputy. 106, 128 |
| The Exchequer may make a Deputy. 226 |
| Where a woman having an Office may make a Deputy. 311 |

## Dignity. See Nobility.

## Difecel.

| A Writ of Difecel to reverse a Fine levied by Tenants in ancient Demesne. 270 |

## Difecel.

| No Process or suit before Justices, &c. shall be discontinue by making new Commissions, &c. 165 |
| Of discontinuance and recontinuance of the Justice-Sent in the Forrest. 313 |
The two Provinces Canterbury and York, what Bishops belong to the one, and to the other, 322
Of Subscriptions. 323, 324
Clerks to be sworn to Canonical obedience to their Diocesan. 324
When the Bishops could make no wills without the Kings Licence, and what the King is to have after their decease. 338
The Bishops temporalities feited for the Kings dues, &c. 338, 339
If a Bishop in England be made a Cardinal, &c., the Bishopsrick becomes void, the King shall name the Successor. 339
The manner of Electing Bishops. 359
Bishops hold their Bishopsrics per Bar. quam. 360, &c.
The precedence of Bishops, &c. 364, 365
The Gardianship of the Spiritualities, &e., the vacant Bishops, where granted. 347
Agreed at a Synod holden in Ireland by St. Patrick, that high Priests should have Wives. 356
 Ecclesiastical Courts, anciently called Hallimons. 1 Holly-Courts, Circummetos, or Circummentos. 321
The Kings Laws bound the jurisdiction of Ecclesiastical Courts. 321
The Popen Collector or Miniter had no jurisdiction within the Realm. 321
The Spiritual jurisdiction, and of what things the Clergy have jurisdiction. 321, 322, 339
Delays in Ecclesiastical Courts. See Delays.

1. Of the Court of Convocation. 322, 323
The Name. 322, 323
Of the Convocation house: The whole Clergy in person, or by representation. 322, 323
The Antiquity. 322
By what Authority assembled. 322
What their jurisdiction was. 322
What their jurisdiction now is. 323
The privilege of the Clerks. 322
2. Of the high Commission in cases Ecclesiastical. 324
The Jurisdiction of these Commissioners, 324, &c.

3. The Prerogative Court of the Arch-Bishop of Canterbury. 335
This is the Court wherein Testaments be proved, and Administrations granted. 335
Rules to be observed by the Judges. 335
The Fees for probate of Testaments, &c. 335

4. The Court of the Arch-Bishops of the Arch-Bishop of Canterbury. 337
Called Curia de Arcobus, &c., holden in the Bow-Church of London. 337
The Limits of the jurisdiction. 337
The Judge is called the Dean of the Arch. 337
His Jurisdiction. 337

5. The Court of Audience. 337
This Court is kept by the Arch-Bishop in his Palace. 337
With what matters it dealeth. 337

6. The Court of Faculties. 357
The Arch-Bishops Officer is called Master ad facultates, his power is to grant Dispensations. 357
For what. 357

7. The Court of peculiars. 338
8. The Conistory Courts of the Arch-Bishops, and Bishops. 338
Where, and before whom holden. 338
When Conistory Courts began. 338, 339
From the he Appeal is to the Arch-Bishop. 338

9. The Court of the Arch-Deacon or his Commissary. Where to be holden. 339
From him the Appeal is to the Diocesan. 339
10. The Court of Delegates and consequently of Appeals. 339
Why so called. 339
By what Authority, and upon what Appeals they sit. 339
Of Appeals. 339, 340

11. The Court of Commissioners of Review. 341
Where after a definitive sentence the king may grant a Commission of Review. 341

12. Le Court des Conservateurs des privileges de St. John de Jerusalem, &c. 341

E
Justices in Eyre. 138

W
Bishops. 184
Called Justiciarii in iriure, or Innuenter, in respect of other Justices that were residuaries. 184
Called Justiciarii deambulantes, &e., perambulantes. 184
Their Authority, and Jurisdiction. 184, 273, 159
The Stile of their Court. 184
They held their Courts from seven years to seven years. the manner and method, of their proceedings. 184, 185, 186, 187
Articles inquirable by the Justices in Eyre. 194, 195
They may hear and determine the same day. 194
Of the Justices in Eyre, of the Forrest. 290, 291

310, 315

Elephant. 3
The properties of an Elephant.

Election.
Who are to choose Parliament men, who not. 144
The Election of the Speaker of the House of Commons. 548, 49
Elections of Parliament men to be free, &c. 1048
How, and when to be. 48, 49
Of Elections of Bishops. 359
Of the royal Franchise of Ely. 220
Where named the County Palatine of Ely. 220
Of the Bishopsrick of Ely. 220
The Bishop hath royal Jurisdiction by prescription grounded upon a grant. 220
The liberty and privilege which the Bishop of Ely hath. 220, 221

Enemies.
Lawful to take goods from the Kings enemies. 144
Of Enemies. See Leagues.

( )

England
### The TABLE.

<table>
<thead>
<tr>
<th>England</th>
<th>The Realm of England is an Empire, and fo hath been accepted in the world.</th>
<th>342, 343</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The glory of England.</td>
<td>344</td>
</tr>
<tr>
<td></td>
<td>England and Scotland anciently but one Kingdom.</td>
<td>245</td>
</tr>
<tr>
<td></td>
<td>Egbert Rex in Parliamentapud Wintoniam metavit nomen regis de confusa populis fuit et justit ialid de certo vocata Anglia.</td>
<td>246</td>
</tr>
<tr>
<td></td>
<td>King Athelstan reduced England to a Monarchy.</td>
<td>359</td>
</tr>
<tr>
<td>Equity</td>
<td>Equity is just Correction of Law in some cases.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>See Chancery.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Matters of equity ought to be determined in the Chancery.</td>
<td>213</td>
</tr>
<tr>
<td></td>
<td>The Court of Equity can bind but the person.</td>
<td>218</td>
</tr>
<tr>
<td></td>
<td>There can be no Court of equity but by Act of Parliament, or Precept.</td>
<td>87, 248</td>
</tr>
<tr>
<td>Error</td>
<td>The Manner of bringing Writs of Error in Parliament.</td>
<td>21</td>
</tr>
<tr>
<td></td>
<td>What Errors are reddretable there.</td>
<td>21, 255</td>
</tr>
<tr>
<td></td>
<td>Where Records of Attaigned of High Treason may be revered for Error, where no by 59 Eliz., c.2, 21.</td>
<td>105</td>
</tr>
<tr>
<td></td>
<td>Errors by the Law, in the Common Pleas, are to be corrected in the Kings Bench, and of the Kings Bench in the Parliament.</td>
<td>224, 272</td>
</tr>
<tr>
<td></td>
<td>What Errors are to be corrected in the Kings Bench, what not.</td>
<td>71, 80</td>
</tr>
<tr>
<td></td>
<td>Where Errors in the Exchequer shall be examined.</td>
<td>72, 105, 165</td>
</tr>
<tr>
<td></td>
<td>To whom Writs of Error are to be directed in the Exchequer, Common Pleas, &amp;c.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Error of a Judgment upon a trial by record in the Exchequer.</td>
<td>110</td>
</tr>
<tr>
<td></td>
<td>The Courts in the Exchequer Chamber, for Errors in the Kings Bench and of the Kings Bench.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No Writ of Errors lye for Errors in the Admiralty.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Error to reverse an Outlawry, because he was upon the Sea at the time of the Outlawry.</td>
<td>125</td>
</tr>
<tr>
<td></td>
<td>Error of Judgments before the Justice of Traibail.</td>
<td>146</td>
</tr>
<tr>
<td></td>
<td>Before the Chamberlain and Justice of the County Palatine of Chester, how to be corrected.</td>
<td>213, 214, 215</td>
</tr>
<tr>
<td></td>
<td>Of Errors in the County Palatine of Durham.</td>
<td>216</td>
</tr>
<tr>
<td></td>
<td>Errors in Wale.</td>
<td>223</td>
</tr>
<tr>
<td></td>
<td>Errors in the Cinque Ports how to be redretable.</td>
<td>224</td>
</tr>
<tr>
<td></td>
<td>Error in the Stannery Courts. See Stannery Courts.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Errors in the Haultings.</td>
<td>247, 248</td>
</tr>
<tr>
<td></td>
<td>Errors in the Sheriffs Courts of London.</td>
<td>249</td>
</tr>
<tr>
<td></td>
<td>Errors in the County Court.</td>
<td>266</td>
</tr>
<tr>
<td></td>
<td>Errors in the Pie-powders Court.</td>
<td>272</td>
</tr>
<tr>
<td></td>
<td>Errors in Calde.</td>
<td>282</td>
</tr>
<tr>
<td></td>
<td>Errors in the Forrest Courts.</td>
<td>297</td>
</tr>
<tr>
<td></td>
<td>De escapas.</td>
<td>306</td>
</tr>
<tr>
<td>Escheat</td>
<td>The Seinf of the King of Lands by Escheat altereth not the nature of the Lands.</td>
<td>224</td>
</tr>
<tr>
<td></td>
<td>The Court of the Escheator, and of the Commission for finding of officers.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Of Escheators.</td>
<td>197</td>
</tr>
<tr>
<td></td>
<td>Who gives him his Office, and how.</td>
<td>225</td>
</tr>
<tr>
<td></td>
<td>His office, duty, and manner of his proceedings, in finding Offices.</td>
<td>225, 226</td>
</tr>
<tr>
<td></td>
<td>His see, and forfeiture if he offends.</td>
<td>225, 226</td>
</tr>
<tr>
<td></td>
<td>His Oath, and sufficiency.</td>
<td>226, 225</td>
</tr>
<tr>
<td></td>
<td>He may make a Deputy.</td>
<td>226</td>
</tr>
<tr>
<td></td>
<td>If he have goods of a man out-lawed in trepatis, I am discharge a delivering them to the Escheator.</td>
<td>226</td>
</tr>
<tr>
<td></td>
<td>An Action upon the Cale lye against him for returning a falling Office.</td>
<td>226</td>
</tr>
<tr>
<td></td>
<td>The Mayor is Escheator in London.</td>
<td>250</td>
</tr>
</tbody>
</table>

### Effores.

<table>
<thead>
<tr>
<th>Effores</th>
<th>The owner of the wood must leave sufficient Effores.</th>
<th>258</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Where the pleading of a Licence, for Alienation works an Efforse, where not.</td>
<td>111</td>
</tr>
<tr>
<td></td>
<td>An Efforse by losing of a general Livery, &amp;c.</td>
<td>207, 208, 209</td>
</tr>
<tr>
<td></td>
<td>Of Efforses by Offices found, &amp;c.</td>
<td>207, 208, 209</td>
</tr>
<tr>
<td></td>
<td>Juries not Efforse, because sworn ad veritatem dicendum.</td>
<td>207</td>
</tr>
</tbody>
</table>

### Effretts.

<table>
<thead>
<tr>
<th>Effretts</th>
<th>Of Effretts. The Clerk of the Market delivers the Effrets of those things which touch his Office into the Exchequer.</th>
<th>183, 177</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Evidence. A what sufficient to prove a Forrest.</td>
<td>273</td>
</tr>
<tr>
<td></td>
<td>Examiners. Their Duty in the examination of Witnessles.</td>
<td>279</td>
</tr>
<tr>
<td></td>
<td>Exchequer-Chamber.</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>Exchequer-Chamber Cause, quid?</td>
<td>68, 110, 119</td>
</tr>
<tr>
<td></td>
<td>Where called the Council-Chamber, and why.</td>
<td>106</td>
</tr>
<tr>
<td></td>
<td>Of the Court of Equity in the Exchequer-Chamber.</td>
<td>108, 109, 118, 119</td>
</tr>
<tr>
<td></td>
<td>The Judges and Jurisdiction of this Court.</td>
<td>118</td>
</tr>
<tr>
<td></td>
<td>Who priviledged to sue in this Court, who not.</td>
<td>119</td>
</tr>
<tr>
<td></td>
<td>The Antiquity of this Court.</td>
<td>119</td>
</tr>
<tr>
<td></td>
<td>The several Courtsholden in the Exchequer-Chamber.</td>
<td>119</td>
</tr>
</tbody>
</table>

### Exchequer.

<table>
<thead>
<tr>
<th>Exchequer</th>
<th>It is the proper Court of the King, and Center for his Revenue and Profit.</th>
<th>72, 116, 112</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The Authority of this Court is of Original Jurisdiction without any Communion.</td>
<td>103, 113, 114, 115</td>
</tr>
<tr>
<td></td>
<td>This Court is divided into two parts, viz. Superior and Inferiors. The account finds, and the receipt finds.</td>
<td>118</td>
</tr>
<tr>
<td></td>
<td>Of the Officers and Ministers of this Court.</td>
<td>104</td>
</tr>
<tr>
<td></td>
<td>They ought to be well skilled in the Law, and courtesies of the Exchequer.</td>
<td>105, 106, 107, 108, 109</td>
</tr>
<tr>
<td></td>
<td>How called, and why called Exchequer.</td>
<td>112, 104</td>
</tr>
<tr>
<td></td>
<td>Who have the custody of the Records of the Exchequer.</td>
<td>105, 115, 155, 165, 182</td>
</tr>
<tr>
<td></td>
<td>The Barons are sole Judges, and all judicial proceedings according to Law, are coram Baronibus, &amp;c.</td>
<td>105, 105</td>
</tr>
<tr>
<td></td>
<td>Those judicial proceedings are in Rolls, but not numbered as in other Courts.</td>
<td>109</td>
</tr>
<tr>
<td></td>
<td>Duly in charge. How and what.</td>
<td>106</td>
</tr>
<tr>
<td></td>
<td>Of the Court of Equity in this Court.</td>
<td>116, 119</td>
</tr>
<tr>
<td></td>
<td>The Oath and duty of the Barons.</td>
<td>109</td>
</tr>
<tr>
<td></td>
<td>Tryal by Record, &amp;c. in the Exchequer.</td>
<td>105, 110</td>
</tr>
<tr>
<td></td>
<td>Such course of the Exchequer as tends to the disjointness, mischief, and delay of the subject, and no advantage</td>
<td>105</td>
</tr>
</tbody>
</table>
advantage to the King, is against Law, and not to be allowed. 110
Who may sue and be sued here by Bill, who not. 112, 113, 119
Of Accounts in the Exchequer: See Accounts. 113
Bail for the king to have Accounts taken here. 117
Of the Chancellor of the Exchequer. 119
Of what this Court may hold plea. 113, 114
The black Book of the Exchequer, who was the Author. 114
How the Law holdeth in this Court called 114, 115
Rend:. en superior.
The Barons to do right and reason to all without delay. 115
The Barons are the Sovereign Auditors of England. 10
The power of the Exchequer in selling the Kings Woods. 299, 300
The Courts in taking Sheriffs Accounts. 116
By the course of the Exchequer, if the Defendant in an Information of Intrusion, plead Not Guilty, he shall lose the possession of the Lands. 116
In the Exchequer are seven Courts. 119
The Barons have their Office by Patents, quantum f aenea gererent. 117
A Court to enquire of, and certifie unlawful untrue accounts, in the Exchequer. 117
The punishment of false accountants. ib. 117
The Court of Equity in the Exchequer-Chamber, Vide Exchequer-Chamber.

