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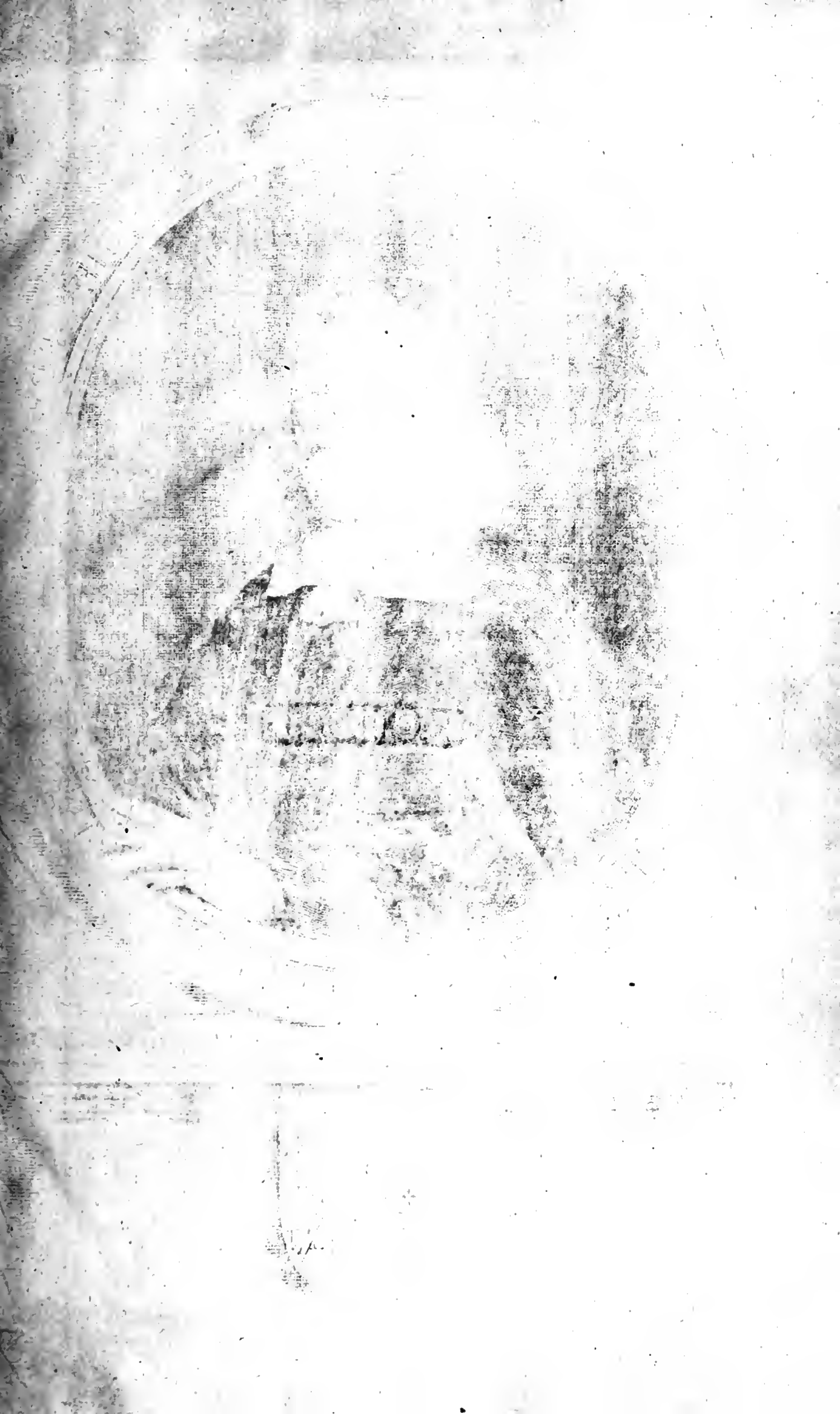
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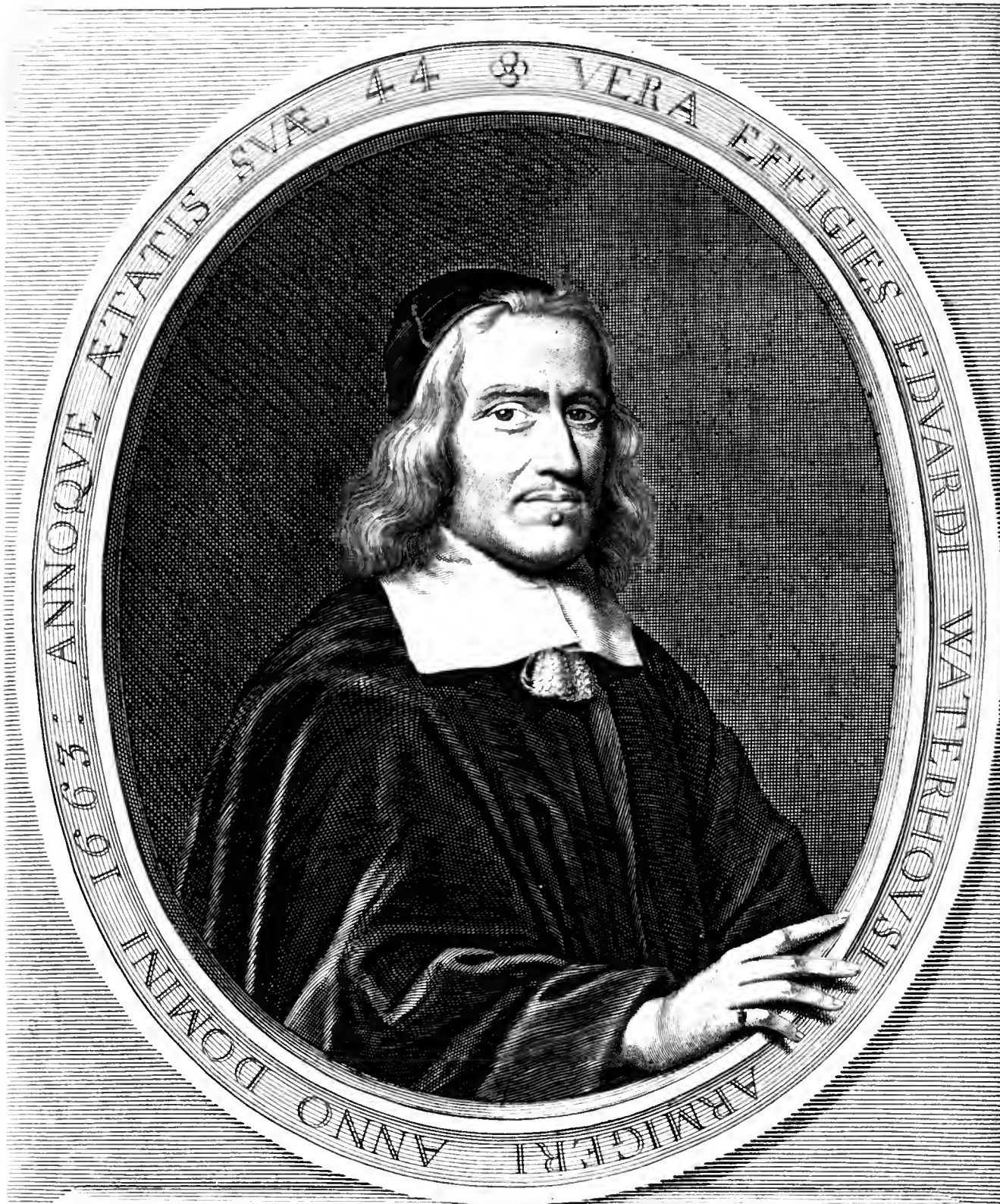
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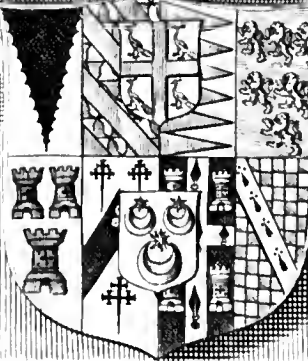


*D. Logan ad rivum sculp.*

NOBIS

FIRMA

FIDES





*Fortescutus Illustratus,*  
O R A  
COMMENTARY

On that Nervous TREATISE

*De Laudibus Legum Angliæ,*

Written by Sir JOHN FORTESCUE Knight,  
First Lord Chief Justice, after Lord Chancellour  
to King HENRY the Sixth.

VVhich TREATISE, dedicated to Prince  
EDWARD that King's Son and Heir (Whom he at-  
tended in his retirement into *France*, and to Whom he  
loyally and affectionately imparted Himself in the Virtue and Va-  
riety of His Excellent Discourse) Hee purposely wrote to consoli-  
date his Princely minde in the love and approbation of the good Lawes of  
ENGLAND, and of the laudable Customs of this his Native Country.

The Heroique Design of whose Excellent Judgement and  
loyal Addiction to his Prince, is humbly endeavoured  
to be Revived, Admired, and Advanced

---

By EDWARD WATERHOUS Esquire.

---

Ἐπὶ τῶν νόμων μὴ τιθεῖται σφοδρῶς, πραοτέρως δὲ κολάζειν ἢ ὡς ἐκείνοι  
κελεύουσι.

Oportet leges quidem acriter statui, mitius autem quam ipsæ jubent pœnas su-  
mere. Iſæus apud Stobæum, Serm. 147.

---

L O N D O N,

Printed by Tho. Roycroft for Thomas Dicus at the Sign of the Hen  
and Chickens in St. Paul's Church-yard. 1663.





TO THE  
RIGHT HONOURABLE  
and truly NOBLE  
EDWARD  
EARL of CLARENDON,  
Lord HIGH-CHANCELOUR  
OF  
ENGLAND.

May it please Your LORDSHIP,

**T**HOUGH the proof of Your obliging and generous Virtues hath fixed in Wisemen a confidence of Your favourable acceptance of whatever Wisdom and Worth (under the Patronage of Your endeared Name and Greatness) presents to the Publique;  
a and

## The Epistle Dedicatory.

*and that it cannot but be thought rather a certainty then presumption, that You will treat those with ingenuous kindness, who are ambitious to perpetuate Virtue, and to adorn the dead Monuments of it with all those Tropheys of revival and amplitude, which their greatest parts and most elaborate endeavours to that honestly-ambitious end can possibly arrive at: Yet may it (My Lord) be doubted how this enterprize of mine, by which I humbly (under the favour of Almighty God and Your Lordship) design to revive the Memory, and illustrate the Learning of that Venerable and Profoundly-Scientifique Antecessor in the Office of the Chancellourship, Sir JOHN FORTESCUE, may be from my hand accepted, who am none of the first Three in adaptation to such a Service. But since it pleased God as to impregnate me with resolutions to attempt, so to vouchsafe me health to finish what I proposed in these Commentaries, I trust Your Honour will accept the Protection of them, though they be but the Umbra and Eccho of the various*  
*and*

## The Epistle Dedicatory.

*and transcendent Learning that the Text of the  
Chancellour FORTESCUE abounds with.*

*For truely (My Lord) had I not well-  
weighed my Reverend Original, and found  
in him that Pondus and Affluence of general  
and well-digested Science, which would exer-  
cise the pains and curiosity of a Gentleman and  
generous Artist, I should never have ambition'd  
the exploration of what God would enable me  
to, in so incessant a progress of study as this  
has occasioned. Yet forasmuch as by the as-  
sistance of God I have in such proportion as  
his merciful indulgence has favoured my hum-  
ble industry with, perfected these Commenta-  
ryes, and obtained the favour and encourage-  
ment of an Honourable, Learned, and  
Grave Permission of them to the Press  
for publick View ; I humbly beseech Your  
Lordship to pardon me while in pursuance of  
those primitive resolves of my first undertaking  
them (which was above five years since) I  
devote them to Your Perspicacious and  
Oracular Self, Whom of all His most  
Excellent MAJESTY'S Favourites and  
Ministers*

## The Epistle Dedicatory.

Ministers of Estate, I foresaw; by the augury of a very affectionate and well-instructed experience, the probablest to succeed to the opportunity, and exceed in the ability to propagate FORTESCUE in all the latitudes and advantages of his Sage, Legal, Civil, and Politique Counsel and Conduct of Greatness, to that which is the most Royal termination of it, Justice; and by that Impartial Arbitrator of Justice, which wise and well-advised English-men call, The Law of England.

And therefore (My Lord) there being so true a Parallel between my Noble Text-Master and Your Noble Self, Both Gentlemen by birth, Both Lawyers by breeding, Both Knights by degree, Both Wisemen by experience, Both loyal Attendants on your Sovereigns recesses abroad, and Both honoured by your Sovereigns with the trust and state of Chancellours: these Instances of likeness relating to, and uniting in you both, make me bold to conclude, that to no VVorthy alive are these Commentaries so properly

to

## The Epistle Dedicatory.

to be addressed as to Your Highly valued Person, Whom I believe to be not onely what the Learned Parisian Chancellour Budaëus once wrote of the French Chancellour Deganai, ( One Qui per omnes ætatis progressus totidem honorum Civilium gradus suo pte nixu, nullo manum porrigente scandens, non antequam ad culmen honorum evasit, scandendi finem fecit, ut non fortunæ beneficio, sed suo merito pervenisse eo credi possit, cujus ea vis fuisse ingenii atque animi cernitur, ut quocunque loco natus esset, in quodcunque tempus incidisset, fortunam ipse sibi facturus videretur ) but also what may as truely without degenerate flattery be added, That very Happy Hee, Who hath concentred in Him so much of the Eloquence of Tully, the Gravity of Cato, the Justice of Aristides, and the Favour of Mecænas, as renders You meet to obtain the utmost Honour, a Sovereign Master can reward a faithful and approved Subject and Servant with : Which that Your Lordship

*In Epistol.  
Dedicator.  
ante Annot.  
in Pandect.*

## The Epistle Dedicatory.

*may long deserve, and live to enjoy and to bless  
this Nation and every worthy Interest and  
Concern in it, with the rayes and diffusions of  
that Prudence, Piety, and Loyalty which are  
concluded eminent and exorient in You, is and  
shall be the earnest and sincere Prayer of*

From my Study in  
Syon-Colledge.  
June 11. 1663.

( *Renowned Sir* )

YOUR H O N O U R S

Most Humble Servant

EDWARD WATERHOUS.



**T**hese Commentaries upon the Character  
For a more learned Treatise De  
Laudibus Regum Angliae, the con-  
tents useful and fit to be published; And  
therefore approve the Printing thereof.

MAY. 14.  
1601.

Richard Hooker  
Othobon Birdgoune  
Matthew Hale  
Thomas Alder  
Robert Hyde  
Edward Heyrick  
Thomas Twiss  
Thomas Smith  
Christopher Tomlinson  
and others  
of the University of Cambridge

**T** *Hese Commentaries upon the Chancellour  
FORTESCUE'S Learned Treatise De  
Laudibus Legum Angliæ, We con-  
ceive useful and fit to be published; And  
therefore approve the Printing thereof.*

**MAY. 14.**  
**1663.**

Robert Foster.  
Orlando Bridgeman.  
Matthew Hale.  
Thomas Malet.  
Robert Hyde.  
Edward Atkyns.  
Thomas Twisden.  
Thomas Tyrrell.  
Christopher Turnor.  
Samuel Brown.  
Wadham Wyndham.



A N  
INTRODUCTION  
TO THE  
COMMENTARY  
UPON  
FORTESCUE.

**B**Efore I treat on the Text, I think it convenient to write somewhat concerning the Parties introduced, and the manner of introducing them. The manner of their Exhibition is by way of *Dialogue*, a form very ancient and significant, whereby Authours, as *Trismegistus*, *Plato*, *Plutarch*, *Tully*, *Athenaus*, *Aristophanes*, *Lusian*, and hundreds of others, brought in such persons, and fictions, as conduced to the various expression of their design, and the useful instruction of after-Ages: and therefore *διαλογικη*, which is *the inward reasoning of the minde*, whereby a man proposes things *Pro* and *Con*, as if really acted, is by *Ruffinian* ranked *inter schemata dialektica*, and he that skills this Art aright, called *διαλογικος*: so that *Dialogues* are proper Modes of Speech and writing, whereby one and the same person both frames Questions and Answers, under names and notions of Persons distinct and several. Thus does our *Chancellour* act both his own and the *Prince's* part, laying down those Rules, which Experience had taught him, the best Conduct and Regulation of life, and in producing the *Prince* as assenting to or dissenting from them, and so occasioning either his first adhesion to what he positively asserted, or his further addition of such Proofs as should resolve the

c

doubt,

*Dialogus est oratio, in qua disputantes introducuntur quotquot Auctori libuerit. Cic. ad Attic. lib. 13.*

## The Introduction.

Lilius Gyraldus,  
SYNTAG. 15. De  
Diu. p. 425.

doubt, and make the Dose prescribed Palatable. So that in this Text, by the help of *Dialogue*, there is not onely a calm and pleasant delight for Youth and Novice-wits, but grave and pithy Direction for the most accomplished mindes, who from it cannot but be enriched; since, in *Lampridius* his words of *Severus* his *Lararium*, it contains *Christum & Abrahamum, Orpheum & Apollonium*, matter of all Variety and useful Institution both in Morals, Prudentials, and what's the most excellent in the knowledge of Things Heavenly. This for the *Dialogue*.

Now of the Persons in this *Dialogue*, which are Two, and those under a pair of Illustrious Names, the *Prince* and the *Chancellor*, or as here they ought rather to be marshalled, the *Chancellor* and the *Prince*. The one apt and willing to teach, the other prone and ready to learn; which harmony cannot but produce a profitable and desired effect: for that heart is sure to be wise whose ear accepteth Counsels, and who turneth not his eye from the Precepts of Wisdome. Now though by the Lawes of Civility and Nations, precedency be due to the Person most dignified, and Princes of the Bloud have the Preheminence of Temporary Officers, where their Offices have not immediate representation of Sovereigns, their Masters; yet I shall crave leave to treat first of the *Chancellor*, and then of the *Prince*: because in this *Dialogue*, and as to this occasion, the *Chancellor* is the first both *Ordine temporis*, as the Commencer of the Discourse, and *Dignitate sermonis*, as intending to distil into the Youth of the represented *Prince* what his grave Experience observed necessary to make his Life exemplary, and his Government, when ever it should begin, successful.

*Fortis Scutum Salus Ducum.*  
Fortescue's  
Motto.

The *Chancellor* I finde described three wayes, 1. By his Name, *Fortescue*. 2. By his Office, *Chancellor*. 3. By his personal Dignity, *Miles Grandævus*: which represents him a man doubly honoured, from his Title *Miles*, from his Experience *Grandævus*; *For multitude of years teach Wisdom*. For his name *Fortescue* 'tis ancient and Knightly, possibly derived à *forti scuto*, which some Founder of the Family was especially noted to have; either his Integrity which covered him from top to toe from the malice of his foes, who like cruel Archers shot at him, though his Shield, like Joseph's Bow, abode sure through the mighty God of his Salvation, Gen. 49. 24. or else from some more then ordinary Valour, which the many blows received on his Shield did amply express.

Tholoff. Syntag.  
Juris. lib. 36. c. 4.  
ff. 1. De mutatione  
Nominis.  
Rivet. Exercit.  
22. in Genes. 2.

I shall not here engage in the Story of Names, nor take upon me to dive into the Well of Science to fetch thence that, which we would call the truth of their Original. If we understand a Name, as *Logicians* doe, for *Vox significativa secundum placitum*; then there is no certainty of Names but uncertainty, what pleases the Imposer, and others to give after his Example: yet for the Antiquity of Names, we are to know that they are coæval with time and things, for when God created things he named them according to the specificque nature of them, or according to some use or other purpose which they most tended to. After whose Example the *Hebrews*,  
and

## The Introduction.

and (a) *Adam* especially gave Names to all Creatures, which Names did evidence not onely their Nature, but their subjection to man, as (b) *Bochartus, Grotius, Rivet, Toftatus*, and all the Learned on *Genes. 2.* agree. After the *Jews*, the *Greeks* followed, and the *Romans* were so multiplicative of Names, that they run them out into an infinity almost; for beside their twenty eight Appellative in (c) *Isidore*, I finde (d) *Sigonius*. (out of the ancient *Grammarians, Sospater, Donatus*, and *Diomedes*) numbring four sorts of Names, one derived from Dignity, as *Prænomen*, being therefore prefixed because Gentile, as *Publius*; the second of propriety declaring their Nation and Bloud, *Nomen*, as *Cornelius*; the third *Cognomen*, being an additional adjoynd to their Genile Name for the greater State and Equipage of it, as *Scipio*; the last *Agnomen*, from some casual regard or remarkable action, as *Africanus*: on all these he enlarges, and therefore to him I referr the Reader. The *Poets* also took the liberty to term the *Muses, Camena, Heliconiades, Parnassides*, and such other names to the number of thirty, and as many names had *Hercules* also from the several fictions they had of him. So generally are Names given *ad placitum*, that it is hard to limit Names to Natures or Actions, when even fictive occasions have been Parental of them, and that *ubique locorum*, no Nation not taking the liberty so to doe. And at home to be ignorant of this would be our shame, when every dayes experience lessons it, and no man that is Clerkly, but knows, that Names are occasional, and varied as occasion serves, as *Master Cambden*, our learned *Antiquary*, every where in his *Britannia* acquaints us. Amongst us therefore in *England*, we have onely two Names usual, the *Christian* given at the *Font*, or *Baptistery*, by the *Bishop* or *Presbyter* ordinarily, as *John, James, Robert, Edward*: and the *Sirname* for distinction of the Family from whence Children descend. Both these are usually expressed in Deeds, Grants, Wills, and all other Writings whatsoever, and when ever omitted, are either the fruits of negligence or worfe; for it leaves men in the dark, and subjects their Actions to uncertainty, which alloyes the credit and grandeur of them. And for this cause (if no other could be added) men are obliged in Justice to their Fames, Persons, Posterities, and Families, to own their individual persons by those Names *Christian* and *Familique*, which they ordinarily go by; since as many Authours, not living to publish their pains, become unprofitable to the World, to enrich which they in their Lives and Studies were probably ambitious, as I think amongst many others, *Julius Caesar Scaliger* was in that Noble Compiement of an hundred and ten Books *De Originibus*, which are lost: or else others come after the Authour's death, and thrust themselves into that praise which they never merited, and call themselves Fathers of those Speculations, which, if they could vindicate themselves by a Reply, would disown their impudent, and but Suposititious Authours. I the rather observe this, because in the mention of my Text-Master, not onely *Mr. Mulcaster* a learned man, and a Student in the Law, terms him *Master Fortescue Knight*: but also *Pitæus* out of

*Robert*

(a) *Hinc colligitur Hebraei Adamum infignem Philosophum fuisse, qui naturas omnium animalium probe tenuerit, ut inde iuxta naturam ac proprietatem suam cuique suum nomen indiderit. Fagius in Gen. 2. 19.*  
 (b) *Geograph. Sacra, p. 26. & p. 57, 58.*  
 Tholoff. Syntagm. Juris. lib. 32. c. 8.  
 (c) *Isidor. Origin. lib. 1. c. 2.*  
 (d) *De Nominibus Romanis, c. 1. p. 341. Ed Sylburg.*

*Lilius Gyraldus. Syntagm. De Musis. Hist. Deorum. Syntagm. 10.*

*Nomen dici putant quod rem notam facias, sitque velut rerum imago. Manertus apud Tholoff. Syntagm. Juris. lib. 32. c. 8.*

*Epist. Dedicatory before Fortescue: Pitæus p. 597.*

## The Introduction.

Robert Record writes him onely *Fortiscutus*, *De Fortiscuto meo hoc dicam, quod & de Thoma Cranleio Lelandus refert, ut qui non modo ingenio, verum etiam calamo, utpote bonis instructus Artibus, plurimum valuit:* so that were not Records and later Authours more punctual, the Worthy Authour might have been less certain. But our late learned *Selden*, who has led me the way to admire this Authour, has particularly displayed this brave Sage to be third Son to *Henry Fortescue* Son of Sir *John Fortescue* Knight, Captain of *Meaux* and Governour of *Bry* in *France* under *Henry the Fifth*, which Sir *John* was second Son of *William Fortescue* of *Wimston* in the County of *Devon*, Esquire; so that our *Chancellor* being immediate Heir in the eighth descent of Sir *Richard Fortescue* Knight, who came out of *Normandy* in the *Conquerours* time, was generously descended by his Father, and no less by his Mother, who was a Daughter and Heir of *Beauchamp*, his eldest Brother was Lord Chief Justice of *Ireland* and dyed issueless, his second Brother's Posterity in the third Descent divided themselves into two Branches, one of which seated themselves at *Famborn* in *Essex*, the other was seated by Sir *John Fortescue*, *Chancellor* of the *Exchequer*, and *Master* of the *Court of Wards*, at *Salden* in *Buckinghamshire*, where now the Heir of his Family Sir *John Fortescue* resides, who very civilly and like a Gentleman of Honour, sensible of the service I aimed to doe to the Memory of our *Chancellor* his Noble Kinsman, presented me with this information from his Pedigree, and with the Picture of our *Chancellor* which he caused to be cut to be hereunto prefixed; which I purposely mention as my return of kindness and thanks to his care to right my *Noble Chancellor*, whose Portraiture but for him had been unknown and unpublique. So that he was of a Knightly Race, and of so renowned a Gravity, that he was Chief Justice to *Henry the Sixth* for the latter half of his Reign; and, as appears by Records, that he might *Statum suum decentius manu tenere*, the then King gave him an Annuity of an hundred and eighty *Marks* out of the *Hamper*, together with *116. s. 11. d. 4. percipiendum singulis annis ad Festum Natalis Domini pro una Roba, & Furrura pro eadem erga idem Festum; & 66. s. 6. d. singulis annis ad Festum Pentecostes pro una Roba, & Linura pro eadem erga idem Festum:* so greatly did this Worthy Knight deserve of his Prince, that he was thought the meet subject of all Favours. For he well demeaned himself in all Trusts, and as he lived no shame to his Family, so dyed he not ashamed of Fidelity to his Sovereign; for him he accompanied in his misfortunes, and to him did he express the ardour of a just and ingenuous gratitude, in applying to his Son and Heir, whom he hoped should inherit his Throne and Dominions, such wholesom Documents, as best fitted him to submit to God while a Sufferer, and to rule in the place of God when he should restore him to his Government, and subject his people and the guidance of them to him. Thus much for our Text-Master's Name, *Fortescue*,

Now for his Office, *Chancellor*, a great Office of Trust and Dignity, the *Prince's Conscience* in a Subjects breast, the *Great Justice* of the Realm, in whom the oppressed ought to finde Relief, and from whom

Selden's Notes  
Fortescue. To  
the Reader.  
Rot. Patent. 20.  
H. 6. Membr.

Fortescue's  
Descent by  
Father and  
Mother.

A most wor-  
thy Kinsman.

## The Introduction.

whom the Oppressour how great, how popular soever he be, ought to finde no Favour. The Trust of this Officer in *England*, appears notably out of old *Ingulphus*, where *Edward the Elder*, King of this Land, expresses his minde to *Turkil*, Abbot of *Crowland*, his Chancellour in these words, *Ut quæcunq; negotia temporalia vel spiritualia, Regis judicium expectabant, illius consilio & decreto, tam sanctæ fidei, & tam profundi ingenii tenebatur, omnia tractarentur, & tractata irrefragabilem sententiam sortirentur.* So *Ingulphus*. The Name *Cancellarius* is variously understood, *Grammarians* make it no more then a *Scribe* or *Notary*, as the *Domestici apparitores* to great *Magistrates*, or as *Præfatos Prætorio*. The Verb *Cancello*, whence *Cancellarius*, signifying to deface, or amend, or cross out a thing written, having relation to a Superiour commanding it, some have thought to import the Office and Officer to be subservient, and under some limitation: which possibly the *Lattices*, which are called *Cancelli*, whether in Churches or in Courts do further illustrate. For as in Churches, Chancels are immured in and severed from the *Navis Ecclesiæ*, and the most noted Members of the Church sit there; so in Courts, the Judges and Officers of the Courts sit within the Barrs, when the Counsellours, Advocates, and Pleaders, which *Budæus* calls *Cancellarios*, and we call *Barristers*, stand and plead at the Barr.

In the Sacred Empire the Office of Chancellour is as frequent as our *Steward* in Mannours, every Province almost having its Chancellour; who is but a Cypher to the Great Chancellour, whom *Budæus* defines, *Principis præsentis Vicarius, & eo peregre profecto, Inter-rex quodammodo censendus*; and in another place, *Norma omnium jura reddentium, cujus ore sacundi Reges moribus nostris esse solent, cujus oculis velut emissitiis, circumspicere omnia ac perlustrare creduntur*: And therefore *Cassiodore* writing to one of these Chancellours, cajoles him thus, *Respice quo nomine nuncuperis, tenes quippe lucidas fores, claustra patentia, fenestratâs januas*.

This great Officer, *France*, *Spain*, *Denmark*, *Sweden*, *Scotland*, preffer above all Officers, and so does *England* too, and that anciently; for *Fleta* writing of the Great Officers of *England*, sayes thus of the Lord Chancellour, *Est inter cætera quoddam officium, quod dicitur Cancellaria, quod viro provido & discreto, ut Episcopo vel Clerico magnæ Dignitatis debet committi, simul cum cura Majoris Sigilli Regni, cujus substituti sunt Cancellarii omnes in Anglia, Hybernia, Wallia, & Scotia, omnesque Sigilli Regis custodientes ubique*, so *Fleta*: *Sir Henry Spelman* sayes much in few words; *Censorem non agnoscit præter Regem, nec lites ei transmittant Judices, sed invitis ipsis sæpe adimit*, so *He*. And in all Acts of Parliament and Instruments of State, the first Person of Trust is the Lord Chancellour, who is counted *Magistratum omnium Antistes*; by reason of which the Chancellourship is called, *Summum hodie honorum fastigium, ultra quod nihil sperare licet homini quidem privato & togato, quasique quoddam summa quedam ambientis animi solstitium*. By which, and what to this purpose might abundantly be added, it appears, that this Officer is the weightyest, and of greatest import of any in the Nation, *Caput sanctioris interiorisque consilii*, without which well-performed with

*Leges Forcatulum*  
lib. 7. *De Gallorum Imperio & Philosophia.*  
*Salmuth, in Pan-*  
*ciol. Part. 1.*  
p. 316.

*Locus is in quo celebrantur ludi forenses, fests, Cancellis, aut aliis id genus septis erat circumscriptus.* *Erasim. Adag. 93.*  
*Chil. 1. Cent. 1.*  
*Cui alludit Cicero lib. 1. De Oratore.*  
*Et quasi certarum artium forasibus Cancellis circumscriptam Scientiam. Idem in actionibus.* *Ab his Cancellis quibus me circumscripti declinavero.*

*Budæus in Pandect. p. 78. Edit. Valsol.*

*Variarum. lib. 11. c. 6.*

*Lib. 2. c. 13. p. 75. Edit. Seld.*

*Gloss. p. 110.*

*Budæus loco præcit.*

## The Introduction.

trust and temper, Oppression would call for Divine Vengeance, and Injury not be more the Sin then Suffering of the Nation: thus much for the Office of the *Chancellor*. Though I judge in this high and supreme sense our Authour bore the Name, had not the actual Power and Office of *Lord Chancellor* in *England*; true it is I finde him called (a) *Chancellor*, yea *Summus Angliæ Cancellarius* by *Pitæus*: yet I doubt the Grant he had from *Henry the Sixth* was abroad, *Non nisi a vi-cto, & exulante apud Scotos Rege*. The *Jus adrem* he had to testifie his *Prince's* favour to him; but the *Jus in re* not effectually commencing, till his *Prince's* suppressed Right should invigorate, and evict his Rival's power; our *Chancellor* cannot be accounted so plenary a *Chancellor* as otherwise in his Master's possession of the Crown he would have been. Though then he was not, as to the State and Possession of that Honourable and Great Trust here in *England*, so compleat and perfect a *Chancellor*: yet *Chancellor* to *H. 6. of England* he indisputably was, as also to his Son *Prince Edward*, and in it behaved himself worthy the Title of *Miles Grandævus*.

*Miles*] the highest rank of the lower Nobility, an Honour given to Men of Merit ( for *Miles quasi Millefimus*, *A man*, as we say, of a thousand) who being an Esquire before ( for *Sir Edward Cook* sayes, if his Authority be as good in Heraldry as in Law, no man was wont to be made a Knight, but he that was first an Esquire ) was rewarded by his Prince, or some having Sovereign Commission for some notable performance done, or to be done. Now this Honour of Knighthood was an encouragement to venture, the price of life, that which carries men sometimes beyond reason to hazard, and beyond Conscience to detain what they get. *Olympiodorus* tells us, that *Honorius* the Emperour rewarded valiant men with the name of *Βουκάλειοι*, which I am apt to think was our *Knights Bachilors*: and the Authour sayes, 'Ου μόνον *Ρωμαίων*, Not onely Citizens of Rome were so rewarded, but Strangers that deserved well in their Warrs; yea not onely did they give them the Nobilitation of Honour, making the *Alchemy* of base blood to become generous: but giving them badges of their Honour answerable to those now in use. *Tacitus* (*Annal.* lib. 18.) tells us, that *Equestri dignitate donare, & Annulis honorare*, were promiscuous: and *Lampridius*, while he mentions *Severus* his care to exclude infamous persons from the *Equestrian Order*, *Ne Ordo Equestris commacularetur*, tells us also, and together with him *Suetonius*, That Rings, spurs of Gold, and Crowns, with Chariots of Triumph, were the reward of brave spirits. As after Ages have had like occasion for men of Courage, so to them have they been no less grateful; nor have extemporary Services gone without extemporary Favour. Honour being often given upon the ground where it has been won; which makes the *Knight Bachilor* in his Institution, a brave Military-esteemed Order. There is no man but must yield to Time's Sovereignty, and to that Fate, that common Opinion, and perhaps general Error introduces, That, That makes and marrs what, and who it pleases; and though by its obstruc-tion many notable Orders of Knighthood are produced, as our Order of Saint George, and those other, *Toixon d' Or*, Saint Michael, Saint

Jago,

Selden *Epistle before his Book*  
Spelman in *Gloss*  
p. 416.  
(a) In *Introduct.*  
*Materia ante For-*  
*resecutum ex Im-*  
*pressi.* Edw. Whit-  
church. *Cum Pri-*  
*vilegio.* *Temp.*  
H. 8.