Excommunication. 68
In many Cases Acts of Parliament have adjudged men Excommunicate, ipso facto. 327
Who have power to Excommunicate. ib.

Execution.
A feire factas upon a release, for one in Execution. 179
Execution, the life of the Law. 278

Executors.
See Chancery.
See Use.
The Kings Executors, &c. 335

Exemption.
What Charters of Exemption are good, what not. 49
Heralds discharged of Subsidies, &c. by Letters Patents. 126
Exemption from Tallages: See Tallyage.
From Toll, See Toll.
&c. Illam. 306
Espositura Canes, i. Expulsitutre Canes. 308

Exposition of words: Of Statutes. 88
See Statutes and Treasurers.
Domino 37. Hist. & hant 22. Lieutenant. 88
Laine is an ancient French word, and signifies to hide. 88, 104
Sic, 104
Sow. 107. Lowdrally, or Lowdraly. 252
Debts taken for all duties. 113
Confiable and Marhull. 121
Out of the Realm. 124
Hereschul. 127
Heresit. 128
Hable, Hade or Hit's. i. Pertin. Halfe Courts. 147, 148

Ennomina. 168, 169
Businesse of Businesse. 185
Realm, from the French Word Kulanne, and both a Regno. 239
Barneke, and Rout. 277. Deemster. 284
Masters de Cheine, of moist cometh Nota, significins a Kennel. 328
Swanlinne, of Swan, and Mist, or Gemute. 269

Extinguishment.
Where by the acceptance of one Office, a former becomes void. 310

Extortion.
Exortion upon the Statute, 21 H. 8. 46.5, concerning Fees for probat of Testaments, &c. 336

F

Faculties.

False Imprisonment.
Prisoners.
An Arrest, false imprisonment where the proceedings were coram non Judice. 57
How odious was unjust imprisonment. 279
What several remedies the Law hath allowed for relief of poor Prisoners. 182
By Letters Patents only power to imprison in Ecclesiastical cases cannot be granted. 332, 335, 377

False Judgment.
A Writt of False Judgment doth lye upon a Judgment in the County Court, upon a Juflicet, &c. 205

Favour.
Fear is a betraying the suitours which reason offereth. 13, 57
Vide the Epilogue.

Fees.
The Fees for probat of Testament, &c. 335
The Clerk of the Markets Fees. 274
The Fees of the Knights, Citizens and Burgesses of Parliament. 45
The Fees of the Clerk of the Crown for a ten, &c. and entering a Plea for many. 164
The Fees of the Treasurer of the Exchequer. 118
The Fees of the Officers of the Exchequer. 318
The Marshals Fees of the Court of Marshalsey. 170
The Fees of Exchequors. 225
The Coroners Fees. 271

Fee-Simple.
A Fee-Simple how limited by Act of Parliament. 205
A qualified Fee in this form, fit & hereditum facit. Regibus Anglia. 243, 144

Fedeararion.
Fedararius, or Fedeararius is derived a fees feuds feuds which in one feuds signifies a Signior or Tenures in Office. 504

Felony.
Felony by compassing or conspiracy to kill the King, &c. 138
Felony committed upon the Sea. 147
In the Kings Palace. 133
<table>
<thead>
<tr>
<th>Table of Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td>What paffes by the grant of a Forreft. ib. 313</td>
</tr>
<tr>
<td>Forrefts anciently called Walds and Backholt. 289, 319</td>
</tr>
<tr>
<td>Carta de Forfeta, The like Charter granted by King John. ib. 289</td>
</tr>
<tr>
<td>1. Of the Court of Attachments, or the Woodmore-Court. 289</td>
</tr>
<tr>
<td>2. The Court of Regard or Survey of Dogs. ib. 289</td>
</tr>
<tr>
<td>3. The Court of Swanmore, derived of Surn and Most, 1. Carta Miniftrum forfeta. 269, 300</td>
</tr>
<tr>
<td>The entry of the prefentment in this Court. 259</td>
</tr>
<tr>
<td>Of the Law of the Forreft. 259, 303, 304, 304, 313, 314, 315, 316, 317, 318, 319</td>
</tr>
<tr>
<td>Where a Forrefter may Arrefs any one that challs a Deer, &amp;c. 290</td>
</tr>
<tr>
<td>4. Of the Court of the Junefeat, helden before the chief Forreft of the Junefeat. 291, 313, 319</td>
</tr>
<tr>
<td>His Authority and Jurifdiction, and how he is created. 291, 292, 319, 315, 315, 315, 299, 300</td>
</tr>
<tr>
<td>Of claims to Franchizes in Forrefts. 291, 294, 295</td>
</tr>
<tr>
<td>The manner and entry of Claims, and the proceedings thereupon. 305</td>
</tr>
<tr>
<td>See Claims. 297, 305</td>
</tr>
<tr>
<td>Before a Junefeat-Seat there ought to be preparations for the same. 291, 292</td>
</tr>
<tr>
<td>Ordinario Forfeta. 292</td>
</tr>
<tr>
<td>Officers of the Forreft shall not be sworn on Enquests out of the Forreft. 293</td>
</tr>
<tr>
<td>No Dog ought to be mulled. 294</td>
</tr>
<tr>
<td>If Justice be done at the Junefeat-Seat, what remedy the party grieved hath. 294, 295, 297</td>
</tr>
<tr>
<td>The Junefices of the Forreft may adjourn difficult cases into the Kings Bench. 295</td>
</tr>
<tr>
<td>A Cafe adjourned into Parliament. 302</td>
</tr>
<tr>
<td>Fines for trespasses in Forrefts. 295, 307, 316</td>
</tr>
<tr>
<td>If the Junefe in Eyre give an erroneous judgement, what remedy is there. 295, 307, 316, 317, 318</td>
</tr>
<tr>
<td>Returned in the Kings Bench. 297</td>
</tr>
<tr>
<td>Moif Statutes concerning Forrefts are declarativa antiqua juris. 298, 300</td>
</tr>
<tr>
<td>Woods in Forrefts, by what means the owners may tell them, &amp;c. 291, 298, 299</td>
</tr>
<tr>
<td>Incidents inapparable to Forrefts, and what points follow in a Forreft by. 292, 298</td>
</tr>
<tr>
<td>Seven points resolved concerning the disposing of the Kings woods in Forrefts, and the order of the Exchequer thereupon. 299, 300</td>
</tr>
<tr>
<td>The power of the Kings Officers within the Forreft. 299, 300, 306, 319</td>
</tr>
<tr>
<td>The King can make no Forreft, &amp;c. in other mens grounds, in his own本事. The original of Forrefts. 300, 301, 319</td>
</tr>
<tr>
<td>H. 2. made a Forreft about Hampton-Court by com. pition with those over whose grounds it was made. 301</td>
</tr>
<tr>
<td>Of Deafforestation, mets, bounds and perambulation of a Forreft. 317, 318, 320, 320, 326</td>
</tr>
<tr>
<td>In what case 'tis no offence to fetch a Deer out of the Forreft, and Dogs kill a Deer therein. 304</td>
</tr>
<tr>
<td>Exploitations of divers obscure tarmans &amp; words. 306</td>
</tr>
<tr>
<td>For the Lord of Parliament may hunt in the Kings forreft, when not. 308, 309</td>
</tr>
<tr>
<td>Of the drifts of Forrefts. 309, 310</td>
</tr>
<tr>
<td>How many forts of Officers, and what number do belong to a Forreft. 310, 311, 312, 313</td>
</tr>
<tr>
<td>If the Warden or Verderor dye, then their heir must bring in the Rolls. 312, 313</td>
</tr>
<tr>
<td>Of the Forrefts of Pickering, Windsor, Rockingham, &amp;c. belonging to the Caftles, the Constables of the Caftles are chief Wardenes. 313</td>
</tr>
</tbody>
</table>
| The proceedings of the Junefeat-Seat where a par
The T.A.B.L.E.

<table>
<thead>
<tr>
<th>Page</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>313</td>
<td>Of a trespass in a Forrest is pleaded.</td>
</tr>
<tr>
<td>313</td>
<td>Of discontinuance and recontinuance of the Justices.</td>
</tr>
<tr>
<td>313</td>
<td>Of Juries.</td>
</tr>
<tr>
<td>314</td>
<td>What be no beasts of the Forrest, and what be.</td>
</tr>
<tr>
<td>314</td>
<td>Every Forrest is a Chase, &amp;c. quidnam amplius.</td>
</tr>
<tr>
<td>314</td>
<td>By what Grant a Subject hath a Forrest in Law, by what not.</td>
</tr>
<tr>
<td>314</td>
<td>The Title of the Courts of Eyre in Subjects hands.</td>
</tr>
<tr>
<td>315</td>
<td>In what cases the Forrest Law differs from the Common Law.</td>
</tr>
<tr>
<td>315</td>
<td>Of Felonies, Trespaßes, &amp;c. in Forreßts.</td>
</tr>
<tr>
<td>316</td>
<td>The feasons of Beasts of the Forrest and which are.</td>
</tr>
<tr>
<td>316</td>
<td>Venison.</td>
</tr>
<tr>
<td>316</td>
<td>Of Vert and Venison.</td>
</tr>
<tr>
<td>316</td>
<td>Of Principal and Accesory.</td>
</tr>
<tr>
<td>316</td>
<td>Forrfa et locum quo furam includantur.</td>
</tr>
<tr>
<td>317</td>
<td>The good old Laws of the Forrest to be observed.</td>
</tr>
<tr>
<td>318</td>
<td>The Articles of the Forrest.</td>
</tr>
<tr>
<td>319</td>
<td>The antiquity and number of Forreßts.</td>
</tr>
<tr>
<td>319</td>
<td>The care of Forreßts committed to great and honourable per íges.</td>
</tr>
<tr>
<td>319</td>
<td>Of Cúna de forrfa.</td>
</tr>
<tr>
<td>319</td>
<td>The new Forrest in Hampshire, created by William the Conquerour.</td>
</tr>
<tr>
<td>319</td>
<td>Forreßts.</td>
</tr>
<tr>
<td>320</td>
<td>When an Outlawry shall cause a forreßt.</td>
</tr>
<tr>
<td>326</td>
<td>De notigelder.</td>
</tr>
<tr>
<td>350</td>
<td>Franchise.</td>
</tr>
<tr>
<td>356</td>
<td>The diversity between a Franchise to demand Complainants, and a Franchise ubi breve domini Regis non currit.</td>
</tr>
<tr>
<td>356</td>
<td>Liberties seised as forreßted.</td>
</tr>
<tr>
<td>357</td>
<td>Claims of Franchizes in Forreßts, where to be determined.</td>
</tr>
<tr>
<td>361</td>
<td>Franchizes and Liberties ought to be claimed before Justices in Eyre.</td>
</tr>
<tr>
<td>361</td>
<td>In what cases Writs may be directed to a Franchise.</td>
</tr>
<tr>
<td>361</td>
<td>In what case the Franchise shall be allowed, and where nor, though part of the Action arises within the Franchise.</td>
</tr>
<tr>
<td>362</td>
<td>Of the Franchizes of Lancashire, Chester, Durham, E. &amp;c. and of the privileges of the Inhabitants, &amp;c. not to be empanelled out, &amp;c. See the peculiar Titles.</td>
</tr>
<tr>
<td>370</td>
<td>Frank-Fees.</td>
</tr>
<tr>
<td>370</td>
<td>Land made Frank-Fees.</td>
</tr>
<tr>
<td>370</td>
<td>Free-men. See Reformation.</td>
</tr>
<tr>
<td>370</td>
<td>One may be free of London three ways.</td>
</tr>
<tr>
<td>370</td>
<td>Pugacia, quid ?</td>
</tr>
<tr>
<td>370</td>
<td>Garbler.</td>
</tr>
<tr>
<td>370</td>
<td>Chirograph, the Garbler of London his Office and power.</td>
</tr>
<tr>
<td>370</td>
<td>The signification and activation of the word.</td>
</tr>
<tr>
<td>370</td>
<td>What Garbleable.</td>
</tr>
<tr>
<td>370</td>
<td>Garbles signifies the dañ, or soile, &amp;c. that is seuered.</td>
</tr>
<tr>
<td>370</td>
<td>Justices of Goal-Delivery.</td>
</tr>
<tr>
<td>370</td>
<td>Their Authority by Commissions and Acts of Parliament.</td>
</tr>
<tr>
<td>370</td>
<td>They send their Records into the Exchequer.</td>
</tr>
<tr>
<td>370</td>
<td>To whose Justices Commissions of Association, Writs of Admiration, &amp;c. in unæmnes, are directed.</td>
</tr>
<tr>
<td>370</td>
<td>Where they shall keep their Sessions.</td>
</tr>
<tr>
<td>370</td>
<td>They may hear and determine the same day.</td>
</tr>
<tr>
<td>370</td>
<td>Garnet. See Jesuit.</td>
</tr>
<tr>
<td>370</td>
<td>De Gelda.</td>
</tr>
<tr>
<td>370</td>
<td>General Issue. See Pleadings.</td>
</tr>
<tr>
<td>370</td>
<td>Gloucester.</td>
</tr>
<tr>
<td>370</td>
<td>When first printed and upon whose persuasion.</td>
</tr>
<tr>
<td>370</td>
<td>Grants.</td>
</tr>
<tr>
<td>370</td>
<td>A grant of the Chancellorship of England in succession, void.</td>
</tr>
<tr>
<td>370</td>
<td>A grant of the Office of Chancellor of the garter void, because the jurisdiction, &amp;c. was not expressed.</td>
</tr>
<tr>
<td>370</td>
<td>Grants of Names and Dignities, what good, what not.</td>
</tr>
<tr>
<td>370</td>
<td>What passeth by the grant of a Forrest.</td>
</tr>
<tr>
<td>370</td>
<td>The Kings Grant.</td>
</tr>
<tr>
<td>370</td>
<td>The Kings gift by word, said.</td>
</tr>
<tr>
<td>370</td>
<td>Leaves of the Kings Land.</td>
</tr>
<tr>
<td>370</td>
<td>Vide King, and Letters Patents.</td>
</tr>
<tr>
<td>370</td>
<td>Curia curiæ aequa apud Graevendl.</td>
</tr>
<tr>
<td>370</td>
<td>Greencloth. See Counting-houses, &amp;c.</td>
</tr>
<tr>
<td>370</td>
<td>Green-Wax.</td>
</tr>
<tr>
<td>370</td>
<td>What comprehended under these words Green-Wax.</td>
</tr>
<tr>
<td>370</td>
<td>Gynaria quid ?</td>
</tr>
<tr>
<td>370</td>
<td>Guardian.</td>
</tr>
<tr>
<td>370</td>
<td>H</td>
</tr>
<tr>
<td>370</td>
<td>Haben Corpus.</td>
</tr>
<tr>
<td>71,182</td>
<td>Of Haben Corpus in the Kings Bench.</td>
</tr>
<tr>
<td>290</td>
<td>Of Haben Corpus in the Chancery in vacanee time.</td>
</tr>
<tr>
<td>81,125</td>
<td>The readiest way to relieve Prisoners.</td>
</tr>
<tr>
<td>290</td>
<td>Of Haben Corpus in the Exchequer.</td>
</tr>
<tr>
<td>290</td>
<td>Habæ quid ?</td>
</tr>
<tr>
<td>290</td>
<td>Ham, quid ?</td>
</tr>
<tr>
<td>290</td>
<td>Births.</td>
</tr>
<tr>
<td>290</td>
<td>The Isle of Man being granted by Letters Patents, is descendible to the Heirs general.</td>
</tr>
<tr>
<td>284</td>
<td>See Law.</td>
</tr>
<tr>
<td>326</td>
<td>Of Heralds there be tres Reges.</td>
</tr>
<tr>
<td>326</td>
<td>The Office of English Heralds.</td>
</tr>
<tr>
<td>326</td>
<td>Difcharged of Subsidies, &amp;c.</td>
</tr>
<tr>
<td>326</td>
<td>Conformed by Letters Patents.</td>
</tr>
<tr>
<td>326</td>
<td>Incorporated.</td>
</tr>
<tr>
<td>326</td>
<td>Their use.</td>
</tr>
<tr>
<td>299</td>
<td>Herbage and Pannage.</td>
</tr>
<tr>
<td>299</td>
<td>Where the Cartel of him that hath Herbage and Pannage in a Park, may be driven out.</td>
</tr>
<tr>
<td>299</td>
<td>Of the Franchise of Hexam and Hexamshire.</td>
</tr>
<tr>
<td>222</td>
<td>When named a County Palatine.</td>
</tr>
<tr>
<td>222</td>
<td>Declared by Parliament to be parcel of the County of Northumberland, &amp;c.</td>
</tr>
<tr>
<td>16</td>
<td>Now it is no County Palatine, nor Franchise.</td>
</tr>
</tbody>
</table>

Footnotes:
The TABLE.

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Many falsehoods practiced in packing foreign ships.</td>
<td>263</td>
</tr>
<tr>
<td>How punished.</td>
<td>166</td>
</tr>
<tr>
<td>Of Hernegheldis.</td>
<td>506</td>
</tr>
<tr>
<td>In what cases a man's house may be broken open, where not.</td>
<td>176, 177, 178</td>
</tr>
<tr>
<td>If the door be open the officer may enter in. 178</td>
<td></td>
</tr>
<tr>
<td>Tis usual, but unlawful, to search poor men's houses upon certain grounds. 178</td>
<td></td>
</tr>
<tr>
<td>The Gardener of Spices may enter into shops, etc. in the daytime. 265</td>
<td></td>
</tr>
<tr>
<td>Commissioners of sewers may break open houses, etc. 278</td>
<td></td>
</tr>
<tr>
<td>Always by the common law made by the Constables of towns. 267</td>
<td></td>
</tr>
<tr>
<td>Heriæum et clamor (verba dolens) unde. 254</td>
<td></td>
</tr>
<tr>
<td>Of hue and cry by the Forrest law. 254</td>
<td></td>
</tr>
<tr>
<td>Hulme guild? 254</td>
<td></td>
</tr>
<tr>
<td>The Court of the Hundred. 267, 268</td>
<td></td>
</tr>
<tr>
<td>The stile and jurisdiction of this Court. 267, 268</td>
<td></td>
</tr>
<tr>
<td>This is the Court of Record, the Squires are judges. 267</td>
<td></td>
</tr>
<tr>
<td>Derived out of the County Courts. 268</td>
<td></td>
</tr>
<tr>
<td>Hundreds rejoined to the Counties. 267</td>
<td></td>
</tr>
<tr>
<td>Of Bayliffs and Constables of Hundreds. 267</td>
<td></td>
</tr>
<tr>
<td>Hunting. In any forest a man may as lawfully hunt as in any other his grounds. 303, 304</td>
<td></td>
</tr>
<tr>
<td>Spiritual persons may hunt. 309</td>
<td></td>
</tr>
<tr>
<td>What shall be unlawful hunting in Forests. 314, 315, 316</td>
<td></td>
</tr>
<tr>
<td>Hunting not to be used as a trade. 319</td>
<td></td>
</tr>
<tr>
<td>Lords of Parliament may hunt in the Kings Forrest, endo vel reducta, to and from the Parliament. 345, 369</td>
<td></td>
</tr>
</tbody>
</table>

I

The Iles of Jersey and Guernsey. They did anciently belong to the Duchy of Normandy, when united to the Kingdom of England. 285

The Judicature and custom of these Isles. 287

Though the Kings Writ runneth not here, yet his Commission doth to punish offences. 285

The inhabitants not bound by our Statutes unless named. 285

Their privileges. 287

How many Parishes, etc. are within these Isles. 286

Jerusalem, etc. 341

The Court of the justices asigned for the Government of the Jew. 341

This Court ceased when the Jews were banished. 254

A house for the Jews converted. 95

Judic. et annua for Regia fant. 254

Institution.

An Indemnity void for part, and good for the trespass, quare cl. etc. 181

Infant.

An Infant is not eligible to Parliament. 47

Not a living chief: 45

Where an infant shall find security, to pay a fine to the King. 181

Where he shall not be amerced. 186

Information.

Informations against thirty nine of the house of Commons, for leaving the House without Licence. 17

Informers and relations raise many suits. 76

Belt trusted where they are best known. 76, 172

Informations to be heard in their proper Counties. 173

Informations in what Courts to be brought. 173, 174

An Exposition of the Statute 21. Jac. c. 4. concerning Information. 172, 175

Inquisitions.

The Inquisitions of the President and Council of the Northe to be inrolled. 173

Of the Inquisitions of the President and Council of the Marches. 212

Intendment.

Where the Court will intend an Affent, where there appeareth no dis-affent. 187

Interventures.

They ought to be single and plain, pertinent, and in no fort capacious, leading or directory. 279

Irish.

Modus recogniti Parliamentum transcribed into Ireland. 13, 349

How the chief Justice in Ireland is called. 75

Ireland is a distinct and divided Kingdom. 201, 349

Their Courts of Justice, and Laws are the same with ours. 345, 348, 351, 356

No Nation in the whole greater lovers of Justice. 249

They are descended of the ancient Britains. 349

Parliaments in Ireland of ancient time. 12, 349, 350

Nobles of Ireland called to the Parliament of England. 357

By special words the Parliament of England may bind the Subjects of Ireland. 351, 353, 351

Acts, etc. in England, for regulating and holding Parliaments in Ireland. 350, 351

The Breton Law. 351

Poyings Law. 351

The Statute of Kilganny. 351

What Statutes in England extend to Ireland. 351

How and in what manner a Parliament is to be holden in Ireland, and how Bills ought to pass in the same. 357, 352, 353

The Case of the Earl of Shrewsbury upon the Statute of 28 H.B. of Abolente. 334

An Act that all persons having lands, etc. in Ireland shall reside upon them, and that they which have Caffles, etc. shall forfite them. 336

Compass Riverfis, etc. to be given to the Essex in England. 16

A record of the custody of the body and lands of...
### The Table

<table>
<thead>
<tr>
<th>Page</th>
<th>Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>360</td>
<td>Heirs within age.</td>
</tr>
<tr>
<td>357</td>
<td>A Proceeding out of Chancery to the Justices in Ireland to proceed in a Quare impedit.</td>
</tr>
<tr>
<td>357</td>
<td>Of the Grant of the Kingdom of Ireland.</td>
</tr>
<tr>
<td>356</td>
<td>Certain Irish words explained.</td>
</tr>
<tr>
<td>356</td>
<td>The manner of electing Bishops in Ireland.</td>
</tr>
<tr>
<td>355</td>
<td>Of the division of this Kingdom into the English Pale, and the Wild Irish.</td>
</tr>
<tr>
<td>350</td>
<td>A Justice in Ireland cannot be removed, but by the King.</td>
</tr>
<tr>
<td>350</td>
<td>It hath thirty three Counties, &amp;c.</td>
</tr>
<tr>
<td>350</td>
<td>Enacted that every man during six years might dig Gold and Silver in his proper Soil in Ireland, &amp;c.</td>
</tr>
<tr>
<td>361</td>
<td>Records concerning this Kingdom.</td>
</tr>
<tr>
<td>64</td>
<td>Judgments.</td>
</tr>
<tr>
<td>64</td>
<td>No man ought to be condemned without answer.</td>
</tr>
<tr>
<td>63</td>
<td>Oui non vestigio, &amp; contra causas ejus, in hominem abjicere non vuulsionem, non consilium, nec confessio forte sententiae.</td>
</tr>
<tr>
<td>63</td>
<td>Per remissi sententiae reuss abjicere.</td>
</tr>
<tr>
<td>70</td>
<td>Wherefore Judgments must be Idea Conferentiarum off per Chartam.</td>
</tr>
<tr>
<td>88</td>
<td>The Judgment in the Marshalls Court, when either party is vanquished.</td>
</tr>
<tr>
<td>124</td>
<td>Judicium est tamquam juris dilectum.</td>
</tr>
<tr>
<td>138</td>
<td>Judicium pro veritate acceptarium.</td>
</tr>
<tr>
<td>209</td>
<td>The Judgment in the Travers of Offices found for the King.</td>
</tr>
<tr>
<td>223,212</td>
<td>Judgments here, of Land in Wales, or County Patents, void.</td>
</tr>
<tr>
<td>73</td>
<td>The king himself cannot be Judge, in propriis causis.</td>
</tr>
<tr>
<td>73</td>
<td>Justices of the Kings Bench, See Kings Bench.</td>
</tr>
<tr>
<td>74</td>
<td>Justices of the Common Pleas. See Common Pleas.</td>
</tr>
<tr>
<td>125</td>
<td>The Judges cannot injure two Offices.</td>
</tr>
<tr>
<td>125</td>
<td>Sapientis judicis eff cognitare tantum fide effe permium quantum commiitum per cedream.</td>
</tr>
<tr>
<td>237</td>
<td>No man can be Judge in propriis causis.</td>
</tr>
<tr>
<td>255</td>
<td>A Judge Fined for raising a Record.</td>
</tr>
<tr>
<td>255</td>
<td>Necessary that the Judges should know the</td>
</tr>
<tr>
<td>290</td>
<td>The King is well apprised of all his Judges as well</td>
</tr>
<tr>
<td>314,349</td>
<td>Judgment.</td>
</tr>
<tr>
<td>154</td>
<td>May inquire and try the same day.</td>
</tr>
<tr>
<td>154</td>
<td>They are special Justices of Oyer and Terminer.</td>
</tr>
<tr>
<td>168</td>
<td>They are to deliver their Indictments to the Justices of Goal-delivery.</td>
</tr>
<tr>
<td>177</td>
<td>May not proceed to break open any man's house for a Felon, &amp;c.</td>
</tr>
<tr>
<td>177</td>
<td>Law Ecclesiastical and temporal are administered by judges,</td>
</tr>
<tr>
<td>74</td>
<td>At the Kings Will, per justiciarios, &amp; legem suam etum offi discre.</td>
</tr>
<tr>
<td>177</td>
<td>The King himself cannot be Judge, in proprios causis.</td>
</tr>
<tr>
<td>177</td>
<td>Law Ecclesiastical and temporal are administered by judges,</td>
</tr>
</tbody>
</table>

---

**Jury**

- A Charter of Exemption from Jury, &c. void.
- Juries shall not be compelled dictate proce. |
- When the Justices of Nisi prius may grant a Tennis.
- Where the Award upon the Roll, to the Sheriff to return a Jury, is not sufficient; where it is.
- Juries returned without ven. fac. by general commandment of the Justices of Goal-delivery.
- Juries sworn ad veritatem diem domum not to be used. Bribed, their Tower is called Peredictum quod dillum vortant.
- Who exempted from Common Juries.
- Of Juries in the Forrest.
Regia dignitas est indivisibila, & quaelibet alia dignitas est semele indivisibila.

By what Warrant Physick is to be given to the King.

The King better served with Viands for his household by the Market at his Court Gate, than by purveyors.

Where no Office can be found to entitle the King, he may get Sein, &c. by Commission returned of Record.

The King cannot make a King within his own Kingdom.

What he cannot grant by Letters Patent, &c.

H. 2. Crowned twice.

After the death of every Bishop, the King is to have his kenne of Hounds, &c.

H. 8. acknowledged Supreme Head in divers Convocations.

The King may make his Testament, Executors, &c.

Where after definite Sentence the King may grant a Commission of review.

The King subject to none but God.

Iste autem Rex non debeat ehe sub homine sed sub Deo, &c.

The King is an Emperor.

With what Majesty Crowned.

Over how many Kings the Kings of England have triumphed.

How the Kings of England have filled themselves, and of the Kings of the Earth, &c.

The Oath which the Kings take at their Coronations.

The Ancient Motto of the King of England.

The Duty called Aurum Regiae.

The Kings Hufhold. See Cuming Hume, &c.

Of the Kings Debtor. See Debt.

Kingdom.

Divers Monarchs hold their Kingdoms of others jurisdiccius.

The miserable estate of this Kingdom, under the Heptarchy.

The Division of a Kingdom, the Ruine thereof.

Of the Kingdom of England.

Of the union of divided Kingdoms.

Of the changing the name of a Kingdom.

Kings-Bench.

A contempt of a Peer of the Realm in Parliament, not punishable in the Kings-Bench.

35. of the House of Commons informed against, in this Court, for departing without Licence, and fined sixt guineas.

17. The Jurisdiction of this Court, exemplified.

Capitallis justitiae praefatur primus in regno.

When the Kings-Bench followed the Court, and when the attendance ceased.

Why called the Kings-Bench.

If any person be in Castra Marschallii by comitement or otherwise, it is sufficient to give the Court Jurisdiction.

By putting in Bail at one mans suit he is in Castra Marschallii, to answer all others.

The Exchequer of the Court of the Kings-Bench is in the Marshalls Court, and not in the Marshalls Court.

The Pleas filed CAEAM REGIA.

How anciently.

The
The Table.