*Dominus Cancellarius Angliæ constitu-tus fuerit.*  
*Coke Preface to*  
*10. Rep.*  
*2 Instit. in 1 Ed.*  
*2. Stat. De Mi-*  
*litibus.*  
*See my Defence*  
*of Armes and*  
*Armory.*

*Photius in Ex-*  
*cerptis ex Olym-*  
*piod. p. 853. E-*  
*dit. Sylburg.*  
*Though I know*  
*there is more pro-*  
*bability in that O-*  
*pinion, which our*  
*Books are of, than*  
*rise of it from the*  
*Baculus, which the*  
*Tyrones novitii,*  
*who had suffered*  
*their Launces to be*  
*broken, which was*  
*a deviation in their*  
*Hakiludia, and*  
*Torneaments, did*  
*bear, and thence*  
*were called Bacca-*  
*laurei: which the*  
*strenuest Soldiers*  
*after were called*  
*by. So M. Patis*  
*p. 768. l. 55. p.*  
*769. l. 4. p. 747:*  
*l. 51.*  
*Pettus Blesensis.*  
*Serm. 1. p. 130.*



## The Introduction.

*Jago, Calatrava, Saint Esprit, the Annuntiation, Templars, Knights of Malta, Alcantara, and Montefio, or that of the Teutonick Order, Though I say these, and the most of them, have been honoured by the pleasure of Sovereigns with especial Rayes of Majesty, carrying their Testimonial in their Badg on the outward Vest, which challengés all approachers to a more then ordinary respect: yet bare *Knighthood* is not without somewhat of a dignified lustre, both as in Antiquity and universality of allowance, it is most ubiquitous and embraced; and our Land and Law account it a noble degree, and of 1000 years age here amongst us. Since then I finde our Authours make *Milites* and *Principes* a kinde of *Synonyma's*, as *Brompton*, no rude Historian, does in his mention of *David King of Scots*, his coming into *England* in King *Stephen's* time, who was met by the *Northern English*; in his words, (*Milites & Principes Angliæ Boreales animosi, cum insigni Comite Albemarle, &c. viriliter restiterunt;*) and since *Knights Bachilors*, made by any Sovereign, are owned in all places as *Persons of Honour*, and their Title less burthen to them in cases of worldly vicissitude then others by Patent are, I account them both as to their Rise, Antiquity, and Universal respect, not less nobilitated then becomes worthy men and merits. And such an one was our *Knight*, who was *Chief Justice* from the 20 *H. 6.* to the 32 *H. 6.* yea, for ought I know, to the 38 *H. 6.* and after *Chancellour* to his *Prince*; to which Offices men seldom attain till they be aged and experienced, and till they be notable for Counsel: therefore is it added here to our *Chancellour's* remark, that he was *Grandævus*, a man not so much for *Action* as *Counsel*; a *Knight*, that like the old *Leontine Gorgias*, was famous in the very determination of his life, being able to say with him, *Quod voluptatis causa nihil mihi unquam facere permisim;* and having gratified his passion with no abuse of his virtue. This, This is he that is called *Miles Grandævus*: and well may he so be, for he was a *Grand-sier* and *Oracle of Counsel* and *Conduct*; *Grandævus, qui est provectoris ætatis, quasi grandis ævi senex,* saith *Cerda*: so *Virgil*,*

*Et quæ virtus Abas, & quæ Grandævus Alethes.*

So *Pliny*, *Alios esse Grandævos, semper Canos.* Yea *Grandævus* and *Longævus* the *Latines* promiscuously used for *Old-age*; in that then any thing of more then ordinary remark was expressed by *Granditas*, famous Phrases, *Granditas Verborum*: so *Pliny* writing of one rare for his time, sayes, *Non illi vis, non granditas, non subtilitas, non amaritudo, non dulcedo, non lepos desuit.* By this Attribution to our *Chancellour's* we are told, that he was a man wise enough to make a *Prince* happy; A *Grandævus* who carried *Time's* Badg on his Head, and *Time's* Glafs in his Hand; that had outlived the Passions and Easinesses of heady, fierce, credulous youth; and was grown as full of Counsel as an Age was of Moments: an *Helluo temporis*, who had so measured Time that it could hardly deceive him: This is he, who addresses himself in this *Dialogue* to the *Prince*, whom he much conversed with, and thereby may be presumed fully to understand. And indeed

Edir. London.  
p. 1026.

Rot. Patent. 20  
H. 6. part. 1. in  
10 Claus. 38 H. 6.  
in 30. Rot. in Turri.  
Dorso summanit.  
Parliamenti.

Cælius Rhodigin, lib. 19. c. 20.

In lib. 1. Æneid.

Lib 1. c. 7.

Non panitendum  
Imperatorem egisset, si duntius illi  
per Cononem &  
Leonem, Orientis  
præfectos, imperare  
licuisset. Egnatius  
in Theodosio A-  
dramiteno.

## The Introduction.

deed the great Experience of this Gentleman, whose former conversation with the Youth of Honour and Note, ( to whom in times past he had read the Civil and Common Laws ) gave him a more exact Method of dealing with the Young Prince. then the bare Principles of a Mother-wit, or the rude notions of a life of Study would have suggested to him, since had he been morose and humerous, as most aged men and Artists are, he would sooner have deterred from, then exhorted the Prince to, the Study of what he commended; for Great Spirits are not easily cajoled into any thing by Pratorian Dictates, which smell more of a Cynique Severity then a generous Candour: but when he, in his grave and sober address, complements the Prince into a good opinion of him, how well received are all his Documents? Prejudices against mens Persons end in prejudices against their Words and Actions: and men of scandalous looks are seldom less then Beams in the Eyes of Princes, who never look with pleasure upon figures which have torvovous, rude, and discomposed Vilages. This the wise Chancellour foreseeing, frames himself to such a Courtly Demeanour, as might not immerge his grave Design in the danger of miscarriage; but still preserve him regarded in his Princely eyes, to which he ever desired to approve himself worthy: Thus much for the Chancellour, the first party in the Dialogue.

Now of the Prince, the second and more noble party. This Prince was brave Edward, Son and Heir to King Henry the Sixth of this Land, by Dame Margaret Daughter to Reynard Duke of Anjou and Berry, and King of Jerusalem, to whom, in his Father's Misfortunes, this Royal Stripling, forced to fly into France, addressed, and from whom he doubted not to receive the courtesie of welcome, being under those inevitable pressures which attend things humane, and against the infelicities of which Crowns cannot prescribe; for could any Father have merited his own establishment and his Posterities blessing, surely the Saintly Father of this Prince would have been the very Hee: For He was a Prince of remarkable Virtue, a Pattern of most perfect Piety, upright, farr from fraud, wholly given to Prayer, reading of Scriptures, and Alms-deeds; of such integrity of life, that his Confessor avowed, that for all the ten years he had confessed him, he had never committed any mortal Sin; so continent, that suspicion of unchaste life never touched him; so full of Charity, that he thought he did never enough for the Church and the Poor: Who on dayes of Devotion would wear Sackcloth, and learned from his Saviour to use no other Communication then Forsooth, Forsooth; Yea, Yea; Nay, Nay; yea so full of Mercy, that he pardoned (when for a time he was restored to his Crown) one, that thrust him into the side with a Sword when he was Prisoner in the Tower. Yet this Prophetique King, who foretold from the face of Henry the Seventh, when but a Childe, That He would be the Person, to whom both We and our adversary, leaving the Possession of all things, shall hereafter give room and place, could not by his Kingly Divination foresee, or by Prudence obviate, and forestall his misfortune: but after almost one and thirty years quiet Possession of his Government, in the fifty second year

*Rex longe pientior,  
quam Imperio fortunator.* Leland,  
*de H. 6. in Cygnca  
Cantione.*

Hollingshed. p.  
691.

Hollingshed. p.  
678.

## The Introduction.

of his age, lost his Crown by Battel gained against him, his Adversaries being fewer in number then his Partizans; and soon after his life was taken away by Murther, and his Corps buried at *Chertsey*, being carryed thither obscurely without *Priest* or *Clerk*, *Torch* or *Taper*, *Singing* or *Saying*, or any kinde of *Decent* or *Christian* Solemnity. So departed this good King. And unfortunate was Gallant Prince *Edward* his Son, who as he was a young Gentleman of faire Complexion and comely Person, so was he of a brave, bold, and daring courage, as appears by his valiant demeanour in *Tewksbury* field, wherein he very *Princelyly* manned a great and puissant Army, expressing no remissness in any point of true and generous *Knighthood*; yet for all that endeavour lost the day, and became a Prisoner to Sir *Richard Crofts* who took him, and for a while kept him safe and secret: but whether the fear of *Edward the Fourth*, now Victor, or the love of the reward promised to the Discovery and Delivery of him, wrought the resignation of him into *Edward the Fourth's* Hands, sure it is, rendered he was, and as sure that upon the rendition of him he was contrary to *Edward the Fourth's* Proclamation, slain. For when he came into *Edward the Fourth's* Presence, and was by him demanded *How He durst so presumptuously enter into his Realm with Banner displayed*, Hee, the Prince *Edward* (Son to *Henry the Sixth*) boldly answered, *To recover my Father's Kingdom and Heritage, from his Father and Grandfather to him, and from him after to me lineally descended*; at which words King *Edward the Fourth* said nothing, *But with his hand thrust him from him, or* (as some say) *struck him with his Gantlet, Whom incontinently George Duke of Clarence, Richard Duke of Gloucester, Thomas Gray Marquess of Dorset, and William Lord Hastings, that stood by, suddenly murdered*; For which cruel Act (saith my Author) *the most part of the Doers in their latter dayes, drank of the like Cup by the righteous Justice and due punishment of God*. For the *Duke of Clarence* who murdered both *Henry the Sixth* and his Son, this towardly Prince, (that our *Fortescue* so loved and applyed himself to) about the 18 E. 4. was accused of Treason, cast into the *Tower*, and after drowned in a *Butt of Malmsey*: The *Duke of Gloucester*, after *Richard the Third*, was slain at *Bosworthfield*, *His body being naked and despoiled to the skin, and nothing left about him, not so much as a clout to cover his privy Members, being trussed behinde a Pursuant of Arms like an Hogg or Calf, his head and arms hanging on the one side of the Horse and his leggs on the other side*: the *Lord Hastings* was accused of Treason by the *Duke of Gloucester*, when Protector to *Edward the Fifth*, and beheaded: so that onely the *Marquess of Dorset* remained, which, what became of him I finde not; but I believe he that shed the bloud of a Prince had his own bloud shed, as the satisfaction of Justice. For viler men never the World saw of Nobles then were these Peerlessly wicked *Peers* who slew in cold bloud the Son of a King, whom the King in being, promised to preserve: Thus much for the Story of the *Prince*, the second Person in the *Dialogue*, Who being the Care and Charge of our Chancellour, and proving notably *rational* and *manly*, may be thought to appear such from the improvement of those Principals and Maxims

Holingshed. p.  
691.

Page. 688.

God an A-  
venger of  
innocent  
bloud.

Idem loco praei

Page. 690.

Page. 703.

Page. 760.

Page. 724.

## The Introduction.

which our *Fortescue*, His Father's and His *Chancellor*, had communicated to him in this Discourse, *De Laudibus Legum Angliæ*, which among many other Treatises that he wrote, is accounted the most worthy, as being not onely the fruit of his solid Law-judgement, which further appears in the Year-Books of *H. 6.* from the twentieth of his Reign upward; but of his various Abilities in *Philologie* and *Historique Learning*, as in what after followeth more at large appeareth.

Spelman. ante  
Glossarium.

So endeth the Introduction, which the Authour publishes, as he does the subsequent Commentaries, *Sub Protestatione de addendo, retrahendo, corrigendo, poliendo, prout opus fuerit & consultius videbitur,*

D E O

*Clementissimè annuente.*

E. W.





*W. Faithorne sculp.*



*Sr John Fortescue K<sup>t</sup> Lord Cheife Justice & Lord  
Chancellor of England vnder King Henry y<sup>e</sup> Sixth.*



A COMMENTARY

Upon

FORTESCUE

*De laudibus Legum Angliæ.*

CHAP. I.



*Andeo verò, Serenissime Princeps, super Nobilissima Indole tua.* 'Twas the Oratour's Rule, long ago, to commend what he had to utter by apt Prefaces; *Oratoris est bene incipere*: and the reason being to engage the Auditours to Attention, and thence to captivate them, the Practice proved not onely appropriate to Oratours; but to Historians, and generally all Writers. This Method, prevailing with our Chancellour in these words, makes me ready to write that of him, which *Seneca* does of his *Fabian*, *That he seems to him, not so impetuously to multiply words, as weightily, and profitably to express his minde by them.* So compr, so seasonable, so peculiar to his purpose is this Courtly Frontispiece, that therein our *Fortescue*, like *Seneca's Fabian*, may well be written of, as *non negligens in oratione, sed securus*, and his Book, to which this is the Inlet, be termed *Electa verba, non captata*, &c. *Choice words, not wrested, as the manner of men is, from their proper meaning, but significant to the purpose for which they are al-*

*leadged, and expressive of an high Genius, and a Magnanimous Soul, that uttered them.*

*Mihi non effaudere videtur Orationem, sed fundere.*

*Seneca Ep. 100.*

For here the Chancellour displays both the Prince's Endowments, and his own Affection to the Glory and Extent of them; that as, by the one, he appears to have tutoured a Noble mind, so, in the other, does he insinuate such Tuition to take the first fire from his Example, who loved the virtue in others, which was first ingenerated in himself.

This Clause then, *Gaudeo, Serenissime Princeps, super Nobilissima Indole tua*, relates both to the Prince, and to the Chancellour, in the Expansion of it. To the Prince, as, *Serenissimus*; and *Nobilissima indolis*; to the Chancellour, as affected with, and rejoicing for the futurity of good to the Nation, over which his Accomplishment was to be influential. This is the purport of this Introductory Artifice, which I the rather touch upon, because it is a Course both Christian, and artly, not to prejudicate our

Success

Success by rude Prefaces; but to make our ends on men in honest ways, through the Mediation of Favour, honestly begg'd, and readily, with Consent of those we ask it of, obtained. And because the Cause precedes the Effect in Nature's Order, and it will become us to treat of the Root, before of the Fruit, the Prince's Perfections shall precede the Chancellour's Affection to Him for them, even in our Comment.

The Prince is represented first, as *Serenissimus*. Then, as *Nobilissima indolis*.

*Serenissimus*. Antiently Emperours and Princes were pleased to be called by Names of singular Beneficence; *Pii, Clementes, Mansueti, Tranquilli, Sereni, Felices*: but, of late, they have assumed Superlatives to their Condecoration, so that not onely *Jupiter* had the Name of *Optimus Maximus*, but all Supremes are now represented by superlative Expressions, because they challenge sole Power within their Dominions. Hence comes it to pass, that though Princes do communicate many Attributes of theirs to men of Virtue, and Eminency (as to Patricians, Senatours, and Ministers of Learning, and State) such as are the Titles of *Illustres, Spectabiles, Nobiles, Clarissimi, Perfectissimi*, (of which *Pancirol* gives us a particular Accompt) yet the Title of *Serenissimus*, as incommunicable, Princes have reserved to themselves, and to such have wise men chiefly, if not onely, given it. Thus of old did Saint *Leo* term the Emperour *Leo*, to whom he wrote, *Τῷ ὑπερευδεδόξῳ, καὶ γαλανότατῳ ὑῶ Διδῶτι, To Our most glorious, and most serene Son, Leo the Emperour*: and that, because Serenity in a Prince is that temperament, which keeps him æquilibrium, and properly qualified to rule, and all the Concomitants to it. And therefore though *Herodian*, to flatter a vile *Commodus*, may call him *Nobilissimum Imperatorem*, and *Licinius Valerianus* may, because none others will, give himself that Title; yet none deserves the Title of *Serenissimus*, but he, that, in *Lactantius* his words, *in opere misericordia largiter fecerit, &c. He that is merciful, generous, and has expressed in his life, and Actions, Perfect Virtue*. Indeed Serenity being a Supernary may well be accounted more then ordinarily of: nor is it so much a Courtesie, as a due debt, and Homage to Serenity, to admire it. The Catholique Rational Nature conspires to pay a Devoir to this Deity for the Diffusion of its quality to every thing.

Serenity is that temper, that gives opportunity to all Virtue; and then is the Season to do worthily, when there is no Cloud, no Storm of Obliquity in the Minde, but all the Region of it is clear: therefore all serene things were accounted excellent, *astus serena, cælum serenum, color serenus, lux serena, animus serenus, doctrina serena, frons tranquilla, & serena, yea, vitam serenare, and domum largo igne serenare*, are frequent in all good Authours to express the greatest pleasure, content, and comeliness by. And therefore the Positive being so significant, its Superlative must have a supereminency of sense, reflecting most intense Lustres on a Prince, and prolating him, not as onely disposed to, but accomplished with the liberallest Proportions of humane Capacity, whereby lofty Nature is reduced to such an harmonious Mansuetude, as makes Majesty comply with Meanes; and forbear those superb and monstrous Titles, which both intimidate men, and intrench on God's Patience provoked by the Arrogancy of them. For though *Attila* may glory in the Title of *Ira Dei ego sum, & Orbis vastitas, I am the Anger of God, and the World's Devastation*, and *Abbas* the Persian King vapour, that he is King of Kings, and Sultanies, Lord of the Imperious Mountain of *Ararat*, Commander of all Creatures from the River *Corazon* to the Gulph of *Persia*, Governour of all Sultans, Emperour of *Musselmen*, Bud of Honour, Mirrour of Virtue, Rose of Delight; while *Sapores* vaunts himself to be King of Kings, Equal to the Stars, and Brother to the Sun and Moon; and *Cozroes* will be Lord of Lords, Prince of Peace, Salvation of men, the great Conquerour rising with the Sun, giving Lustre to the Night: notwithstanding the great *Cham* give out, he is the Son of the highest God, and Quintessence of the purest Spirits; and *Prestor John* challenges to himself, to be Head of the Church, the Favourite of God, the Pillar of Faith: yet all these, and such other Rhodomontadoes, are but the Lunacies of deluding and deluded Opination, the Metreticious Suggestions of light, and loathsome Eccentricity, Privations of that Serenity, which keeps the Minde in a Royal Mansuetude, and inclines it to a fertile, and frequent Humanity, which *Nerva* probably foreseeing in *Trajan's* temper, rewarded with Adoption of him to the Empire: for, though *Trajan* were a Spaniard, and neither an Italian, nor Italian'd, yea, though *Nerva* himself had many Kindred, and none of strange Origin were ever Emperour before *Trajan*, yet *ὁ δὲ τὸ πρῶτον αὐτοῦ σωτηρίας δὲ ἀντὶ τῶν συγγενῶν ἀεσιμονίας*, He did not prefer the ad-

vancement

In Notitia digni-  
tatis utriusque  
Imperii. a. p. 3. ad  
p. 26. & c. 4. 17.  
Alciarus & Bre-  
chzus ad Legem  
100. in lib. De  
Verborum signifi-  
catione p. 234.

De Opific. c. 15.

Animosa vox vi-  
detur, & regia,  
cum sit fultissi-  
ma Senec. lib. 2.  
Benet. c. 16.

Dion Cæs. lib.  
63. p. 771.



vancement of his Kindred above the good of his Government, Trajan, he chuses. *Τὴν τὴν ἀρετὴν*, &c. Making Virtue a Qualification to Government, rather than Country. And accordingly he approved himself: for no sooner was he in the Throne; but he gave the Senate assurance, That he should disturb, or put to Death no good Man, which exemption of Good Men from fear, and danger, persisted in by his other supernumerary largesses, of which that was one Openly he honoured, and preferred all Good, and Just Men, made all Men account him an Incarnate God, and possessed them with such Eulogick gratitude, as would have tempted any Minde, but that of serenity, to abate of its condescension, and to affect distance. But the gentleness of his Minde kept him in the merit of that praise, which Herodian gives to Marcus the Emperour, Father of Commodus, *μὴν ὅτι βασιλεύων*, &c. that he did not onely profess in Word, but practised in Deed the Gravity and continence of perfect Virtue. In short, what this *serenissimus* in a Prince is, the Lives, and Carriages of five of our late English Monarchs, four of which are, I believe, rewarded with the Glories of Heaven for it, and the last yet is, and I incessantly pray long may be, the living Instance of it, will beyond all the Oratory of Words, and Sculpture of the most Immortal and transcendent Pen, discover, and confirm.

Lib. 1. p. 464.

E. 6. Q. Eliz.  
K. J. Charl. 1.

Our Chancellor then meant much by *Serenissime Princeps*; yet not all that he had to bless God for in his matchless Pupil. To be of a towardsly and pliant Nature, to be a *subactum solum* to virtuous Implantations, was a blessing, which the rough and sanguineous truculencies of some Natures abhorre: but to have *nobilissimam indolem*, a fertility, and profuseness of addiction to Good; to have, as it were, Good connatural to, and radicated in the very Free-hold, so that it is, as it were, inseparable from it, This is a noble Second to the former, nay it is the Parent of it, at least the *sin: qua non*: for such most an end Princes prove, as they are in the Oar of their natural Temper. Hence the Chancellor expresses the accomplishment of the Prince by *Indoles nobilissima*, as the *significatio futurae probitatis*; so Tully uses the Word, *Cæsaris vero pueri mirifica indoles virtutis*. So 2. De finibus 18. and he commends *Lentulus* as one *eximia spe, summa virtutis adolescentem*. And Seneca mentions *Tanta indolis juvenem, qui citò Pater, citò Maritus, citò Sacerdos*, &c. Yea not onely in Children is *Indoles nobilissima* a notable comfort, but in Grown Men in *veris signum est presentis virtutis*, so Tully: *Fac enim fuisse in isto C. Lælii M. Catonis materiam & indolem*; and Pliny says, *primum nonnullis indolis dedi Specimen*; and Aulus Gellius mentions *Lata indolis adolescens*, lib. 19. cap. 9. 'Twere endles to multiply instances out of Authours to this purpose: that only, which the Phrase imports, is a natural edg both to Good, or Evil; for *indoles* barely is applicable to either: for though Livy writing of *Lavinia*, understands her *Indoles* to be *generositas quadam virtutis atque animi* (1. Ab Urbe 9.) yet, when he uses the word of *Hannibal*, he makes it to Evil as well as to Good, *cum hac indole virtutum ac vitiorum sub Asdrubale meruit*: And therefore the *Nobilissima* here is not onely a Complement, but a Characteristical discrimination of the Prince's propension to Good, as his Choice, and that which God had so tintured his Temper with that he could as soon cease to be, as not to be Nobly Virtuous. *Indolem valent, quantum terra proprietat, & cæli, sub quo aluntur*. And hence is it, that as curious and thirsty Planters, that delight in choice Fruit, do not onely preserve choice Seed, and choice Grafts, but also sow and plant them in proper Soils; that so their Natural *Indoles* may have no Aloies, and Debasements, but Additions from the Position of their Fixation: so do prudent and diligent Parents, and Supervisours express their Affection and Judgment in the Nurture of Youth to Virtue, that, their Natural Towardness not being nipped and blunted, they may in time come to a virtuous Tapering, and to that proportion of Plenitude, which their Natures and Opportunities capacitate them to.

Cic. ad Brutum 2  
lib. 1. Ep. 7. c. 12.  
De Consol.

5. Verr. lib. 2;  
Ep. 7.

Which Connaturality of the fruits of Education with the Impressions of their Birth make Virtue so habitual to them, that they may well be called theirs as (by Divine Concession) they are the temporary Possessours of them; since by their Coalition with them, and their Appropriation of them, as their peculiar Treasure, they are onely and properly termed *serenissimi* and *nobilissima indolis*. For though Titles, and Terrour may cause ascriptions of Perfection to Men, who otherwise as they deserve them not, so would not obtain them, Shews of Virtue, or claims to the credit of Her from the real Alliances of Her, to their Ancestours, is not currant Coyne to purchase the Prince's Character here. For those remote and dubious Titles, though they derive faint and refracted lines from the Centre of Merit, yet are but the by-blows of its excellent Heroickness. They are as *Monogenes*, Pompey's Cook somewhat like him, but not very Pompey the Great: they

are as *Serapio Scipio's* Slaughter-Man, not indeed Famous *Scipio, Africk's* Master. They are *Spintheris* the despicable Player, not *Publius Lentulus* the Grave Senatour. They are *virtutis umbra*, little conducing to *Princes* praise, but rather the Vizzard of such Deformities as seek, and take Sanctuary and relief from creditable appearances. That which onely is worthy *Princes*, is *propriis gemmis coruscare*, to see that the Virtue they pretend to, be *vera; non fucata; propria, non aliena*. For that the *Chancellour* here admires the *Prince*, as One that was worthy his Descent, and Degree, and thereupon He assures him the Serenity of his Mind comforted with that Noble Towardlines, which he undoubtedly discovered to be his Own, unstudied, unaffected, naturally His, had so affected him with Joy, that he could not but declare his thoughts with Gratitude to God the giver, and with admiration of Him the Subject of so much and so rare Endowment, *Gaudeo, Serenissime Princeps*.

In Augusto.

This the *Chancellour* adds, to shew the Sense Wise men have of *Princes* Worthinesses: for since they are the great Examples of their People, and have, as it were, the power of making them Good, or Bad; the preponderation of them to Virtue, which will be the turn of the Common-Scale, and make it incline to the right, cannot but highly rejoyce those, that rightly conceive it. *Augustus* was a brave *Prince*, yet *Suetonius* writes, he never commended his Sons to the People's love *nisi cum hac exceptione, si merebuntur, &c.* but with this proviso, that they deserved, professing, that Honour ought to be the reward of Virtue, and not the Companion only of great Birth, and high Blood. For well he knew, that if the Wisdom and Calmness of their Minds did not balance, and overbear their Passions, and make them tenable against Temptation and the fierce and too often prevalent sieges of it, they would do by their People, as that General in *Cedrenus* wrote he would do, in case their Good and his Will were competitorous, *aut mundus pro Imperatore &c.* Either the World shall acknowledge Me an Emperour, or I will make my self so, whether they will or no. Or, as *Paul the Fourth*, who was so great a Self-admirer; that he blushed not to say, that either he would have his Will, or he would set the World on fire, and go up in the flame thereof.

Page 122.

But rather as *D'Avila* represents *Monsieur le Hospital* the *French-Chancellour*, not like the Duke of *Guise* all for Warr, but endeavouring to compose, and sedate Differences, and to reconcile parties, though he held the reproach of a soft Gown-Man for so doing; and *Henry the third of France*, who was wont to say, that by Civil, intestine Wars Religion it self, which received its Nourishment from Peace, was much impaired, and so that, instead of gaining those Souls that were gone astray, by violent means, they did endanger the loss of those, that were most Zealous in the Truth: and therefore that of the Moralists concerning *Cesar* is most true, *μὴδὲρα νίκοις, μὴδὲ φρονίσις*, no Man, but *Cesar*, that is in his right Wits, and is overpowred by Ambition, will come to the Common-Wealth to disturb it for his own Radication, and Establishment. For ingenuity, that perswades a Man not to better himself as *Chrysis* did by *ἀνα* and *χρῆσις*; by topsyturvying all Men, and all things, but keeps him in the Golden mean of Contentation, especially such a Jewel in the Mind of *Princes* must needs exhilarate all Men, chiefly those; that have had the Honour of their Nurture, and Tuition, and have been near them in attendance, and affection; and such the *Chancellour* having, I conjecture, been, alledges his *gaudeo* upon the view of such imbibings, and so pleasing probable Fruits arising from it.

Plutarch. in adv. Stoicos p. 1059. edit. Parisiens.

*Gaudeo, serenissime, &c.* As the *Prince's* Virtue gave, so the *Chancellour's* love took; the occasion of Joy at the *Prince's* proficiency. For though Joy be the proper Act of the Soul's exultation within it self, *Gaudere significat Tantam apud se voluptatem sentire, neque vulgò proferre gaudii notas*, in regard whereof *Triumphare, & gaudere* is joynd by *Tully* in lib. 189. ad *Atticum*, and *Seneca* censure him as Imprudent, *qui adventitio letus est*; adding the reason, *Exibit gaudium, quod intravit, &c.* The Joy that is occasional onely, and rises from imperfect Virtues, goes, as it comes, but that, which flows from a Divine Soul; conform to God, is constant, and solid, and encreaseth towards Eternity. *Mihi crede, res severa est verum gaudium, &c.* Believe me, true Joy is a serious thing: and so Ep. 27. *Aliquid petis bonum mansurum circumspice, &c.* look upon durable good, onely lasting Joy is to be attained by Virtue, so Ep. 59. *Est elatio animi suis bonis, viribusque fidentis*, and *Gaudium hoc non nascitur nisi ex virtutum conscientia*; so *Philo*, while he calls Joy *ἀνμύσιον τὸ χηλίσιον*, determines, Joy may be in no mind, but where grounds from Virtue are; taking to himself, immortal delights. According to which, that expression of the blessed Virgin, is Emphatick, *My Soul doth magnify the Lord, and my Spirit rejoiceth in God, my Saviour.*

Cic. 3. Tuscul. Ep. 93 Ad. Lucil. Epist. 23.

Lib quod deterius potiori insidians solent. p. 177. Lib. De septenar. Felis p. 1172.

I say

I say, though to rejoyce be properly the Product of our own good, and intern serenity, yet ha's it an extent also to that good, which we opinionate to be in any one, and for that are as much delighted, as if it were our own. *Quum ratione animus movetur, &c.* When the Mind is moved by Reason, pleasingly, and unalterably, then is it partaker of joy. Hereupon the Chancellour reckoning upon the Prince; as Heir of the Crown, and probable to be the Monarch of this Land, in whose excellent Endowments, every particular in the Nation, would proportionably to its capacity and concern, be blest, not onely excites others, but protests himself much pleased with, and refreshed by the hopes and assurances he had of futurities blessing, in his excellent and Royal Inclination; and this is the cause of his *Gaudeo*.

*Videns quantâ aviditate tu militares amplecteris actus.*

It should seem the visible Application of this Prince to Manly and Martial Experiments had been earnestly look'd into by the Chancellour; who, not like a Parasite of the Court, or a mendicant at the Trencher, deluded the Prince into a belief, that Vice was Virtue and haughtiness of mind Princely towardyness: but like a man of weight, Worth, and Integrity, whose Conscience led him to enter common with his Prince in hazard, and whose heart hoped God would give his dead and (as it were) buried right a glorious Resurrection in his future Prosperity (which this his Addiction to Chivalry; did in a kind fore-speak) annexes this *videns quantâ, &c.* as the Rise of his *Gaudeo serenissime Princeps de nobilissima indole tua.*

*Videns*, Men of Honour love the Warranties of Honour, Reason, and Piety for their applauses, not daring to gratifie Power and Greatness to the disservice of Truth and Fidelity. He that ha's so debauched a Soul to put his *probatum est* to an uncertainty, may, ere long, be accounted fit for no Honour above a Knights-ship of the Post. But he that says no more then he sees, knows, and believes, deserves the credit of a faithful Witness.

*Quantâ aviditate militares tu amplecteris actus.* This is the *materia prima*, of which the Prince's Virtue, as it is here by the Chancellour rejoyced in, consisteth; and it directs us to two observables: First, *Principis electio*, that which the Prince chose to be the Companion of his Time, and the Dial, upon which, by the shadow and reflex of his present inclination, they should judge the height of their after-hopes from him. And those were no nugatory Trifles, no effeminate Lubricities, no childish refuse Trumperies, but the great and peculiar Glories and Ornaments of Princes, *Militares actus*. Secondly, *affectus Principis erga res electas*, he prosecuted them so chosen with no indifferent, remiss, and tepid love, but with a generous insatiety, with the keen appetite of impatience, and prodigal intentness. *Quantâ aviditate militares tu amplecteris actus.* His choice was *optimorum*; for even Nature lessons to this in all the Emanations of her Implants; no Creature, but by its sensual propension is vehiculated to what it apprehends best for its Conservation, and least contrary to its Being. Yea; take away those impediments to choice (*vis major & metus*, which *Seneca* Lib. 2. de Benefic. 118. says, do ex necessitate tollere arbitrium) and propose to their sense things, they shall decline what they apprehend injurious to them, and accept what is pleasing. And for men, they are usually estimated by their Company, Pleasures, and professed Engagements. And such is the rate of their Exchange, in the Reputation of men, as their Judgment is either dignified, or depreciated in its choice: *Moses* lost himself almost in the Peoples eyes, for chusing a *Zipporah* to breed upon; so course a ground they thought unmeet to draw a fair-figur'd Posterity upon; especially Princes, as they are *altioris molis*, and are the great Sea-marks, by which Subjects are directed, are to avoid indiligence therein: Neglects in them are ominous, and of tragick interpretation; because their Duty being *ἢν ἑλαχες Σπάρτας κοσμεῖν*, to adorn their Charges by Actions Kingly; their *Torpor* is the hazard of their Government.

Therefore *Homer* bringing in *Agamemnon*, when he says, All his Companions in War were full of sleep, and took their rest, singles out Him, as more concerned to wake, because he had the care and conservation of all upon him.

Ἄλλ' ἔκ' Ἀργείδῳ Ἀγαμέμνονα πειμῖνα λαῶν  
 ὅτι πρὸ ἔχθρῳ γλυκεροῖς πολλὰ φρέσιν ὀρμαίνοντα.  
 Care kept King Agamemnon broad awake;  
 No sleep, his charge in danger, could he take.

Adag. 1. Chil. 2.  
 Cent. 5. p. 652.

Iliad. x. v. 9.

B

Hence

Hence is it, that all Princes have Characters according to these first Draughts of their Choices; by which they are understood to be legible in all their after Portraictures. *Nero*, that delighted in Butchery, and in converse with Mummers and Juglers, was prefaged to be a rude Monster: as was *Trajan*, that was pleased onely with worthy men, and graceful manners, a virtuous Prince. The choice then of our Prince being *actus militares*, to inure himself to hardship, and to accustom his body to toil, to fix his mind against fear, and thence to chase all touches of Effeminacy; to propound to himself certain hazard, and uncertain Victory; by hope to provoke Attempts, and by Courage (with God's blessing) to force Success: this choice of his is the merit of true Nobility, which *Marius* in *Salust* expressed thus, *I account* (said he) *Nature equally the Mother of all men, and that the bravest Spirits are in her Heraldry the noblest, and most to be honoured: that Nobility began in Virtue; and therefore, though I can shew no Statues of my Triumphant Ancestry; yet if my Military Habilitments creditably managed by me, and the Wounds received on my Body for my Countrey, might be instead of valour, and Ancestry, then I have wherewithall to render menible; thus Marius, and that most wisely: for Martial Additions, where mansueted and tempered by ingenuous and civil Virtues, steal into the Mind formidable Resolutions, and instruct, by observing the Experiments of past and present, men at Arms to learn the method of fighting, and the temper of bearing both loss and gain, since the Issues of War, as all other things, are in the Hands of the Almighty, who disposes them as he pleases; and often it is seen, that as the Race is not to the swift, so not the Battle to the strong; nor are always men fortunate, as they well design, and dexterously manage their Designs. Marshal Memorancy was a brave man, and commanded in chief the Forces of France many years; yet in all his Enterprises he came not off, but either a loser, grievously wounded, or a prisoner: Notwithstanding which secret pleasure of God, the best Prescript to a Prince's probable security is Arms. And therefore, though true it be, that *Seneca* long since writ to *Nero*, *Errat, si quis existimat tutum esse regem ubi nihil à rege tutum est, securitas securitate mutua paciscenda est, non opus est instruere in altum editas arces, nec in adscensum arduos colles emunire, nec latera montium abscindere, multiplicibus se muribus turibusque sepire, saluum regem in aperto clementia prestabit, unum est inexpugnabile munimentum amor civium.* Though instances there are of the Orationes of Princes, who by the cogencies of their Wit, well and aptly uttered, have wrought Subjects to despise Death, to bring their dying Rights to life again; making them so keen and eager on fight, that they have gone pleasantly, and with triumph, to try their Title by Combats, and foughten Fields: yet never did I read of any, that by brave words won Field, without the second of brave Action. For the personal Valour of Commanders makes Souldiers of raw, and bold of cowardly men; when timorous and flying Leaders spirit their Foes, and discomfit their Parties. And Princes, whose design it is, to appear like *Caesar*, with their *Veni, vidi, vici*, and either to lose life, or obtain victory over their oppositions, in a just Cause, and notable Quarrel, resolve with our King *Hen. 7th.* *Rather to be left dead Carrions on the cold Earth, then to be free prisoners in Ladies Chambers.* Omitting no accomplishment, that Time and Affairs opportune them to. For that Prince, who is not valiant, will never be accounted wise, since Wisdom consists in obtaining what we affect, and in preserving such beloved attainments of ours, which Valour well managed, and spritfully expressed, chiefly conduceth to.*

In Jugurth.