The Supreme Authority of the Justices of this Court and their titles, how called, and of the changes of their names. 73,74,75,76

The King hath sole on the high Bence, and the Judges on the lower at his feet; yet the Judicature only belongs to the Judges. 73,74

What Records this Court may remand, what not. 73,74,80

Other Courts are derived out of this. 74

Designation, &c. 74

Ordinaries &c. 74

The Chief Justice of this Court, how called, anciently created by Patent, now by Writ. 74,75

For what ends instituted. 74

The ret of the Judges have their Offices by Letters Patent. 75

How filled, ought to be Serjeants. 75

There are four of them. 80

Ought not to be removed without cause. 75

To be discharged by Writ under the Great Seal. 75

The undue practice of some Clerks, in suing out an Original in Trelaps, because they could have an Original for Debts, out of Chancery returnable in this Court. 75

The Authority of this Court to inflict corporal punishment, as Pillory, Papers, &c. 77

To what purposes the Kings-bench and Chancery are accounted but one Court. 73,80

Bills by strangers against the Bail in the Kings-bench. 179

A Record removed in this Court, is as it were in his Center, &c. 75

Transcript of Attainders &c. before the Justices of Oyer & Terminer, &c. fees to this Court. 182

Knights Service, Knights Fee, &c. 205

A Knights Fee is the Service of a Knight, that is, of a man at Arms, or of War. 40

Writs to divers ad ordinem milit. Baltonis &c. 44

The Court of the Duchy-Chamber of Lancaster at Westminster.

The Duchy of Lancaster when created a County Palatine by Act of Parliament. 201,211

The County of Lancaster is a County Palatine, the beginning and erection thereof. 204

It is called Comitatiss Patanum, a Comitatiss, &c. 204

The power, authority and jurisdiction, &c. 204, 205,206

Of Fines, Recoveries, Tryals, &c. in that County, 205

The possessions of the Duchy when severed from the Crown, and in what State the Duchy stands at this day. 205,206,206,210

What Lands within the survey of the Duchy, and how the Lands pays. 206,206,210

The proceedings of the Duchy Chamber at Wofon. 206,210

The Officers of this Court. 205

Of Leafts, Grants, &c. of Lands within the Survey of the Duchy. 209,210

Attornment not necessary to grants of Reversions of Lands within the County Palatine, but otherwise of Lands without. 210

Why Liberry of Seisin, and Attornment not necess
<table>
<thead>
<tr>
<th>The Table</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The Signification of the word Letr.</strong></td>
</tr>
<tr>
<td><strong>The Jurisdiction of the Letr.</strong> 264, ibid 264, 247-3</td>
</tr>
<tr>
<td><strong>The Steward may take a Recognizance.</strong></td>
</tr>
<tr>
<td><strong>The Writ is given by the Court.</strong></td>
</tr>
<tr>
<td><strong>Lepiroria quid.</strong></td>
</tr>
<tr>
<td><strong>Liberte.</strong></td>
</tr>
<tr>
<td>A Liberate guid, &amp;c unde deministrat.</td>
</tr>
<tr>
<td>To whom it be directed, and the two kinds of libereat.</td>
</tr>
<tr>
<td>When it makes the Officer a debtor to the party, when not.</td>
</tr>
<tr>
<td>A Liberate to the Gaoler to deliver a Prisoner out of prison.</td>
</tr>
<tr>
<td><em>The Writ de libertatione alibiandi.</em></td>
</tr>
<tr>
<td>Where it lies.</td>
</tr>
<tr>
<td><strong>Licence.</strong></td>
</tr>
<tr>
<td>Of Licences to be absent from Parliament.</td>
</tr>
<tr>
<td>See Parliament.</td>
</tr>
<tr>
<td><strong>Limitation of Allions.</strong></td>
</tr>
<tr>
<td>A Limitation of time to be voided in criminal causes.</td>
</tr>
<tr>
<td><em>Libery of Secion.</em></td>
</tr>
<tr>
<td><em>What Lands paid without Liberty of Seison.</em></td>
</tr>
<tr>
<td><strong>Libery out of the Kings hands.</strong></td>
</tr>
<tr>
<td>The several losts and differences.</td>
</tr>
<tr>
<td>The world of troubles the Subjects suffered for milking of Livereys.</td>
</tr>
<tr>
<td><strong>London.</strong></td>
</tr>
<tr>
<td>Of the Name and Antiquity of London.</td>
</tr>
<tr>
<td>It is a Countie of it self.</td>
</tr>
<tr>
<td>There are within the Walls 97, Parishes, and without 15, standing partly within the Liberties of the City, part without.</td>
</tr>
<tr>
<td>The Cuffin of London touching the Court of Conscience.</td>
</tr>
<tr>
<td>Of the Chamberlain of London.</td>
</tr>
<tr>
<td>The Liberties and Priviledges of London.</td>
</tr>
<tr>
<td>In the City are 26. Wards, governed by 26. Aldermen.</td>
</tr>
<tr>
<td>In London the Parishes are as Towns, and the Wards as Hundreds. ib.</td>
</tr>
<tr>
<td>Every Company in London have a peculiar Hall, wherein they keep their Courts. ib.</td>
</tr>
<tr>
<td>One may be free of London 3. manner of ways.</td>
</tr>
<tr>
<td>Of the ancient Wall of London, and what part of the Tower of London is within the City of London. 251</td>
</tr>
<tr>
<td>When governed by Paragraveres, when by Butliffes, when King John appointed a Mayor, and after gave the Citizens liberty to chuse a Mayor de sefpils. 253</td>
</tr>
<tr>
<td>When the Aldermen were changed every year. ib.</td>
</tr>
<tr>
<td>What offence to call corrupt things into the water about London.</td>
</tr>
</tbody>
</table>

### The Courts and their Jurisdictions within the City of London.

| 1. | The Court of the Hoflings. |
| 2. | The two Courts of the Sheriffs. |
| 3. | The antiquity of the Sheriffs and their Courts. |
| 4. | Errors in this Court how to be reddressed. ibid. |
| 5. | The Court of Equity before the Lord Mayor commonly called the Court of Conscience. |
| 6. | The Jurisdiction and proceedings of this Court. |
| 7. | The Court of Wardmote. |
| 8. | The Court of Hall Note. |
| 9. | The derivation and signification of Hall mote. ibid. |
| 10. | The Court of the Chamberlain for Apprentices. |
| 11. | The matters of this Court. |
| 12. | The Court of Efcheaster in London. |
| 13. | The Court of Policies, and Affarances in London. |
| 14. | The Jurisdiction, and ends of the instituting this Court. |

---

**M**

| 1a. | quid, &c unde. |
| 1b. |见下 |
| 1c. | Manuscript. |
| 1d. | Statutes. |
| 1e. | See Bail. |
| 1f. | See London. |
| 1g. | Malt. |
The Marshalls Fees.

The Marshalls Fees. 
It is called Curia Aula Hoftitii Dom. Reg. 268
Maflimus manuibus is a Maflifiaved. 254,368
Majus terra. Mon de terra, quid. 293

Manser.
Taken with the Manser, a manis, is in 4 kinds. 294

Measure.
Of measure. 273,274
Menis vetenum. 273
Menaurium quid. 273
Menta quid. 273

Metal.
There be five kinds of base Metals, viz. Copper Tin, Iron, Lead, and Latyn, of thefe. 237

Merchant and Merchandize.
Statutes made against the freedom of Trade, and Merchandizing never live long. 31
How English Merchants wronged beyond Seas may be remedied. 124,125,137
The Riot of English Merchants in 3. things, viz. costly Building, costly Dyet, and costly Apparel. 27
Where the Company shall answer the debt of a Merchant, &c. 18

Miner.
A Grant of all Mines of Gold and Silver within England to the Duke of Bedford, &c. rendering, &c. 360

Misericordia.
Taken as well for a Fine, as an Amerciament. 306

Monasteries.
Upon what object H.R. obtained the dissolution of Monasteries. 44
The Monastery of St. Bennets de halme in Norfolk, priorus Cafram quam Clangrwm. 256

Monsifans de deis.
Monsifans de deis. 76,196

Murder.
To kill the Connable, &c. 586
Murelegos, a legend Mure, a wild Cat. 274
Murrenand unde derivatur. 18

N

Names.
By what Names the Lords are named in the Writs of summons to Parliament. 58
Summates granted away. 115
Koming lent on a yeare. 291,313
The Names of Dignities of the Nobility are parcel of their Names, and so ought to be named in the Kings Writs. 358
Otherwise of the Offices of Chancellor, &c. and other Offices for they are not parcel of their Names. 18

Navy.
The decay of the Navy arises by three caufes. 50
The Kings Navy exceeds all others. 50,147
When several had the government of the Fico. 145
The owner of a Ship shall answer for hurt done by his Ship, though he be not party thereto. 149
Nifi Prius. Justices of Nifi Prius.
The Bench may grant a Nifi Prius, for thee there the Transcript of the Record is only lent. 74,150
Justices of Nifi Prius when first instituted. Their Authority

The Table.


tables or Malls is a Saxon word, in Latin Brasium, and Brasius is used for a Malls. 
How Malls is to be made. 
How the Malls duty, his deceptions how punished.

The Isle of Man.
The Isle of Man given to the King by the Lords Temporal and Commoners. 25
The Isle of Man no part of the Realm of England, nor bound by our Parliaments, but by special Name. 201,224
This Isle hath been an ancient Kingdom. 283,224
How granted. 
How many Ciphers, Parishes, Towns, &c. are in it. 41
What Statutes extend not to this Isle. 224
The Isle defendable to the general Hairs. 41
The Strange Laws and jurisdiction of this Isle. 283, 285

Clayers Inlands, who ? 285
The Bishop in this Isle. 285
Manogamus et monogamus. 308

Manser.
A customary Manser. 228

Maxims.
How dangerous it is to alter any Maxim or fundamental Law. 41
Maxima quid & unde. 318

The Court of the President and Council, in the Dominions, and Principalities of Wales, and the Marches of the same. See Wales. 

The Counties of Chester and the City of Chester to part of the Marches of Wales. 213,214
This Court of Equity is strengthened by the Statute of 3 H. & C. 26. 242
But see 17. Car. 1. c. 10. 242
They sit by force of the kings Communion, and instructions, and proceed as in a Court of Equity by their wifdoms and discretions. 242
The 4. English Shires, not within the Marches. 242
Their Jurisdiction, &c. and of Prohibitions granted to them. 242

Market.
The Clerk of the Markers Fees. 274
A Market without an owner. 272
The Court of the Clerk of the Market. 273
 Called Clerius Mercat bispittii Regis because there was a Market kept at the Court Gate. 273
Why not much need now of a Clerk of the Market. 273
The proceedings and jurisdiction of the Court. ibid.

The Earl's Court of England. See Chivalry. 

The derivation of Marshall. 123,139
Of his Office. 127
Grants of his Office. 128
Vice Marshall. 128

The Court of the Marshalls.
Wherefore it is called the Court of Marshalla. 130

The Judges. 
The Jurisdiction of this Court is original and ordinary. ibid.
This Court hath his foundation from the Common Law.
Of the Castle of Norwich. 258

Notice. Every one must take notice of all the Members of the House of Commons, at this peril, otherwise of their Servants. 23, 24
Every one is bound to take notice of that which is done in Parliament. 26

Novelties. Innovations and Novelties in Parliamentary proceedings are most dangerous, and to be refused. 11, 14
What mischief and bred hatred the Novelty of new Subsidies doth hatch. 33
Supra vires rem non, nec orbita saullit. 34
Commissions of new invention, &c. void. 163, 164

Nullity per viae nullitatis. 262
Judgments, &c. void. 223, 224, 270

Nig Tid Record. To be pleaded to a grant under the seal of the Duchy of Lancaster. 209
Nofant. How and where punissilable. 261

Oath. The Oath of a privy Councillor. 54
The Oath of the Lord privy Seal. 51
The Oath of the Lord Chancellor. 88
The Oath of the Lord Treasurer of England. 103
The Oath of the Earl of Exchequer. 109
The Oath of the Lords of Liddes and Mediators. 115
The Oath of the Plaintiff or his Attorney is to take in the Pipeword-Court. 116
The Oath of the Commissioners of Severs. 275
Of an Oath in general. 278, 279, 153
The Oath of a Forrester. 293
The Oath of the Ranger. 304

Offences. All wrongs may be punished in one Court or other. 71
Offices and Inquisitions. To whom Offices found vitiate offici are to be delivered. 107
How the Subject shall be delivered against false Offices found. 196, 207
Offices concerning Wards, &c. 200, 197
Office found in Clocker. 212
Of Offices vitiate offici, & vitiate bu. upon what Writes, before whom and how to be found. 225
Secret Offices abolished in Law. 19
Where to be returned. 19
Office found in the Isle of Man, void. 284

Office and Officers. When the Office of High Steward of England was of Inheritance, and the Earlstom of Leicester holden by doing that Office. 48
Ancient Offices must be granted in such forms, and in such manner, as they have used to be. 75, 87
Who ought not to have two Offices. No new dominium saeclorum. 100, 310
Officers to subsist such as they will answer for. 115
Officers granted Quam dixi se bene gerit. 117
The Office of the Constable of England, anciently of Inheritance, now but vice. 127
Officers 2
The Table.

Officer of the King's Household. See Counting-house.

A Charter of a Judicial Office granted to two, void

The grant of a new Office void, because it was not defined, what Jurisdiction or Authority the Office should have

Chancellor of the Exchequer

To whom the King should give Offices

The King cannot make a new Office, for correction, &c., of any thing, which belonged to the Jurisdiction of any former Court

An Officer created by Statute, cannot prefer itself as an Officer at Common Law

Officers names put them in mind of their duty

What Offices (though in fee) cannot be granted over without licence

Where by the acceptance of an Office, a former becomes void

Of the Officers of each Court, See the Several Rules of their Courts.

Justices of Oyer and Terminer.

Their Authority 162, 163, 164, 165, 166, 169, 175

See Commission, &c.

Oyer and Terminer before whom grantable, and for what purposes

They may inquire and determine the same day

The Court of Oyer and Terminer is a Court of Record

Commission of association, Writs of admittance, and 51 are annexed, &c., to the Justices of Oyer and Terminer

If they sit and do not adjourn, their Commission is determined

They send their Records to the Exchequer

How their Commissions may be countermanded


Ordinance.

The difference between an Act and Ordinance in Parliament

The King's Ordinance doth not bind

Orphans.

See Court of Orphans in London, &c.

Otteliers

Ostracism.

The goods of an Ostracism, to whom to be delivered

A conviction of Ostracism, and its effects

Process of Ostracism doth not come into action

Ostracism void, because no Capita directed to the County where the party was supposed to be conversant

Judgement of the Ostracism in the House given by the Recorder

The Counties give Judgement of Ostracism

When the Ostracism appears upon record, it dissolves the party, and exiles forfeiture

Oxford. See University.

P.

County Palatine.

The Authority of those who had County Palatines

What forfeitures they shall have, what not

County Palatines paroch of the Realm of England and divided in Jurisdiction

Oath.

P. Bishop Episcopale Qua

De Pontagoe

Parks. See Coasts.

Parks in the day of the Saxons called Deoncifeld

H. 1. made at Woodstock a Park

Of Heritage and Pawnage in Parks

The King cannot make a Park in other towns

Paras are not to be guided by Forrest Laws

There cannot be a Park without an enclosure in

Parkeistle

Parliament.

The Court of Parliament consists of the King's Majesty, and the three estates of the Realm

The Lords Spiritual sit there in respect of their Bar- onies, and ought to have a Writ of Summons, &c., de dictis jura

The Lords temporal sit there, by reason of their Dignities, and every one being of full age, ought to have a writ of summons ex debito jure

The Commons elected by the Shires, &c., by force of the King's Writ, ex dictis juro

Commons in legal underwriting taken for the freeholders

Of what number the Parliament consists

When there is bell appearance, there is bell luc-flect

Anciently both houses met together, how and where now

Of regular Lords of Parliament, and when they ceased

The King and the three estates are the great Corporation, or the body politic of the Kingdom

Of this Court, the King is caput, principium, & finale

This Court resembled a Clock

To a natural body

Of the Names of this Court, and how called

Parliaments in Scripture

What properties a Parliament may have

When, and to whom Writs of Summons to Parliament issue, out of Chancery

They be now returned into Chancery, and kept in the Office of the Clerk of the Crown

The Contents of those Writs

By what Names, the Lords are named in those Writs

The temporal, and spiritual subjects have no voice in Parliament: Who and by what Writs called

Multitudes are bound by Acts of Parliament, which
<table>
<thead>
<tr>
<th>The TABLE.</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>are not parties to the Elections of Knights, &amp;c.</td>
<td>4, 5</td>
</tr>
<tr>
<td>The beginning of the Parliament</td>
<td>6, 7</td>
</tr>
<tr>
<td>The Parliament cannot begin, but by the royal presence of the King, either in person or by representation</td>
<td>6, 7, 18</td>
</tr>
<tr>
<td>Not end</td>
<td>28</td>
</tr>
<tr>
<td>How a Parliament must be called, and holden when there is a Guardian of England</td>
<td>6, 7</td>
</tr>
<tr>
<td>Parliaments begun by Commissioners</td>
<td>6, 7</td>
</tr>
<tr>
<td>Held by the Kings Commissary by Letters Patent</td>
<td>7</td>
</tr>
<tr>
<td>Where the Guardian, and Commissioners are to sit in Parliament</td>
<td>7</td>
</tr>
<tr>
<td>How a Parliament may be prorogued at the day of the return of the Writ of Summons</td>
<td>7</td>
</tr>
<tr>
<td>Of Prorogation, Adjournment, Continuance, and what makes a Session of Parliament</td>
<td>27, 28</td>
</tr>
<tr>
<td>What is to be done the first day of the Parliament, and who shews the causes of the calling the Court, and where anciently</td>
<td>7, 8</td>
</tr>
<tr>
<td>Sickness, no cause to remove a Member of the House of Commons</td>
<td>8</td>
</tr>
<tr>
<td>What is</td>
<td>23</td>
</tr>
<tr>
<td>The liberties of free speech and privileges of the House of Commons</td>
<td>8, 9</td>
</tr>
<tr>
<td>The matters of Parliament</td>
<td>9, 14</td>
</tr>
<tr>
<td>The Parliament relieveeth but such as cannot have remedy but there</td>
<td>8</td>
</tr>
<tr>
<td>How often Parliaments are to be holden, and the mischiefs of their disuse</td>
<td>9</td>
</tr>
<tr>
<td>In ways they have but one Knight and one Burgess in England, out of every City come two Citizens, and out of every Burghe two Burgesses, &amp;c.</td>
<td>9, 10, 223, 240, 241</td>
</tr>
<tr>
<td>H. 6. fate in Parliament when he was three or four years old, and so he did in the sixth or eighth year of his reign</td>
<td>6</td>
</tr>
<tr>
<td>Of petitions in Parliament</td>
<td>10, 11</td>
</tr>
<tr>
<td>Vide Petitions</td>
<td>11, 12, 13, 43, 49</td>
</tr>
<tr>
<td>One of the principal ends of calling Parliaments is to redress mischiefs and grievances</td>
<td>11</td>
</tr>
<tr>
<td>The Commons being the general Inquirers of the Realm appoint Committees of grievances, &amp;c.</td>
<td>11, 43, 49</td>
</tr>
<tr>
<td>And may examine offenses by any of the Lords, and transmit them to the Lords, &amp;c.</td>
<td>24</td>
</tr>
<tr>
<td>Of the ancient trussee called modes towards Parliament</td>
<td>12, 13, 14</td>
</tr>
<tr>
<td>Of Attains and Provoct</td>
<td>12, 13, 43, 49</td>
</tr>
<tr>
<td>The Lords and Commons cannot affect to any thing in Parliament, that tends to the eitheration of the King or his Crown</td>
<td>14, 357</td>
</tr>
<tr>
<td>Curia Parliamenti suis propriis legibus subjicit</td>
<td>15</td>
</tr>
<tr>
<td>Lex &amp; Constitutiones Parliamenti &amp;c. 143, 151, 21, 23, 42, 49, 357</td>
<td></td>
</tr>
<tr>
<td>The lex ab omnibus usque quemque multis ignota est, paucis cognita</td>
<td>15</td>
</tr>
<tr>
<td>None to go armed, or then plays, &amp;c. during the Parliament</td>
<td>14</td>
</tr>
<tr>
<td>Every Member, though chosen for one particular place, is to serve for the whole Realm</td>
<td>14</td>
</tr>
<tr>
<td>Where contemptis and offences of Parliament men are to be punished</td>
<td>15, 16, 17, 13, 24, 43, 44</td>
</tr>
<tr>
<td>The Kings Inhibition that the Parliament men should not receve without Licence</td>
<td>15, 17, 43</td>
</tr>
<tr>
<td>When the Commons had no great joy to continue in Parliament</td>
<td>21</td>
</tr>
<tr>
<td>Of Weins of Error in Parliament ibid.</td>
<td></td>
</tr>
<tr>
<td>The House of Lords is a distinct Court for many paroses</td>
<td>21, 563</td>
</tr>
<tr>
<td>So is the House of Commons</td>
<td>28, 563</td>
</tr>
</tbody>
</table>

The Lords in their house, and the Commons in their house, and both houses together have power of Judicature |

23, 36

Of the privilege of Parliament 24, 48, 363

The mutability of the High Court of Parliament, in New's Case 25

Why some of the Commons are to be at the Ingratitude of the Rolls of Parliament 26, 51 |

The Parliament represents the body of the whole Realm 26, 49

Where Parliament men attained of Treason, could not sit, till their Attainers were reversed 27

There is no Session until a Prorogation or a Disolution, though Bills pass. ibid.

About 300 Sessions of Parliament since the Conquest | 50 |

When Bills palled, must begin again | 50 |

If no Act pass, nor Judgement given, it is no Session of Parliament, but a Convention | 58 |

The manner of Proroguing, Adjourning, and Dissolving the House of Commons | 56 |

Good Bills, or Motions in Parliament seldom die | 32, 83, 203 |

How the Lords give their voices | 32 |

How the Commons give their voices | 35 |

Of the Kings royal assent | 28 |

Of the Assent of the Clergy, &c. | 35 |

Why the summons of Parliament is by 40 days or above before the sitting | 36 |

How Parliaments succeed not well in five cases | 35 |

Amity amongst them the chiefest cause of good success | ibid. |

Etres i. incapabiles, et iacentes inoperabiles. ibid. |

The Honour and Antiquity of the Parliament | 36 |

39, 143 |

The Power and Jurisdiction of the Parliament | 36 |

38, 39, 43, 143, 350 |

St. Augustine's faller, et suavitatis, et dignitatem eorum humanitatem, et suavitatem eorum capabiliter |

Male ego nec metus reum, nec temora pacis |

The proceeding in Parliament against abettors | 38 |

Excellent Rules for all Parliaments to follow | 39 |

Subsequent Parliaments cannot be restrained by the former | 43 |

The punishments of Members: that come not to Parliament, or depart without Licence | 43, 44 |

What shall be a sufficent excuse for not coming 49 |

Advice concerning new and plausible projects and offers in Parliament | 44 |

Whom the King may call to the Lords House of Parliament | 44, 45, 85 |

None to sit in Parliament but those who have right to sit there | 45 |

Where the Commons may desire conference with those of their several Countries | 46, 47 |

The Fees of Knights, &c. who to pay them 46, 46 |

Who be Eligible to be Knights, Citizens, or Burgesses of Parliament | 46, 47 |

A Baron is the lowest degree of the Lords house, 48 |

Who shall be electors of Knights, Citizens, and Burgesses, how and when, and of Elections | 48, 49 |

No Knight, &c. to sit in Parliament he hath taken the Oath of Supremacy | 48 |

The King cannot grant a Charter of Extortion to free a man from Parliament | 49 |

Constitutions in Parliament for maintenance of the Navy | 50 |

A Cave adjourned into Parliament | 50 |
The T A B L E.

A Lord of the Parliament may hunt in the King's Forest, evado & videlumb to, and from the Parliament 358, 359, 366
The Nobles of Ireland called the Parliaments of England 350

Letters Patent.
How to be repealed and for what cause 98
See Stat. facetas.
Letters Patent Records of the highest nature 209
Inheritances which pass by Letters Patent, are descemible at Common-Law.
What cannot be granted by Letters Patent 357
Pellotta 358

Of the County Palatine of Pembroke.
When it was a County Palatine, and when the Jurisdiction thereof was taken away 211

Perambulation.
The form of perambulations in Forests 334, 303
Perjury.
Perjury, in a Court though holden by usurpation 98

Petitions.
Petitions in Parliament, when to be delivered, and discussed.
Who the Receivers, Tryers, and Adjudicators, and how answered 11, 12, 14
Extra Parliamentum nulla petita est grata licet necessaria, in Parliamento nulla petita est ingrata nec necessaria 11
The Petition of right to the King for a Writ of Habeas, is not ex debito jussit, but for decency 91

Physic-men.
Of the College of Physic-men in London 241
Of the Kings Physicians, and by what warrant physic is to be given to the King 251
The Science of Physick containeth the knowledge of Chirurgery ibid.
How Physic-men ought to be qualified, and the danger if their patient dies by their unskillfulness, &c. 355, 356

The Court of Pynodow, vulgarly Pynoders, Curia pedis, potuvicrinis.
This Court is incident to every Fair and Market 372
Why so called ib.
The proceedings are de hora in homan ib.
It is a Court of Record holden before the Steward ib.
The Jurisdiction thereof ib.
There may be a Court of Pynodw by Customs without Fair or Market ib.
Errors in this Court ib.

Piracy.
How punished 147
Pirates goods belong to the King 136
One enemy cannot commit Piracy upon another 134
What taking of goods at Sea is Piracy, what not 154

Plea and Pleading, &c.
Actions brought against Parliament men for leaving the Parliament house, without Licence, and their Pleas 151, 152, 158, 19
Edmund Powders' plea that he was always present at the Parliament and his pregnant Travels 19
The usual form of pleading an Act made at a Session by prorogation is ad Sessionem tentans &c., per prorogationem 17

Not nisi prius Consuetum, aut hominem, quod aliquis de his quae eorum nobis & consilia nossero in discussione prudens, alibi inde interim placenti debetur, aut appareat 69
Placita Corona Regis, propriis causa Regis 71
Communis platica non sequatur Curiam ubrarn 71, 99
An Act of No. Dissensus, is quarta, and not platitude and not within these words, communis platica 74
Pleas are divided into Pleas of the Crown, and into Common or Civil Pleas 99
All are said Communis platica, which are not Placita Corona 118
Why called Common Pleas 99
A Lease by the words Commississis Custodiandis tenens, the Leafe pleaded a demise of the Land in itself, and good 118
The reasons of the Statutes for pleading the general issue & giving the special matter in evidence 127
Who may do it 173, 174, 175, 178
Pleas to the Jurisdiction of the Court 213
See Tryal upon Oath 232
Foreign Pleas 205, 247

Pledges.
See Surety.
When Husb and Husb, were common pledges, instead of Doe and Ryn 72
Plegii & Plegis in the Derivation 240
Plegii de pretiosissimo, the reason of theft 180
Who shall find them who not; where and when they be stored 180
Found in Bills in the Bills ib.
Voluntary pledges ib.

Policies and assurances in London.
The Court of policies, &c. 350

Popish.
His Tyanny over King John, and how repelled by King Edward 3 13, 14
His claiming first fruits, &c. Jure Divino 130, 131
The Pope is a temporal Prince 136
Ambassador sent by, and to the Pope ibid.
The Popes Collector or Minilter had no Jurisdiction within this Realm 331
The thundering Bull of Pope Paul the third, against H. 8. 344

Port-Mote, alias Port-Courts.
Curia Portuaria, why so called 138
Portus est locus in quo exportantur & importantur mercis a portando ibid.
Every haven &c. is within the body of the County &c. ib. 147

Precedency.
Of the precedence of the great Officers, Nobility, and others of this Realm 361, 362, 363, 364
In all trials of Treaties by the Peers, the great Officers shall be placed according to their offices 365
Of the places and precedence of the Nobility, and Subjects of this Realm, their Sons, Wives and Daughters, &c. 366
The precedence of Bishops, &c. 361, 364
The precedence of Barocont, &c. 366
The precedence of Barontes, &c. 366
The dignitaments ordo forventus, signis in debitis scientiam aversavit, nulla se ignatione defende so fine plant Saccoglia 18.

Priors. See Ecclesiastical persons.

Premature.
A premaritiv for suing in Curia Romant, &c. 139
(f 1)

The Table of

The Table.
### The Table

<table>
<thead>
<tr>
<th>Privilege</th>
<th>The privilege of any Lord of Parliament, is to be decided by the Lords</th>
<th>354</th>
</tr>
</thead>
<tbody>
<tr>
<td>Privilege of the House of Commons, by the same house</td>
<td>355</td>
<td></td>
</tr>
<tr>
<td>Of suits against privileged persons, See Bill.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Privy-Secal

- The Lord Privy-Seal his Oath 55
- His Office of great trust and skill
- Four Clerks of the Privy-Seal
- This Seal is called by several Names
- The Lord Privy-Seal sits in the Court of Request at his pleasure
- Privy-Seal to the Court of Chivalry to sue ex parte

#### Probate of Wills

- Where to be made
  - Procurators Clerii, who, and why, useless now
- Prohibitions
  - Prohibitions in the King's Bench 70
  - Prohibitions in the Common Pleas granted, in Term of Vacation
  - And Attachments if the Prohibitions be not obeyed
- Prohibitions granted in the Common Pleas 99
- Prohibition to the Court of Exchequer 114
- To the Court of Admiralty 131
- To the Justices of Assize
- To the Spiritual Court for molesting a Temporal Officer
- To the Stannary Courts
- To the Marches of Wales
- To the President and Council of the North
- To the Ecclesiastical Court touching a suit there, by an Orphan of London for a Legacy
- To the High Commissioners 333
- Toooo. Marks recovered against a Bishop for securing after Prohibition

#### Property

- Property altered by taking an enemies goods 154
- When Dee are out of the Forrest the property is out of the King
- Prohibition. See Parliament.