D'Avila p. 239.  
Lib. 1. de Clem.  
p. 626, 627.Holinghed p.  
758.Lib. de Educ.  
Liberis, p. 12.Æmilius Probus  
lib. 2. c. 16.Necphor lib. 22.  
c. 33. & lib. 14.  
c. 2

And therefore that Precept of *Pythagoras*, *Μὴ γέσθαι τῶν μελανέπων*, not to taste of those things that have a black Tail, *Plutarch* rightly understands to be a Command to avoid men of dissolute souls, and infamous lives, was very good, because they taint those they breath upon, from the corrupted Lungs of their putrid Principles, and Practises. And thence is it a choice piece of Wisdom, as to chuse the best and most every way endowed men, to train up Princes in youth: of which *Plato* in 2. de *Repub.* & lib. 6. & 7. de *legibus Arist.* lib. 6. *Politie.* lib. 1. *Agellius* lib. 9. c. 3. and, according to which, *Charles* the Great educated his Children, Sons and Daughters, as *Probus* informs us; and as *Theodosius* did *Arcadius*, and *Honorius*, under *Arsenius*; and *Constantine*, did his Sons, *Euseb.* lib. 4. de *vita Constantini* c. 51, 52. And, as *Trajan* was by his Master *Plutarch*, who writ to him that Golden Book, *De Liberosum institutione.* And *Alexander* was by *Aristotle*, and all the most excellent Presidents to the World of vir-  
tuous

# A Commentary upon FORTESCUE.

7

tuous Majesty have been. I say, as it ha's been their Wisdom, to chuse the choice of men for their Tutors, so have those Tutors been conducted to their Education, from the observance of their Natural Tempers; and, by both, animating them to good, and deterring them from evil, as they saw they were more or less addicted to them; especially when their Charges are of such as *Portius Cato* was, *Tam acri ingenio ut ipsi sibi fortunam fecisse videatur*, &c. *Who was of so sharp a wit, that he seem'd to carry his good fortune in his promptness; no Art either publick or private wanting in him, so great was his eloquence in Speech, and bravery in Action, that it purveyed for him all his after Glory. In short, so rare was he in all parts of Virtue, that he seem'd to do every thing as if he had been born only to that end, & yet was all he wished to be to a matchless perfection.* Where such Princes are, they must be tended specially that their Vestal fire extinguish not, that they turn not to Serpents hissing; which marrs the delight of their Virtues harmony. Their Minds must be kept ever stirring, that through inoccupancy of Virtue they constagnat not Vice, which being habituated to men is not easily rooted out of them. Hereupon the Wisdom of these Architects is to raise a Roof of Action upon the Foundation of sober Virtue, to keep the Mind within bounds, and to spend its volatility on Corporal Exercises, which are of virile invention and performance. For the Tutors and Directors of Princes Educations, after they have seasoned their Charges with Letters, and secured their Breedings and younger years from the Censures of Illiterateness, prompt them to Corporal Exercises, and athlerary Activities, such as are skill in handling the weapon, for defence of their persons (a very great ornament and security to any man of power and honour to excel in) not that he shall need either to provoke, or be provoked the more by it: for his Passion ha's no stimulation thereby, nor will his Skill betray him to Pride over others, because true Science abhors Boast, but rather keeps it self latent against a time of need, and proves a Reserve to his security against secret Attempts, and false Treacheries, which seldom are acted upon Princes of spirit, and Corporal Manlyness. Next to this, Tutors present to Princes riding of the great Horse, and the right managing of them in all the parts and punctilio's of Cavalry; then they allow Jults, Barriers, Tournaments, Tiltings, or such other Manly Recreations, as are fashionable to greatness in the age of their life and breeding. And they at last allow them to try the proof of all these preparatory Inductions by Field-service; that is, such venture, as may display boldness, and bravery; but be as little in the Eye and Road of Danger as may be: their Design being not to end, but to enamel his life with all those embossings, which illustrate the Fame, and aggrandith the Military Virtue of arising Majesty. For wontedness, and assuency to any thing connaturalizes it, which *Pythagoras* gave us long ago the rule of, *Ἐλυσίον τὸν ἀρετῶν, ἡδὺν δὲ αὐτῶν συνήθεια πρήσει.* *To chuse the best way of life and custom, will make it delightful to us.* The experience of which, even in Military Affairs, rules the practise of great Commanders (not ordinarily to draw raw Souldiers, and fresh men into present service, but to put them into Garisons to be trained, and their best men to draw out, that their Novices, by the sport that now and then they have, may be gradually perfected in the Habit of couragious Boldness. Those *actus Militaris* then that our Prince here do's embrace, may be thought those onely, that are the Recreations and expressions of their spirits in times of Peace. And to these he is said to be notably addicted, and affectionately acted. As well he chose, so to his choice does he resolutely adhere; and this displays both Judgment and Constancy. A good Choice, and a grave Mind, not to waver in, or be cold to it: Levity is one of the Alloys and exuberances of Youth, and that which ha's so great a party in those early Flowers; that though they smell sweet, and come timely, yet they are soon gone. And therefore, the Prince young and wise, in age probable to chuse and chuse again; yet fixed to his first worthy Choice, deserves well the praise of his Tutor while he lives; as did such another Babe of Grace and Greatness, *James* the Son to the King of Scots; of whom *Erasmus* gives us almost an incredible accompt, concluding, *Satis demum dolori nostro, satis discipuli memoria*, deserve of him. For the Prince here is commended not onely *amplecti*, which argues endearment, but *magna aviditate*; for so the *Quantus* imports: 'tis a Note of Magnitude and Hyperbolicism. *Aviditas* argues such a love, as *obccates, à non videndo propter nimiam cupiditatem*, saith *Festus*, a kind of Fury, that carries a man in a Whirl-wind, *Sicut amens qui mentem suam non habet*: Such an insatiety, as is in Nature's Hunger, and Womens longing: such as *Tully* reports of *Cato*, *Erat enim, ut scis, in eo inexhausta aviditas legendi nec satiari poterat*: and, in *Pliny*, no-

*Schrievellius in E. pist. dedic. ante Iliad. Homer. Edit. 1656.*

*Sabellicus lib. 5. Ennead. 5.*

*Plurarchus lib. de exilio. p. 662.*

*Adag. Chil. 2. Cent. 5 p. 564, 565.*

*Lib. 3. de Fimbis.*

Ad Quint. fratr.  
lib. 1.  
Veri boni avi pe-  
ras tunc est, Senec.  
Ep. 33.

thing is more frequent then *aviditas diripiendi* lib. 12. c. 14. *Aviditas ad aliquem faciendum*, lib. 17. c. 18. *Aviditas ad cibos*, lib. 20. c. 16. *Aviditas seminarum*, lib. 20. c. 21. Yea, Tullie's *infinita aviditas glorie*, and his *aviditate inflammatus*, which he mentions, lib. 2. offic. c. 54. All these, and such like expressions in Authours, makes the Chancellour's Character of the Prince by this *Quanta aviditas*, to be importunate and implatable, like that of *Cato*, who confessed, *Gracas literas senex didici*, &c. *I learned Greek in my old age, and was so eager after it, as if I should never be satisfied with any attainment beneath the perfection of it.*

1. De Oratore  
120.

Pro Sylla.

There was much then of freeness and irritation in the desire of the Prince towards Arms; so that his Mind all on fire with love to, and valuation of it, testified it self, by halting to, and embracing the *Theory*, as inlet to the practise of it. For so *amplecti* signifies here. And not onely *cognoscere & intelligere*, but *vehementer amare*; so Tully, *Nec quod jus civili (Crasse) tam vehementer es amplexus*: so in *Salust. Imperator omnes ferè res asperas per Jugurtham agere in amicis habere magis magisque cum in dies amplecti*. So Tully, *Tanto amore suas possessiones amplexi tenebant, ut ab his membra divelli citius ac distrahi posse diceret*.

So that all the result from this of the Chancellour in portraying the Prince to be Martial, will amount to this, that use and custom made it not onely affected by, but connatural to him: so that as *Aristides* could sooner not be, then not be just, *Citius Solem è cælo*, &c. *Sooner the Sun could be displaced the Firmament, then Aristides be removed from his integrity*. So our Prince could as soon deny his Stomach food, or his Eye pleasure, as his delight Martial Exercise. And hence was it, that as to shew his forwardness, *aviditas & amplecteris* is asserted: so to evidence him more led by sense and passion, then reason and speculation, this delight of his is rendered by *Militares actus*. For Youth is more pleased with Corporal Traverses, then Mental Agitations; those are introduced, when the Senses exterior are glutted, and the wild Oats are sowed, as we say; but Bodily Feats, as they are in Youth most seasonable and fragrant, so are they most delighted to express them, because Sense pleases it self in its perfectest model, and vividst Representation, which is that of the Body in Youth, when the Sails of the Skin are filled, and the Veins reaking hot with lively blood, and the Joynts unctiously motive with metaled Youth, and the Spirits energetically diffusive, when the Circulation is uninterrupted, and the Violetscent in the Breath, the Roses colour in the Cheek, and on the Lip, the Lilies whiteness on the skin, when the Plushy Mantle on the Head, and the succulent Moisture of the Bones, rouse up to agility, and perform creditably their undertakings. Then, then, are men chiefly delighted in, and carried to *actus militares*. Yea, then is the impresson of Custome more durable when it's fixed on Nature's marble and adamant, which was the reason that *Solomon* advises, *to teach a Child in the Trade of his Youth, that he may not depart from it in Age*; it being not often seen that vertuous Youths degenerate into vicious Old-ages. Hence considering the Chancellour presents the Prince as so early generous, and so towardly inclined in his first Dawning as it were. I cannot but greatly admire him, and believe the Chancellour by these Representations of him was much a Votary to him. For, since there is nothing amiable in Man, but Virtue, because that has abundant remains of the image God, and the primeve Sculpture of omnipotence, so without that is there nothing less estimable then he in his degradation. And this was the sense of *David*, *Man in honour abode not, but became as the Beast that perished*; yea, the Heathen *Agamemnon* when by the *Sycionian* he was presented with the famous Mare *Ætha*, on purpose that he might be excused from War, accepted her *ἀεὶσα βελουσιανος*, &c. *Thinking a brave spirited Beast more valuable then a base spirited Man*. And hereupon, when Princes in their ascents to Manhood, choose honest delights, and honourable loves, they are highly to be blazoned for remarkable, and almost Non-suchness, the tendencies of youthly greatness, being mostly to lubricity and effeminatefulness; the triflings of time, the debaucheries of Minds, the enervations of Strength, the neglects of Affairs, both of Peace and War, these are too often the Infelicities, and Shipwracks of Princes as well as meaner men. Thus was *Edward* the fifth of this Land made unhappy by fond delight.

Plutarch, in  
Gryll p. 982.  
Edit. Paris.

Holinghed, p. 715.

Petulantium  
libidinem, luxu-  
riam, avaritiam,

And if Youth abstain here, there is another snare that is apt to be caught by; desire of gain, though by indirect means, and satisfaction of anger, though by oppression and blood:

blood. The Duke of *Guise*, to maintain his party with pay, seized on Church Chalice, and coyned them. \* *Henry* the Third of *France*, when he had caused the Duke of *Guise* to be murdered, came in all haste to the Queen-Mother to tell her, *He had made himself King of France, now he had slain the King of Paris*: but she replied, *You have made the Duke of Guise to be slain, God grant you be not now made King of nothing*. Yea, so long as *Adam Gordon*, *Huntley's* Deputy in the North of *Scotland*, stands on Record for abusing the Queen's Authority, in revenging his Family on the *Forbes's* Family, their Antagonists, one hundred and twenty seven of whom he slew, and twenty seven burn'd alive in *Favoy-house*; there will never want an horrid instance of the danger of power in a vitious mind. Give me a Prince like *Malcolm* the Third, King of *Scotland*, who can defie a Conspirator, and bravely challenge him; yea, upon his sound repentance heartily forgive him. Such Princes *England* ha's mostly had, now ha's to a miracle beyond compare, and I hope ever will have such, who have been, are, and will be nobly couragious, but not bloody; *God and the King may, and do shew mercy from their own innate essential Clemency, but they are afflictive to men not without the aid of others, whom they consult with; when they send their Thunder-Bolts, and are by their Councellours often so allayed, that their anger proves favour, saith Seneca. Quia Jovem, id est, Regem prodesse etiam solum oportet, &c.* Such Magnanimity, such virtuous loftiness of mind, will keep all Maggots of corrosion and putrefaction off, admit no suggestions of Vice to Familiarity and Audience, but abhor the Promoters and solicitations to them, as valiant *Grillon* did, who being Captain of *H. 3<sup>d</sup>s.* Guard, and commanded by him to kill the Duke of *Guise*, honestly and religiously replied, *Sir, I am really your Majestie's most humble and devoted Servant, but I make profession to be a Soldier, and a Cavalier. If you please to command me to challenge the Duke of Guise, and fight with him hand to hand, I am ready at this instant to lay down my life for your service: but that I should serve for an Executioner, before your Majestie's Justice commands him to die, is a thing suits not with one of my condition; nor will I ever do it whilst I live*: thus he. So dangerous a thing it is to give way to any evil, that, a battery and breach being once made upon Integrity, all the residue and remain of Virtue is in peril.

Well may the Prince then here be a person of wonder, and of the Chancellour's love, who gives up himself to such innocent and graceful Recreations, as are purely Princely; and become him as peculiarly such: for so it follows, *Convenit namque tibi te taliter delectari.*

*Convenit namque tibi te taliter delectari.*

This is added, to carry the Prince's praise to its true merit; 'twas not onely a good, but a graceful choice, that he made, proportionable to his quality, and station; his delights were not like the *'Adonis & κίρκου*, those Gardens of the Poets fiction, altogether vain and profitless, in quibus semina, &c. in which seeds of virtue will no better thrive, then seeds of plants strowed up and down in an earthen pot; as *Erasmus* his words are, no such delights did the Prince fix upon: for then that might be said of him, which was said of *Calvisius Sabinus* in *Seneca*, *Nunquam vidi hominem beatum indecentius, Never did I see a man less become his happy condition then Sabinus did.* The Prince, like him, would have been great and rich; but in his demeanour not admirable, no nor imitable, as neither was he; yea, had the Prince so declined and inconsidered himself, that might have been said to him in the after-time of his life, which *Seneca* writes to his Friend, *Numera annos tuos, et pudebit eadem velle, que volueras puer eadem parare: Consider thy years, and you will be ashamed when a man, what ye loved and gloried in, when a child.* But when he culls out to his esteem such Recreations as are Princely and virile, well may he be applauded with a *Convenit.*

Indeed delights are common to all Creatures, and the chief external good both of their desire and endeavour; and when the object of them is adequate and regular, when it ha's no inconformity to the Agent, that acts to, and is acted by them, all is well, and like to be fortunate with us. For since there is a kind of Deity in the addition, and genius, and the naturalty of mens propensions do mostly preface their excellency, and preoccupy their conquest of the difficulties they encounter with, according to that of *Heraclitus*, *Ἐὐδὸς ἀνθρώπου δόλιον*, and according to that, which *Ammian Marcellinus* makes good in all famous persons, who have been excited to do what they worthily did, by it, *lib. 21. p. 394.* It conduces much to a good issue, that we mismatch not our genius, by any base consort, or plebeian Mate of converse and intentness. *Alcmon* in

C

*Plutarch*

*cradelatatem sensim quidem primo & occulte, velut juvenili errore exercuit.* Sueton. in Nerone cap. 6. D'Avila p. 746. Spotswood's History, Scotland. p. 259.

*Seneca Natural. Quasi. lib. 2. p. 856.*

*D'Avila. p. 742.*

*Cent. 1. Chil. 1. Adag. 30.*

*Ep. 27.*

*Eodem loco. Ep. 27.*

*Unicuique nostram padagogum dari Deum, non quidem ordinarium, sed hunc inferioris nota, ex eorum numero, quos Ovidius ait De Plebe Deos.* Senec. Ep. 110.

## A Commentary upon FORTESCUE.

Libro De Fortuna Romanorum.

Plautus in Trinummo.

In Panegy.

Hic Princeps suo beneficio tutus nihil perfidius eget: arma ornamenti causa habet. Senec. lib. 1. Clem. p. 625. Patrem quidem patriam appellavimus, ut sciret datam sibi esse in potestatem patriam, qua est temperatissima, liberis consulens, suaque post illos ponens. Idem eodem loco.

Hist. Scotland. p. 57.

D'Avila p. 237.

Plutarch tells us, Fortune is the Sister *Ἐνοχίας, πείρας, καὶ προνοίας*, of good education, great persuasion, and exact providence, and circumspection. Hence do the current of Authours erect the genius and ducts of men, as Mints and Forges of their Fortunes, good or bad. The Comœdian ha's it, *Sapiens ipse sibi facit fortunam*; and *Portius Cato* is by *Livy Sabellicus*, and *Budæus* made one, *Qui quocunque loco natus, &c. Who would make every Countrey his, and every condition he was fit for come to him, and force their courtesie upon him.* Indeed it is not always the reward of Virtue to succeed; the lines of worthy men do not always fall to them in fair places, nor have they always goodly heritages: yet *Pacatus* stands to it, *Sua cuique prudentia Deus*; and *Erasmus* ha's collected fundry instances to confirm it: and mostly we see, that men are happy or miserable, as their minds are narrow or great, active or supine, industrious or negligent, prudent or temerarious: yea, in Princes and great men, there is no choice so noble, as that of couragious virtue, that draws forth the mind to bounty, benignity, and a through closure with every overture of well-doing; nor is it possible narrow thoughts should cohabite where true valour is. Men of honour, who look upon themselves as born and bred for publique good, are acted by principles of suavity and munificence, consulting no accumulation to themselves but fame, no practice on men but that of Justice and Obligement; their delights are to be Patrons of Virtue, and Store-houfes of munificence. This the Duke of *Guise* made good to his enemy, the Prince of *Conde*; for having taken him at *Blainville*, he so gloriously treated him, that they both supped at Table together that night, and after lay together in the same bed. So did *Charles* the Fifth Emperour do by *Francis* the first of *France*, *Herbert's Hist. H. 8.* Yea, it is against the hair, nay against their nature, for them to be forced otherwise, though by reason of State, or necessity of affairs. *Henry Wardlow*, Lord Bishop of *St. Andrews*, had so noble a nature, that he thought no cost too great for a brave work; one day the *Major Domus* complained of the great number of comers, who expected, and had entertainment at his house, desiring him for the ease of all his servants, to make a bill of household, that they might know who were to be served. He condescended, and when his Secretary was called to set down the names of the household, being asked whom he would first name, answered, *Angus* and *Fife*, two large Counties. The Secretary from this understood his pleasure, and desisted. All this instance in, to shew that what men chuse as their delights, are so commensurate to the addictions of their souls, that the one is discernable by the other. Our Prince then by chusing *militares actus*, as the subject of his embraces, may very fitly be saluted with a *Convenit tibi, Princeps, taliter delectari*. For he, in thus doing, answered all, that could be expected from him, *ratione fama, familia, fortuna, potentia*, all which were either hopeles, or hopeful, as he proceeded to the improvement of this choice. For if the Prince sit still, and cry *Leo in via*, fearing to hazard his person to gain his right, he both contemns his Government, and animates Rebellion, upon hope of no disturbance for recovering it: and the infamy of such pusillanimity, being a Hell on earth, makes a brave mind kindle, and engage to recuperate, which if God pleases not to permit, yet he dies with the fame of an honest valour, and a just resentment of his injured estate, and sells the Fine and Recovery against him at the dearest rate, resolution enraged, and desire doubly edg'd, can part with it at.

Famous *Momerancy* in Anno 1576, fighting against the *Hugonots* Army, was boldly charged by *Robert Steward*, *Momerancy* asked *Steward*, whether he knew him, or not? Yes, quoth *Steward*, I do; and because I do, I present thee with this, and shot him in the shoulder, so that he fell, but as he was falling, he threw his Sword, the blade whereof he still held in his hand, though broken, with such a violence at *Steward's* face, and then he was near eighty years old, that he beat out three of *Steward's* Teeth, brake his Jaw-bone, and laid him by him on the ground for dead; which shews, that men do sell their ruines, as dear as love and rage can make them to their Ruiners.

*Nec dum quia Miles es, sed quia Rex futurus.*

This is added, to shew, that Titles imploy cares of corresponding to them in actions of congruity. *Magnos magna decent.* This *Alexander* understanding from his Master *Aristotle*, or his Mother-Genius, replied to one that asked him, if he would run at the *Olympick Games*: *Do any Kings run there?* implying, that men must do onely those Actions, that are semblable to themselves, the Actors. Of this *Nehemiah* had a sense, when he resolved against flight in those words; *Shall such a man as I fly?* And this that



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that Emperour remembred, when he rouzed himself up against sorrow for his distress; with these words, *Non decet Imperatorem mori flentem*. And to this the Chancellour here is the Prince's Remembrancer, that as he well chose, so he should fix upon grounds of Congruity and Reason, as he was both a Knight in present, and a King in possibility.

*Miles es,* ] This is not expressive of his profession and addiction, but in a more press sense relates to his particular dignity and degree. For usual it was with Princes afore, & in H. 6. time, to create, by dubbing their Sons Knights at the Baptistry, or in their Cradle, or when they were able to go. Perhaps our Prince might not be so early a Knight, but one created either when he grew fifteen years, or before. Whensoever he was Knighted, is not much material; that such he was, is without doubt; and that such he deserved to be, according to the addictions of his manly mind, is plain from our Chancellour's words, which I take to be not pompous in courtiery, but real, according to the latitude, and very truth of its History, and accomplishment in him, *Rex futurus*. This is the other Argument on the behalf of Martial Acts, as our Princes choice. He was born the Heir of a Crown, and had Title to Regality, when God should disseise his Father of Regality by death; till when, the Prince was but a Subject: for the Law abhors deprivation, or resignation, upon any pretense whatsoever, Allegiance being indispensable, and determining no how but by death. Now the Prince being by Inheritance, if he should survive his Father, a King, this *Rex futurus* is proper, as to that probability and the regality of a Title; but it had another sense also from our Chancellour: it is as it were a Prophecy of Loyalty, concerning the ruine of Usurpation, and the Introduction of H. 6. the rightful Lord, or at least of him the Prince (now his Father is dead) King. *Rex futurus* is indeed the voice of Loyalty; but it ha's an associated peradventure; because what we are is before, what we shall be behind the Curtain of Providence mysterious to us: I was bravely said of our Text-Master, but he (good man) reckon'd without his Host, and was not a Prophet in the upshot: yet this he did, to keep up the Prince's spirit, to harden him against despondency, to rivet on him magnanimity, which erects a Kingdom of content in the very quarters of Crosses. This, I believe, he did, to lesson him, that power lost by Battle, is by Battle to be regained; that Princes fighting strenuously are probable bravely to succeed; that diligence makes those fortunate, whom dissoluteness reduces to want, and, what's worse, contempt; that if there were no other Argument to Courage, this were enough, that Princes are impatient to be the Vassals and Tennis-Balls of Fortune, and that their probablest Rescue and Restitution is from Resolution.

Nulla vi verborum,  
nulla ingenii fa-  
cultate exprimi  
potest, quantum  
opus sit, quam  
laudabile, quamq;  
nanquama à me-  
moria hominum  
excitatum posse hoc  
dicere, Parentibus  
meis parvi, cessit  
imperio eorum,  
sive aequum sive  
iniquum fuis-  
set, obsequentem sub-  
missumque me  
præbui, ad hoc  
unum contumax  
fui, ne beneficiis  
vincerer Seneca.  
lib. 3. De Benefi-  
ciis, p. 50.

*Regis nempe officium est pugnare bella populi sui, & eos rectissime judicare.*

In this Clause the office of Rule, both as to War and Peace, is set down; and this the Chancellour appropriates to Kings, as the meetest persons to carry on both good Offices. This was primitively *familistique*, all power being vested by God in the Heads of Families, over those that were theirs by Generation, Emption; Compact, or Conquest. And as the power of life and death, which was Civil Judicial power, was in them; so also was the Military and Bellatory power in them also; for, if they were to rule their Family, they were also to protect their Rule from inroads upon, and injuries to it. Thus did *Abraham*, very soon after the World's peopling, arm his menial servants, to propel danger from them, and redeem his captive Nephew, *Gen. xiv. 14.*

After when power was more publique, and increase of people dwelling together called for a Magistrate, the Sword; both to repel evil, and compel to good, was lodged in him as well by the determination of God, as the consent of the people. This did *Moses*, *Joshuah*, and the Judges execute, and after them the Kings, God having written this *Sapience* on man's nature; according to which, generally, all Nations, and unions of men in all places, and at all times, assented to the position of power in one or few, for the good of their respective Combinations. And, if the Holy Writ had been silent in this, there had been good authority for its practice, merely upon the rules of civil convenience, and social necessity, which is an original Law, and paramountly takes place, as having its warrant in its weight, importance, and utility; nor could it be doubted, but the general compliance of the rational nature with it would have silenced all pretensions to doubt about it. But *St. Paul*, from the Spirit of God, ha's partly asserted Magistracy thus accommodated, as our Chancellour describes it. *The Magistrate bears not the Sword in vain*, that excludes power from being made a Cypher. *If thou doest well,*

Quis ergo magis  
naturam rerum  
ignorat, quam qui  
optimo ejus operi  
& commendatissi-  
mo hoc servum &  
perniciosum vitium  
assignat. Seneca  
De Ital. 1. p. 542.

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thou shalt have praise ; if evil, fear the power : that is, the authority of God, in the trust of man, is for promotion of Justice, both in animation of good, and repulse of evil.

Under which head, War, as occasionally necessary, is not onely lawful, but useful ; and that without which, Justice cannot be propagated ; since Wars are undertaken not wisely, nor properly as choices, but as such exigents, without which peace and justice cannot be accomplished, or enjoyed : so true is that of *Valerius Martianus*, who, though a Creature of busle, and one made by battle, yet when become great and grave, declared it his Maxim, *Let us not live War, while we can leave in Peace.* And therefore, if a Governour will prove himself an *Adrian*, *Ita se Rempublicam gesturum, ut sciret populi rem esse, non propriam*; if he will shew himself untreacherous, by being jealous of his necessary power, he must apply himself *pugnare bella populi sui*, if ever he intend *eos rectissime judicare*. For as the Empire of God is not submitted to, but *ratione potentia & formidata vindicta in rebelles*; so will not humane Governments be subjected to in their moderate, legal, and uninjurious Commands, without punishment by the edge of the sword upon Recusants. Hence was it, that as the *Jews*, in times of peace, punished Enormities with death, restitution, retaliation, according to the divers nature of them, so did they impede the great neighbouring evils of encroachment on them ; which Nations bordering on them were ready ever to attempt, by diversion, and making their Countrey the seat of War. Upon which they were led by their Kings, and Leaders, who were *Jeptahs* for valour, *Sauls* for stature, *Dauids* for activity, chosen men, whom their people followed readily, stood to manfully, brought off victoriously, there being a natural love and loyalty in all people to men of honesty and valour, as appears in many instances, but chiefly in that of the people to *Jonathan*, and after to *David*; yea, and of later times to *Nieephorus Boloniates*, who thrust *Michael Ducas* from the Empire; and, *Ignatius* says, had reception by the people, as a reproach to *Ducas* his Cowardise.

Hence came it to pass, that the Nations looked upon no virtue so peculiarly and directly in the Kings, as Chivalry. *Plutarch* tells us, the *Egyptians* chose their Kings *ἐκ τῶν ἰερέων, ἢ τῶν μαχητῶν*, either from their Priests, or from their Warriours; and he adds the reason, *τὸ μὲν δὲ ἀ ἀγαθίαν, τὸ δὲ διὰ σοφίαν, γένος ἀξίωμα καὶ πῦλιν ἐχρῆστος*, as thinking those onely worthy to rule, who were famous either for Valour, or Learning. And *Xenophon* writes, that the *Greeks* were like minded, *τῆ δὲ βασιλείᾳ προσήκειν ἀνόμενον ἢ ῥαδιουργίαν, ἀλλὰ καλοκαγαθίαν*. So well advised was *Agesilanus*, that he judged strenuity proper for Kings. So *Agamemnon* is commended by that Authour from a Poem of him here quoted, and approved, *Ἀμφότερον, βασιλῆος τ' ἀγαθὸς, καὶ κρείττος τ' ἀιχμητῆς*, He was both great to fight, And wise to rule aright. Yea, he brings in *Cyrus*, justifying himself to be a good Governour, from that valour he expressed against the Nations enemies, *Ἀιχρὸν εἶναι πῦλιν μοι δοκεῖ τὰ τοῖς ἄλλοις ὄντας ἁποπηῆσαι*, as if it had become him scurvily to fear, and not rather to fight them as he gallantly did. And *Clytiobulus* is brought in by him, declaring, that the *Persian Kings* did, and they ought ever to divide their time, *καρδίαν τε καὶ τὴν πολεμικὴν τέχνην*, between War and Husbandry; and where ever this distribution of Kingly Office is not, he terms it, *κώλυ βασιλείας*, an imperfect Government. The *Romans* also eyed much Valour and Military Prowess in their Kings, Consuls, Emperours, and Captains; therefore they chose two yearly Consuls, and purposely disposed one to the care of Martial; the other, to the civil justicing between man and man, yea, though they were a Nation fledg'd by War, and were made up of flagrant and combustible Elements, yet were they most just in their pacts, and inviolably zealous for indemnification of Allies; nor did they ever take a provocation so lightly, as to proceed to revenge it on their Provokers, and right themselves against their provocation: but, upon sullain and surly persistencies in contumacy, and resolves of injury, *memores idēi fœderis cum penis non statim ad arma procurrunt, dum prius more legitimo quarantant*, saith *Jornandes*.

After, when they chose Emperours, and Chiefs, they looked upon the warlik'ft of men, and him they subjected to, and followed; yea, the Laws of all Governments, as of the *Empire, France, Spain, Denmark*, and this *Empire of Great Britain*, do therefore call Wars the (a) King's Wars, Coyn (b) the King's Coyn, the Navy (c) the King's

*Dum in pace esse possumus, non arma induamus.*  
Egnatius in vita ejus p. 575. edit. Sylburg.  
Alius spartianus, p. 128. edit. Sylb. Nullum Ornamentum Principis fastidio dignius pulchriusque est, quam illa Corona. Observatos Civēs. Seneca lib. 1. De Clem. ad finem.

*Quem in fœderis Principis invidiam Civēs facile admiserunt.* Egnatius in vita ejus p. 515.  
Lib De Iside & Osiride p. 314. edit. Parif.  
Lib. De Agesilao. p. 753.

Lib 3. Memorab. p. 763.

De Administrat. Domest. p. 327.  
Lib 3. Hist. Græcæ p. 493.  
Aquinus de regimine Principum, c. 21.  
Romani semper justa movere arma, cetera nationes odio, & valetudine leviorēque quod Imperium tanta Urbis justitia agerent, tela in populum Romanum capiebant.  
Lilios Giraldus Syntag. Deotum pag. 466.  
Lib. 1. p. 640. edit. Sylb.  
(a) 7 E. 1. 1 E. 3. c. 7. 18 E. 3. c. 74

H. 4. c. 13. 2 E. 6. 2. 4 & 5. P. M. c. 3 (b) 25 E. 3. c. 2. 12. 3 H. 7. c. 6. 5 E. 6. c. 19. 20 H. 6. c. 19. (c) 31 Eliz. c. 4.

Shipping,

Shipping. the Forts (d) the King's strong Holds and Castles, the Laws (e) the King's Laws; the Subjects, the King's Subjects; the Courts, the King's Courts; because by these the Kings are enabled to defend themselves, and their Governments, and that by Wars, to suppress Rebellion, or divert Invasion. And the trusts of God and Men, vested in the King to these publique Beneficencies, have, do, and will ever produce to their Trustees, glory, riches, and serenity. These exhalations are returned in golden, silver, and milky showres; the *Via lactea* of Majesty. *Cæsari quoque ipsi, cui omnia licent, propter hoc ipsum multa non licent: omnium domos illius vigilia defendit, omnium otium illius labor, omnium delicias illius industria, omnium vacationem illius occupatio.* Now if the Office of Kings be to war for peace, and security; where, without it, they are not purchasable, or possible to be kept; then the means of effecting these are, *de debito*, the King's. Every end supposes a means. If the King be to do, he is to have wherewith to do: he is else but *togatum maucipium*. Therefore our Laws do own and recognize the Seigniorie of the King, to defend force of Arms, and all other force, against the peace, whensoever it shall please him. So declare the Peers and Commons, in full and free Parliament, 7 *Edw.* the First. Not thereby to out themselves of all subject-like Counsel to their Kings, in cases of War, to be entred upon: for, in those Cases, our Kings have chosen to take their advices, before their own personal ones: but the Law was so, and so then declared, to enable the Crown to do its proper office, in case of emergencies, either of Rebellion, or Invasion; and were they bound to wait the Convention of Counsels, tedious often before, and in their Meetings; Remedies would be impossible, and Villanies unhinderably successful.

(d) 2 & 3 E. 6. c. 16. 13 R. 2. c. 15. (a) 21 Jac. 2.

Seneca in Consol. ad Polyb. p. 754.

Habet Rex in manu sua omnia jura, quæ ad Coronam, & Laicalem pertinent potestatem, & materiam gladium, qui pertinet ad Regni gubernaculum. Fleta, c. 17. lib. 1. p. 16. edit. Scd.

serò medicina paratur,  
Cum mala per longas conualnere moras.