#### Praisef

- Praisef, a parte & parte, made praisefatio

#### Pride

- Defense of the Power and Authority of the Protector, and Defender of the Realm and Church of England, during the King's tender age

#### Privilege

- What Members of Parliament may make proxies, and what not, to whom a Proxy may be made
- What shall be a revocation of a Proxy

#### Proclaim, Powellite

- What and whereof derived
  - In any Proclain a man may as lawfully hunt, &c.
  - In any other his grounds
- The purifie man may kill wild beast in his Purlieu, &c.
- The Ranger may reclassify the King's Deer in the purlieu
- A man may keep a Maffiff, &c. here unexpedited

#### Purveyors

- Of Purveyors
  - Purveyors

#### Queen

- 1531.166.177
- 307
<table>
<thead>
<tr>
<th>Q</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>His Office and how constituted</td>
</tr>
<tr>
<td>Quain.</td>
<td>Register</td>
</tr>
<tr>
<td>*One to marry the Queen Dowager without</td>
<td>Relief</td>
</tr>
<tr>
<td>Licence of the King, upon pain to lose his</td>
<td>Why justly called Antiquum rolevuem</td>
</tr>
<tr>
<td>Estate</td>
<td>3651</td>
</tr>
<tr>
<td><em>Aurum Regiae: Quia?</em></td>
<td>358</td>
</tr>
<tr>
<td>See King.</td>
<td></td>
</tr>
<tr>
<td>R</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rayer,</td>
</tr>
<tr>
<td></td>
<td>The Oath of the Ranger</td>
</tr>
<tr>
<td></td>
<td>Rausum</td>
</tr>
<tr>
<td></td>
<td>Redemption, how taken</td>
</tr>
<tr>
<td></td>
<td>Rebellions</td>
</tr>
<tr>
<td></td>
<td>The many Rebellions in the Reign of H. 8.</td>
</tr>
<tr>
<td></td>
<td>Recognizance</td>
</tr>
<tr>
<td></td>
<td>The forms of Recognisances for bail, 178,179,180,</td>
</tr>
<tr>
<td></td>
<td>Recognisances in nature of a Statute Staple</td>
</tr>
<tr>
<td></td>
<td>Recognisances in the Town and Leet</td>
</tr>
<tr>
<td></td>
<td>Recognizance</td>
</tr>
<tr>
<td></td>
<td>The Recorder of London gives judgement of the Out-</td>
</tr>
<tr>
<td></td>
<td>lawry in the Hugings</td>
</tr>
<tr>
<td></td>
<td>Records</td>
</tr>
<tr>
<td></td>
<td>Why Records of Parliament have been so highly ex-</td>
</tr>
<tr>
<td></td>
<td>cruised</td>
</tr>
<tr>
<td></td>
<td>When the Reasons of Judgements were set down in</td>
</tr>
<tr>
<td></td>
<td>the Record</td>
</tr>
<tr>
<td></td>
<td>The Book of the Clerk of the house of Commons is</td>
</tr>
<tr>
<td></td>
<td>a Record</td>
</tr>
<tr>
<td></td>
<td>Of Demanding Records out of the Kings Bench</td>
</tr>
<tr>
<td></td>
<td>What Records remain in the Rolls, and what trans-</td>
</tr>
<tr>
<td></td>
<td>mitted to the Tower</td>
</tr>
<tr>
<td></td>
<td>Who have the custody of the Records in the Exche-</td>
</tr>
<tr>
<td></td>
<td>quer and Common-pleas</td>
</tr>
<tr>
<td></td>
<td>Records in the custody of the Clerk of the Crown,</td>
</tr>
<tr>
<td></td>
<td>Records sent to the Exchequer</td>
</tr>
<tr>
<td></td>
<td>Transcripts of Attainers, &amp;c. before Justices of the</td>
</tr>
<tr>
<td></td>
<td>Peace, &amp;c. sent to the Kings Bench</td>
</tr>
<tr>
<td></td>
<td>Records and Affiavts delivered into the Kings Treasury</td>
</tr>
<tr>
<td></td>
<td>Indictments, &amp;c. in the Sheriff's Tourn, to be del-</td>
</tr>
<tr>
<td></td>
<td>ered to the Justices of Peace.</td>
</tr>
<tr>
<td></td>
<td>A Grant under the Seal of the Duchy of Lancaster,</td>
</tr>
<tr>
<td></td>
<td>&amp;c. is matter of Record</td>
</tr>
<tr>
<td></td>
<td>The Course of certifying Records from the Chanc-</td>
</tr>
<tr>
<td></td>
<td>ley Rolls</td>
</tr>
<tr>
<td></td>
<td>The danger of rating Records</td>
</tr>
<tr>
<td></td>
<td>Brevia clausa in vacuo non habebat</td>
</tr>
<tr>
<td></td>
<td>Who hath the custody of the Records of the Forest</td>
</tr>
<tr>
<td></td>
<td>Vide Tit. Remover de Records</td>
</tr>
<tr>
<td></td>
<td>Revolutiones</td>
</tr>
<tr>
<td></td>
<td>Redissifion</td>
</tr>
<tr>
<td></td>
<td>In a Redissifion the Sheriff is Judge</td>
</tr>
<tr>
<td></td>
<td>The proceeding in a Redissifion</td>
</tr>
<tr>
<td></td>
<td>Regarder. Regrissum</td>
</tr>
<tr>
<td></td>
<td>It is derived of the French word Regarder to view</td>
</tr>
<tr>
<td></td>
<td>or use because he cannot present any thing but upon</td>
</tr>
<tr>
<td></td>
<td>his own sight or view</td>
</tr>
<tr>
<td></td>
<td>Remover de Records, &amp;c.</td>
</tr>
<tr>
<td></td>
<td>The Damandant in a Writ of right clofe cannot</td>
</tr>
<tr>
<td></td>
<td>remove the plea out of the Court of the Lord for</td>
</tr>
<tr>
<td></td>
<td>any cause, the Tenant may for 7 causes 269,370</td>
</tr>
<tr>
<td></td>
<td>He may assign any cause, besides that mentioned in</td>
</tr>
<tr>
<td></td>
<td>the Records</td>
</tr>
<tr>
<td></td>
<td>Records sent to the Exchequer</td>
</tr>
<tr>
<td></td>
<td>See the Titles Records and Certificates. Durham,</td>
</tr>
<tr>
<td></td>
<td>Kings Bench</td>
</tr>
<tr>
<td></td>
<td>Replication</td>
</tr>
<tr>
<td>D: san tant dentro, where good</td>
<td>296</td>
</tr>
<tr>
<td></td>
<td>Reports</td>
</tr>
<tr>
<td></td>
<td>When the Causals, and Reporters of Cales began to</td>
</tr>
<tr>
<td></td>
<td>publish the Cales in Print</td>
</tr>
<tr>
<td></td>
<td>What is a dangerous kind of Reporting</td>
</tr>
<tr>
<td></td>
<td>The Courts of Requests</td>
</tr>
<tr>
<td></td>
<td>The Jurisdiction of this Court</td>
</tr>
<tr>
<td></td>
<td>How called</td>
</tr>
<tr>
<td></td>
<td>The original Institution</td>
</tr>
<tr>
<td></td>
<td>The Matters of Requests, called Magistri a libris</td>
</tr>
<tr>
<td></td>
<td>supplication</td>
</tr>
<tr>
<td></td>
<td>In what respect called a Court</td>
</tr>
<tr>
<td></td>
<td>It hath no power of Judicature</td>
</tr>
<tr>
<td></td>
<td>Respondent Superior</td>
</tr>
<tr>
<td></td>
<td>How this Law holdeth in the Exchequer and in other</td>
</tr>
<tr>
<td></td>
<td>Courts</td>
</tr>
<tr>
<td></td>
<td>Ressituation</td>
</tr>
<tr>
<td></td>
<td>A Free-man unjustly disfranchised may be restored</td>
</tr>
<tr>
<td></td>
<td>and relieved in the Kings Bench</td>
</tr>
<tr>
<td></td>
<td>The Judges and Justices of peace, to give restitution</td>
</tr>
<tr>
<td></td>
<td>of possession in certain cases</td>
</tr>
<tr>
<td></td>
<td>Retour</td>
</tr>
<tr>
<td></td>
<td>The retons comam nobis are in three manneres, si-</td>
</tr>
<tr>
<td></td>
<td>litem, comam nobis in camera, comam nobis subwacque fatimatur</td>
</tr>
<tr>
<td></td>
<td>in Anglia, &amp; comam nobis in Curiariaria</td>
</tr>
<tr>
<td></td>
<td>The return of Writs in the Kings Bench and Comnas</td>
</tr>
<tr>
<td></td>
<td>Pleas</td>
</tr>
<tr>
<td></td>
<td>A Writ of the Justice of the Forrest returned into</td>
</tr>
<tr>
<td></td>
<td>the Kings Bench</td>
</tr>
<tr>
<td></td>
<td>Review after a definitive sentence, &amp;c.</td>
</tr>
<tr>
<td></td>
<td>Revocation of a Proxy, See Proxy</td>
</tr>
<tr>
<td></td>
<td>Countermand of commotions of Oyer and Terminer</td>
</tr>
<tr>
<td></td>
<td>De Rewarda</td>
</tr>
<tr>
<td></td>
<td>Rites Rota,</td>
</tr>
<tr>
<td></td>
<td>Of Rites and Rota</td>
</tr>
<tr>
<td></td>
<td>Rolls and Lendments</td>
</tr>
<tr>
<td></td>
<td>Of the Matter of the Rolls</td>
</tr>
<tr>
<td></td>
<td>Of his house called domus contemorum, because it is</td>
</tr>
<tr>
<td></td>
<td>founded it for such Jews as should be converted</td>
</tr>
<tr>
<td></td>
<td>This Office is granuable by Letters Patent, for life or</td>
</tr>
<tr>
<td></td>
<td>at will</td>
</tr>
<tr>
<td></td>
<td>Rolls of the Chancery, why so called, and of what</td>
</tr>
<tr>
<td></td>
<td>they consist</td>
</tr>
<tr>
<td></td>
<td>Now</td>
</tr>
</tbody>
</table>
The TABLE.

How the Matter of the Rolls is filed................................................................. 97
The gifts of the 6 Clerks Officers belong to him pare office ............................ 97
He heareth causes, and giveth orders in the absence of the Lord Chancellor .... 118
What masters of State, as Leagues, &c. inrolled in the wardrobe ......................... 133
The Rolls in the Exchequer not numbered .................................................... 109
Instructions of the President and Council of the North to be inrolled ................. 146
The Statutes of Ireland to be inrolled in the Chancery here .............................. 313
All that which passe the great Seal ought to be inrolled in the Chancery ............... 355
Many Rolls amongst the Kings Records, whereof there is little or no mention in our Books, Psaut. 277

Runnymede Mortf
The Town and Marth took their Name of Robert Runnymede........................ 277

A

Sirre Fattas

A Sirre Fattas upon Errors assigned in Parliament ........................................ 21
A Sirre Fattas to repeal a Patent may be brought in the Kings Bench ............... 72
And in the Chancery ......................................................................................... 72
Sirre fassas upon Recognisances ....................................................................... 79
Sirre fassas in the nature of an Audita Querela ................................................ 79
Sirre fassas upon a release for one that is in Execution ..................................... 179
Sirre fassas upon a Record removed out of the Forrest into the Kings Bench .... 294
Statutes Statutes ............................................................................................... 307

Of Scotland.

England and Scotland anciently but one Kingdom ............................................. 345
One Language, one Religion, and anciently one Government in both ibid.
Their Laws are divided into the Common Laws, Acts of Parliament and Customs ibd.
Their Books of Law ibid.
The similitude between their Laws and ours, touching the Crown, Dicerns, Parliament, Nobility, Officers, Tenant by the Curtesy, Writs, Wardships, &c. ........................................ 345
The same vowels of Art are used in both Kingdoms ...................................... 345
They have two Arch bishops, 30 Counties, a Universities, the Motto of their Kings the length and form of Scotland, when an Heptarchy there, &c. 346
A union of both Kingdoms endeavoured by King James .................................. 347
The distinct Kingdoms as they now stand have many different Laws ............ 346
Many Laws, Records, &c. concerning Scotland .............................................. 346
From whence the Bills and Scots originally came ............................................. 347
Their first Bishop ............................................................................................... 348
Defects of Gould .............................................................................................. 306

Sea.

Remedy by the Common Law for wrongs done beyond Sea ........................... 183

The description and limitation of the Sea, wherein the Lord Admiral hath Jurisdiction ............................................................................................................ 134
That is called the Sea, which is not within any County .................................... 140
It is not the certain of the high Sea, where one may see from one Land to the other ibid.
Every water which flows and refloows is an arm of the Sea ......................... 141
The Kings Prerogative and Interest in the Seas .............................................. 145
The safeguard of the Seas undertook by Merchants, &c. ................................. 146
Sea-marks and Light-Houses ............................................................................ 148
See Marks, See Beacons

Seal.

Of the three Seals by which the Kings Grants, Writings and Leases pass........ 55
Clavi sigillii, their Office .................................................................................... 55
The Kings principal Secretary keeps the Signers for sealing the Kings privy Letters 56
The great Seal is Clavi Regni .......................................................................... 80
H.s. had two great Seals, one of Gold, and another of Silver ............................ 83
Of the Exchequer Seal ...................................................................................... 119
Of the Seals of the Dutchy and County Palantine of Zonaker .......................... 210

Seal.

The title of Matt how brought into the Kings Seall ......................................... 284
The posseffions of Jersey and Guernsey are a good Seall for the King of the whole Dutchy of Normandy ................................................................. 386

Sentence.

Definitive Sentence ............................................................................................ 541
Serjeants ............................................................................................................ 28
None but Serjeants at Law can practive in the Court of Common Pleas ......... 78

Services.

Regale servitium, &c. ......................................................................................... 192
See Tenures

The Court of Commissioners of Sewers

Suits for a Sewer, &c. aide ? ........................................................................... 375
Their Authority, Commission, and Jurisdiction ............................................... 375
How the Commissioners should be qualified, their number, and by whom to be nominated ................................................................. 375
Their Oath ibid.
They may jusicie, or arre for a diffres, &c. generally ........................................ 376
Their proceedings are bound by Law ................................................................. 376
A receit of several Commissions of Sewers ...................................................... 376

Sherrif.

See Towns
The Sheriff should see the Statutes within his Country to be kept ..................... 26
The punishment of Sheriffs for their negligence in returning Parliament Writs 44
What within his accounts ................................................................................... 107
In what cases the Sheriff may break open a man's house, where not 177
Indictments &c. in the Sheriff Turn to be delivered to the Justices of Peace .... 183

Baylills of hundreds belong to the Sheriff ...................................................... 266
When the Sheriff was eligible by the Free-holders ......................................... 47

Solicitor
The TABLE.

| The several forms of Acts of Parliament | 25, 139, 349 |
| How and why Acts of Parliament may be inrolled in other Courts | 43 |
| How in former times Acts of Parliament were proved by the Sheriffs | 36 |
| The Title of divers Acts of Parliament | 27 |
| Statutes made against the freedom of Trades, &c. never live long | 31 |
| Of Statutes of confirmation of Letters Patents | 34 |
| Obedience Statutes, and when for the time | 40, 41, 70, 174 |
| A mischiefous Act with a flattering preamble | 38, 40 |
| A Caeve to Parliament in making Statutes | 41 |
| Acts against the power of the Parliament, subsequent bind not | 42, 43 |
| Acts of Parliament ought to be plainly and clearly, and not cunningly and darkly printed, especially in criminal cases | 43, 52 |
| There are divers Acts of Parliament in Print, that are not of Record in the Roll of Parliament | 70, 51 |
| There are many Acts in the Roll of Parliament and never yet printed | 50, 51 |
| Divers clausets omitted in the print, which set in the Parliament Roll | 19, 51 |
| More in the print, than in the Record | 70, 51 |
| Many varieties between the Print and the Roll | 18 |
| Statutes repealed or disaffirmed, and yet printed | 50, 51 |
| Whole Parliament omitted out of the print | 19, 51 |
| Histories sometimes explain Records of Parliament | 52 |
| Multitudes bound by Statutes which are not parties to the elections of Knights, &c. | 4 |
| Statutes which and the punishments, &c. Sur officiatio de turp. &c. auent. These are expressly, not to extend to life, or member, but to imprisonment, &c. in the Statute 15 H. 8. c. 4. Reloved, the Surrey to be by obligation, by the party grieved, and the Court to set down the form and sum of the obligation | 51, 52, 78 |
| Of the clausets not disaffirmed in Statutes | 31, 57 |
| And further to be punished according to his demerits | 32 |
| These words are to be understood of punishment in an ordinary course of justice, by Indictment, &c. | 31, 71 |
| Statutes repealed and expired | 17, 174 |
| Fired or imprisoned at the Kings Will, in Statutes, how understood. | 71, 179 |
| Statutes often called Ordinances, every Statute is an Ordinance, fed the contrary | 186, 187 |
| Statutes made against Bankrupts, and for relief of Creditors, to be beneficially continued, for relief of the Creditors. Who not bound by our Statutes unless specially named | 287, 288 |
| Every Statute consists of the Lector and the meaning | 71, 179 |
| Every Act, consideration had of all the parts, is the best Expositor of it felt | 35 |
| General words, &c. which have been used, &c. shall not extend to Authorities repealed | 32, 330 |
| Of the construction of general words in Statutes, and where they have received a particular interpretation | 330, 331, 335 |
| The preamble is the key to open the meaning of the makers of the Act | 330 |
| Every Statute ought to be expounded according to the intent of them that made it | 18 |
| The Authority of Statutes | 342, 343 |

Solicitor.

His Patent is Quamdiu se bene gessit et

Soldiers.

How to proceed against Soldiers that depart.

Speakers of the House of Commons.

When the Commons had no continual Speaker.

The manner of his Election.

For what causes he may be removed.

What the Speaker shall do when he is chosen.

The King may allow of his excuses, and disallow him.

The Protestation of the Speaker.

What the Speaker shall do, after his allowance.

When any Baron of the Exchequer was Speaker of the Parliament.

Spyery.

To be Garnished.

The Courts of the Statuaries in Cornwall and Devon.

The Siole of the Court.

The Officers be the Steward, Underwarden, &c. in.

It is called Statuaria, a Stannus, Tyne in Saxen words, and derived a Tynnis, and the Tynners are called Statuaries.

The Jurisdiction of this Court.

The No Writ of Error lyeth upon any judgement in the Scannery Court.

Erroneous Judgements in Scannery are to be=reverted by Appellation, and to whom this Appellation shall be made.

The privilege of the workers in the Statuaries.


The special Laws of the Statuaries.

Statute Staple, and Statute Merchant.

Of Executions upon these Statutes.

See The Court of the Mayor of the Statue.

The Court of the Mayor of the Statue.

This Court is guided by the Law Merchants, and is held at the Woodstaple at Westminster.

Where hereofhere.

The Officers.

The jurisdiction of this Court.

The bounds of the Staple at Westminster, and in other places.

Of Statutes Staple and Recognisances in nature of a Statute Staple.

The five Staple Merchandises, viz. Wool, Woold, Leather, Leed, and Tyne.

The derogation, and signification of the Word Staple.

The Common saying, viz. Riches follow the Staple.

Of Statutes in General.


Sealed by the Lords. &c.

The difference between an Act and an Ordinance.

Which shall be said an Act of Parliament, which not.

Where the Printed Book of Statutes ereth in letting down the beginning of the Parliament.

The Division of Acts of Parliament.

Statutes relate to the first day of Parliament.
### The TABLE.

<table>
<thead>
<tr>
<th>Statutes.</th>
<th>351</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 H. 3. called the Affile of Clarendon ca. 11.</td>
<td>45</td>
</tr>
<tr>
<td>All Statutes repealed that are against Magna Ca. or Carta de justicia.</td>
<td>320</td>
</tr>
<tr>
<td>Magna Carta confirmed by 32 Aeds</td>
<td>35</td>
</tr>
<tr>
<td>Magna Carta ca. 11.</td>
<td>71</td>
</tr>
<tr>
<td>36 H. 3. ca. 4.</td>
<td>166</td>
</tr>
</tbody>
</table>

#### E.D. 1. Wisb. 1.

- Westminster x ca. 29: 76, 191
- 33 E. 1. Regnem: 186
- W. 1. ca. 15: 290
- W. 2. ca. 102: 185
- Artic. super Cart. ca. 4: 114, 113
- E. D. 1.
- Privileges Regis, ca. 3: 218

#### A.D. 1.

- 4 E. 2. ca. 14: 9
- 36 E. 2. ca. 10: 9, 10
- 5 E. 2. ca. 9: 38
- 28 E. 3. ca. 5: 18
- 14 E. 3. ca. 5: 67, 68, 69
- 2 R. 3. ca. 28: 68
- 14 E. 3. ca. 14: 68
- 18 E. 3. Sta. 3: 68
- 20 E. 3. ca. 1: 70
- 36 E. 3. ca. 9: 82
- 31 E. 3. ca. 11: 105
- 14 E. 3. Sta. 1: 196
- 9 E. 3. ca. 4: 205

#### R. 2.

- 5 R. 2. Sta. 2. cap. 4: 44, 49
- 7 R. 2. ca. 4: 10
- 7 R. 2. ca. 16: 108
- 7 R. 2. ca. 16: 109
- 1 R. 2. ca. 5: 108
- 5 R. 2. ca. 9: 110
- 1 R. 2. ca. 12: 111, 115
- 13 R. 2. Sta. 1: 123
- 13 R. 2. ca. 8: 136
- 35 R. 2. ca. 3: 137
- 17 R. 2. ca. 6: 182

#### H. 4.

- 7 Hen. 2. ca. 15, 10: 63
- 6 Hen. 2. ca. 7: 117
- 2 Hen. 2. ca. 11: 137
- 1 Hen. 2. ca. 3: 110
- 13 Hen. 2. ca. 7: 184

#### H. 5.

- 8 Hen. 2. ca. 1: 7
- 2 Hen. 3. ca. 8: 184
- 15 H. 6. ca. 6: 83, 84
- 31 H. 6. ca. 2: 83, 84
- 18 H. 6. ca. 1: 112
- 19 H. 6. ca. 7: 141
- 20 H. 6. ca. 11: 152
- 11 H. 6. ca. 6: 169
- 8 H. 6. ca. 10: 215
- 25 H. 6. ca. 19: 325

#### E. 4.

- 12 E. 1. ca. 8: 262
- 17 E. 1. ca. 2: 337
- 32 E. 1. ca. 7: 304

### K. 3.

- 1 R. 3. ca. 6: 272
- 2 R. 3. ca. 4: 274
- 11 H. 3. ca. 7: 40
- 3 H. 7. ca. 1: 62
- 3 H. 7. ca. 14: 133
- 4 H. 7. ca. 12: 170
- 4 H. 7. ca. 17: 196
- 10 H. 7. ca. 4: 312

### H. 8.

- 33 H. 8. cap. 20: 21
- 33 H. 8. ca. 21: 28
- 34 H. 8. ca. 3: 9
- 35 H. 8. ca. 16: 43
- 33 H. 8. ca. 9: 64
- 33 H. 8. ca. 9: 97
- 33 H. 8. ca. 9: 210, 113
- 35 H. 8. ca. 23: 147, 114
- 32 H. 8. ca. 15: 124
- 33 H. 8. ca. 14: 133
- 33 H. 8. ca. 14: 139
- 28 H. 8. ca. 1: 153, 147
- 28 H. 8. ca. 14: 182
- 28 H. 8. ca. 46: 188, 200, 84
- 33 H. 8. ca. 22: 188, 200, 84
- 1 H. 8. ca. 12: 197
- 27 H. 8. ca. 24: 205
- 32 H. 8. ca. 13: 309
- 27 H. 8. ca. 19: 334, 339
- 31 H. 8. ca. 5: 316
- 35 H. 8. ca. 3: 344
- 31 H. 8. ca. 10: 362

### E. 6.

- 2 E. 6. ca. 13: 84

### E. 6. 1. 147

- 1 E. 6. ca. 11: 334
- 1 E. 6. ca. 7: 165, 169
- 1 E. 6. ca. 10: 253

### Mary and P. and M.

- 1 Mar. ca. 6: 48
- 2 P. and M. ca. 13: 167
- 2 and 3 P. and M. ca. 18: 169

### E.d.

- 2 E. d. ca. 1: 21
- 5 E. d. ca. 1: 43, 48
- 27 E. d. ca. 8: 72
- 21 E. d. ca. 4: 76
- 5 E. d. ca. 18: 87, 38
- 5 E. d. ca. 9: 37
- 8 E. d. ca. 7: 135
- 27 E. d. ca. 11: 137
- 5 E. d. ca. 5: 137
- 8 E. d. ca. 13: 149
- 30 E. d. ca. 4: 166
- 31 E. d. ca. 6: 167
- 1 E. d. ca. 1: 314

### J. A.

- 21 J. a. ca. 2 ca. 4 ca. 16 ca. 13 ca. 8 ca. 33: 76, 77
- 7 J. a. 15: 115
- 1 J. a. 7: 166
- 21 J. a. 15: 175
- 21 J. a. 15: 176
- 1 J. a. 19: 264

### CAR. 1.

- 3 Car. cap. 1: 77, 125

The title of this Court: Star-chamber.

This Court of all Courts ought to be kept within its proper bounds and jurisdiction. That
The TABLE.

The King to have no Customs, but what are set by Act of Parliament

See Prerogative.

Heralds discharged of Subsidies, &c.

See Allsorts.

Summigiam, or Summiage

Supremacy.

H. 8. acknowledged Supreme head of the Church of England by the Clergy in their Conversations

The King's Supremacy

Who take the Oath of Supremacy

Surcharge of the Forrest.

Supererogation for Smoke. (Quod ?)

Sentry.

See Pledge.

Surrey, Securitas by the Common Law, and Statute,

The surety of the Peace, and de buon gesto, how they may be broken

By whom, and in what cases surety shall be found

Whensoever a Statute required pledges for surety to be found, they ought to be sufficient

The King's Swornbrand.

Magister deputatus bynum, his Authority

No Fowl can be a Swan but a Swan

Tales de circumstantiis. See Just. Taliage.

W. Ho freed from Talages, &c.

Talley.

There are two kinds of Talley, the one of Debt, the other Reward

Taliage.

No citation Talie can be of a Term

Theme.

The Lord Mayor hath the conservasion and rule thereof.

Temple.

Tenant.

Tenant of antecedent pleaded in trespass

Tenants Wide Subsidies.

Teweasts unde.

Tenure.

V. Who hold per Barondam, and who not

A tenure of the King in chief, in equipage with Barony by Stat. 10 H. 2. c. 12.

An Earl hold by doing the Office of Steward of England

The counties of the King, in capite how increased

The Office of the Constable of England, of Inheritance by the tenure of the Manors of Harlefield, &c.

Of the several types of tenures, and Services, how by whom, and for what ends created

All the Lands in England originally moved from the King, and are held of him, mediately or immediately

Tenures originally created for the defence of the Realm

(b.)

what
The TABLE.

What care there was of ancient time, to preserve the tree of pairs, honourable, and profitable courts. [Scripture. See Will.]

Toll.
Who freed from Toll, &c. 169, 167
The Court of the Tourn. See Sheriff.
The Tourn is a Court of Record holden before the Sheriff.
260, 263
The Scribe and Jurisdiction of this Court 260, 261,
271
Tourn eft uis praebenda et
When Ecclesiastical courts were handled in the Tourn.
16
The Sheriff in his Tourn cannot enquire of a Nuis,
161
For what causes instituted.
263
The Sheriff may take Recognisances for keeping the peace
263

Tower of London. See London.