This is the rather to be touched upon, because it was once an old sore, and through the putrefaction of this hath made a many years confusion, and given being to a Leveling Monster, and a *Hydra*-headed Antique, which deserves to be caution'd against in the legal Assertions of the Truth in this Cause. For the King being *caput regni & legum*, all direction, protection, judgment of discretion, and severity is in him; and as the Law says, *Nihil potest Rex, quam quod de jure potest*; so is it a just Rule (saving incommunicable absoluteness) *Quidquid Jovi, id Regi licet*, that is, as unaccountable to the coercive power of Subjects are Kings, as God himself; the Deputy: as his Principal, though that of *Seneca* be also true, *Ad Reges potestas omnium pertinet, ad singulos proprietatis*. Yea, were not Kings exempt from these Shackles of Iron, and bale Metal, what glorious Nothings, and glistering Cyphers would they be? What pitiful Mercenaries would insolence, and *Plebeian* encroachment reduce them to: like that *Tartarian* Prince, they would truckle under the Usurpations of their Vassals, and be guilty of that easiness which is irreal. *Quod ad Religionem attinet, de qua inter vos disputari audio, vester Pontifex meus Pontifex erat; vester Lutherus, meus Lutherus.* So abhorred a degradation of Majesty, that no generous spirit would take such an unkingly Kingship.

Lib. 7. De Benefic.

Inhoff. Discurs. Politic. p. 91.

The Law then in the Chancellour's words, *Pugnare bella populi sui*, ha's this Interpretation, That the King is by Office to fight the Battles of his People; that is, by his people to battle, for the adjunct of propriety, ha's here but a sense of ministry, not causality; that is, 'tis not to fight the Wars of his people, as they are Warranters of, and Regents in it; but of his people, as they are those Instruments he fights by, and fights for, since the end of War is Peace, as it follows, *Et eos rectissime judicare*. This the Chancellour adds, to shew the amiable, as before he had the terrible Check of Majesty. So wisely ha's God provided for Order, and the tuition of the Magistrate's power, that between Force and Law it should be intemperate. Force supports Law, and Law moderates Force; were it not for punishments, we should be *Ravilliacks* to one another, *Homo homini lupus*; and were it not for Laws, Property would be determined by Might, and lame and helpless *Mephibeths* be popped off with nothing, though they are the rightful Heirs, and ought to be the real Possessours of their Rights. So that Laws are the Rules and Monitors of Kings, concerning their duties to God, in their demeanours to men. 'Tis true indeed, *Parem habere non debet Rex, nec multò fortius superiorem*

periozem in justitia exhibenda, ut dicatur de eo, Magnus Dominus noster, & magna virtus ejus. That Fleta asserts, as the King's undoubted right : but then he subjoyns ; Licet omnes potentia p[ro]ce[ss]et, cor tamen ipsius in manu Dei esse debet, & ne potentia sua maneat irrefrenata, frenum apponat temperantia, & lora moderantia, ne trahatur ad injuriam qui nihil aliud potest in terra, quam quod de jure potest. So Fleta, lib. 1.

Ἀριστοφῶσα.  
Ἰὼν μὲν ἀν-  
θρώπος θεός-  
τος & δὲ ὁ  
βασιλεύς.  
Crispinus apud  
Stobaeum, Sec.  
45. p. 324.

c. 17. I know that great is the indulgence of God to Kings, and vast Prerogatives ha's he vested them with. And to Kings, as the flower of men, hath he given rational principles of Sapiencie, to immure and protect his Donaries to them, and Kings would be necessary to their own, and their Subjects woes, if they should not employ to their preservations (in all worthy and wise latitudes) such Intrusts, and Commissions, by God and Laws delegated to them. But yet Fleta's counsel is from the unerring mouth

Nullius juris ratio, aut aq[ui]tatis benignitatis patitur, ut qua salubriter pro militate hominum introducuntur, ea nos duriore interpretatione contra ipsorum commodum producimus ad severitatem. Modestinus, lib. 8. Responsum.

and mind of Truth, Temperent igitur Reges potentiam suam per legem; qua frantum est potentia, quod secundum leges vivant; quia hoc sanxit lex humana, quod leges sum ligent latorem: & alibi digna vox ex Majestate regnantis est, Legibus alligatum se principem profiteri. So he, loco p[re]c.

King James's Speech at White-Hall, 1609. p. 531. of his Works in Fol.

It is sedition in Subjects, to dispute what a King may do in the height of his power, but just Kings will ever be willing to declare what they will do if they will not incur the curse of God. I will not be content, that my power be disputed upon: but I shall ever be wil-

ling to make the reason appear of all my doings, and rule my actions according to my Laws.

Διὸς πο-  
λεὶν δὲ ἡ  
δίακου πίν-  
των τῶν ὑπ'  
ἀσπὸν φύσιν  
δυσίω ἡ νό-  
μο, &c.

Princes then must not be remiss and negligent, but vigilant and distributive of their power to their Subjects; that's judicare, the act of Majesty, by example of, and authority from God. The Lord sitteth in the Congregation of the mighty, he judgeth amongst the gods. And this impartment of their power, they must make secundum jus & equum, as the Laws of their Government directs and advises, and that's rectissime eos judicare. For though Laws may be hard and unpleasing, yet, while they remain Laws, the people are to be ruled by, and the Prince is neither cruel, nor unjust, in exacting obedience to, nor in correcting contumacy against them. Though his goodness and conscience, in dis-

Diogenes Py-  
thagor. apud Sto-  
baeum Sectm. 46.  
p. 129.  
Lex scripta,  
quamvis dura, est  
servanda. Glos.  
ad Pauli verba  
lib. 5. ad Edic.  
Digest. lib. 3.  
tit. 2. p. 344.  
King James's  
Speech at White-  
Hall, 1609.  
p. 537. of his  
Works in fol.

charge of his place and power also it be, to cause their emendation and correction (if such they be) with all possible speed, and to proceed with all imaginable zeal to the deliverance of the people from the burthen and influence of their rigour on them: so wisely spake King James of happy memory. If any Law or Statute be not convenient, let it be amended by Parliament; but in the mean time, term it not a Grievance: for to be grieved with the Law, is to be grieved with the King, who is sworn to be the Patron and maintainer thereof.

Lib. 8. De Moti-  
bus c. 12. c. 10.  
p. 401.

And thus all gracious and beloved Kings have ever done, ruling not by Lust, but Law; not by absolute power, but by legal administrations: and this will properly call him, that so does a King. Ὁ μὲν γὰρ τύραννος τὸ ἑαυτοῦ, &c. Tyrants seek their own good, Kings the good and benefit of their Subjects, saith the Philosopher; and lib. 4. De Repub. after he ha's spoken much of Kings, as Keepers of those Rights, which Nature ha's annexed to men, and made them Defenders of, he concludes, Ἐστὶ δὲ σκοπὸς τυραννίδος, &c. that is, The Tyrant's end is benefit to himself, to suck the sweet, and eat the fat of Subjects: but the King's care is to profit and better his Subjects, by example and precepts of virtue, seeing they do things honest, and of good report. And that this is the second pillar of Government, and that which Kings are to look after, having by the Sword procured peace; if otherwise it was not attainable, is plain from the joynt consent of all good Authors, and Authorities of Scripture, Reason, and Practice; as learned Hopperus, and Ficinus on Plato's Politicks, ha's notably observed.

Καὶ ἐπιθῶν-  
ται δὲ πάλυες,  
ἵνα ὁβίε ἀν-  
τις ὡς βελί-  
σος ἐν,  
Xenophon. lib. 2.  
De Exped. Cyri.  
Libro unico, De  
Instit. Princ. in  
Argum. p. 527.  
Politic.  
Fleta in proëmio  
libri edit. Selden

I know there are some Parasitique Wits, that forge Arguments, to the subversion of legal Boundaries, as never made by God for Princes, nor reasonably to be commended to their practise; yea, that harmless, and, as I believe, it was intended, and is by Wise-men expounded, Rule of the Civilians, Quod Principi placuit Legis habet vigorem, they apply to the liberty of the King's Will, to do what he will with the lives, fortunes, and liberties of the people under them; a Device to blow up the very Root of Kingship, God's blessing on it, love of Subjects under it, and the content of that continual Feast; which

which a good Conscience makes to its Possessor in all the vicissitudes, and varieties of life. For Kings being but men, and so under the Law of mutability and misery, do need, how great soever they be, the prayers, fidelities, and assistances, both by purse, and person, of their Subjects, as often as their legal and necessary needs shall call for them; and if they that are to pay and serve, love not their Lord, they will part with their money but slowly, perhaps after the season be past, and serve him but coldly, him in shew, and his Antagonist in truth: 'tis love, alas! mixed with fear, both subtilly, and yet innocently blinded in the gubernative activity of power, that makes Kings secure and beloved. Take away these kind entercourses in this politique Marriage between King and People, and all the *Disdiapason* ceases, and the harmony becomes disconcerted.

Indeed, the pleasure of Kings is, in a sober sense, the Law; because Kings please to do nothing but Justice, the just Counsels of God being with them, *quod* Kings, and they knowing, that they are accountable to God, for the ryot of the man, against the King, in them, ought *so to demean themselves to their Subjects, as God does to the World, because God ha's made their Subjects to them, as the World is to him*; that is, since God ha's made them Lords, not to be disputed with, but by prayers and tears, by patience and resignation, they should carry as even and just an hand towards them, in providence for their good, in compassion to their wants and weakneses, in tenderness of their freedoms and securities, in desires to deserve their submissions and loyalties; as God does, whose mercy is, in this sense, over all his works, and who accounts severity his strange work. And as God can do no injustice, because he is essentially just, and all Justice is originally in him, and what is in us, is but by derivation from him; so Kings are to do nothing unjust, because not onely so far as they do it, they are inconform to God, but for that they are responsible for what they do to God, whose rectitude they ought to imitate. *Caveant igitur sibi Reges & Indices, ne conquerentes repellant, vel perverse judicent, ob quod in iudicium justis Dei corrunt, ubi iudex terribiliter discretus, & intolerabiliter severus, immoderate offensus, & vehementer iratus, cujus sententia immutabilis, carcer irremediabilis, tormenta sine fine,* saith *Fleta* notably. And while Kings remember this, and bring their dignities in credit by their virtues, not resting more on their Power to coerce, then on their Justice to invite their people to their admiration and imitation. *Hortensian* Laws, that translate power from people to them, restraining all from using it besides themselves, are no in injury, but advantages to the people; the wisdom of Kingly Counsel best knowing how to manage dexterously, and to purposes of Sovereignty, such entrusts: No, nor truly are such devolvings greater advantages to Kings, then to render them more capable to make their people happy, by their more affectionate and watchful eye over them for their good, nor is all the honour and support that love and loyalty in Subjects to their prince can express, more then the bare return of their Regal merit, who watch, and cark, and care, that they may be quiet and orderly under him, in order to God, the Sovereign of him and them: which makes me conclude Allegiance and Fidelity a most religious and reasonable service of God, through the Person and Government of the King; who, whatever he be, we ought to obey for Conscience sake, with gratitude to God's mercy, when a *David*, and a *Solomon*; and with patience under God's pleasure, if otherwise: considering, that as well evil men, as good in Kingship, are to be obeyed; because obedience is due to the Office, and to the Person in it, by reason of both the Person in the Office, and the Office in the Person, and that inseparably, and without distinction. Yea, if Kings should be misled by ill Counsels, and do the thing, that is not right in the sight of God, and in the sense of the Law, because God is the onely Judge of their actions, and the Law's Head is the King: Christian Subjects have no refuge to fly to, but Obedience, and Prayer to God, to turn his heart. *They must not curse the Prince in their thoughts, nor calumniate him in their words.* For as the former is Blaphemy and Sacrilege, so the latter is desperate Treason;

*Rex est νόμος ἐμψυχός.* Fornerius *ad legem*, 244. lib. De Verb. signif. pag. 526.

Ὁς Θεός ποτὶ κόσμον, βασιλῆς ποτὶ Θεόν, καὶ ὡς πᾶσι ποτὶ κόσμον, βασιλῆς ποτὶ Θεόν. Diotogenes Pythagor. apud Stobæum, Serm. 339.

Δὴ τὸν βασιλέα μνημονεύειν, ὅτι ἄνθρωπος ὢν ἐξουσίαν εἰληφεν ἰσοθέου, ἵνα προαίρηται κατὰ μὲν καὶ δία πάντων δὲ ἀδραπίνη χρεῖται. Philippus Rex apud Herodotum, lib. 3. Pythagor.

Lib. 1. c. 17. Art. 10. Ἀεὶ γὰρ καὶ δουπέρεχων τὸς ἄλλος ἀρεσῆ καὶ κατ' αὐτὸν ἀξιοκείνους τὸ ἀρχεῖν. &c. Idem loco prac.

Tiraquel in Alex. ab Alex. lib. 6. c. 24.

Calvin's Case. 7 Reg.

son; the Road to damnable and detestable Rebellion. For since God never made any other Judge of Kings but himself, pretension to reduce their Eccentricity, by being insolent against them, is in Gods, and the Laws account, but plausible enmity and intention

Seneca, Ep. 64. *Quam venerationem praeceptoribus meis debeo, eandem illis praeceptoribus generis humani, à quibus tanti boni initia fluxerunt, si Consulem vides, aut Praetorem quibus omnia bonor haberi soles faciam, equo defiliam, caput ad aperiendam, semitam cedam. Quid ergo? Marcum Catonem utrumque, & Lulium sapientem, & Soeratem cum Zlatone, & Lenoce, Cleanthem que in animum meum sine dignatione summa recipiam? ego vero illos veneror, & tantum nominibus semper assurgo.*

7 Rep. Calvin's Case.

*Rex nunquam moritur* Reg. Juris. *ἀρχὴν ἀνεκὴν καὶ ἀθάνατον καὶ ἀδίκωτον.* Adag. 89: Chil. 2. Cent. 7.

*Habeatur personarum ac dignitatum proportio, & cuius sit ubique virtutis modus, aquo peccata quod excedit, quam quod deficit.* Seneca, De Benef. c. 16.

Speech, 1616. pag. 551. *Ταῦτα τὰ ὀντη δὲ μάλιστα πικρῶν ἐστίν.* Philo, lib. De Agricultura, pag. 193.

*Πάντος ὀνδύμιας καὶ ὀβέξωος ἀπὸν καὶ ἐκείν, ἐνταὶ δὲ τὸν μέγαν.* Justinus Mart. Epist. ad Zennum, & Siren. p. 590. edit. Sylburg.

See the most learned Bishop of Worcester's Character of him, in his Sermon, at our Gracious Sovereign's Coronation, pag. 3, & 4.

to subvert them: the good King, our late Lord Charles the First, & Margaret, found it so. Never were more Protestations of love and loyalty worded, then some of his English-men made to him; who yet brought him to the cursed custody and power of those, who impiously, and to the eternal dishonour of God, and the Laws of Nature and Nations, murdered him, whom all good men venerate for a Martyr. Power then being the Ordinance of God, and residing divinely in the Person and Office of the King; Allegiance and Duty, in all the latitude of them, are by all manner of rights due to the King. And as nothing can make it cease to be due to the King, it being founded in the Law of Nature, and due by it to the King; who, though he may die in person, yet lives in succession and office, there being no Interregnum Chasm in England; so can no just expression of it be denied, without sin against God, and injustice to his Vice-gerent, who has power of his Body, as Head thereof, and ought to have homage from it, as the vital influence of the whole, and every particular in it; which I

thought good to write of here, to testify my abhorrence of those Levelling Monster Anarchique Principles; which, insatiating this Nation of late, produced so unnatural, and tragical effects of War, Disloyalty, and Irreligion amongst us: in which while, some loyal-resolved, and knowing subjects, asserted their duty, and to their eternal honour, suffered more, or less for it: more credulous beguiled, and misconducted ones, either wholly forgot it; or, in regard of the pressures upon them, did not so vigorously express it as they ought; which since God, I hope, and the King, I dare say, has in the majority, and well-meaningness of the seduced people forgiven;

I only remember here as a Caution against Relapse; humbly beseeching God, that both King and People may live in unity and godly love, *That as all good Kings in their Government must imitate God, and his Christ, in being just and righteous, David and Solomon in being godly and wise* (they are wise King James his words) *as they prefer their People's good beyond their own quiet and pleasure, as Philo says: Kings, shepherds of their people, do; so all good people must; and are onely good, when they do observe the Rule of Religion, Give honour to whom honour, fear to whom fear, tribute to whom tribute is due; that is, to the King, and to all in Authority, under him, and to evidence to the World, that while others live besides, they live according to the rule of Christian, and English subjection. And this, on both sides observed, will cashier all jealousy, for while both respectively, rule and obey according to the Laws of this Realm, the people will live orderly, and in peace, and the King will be able pugnare bella populi sui, & eos rectissime judicare.*

*Ut primo Regum capite octavo Clarissime tu duceris.*

Here the Chancellour produces to the Prince a Scripture-instance, in the great example of the wisest of men and Kings, Solomon; who being instructed by God how, as well as authorized where to rule, is the best pattern for a Prince's practice in his regal demeanour. And that Solomon here mentioned (for the eighth of the second of Kings wholly treats of him) is not a person less matchless, then is generally and truly presumed of him. 'Twill not be amiss to consider, what in him may be most eminent, most convictive of our Belief, of his supremacy above other men, either of his, or after times. And though comparisons are odious, and vulgarly, we say, there is no one man so accomplished, but there is another as excellent as he; yet since the Spirit of God, and all Authours Christian after him, has made him the Phœnix, *humana natura ornamentum*, 'twill be not lost labour to consider him.

Solomon then was a Prince born, the Son of King David, by Bath-Sheba his beloved Wife, a Prince Solomon was, called by this name mysteriously, in order to his causation

tion of peace, and introduction of the concurrent blessings with it, Plenty and Riches. For he made silver to be in Jerusalem as Stones, and Cedars made he as the sycamore Trees that are in the Vale in abundance, 1 King. viii. 27. and in order to his being a Type of Christ Jesus, the Prince of Peace, who brake down the wall of separation between God and Man, and brought life and immortality to light through the Gospel. A Prince Solomon was, wise as an Angel of God; so the Holy Text phrases him, so the Holy God endowed him: God that gave him leave to desire what he would of him, gave him love to Wisdom and Grace, to beg it as his choice, and to obtain it as his jewel: so wise, and so understanding a heart did God give Solomon, that all Expositors do agree him *ex omni parte beatus*, both as to speculation, and action. Tiraquel numbering the virtues of all Antients, and Moderns, makes Solomon, in wisdom, paramount to them all. Pineda ha's made a large and laborious Treatise *De gestis Solomonis*, wherein he makes every atome, and minute-particulate of him, a Mountain of Wonder. And Turrian is not behind him in the admiration of him. And no wonder: for if wisdom make a man's face to shine as it is, *Prov.* and as the Heathens acknowledged to the praise of her, *Ουκ εστι σοφια κλημα μιωτερον*, There is nothing more honourable then wisdom; because it is the Image of God, and that which gives the possessour of it prelation above others; as it enables him to know those things, that otherwise are hidden, and hard to men. So the Philosopher says.

1 Kings iii.

Lib. 5. De Nobilitate.

Lib. 6. De Philosoph. Princ. p.

ΕΙ τα εταχα λεπα γυναικων δυραμεινον, η μη παδεια ανδρασω γασκων, τυτον.

Aristot. Proemia Metaphys. In Pimandre Mercurii lib. 3. com 6. Dialog. 1. 5. 13. c. 1. De Veritate. p. 114.

In 1 Reg. iii. 12.

If Socrates, whom the Greeks thought των βεστων σοφιστας, the wisest of Mortals, made it his study amongst men, and his petition to the gods, to be wise; O amice Pan, & cetera Numina, date obsecro, ut intus pulcher efficiari; O thou Pan, and the rest of the gods, grant me, I beseech you, to be beauteous in soul, inwardly worthy; which Roscius enlarges, *Veritatis divina cognitionem petebat*; He desired knowledge of divine truth, which God onely was able to grant him, which onely a calm and well-tempered Soul was capable of. If Wisdom, which all Authours and Ages thought God in Man: if this, I say, were in our Solomon eminently, beyond the proportion of other Kings; and answerable; if not transcendent, to the endowments of other men, not Moses himself excepted, though Vatablus be of another opinion; and if this mass of Wisdom be evidenced not onely judicially on the Throne, but discursively in the Chair, to the admiration of all hearers; who being at his discourses from the Cedar in Lebanon, to the Hysop upon the Wall; and other his civil Precepts in the Proverbs, Ecclesiastes, and Song of Solomon, (though Grotius herein also much abates him, while he makes the Proverbs to be onely liber ελλογις, a compilement, like those the Emperours of Constantinople after him had, of all the select Sentences of those Heroiques that in time preceded him, and were Proverbial amongst the Jews.) I say, Solomon's works and words considered, will render him such an Non-such, as the Holy Spirit characterizes him to be. So true is that of a learned man concerning his Proverbs, *Neque ullum vel ex universo Proverbiorum numero reperias*, &c. That there is no passage in the Proverbs so inconsiderable, and ordinary in the words of it, but if it be rightly and thoroughly understood, conches in it some admirable piece of truth and Wisdom, worthy the most wise Solomon its Pen-man. So great, so wise, so much of mortal comprehension had Solomon; that, amongst men, the sons of natural propagation; no Socrates, no Xenophon, no Caesar; no Marcus Antoninus was greater, was like to him. He was of the quorum, quorum, quorum, to all that preceded him, or shall succeed him in the ordinary way, of Manhood; and therefore is most to be heeded, as he is *virorum scientissimus, & exemplorum angustissimus*.

Bayns in Co. 1. Prov. inter Cris. Sacr.

Παρι παντας ανδρασω βασιλδς ενλιτωτα] & η προσητις σφωτα] & as Gregory Naz. Orat. 33. in Eccl. cles. p. 749.

This for the Dignity of his Person.

Now as to the Divinity of his Prescript, in that which our Chancellour here instances, in the eighth Chapter of the first of Kings; which Chapter, having many remarkable passages in it, was purposely quoted by our Chancellour.

First, In it there is Solomon's regard to, and valuation of the Ark of God (the visible sign of God's presence) expressed in the Assembly of State, that he summoned to attend its remove, The Elders of Israel, all the Heads of the Tribes, and the chief of the Fathers of the Children of Israel, unto the King, vers. 1. 'Tis not fit any thing of Gods should be passed over without due honour, nor his Ark change his station, without the attendance of a decent Equipage: Princes that serve not Religion with all their might, are not worthy the blessings that attend it. Therefore, gracious King Charles,

E our

Eicon Basilic.  
pag. 212. art. 24.

our late martyred Lord, made a rare choice, *Nor could I follow better Presidents (said he) if I were able, then those two eminent Kings, David, and Solomon, not more famous for their Sceptres and Crowns, then one was, for devout Psalms and Prayers; the other, for his divine Parables and Preaching, whence the one merited, and assumed the name of a Prophet, the other of a Preacher. Titles, indeed, of greater honour, where rightly placed, then any of those the Roman Emperours affected from the Nations they subdued, it being infinitely more glorious, to convert souls to God, by the Word, then to conquer men to a subjection by the Sword.* Thus he.

Ver. 5. *All the Estates, that attended the Ark's remove, did it not more to observe the King's pleasure, then to testify their own duty; for they that went before the Ark sacrificed Sheep, and Oxen, that could not be sold, nor numbered for number.] Zealous minds think that the best service of God, which is most costly, as desiring to shew the truth of their heart in the bounty of their hand.*

Ver. 14. *Solomon blessed the whole Congregation, and the people stood.] 'Tis a good sign of accord, when Passions, and Prejudices, do not obstruct between Prince and People: when the one thinks himself not too high, to regard his meanest Subject; the other, shews himself not too heady, and humorous, to observe and reverence his Liege Lord.*

Ver. 23, 24. *Solomon the King solemnly pours out his Soul to God in prayer before the people, as not ashamed of the humility of a sinner, in the height of the state of a Sovereign.] Nothing debases Majesty but sin, nor disparages a King in his Peoples eyes, but flagitiousness: he can never miss acceptance with men, that first gains by prayer and humility acceptance with God: nor does he ever miss to finde God propitious, who seeks him with all his heart, and serves him with all his might.*

Ver. 29. *Solomon builds a magnificent Temple, which he devotes to God, and which he prays, that God would accept as his own.] 'Twas not the King's prayer, nor the bounty he had expressed in the costly furniture of it, that at all advanced those ends Solomon had in its designation: he intended it as a refuge to the peoples distress, and an oracular repertory, in which the secret of God's power and goodness should be (as it were) deposited, which it could not prove, unless God ratified it for such: therefore prays he to God to grant his Petition, and to accept those services, that he and his people should in that place perform to him. Good Princes would willingly bring God and their Subjects to an accord, and leave his blessing as the guard of their government when they are gone. There is no policy like that of Religion, which ever keeps God on its party.*

Ver. 55. *The King blessed the Congregation again after, as well as he had done before his prayer.] To teach Princes, that their love to their people, should be ever in their memory, and that Religion is the cement of their reciprocation; nor do the Laws of Holy Church lesson ought to Prince, or People, beside love, and duty.*

Ver. 65, 66. *Solomon keeps a Feast, to satiate the Peoples stomachs with his dainties, as well as he had spoken to the filling of their ears with pious Orisons, and devout interpellations to God for them.] To pattern Princes, to use all Baits to catch Multitudes; the soberer of them with the reason of good counsel, and serious kindness; the ruder sort by bounty, and pabulary plenty, which will make them love, and bless their Benefactor, and return to their quarters contented, as Israel did, v. 66.*

These are the main Poles, upon which this Chapter moves towards a fitness of directive influence on the Prince, for in that he ha's his life and breath from God, and even for his Crown, and Power, is but a Feudatary to the Almighty, who deals by Monarchs, as by Pismires, and exalts, or suppresses, as he pleases, in the Kingdoms of the World. And inasmuch as Kings have no readier way to preserve God their Tutelar, then by securing his rights inviolate, and by promoting the glory of his Divinity above all secular Projects, and extern conveniencies, as Solomon here did, and as Nature herself dictates to her very own Sons, not enlightened by Divine Revelation, or Scripture-Regulation, according to that *πρῶτον ἢ περὶ τῶν Θεῶν ἐπιμέλεια*, *The first care of Kings is that of Religion, and the Worship of God.* In that, this wise and worthy Monopoly of devoting to God the totality of our prime and principal affection and reverence is in this Chapter pithily and particularly set down; and that it conduces, being punctually observed, to so much felicity and greatness in the outward state, parados, and pomp of a Prince, it well deserves the perfection and distinct observance of him: and the Chancellor ha's done wisely and faithfully to direct him to it.



*Quare ut armorum, utinam & Legum studiis simili Zelo te deditum contem-  
plarer.*

Here the good old Chancellour wisely does not *non movenda movere*, as they did, who laid siege to supplant that which was sacred, as past their reach, and so ought to have been exempt from their attempt; but he presses the Prince to so equal a dividend of himself between Arms and Arts, that neither may have cause to boast of their engrossing him, or of his desertion of them; but both being ancillary to his Regal Endowment; might indifferently be Candidates to his favour, and to both have his love and leisure proportion'd. To love Arts, so as not to hate Arms; and to practise Arms, so as not to decline Arts: to handle the Sword, yet not so as to suppress the Law: so to remember himself a Prince, as not to forget himself a man; *homo ab humanitate*, a Christian man, *ferendo non ferendo*, a knowing man, whose right commenceth from God, and is conveyed and declared by the Laws of civil compact, recognizing hereditary descents, and is secondarily supported by Armies, and courage to manage them. *Ὁ νόμος πάντων ἐστὶ βασιλεὺς θεῶν τε, καὶ ἀνθρώπων πραγμάτων, &c.* The Law is the Queen of all divine and humane things, and ought to preside over all men, good and bad, to be the Leader and President, and the rule both of just and unjust. And thus a Prince, viewing himself, cannot more incline to Mars, then Mercury; nor affect to be onely a Souldier, and not an Artist, but practise both Veats of Cratory, and Prowess, as occasion serves, and as their warrantable and just advantages conducts them: which to observe, and be punctual in, argues the highest fruits of noble Institution, inclination, and God's Amen upon them. *Σοφία δὲ βονδείας σίους ἀνδρῶν τῶν δυναστανῶν ἐν πόλει μείζονα δύναται.* For Wisdom (saith Nazianzen) can instruct the City to do more then arms, and strength without it can: yea, whereas the indiscreet man, by his force, is rather presumptuous to take the first opportunity, though it be the worst, because he rests on his forces, and that arm of flesh, he is seconded by; Wisdom conducts him, *ἐν δεξιᾷ τῶν πραγμάτων*, to chase worthy methods to worthy ends, and to stay God's leisure, and not to precipitate a good cause by an ill managery. So that Father: and therefore so concluded Edward the Fourth of this Land his life, with the charge he gave the Lords and others, Trustees for the education of his Children, in these words: If you bring them up in virtue, you shall have virtuons Princes; if you set them to Learning, that Governours shall be men of knowledge; if you teach them Activity, you shall have valiant Captains; if they practise Policy, you shall have politique and prudent Rulers; if they be unlearned, they may, by flattery, soon be blinded, and by adulation often deceived; if they lack activity, every Creature, be he never so base of birth, shall foil and overthrow them like dumb Beasts, and beastly Dastards. Therefore I desire you, and in God's name, adjure you rather to study to make them rich in godly knowledge, and virtuous qualities, then to make parties to gratifie them with abundance of worldly treasure, and mundane superfluity. Thus nobly that King.

*Cum ut armis, ita legibus judicicia peragantur. Quod Justinianus Augustus æquissima libruæ mente in initio Præmii libri suo Institutionum ait, "Imperatoriam Majestatem non solum armis decoratam, sed & legibus oportet esse armatam; ut utrumque tempus bellorum & pacis recte possit gubernare.*

This the Chancellour marshals in this order, to make good what he had formerly gained: for, as in the former clause, he had made the Prescript; so in this he subjoyns the reason, Kings, as mix'd persons of Mercy and Justice, are Keepers both of Laws and Swords, the purports of both Tables; and, being such, are to practise the activities of both hands, to apply Law to their ordinary, and force to their extraordinary administration; since as Food and Physick preserve the Body-natural, so do Laws and Arms the Body-politique. Hence is it, that Synesius makes a well-instituted Warlike Prince most inclinable to Peace, because his generous Nature having circumvallated his power renders him *ἐκ ἰσχυρῶν ἀδικεῖν*, Not onely, not willing to do wrong; but by his power to prevent wrong from being done; yea, it inclines him not so much to lift up his head above men in self-magnification, as his hands and heart in solemn gratulation to God; both the God of him and his Government. For Kingship was looked upon in the World to be the Prognate of God, and a derivative from his Wisdom: and therefore, not onely the Scripture brings in God, asserting the Patronage of Kings, *By me Kings reign*, and Princes decree justice, but also Heathen Writers make their Gods the Proto-Kings; which Synesius avers to be the Position of the Egyptians, who are reckoned mortalium

Adag. 61. Chil. 1.  
Cov. 6. pag. 254.  
E: 2 m.

Chrysippus libro  
Περὶ νόμων  
citatus in Digest.  
Tom. 1. Tit. 3. De  
legibus Senatūs-  
que Consultis,  
p. 73.

Orat. 53. in Ec-  
cl. p. 763.

Holinghed.  
p. 709.

Ὁ πολέμικος  
παρὸς μάλλον  
εἰρημικός.  
Synesius lib. De  
Regno pag. 926.

Lib. De Provi-  
dentia, pag. 100,  
101.

*antiquissimi* : and this they did not onely to aw men into fear of their Thunder and Lightning, but also to bespeak them to a belief, and recumbency on them, as Fountajns of Justice, Sanctuaries of Refuge, Treasuries of Benefaction, not torvous, and of truculent aspect, but gentle and calm-look'd. Thence came those Positions of *Justinian*, *Regiam Majestatem*, &c. and thence transplanted into our Law; because, though Kings be, in a sort, Gods, and unquestionable by any but God; which was *Marcus Antoninus* his assertion seconded by all subsequent Authours, as *Grotius* ha's well observed, and as *Tacitus* long before wrote in those words, *Principi summam rerum arbitrium Dii dederunt, subditis obsequii gloria est relicta. The gods have given Princes supreme power, and allotted to Subjects onely the glory and praise of obeying them.* And though those, whom he mentions to be Kings in *Gaul* and *Germany* of old, who had onely power *precario jure regnandi & auctoritate suadendi, non jubendi potestate*, were but improperly called Kings, Kingship being a thing absolute, by, from, and under God; though, I say, these are, and ever will be loud truths, not to be descryed by the *Ojms* and *Zyms* of Anarchy, and popular insult; yet are they far from inflating Princes, beyond moderate, and well-featured Bounds. God ha's indeed subjected Subjects to Kings; but ha's he not also subjected Kings to himself? Surely yes, and they must give account of their people to him; and they will never have comfort in their rule, except they have learned to rule over their passions, and to be subject to the Prime Regent, God; who ha's deputed Kings to be Pastors and Curates to his Flock the less glorious Creatures, on whom the Image of God is stamped, as well as on the greatest Monarchs. And therefore, as Arms are to support Governments, so Governments are to express themselves by Laws, as the genius of direction to those Arms. For God never intending power to

be *bruta fulmina*, which carry more terrour then use: the Magistrate is not to use it, but for the punishment of wickedness, and vice, and the maintenance of God's true Religion, and Virtue; which when they do, they are true Executours of Christ's Will, and Bequests; lovers of him, because keepers of his Commandment; and his Commandment is to do justice, love mercy, and walk humbly with God.

This, this is the noble end, and noble expression of power, *ut intelligeret eose loco jam esse Regem suppositum, ubi sua propria persona oblivisci, & in unum Reipub. bonum incumbere deberet*: Giving the King to understand, that in being a King, he becomes a forgetter of what is his personal advantage, to make good his publique Office, saith learned *Hopperus*. And he that goes by this Canon shall be sure of Peace, and God's blessing in his soul, and on his proceedings. Yea, the fruits of it he shall reap in the love of his Subjects, *μόνη ἡ μάχισσα*, &c. the onely and chief protection and security of Princes. For though particular Accidents, and fatal Periodiques tended to in the old age of Governments, crosses this in the experience of its safety; yet *κατὰ τὸ πλεῖον*, and saving those occult causes, which are not to be defeated, the Canon is sure, that moderate Government is most durable; which is the reason, as I humbly conceive, the Laws of *England*, the best tempered Laws, for an Island, in the World, point to the Kings of *England*, the middle way of Government between absolute Will, and popular dependance; because thereby it puts both King and People into a felicitous state, which they cannot deviate from, without mischievous inconveniencies. "A Political Monarch governs his Subjects, as a Father doth his Children, by equal and just Laws, made by their own consent to them. Despotical Government is that of the *Turks*, and *Muscovite*; but Political is, and ought to be the Government of all Christian Kings; I am sure it is of ours: and therefore such a kind of Monarchy as ours is not onely the most just and reasonable, but the most plausible, and popular Government of all others: they are the words of that most Reverend and Learned Prelate the Lord Bishop of *Worcester*.

The King is absolute, what then, may he do what he will? is his pleasure a Law? As King, yes: for so he can do no wrong, because *quà* such, *Deum agnoscit superiorem & Legem*; but as mistaken, or seduced by passion, his Will is not the Law, but the Law his Will; and though men are no Supervisours compulsive of him, yet is there one greater then he; *Satis est expellet Deum utorem*: that's his aw and Monitor, *ad bene regendum*, the Subject is free: how? not to do what he list; no, not with his own: for he must so use what

Glaucillia Prolog.

De Jur. belli & pacis. lib. 1. c. 8.

Tacitus. De Morib. Germ.

Ὁὐκ ἔστιν ὁ ἀρχὴν μὴ ἀρχεῖν τα, Non bene imperat, nisi qui bene paraverit imperio. Aristot. lib. 3. Politic.

Ideo Imperialem fortunam velus humani Deus prapofuit, ut possit omnia, qua noviter contingunt, & emendare, & componere, & modis & regulis competens trudere, & hoc non primum a nobis dictum est, sed ab antiqua descendit profapia. Justinianus in Diplom. De Confim. Digestorum. pag. 16. Tom. 1.

Hopperus. lib. De Vera Jurisprud. pag. 335.

Synefius, lib. De Regno. pag. 21.

In his Sermon at the Coronation of our now blessed and beloved King. pag. 36.

what is his, as not to prejudice the Publique: so is the Law of Reason and Policy, *Re-publica praeferenda est privatis*, and so affirm the Statutes, 27 E. 3. c. 3. 12. 16. 28 E. 3. c. 5. 23 H. 8. c. 16. 25 H. 8. c. 13. 32 H. 8. c. 18, 19. 33 H. 8. c. 7. 35 H. 8. 4. 1 Edw. 6. c. 3. & 5. 2 & 3 E. 6. c. 37. 1 & 2 P. & M. c. 5. 1 Eliz. c. 17. 18 Eliz. 9. 1 Eliz. c. 15, 17. 8 Eliz. c. 3. 23 Eliz. c. 5. 27 Eliz. c. 19. and hundreds of others, which were made to restrain private emoluments, where publicly detrimental: Yet he is free from all restraints, *other then such as the Common Law, or the consent of the Nation* in Parliament. puts upon Him, his Body, Life, Lands, Posterity, and can appeal to the King's Court for relief, against all preter-legal courses against, or oppressions upon them. And hence is it, that the Government of England being so transacted by the Law, produces Justice, Riches, peace, and Piety, to a wonder. For the Monarch rules in it *optantibus cunctis*; and if in any thing he be incommodated, *non spem hominum excitat sed metum*; yea, so filial a love have Englishmen, for the most part, to their Princes, that what *Seneca* writes of the Prince, is true of the people, *Nihil esse eni quam tam pretiosum*, &c. *Nothing they have is so precious to them, as the safety of their Governour; for whom, as they will desperately hazard, so in his safety much rejoyce: so much they hold themselves related to his weal or woe.* And therefore, though true it be, that England is by some looked upon like Athens in Solon's time, as a mix'd Government, which ha's much of regulation to power in it; yet is it as true, that England's Imperial Crown being absolute, in regard of dependance on any but God, leaves the Monarch as well empowred with the Sword to propagate, and protect Justice, as directed by the Law, to administer Justice to those that need, and seek it.

21 Jac. c. 3.  
 Plowd. Com. 236. 2 Infit. c. 21. M. Chatta. p. 36.  
 Seneca lib. 1. De Clem. p. 627.  
 Grotius, De Jur. Belli, & Pacis. p. 64. lib. 1.  
 Stat. 21 Jac. c. 3. & 4.

The use then both of Arms and Laws, must be connected in a Prince, that he may be indefectuous: For as Arms are like the Muscles, that move and plump out the joynts and proportions of the Body, that they are symmetrical to the beauty of the whole; so are Laws like the Veins and Arteries vehiculary of the blood, and succulency into all the parts, by a right orderly circulation, and distribution. And the counsel Laws give, is not to suppress the use, but advise to the right use of the Sword: not to condonate through easiness great offences, nor to punish passionately, and with severity, small diffults, and errors of infirmity; but to give to every offence its proper chastisement, to arbitrate the Law's Prescript, and become its Patron. This, while a Prince promotes, he declares himself an *Agefilans*, a rare Prince. For of him *Xenophon* writes, *Ὁν δυναστέτητος ὦν ἐν τῇ πατρίᾳ*, &c. *That though he could do what he would, yet he did what onely he ought, professing himself to be under the direction of the Law, though not the subjection of it.*

In Oratione De Agefilao. p. 668

Our Chancellour then had good reason for his advice, since he caressed, and smoothed the young Prince into the love of the Law; fore-seeing, with *Timon of Athens*, that if he were onely a Martialist, he might be as *Alcibiades* was by him fore-seen to prove, *Patria exitio futurus*; so the Prince might, *patriis legibus exitio futurus*: since what Youth sucks in, it retains, and propagates in its Manhood, and Age: which considered, good Princes aim to do; as *Justinian* says, *armis decorari*, to use force as a jewel for shew, *ad faciendum populum*, to purchase dread and estimation; but, *armari legibus*, to speak favour and terrour to subjects, in Law terms, *per delegatos judices*, *non per ut legatos milites, more curiali, non militari*, By Pen and Paper, not Guns and Pikes, the Paradoes of Conquests, not the practice of Civil Governments, except on extraordinary occasions; and then, as necessary as Physick, in bodily distempers.

*Tamen ut ad legum studia fervide tu anheles maximus legislator ille Moses olim Synagoga dux multo fortius Caesare te invitat.* Here our Text-Master backs his former Argument by an example; he saw the Prince was earnest, as one through-warm with the love of Arms, and well he perceived, that his eager pursuit, which left no vein in him unstretched, but kindled, to a heighth of reaking; (for so *anhelare* signifies, *anhelare est eum ex cursu, & quovis labore vehementi crebris quasi singultibus spiratur & respiratur.* So *Columel*, lib. 2. c. 3. *Ante ad praesepia boves relegari non expedit quam sudare atque anhelare desierint.* Hence *anhelare scelus*, for doing mischief with might and main. *Tandem aliquando Quiretes Catalinam furentem audacia scelus anhelantem pestem patriae nefarie molientem.* And again, *Anhelans ex infimo pectore crudelitatem*, is *Tullie's* expression for our authority.) And therefore he endeavours to fix his mettle, and intend his earnestness on its right object, by propounding not onely a most excellent

Cic. in Catal. 24. Antor ad Herennium, lib. 4.

Opus est aliquo ad quem mores non sibi sibi exigant: nisi ad regulam prava non corriges. Aliquos habeat animus quod vereatur cuius auctoritate, etiam secretum suum sanctius faciat. Seneca Ep. 11.

Lib. 2. De Vita Moysis, p. 654.

In Ref. ad Quest. 25. ad Orthod. p. 317. edit. Sylburg.

Lib. 2. De Vita Moysis, p. 655.

Lib. De Vita Moysis, p. 602. initio.

Νομοδότης ὁ καὶ παρὰ νόμων ἀυτοῦ [Θεός] ὁ ὅτι πάντες οἱ ἄγγελοι καὶ οἱ ἄνθρωποι. Philo libro De Sacrificiis. Ab. ii & Cami. p. 153.

thing, but a choice example of one authoritative in the case, *Moses*; one of whom, no Story mentions, but either the Holy Text, or Histories from it. The grave Knight will not to *Moab*, and *Ekron*, not cull examples out of prophane Authours, while there are pregnant ones in the Book of God; his instance therefore is not in *Alexander*, *Cesar*, *Pompey*, *Marcus Aurelius*, *Trajan*, *Constantine*, or his *Henry* the sixth, though all great instances of Bravery; but his man of Mirrour is *Moses*: For, though they all in their respective times, were praise-worthy; yet none of them came up to the pattern in the Mount, on which *Moses* his face glittered to a transfiguration, and admirableness, hardly consistent with Manhood. For God who had provided him such a Nurse-Mother, as a King's Daughter; such a Cradle, as an Ark of Flage, and exposed him to the ruffles, and hazards, of merciless Waters, when but a Babe, onely able to cry under the burthen of a helpless Infancy, shadowed out what he was, in time, to be, who broke out upon the World, through such a Mist, and Cloud of Dangers; which, when dispelled by mercy, evidenced him to be what God appointed him, *Biondis* καὶ νόμοδότης, &c. as *Philo's* words are of him, both a *Law-giver*, an *Army-Leader*, and a devout *Sacrificer*, for the peoples relief and supply. Now *Moses* being such a person, is the example presented to the Prince, and asserted from the Holy Ghost, to be learned in all the Learning of the *Egyptians*, and mighty in word and in deed; which the Holy Text says of him, not as thinking those miraculous things that he could do, worthy him, or commending them in him, as they were feats, that the *Egyptians* doted on, and were superstitious about: for as *Iustin Martyr's* words are, Ἀνάξια δὲ τὰ ἐκείνα, &c. they were but small things, and not proper to commend a Prophet. But therefore the Holy Ghost adds, *Moses* was mighty in word and in deed; because δὲ ἐκείνας μὲν περιβλεψάτω, &c. because for those two excellencies *Moses* was famous with the *Egyptians*. As then the Chancellour's love to the Prince's proficiency; to his prudence in the choice of his example, to that end, is well-worthy him. He (wise soul) knew, *magnos magna decent*, that trifles became not those Eagle and celestiz'd souls, that steer Princes, which *Philip* of *Macedon* hinted to his Son *Alexander*, whom he found playing skilfully upon the Lute; Art thou not ashamed (quoth he) my Son, to be so skilful a *Musitian*. And thence singles he out to the Prince's imitation this *Seraphique* instance of both præcellencies, A man of Wisdom, for he was *Legislator* to the *Jews*; a man of eminency above others: for though they had other *Legislators* after him, yet he was *Maximus Legislatorum*, all their Legislation was after his model, and his precursing them: yea, and a man he was not of yesterday, who rose *malis artibus*, and, in the declension of the World, to be a *Law-giver*; but *olim*, when the *Golden Ages* were; when virtues had the upper hand of vices, then had *Moses* the dignity to be *Maximus Legislator*, *Synagoga Dux*; and fitly so too, for he had what *Philo* says, all *Law-givers* and *Chieftains* should have κατὰ τὰς περιστάσεις αὐτοῦ, the gift to excel in all noble endowments, suitable to his place and occasions.

*Moses* is then here mentioned in both capacities, both of a Civil Magistrate, and a Martial Conductor. A Civil Prince, in the exercise of Legislation; a Martial Leader, in his conduct of the people against their enemies. *Synagoga Dux*, of the former, not onely himself, in his books, testifies; but even our Lord *Jesus*, the truth it self, who puts him in the parallel with himself: *The Law was given by Moses, but Grace and Peace came by Jesus Christ*; and in another place *Moses* gave them a Law. Yea, the *Jews*, in Religion, in all Ages of the World, have testified of *Moses*, as their *Law-giver*. *Philo* *Judeus* writing of *Moses* his life, calls him *Νομοδότης τῶν Ἰουδαίων*, &c. as the *Law-giver* of the *Jews*, or the *Interpreter* of the *Holy Law* to the *Jews*. And to be a bare *Legislator*, is to be presumed great in place, grave in years, wise in counsel; for the Antients did ever account their *Law-givers* *secundi Dii*, and never took Laws from any Mouthes, but those which were extraordinarily gifted: yea, if it were reckoned a part of the policy of pristine Ages, to acclamate Laws, as the invention and bequest of the Gods to men, then sure those that were instrumental in their Productions, were none of the lowest of the people, but the best and bravest of them. And of that number was *Moses*, *Maximus Legislator*: not onely because he was *primus* & *primas Legislator*, and *primus* in unoquoque genere nobilissimum: For before *Moses* gathered the people into a polity, they lived in diffusions, scattered; and as sheep without a shepherd. But *Maximus*, as having many preparatory endowments to, and successes in this Legislation. God that

that called him to, fitting him for so great a Sphere, and making him adorn the Sparta he had appointed him to. *Ficinus* makes three endowments, or felicities, in a Law-giver, *Deum, fortunam, artem*; God above, success about, art in his maneries, and constitutions. *Philo* the Jew, reports *Moses* his first step to greatness (yea, and to this degree of it in Civil and Martial Government) to be his apprehensive Infancy; God made him all touch, taking every sparkle of illumination that was struck into him from his puiſne institution. The *Hebrews* story, that one day being at play with the Crown of *Pharaoh*, he threw it on the ground, and afterwards trod upon it: the King, and Spectators, took it to have an ominous preſage, and the jealousie of *Pharaoh* meditated revenge of the fact; but the King was advised to try, by some expedient, conducing to the discovery of the rise of it, whether Malice or Chance, and to forbear rigour in the interim. An Apple, they say, was on one side presented him, and on the other a Coal of fire, to see whether he would chooſe; and, they say, God gave him so subtle an Infancy, that he chose purposely the Coal of fire, and would have put it into his mouth; which, they say, he was led to do, to shadow the former Instinct, and under the notion of a Child, to serve himself for his future Exploits; and the Sages told the King, that there was no reason to put to death his Daughters adopted Babe, for an act of pure simplicity. For being in *Egypt*, and the *Egyptians* having *Greek* Philosophers amongst them, whom they had leured to them by reward; *Moses*, says he, by an *ἁμεία φύσεως*; an aptness of nature, stole all their Arts from them upon the first insight, and impartment of them: so that what other Lads were years in learning, and then but imperfectly, at last, obtained, *Moses* learned in a trice, and that exquisitely, *ultra quam non*, making good that, *πολλὰ δ' αὖ μεγαλάι φύσει*, &c. so excellent Wits learn Arts, that they add to them by learning of them. So *Philo*.

Com in lib. 4.  
De Legib. Platon. p. 821. and  
Moses had them  
all.  
Gaulmyn in  
opere Rabinico.  
De Vita &  
morte Moſis.  
p. 10. &c.  
Joseph. Antiq.  
Judaic. lib. 2. c. 5.

Lib. De Vita Moſis.  
p. 605.

Gaulmyn, p. 23.  
De Vita, & morte  
Moſis.

Another step to *Moses* his fitness, was his marriage to *Jethro's* Daughter: If we'll believe *Philo*, For God sayes he bringing *Moses* into his Father-in-Lawes house; Who as a Prince and Priest had plenty of all things, and especially of Cattle, *Moses* having committed to him the Government of the Castle, *πρὸς διδασκαλίαν, πρὸς τὴν ἡγεμονίαν*, was made more apt thence to rule men, as acquainting their inspectors, which those observations, vigilancies, and discreet demeanours which will be usefull in greater charges. But these and such like, are but the less eminent lustres of *Moses* his Additions; that which makes him *maximus legislator* was his ministrations to the Moral Laws Promulgation, his Sanctification to his employment Magistratique, by being in the Mount with God 40 days, and his knowledge of the mind of God in all the latitude of his Commission, and his fidelity in doing every thing according to the preciseness of his Entruſt, which God rewarded with such a reverence from the people, that as he was just to God and Men, so was God a zealous asserter of his worth, and an exiter of the people to an eternal Honour of him, and of his Memory in all Generations, and his Laws paramounted all other Law in that they abode the test and terrour of Conquest, and remain to the Jewes in Nation and Religion, the same that they were, even to this day. Yea, as when he lived, he was the peoples Oracle from God, and Orator to God, a favorite, who by the spel of his faith could charm, as it were, with reverence I write it, Omnipotence, and bind the Almighty to peace with his people, as God himself intimates in these words, *Let me alone that I may slay this people*: so when he was dead God concealed the place of his buryal to hinder their Idolatry, for surely they would have been superstitious to his memory, and erected an Altar near his grave, that was so real a numen to them when he lived, and this God knowing, prevented them by concealing it, yet, I say, this *Moses* so adored by the people, and so victorious in the Conduct of them, did render himself *Maximus legislator* by his self-denyal, he made no family, he gathered no wealth, he commenced no regality from this advantage, but served God, and his charge, leaving the compensation to the issue of God's appointment. He looked more at God's glory, then his own greatness, at the peoples peace, then his progenies preferment; and when God revealed to him he must die, introduced no Son or Creature of his, whom favour, not virtue, fitted to succeed him; but generously, and justly, deputed *Joshuah*, one parted, and graced suitably to the Office he admits him to, and him, full of the Spirit of Wisdom. He charges, in the sight of all *Israell*, to be strong, and

Τὰ δὲ τῆς  
μοῦς βεβαία  
ἀσφάλεια,  
&c. *Philo*,  
lib. 2. De Vi-  
ta Moſis,  
p. 656.

Ut Deus in rebus inferis rebus procreandis non  
sua, sed nostra causa agit, ita & vicarius e-  
jus Princeps Dominum suum imitatus, apud  
quem omnium afflictionum suorum rationem red-  
dere debet, non de se periculat, sed de tota  
Reipub. universè sollicitus esse debet. Hopperus,  
lib. De Institut. Principis.

of good courage; yea, and as a Prophet, assures him God will be with him; as it is, *Deut. xxxi. 6, 7.*

So that *Moses*, all things considered, was rightly termed by our Text-Master, *Maximus Legislator*, no Law-giver before him; no Law like his in duration; no Justice so unspotted as his; no Justicer so venerated as he. The Friend; nay, in a sort, a fellow-Commoner with God (as I may reverently write it) at the Mese on the Mount; or rather the *Master of Requests*, admitted near, when all were to keep off the Mount. In sum, *Moses* was prefigured *Christ*; not onely as all Types were, but as he mostly, if not solely, was in the Office of Ecclesiastical despotiqueness, and indisputable Legislation.

Hitherto we have seen him in the Temple as the Corner-stone, and Earthly Master-Builder of the *Sanhedrim*, or *Church-Fabrique*: Now let's consider him in *Tentorio*, as a Magistrate Civil, *Synagoga Dux*, that's a Leader of the People; for  *συναγωγή* signifies any Convention of People; yea, the very *actus Congregandi* is called  *συναγωγή*: so *Thucydides*, lib. 2. uses  *συναγωγή πολιμυ*, and *St. Basil* calls *Cumulus aceruus συναγωγή*: so *Alexander Aphrodisiensis* calls plenty of milk  *συναγωγή τε γαλάκτος*.

Homil. 4. in Hexameron.

Lib. 1. c. 1. Sum. De Ecclesia, - Lib. 1. De Vita Moÿs, p. 640.

*Beza*, indeed, upon the Tenth of *Matth. 17.* where mention is *συνέδριον ἢ συναγωγήν*, makes a distinction; the *συνέδρια*, he says, are *gentium*; the *συναγάγαι* *Judeorum*, but still he agrees, that the word *συναγωγή* signifies a collection; and so *Tur-recremata* confirms it: so that *Synagoga Dux*, is, but in *Philo's* words, *ηγμων των Εβραιων Leader of the Hebrews*. And that this he notoriously was, the Holy Text attests frequently: For, besides God's miraculous endowment of *Moses*, to convince *Pharaoh* of his message, for the People's enlargement out of *Egypt*; upon which accompt he is called *τω θεώφιλη μυθεΐς*, &c. the *Friend of God* initiated in the *Holy Mysteries*. God made him the People's General too in the Wilderness, and at the Red-Sea; yea, after all to *Canaan*: for he it was, that brought them to that promised Land, though he himself entered not with them into it. Happy *Israel*, that had such a Prince as *Moses*,

Lib. De Cherubim, p. 116.

Lib. 1. p. 626.

Lege Gaulmyr. lib. De Vita & Morie Moÿs, offavo.

*Faithful in all Gods house, loving to all Gods people, προς παντα μωσα, &c.* as *Philo's* words are, *a circumspēct man, equally virtuous in small and great affairs, not greedy of gain, not thirsty of applause, but intent onely upon great advantages to God, and the people, and leaving the lesser practiques to lower minds*. This, shortly was *Moses*. Thus happy was *Israel*; yea, and thus happy also was *Moses* in *Israel*, God accepted his integrity, and rewarded it with a renowned life, and a lamented death. 'Tis from the wisdom of the World, that men study rather to be great, then good; fortunate, then honest. That heart which is liquored with grace, and ha's the tincture of God on it, will stand upright in the Circumvallations of Temptations: Successes and power cannot palliate lawless liberty, where Gods fear denies it. To deal deceitfully, and take men in the snarcs of their credulity, was no practise of *Moses* the Chieftain of *Israel*, Gods Friend. For though *Moses* was sole in power, yet is he no oppressour of the people: No Lord over them against their wills, and to their out-cry; but bears with their Murmures, sympathies in their grievances, watches to prevent their annoyance, buries his own lustre, in the reputation of well-deserving, and ha's no other Monument, then their Memories, in their Generations, and Gods entry of his merits on the Record of his Scripture. And hereupon *Moses* being so unparallel'd a Magistrate, may well be the example of the Prince, to learn both how to govern artlily and martially; yea, and have a cogency on the Prince, *multo fortius Casare*. For since *Moses* was no soft and trim'd Gown-man, onely as some are, who yet do more by counsel in their Studies, then Armies do in the field by action, undisciplined and unadvised, but a valiant Warriour, as not onely his own Books declare, but as *Josephus*, by tradition, reports; infomuch, that when the *Ethiopsians* invaded *Egypt*, and the Oracle directed them to have their Armies led by an *Hebrew* Captain, to stop their progress. Which being observed, and *Moses* chosen for the man, and he so miraculously, and mantully doing it, as *Josephus* at large relates.

Anriq. Judaic. lib. 3. c. 11.

Our Chancellor had high reason, to urge this example, rather on the Prince then *Julius Caesar's*, because more energetic and potent; more bold and superative in the nature and proper operation of it. For, alas! *Julius Caesar*, which I suppose he may obliquely refer to, in regard he was a Temporary Master of the Western World, having subdued *Germany, Gaul, and Britain*, and dreamed, he was uniting the Empires of

of Heaven and Earth together, was but a little time Lord of those Conquests, obtained them by blood and oppression, and of them had far less then *Alexander* had atchieved, before he arrived at *Caesar's* age: yea; what *Caesar* had, he held with Troubles and Conspiracies, and at last paid his life for the revēge of his affectation, wherein the Senators were Assassines, and the Capitol the Slaughter-house: nor did *Caesar* obtain ever after such a Marble of himself by the largels of Posterity, as *Constantine* the Great had, *Quod instinctu divinitatis, mentis magnitudine cum exercitu suo, tam de Tyranno quam de omni ejus factiōne, uno tempore, justis Rempubl. ultus est armis.* No such Trophy to his memory, but a tacit reproach of his practice, in the Inscription under *Brutus* his Statue in after-times, *utinam nunc viveres*; *Caesar*, I say, was potent, but cruel; prevalent, but injurious; and this made him execrable, and envyed. But *Moses* was an Heroick that might have had what he would, God in wrath would have extirpated *Israel*, and multiplied *Moses* into a great Nation: but *Moses* interposes with God; and mediates for *Israel*; yea, was contented to be onely what God cut him out for, and general good would quietly permit him to be.

And herein he was himself *fortior Casare*, and his example ought to invite more it-refragably then *Caesar's* did, because *Caesar* could not deny himself, taking what was takable by him. No sooner had the Common wealths divisions weakned opposition against him, every potent Patrician standing single, and the union of them refracted and subdivided into inconsiderable nothings, but *Caesar* puts in for the whole: No Re-conciler he; for then he had been *felo propostis*, but a subtile tent rather to keep the Wound open, till at last he and his party marched in at the breach, Victors; and when he was in possession, then he wins those by love, that would be made loyal by it, and destroys those that were implacable; and in this he did in his Generation wisely: But *Moses* had leave to chuse, and refused; might have been the Prince, but continued still the Captain of *Israel*; yea, when Fame surrounding his actions, and consolidating the People to him, rendered him more then probable, sure not to be defeated of their Acclamations, and complying with his establishment, in all this croud of tryal, which bulges and swallows down ordinary mens continencies, and ingenuities. *Moses* stands firm to his veracity, and therefore in all things excels *Caesar*, as a Prince, and a Souldier: yea, if *Justinian*, from whom our Chancellour cites the pre-alleadged Position, be the proper, *Caesar* he means; yet *Moses* will still be more swasive with a good Prince then he. *Justinian* did but employ his *Trebian*, to collect the Laws of other men famous in their Ages, that is, to bring them into a body, and to render them useful to all occasions, of justice, and accommodation; and in this work was, though famous, yet fallible. But *Moses* was taught of God to know, and approved of God, to practise the right duty of a King, *ex utroque Caesar*. And that this is so, the testimony of the seventeenth Chapter of *Deuteronomy*, the eighteenth, nineteenth, and twentieth Verses following will demonstrate,

*And it shall be, when he sitteth upon the Throne of his Kingdom, that he shall write him a Copy of the Law in a Book, out of that which is before the Priests, the Levites; and it shall be with him, and he shall read therein all the days of his life, that he may learn to fear the Lord his God, to keep all the words of this Law, and these Statutes to do them; That his heart be not lifted up above his Brethren, and that he turn not aside from the Commandment, to the right hand, or to the left; to the end, that he may prolong his days in his Kingdom, he and his Children, in the midst of Israel.*

Which words contain two parts, *Actio* and *Finis*; the King's Action, *He shall write him the Copy of his Law in a Book, which is before the Priests, the Levites; and it shall be with him; and he shall read it all the days of his life.* And then the King's end in this, as prescribed by God, *That he may learn to fear the Lord his God; to keep all the words of this Law, and these Statutes to do them.* This is the Analyse of them; but not to be passed over: for though I wove the Rabbinique conceits, that this Law contained six hundred and thirteen Precepts, three hundred sixty five affirmative, the number of the days of a year, and two hundred fourty eight negative, according to that computation they had of the joynts in man's body, which they perhaps conceived the King was to be remembered of, that he might know his life consisted of days, and his body of joynts, which might soon be severed from their contribu-

*Leges Justinianum in confirmatione digestorum ante Tom. 1. P. 27. & seq.*

*Tradunt Judzi circa hunc locum, quā ratione, modo, & ordine & in qua item membrana quo denique atramento liber legis sit describendus. Fagius in Loc. Lorinus also reproaches the Jews for this out of Amster.*

tion to life, and government acted in it. To omit these, and such conceits which learned men have, the Holy Ghost's drift is, to teach us: First, the order of God's dispensation to Majesty. He first gives them a Throne, and settles them in it; so 'tis their right. And then he *shall write him the copy of this Law*. Princes duties in their Oaths, Examples, and Rules of Restraint, are subsequent to their Titles, not to puff up Princes in a contempt and disesteem of their Subjects, whom because they depend not upon, they may use as they list; but to lesson Subjects to look on Majesty, as God's Vicarage, no Creature of theirs; First, he is seated in his Throne, then minded of his Duty.

Secondly, the obligation of Princes, as they are *Deo subditi*, and *vice Dei regnantes*. First, to endeavour their own accomplishment, in this literal Prescript, to be able to write, that they may write this, that God commands them to rivet on themselves by such means. I confess, possible it may be, that a Prince may be letterless, hate, and be wholly ignorant of letters. Some have been such, and such not unworthy Princes in their actions: For that their Memories being vast, and their Passions keen, as by the latter they might be impatient to write, as well as impotent; so by the former, possible to reap the fruit of writing without writing; and the Spirit of God not so much looking at writing, as the means; as at remembering to do the end: I confess, 'tis possible much of the mind of God may be here observed by Princes void of letters; but yet in that, Writing is the probablest way of durable fixing, and the Holy Ghost specially enjoins it, it were good, nay best, the letter of this Scripture should be observed, that thereby Princes may know the Laws of God, and of their Government.

*Statim inito regno  
sua manu Legem  
describat prater  
illam quam pri-  
vatus descriperat  
ut intelligat se ad  
observantiam - le-  
gis obstrictiorem  
privatus esse. E-  
gius in Locum.*

Secondly, in writing themselves, not by Secretaries, and other hands, then their own; but in their own Characters, the Book of the Law; that is, a Copy of the *Autographon*, that lies with the Priests of God; and that so written under their own hand, to deliver to the Priest to be kept, *inter sacra Dei*, as God's evidence, signed and sealed by him against himself; if a violator of it, and the counterpart thereof to have from the Priest, signed by him, as the Charter of his practise. This I conceive is the meaning of the Text, and *Lorinus* is of the same opinion, though I know others think the contrary; because 'tis said, it shall be with him, which his Copy delivered to the Priest, they say, cannot be. *Cajetan* reads this clause, *Scribet sibi emendationem legis hujus accipiens exemplar à Sacerdotibus Levitica Tribus, de exemplo optime, etiam punctis & lineamentis emendato ad differentiam vulgarium librorum in quibus lex non exactè Scribitur, & ut ad amussim scriberetur exemplar à sacerdotibus habendum fuisse*. And *Fonseca* follows him, adding, that probably this exemplar with the Priests was that, which *Moses* wrote; out of which, the Book found by the Prophet *Helchia*, in the Reign of *Josiah*, was written. But I rather conceive the former (yet with humble submission, yea, and without exclusion of the latter) because I suppose thereby the greater and stronger testimony lyes against the King, in case of violation by oblivion, since as the Gospel says, *Out of thy own mouth will I judge thee, thou wicked Servant, and perverse*. So from thine own hand may God say to Princes, *shall your sins be proved and reprovèd: Offendam digitum, & debitum*, God marshals then our faults effectually, when Reason condemns the violation of Religion.

*Describi Curabit,  
v. 18. Habebat.  
autem teste R. S  
duos libros legis  
unum qui repositus  
ad servabatur  
in archivis, &  
alium quem secum  
portabat. Dicitur  
in Loc.*

*2p c. 17. v. 19.*

Thirdly, in reading what they have written, and that not once, but often; but always where duty renews, memory of it must be renewed; therefore we write that we may read; therefore read, that we may remember. To write, and not to read; to write on the Sand, or in Air, or Water, is to write in shew, but not in deed; for all's lost that's so trifled: those fusile, and unstable Elements, are not adopted to tenacity, and therefore are not the grounds on which we write. Men write on Tables, Trees, Pillars, Parchments, Papers, Metal, and on these they are legible thousands of years, even from *Moses* his time till now, above six thousand years; whereas then the Prince is to write, 'tis to write *librum è libro*, the Copy, as the Original. *Cajetan* makes four fruits of his reading. First, *Ut Deus timeatur*. Secondly, *Serventur legis precepta omnia*. Thirdly, *Non elevetur cur ejus supra alios*. Fourthly, *Prorogetur imperium Regis & filiorum*. God commanded the Law to be written that it might be read, and Princes are commanded by God to write the Law, that they may read it often, and affectionately, with resolution to do it at all times, in youth and age, in prosperity and adversity, in *Israel*, and in Captivity, and in all latitudes of impartiality, according to the direct and pat requiry of it.

And



And then lastly, he must read it with a resignation of himself to the power, and a resolution in himself to the practice of it. For so much onely we know aright, as we practise accordingly, That he may learn to do all that is commanded therein; that is, that knowing God the Commauder, and all things accumulately, and copulatively, his command; and himself, though a Prince, not exempt by Prerogative from his duty, may with a ready Will, and unalterable Resolution, perform the Duty enacted by it. This is in short, the sum of this Clause, of which yet our Chancellour has a quotation more succinct in the subsequent words,

*Quod exponens Helinandus, dicit, Princeps ergo non debet esse juris ignarus.*

This *Helinandus* was a French Monk of the Order of the *Cluniacenses*, he lived about the Year, 1200. and *Possennius* says he wrote many things, as forty eight Books of the History from the Creation; of the reparation of lapsed man one Book; Sermons, Epistles, &c. *Vincentius Beluacensis* also writes of him, where in his works this passage is, I know not; nor indeed have I ever seen the Authour; but that it is in them, is more then probable. And his Exposition of *Moses* his Directory, I take to be very genuine and nervous, suitable both to the Holy Ghost's intent, and his amanuensis's Language. For a Prince being *caput Regni & legum*, ought to have in him those vital and animal accomplishments, that may in the nobility of their distribution; supply all the dependents on him. For, as where there are corporal defects, and monstrosity of parts in them, they are thence lessened in the World's eyes, and do all things with much disadvantage; so much incommodated are they from their minds plebeity. It was a sawy, and insolent *Satyre* of the Antients; *Rex illiteratus est asinus Coronatus*: but yet it has the truth of that Moral; *That Kings unlearned are unlike themselves*. Not Gods descended in the likeness of men, but Kings descended from the best and most conspicuous of men to be their vassals censure, and the diminutions of the very bruits of people. And therefore *Philip* had good reason to bless the Gods; that his Son *Alexander* was born to be bred under *Aristotle*, because there was great probability, under so noble Institution, he would become worthy his Father, and Tutor. For Parents generate their Sons, men in nature, and to be such in Title as they themselves are; but Tutors form them, to be worthy and virtuous men, by good Precepts, and lovely examples of virtue presented them. And hence it is, that next divine grace; solid and rational Intellectuals frequently actuated in Affairs, according to the limitations of Religion, the nature of times, the coincidence of circumstances, and the Laws of Respective Governments, declare Kings Kingly qualified. For knowledge of duty consists not wholly in the Theory of their Nature, but in the maturation of their Conceptions, to a subserviency to their end. And therefore, though Kings may have less proportions of speculative abilities, not so clearly defining and canvassing of Justice and Courage, as professed Doctours in Artly Faculties may; yet they do ever in their aims, and when they do like themselves, excel them in the noblest import of Justice, that is, in distribution of it as a blessing, resulting from their Crown, as, the *Flos Solis* which is enlivened and made conspicuous by it. For the chief end of Government is Justice, and that being *Constans & perpetua voluntas jus unicuique tribuendi*, which refers to action, according to that of the Civilians; *He is not just, who is not actively such in the disposition and resolution of his mind and purpose*. Princes are said to be knowing in the Law of their Government when they observe Laws, and propagate Justice; according to humane possibilities, and regal prudencies; *Rex, cum sit Judex, sententiam diciturus assumat sibi tum prudentiam, &c.* Since the King is Judge, and as the living Law determines right and wrong, it becomes him to be prudent, that he err not in judgment; and just, that he proportion punishments and rewards, according to the natures of the actions they refer to, in which no favour or affection must be shewed, that Justice be not maimed, saith *Petreius*. Now because the Laws of God and Governments are the best Magisteries of Princes in this noble Craft, and heroick exercise of Conscience, the Chancellour here puts the non debet upon the Prince, telling him, that whatever he pretermits, this he must not do, knowledge of the Law; because without it, a Ruler cannot be just, a People not be happy, a Government not be durable, a Governour not be renowned. The Cabalists

*Possennius in Apparatu Sacro. P. 721. In Speculo Historiali, lib. 30. c. 108.*

*Quo genere otiosus es, hoc fidem exsolvo. Seneca. lib. 5. Benef. vo. ad speciem veri componite animum, & dum hinc estum dicitur quicquid est id quod nomine honesti iustatur, id colite. Idem eodem loco.*

*Ex iis autem qui sunt, eligamus non eos qui verba magna celeritate precipitant, & communes locos volunt, & in privato circulantur, sed eos qui vita docent, qui cum dixerint quid faciendum sit, probant faciendo. Seneca, Ep. 52.*

*Omne jus aut consensu fecit aut necessitas constituit aut firmavit consuetudo. Modestinus, lib. 1. Regul.*

*Totum autem jus consistit aut in acquirendo, aut in conservando, aut in minuendo, Ulpianus lib. 2. Institut.*

*Iustus non est nisi qui constanter, & firmo animi proposito quod iustum est, agit. Reg. Jur.*

*Cum lex in preteritum quid indulget, in futurum vetat, Ulpianus, lib. 35. ad Edictum. In notis in Philonis, lib. De Officio Judicis. Minime sunt miranda qua interpretationem certam semper habuerunt. Paulus, lib. 4. ad Plautium.*

do

do hold, that Injustice is one of the underminers of Thrones, and that Canker that eats out the vitality of their permanence, and disposes them to, and puts them into Revolution and period: yea, he must needs be unnatural to his good name and perennity, who does not labour to know his duty, and perform it, as rightly he ought, so many being concerned besides himself (as in case of Kings there are,) and in the rectitude, or obliquity of his actions. *Helmodus* tells, that *Harald* was so famous a King, *Ut Leges & jura statuerit, &c.* That the *Laws and Statutes* he made were for the reverence of their *Maker so venerable, that both the Danes and Saxons religiously observed them.* And since him, those who have followed most the steps of serious knowledge, in strict Justice, have been most renowned. For as to be a man, is to be endowed with Reason and Understanding; so to be a King, is to be knowing in the Law of Nature, of Nations, of his Polity, *hec tria sunt omnia*; and in these, *non debet princeps esse Ignarus.*

Lib. 1. c. 15. Histo  
ria Sclavorum.