The Court of the Tower of London

The Court of Justice of Trailblazon.
Why so called, their Authority, Jurisdiction, and proceedings
186, 187
Travers.
Travers of Office. 79, 196, 206, 210, 210, 219
What Pretense or Inducement may be traversed, what not
290, 291

Treason.
Rebels and Traitors called Contraetant, and why,
89, 90
The killing of the Ambassador of France declared
37
Treasons committed out of the Realm, &c. How to be tried
134
Treasons in the Kings Palace, &c.
133
Treasons, &c. on the Sea.
147
See Courts.
Justices of Goal-delivery may deliver the Goal of Prisoners committed for high Treason
169
Treason for marrying with any of the blood royal
362

Trespass.
The Coroner is to enquire of Trespass Trove
271
Trespass,
The Lord Treasurer of England.
How he hath his Office
104
His Office, Duty and Oath
104, 105
He hath granted to him Tresaurarius or Regis Angliae, which anciently was a distinct Office of itself
105
Tresaurarius Comtus Regis, where accountable
109
93
Where in Statues, &c. by the general word Treas., the Lord Treasurer of England is intended, where the Treasurer of the Exchequer
105, 111

Trespass.
Common or Trespass, quid?
83
How far a trespass quare vi & armis & c. et contra paras.
181
If I have goods of a person outlawed in trespass, I am discharged if I deliver them to the Exchequer
315
Where it is no offence to hunt a Deer, and follow him into the Forest
304

Where my agreement to a trespass after it is done, makes me no trespasser, unless the trespass be done to my use, and where it doth
317

De Trespassis.
Trial.
By Jury the Ancient Birthright of the Subject

Trial of Peers. See Nobility.
Of Trials in the Exchequer
193, 194
Trial by Record where the issue might be tried by the Country
109
Trial of Treason, &c. out of the Realm, and upon the Sea.
124
Of Trials in the Martial Court
124, 125
Matters rising within any Country, though upon the Sea, ought to be tried by the Common Law
134, 135
If any contract, &c. be made beyond the Sea, for doing an act within this Realm, or a contract, it is to be tried by the Common Law
134, 135, 139, 141
So of contracts, &c. made within any Country, &c. for doing any act upon the Sea, they are to be tried by the Common Law
133, 139, 140, 141, 142
Acts which are treasonable, done out of the Realm, lie at Common Law, but criminal and local, before the Constable and Marshal
140
See Acton.
The Common Law hath jurisdiction, where part of the offence is on the Sea, and part in a Country
140, 141
Of Trials in Lancaster, &c.
205
A rebate or other special deed pleaded in Bar, in any Court, at treachery, within a Franches, &c. it shall be tried where the Writ is brought
30
Where though part of the Action arises within a Franches, it shall be tried at Common Law, where not
134, 135
In Trespass, the Defendant pleaded an Arbitrement made in the Isle of Ely, the Plaintiff showed that Ely is a royal Franches, and had a venetur, fec
230
Trial per mediationem
128
Trial of Ancient Demesne by Doomsday Book
169
Trial by Witness
278, 279

Tract. See Lesquer.
Traff. See Wey.

Tythes.
The Forfeiture for non-payment of Tythes to go to the party grievances
84

V.

W.

W.

What Beasts of the Forrest, &c. are venison, what not
316

Virtual.
The punishment for selling corrupt virtual, &c.
166, 167, 168

Verbarum, Vert, &c.
A viridis, Vert, or green hue, for that his Office principally concerneth to look to the Vert or Green.
292, 317, 339
He is a Judicial Office and chosen in full County, his Office and Duty.
295, 315
Four Verd caret in every Forrest
295, 315
If a Verderer dies his Heir must bring in the Rolls.
313
Of Vert
317
The TABLE.

Wales, unde tractagrat, 1. Præpositus for
refœ 289

Wales. See Marches.

Of the legal Courts and their jurisdiction within the principality of Wales 239, 244
Wales originally no part of England, and therefore regularly no Writ of Error did lie of a Judgement in
Wales 233

The twelve Counties of which the Principality con-
fined 339, 340
Walis the Ermology of the Word 239
When it was a Realm or Kingdom, and governed
pre fœs Regulæ 19
When holden of the Crown of England just fiendal
still forfeited by treason 239
When incorporated and united to the Realm of
England by Acts of Parliament 249

The Principality of Wales, how called by the Roman
244

Of the Kings great Sessions of Wales 240
Justices of Wales are to be made by Patent 19
Welsh men called to our Parliaments 241, 249
The Britains ever lovers of the Laws of England,
Which only now are to be used in Wales 19
Where execution shall be made of the Laws in
Wales by the Sheriff of the County next adjoining
244

The Kingdom of Wales, when divided into three
Principalties, and the last event 193
It is divided from England by a Ditch 19
Edward (called the Black Prince) created Prince
of Wales by Charter now, 194

Warrant.

Rules to be observed concerning entering upon a
Warrant 129

Of Warrants to issue out the Kings Treasure, and
for Loans of his Lands 110, 111, 112
Of Warrants to the Lord Chancellor to grant
Commissions, &c. 167

Wardrobe.

Several matters touching the Wardrobe 130, 131

The Court of Wards and Liveries raised by author-
ity of Parliament. 128
When Wards became due to the Kings of England,
by what Title, and upon what reason 190, 191, 192

Who had the charge of the Kings Wards, how
they were disposed of, and in what Court this revenue
was answered before the reign of H. 8. 190, 191, 192
193, 194, 195

How the Kings Ward, his Lands, Houses, &c.,
should be dealt with 193, 194, 195

Wardship no badge of Servitude, the benefit that
accrues to the King, and Heir thereby 193, 202

What care there was of ancient time to preserve
the tree of piety, honourable and probatible tenures,
and that the King should be truly and unlawed of Ward-
ships, &c. 194. Since fell upon the Cyprian age of
Lands holden in Capitale, and of another Lord in Seigni-
ary dying feigned of the use of both, his Heir shall be in
Ward to the King 196, 197

Of Wards in the County Palatines 200
The Court of Wards a Court of Equity and Record
200, 201

Informations for his Majestie, on the behalf of the
Heir, for his goods, &c. 201

The Judges and officers of this Court 19

Motions in Parliament, and considerations for tak-
ing away Wardships, &c. 201, 202

Of Wardship, first fœlons, &c. due to the King,
for Lands in the County Palatine of Durham 219

Ravishment of Ward for him who hath the custody
of an Orphan committed to him 248

Warren. See Chase.

Not to be erected without a Charter from the King
298

What be no Beasts and Fowls of the Warren 314

Watch.

Concerning Watches, Beacons, Sea-marks, &c.
149, 150, 151

Ordinances for Watches in Norfolk 149

Warrant, or Wardrobe, to be free from contribution of money to Watches
149

Of Weight

275

Of the city of Westminster.

Called Westminster in respect of the Edimouth, not
far from the Tower of London 275
By whom founded 19

Of the Burgess, how chosen, and their power 19

Of the Clock-house, by whom built, and upon what
occasion 19

Queen Elizabeth made the Monastery a Colle-
idge, consisting of a Dean, 11. Prebends, a School-
master, an Usher, 40. Scholars, and 32. Almoners.
161
### The Table

- The several sorts of Writs in Chancery: 86, 82
- The Writ de quaibidam certis de causis 82
- Writs upon a pains when to be granted: 3, 119
- Of the Writs of Subpoena & certis de causis going out of the Chancery, and Exchequer: 14
- Writs of the Exchequer ancientier than the Register 154
- The Writ by parte tale 115
- The Writ de allacione frisle 116
- Most Writs take their denomination from words contained in the Writs, some, offe & effe: 119
- Writs of search in the Exchequer, to whom to be directed 119
- The Writ, when a Noble-man is protected by a Capice, &c. to command the Courts, that due Process be awarded: 156
- The Writ against Souldiers that dirft 118
- Of a Superfides & Procedendo 153
- Of a Capice for Felony 177
- The Writ de facrisitate inventendi &c except Regum 180
- The Writ de Odio & Atia 182
- The Writ de morum captione 19
- The Writ of Homine replegand 190
- The Writ de pace & imprisonamento, &c. 19
- The Writ de nativo habito 193
- All Writs to be made in the King's name, in whole the whole of the County Palatines 235
- In this brevis Dominii Regis non morant 233, 231, 215
- The Writ de subfechure amovendo 236
- Of the Writ to the Sheriff to enquire of a Noface &c 264
- Of the Writ of right close 269, 270
- The Writ which issues out of the Exchequer, after the death of every Bishop 328

### Y.

- York,

---

The Rules, Sentences, and other proper Expositions, Alphabetically compos'd.

### A.

<table>
<thead>
<tr>
<th>Writs</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Writ by which the chief Justice of England is called 13</td>
</tr>
<tr>
<td>Original Writs issue out of Chancery only 74, 75</td>
</tr>
<tr>
<td>The Writ de dato assignando 13</td>
</tr>
<tr>
<td>Writs of Audita Querela 76, 77</td>
</tr>
</tbody>
</table>

---

### C.

<table>
<thead>
<tr>
<th>Writs</th>
</tr>
</thead>
<tbody>
<tr>
<td>The severall sorts of Writs in Chancery 86, 82</td>
</tr>
<tr>
<td>The Writ de quaibidam certis de causis 82</td>
</tr>
<tr>
<td>Writs upon a pain, when to be granted 3, 119</td>
</tr>
<tr>
<td>Of the Writs of Subpoena &amp; certis de causis going out of the Chancery, and Exchequer 14</td>
</tr>
<tr>
<td>Writs of the Exchequer antiderior than the Register 154</td>
</tr>
<tr>
<td>The Writ by parte tale 115</td>
</tr>
<tr>
<td>The Writ de allacione frisle 116</td>
</tr>
<tr>
<td>Most Writs take their denomination from words contained in the Writs, some, offe &amp; effe 119</td>
</tr>
<tr>
<td>Writs of search in the Exchequer, to whom to be directed 119</td>
</tr>
<tr>
<td>The Writ, when a Noble-man is protected by a Capice, &amp;c. to command the Courts, that due Process be awarded 156</td>
</tr>
<tr>
<td>The Writ against Souldiers that dirft 118</td>
</tr>
<tr>
<td>Of a Superfides &amp; Procedendo 153</td>
</tr>
<tr>
<td>Of a Capice for Felony 177</td>
</tr>
<tr>
<td>The Writ de facrisitate inventendi &amp;c except Regum 180</td>
</tr>
<tr>
<td>The Writ de Odio &amp; Atia 182</td>
</tr>
<tr>
<td>The Writ de morum captione 19</td>
</tr>
<tr>
<td>The Writ of Homine replegand 190</td>
</tr>
<tr>
<td>The Writ de pace &amp; imprisonamento, &amp;c. 19</td>
</tr>
<tr>
<td>The Writ de nativo habito 193</td>
</tr>
<tr>
<td>All Writs to be made in the King's name, in whole the whole of the County Palatines 235</td>
</tr>
<tr>
<td>In this brevis Dominii Regis non morant 233, 231, 215</td>
</tr>
<tr>
<td>The Writ de subfechure amovendo 236</td>
</tr>
<tr>
<td>Of the Writ to the Sheriff to enquire of a Noface &amp;c 264</td>
</tr>
<tr>
<td>Of the Writ of right close 269, 270</td>
</tr>
<tr>
<td>The Writ which issues out of the Exchequer, after the death of every Bishop 328</td>
</tr>
</tbody>
</table>

---

### Notes

- **The Life of Right.**
  - There hath been an ancient Baron, and of later times a Viscount of this life.
- **The Statute of 4 H. 7. cap. 16, against taking of the woods within this life.** 19
- **A King of this life crowned by Henry the 6th.** 287

---

**Writs.**

- Commissioners for Examination of Witneses, their duty 278, 279
- Of Trial by Witneses, and what Courts proceed upon Witneses examined 279
- The derivation of the word Witnes 279
- An Alien born (if not an Infeile) may be a Witnes 279
- The Duty of Witneses, and several Rules concerning them 279

---

**Dr. Crandall.**

- 7. Points resolved, concerning the disposing the Kings Woods in Forests 299
- How much, and by what means the owners of Woods in Forests and Chales may fell them 298

---

**W. W.**

- The duty of a Woodward 313

---

**Wreck.**

- Wreck of the Sea ought to be discussed and determined at Common Law 134, 135
- The Coroner is to enquire of Wreck 271

---

**The Duty of a Writer.**

- The Authors clearness and impartiality in his Writings 302

---

**P. E.**

- Writs of summons to Parliament. See Parliament. Writs not to receive any alteration, or addition but by Act of Parliament 129, 128
- Writs to command any Courts to observe and keep any Statutes 43
- Writs in several times to the Sheriff, for the Proclamation of Statutes 26
- Writs to summon absent Offenders to Parliament 33, 39
- Writs to divers Ad ordinem militiae de Balne usus pereat. Juncta antiqua coactantibus in creatione usitat 44
- The Writ de expensis militiam, &c. 46
- The Writ de procedendo ad judicium, where it lies 67, 68
- The Writ de execucion Judicii, where it lies 68
- Writs directed to the Justices, not to delay right, &c. 68, 69
- A Certiorari to cause the Tener of Records to come before the Courts, for redressing delays of Judgement, &c. 69
- The Writ by which the chief Justice of England is called 74, 75
- Original Writs issue out of Chancery only 78, 79
- The Writ de dote assignando 16
- Writs of Audita Querela 76, 77

---

### York,

- There is a President and Council of York de fide, But what Jurisdiction they have is the question 246

---

### The Rules, Sentences, and other proper Expositions, Alphabetically compos'd.

---

### Y.

- York,

---

The Rules, Sentences, and other proper Expositions, Alphabetically compos'd.
<table>
<thead>
<tr>
<th>The TABLE.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contemporanda expostia est opinia</td>
</tr>
<tr>
<td>Corpus sibi dare, ejus sibi dispensare</td>
</tr>
<tr>
<td>Commune error factit fas</td>
</tr>
<tr>
<td>Cessante ratione cessat infa lex</td>
</tr>
<tr>
<td>Consilia multorum requiratur in magis</td>
</tr>
<tr>
<td>D. Diversa &amp; impura s, cum radix &amp; vertex imperii in obedientiam confusa rata sunt</td>
</tr>
<tr>
<td>Diferdere judicium cum impia</td>
</tr>
<tr>
<td>E. Eius nihil turpe cui nihil satis</td>
</tr>
<tr>
<td>Erosio ad sua principia referre est resellere 98 &amp; Epilogue.</td>
</tr>
<tr>
<td>Error qui non resiliat approbarat</td>
</tr>
<tr>
<td>Incessuorem omne in iure repromptor</td>
</tr>
<tr>
<td>Inter eosque omnes inimicis</td>
</tr>
<tr>
<td>Per varias altas legem experimentia fecit</td>
</tr>
<tr>
<td>F. Falsa tenetur nulla quae fueri proibidentur</td>
</tr>
<tr>
<td>Gravissima est aeterna quum temporalis sedare majoritatem</td>
</tr>
<tr>
<td>General words taken in digniori sejus</td>
</tr>
<tr>
<td>I. In praesentia majoris caessat potestas minoris</td>
</tr>
<tr>
<td>Justitia est virtus excellens &amp; altissima complenens</td>
</tr>
<tr>
<td>Infirmum reprehens in iure</td>
</tr>
<tr>
<td>Idea pens lectorum sit iudicium</td>
</tr>
<tr>
<td>Ignorantia iuris est sanctum innoenentis</td>
</tr>
<tr>
<td>Interpretes tali in ambiguis semper iuncta est ut evertatur discordia, &amp; absurdiem</td>
</tr>
<tr>
<td>M. Multa etiam exercitationis facilissim a quam regulis praeцип</td>
</tr>
<tr>
<td>Multis et retroversum &amp; qui male currem</td>
</tr>
<tr>
<td>Multis est conditioni suficientem, &amp; rei quam aliore</td>
</tr>
<tr>
<td>Multa &amp; rei spectata est si non est vagum aut incoerentum</td>
</tr>
<tr>
<td>Multas ubi abhuc et multae, nemo omnia novit</td>
</tr>
<tr>
<td>Multae in se</td>
</tr>
<tr>
<td>N. Multa sunt comitantes, est naturali aequitati ad-</td>
</tr>
</tbody>
</table>

**FINIS.**