*A mundi origine & primordio nobiscum  
nata est. nunquam interitura. Quam si seque-  
rentur nostri jurisperiti ne tabulas dicam &  
legulejos potius non profecto interfecissent, &  
mandros quotidiè & identidem de tondere-  
mur. Lilius Gyrald adn literas.*

Corvinus, lib. 1.  
Instit. Tit. 2.  
Gloss. in Pandect  
lib. 1. Tit. 1. E.  
Quod natura, p. 55  
Lib. 13. De Juri.  
Sprud. c. 2. p. 95.

Lat. De Aristot.  
Dogmat. everfione  
54. c. p. 116. p. 119.

In Cohoriat. ad  
Gracos, p. 8.

Budæus in Pan-  
dect. priores, p. 51.  
Impress. Basileæ,  
1534.  
Fornetius in Le-  
gem 4. p. 122.  
De signific. Ver-  
borum.

View of the Ci-  
vil and Eccles.  
Law, p. 20  
Digest. lib. 1. Tit.  
1. De justitia &  
jure, p. 56, 57, 58.

Florentinus lib. 1.  
Instit. lege An-  
nor. loc. ut supra.

¶ See K. James's  
Speech, An. 1616  
Star Chamber,  
p. 54. of his  
Works.

Alciatus Brech.

The Law of Nature is that νόμος ἀρχαῖος, that which is implanted in all Creatures. This, *Corvinus* says, is *collecta ex præceptis naturalibus, &c.* collected from *Natures Precepts, taught by Nature to all Creatures*: Such as are *Conjunctions of Creatures, male and female, for preservation of their kinds, self-preservation, and all things incident thereto, &c.* These *Laws of Natural Policy* God has chafed upon the universal nature of the Creation, animal and sensitive, and the Characters of them are indelible: the World must cease

when they cease, which under their prime cause, are the means of its continuance, in its noblest end, and parts external, living Creatures. This Law of Nature some of the Learned do make fourfold, *Lex Mosaiica, instinctus natura, jus gentium, jus prætorium.* *Possévinus* makes it of a five-fold nature, *Natural, Supernatural, Mosaique, Divine, Private.* Yea, they make the Law of Nature to consist in those Precepts which are purely good, both as to doing of good, and avoiding of evil; according to that rule of *Justin Martyr*, ἡ φύσις αἰὲν περὶ τῶν ἐνδεχομένων τὸ βέλτιστον; and in another place, τὴν φύσιν μὲν ἄνθρωπος ἐπιτελεῖ. Now this Law of Nature being explicated in the Law of *Moses*, and added to by that nomothetique, and despotic Authority that *Moses* has, as the πρῶτος νομοθέτης, (as *Diodorus Siculus* testifies) he had learned from the *Egyptian Priests*, as the truth of their Tradition (as *Justin Martyr* observes.) The *Laws of Nations*, of what kind soever, are but the prudent Extracts, and divine Comments upon this Text; and the improvement of that natural Sagacity, and political discretion, which men of parts, place, and experience express according to the entrusts of God with them. And this being in all places, and in all ages, one and the same in the main, and chief tendency of it, which is preservation of justice, and propagation of humanity in all the emergent and occasional branches of them, which diversify and spread out into infinities, as men and things dilate and increase, the Learned call the Law of Nations, as the common Principles which correspond man with man, *jus gentium*; and this is defined to be in *præceptis & communibus notionibus homini peculiariter insitis, vivendi reclamatione rationera continentibus.* This consists in distinctions of mens Rights, building of houses, erecting of Cities, societies of Life, judgments of Controversies, War, Peace, Captivity, Contracts, Obligations, Successions, and the like; as that judicious Gentleman Sir *Thomas Ridley* has to my hand observed. Now because this Law is the same to all, in all places, at all times being the instinct of humane nature, and a donary of Gods, the *natura naturans* to the *natura naturata* in man, therefore 'tis called the Law of Nations, since it links together humane Natures and Societies so firmly, that there is no unluting or discenting them, but by a ryot and fray against the peace of God's primary position of them: nor can Wars and Animosities justify themselves of any better *Origen* then by blows, and monstrous heats, against the serene and just cognition, and alliance of man with man, and the common principles leading them to union and amity. But this being not the ordinary notion of *jus gentium*, I proceed to honour it as the custome and observances of learned and reduced Politics, which of rude are become civil; of Ethnique, Christian; of discordant, harmonious. And so by the *jus gentium*, the \* Imperial Laws, ordinarily called the Civil Laws, are to be understood, these being the Laws of particular Constitutions, yet are so composed by, and conform-

& Forner ad legem 10. p. 28, 29. Gajus, lib. 1. Instit. c. 9. D. gest. lib. 1. Tit. 1. p. 60.

ed to the Laws of Nations, that they are deep Channels of Justice, Wisdom, and Variety, and are saved in the opinion of the plurality of civiliz'd men, *Jus civile est quod neque in totum a naturali vel gentium recedit, nec per omnia ei servit. Itaque cum aliquid addimus, vel detrahimus juri communi, jus proprium, id est, Civile efficitur*, saith *Ulpian*. Now that the aforementioned Laws do differ in the objects they respect, the Law of Nature suits, *omnibus quidem hominibus, sed non solis*, because it takes in bruits as well as men. The Law Civil agrees with men onely, but not with all men (for that we in *England*, and in other parts, more or less, it is excepted against in the Exemptions and Salvo's that are allowed against it) but the Law of Nations suits *omnibus hominibus & solis*; and the Civil or *Roman* Laws being the amplest and oldest System of humane Laws, are highly to be valued, and so are in the Empire, *Non oportere jus civile Calumniari*; saith *Paulus*; and the gloss gives the reason, *Quia non est pecuniarium interesse, quum sit inestimabilis scientia*; p. 119c. in marg. p. *Doctior*.

*Ulpian, lib. 1. Instit. c. 6. Digest. lib. 1. Tit. 1. De Juriura & Jure, p. 58*

*Fornierius De Veriorum signific. ad legem 43. p. 122, 123.*

*Lib. 4. Epitom. Alfini. 19. Digest. lib. 10. tit. 4. ad exhibendum.*

By the Civil Law, I mean the Law of Nations methodiz'd and collected into four Tomes.

The first whereof is the *Digest à digerendo*, or *Pandects*, from *παρασκευασις*, containing the Works of twenty seven original Lawyers, some of which were before Christ's time, and the rest in the Emperour's days to *Maximinus*; and to this Tome *Justinian's* *Institutes* is added.

*Budæus in Pandect. p. 56. edit. Basil. 1534. Possevinus Bibliothec. Select. lib. 13. c. 11. Sec. seq.*

*Nostrum autem consummationem quæa nobis Deo adveniente componetur, Digestorum, vel Pandectarum nomen habere saucimus, nullis jurisperitis in posterum audentibus commentarios illi applicare, et verbositate sua supradicti codicis compendium confundere. Imp. Cæsar Justinianus in Concil. ante lib. Pandectarum p. 13.*

The second Tome, or Member of the Law; is the Code in Twelve Books, the *Responsa* of the fifty six Emperours, and their Council, from the Emperour *Adrian* to *Justinian's* time.

The third is the Authentiques, *ἀπο τῶ ἀυθεντικῶν*, proceeding from the immediate moutches of the Emperours, and so being of absolute and unquestionable Authority, this part is called also *Novella*, for that the Laws in them are upon emergencies as new matters occasioned new Remedies.

*Possevinus Bibliothec. Select. lib. 13. c. 16.*

*Ulp. lib. 1. Instit. Digest. lib. 1. Tit. 1. p. 58. 59.*

The fourth is *liber feudorum*, *εφεσίδας*, which contains Tenures of a Military *Origen*. I suppose, some make this as antient as Christ's time; others later, but all very antient. These are the grand Records of the Civil Laws, which are artlyly and amply expatiated upon by the Learned Doctours in that Science, who truly have in all Ages proved themselves as great Masters of Learning, as any the World has had, and have carryed as great a sway in the transactions of State Affairs, as any other Race of Learned men; such as of old were *Tib. Coruncanus*, *Publ. Papyrius*, *App. Claudius*, *Claud. Centumnarius*, *Sempronius*, called by the *Romans*, as none before or after him was, *Σόφο*, *Scipio Nasica*, *Mutius*, and hundreds of others; which, together with their equals of later date, such as *Ulp. Bartolus*, *Zasius*, *Alciat. Hottoman*, *Hopper*, who all of them in the words of *Ulpian* declare the Civil Law to be that *quod neque in totum naturali vel gentium recedit, nec per omnia servit. Itaque cum aliquid addimus vel detrahimus juri communi, jus proprium, id est, civile efficitur*. And again, *Jus autem civile est quod ex legibus, plebiscitis, senatusconsultis, decretis principum, auctoritate prudentium*. These are some of those *Jura*, that the Prince here is not to be ignorant in. But the great Chancellour, as a common Lawyer by profession and preferment, has another kind of Law to acquaint the Prince with, as he was supposed by our Chancellour to be rightful Heir of the Crown of *England*, in which there was a peculiar *Municipe* Law. *Filia temporis, mater pacis, fructus sapientie, fulcrum regiminis, decus regnantis*; grounded upon six principal grounds: First, the Law of Reason: Secondly, the Law of God: Thirdly, on divers great Customs of the Realm: Fourthly, on divers principles called *Maxims*: Fifthly, on divers particular Customs: Sixthly, on Statutes made in Parliament by the King, and by the Common-Council of the Realm.

*Lege Imper. Justin. diplom. De Confim. Digest. p. 11, 12, 13. &c. ante Tom. 1. Pandect. De Origine Juris, p. 70.*

*Doctior & Stud. lib. 1. c. 4. p. 8.*

Such a Law as that *Plato* describes to be a well-constituted one, *τὸς ἀυτῶς χερσίνους*, &c. making the Subjects happy and blessed under, and shining as the fruits of it. This is the Law of *England* antient, not onely *ultra memoriam hominum*, but *recordorum*, the fruits of experience, in the succession of time, the womb of peace, riches and renown in all ages and degrees; the centre and stability of all Governours, and Governments, when they reduced all their Circumferences to its punct of Justice, which is indivisible. In a word, the amplitude and glory of its Monarchs, while they have been ruled by it, dreaded alive; and lamented when dead, because great and

*Lib. 1. De Legib. p. 773.*

good, powerful and just, men in nature, but Gods in munificence. In these Laws, and in the emanations from them, and the Statute-additions to them, the Prince is told, he ought not to be ignorant, because the Law is the rule of his duty, and *ignorantia juris non excusat*, neither before God in point of Conscience, or men in point of fame; which is the reason, that wise Princes have laboured to know and govern according to the Laws of their Government, and onely unhappy ones neglected themselves in the omission of it; and the effects of swerving from the Law is legible in the troubles of King *John*, *Hen. the Third*, *E. the Second*, *R. the Second*; who not guided by the Laws, had Reigns of War and Tumult. The Prince then was by our Text-Master well advised not to be ignorant of the Laws, lest he prefer Passion above Reason, and being carryed away by the *Euroclydon* of his Will, forget that pious, prudent, generous Rule of practice, which our late Martyr'd Monarch, blessed King *Charles* commend ed in those words, *I cannot yet learn (said that martyr'd Oracle) that Lesson; nor I hope ever will you, that it is safe for a King, to gratifie any Faction, with the perturbation of the Laws, in which is wrap'd up the publique Interest, and the good of the Community.* So renowned King *Charles* the First. But I proceed to what follows in the Text.

Math. Paris, pag. 231, 245, 324. Walslm E. 2. Scire Leges, hoc non est verba eorum tenere, sed vim ac potestatem. Coelius, lib. 16. Digestor. Pag. 238. to the Prince of Wales.

*Nec prae-textu Militia legem permittitur ignorare.*

This is added, to take away all Arguments of excuse, which Martial Natures are apt to make in A apology for their artleisness; they say, it effeminates the mind: Did it so in *Moses*, *David*, *Alexander*, *Cesar*, *Julian*, *Constantine*, *Antoninus*? nothing less: nor did they allow all time to their accomplishments as Souldiers, Schollars they knew they ought to be, and onely could be by Study, and learned Institution, and the Laws of God, and Men, as the Treasuries of that they read and considered; and this made them calm Governours, tender Parents, prudent Warriours, politique Statesmen, victorious Princes, and yet continues them in the reputation of Heroiques. Divide a Prince from knowledge and action, curtail him of either of those Diadems, and his Crown is abated; by how much either prevails against other, by so much is he propended to the extream, which is the over-reach of Virtues mediocrity. And therefore, as I hold a Prince ought not wholly to neglect Military Affairs, but verse himself in, and accustome himself to them, that he may intonate fear into Neighbours, not to provoke him to War, or to contemn him in his appearing; as vainly did the Emperour by the *Swedish* King, who was the bravest Hector of his Age; no, nor ought he wholly to rely on them, contemning Arts and Policies of Justice and Law; because they direct best how *parta & propria conservare*, and are the nerves and sinews of success and honour: but joyn them together, *etsi milites sine arma propter leges in tuto collocantur, ipsas tamen leges armorum praesidio conservatas* Justinianus putavit. So *Salmuth*. And how little Arms, without managery of Wisdom has profited their undertakers, is evident in the fatal consequences of those brutish engagements, which have been ruinous to Princes, and their Fortunes; as *Salmuth* has given us many instances to prove the truth of it. And this renowned Queen *Elizabeth* resolving in her self, who turned the Affairs of Christendom upon the *Poles*, of her Wisdom and Courage, being truly furnished with both Ornaments, to a degree symmetrical to her Majesty, made her Reign renowned, her Subjects rich and grateful, her Commands absolute and observed, her life prayed for, her death deprecated before it came, and lamented when it came. In a word, left none unsad, but those to whom she justly and honourably was a terrour. And she did this to the amazement of all Christendom, and the immortal

1 Jacob. c. 1.

In Epist. De Justiniano, Codice confirm. In Panicol. Tit. 56. De Armamentariis, p. 292.

Sapientia noceri non potest, nulla debilitat atas praesens, nulla diminuet sequens ac deinde semper ulterius aliquid ad venerationem conferet, quoniam quidem in vicino versatur invidia. Seneca, lib. De Brevit. Vitae, p. 735.

honour of the sex, by being directed by her learned judgment, to temper her Justice with spirit, and her Mercy with competent severity, and by employing such Spectacle State-Ministers, and active Martialists, as shewed her a practical Monarch, who as she knew how to rule supream, so skill'd the method of her supporting that her soleness by the proper aids and shores of it, Laws and Forces; and this was *non prae-textu Militia legem ignorare*. For the fundamental and ancient Laws, Priviledges, and good Customs of this Kingdom, do not onely preserve the King's Regal Authority; (but are the Peoples security of Lands, Livings, and Priviledges,

ledges, both in general, and particular) are preserved and maintained; and by the abolishing, or alteration of the which, it is impossible, but that present confusion will fall upon the whole state and frame of this Kingdom. They are the words of the Statute,

1 Jac. c. 2. in the Preamble.

Which considered, there is great reason Princes and Monarchs, especially ours in England, should not be ignorant of the Laws, because they are so essential to their own stability; and their peoples security, as nothing can be more; nay, without them, known and exercised in that *Quaternion of Magistratique* method, *Imperare, vetare, permittere, punire*, which contain the virtue of Laws, there can be no honour to the Prince, no felicity to the People: yea, that Prince that is so unhappy, while he intends so nobly; not to be well reformed, may use *Cato's* words, though in a little other sense, *Nihil egisti, fortuna, omnibus conatibus meis obstando, non pro mea adhuc sed pro patria libertate pugnavi nec agebam tantâ pertinaciâ ut liber, sed ut inter liberos viverem, nunc quoniam deplorata sunt res generis humani, Cato deducatur in tutum.* Better for a good King to go to a glorious reward in Heaven, than live to oblige a graceless, and ingrate people. But God being the onely Lord of life and death, is to be attended upon for the issue of things; which if they be not to Princes, as well as other men, such as they would have them; yet are, in whatever they are, such as God permits, and knows best for them to have them. In the mean time, we must endeavour to do our duties, the Prince not excepted, whose part it is, *juris non esse ignarus pratextu Militiæ;*

Modestinus, lib. r. Regularum.

Seneca, Ep. 14.

*A sacerdotibus Levitica Tribus assumere jubetur exemplar legis, id est, à viris Catholicis & literatis.*

This is added, to restrain the King for the Matters of God, to God's own appointment and institution; the Priesthood was setled on *Levi* by God, *Numb. i. 2, 3.* and no portion had *Levi* with his Brethren, for the God of his Priesthood was his portion. Now, God to put a dignity on the Priesthood, does not onely enjoyn the people to consult the Priest, who had the custody and knowledge of the Law; but even the Prince, he was to write the Law from the Original, with the Priests, called here the *Levitical Tribe*; not as *Aben-Ezra* thinks, to distinguish them from other Priests, which were not of the seed of *Levi*: for *Drusus* refuses that, upon the ground that the Priests were of the Kindred of *Aaron*, who was of the Race of *Levi*; but to keep us close to God's Ordination, who made the Priesthood the Repertory of Law-Learning, *αὐτὸς θεὸς οἱ ἱερεῖς*, as *Philo's* words are: And hence learned *Grotius* writes, *Hic vero ratio habetur meliorum temporum, &c.* Here, saith he, is an account of the flourishing times of *Levi*; for then all controversies, judgments, difficulties, were brought before, and resolved by them; but afterwards they declining, and the incomes of the Priesthood being great, and inclining the Priests to sloth and luxury, it fell out in time, that the Learning of the Priesthood was translated into other Tribes, amongst which there were those that excelled the Priests in knowledge of the Law: so that the people did not onely have the Levites, but even sometimes the High-Priest, and applyed themselves for introduction in the Law of God, to those that were learned, though not Levites, but Lay-men; saith he, out of *Maimonides*, lib. 2. *De Synedrio.*

In loc.

Lib. De Vita Moſis.

Grotius in Deut. xvii. 9.

Though therefore the Priests misbehaviour, might eclipse their credit with the people; yet God's dignification of *Levi* is plain from Scripture throughout the whole Book of *Numbers*; and the Authour to the *Hebrews* mentions it in the fifth of the *Hebrews*, as an augmentation of it. No man, saith he, takes this honour upon him, but he that is called of God, as was *Aaron*. Yea, and plain is it from *Philo*, whose words are, *ἔχ' ἰεῖας ἐν τῷ τῶν ἁγίων, &c.* Do you not see, quoth he, that God the great Law-giver, did not commit the preservation and charge of holy things to every man, but to the pure and holy Levites. So in another place, *τὴς γὰρ ἁγίας, &c.* The Levite has all the priviledges that pertain to a perfect Priesthood, by which men attain the knowledge of the great God, and are in their sacrifices and services rendered acceptable to him. And in another place he gives the reason, why God took such care of *Levi*, and made their Habitations, Cities of Refuge, as well as their Offices, the keepers of the holy things of God; because they deserted all that was most dear and near to them, to attend his portion who is immortal. The Priests then were the Trustees, to whom the Custody of God's Law was referred. And therefore Princes enjoyned to transcribe the Law from their Original, were to apply themselves to them; so under the Law: nor is it otherwise under the

Lib. quod Det. potiori insidi ſolent. p. 166.

Lib. De Sacrif. Abelis & Caini. p. 152.

Go-

De differentia  
Mofaici sacerdo-  
tis & Evangelii  
lege in Orat. Car-  
lerii in Concil.  
Bafil. Concilio. To.  
1. p. 8. & Orat.  
Polemarii. p. 522.

Catholicus est  
ille qui credit im-  
plicitè, vel expli-  
cite alicui, vel habi-  
tu omnia quæ per-  
tinent ad fidem  
orthodoxam for-  
matam vel infor-  
matam. Brulifer.  
Dist. 59. 3. lib. 4.

¶ Lib. 2. c. 13. 91a.  
fit. Orator.

Ne putes Ecclesiam, quæ in petra est, in una  
parte esse terrarum, & non diffundi usque ad  
fines terra, &c. S. Augustin. lib. 11. con-  
triter. Petilian. c. 108. Sic Tract. 32. super  
Joannem. 1. Homil. super Apocalyp. de cor-  
rect. Donatist. c. 3.

Sanctus August. de correct. Donatist. c. 30.  
Extra hoc corpus neminem vivificat Spiritus  
Sanctus.

Romanæ Ecclesiæ abundè satis est gloria  
partem esse parvam universali Ecclesiæ.  
Lib. De Officio pii viri. p. 388, 390.

Quisquis ergo ab hac Catholica Ecclesia  
fuerit sepeatus quantumlibet laudabiliter se  
vivere existimet, hoc solo scelere quod à Christi  
veritate disjunctus est, non habebit vitam sed ira  
Dei manet super ipsum. Sanctus Aug. Ep.  
100. post collat. contr. Donatist.  
Nomen Catholicum fuit inventum, ut ea di-  
scriminatione nominis ab heretico cum conven-  
ticulis cognosceretur esse distincta. Baronius,  
To. 1. ad An. 42.

2 Tim. ii. 5.

Gospel. For as God under the Old Law by *Moses*, so under the New Testament by who was faithful in God's Church as a Son, has ordained an Evangelical Priesthood, not less conspicuous, then the *Aaronick* one; for, as that was ordained of God for men in things pertaining to God, as it is *Heb. v. 1.* as that was an honour to those that were of it, who were counted God's portion, as that had the dispensation of offering both gifts and sacrifices, and making known the Law of God to men, as none were to be of that but *Levites*, persons separated to that function, as that was exclusive of all other Worship, till the time of refreshing from its burthen of multiplyed Ceremonies came: so the Priesthood or Ministry of the Gospel is ordained by Christ, and the Ministers in it *Patrimonium Crucifixi*, and the Tythes in it the Ministers right, and all parts of Ministry onely is dispensable by them, and none ought to be accounted in the Ministry, but those separated to God by Canonique Ordination. Thus they answer each other; and in one thing the Gospel Priesthood excels the legal. As it is a more spiritual one, so a more durable one, so a more general one, that brought men to see their God through the Glafs of Types and Figures; this face to face, that lasted but till the substance came. This shall endure, till time shall be no more; that was limited to the *Jews*: This is indulged to all Nations; the Gospel brings salvation unto all men: now, there is neither *Jew* nor *Gentile*, bond or free, but all one in *Christ Jesus*.

So that the Chancellor has done well to expound the Evangelique Rites by *viri Catholici & literati. Catholici*] This word in all Authors is expressed to denote Universality; the Physicians call \* that wch is profitable to allay and sweeten all humours, a *Catholique Medicament*; and *Quintilian* terms universal and perpetual Rules *Catholique, Catholici* then here is to exclude factious assumption of the Office of Ministry, without admision, and confirmation in it *Apostolical*, that is, *Catholique*: for no Ministry is *Catholique*; but that which is by Church-Tradition, *Catholique Reception*, *Apostolique Practise*, *Scripture-Warrant*, which for ought I know, have read, or I think is possible to be found in *Scripture-History* or *Tradition*, was *Episcopal*, in the sense that our Holy Mother the Church of *England* practises it from the purest times, and pioufests presidents. And then *Literati*, to denote qualifications of the mind to, both understand in themselves their duty, and make others understand theirs also. For the *Catholique Church*, which is not restrained to any part or particular of the whole Church, either *Romane*, *Reformed*, or *Greek*; but the whole Complex of Christians, having Christ their Foundation, and being the pillar and ground of Truth on him the Rock, though it may differ in circumstantial; yet being one in unity of Faith, and essentials of Worship, and practise of Charity, accounts its particular Ministry, in a true sense, *Catholique*. And therefore, though the Chancellour by *Catholicis* mean the *Romish Priest*, excluding all others, yet it is applicable to the Priesthood, or Ministry of the Universal Church: of which in *Cassander's* words; It is abundantly enough honour done the Church of Rome, that it is a small part of the Universal Church. And no National Church is

more or lesse *Catholique* one then other, *Ubi à capite non receditur per falsam, & Scripturis sacris dissentaneam Doctrinam à capite Christo, a corpore vero non per quamvis rituum & opinionum diversitatem sed per solam charitatis defectionem.* So he.

So that the Officer that the *Catholique Church* has admitted to, and empowered with the things of God, the dispensation of his Word and Sacraments, and other holy parts of Priesthood, is Successour to the Prerogatives of the *Evangelique Priesthood*, of which the *Levitical* was fore-runner, and no Intruder must be hearkened unto, or admitted to participation in it, who is contrary *publica, antiqua, perpetua, & universali Ecclesia consuetudini.* For *Saint Paul* reprobates such interposition as dangerous; we have no such Custom, nor the Churches of God. This be enough for *Catholicis viris.* And those the Churches of God have always trained up to be, and admitted onely such as be *Literati*; as *Learned*, without *Catholique*, will be but a factious; so *Catholique*, without *Learned*, a barbarous Priesthood. The Apostle's rule is to *Timothy*, Study to shew thy self a *Work-man*, that needs not to be ashamed.

Ὁκνημον,

*δύνατον*, *Operarium inconfusibilem*, one that can hew out fit proportions from the mass of Scripture, and orderly set together what he has apportioned for his Ministry, to make it orderly and advantageous, not *erubescens*, as St. *Augustine* expresses it, as they are that boast of more then they can perform; seeming to be what they are not, *ὀρθοτομήσα*, *rectè secantem*, that is, carrying himself so, as to hold the Truth free from all extreams, as they do that keep the Channel, and avoid the Rocks on both Shores, *Collatio ergo inter Dei servos esse debet, non altercatio*, saith Saint *Ambrose*, in *loc.* *Grotius* will have it to be *similitudo ducta à victimis quæ certo ritu secari debebant*, and, says he, a man is said rightly to divide the Gospel, *cum cuique accomodat ea monita quæ cuique Maximè conveniunt, quomodo de victimis alia partes dabantur sacerdotibus alia privatis*; which being an act of Wisdom, requires learned breeding to direct the Workman unto, and in his work; and upon this ground, as the Priests of old were learned in the Law; so the Ministers of the Gospel, whose mouthes are to preserve knowledge, are to be by Canon learned, and such the Chancellour means by *Literati*, not such as the *Scientique Budæus* laments for being in *primorum ordinum sacerdotibus* in France, where *virtutis doctrinæque præmia in homines latine infantissimos non singulâ sed bina, terna congeri verius quam conferri vidimus, qui certè non tam his honoribus ornati, quàm obruti esse iniquis oneribus videntur*. No such Drones, and over-grown Novices does our Text intend; the holy things of God are under the Gospel committed *viris Literatis*. So *Tully* expresses *virii literati ac studiis doctrinisque dediti literatus & desertus*. So *De Clar. Orat.* 4. Such, who have much in them, and much written upon them of knowledge of books and men, and of holiness to the Lord: of the sword in these mens mouthes, should not that of *Plantus* be true, *In eo ensiculo literarum quid est?* But every part of their Exhortation and Reproof, their Information and Direction should be rich and full of Argument.

Lib. 1. Contra Cæconum, c. 2

In Locum.

Budæus in Pan. de St. priores, pag. 186. edit. Basil.

Cic. pro Balbo.

In penul.

This is the Chancellours scope, to inform the Nation; that the Christian Ministry; though it had the *Levitical* for its president, yet not onely succeeds, but exceeds it. And that the Rites of consecrating, or crowning Kings, and taking Oath of them to perform the Laws of their Government, and to maintain the Rites of Holy Church, as they will answer it to God, and the evidences of their Consciences, and the Gospels they swear by, to which the Ministers of God, Bishops, and others, are Witnesses in the behalf of Truth, is no lame and lazy Ceremony, made up onely of extern pomp, but of necessary and renowned consequence; which those that vituperate are Children, and those that would overthrow are Devils; because therein accusers of ancient Piety and Prudence, and enemies to Mankind, who generally have the Priesthood in highest honour.

This I the rather touch upon, because we have lately been in, and are not yet wholly purged from the Lees of those unhappy times, wherein, with many, all Antiquity was execrable, nothing pleasing but novelty, *decresebat innocentia in foro, justitia in iudicio, in amicitia concordia, in artibus peritia, in moribus disciplina*, as *S. Cyprian* once complained of his time. No Law, but Lust; no Justice, but Arms; no Church, but a Meeting-place; no Priest, but a High-shoe, or uncatholique illiterate; no Canon, but Enthusiasm; no Mercy, but Ruine. So that truly in our *England*, there was a kind of Reverter (at least in the menace of the Rabble, and their Arch-Dukes) of *Draydlike Ethnicism*, *Tunc maximè Deos propitiari, cum per cruciatum hominem excarnificassent*, saith *Giraldus* of the *Druids*, and 'twas too true of them.

Lib. De Abus. sacris

De Natur. Decorum Syntagm. 17. p. 529.

But blessed be God, we are in a better state now, the *exemplar legis* has been tendered the King, à *viris Catholicis & literatis*, and now the Echo of our Learned Chancellour may humbly present the pre-instanced Scripture, *Chap. xvii. of Deuteronomy*, as that which is the noblest Monitor of the Prince's duty, that any where, in any Author, in any time, is to be found.

*Liber quippe Deuteronomii est liber legum quibus Reges Israel subditum sibi populum Regere tenebantur*. This is added, to shew the Text-Master's love to the Prince, in his preference of *Deuteronomy*, and the xvii. Chapter of it, for his direction, to be according to much Wisdom; for that it is *Methodus regiminis quo Reges Israelis teneri deberent*, God's precise determination of the King to that, as his Oracle and path to walk by, and in. Indeed, I am of *Pliny's* mind, *Sum ex iis qui miror antiquos, &c. I*

Plinius in Ep. Caninio Rufo, Ep. 6.

am of their minds, who admire the Antients, but yet not so to despise the acquirements of later men and times; for that were to accuse Nature, as spent, and defective to a generous production of Rarities, now as well as heretofore. I know there are Tracts of Policy, and Treatises of Institutions for a Prince, which of late have been proposed to the World with notable art, and subtle insinuations: nor are the later Wits less keen, nor their Writings less polite, than those of their Antecessors: But these are but men that wrote, and what they wrote subject-like them to errors and mistakes. *Moses*, the Penman of this, was one of God's infallible Secretaries, and he propounds to the King (that was Prophetically regulated and admonished, for *Israel* was yet under *Moses* his Regiment) *Τὸ μίον ὑπεβόησ, &c.* The noble Mean between the Iron and Lead Extreams how he shall be, *ἀδύνατος τὰ δίκαια νεύειν*, &c. An admirer of right, a judger of wrong, a propagator of truth, as the best Pillars of a durable Regality. This, says *Philo*, *Moses* propounds herein, as a Reward to the Prince that is led by it; and therefore no wonder, though *Moses* direct to *Deuteronomy*, as his second, and most compleat System of the Law. For though there were many parts of Holy Writ that perswaded the Prince to love the Law, and to embrace it as the Rule; as that where no Law is, the People perish: or that of *Saint Paul*, *The Law is just, and holy, and good; and if it had not been for the Law, I had not known sin.* Or that of our Saviour, who being interrogated by the *Jews*, questions of import, answers them, by referring them to the Law; *How is it written in that Law?*

*Philo, lib. 1.  
De Creati Principi,  
p. 725.*

*Rom. vii. 12.  
Rom. vii. 7.*

*De Pentateuch.*

*In argumento ante  
Deuteronom.*

*Lorinus in prefat  
ante Deuteronom.  
& Beda  
In loc.*

Though I say the Chancellour might have illustrated the beauty and use of the Law from other Scriptures, yet in that he waves them all here, and refers to this Book, and this Chapter of this Book, 'tis a strong Argument, he thought it the most opposite to the Prince's instruction, *Partem Scripturae politicam & legislativam*; as *Aurcolus* his words are. Well he knew, good Chancellour, that every word of God was good; but that these were like those of *Solomon's Apples of Gold* in Pictures of Silver, the onely words he could artly use to his purpose; *Deuteronomium est quasi incensa, & perpetua concio, eaque de causa Moysi, c. 17. v. 18. iussit ut novi Reges, elegendique describunt sibi Deuteronomium, ut discant timere Deum, &c.* saith *A. Lapide*.

It's true indeed, every Book of *Moses* has his peculiar excellency, as it answers some useful end of God in the Production of his Designs there described: in *Genesis* there is description of God as the enjoyner of the Law; in *Exodus*, of *Moses* the Minister of the Law; in *Leviticus*, of the Heads and Content of the Law; in *Numbers*, of the Nature of the People, to whom this Law was given; but in *Deuteronomy*, there is a short Recapitulation and Conclusion of the Law given; the last words of *Moses*, most pithy, most memorable, most cull'd: and *A. Lapide* says his Book was made upon three Causes. First, for supply of Mortality, because all the old men that came out of *Egypt*, and heard the Law delivered on Mount *Sinai* were dead. Secondly, because *Moses* was now to dy, and being to leave the people of his care and love, he leaves them instructed in the Law by this Copy, and perfect Accompt of it. Thirdly, for that the words of Rulers and Princes have most sway with the people they govern, he leaves them this Book, as the lasting *Memorandum*, and *Journal* of their duty, and enjoyns Governours to transcribe it, that by remembering it themselves, and ruling their people according to it, they may be happy and beloved as *Moses* was. For so it follows,

*Hunc librum legere jubet Moyses, ut discant timere deum & custodire mandata ejus quae in lege scripta sunt.*

Well did *Moses* know the temptations of greatness, that Kings are but men in nature, though Gods in sacredness; that Power is apt to arrogate a Prerogative above Mortal Restraints, and that the nature of man frail in them, is apt to pervert God's intention in the latitude of their Commission. Therefore *Moses* claps the Clog of God on the King's Conscience, and enjoyns him to read and write over the Law of him and his Government, as he will answer the violation of it through ignorance or perverseness to the God of that Law, in whose hand his life and breath is, *ὅς τὸν κρείττονος ζῆδαι*, &c. saith *Philo*, *That his corrupt Nature being awed by God's Sovereignty, may by fear and awe of it be restrained from exorbitant rigours, and vain excursions.*

*Lib. De Nominum Mutatione,  
p. 1043.*

Indeed, as the Law of God is the best Book; so fear of God is from the best Lesson

man



man can learn. No grace has more of the exaltation of God, and depression of man, then fear has; and no man has more need to have God's fear in him, then a King that is free from the fear of man on him. Saint Bernard makes fear *prima gratiarum qua totius Religionis exordium est*; No fear, no Religion. Therefore the Wise-man says, *Fear God, and keep his Commandements, that is the whole duty of man.* in the last of Eccles. *Ita est primus in ordine gratiarum sicut paupertas in ordine Beatitudinum*, saith that Father. Indeed fear, as it may be objected and accented, as it may be tintured and by-  
 affed, may in Philo's words be *συμβουλον καδν*, an ill adviser. It may be Jonas in our ship cause a storm, and endanger all the serenity of our inward peace: this his fear, the fear of man; a fear of incredulity, a fear of inverting God's position, making God less, and man more then he is. In an evil fear, forbidden by God, perfect love casteth forth this fear; 'tis a fear of servility, not ingenuity; the fear of Bastards, and not Sons: 'tis the nail in our heads, after the butter and milk in a Lordly dish, which this World's flatteries, and the *Jacl's* of infirmity treat us deceitfully, and to our ruine. But holy fear, to fear the Lord and his goodness, is the felicity, as well as duty, of not onely Subjects but Princes: nay, 'tis paramouly pertinent to Princes, because the onely object of their fear, as a Superiour to them, employs it, and as a God to them, deserves it. And this the Hebrew phrase here *יִרְאָה*, translated to *fear* imports: for 'tis none of those ordinary words the holy Language has, for ordinary fear not *יָרָא*, the fear of one, a stranger in a Land that is not his own; as *Psal. cxx. 5.* nor *יִרְאָה*, a fear of trifictity: so *Psal. xxxviii. 18.* nor *יִרְאָה*, a fear of modesty, like that of youths, who blush for fear, when they come before men of age and worship, *Job xxxii. 6.* which we call a running our heads in a hole; nor *יִרְאָה*, a fear causing an uproar in the mind, *Isa. xxxii. 11.* like that *μεθμυν*, charged on *Martha*, *Tumultuaris circa plurima*, c. v. nor *יָרָא*, a fear that wholly unmans us, *Deut. xxviii. 16.* nor *יִרְאָה*, a fear taking away all hope of acceptance, *Esay xli. 10.* Nor this, or any of these fears, which melt down the spirit, and make a manless futility in the ponderous and masculine nature of man: none of these is the fear here. That which *Moses* lessons the King to learn from the Lord's Law, is *יִרְאָה*, which is a fear provoking to worship, and draw near to God; such a fear as argues love and duty, to fear him so as to fear him onely, him always, so as to cast down their Crowns and Scepters at his feet, and to serve his glory with their compleat absoluteness. This is the King's *timere deum*, but it has an adjunct and copulation, which makes it both appear to be what it is in truth, and to make the principle from which it is found in a suitable effect, *keep his Commandements all the days of his life.* This is that which ingratiates the fear of God with God, when 'tis seen in obedience to him, according to his declared Will, his Law, and that in every particular, not one, but all his Commandements; and that not sometimes, and not at other times, but all the days of his life. This is to be upright with God, as was King *David*, *Then shall I not be ashamed, when I have respect to all thy Commandements.* This is *non currere per mandata sed ambulare in mandatis*; to make God's glory the end of Princes Lives and Reigns. And this is to produce what in our Text follows.

De doctis Spiritu Sancti c. 1.  
 Lib. De Abrahamo, p. 351.

Deatus es, si cor tuum triplici isto timore repleveris, ut timeas quidem pro accepta gratia amplius pro amissa longè plus pro recuperata. Sanctus Bernardus Sermo. 54. Super Cantic. Cantic.

*Ecce timere deum effectus est legis, quem non consequi valet homo nisi prius sciat voluntatem Dei, qua in lege scripta est.*

This is well inferred from the presumption of its cause; to write the Law, is the way to remember it; to love it, the way to practice it; and to practice it, is to be what the Law here is told us to aim at, *Fear God, and keep his Commandements*, fully and constantly. This our Chancellour calls an effect of the Law, because the Law is in God's intention, and the ordinary way of his dispensation, thus to dispose Kings, as it offers them the Rational and Religious answering of the end of their Power, and his Pre-script: for *Philo* makes the Law as *λόγος θεῶν ἀποδείξιον*, &c. *God's declaratory of his Will, both as to what man may, and may not do.* And therefore, inasmuch as fear is a postnatè of knowledge, and knowledge the means of ingenerating divine fear, and this knowledge is conveyed to us by the Law, according to that of the Apostle, *I had not known sin but by the Law.* Not that the Law has any efficacy, to illuminate man to an efficiency of Holy and Reverential Fear. For that is true of the Law, which Saint *Augustine*

Lib. De Migrat. Abrahami, p. 408.

In solutionibus  
Questionum  
latini, q. 1.

89 Epist. ad Hi-  
lati.

Lib. 2. De Vita  
Mosis, p. 654.

In prima quin-  
quagena ex Pro-  
logo, Psal. 31.

Ep. 47.

Augustine wrote of Free-will, *Valet liberum arbitrium ad opera bona, si divinitus adjuvetur, quod fit humiliter petendo & faciendo, desertum vero divino adjutorio quamlibet scientia legis excellat, nullo modo habebit iustitia soliditatem, sed inflationem impia superbia & exitiosum tumorem.* And so in another place, *Nam & lex ipsa in hoc adjutorium data est illis, qui eam legitime utuntur, ut per illam sciunt, vel quid iustitia jam acceperint, unde gratias agant, vel quid adhuc eis desit quod instanter petant.* Whereas therefore the knowledge of what is our duty to do, and not to do, is said to be the effect of the Law, which teaches us what, and how to do our duty, or not do; it is to be understood, not a necessary effect, such as follows the cause, but an effect in order, that is, where ever fear of God is, there the Law of God, known and observed, has been the ordinary means of producing it, and not onely the fescue to point us to our Lesson, but the instigatour of us to learn and practise it. And indeed, to this end has the Will of God concerning man its patefaction in the Law, that man might not be under any impossibility of knowing what he is, and is not to do; nor plead ignorance, when his omissions and errours shall come to Arraignment: and therefore as here is much mercy in God's promulgation, so is there a call to us in it of eternal gratitude. For the Law written on the heart, and rivetted in the created nature, would have compurgated God from cruelty to his Creature, in punishing the breach of his Law, which they had such previous and plenary warning of. But in that he has been pleased to write his Law, and our duty, in such legible, and indelible Characters, as are learnable; not to know his Will by the Law, is to despise God from Heaven, and to sin against our Maker, and his Mercy. To fear then the Lord, as it is an act of service to God, so of mercy to our own souls, because it puts us out of fear of his fury, who is a consuming fire, who has power of soul and body; and it puts us into the protection of his promise, that *No good thing shall be wanting to those that fear him,* Psal. 34. 9. And forasmuch as this fear is as in God causally, so in the Law institutionally; and *Moses*, by the Spirit of God, directs Kings to the Law as their *Academy* and *Oraculary*; because they being *ῥῆτορες καὶ σοφοί*, &c. as *Philo* calls them, are not onely to take care that secular matters be carryed on well and wisely, but also the matters of God and his service. Kings and all in Authority shall do well to study the Law, that they may know to do the Will of their Lord; for that is to know God aright, to practicate his fear from a principle of Conscience, and holy affection to God. When not to oblige him to be ours, if any act of ours properly could so do, but to glorifie him as our chief good, is the source of our service, when we study to know, that we may be ready and regular, in doing what we know we ought, to shew forth the virtue of him that has called us out of darkness into his marvellous light. This, this is to know the Will of God, which is written in his Law; because this is perfect Charity, which is the fulfilling of the Law; and without this all the Notional and Grammatic Knowledge of the Law abstracted from practise of the duties postulated, is but nothing. So true is that of Saint *Augustine*, *Pro bonis operibus sperasti terrenam quandam felicitatem; impius es, non est ista merces fidei, cara res est fides, vili illam addixisti, impius ergo es & nulla sunt opera tua, moveas licet in bonis operibus lacertos, & videaris navem optime gubernare, in saxa festinas.* SO that Father; and so our Lord *Jesus*, *If ye know these things, blessed are ye, if ye do them.*

*Principium omnis famulatus, est scire voluntatem domini cui servitur.* Here the Chancellour proceeds to confirm what went before, from the consideration of domestique Order, which is suitable to the greater Polity of Kings and People; nay, of God and Man: for in Families there is a Lord and Servants; the one commands, because he is Master of all, and his Will is their Law: the other obeys, because he is bound, as he eats, drinks, is clothed, and lives by, and under his Master. Now in this service, which the Chancellour calls *famulitium*, as after *Festus* he does, *servus famulatus*, the first and chiefest thing is to know the Master's pleasure, and to study, and actually answer it, *Si cum inferiore vivas, quemadmodum tecum superiorem velles vivere.* And because the Will of the Lord and his humour was best seen by frequent being in his company. *Seneca* tells us antiently, the Masters did admit their Servants to eat with them; yea, and that the Masters might see what tempers their Servants were of, and what commands could best bear, *Instituerunt diem festum quo non solum cum servis domini vescerentur, sed quo utique honores illi in domo gerere, jus dicere permiserant, &*

domum

*domum pusillam Rempubl. esse judicaverunt*, Ep. 47. Servants thus encouraged, the Master expected a return in observance; no dispute, no delay, to be sure no opposition: The Servant was, whatever he understood his Masters pleasure to have him be, according to that of Philo, Μίγιστον ἐγνώσαν δίκης, &c. *The only praise of a Servant, to think no command of his Masters slight, but to do all to his utmost pleasure, that he thinks he wills.* And therefore God alluding to the Sovereignty of Earthly Masters, says, objuregatively to Israel. *If I be a Master, where is my fear? Ubi est obedientia servi sub imperio domini?* and the Apostle, to strengthen the authority of Masters over Servants, says, *Servants be obedient to your Masters in all things, for this is well-pleasing, and acceptable to God.* How holy Paul obey in all things? yea, in all things: Suppose he commands Idolatry, or Murder, or any other sin, is he to be obeyed in this? Yes, he is to be obeyed, but not in the kind of the command he exercises, in the Servants disposition, but not in the act of termination to such his command, *Cum dominus carnis à domino spiritus diversum imperat, non est obediendum*, saith Saint Jerom, and Tertullian, who owns this Canon, yet modifies it, *sed intra limites Disciplina*, obey him so far as he obeyes God. *Ideo Romanas leges contemnimus, ut divina jussa servemus*, saith the Martyr Sy'vanus, ὅταν θεῶν μὲν μῶνον προσκυνῶμεν, &c. *We worship indeed but one God, but we are loyal servants to Kings and Emperours, praying constantly for them, that they may wisely and worthily discharge their trusts towards their people, as we profess their people ought to express loyal duty to them.* And Seneca is positive, that virtuous minds, *contra Remp. imperata non facient, nulli sceleri manus commodabunt*. Let Stratoncles flatter Demetrius never so highly, and desire the Athenians to pass a Law, *Ut quicquid Demetrio Regi placuisset, id in Deos pium, & inter homines justum esset*: yet Integrity will not swallow any unjust command, though it dare not disobey by contumacy a just Power, while it acts unjustly: but in things that are indifferent, in things civil and prudential, there the Master is so absolute, that the servant is bound to obey throughly and constantly, and has no remedy, but to pray *πρὸς τὸν μῶνον σωτήρα*, &c. *that God their only Saviour would hear and relieve them.*

Lib. quis rerum  
divinarum, Hæ-  
ret. p. 432o

Justinus Martyr.  
in Apol. 2. pro  
Chutlian.

Philo, lib. De  
Confusione Lin-  
guarum, p. 333o

This was the state of Servants bound to obey; yet had they also a priviledge, when they were veteranes and faithful: For then, as they were *secundi liberi*, where Children were, so where they were not, they did *in jus liberorum transire*. To which probably our Apostle alluded, when he made the priviledge of Adoption to consist in translation from Servants to Sonship. This is notably set forth by Abraham, in the case of Eleazar of Damascus his Steward, Gen. xv. 3. *Behold! to me thou hast given no seed, and one born in mine house (to wit, Eleazar, v. 5) is mine Heir.*

This Eleazar of Damascus so called, because he had possibly either purchased a house at Damascus, or had some Rule there (not born there) is in Chap. xxiv. 2. said to be קֹסֵם בֶּן אֲבִי Procurotor filius, or gubernator domus, in cujus manu relinquam omnia que mihi sunt, saith Rabbi Joseph, filius discursationis, who checks all under my Roof. This is he of whom Abraham says, יִרְשָׁה אֵת hereditat mihi, that is, He at present posseseth mine for me, and hereafter shall possess mine for himself. Now this being the compensation of ancient and faithful servants, that they may in time come to this, the principal familie prudence is, to study the Master, and to let no word of his fall to the ground, no command of his be neglected; and this is *scire voluntatem domini*. For since the servant is in his body, his Lords, and has all accommodation from his Lord; what is more reasonable, then that his Lord should be, in this World, and in things lawful, all in all to him: so that the servant having no sphere so proper for his actuation, as his Masters will, and that will being best observed, by setting ones self to the exact knowledge of it, the Chancellour has fitly made it the first knack in the van of service, and that which makes the Master pleased with his servant, and with his service as such.

*Legis tamen lator Moses, primo in hoc edito effectu legis, videlicet timorem Dei commemorat, deinde ad custodiam causa ejus, viz. mandatorum Dei ipse invitatur, nam effectus prior est quam causa in animo exhortantis.* That which our Chancellour calls Legislator, Philo terms ἱερωτάτης Μόσης, because Laws being δὲ νόμοι θεῶν; and to sacred purposes, for order and distinction, security and beauty, the deliverers of them to the people they ruled, may fitly be termed ἱερωτάτης; which, though all Law-makers deserve not to be; because, as they may rule solely, yet not be Kings, and People, yet by

Lib. De Monar-  
chia, p. 319.

no Law: so they having not so much of Divine Rectitude in their Titles and Trans-  
 actions, may abate in the deserts and right to such nominal Titles. But *Moses* was none  
 of these; he obtains power justly, uses it moderately, and resigns it willingly, when God  
 his Principal, determining his life, calls *Jeshuah* to succeed him. This, this indeed,  
 was *ισχυρ*, nay, *ισχυροτιον*, somewhat above the rate of men; for, as *unde habent*  
*quaritur nemo, sed oportet habere*. So when 'tis had; oh! to keep to their stipulations is  
 death to them. If violation be more advantageous, no swasion of Religion, no fear  
 of losing fame, no disgust of their People, keeps such lawless and boundless Natures in  
 aw, they will do what Providence prompts them to, and Prudence suggests, as a necessary  
 Expedient, though they do perjure themselves, and confound all, that Laws and Po-  
 licy has distinguish'd; and all this they do, because the light in them is darkness, and the  
 salt unfavoury. They consult with the false Oracles of flattery and self-magnification,  
 and decline God's fear lesson'd in his Law. Were that, their Councillour, they would  
 do nothing under pretence of God, but according to God, not rule, but as he does, *suaviter*  
*& fortiter*; first with justice, and then with courage, and that by & according to  
 God's Law, which directed by God, discovers the soules vanity, and instruct to  
 fear God's Power, and love his goodness, as its compleat restraint from enormity. I  
 know God by Miracle can instruct Kings, as he rained *Mannah*, and raised the Apostles  
 from letterless Fisher-men, to learned Metropolitans, and profound Doctours. He can  
 do by his absolute omnipotence what he will, and therefore is not obliged to qualifie  
 Princes with fear and observance of him according to the method of Nature or Art,  
 his Will being the Law: 'tis but say, and do: so the *Chaos* testified a passivity to his  
 information; nor did in the pre-existent Matter ought reside, that had any refractory-  
 ness in it. It did not, it could not appeal from his Will; for that had no superiour, no  
 equal. But in that, God now discovers himself to us in familiar and natural methods, and  
 leaves causes to their natural operation, ordinarily interposing no Power to suspend or  
 impede the production of effects from causes; and inasmuch as the effect is first in nature  
 of project, though last in order of time, the cause Physically precedeing it: Therefore  
 the Chancellour advises to get holy and humble fear from the Law, which is God's un-  
 doubted will to us; and that which we knowing, and doing, in such knowledge and  
 deed shall be blest. This is the sum of this Clause.

Contzen. Poli-  
 tic. lib. 5. c. 20.  
 p. 339.

*Sed quis est timor iste quem promittunt leges observationibus suis, verè non est timor ille  
 de quo scribitur, quod perfecta charitas foras mittit timorem. Timor tamen ille li-  
 cèt servilis sæpe ad legendum leges, Reges concitat, sed non est ipse proles legis.*

Our Chancellour having wrote great things of *holy fear*, and made it, that *Lucifer*  
 which shines in the Souls firmament, as an effect of God's Law read and practised,  
 now comes to limit us to a right notion of it, that we may not mistake its counterfeit  
 for the currant and noble grace of fear; and this he does, by distinguishing of fear, as  
 a nude and rude passion, from what it is as a complex of graces, and a renovated prin-  
 ciple, which makes us commensurate, in such degrees as humane frailty allow, to God's  
 requiry of us in order to his glory, our Neighbours good, and our own personal and  
 soularly felicity. For as it is not every Medicine that cures, every Suitor that succeeds,  
 every Valour that is victorious, every Speaking that is oratory; so is it not every fear  
 that is this fruit of the Law this favourite of God. There is fear that quivers through a  
 guilty pusillanimity; there is fear that precipitates to a desperate ferocity; there is  
 fear that sinks men beneath their station, into the stupidity of dull insects of senseless in-  
 animation; fear that petrifies, and obdurates to an immobility; fear that lethargizes  
 the spirits, and makes a man dead, while living. These fears may sometimes be useful,  
 and God by their Revulsions work great effects preparatory to the fear of Worship  
 and Reverence, so often brings the terrour into the Conscience, and thereby pricks the  
 sinner at the heart, letting out all the purulency, and impostumation of sin by its Lan-  
 cet; and that removed, makes a kindly Avenue to his fuller work of Repentance and  
 Conversion. In which sense, Saint Paul calls the Law, *our School-Master to bring us*  
*to Christ*: because as the School-Master cultivates youth, and weeds out by his Disci-  
 pline all the trash, and corrects him for all the wilful breaches of his Rules, and so  
 brings him at last into a pliant and regular temper, in which all after proficiencies  
 thrive

*Timor filialis ori-  
 tur à duplici ra-  
 dice; 1. a co-  
 gnitione divina  
 magnitudinis, &  
 à dilectione Dei*  
*Aragonius in S.  
 Secunda, Dini  
 Thomæ. 919.  
 Art. 2. De  
 Timore, p. 264.*

*Timor Dei est me-  
 tus reverentia, &  
 cultus, A Lapide  
 in Ecclesiæ. xxiv.  
 24. p. 28.*

thrive from their implantation to a great and graceful increase: so does God by troubling the sinner to read, and in reading to be taken with the terrours of the Law against the sin he is guilty of; so dismount and carefs him, that for ever after he is a changed man; that as God did call off *Paul* from his eager *Pharisaism*, and *Saint Augustine* from his prophane *Manichism*, by the voyce of his power and mercy effectually touching them; so does he often do by others, through the ministrations of the Law; the threatnings of it being as so many voyces, and Counsels of desistance and abhorrence. This *Saint Bernard* counsels the sinner to observe, that he may be happy; *Fili accedens ad servitutem Dei, sta in timore, si ex timore te feceris illius servum, faciet te ex charitate amicum suum, & sic aqua timoris commutabitur in vinum dilectionis.* But this fear, though it be like poyson, useful by the modification of Omnipotence; yet it is not the fear of those, whom God values Jewels, and, as such, will protect, *Mal. iii.* 'Tis not the fear of God's Elect, *spurius timor, non filiorum;* 'tis *timor prede, non probitatis,* a fear that preys upon the vitals of ingenuity, and like imbib'd spirits at present refreshes, but after grate on, and overwhelm them, without God sanctifie it to illuminating purposes. Therefore this fear *quæ* such being not of stanch materials, and loyal composition, is not able to fortifie against evil, and to provoke to good; not make the soul as compleat towards God, as the *Queen of Navar's* accomplishments rendered her to the World, when *she not onely bore up the degree and estimation of a Queen, though she had no Kingdom, but kept up her self, and built up the greatness of her Son, in spite of adverse fortune;* but it flags, and renders the man that is acted by it mercenary, illiberal, and constrainedly onely good, being so far from enfranchising the soul, that it servilize it, and reduces it to an angultation of perplexity.

Whereas the fear of God, which *Moses* magnifies as the Laws work in the sacred heart of Kings, is *quasi auriga anima, quasi nauclerus anima, quasi specula anima;* 'Tis *ωλύη & ἀνθεσπών σπαιός δε,* a salutiferous, but a rare endowment; and a good Prince applies that of *Synesius* to the fear of God, makes God's fear the Philosophy he sets down to, *ὃ μὲν ἐν τῷ γυμνασίῳ ἀπομαρτυροῦν ἐν τῇ φιλοσοφίᾳ χροῖσθαι,* in *Ep. 45. ad Herculanum.* That which carries him not *Phaeton-like,* furiously up to the Clouds of Pride, but Christianly, by the safe path of Humility, steers him to secure his immortal soul from those exitials that are occasioned by two much either of presumption or despair, gives him a Prospect of God in his Soul, and in Heaven, in the Throne of his affections, and in the blis of his divine supereminency; and by this incoats glory even in this state of mortality; which *A Lapide,* on those words of the Son of *Syrach, Chap. 34. 15. Blessed is the soul of him that feareth the Lord, to whom he doth look, and who is his strength.* Thus descants on, *parata est anima (saith he) sapientis tum in spe, quia per timorem, & amorem Dei sperat certòque assequetur speratam à se Beatitudinem, tum in re, quia beatitudo hujus vita consistit in timore filiali, hoc est in amore Dei, quia per eum fit amicus, filius, & haeres Dei, & cohaeres Christi, quare ut filius, à Deo protegatur, dirigitur, omnique bono cumulatur.* Thus he. And therefore as it follows in our Chancelour.

Serm. 13. Inter  
parvos Sermones.  
Timor servilis  
quantum ad ser-  
vutem est malus,  
tamen quantum  
ad substantiam  
est bonus. Arago-  
nius in secundam.  
Secunda Tho.  
919. Art. 4. De  
Timore. p. 268.

D'Avila. p. 362.

Greg. Naz. Orat.  
93. on Eccles.  
p. 756. expresses  
it.

A Lapide in loc.

*Timor verò de quo hic loquitur Moyses quem & pariunt leges, est ille de quo dicit Pro-  
pheta, Timor Domini Sanctus permanet in seculum seculi, hic filialis est, & non  
novit pœnam, ut ille qui per charitatem expellitur, nam iste à legibus proficiscitur  
que docent facere voluntatem Dei quò ipse pœnam non meretur, sed gloria domini  
est super metuentes eum, quos & ipse glorificat, timor autem iste, timor est de quo  
Job postquam multifarie sapientiam investigat, sic ait; esse timor Domini ipsa est  
sapientia, & recedere à malo, intelligentia Job xxviii. Recedere à malo, quod intel-  
ligentia timoris Dei est, leges docent, quò & timorem hunc ipsa pariuriant.*

In this conclusion of his first Chapter, our Chancelour has reduced into a compendium, all that he writes concerning the subject of *Fear*, as the Lesson of the Law to the Prince. And, as in the former Clause, he shewed what *fear* the Law wrought not as its proper and most noble work, that is, in the effectuation it expresseth to the mind, that is taught by God: so in this does he set forth specially what it is in the useful and proper proceed of it towards a gracious and well-inclined person; and this he does

does out of that of the *Psalmist*, *Pfal.* . The fear of the Lord endures for ever : not by a duration of time ; for the absorption of Faith by Vision, and Hope by Fruition, determines all *fear*, as it is in order to beatitude ; for that being enjoyed, *fear*, it means to it, is lodged in its end ; but the fear of the Lord endures for ever, that is, it makes the *fearers* of God so walk before God, while they are in the way to him ; as that he shall take them into glory with him, and give them a coeternity of beatitude with him, which shall as little cease to be what it is, as his own Essence shall : so that he being for ever and ever his united to him by grace, shall in glory also have a being and endurance for ever and ever, or else for ever and ever, **עוֹלָם**, is an accumulate expression, denoting a constant method of God in all distributions of his to men by *holy fear*, to usher in all their subsequent services. And this is but as the way to that he wages ; whether one or both senses amounts, but to the acclamation of *filial fear*, which is the Oyl of Charity, the odour of a sweet-smelling Sacrifice to God : so far from being inconsistent with the Charity, that is, the bond of Perfection, that it is the very Charity, that is, the Bond of Perfection. Since thus to fear God, and keep his Commandements, is the whole duty of man. And this to do, though it does not *panam non merere*, as the Chancellour's words are, which attributes too much to the *opus operatum*, in the desert of it ; since all our righteousness is but as a filthy rag before God ; and when we have done all, we are commanded by our Lord to say, *we are but unprofitable servants*, and so no meriters, but demeriters. Yet does the acceptance of God's mercy crown this *fear* so far in us, that it makes us more then Conquerours over our corruptions, which are deservedly our fear, and entails us to the sure mercies of *David*, which are emanations of fidelity, and munificence inseparable from the fearers of God, because founded upon the veracity of his immutable Godhead. And hence it is, that *Job* his determination of God's fear to be wisdom, and to depart from evil to be understanding, *chap.* 28. is literally and infallibly to be understood, as indefatigable ; and the same is expressed to be, because it is the fear of the fontal and durably wise being, and so is objectively Wisdom, and it worketh a practice in man suitable to the purpose of God in his Creation and Endowment, **σφρα γδ πρώτη βίος**, &c. *A holy life is the first and most excellent wisdom, and that which is most clean and acceptable with God* ; which is, to abhor and recede from evil, as God's opposite and Antagonist in his soul, and so argues understanding, and makes him subjectively wise, because wise, both the witnesses of wise actions, since sin is absolute folly, as God charges it in his people. *My people have committed two evils ; forsaken me the fountain of living waters, and digged to themselves broken Cisterns that will hold no water.* So that the Law of God, in all senses, teaching man his duty, and quickning his endeavour by grace, imparted him to a capacitation of it, and a resignation of him to the conduct and empire of it, may well be magnified by our Chancellour in this first Chapter ; and the Scripture he refers the Prince to from the Book of *Deuteronomy*, of all other, be the most peculiar to the ends of his Instruction in the fear of God, and to the observation of his Precepts all the days of his life ; saying of our Chancellour, as *Synesius* does of his *Herculian*, **Τὸ ἐν ἀποδείξει ἄνα Σιρηνίας**, &c. If there be question, *Whether there be Syrens, so long as your Instructions remain, they will put them out of question, since in every line of them they have such melodious notes, as wholly Fortescue, the Prince, and render him unable for admiration to contain himself.* And so I end the first Chapter, referring the Reader for the fuller satisfaction of the latitude of holy and servile fear, to the many Authours, whose Works have much of it ; as they may be read in *Fabian Justinian* his *Index Universalis*. Printed at Rome, Anno 1612. p. 529. and in the *Scholemen*, who generally have written as largely on the Head of *Fear*, as on any other common place whatever. And so I proceed to what follows in

## CHAP. II.

**HÆC** ut audivit Princeps, erecto in senem vultu sic locutus est] because I look upon these Dialogues, as to the Persons, as well as to the Matter real, and not fictive : therefore I term this Chapter the Prince's Replication to the Chancellour. And three notable things it is considered for : First, the Prince's civility, in a speedy repay of his love ; *hæc ut audivit Princeps*. Secondly, the Prince's preparatory percepts, to op-

Caten. Græc.  
Patrium. p. 439.  
Τὸ ὄντι ἢ  
ἀκροτάτη  
σοφία ἐστὶν ἢ  
ὄρθη περὶ Θεῶ  
διάνοις καὶ ἢ  
θεοφάνει ἐπιστή  
μη ἢ ἀείρει  
πράξις. Isidor  
in Job xxviii

Gregorius Theo-  
log. apud Caten.  
Græcorum Pa-  
trium in Job xx.  
p. 436.

2 Jer. 13.  
Λόγων πολλῶν  
μὴν ὀμιλῶς  
εἰρησὶς δεῦτε-  
ρα ἀπὸ τῆς  
πέπλανημέ-  
νης φλυασίας,  
Greg. Naz.  
Orat. 53.

Ep. 145.

pose his youth to this grave and wise Chancellour's age, *erecto in senem vultu, sic locutus est*. Thirdly, the Prince's pregnant and pathetic Reply in the following matter.

First, the civility of the Prince's return to the Chancellour's counsel, is notable: no sooner had he a sense that he was obliged, but instantly he meditates the compensation; *hec ut audivit Princeps*. 'Tis true, men may have courtesies done them they know not of, and then their detinue of thanks, till they have notice that they have received kindness, is their excuse: but when a kindness is done, and so palpably, as we our own selves, are privy to, and convinced of the reality of it; if then we either do it not at all, or not seasonably, and while 'tis warm and fresh, we do amiss. For, as *ingratum est beneficium quod diu inter manus dantis hæsit*; so is the thanks suspectable not to be real, when it is cold, and comes by grand paws, and tedious crawlings to those we owe it to. This our Prince abhorring, as knowing the suspicion of ingratitude, too great a blot for Majesty to be branded with, suffers nothing to impede his thanks to the Chancellour, but sends by the same Post that brought the Narrative Packet, his recoil of acceptance; *hec ut audivit*: no Arrow as it were, is impelled toward the Mark; no thought ejaculated to its object, no volubility of the eye more quick, than this courtesie of his Princely heart, *hec ut audivit*, that is, *non citius audivit quam retribuit*; well knowing that of the *Moralist* was true, *qui cito dat, bis dat*; and that he who makes no haste, has little good will.

It is I know, a way, of narrow minds, to defer rependments, in hope that time may wear out the expectation in those that deserve it, as it does the gratitude of those that are deserved of: such spirits are frequent to vulgar births and brats of self-admiration, who are content, every body, should admire them, and as divine, offer to them; while they in no sort divine, are immunicent; no rain of their bounty, no sun-shine of their favour falls on their adorers, though their loves to them, make them their costly Voraries: all they sow upon this Rock, and commit to this Cormorant, is sure to be thin come up, though thick sown. And well it were, if such degeneracy were the botch and deformity of men of low degree: but greatness sometimes has been capable of these ingratitude; yet the Prince takes no president from them that are great, but not good, and have prelation above others in body and blood, but not in mind and virtue. Therefore his practice is to haste out of debt, to accept of what is in love presented him, and to represent himself the owner of it: this is the first thing, the Prince's acceleration, *reddere quod recepit, cui recepit*;

— *Hæc ut audivit Princeps,*

Secondly, the Prince's preparatory pertness is notable; pertness, in that he takes fire immediately upon the stroke, and kindles by his own innate candor, and the vestal touch of his gentle mind; and preparatory, I term it, because it was ordained to usher in the subsequent matter, more conveniently. It was the Preface to the Discourse, and the Porch to this Pupil-like entertainment of the grave Chancellour. *erecto in senem vultu*; he does not roughly frown, or rudely grin, but gravely youth out his mind to his Instructor, *erecto in senem vultu*. Of all the parts in man, the face we call the Market-place, and in the face the eye is the jewel of it. Of all the senses of man, sight is the noblest; not onely because it is the Organ even of our Clarification in Heaven, and that which we see the face of God by, but because here in this World it is the instrument of our Earthly Heaven, Wisdom, and Philosophy; which, in *Philo's* words, have their initiation from no other thing in us, *ἡ τῆς ἡμετέρας*, &c. then from it as the Prince of the Senses; therefore, though he calls it small in bulk, yet he adds, 'tis that organ which views the great things of Heaven and Earth. Thus, as *Phidius*, to use his words, *Did out of every material, make Statues, Gold, Wood, Stone, Iron, his Art appearing in every Figure, let the Materials be never so trite, that any one that had artly eyes might see him the Workman: so God the great Architect of man, though he has made him to consist of parts more and less noble; yet in the minutest and least glorious part has he instanced his matchless power and goodness.* Alas! the face, it is but a ball of flesh, and the eye but a bubble, which Omnipotence keeps clear and plump; yet how inexpressible is the prevalence of these to captivate love, to search into art, nay to do actions, second in a sort, to those of miracle and astonishment.

*Ingrata patria non habebis ossa mea. Dicitur Scipionis.*

*Lib. De Abraham mo. p. 273.*

But I say no more of the face, for that's *ipsa oris species*; our Prince is here said, *erigere*

Lib. De Orator  
11. & De Oratore  
12.

Ep. 94

Lib. 6. c. 3.  
Herc. Fur.

Projetus & de  
gener vultus.  
Tac. lib. 19.

gere vultum, and that's to present his Will, *quæ pro motu animi, in facie ostenditur*. So Tully, *Vultus qui sensus animi plerumque indicant*; and *Imago animi vultus est, indices oculi*; and as dejection of Countenance shews a guilt, which Cain confirms after that fratricidal facinus, when God told him his Countenance was fallen from his brightness to be sad: so erection of Countenance is a token of God's *primæ largess*, and Nature's innocency resting in us. *Ille vultus nostros erexit in cælum, & quicquid mirificum magnùmque fecerato à suscipientibus voluit*, &c. saith Seneca. Indeed, the Antients, and men of wisdom in all Ages, have made the Countenance the Horizontal Line, upon which the *Idea's* of the Mind, and the possessions of the Regency there, turn themselves open to a perfect view; when there is a sad disastre, and a lugubrious uncouthness within, there will be a flag of defiance to joy, and gentleness in the Visage; there will be *ambiguus, ac consceleratus vultus*, as Horace says; *Quintilians, distortus vultus*, Ovid's *Durus, Ferinus, Terribilis, Trepidus, Tristis vultus*; Seneca's *Igneus, Tumidi & truces vultus*. There will be Ovid's Countenance that covets *abdere vultus suos tenebris*, 2 *De Remed. Amor.* 39. Men, in these cases, will *toto vultu in terram procumbere*, 14 *Metam.* 57. They will shew, what troubles the spirit of man hating prevarication has. And when again there is contentment, and a virtuous habit; when all is placid, and averse to mischief: then there is on the Virgin *Visual Table*, the Inscription of *Decorus, Dilectus, Hilaris, ingenuus*. Then there is Ovid's *Latus & loquens nitidus vultus*, and Virgil's *Virginus, and Placidus*; and Claudian's *Comptus & Coruscus vultus*. In short, the face and hew of it, is an undeniable gnomon of the interns that reflect their beams of intention, or remission, of brightness, or obfuscation, according to the nature of them in their original: So that whereas our Chancellour expresses the Prince as erecting his Countenance on them; he concludes him pleased within, and evidencing of it in a conformity of looks on the visual superficies of so composed a soul and sense; and by *erecto vultu*, here he means what other Authours do by the most benign Epithites; and what Ovid, *Placido vultu respice mea munera*. 2 *Fastor.* 4. and as one that did not *addere vultum verbis* onely, but *præire verba vultu amicali*. He makes way for the main address of his gratitude in the following words, *sic locutus est*.

*Scio, Cancellarie, quòd liber Deuteronomii, quem tu commemoras sacra Scriptura volumen est, leges quoque & Cæremonia in eo conscriptæ, etiam sacra sunt, à Domino edita, & per Mosen promulgata. Quare eas legere Sancta contemplationis dulcedo est.*

These words argue the Prince both gentle of nature, and satisfied in reason and judgment; that as by the one he accepted the counsel of age, so in the other he owns the gratification of youth, in the firm perswasion of the Chancellour's Arguments to be valid, and his quotations Scripture. And to make his ingenuity more transparent, I shall first observe his Assent to the Canonization of the Book, out of which the Scripture-counsel is taken; *Deuteronomy*, that he owns to be *Sacra Scriptura Volumen*. Secondly, his Recognition of the Laws and Ceremonies in it as sacred, because part of the Canonique Scripture, *Leges & Cæremonia in eo conscriptæ, etiam sacra sunt*. Thirdly, his mention of the Authour of them, *GOD, à Domino edita*. Fourthly, his notice of the Instrument of their Promulgation, *Moses, Et per Mosen promulgata*. Fifthly, the Conclusion he subjoyns, deduced from the preconcessions, *Quare eas legere Sancta contemplationis dulcedo est*. These, as the oratorious and pious Preliminaries to his weighty sublequent Reply, are worthy notice. But yet I proceed.

*Sed lex, ad cujus scientiam me invitæ, humana est, ab hominibus edita & tractans terrena: quò licet Moses ad Deuteronomii lecturam Reges Israel astrinxerit, eum per hoc Reges alios ad consimiliter faciendum in suis legibus concitasse, omnem effugit rationem, cum utriusque lectura non sit eadem causa.*

This Clause has the Nerves, Sinews, and Ligament of the Prince's reason in it, and had need of athletary and masculine Arguments to resolve and repel it. No doubt, the Law of God which *Moses* proposes, is that which has an *avisoisía* in it self, and ought to



to have a more then moral swasion on men, nay, a divine Empire over them, to believe, embrace, and follow the Prescript of it; the reason is, because flesh and blood is non-plussed, and has no Rampier to raise against the Battery of its Divinity; God does assist it with such an inseparability, that no wit of man shall hold out siege against it; but if he be not sealed up to the day of destruction, shall yield up his reason and prepossessions to it. No doubt therefore, but *Israel's King* would hold himself concerned in a punctual consistency to it. God, whose the spirits of Kings are, was in it, and he dinted the edge of it, to cut through the oppositions of all argumentation against it. And therefore it was capable to teach the fear of God in God's method, and to the proportion of his requiry, because he fitted it to that end. 'Twas mighty, through God, to dismantle the strong Holds of Satan, and to rescind every obstruction that adversateith that end of God. It had a mighty Authour, *GOD*; and a mighty Minister, *Moses*, and a mighty appearance with Thunder and Lightning; and thence ought to have a mighty power with Kings, to teach them how to rule men under God, that they and their subjects may live with God for ever. But, Sir *Chancellor*, quoth he, *Saul's Armour* will not fit *David*, nor will the Prerogatives appropriated to this one only Law, be applicable to all, no more then the *Scribes* and *Pharisees* come up to *Moses*, because they sit in *Moses Chair*: *Moses* was a man mighty in word and in deed, his Law was written by the Finger of God; the Statutes and Appointments of it were contrived in the Divine Mind; and no wonder, if they directed to God their Center whence they originated: no wonder, though they taught the Kings that were to be; what they might, and might not do, and possessed them with a fear to do the contrary, and with a care to do their positive injunction, in reverence to God the enjoyner, and to the injunction, as a part of his Worship. All the scruple is, How humane Laws that are made by men, subject to like infirmities with others: perhaps, *Tyrannos, truculent*, prophane, perjurious. How these so weak and wicked should arrogate the authority of God, and command indisputable obedience to their Laws. And how Kings that are holy, pious, and beloved, should be reasonably thought to read them, or be obliged to conform to them; since *qualis causa, talis effectus*, shrewdly presumes the Laws of violence and injurious contexture and impresson like themselves. This the Prince objects, as holding himself not so strictly obliged to peruse the Laws of *England*, since they are but humane in their subject matter, and earthly in the objects that they respect. And this concludes the second Chapter.

## CHAP. III.

*At Cancellarius, scio, inquit, per has quae jam dicis (Princeps clarissime) quantum advertentiâ exhortationis meae tu ponderas qualitatem quo me non infirmè concitas super inceptis neâm clarius sed & profundius quodam modo tecum disceptare.*

THESE words bring in the *Chancellor*, acknowledging both the candor in the Prince, and the favour of the Prince to him; which he the rather here mentions, because good counsel, and noble Precepts, have not ever such returns from *Pupils* on their *Tutors*. 'Twas rare counsel that *Seneca* gave *Nero*, in his Book *De Clementia*, which he says he begun and continued, *Ut quodammodo speculi vice fungerer, & te tibi ostenderem perventuram ad voluptatem maximam omnium*. And yet, though it had the sublimest strains of rhetoric love, and pathetique zeal to his aggrandization, that it might polish the roughness, and attenuate the superbitry of his nature tending him to practices, as victorious oyer passion, and as obliging to subjects gratitude; as *Augustus* his was; whom he brings in as justly glorying, *Præstitisti, Cæsar, civitatem incruentam, & hoc quod magno animo gloriatus es, nullam te toto orbe stillam cruoris humani misisse*; yet had he no other answer but death from that parricidal Monster. But blessed be God, our *Chancellor* having to deal with a sweeter Nature, and receiving from him better proofs of radicated virtue, gives him this due *Encomium* in the *Exordium* of this Chapter. And that he does by several Gradations. First, he salutes him as a Prince most excellent; not as great, but good; not glittering in the Vest of Royalty; so much as in the Virtue of Meekness and ductility; *In maxima potestate hac verissima animi temperantia*

Dib. 1. De Clementia, p. 624. c. 11.

Petrus in leges, Atic. lib. 6. Tit. 6. p. 338.

perantia & humani generis incomprehensibilis amor, non cupiditate aliqua, non temeritate incendi, non priorum principum exemplis corruptam, quantum in cives suos liceat experiendo, sentire, sed hebetare aciem imperii sui; as Seneca wrote to Nero. And then secondly, not setting light by the grave and pithy suggestions of his experienced State-Minister, who had with loyalty and love asserted his Rights, partaken in his misfortunes; and now for his good, affectionately imparted himself as he was able to him. This had been but like heady and grateless Youth, which is apt to neglect and forget great deserts, and grave deservers, which the Attique Laws censured; as Val. Max. lib. 5. c. 3. witnesseth, and which all ingenuous Natures abhorred. But in that he does accept the counsels, and consider them, magna advertentiâ, intently and with a fixation of mind, to be conducted by them, and to admit them to a regency in him, argues him a high favourer of virtue, and one that bespeaks the Chancellour to continue his service to him, and that not in the ordinary way of daily astancy, and appearing at this Court; but of diligent study to consider, and of faithful Resolution to impart, what he conceives fit for him to know and do; yea, and to convey this to him by a method of effectuality and perspicacity; that by delighting him with the method and pleasure of the Congress, he may be enamoured with, and surprized by the potency of the Reason; and thence be formed into such a composure of honour and honesty, as may for the present make him the darling Prince; and in future, promise and perform him, if God see fit, the renowned King of his Fathers Subjects; which, that he may by this means come to, he proceeds to direct him as follows.

Scire igitur te volo, quod non solum Deuteronomii leges, sed & omnes leges humanae sacrae sunt. Quo Lex sub his verbis definitur, Lex est Sanctio Sancta jubens honesta, & prohibens contraria; sanctum enim esse oportet, quod esse sanctum definitum est.

Here the Chancellour shews, that though the Laws of God mentioned in his Word, and Deuteronomy as part of it, be primarily, and per se sacred, because they immediately come à fonte sacro, and are the issues of explicated Divinity, there being a kind of patefaction of God in the Wisdom and Order, the reason and necessity of them, to preserve Natural Religion, Civil Justice, and Social Harmony; yea, and to dispose men by their oeconomy, to glorifie God, in adoring him as Supreme, and securing his from the sacrilege of our Insolence; and though God has implanted such Majesty in his Laws, as is not in any humane Law in the World, abstracted from it; ye are all Laws which derive their force, à lege natura (and those that do not, are no Laws, according to that of the Schools, \*Nulla Lex humana habet vim legis nisi in quantum à lege naturæ derivatur) and are honest, just, possible, according to the Custom of Places and Times, advantageous to common profit, and plain. These as regulated by the eternal Law of which they partake, inasmuch as from it they are inclined in proprios actus & fines. These though Humane, in regard of their Makers, and in regard of their Tether, they respecting humane Conversation and Order, yet are sacred, and do refer to God, as their Authour and Justifier; yea, they having a re-

Πάντα γὰρ ὅσα ἐστὶν, ταῦτα ἐν τῷ Θεῷ ἐστὶ καὶ ὑπὸ τοῦ Θεοῦ γενομένα καὶ ἐκείθεν ἀρτημένα. Trismegist. in Pizand. 9.

Νόμοι δὲ εἰς αὐτὸν ἐστὶν ὁμοίως ἕχ, ὁ μὲν μᾶλλον ὁ δὲ ἄλλον, in Minoe, p. 564.

Detrahunt leges aliquando à jure naturali, & addunt juri naturali; nec obstat, quod ipsum jus naturale est immutabile & verum, quia illud verum in suo genere, in certis autem capitulis mutatur, & mutatur, quoad observantiam ipsam, tamen semper bonum, & equum est. Glos. in Digest. lib. 1. Tit. 1. De Jure & Justitia, p. 45. \* Sanctus Thom. Summa prima, secunda, q. 95. Prima secunda, q. 91. art. 2.

Dr. & Stud. c. 19. Lib. quod Deus sit immutabilis, pag. 303. Lib. De Abrahamo, p. 350.

Livius, lib. 2.

spect to that which is God's definition, Order and Charity, according to Philo's notion of them, ἢ πρὸς τὰ ἀγαθὰ καὶ, &c. yea, and being nothing else but ὑπομνήματα βίαι τῶν παλαιῶν, The Narrative of the regular and devout Lives of the Patriarchs, before the Law on Mount Sinai was published, there is good reason to call and account the Laws of every Government sacred, and severely to punish the violent and obstinate Contemners of them. Si quis adversus eas fecisset, sacer alicui deorum cum familia pecuniâque esset, was the Romans judgment; and Saint Paul's further, He that respects shall receive to himself damnation, that is, shall have a sentence in his Conscience, in præjudicium futuri judicii. That the Laws have ever been accounted in all Nations sacred, is not onely evidencible from the nature of Laws, which point out to man his duty, both to others and himself: from whence Philo terms the Law Βασιλεία δικαίου, as he

he does the King, νόμον ἐπιτιθεῖν, adding, that as it is the duty of a King to command what is to be done, and forbid what is not: so is the *πρόσταξις τῶν πράξεων*, &c. the manner and mode of doing and not doing it, the propriety of the Law: and hence the Law (deriving its descent, *non populorum jussis*, &c. not from the Peoples power, or from the Judges judgments, but the rule of Reason and Nature. And again, *Hanc sapientissimum fuisse*, &c. I see (saith he) the Law to be the judgment of the wisest men, not flowing barely from the conceptions of humane nature, nor issuing from any Sect or number of men, but some thing eternal, the Wisdom that governs all the World by commands and restraints.) Not onely from this ought the Law to have great esteem, but ever had amongst all Nations in all times. They called the Law *Κύριος ἀνδρῶν*, the Lord of men; adding, *ὁ πρὸς νόμον ἁμαρτάνων*, a sinner against the Law is a fugitive; and when *Crasus* asked *Pittacus*, What was the greatest thing? ἢ τὸ μὴ ἔσθαι ἐξέλιξαι, meaning the Laws which were written on the Barks of Trees. *Plato*, calls the Law, τὸ ὅσως ἐξέλιξαι, the invention of truth. *Ficinus* in *primo leg. Platon.* derives the Laws by *Minos*, *Lycurgus* & *Solon*, from three Gods, *Jupiter*, *Apollo*, *Minerva*, Power, Clemency, Wisdom; this argues the dignity of Laws; and *Plato* terms them *μυμνάσια τῆς ἀληθείας, ψυχῶν ἀρετῆς*, *Plotinus* ἀρμονίας δύναμις, &c. a power or faculty containing all harmony, the soul of the Body politique; and *Ficinus* on him, says, *Legum major est quam syderum autoritas*; and *Plutarch* said much of the Laws, when he wrote the Laws. *αἰεὶ τῷ τὰ δίκαια ἐπείσσωσι*, &c. The Laws always gives the first place in the Common-wealth to him that does just things, and understands things profitable to Mankind. And in another place, *ἰσχυρὸν ὁπῶντων βασιλῶν συνῶν τε καὶ ἀδυνατῶν*; yea, they were so exact in observing their Laws, that νόμος πέδιδος, was Gospel with the Antients, be their Learning and power what it would be. *Pausanias* replied therefore to one that asked him, how the Laws came to be so fixed, that no man durst endeavour their change, *ὅτι τὰς νόμους τῶν ἀνδρῶν*, &c. Because the Laws are Lords of men, not men of the Laws. Hence the Laws, as ἀψήδης καὶ ὀρθοῦς λόγος, all men have subjected to. The Egyptian Kings, Nil agebant propriis affectibus, sed omnia juxta legum decreta. *Alcamen* refused the gifts offered him by the *Messenians*, Quoniam si recepissem, inquit, cum legibus pacem habere non poteram. *Pysistratus*, though a Tyrant, being accused by the *Areopagite*, for violating the Laws of *Solon*, submitted to the judgment of that Senate according to them. *Augustus Caesar*, when he had violated the Law of Adultery, by him made, in beating the Adulterer with his Daughter, whereas he should have delivered him over to the Law, was displeas'd with himself; and when he cryed out to him to forbear, because he violated his own Law, *Augustus* forbore, ashamed, *equum tamen ducebat non minus se quam alios legibus parere*, as *Falgosus* words it. I might be endless in quotations of this nature; but I refer the Readers to other places of his Commentary, where I more largely prosecute this: concluding with that of the *Moralist*, *Hujus opus unum, est de divinis humanisque verum invenire, ab hac nunquam recedit justitia, pietas, religio & omnis alius comitatus virtutum consertarum, & inter se coherentium, hac docuit colere divina, humana diligere & penes Deos imperium esse, & inter homines consortium, quod aliquandiu inviolatum mansit, antequam societatem avaritia distraxit*, &c.

Whereas then the Chancellour says, Laws are sacred, and adds, *Lex est sanctio sancta jubens honesta, & prohibens contraria*; What doth he but speak, what God and Nature inspires him concerning it; for Laws being the inventa deorum, and the universal suffrages of Nature, propagating good, and impeding evil, are so deservedly accounted sacred, as nothing can be more, because they are from the sacred being, example, authority, and tend to a sacred issue, God's glory, and mens good. Which considered, though the Moral Law once delivered by God be absolute, and no dispensation by man can be allowed for the breach of it; yet is there a kind of second power, next to the positive Law of suspension, latent in the nature of man, and that by God's permission, as it were authoritative, which may be exercised besides, though not directly against that unalterable Law, αἰ μεταγενέσθαι διατάξεως, &c. Later Constitutions, that better see the defects of former, are to be preferred before those that preceded them; saith *Modestinus*. For else emergent virtues would be without reward, and vices without punishment,

Lib. secundo De Vita Mosis. P. 654. Lib. 1. De Legib.

Cic lib. 2. De Legibus. M. Antoninus, lib. 10. c. 25. Lib. De Mundo, c. 6. Plutarchus, De Homero. Plato in Minoe, p. 665. Politic. p. 556. Ficin. Com. in 1. De Legib. p. 767. Lib. 12. De Legib. p. 997. Ænead. 4. Lib. 3. Com. in Lib. 1. Ænead. 3. p. 226. Rep. Gerenda. Præcepta p. 817. Lib. ad Princ. Indoctum, p. 781. Porphyrius in vita Pythagoræ. edit. Holfstenii.

Lib. De Bon. hom. libert. Biodor. Sicul. lib. 1. c. 6. Plutarchus in Solone.

Lib. 4. c. 1.

Ep. 90.

Illustres conditores legum, inventionem legum in Deum, sed per diversa nomina atque media retulerunt, lege annumerationem Legislatorum apud Ficinum in Argum. ante Minoe. Platon. p. 564.

Lege S. Perit. De Legibus Atticis, edit. Paris. 1635.

Lib. 2. Excusationum. c. 4. Digest. lib. 1. Tit. p. 86. De Constit. Primum.

Lib. De Joseph,  
p. 531.

ment, because they, as *omissi casus*, being not in the ordinary Canon; and must on that ground be passed over, as if Magistrates were unconcerned in them. And this civil prudence, and self-preservation, the supreme Law, next that other, obviates, and that warrantably. *Philo* says Government is *ποικίλον ἔ ποικίλων*, &c. a various and prudent adaptation of man to times. As a Sea-Master does not always steer one course; nor put out alike Sails, but varies and alters, as the Seas and Winds, and his Merchandizes, and men occasion; and as a Physitian does not always give one dose, but varies his prescript as the Patient changes, by intentions, remissions, repletions, all to health: so should a Governour order his affairs, as he sees best according to emergencies, regarding publique good, and mens profits. And this *Seneca* makes a most notable care of a Governour to prospect so, that he needs no other eyes but his own to direct him. And hence is it, that as he proposes Laws, *ad docendum*, as well as *imperandum*, yet he improbates *Plato's* long Laws, preferring short Laws soon learned, and easily remembered far beyond them, and cries out, *nihil videtur mihi frigidius, nihil ineptius quam lex cum Prologo*; yet does he suffragate to the use of additional Laws to those

q. 94.

*Budæus* in *Pand. priores*, p. 194.  
*Jura constitui oportet in iis que nascèτὸ πλείον accidunt, non in iis que in πλεονάζουσι, id est, iis que plerumq; accidunt, non in iis que nec opinatò, vel præter hominum opinionem.*

Lib. 1. p. 642.  
edit. Sylb.

*Porphyrius*, De  
Abstin. lib. 1. p. 6.

*LinSchotten*, in  
his Voyages to the  
India's, c. 36.

that are constitutional and primæve, according to the requiry of extraordinary Occurrences; which surely but for this, would be such an *hiatus*, as would swallow up all Gods and Mens Constitutions. For though it may be disputable, whether the World does *senescere vigore*; and many, on both sides, have variety and reason for their adhaënsions for and against it; yet is it out of doubt, that the World, in the acceptation of it for men, the noblest part of it, do every day decrease in virtue, and with their new fashions, new habits and diet, introduce new vices; which, if not caution'd against by Laws, (slips cut out of the whole piece of pristine Wisdom) all that is sacred and civil, will quickly be absorp't. And therefore as *Fabius Cunctator* was by the Romans called *Imperii scutum*, because he taught them the way to master and ruine *Hannibal* by not fighting him, and for that was called by *Jornandes*, *prima redeuntis & reviviscentis Imperii spes*: so true subsequent Laws, woven out of the materials of Legislative Wisdom, which the Antients had, and we from them received the principles in. These I say improved, are rightly termed *reviviscentis sapientia naturalis indicia*, the amputations of vice and eradicators of pestilent annoyances, and Magistrates that carry them on to these ends indisputably to be adored. And therefore that King amongst the *Bramins*, that made the Law against the ventry of Women, by enjoying that every Wife should be burned with her Husband, was an eternal Benefactor to the Nation whom he governed, and to the Successions of them: For whereas their Lust satisfiable by others, better as they thought then their Husbands could, made them poison their Husbands, to enjoy their Leachers, and so filled Families with degenerate Broods: his Law drew them, for love of their own lives, to do nothing against, but all things for the lives of their Husbands, that they themselves might also live with them. And this was the break-neck of that Leachery; and so a good instance, that even by the light of nature, there is a latent power in Governours wisely to enact such Laws, as times, places, persons, and occurrences shall require; and such enacti- ons being sacred, ought as such to be obeyed, and that upon the ground that they are *sancta*, because they do *sancta jubere & honesta, & prohibere contraria*, and have no name above their nature, but answerable to their appellation, according to our Chancellour's words, *Sanctum enim esse oportet, quod esse sanctum definitum est*.

This I conceive is added, to discriminate just from unjust Government: in just Government, a just Law is the Rule, that teaches *unicuique quod suum, est tribnere*, and impedes and punishes whatever is contrary to it; that makes God and his right, mens aw, and expects their zeals to appear asserters of them; whereas other Governours set up wickedness by a Law. Nay, are set up to be what they are by wickedness; such a Government is that of the *Turks*, and was that of the *Mammalucks*. Now as the Government is, so must the Laws of its support be; for holy and righteous Laws will no better suit with unrighteous power, and unjust managings, then old Cloth will with new in a Garment; or new Wine with old Bottles, to use our Lord's comparison. That then, which the Chancellour intends, is, that things ought in nature to answer their definitions; and if Laws be defined holy from the holy Sanctions, they are pre-

presumed to command, and the contrary to them, to forbid: Then the Laws ought to be preserved in their account of holy, from forbearing enactments that are diametral to honesty, and of evil report. And on this ground the Laws of England, since Christianity, have not onely eliminated foolish Laws, like those of the Argives, that Women when they coupled with their Husbands, should put on Beards; or that of the Romans against their manumitted servants; or that of the Lacedemonians, *μη τριβειν μύσαχα*, that is, men should not suffer their Mustachio's to grow. Not onely have the Laws of England avoided fond enactments, but also eliminated all Ethnique Laws, and Drurydize Customs; yea, and the Reformation has since refined things, which in, and under Popery, had at least negative legality, as dispensations for Leachery; and all this upon the Chancellour's Rule, *Sanctum enim esse oportet, quod esse sanctum definitum est*. Again, *Lex est sanctio sancta jubens, & prohibens contraria*, is the definition of all Authours according to truth it self; as is proved from the fore-cited Authorities; *Lex*, not onely à *ligando*, from the obliging nature of it, because none are exempt from its cogency as a rule; but also *lex à legendo, quia publicè legatur ut omnibus notus sit*. For though of late Laws have been printed, and the Laity educated to read and practise them; yet in the elder times, the Laws were onely read and proclaimed from the authographon of their Entry, that all might at their peril take notice of it; which was one reason, I conceive, that *Magna Charta* being declaratory of the antient Common-Law which obliged all persons, was wont to be read not onely at the County Town by the Sheriff, but also in Churches once a year at least, that all persons of what degree soever, though they could not read, or might not, if they could read, come safely to the sight and perusal of it, might hear to know it.

*Sanctio sancta* ] Not *consensus populi*, but *sanctio Principis*. For, though *Plato's* rule be much to favour of People in formation of Laws; yet he fixes the sanctional power on the Prince as inseparable from him, as God's Vicar, and under him Legislator, and so our Laws do also. For the enactment which gives being to the Law-Statute, is the Kings; the consent of the Estates is but *sine qua non*. The Divinity of the King's Uction derives a sacredness on the Law; Subjects co-operation is but to frame them into useful methods, and to draw them to be obeyed more willingly, because consented to by their delegates in their passing. And to render them more probable to be just and wise, when so many Peers, of honour and learning, Spiritual and Lay, and wise and worthy Gentlemen, consider of, and consent to the enactment of them.

*Jubens honesta & prohibens contraria*. This I said was added to distinguish between Law and Law; for 'tis not the outward sanction onely, but the internal virtue, and the excellency of the end and drift of Sanctions, that makes them obligatory and cogent on men to obey them. And therefore, if a Law should be any where made like those fore-cited; or like that which *Lilius Giralanus*, out of *Herodotus*, mentions among the *Babylonians*, that the native women should once a year couple with forraigners, for their recreation and content, that (as it were) they might the better bear the company of their Husbands and Countrey-men all the year after. This Law, I suppose, being so hard and obscene, so dishonest, and so unnaturally putid, would have no force on men and women further, then to make them suffer for disobedience to it; for since the Laws of every Nation are to accommodate the people of it in their way to virtue and serenity, according to that of the Orator, *Constat profectò ad civium salutem, civitatumque inclumitatem, vitamque omnium quietam, & beatam, conditas esse leges*. That the Magistrate is a worded Law; and the Law a silent Magistrate, as *Tullie's* words also are, and that his work chiefly is *μη κάλῶν*, &c. to consult and put in execution things good, generous, and just. Considering I say this, there is great cause to look that Laws be made as Laws ought, to the promotion of things honest, and the impediment of immoralities. For *Saint Paul*, in saying the Law is just, and holy, and good, did but point out to the natural endowment of Law, and those three glorious Attributes of God, which the Laws emanated from, and were regulated by.

And hence is it, that abstract these ends from Laws, and they are no remains of God in man, but have the monstrosities of corrupted nature, and execrable contradiction to God; in his intent and purpose of giving them to men; and instead of being the lines of manuduction to Heaven, they are bonds of iniquity, and conducts to his dishonour in Natures violation and distortion; and some have thought the Statute of 28.H.

Plut. lib. μετ  
 γουακῶν ἀγε-  
 τῆς, p. 245.  
 De his qui serò à  
 nomine puniuntur.  
 p. 550.

Synagmat. De  
 Diis 12. p. 374.

Cic. lib. 3. De  
 Leg.  
 Tertio De Legi-  
 bus.  
 Plato 9. De Le-  
 gib. p. 925.

8. c. 7. 31 H. 8. c. 8. 32 H. 8. c. 25. 33 H. 8. c. 21. not to have been founded upon such Piety, and Justice, as Laws ought to have been, and therefore they were soon repealed; it being a good rule, *Alteri detrahere sui commodi causa contra naturam est, & sic injustum*, saith *Grotius* out of *Tully*. And thereupon considering the precise rule of our Lord's, making Justice the completion of the Law, and the Prophets, and finding many mens actions, in administration of Law diametral to it, I cannot but bring in here learned *Budaus* his complaint, who makes some men even in their Justicings, so far self-admirers, and self-seekers, *Cum, si ad veritatis normam, & ad simplicitatis Evangelica prescriptum exigere jura velimus, nemo sit tam stupidus quin intelligat, nemo tam vecors quin consteat nr, si urgeas, tam jus & fas hodie, & jam diu in sanctionibus Pontificiis, & jus, atque equum in legibus civilibus, & Principum placitis desiderare, quam Christi rerum humanarum conditoris instituta, ejusque discipulorum ritus ab eorum decretis, & placitis, qui Crasi & Mida acervos, bonorum finem esse putant, & felicitatis cumulum, adeo si justitiam finire nunc velis, quomodo priscis auctoribus placuit, qua jus suum unicuique tribuat, vel nullibi illam in publico invenias, vel (si dicere id mihi permittam) culinariam quandam dispensatricem esse, ut faciamur necesse est, sive nunc imperitantium mores spectes, sive civium inter se & popularium affectus.* So that grave *Parisian* Chancellor.

By all which it appears, that Laws are then onely sacred, when they are to purposes sacred, and enjoyn what God and Nature dictates them to; when they answer the end of their institution, and are conform to the principle whence they actuate, which being just and good, becomes thereby accounted sacred, because officious to man in his religious, civil, and social capacity; for, *sanctum esse oportet, quod sanctum definitum est.*

*Jus enim describi perhibetur, quod illud est ars boni & aequi. Cujus merito quis Sacerdotes nos merito appellat.*

This definition of the Law, *ars aequi & boni*, is *Celsus's*, and *Ulpian* from him quotes it; this the gloss well explains, *jus est ars*. First, *ut dicas definitum jus in genere, & sic est ars, id est, scientia finita qua ardet infinita*. For art is nothing else, according to *Porphyrius*, but the finite learning of things infinite. Secondly, it's called *ars arcta*, it is *artificium hominis, nam auctor juris est homo, justitiae Deus*, that is, though God give the rule for justice, yet man fits and disposes the method and way of its convoy and application to men, and so 'tis art; and then *aequi & boni*, that is, it appoints that which is *aequam & utile*, good and lawful in it self, useful and beneficial to man. This the gloss,

Now this delineation of the Law of equity, which is the *ἀρχὴ καὶ πηγή πάντων τῶν καλῶν*, the principle and fountain of all good, as Antiquity terms it. It is fit, it should be further considered; the Philosopher calls *jus, τὸ ἴσον*, that evenness that interours the extremes; adding, *εἰ τὸ ἄδικον, &c.* If Injustice be inequality, then Justice must be equality. And he says, it consists in proportion and comparison, when both rewards and punishments are suited exactly to the merits and demerits of men, and when Magistrates in administration, incline neither to the right hand nor to the left.

I know, there are learned men that criticize between *jus* and *lex*: by *jus* they understand that natural obligation on man, which the *Hebrews* called *צדק*, and the *Greeks* *ἐσθή*, and by *Lex*, constituted positive Laws, which they called *νόμος*, *δικαιώματα*, quod justum, ut quis accipiat ratione Scripturae aut legis aut consuetudinis. But this learned *Grotius* does not approve of, but shews *jus* and *Lex*, have a promiscuity of use, and homonymous sense in Authours. And therefore I take *jus* and *Lex* to import all one; and though *Gaius* disjoyns them, *omnes populi qui moribus & legibus reguntur, partim suo proprio, partim communi omnium hominum jure utuntur*; yet there want not instances of *Lex* his acceptation in good Authours, in the large sense of *jus*. And so I know our Chancellor intended it, since the Laws of particular Polities, being extracts from the natural Law, and conducing to presentation and order, deserves the definition of *ars aequi & boni*.

*Cujus merito, quis nos Sacerdotes appellat.*

F. 8. c. 12.  
De jure Belli, &  
da. p. 2. lib. 1.

In Epistol. Thom.  
Lupiceto inter  
Opuscula. Tho.  
Mori Cancell.  
Angl. Impresi  
Lovaniæ, 1566.

Ulpianus, lib. 1.  
Instit.  
Digest. De  
Justitia, & jure,  
Tit. 1. p. 54.

Author incertus,  
De Vita Pythag.  
apud Photium,  
Bibl. co. 269.  
Lib. 5. De Mori-  
bus, cap. 6.

Jur. Belli & pa-  
cis, p. 3.

Lib. 1. Instit. tit. 1.  
p. 61.  
Corvinus in  
Protomatibus  
Imperial. p. 1.

Here is a ternary of Emphases; one, in *cujus merito*; another in *Quis*; a third in *Sacerdotes*. The first refers us to the Law thus beneficial to Mankind, as meriting from it, and having praise, as its debt, not donary. I confess, the phrase *cujus merito*, though in some sense it may be opposed to *cujus gratia*, a good Orators phrase; yet here it has an identity of sense with it, and lessons us to return praise to desert, and glory to virtue. God himself accounts our praises, a worship of him; *He that offereth me praise, glorifieth me*: and men are by nothing more pleased and retributed then by praise. Oh! to hear well, is the *delicia vite* and *aqua mirabilis*, and the *aurum portabile* that all brave spirits digest contentedly. *Marsius* in his Book, *De Gloria*, has given us a large account of the virtues of men, as their Titles to the glory ascribed to them: and *Camerarius*, after he has set forth *Homer* by such Eulogies as are even Hyperbolique to Rhetorique, concludes in this superaddition, that above sixty famous men commentaried on him; and that *Eustathius*, who extracted his laborious Work out of them, onely is now visible, of those many and famous Writers. And yet though near four hundred years before *Herodotus*, and one thousand before *Pliny* he wrote, or two hundred and seventy years after the *Trojan War*, according to *Porphyrie*; since which there is no Authour so antient among prophane ones: Yet all this Tract of time, and variations of men, he has for his Work sake been honoured. *Neque tamen magis vitam conservari, & adjuvari igni & aqua, quam omnem eruditionem hujus poetae monumentis manifestum est*, saith *Camerarius*. Here's a *cujus merito*, with a witness, better then that of Sons and Daughters. For whereas few men live in them many Ages; some, not an Age; the best, not to much above twenty descents. This *Homer*, though blind and ignoble by Birth; yet in the perrenity of his Wit, has had praise in above twenty Centuries of years. This is the first *Emphasis facti dignè memorati & descripti*.

Lib. De Gloria.  
In lib. 1. Iliad  
Homeri. Impressa  
1538. Majoranus  
in proemio Eusta-  
thii Impressi.  
Romæ, 1542.  
2 Lib. Hæstor.

The second is, *Emphasis persona, quis*: This is not *quis nescientie*, but *eminentie*, a man of name not to be triobolarly prolated. And this was *Ulpian*, neither he that was a Sub-Tutor to *Alexander*, and Master of his Rolls, and one of his Circuit, and itinerant Counsel: nor that other, a *Tyrian* born, and, for his Learning, made the Emperour *Adrian's* Deputy in *France*, and slain in an uproar there. But our *Ulpian*, was, *Domitius Ulpian* the famous Lawyer: he is the *Quis*, in *Budæus* his determination.

Budæus in Pan-  
dect. priores, pag.  
25. edit. Basil.

The *Digest* tells us, where he calls the Lawyers *Sacerdotes*, to wit, the first of his *Institutes*; and the gloss on it gives the why he so calls them. *Quia ut Sacerdotes sacra ministrant, & consuecunt ita & nos cum leges sint sacratissima & ut jus unicuique tribuit sacerdos in danda penitentia, sic & nos in judicanda justitia*.

Vossius, lib. De  
Scriptor Lat.

Indeed, the Laws of old were under the custody of the Priests, as the onely men of honour and fidelity; and *Cressolius* gives a good reason of it, *Id sapienter machinata est divina providentia, &c.* The wisdom of God, saith he, in the modelling of the Holy Tongue, has so providentially ordered it, that the same word should signifie Priest, and Prince, endowed with great Nobility; That when the word Priest is named, the mind of man might be lifted up, and exercised upon the thought of some excellent and truly noble person. For since the Law is *ars equi & boni*, and all Matters and men are to stand or fall by it: 'tis reason, that sacred Jewel should have a sacred Servitour, and Protector, whom neither favour or fear should be suspected to corrupt. And to preserve this from defection, and the opprobry of it, no means being continuable more probably effectual, then virtue of soul, and nobility of descent, Antiquity chose to the priesthood persons thus qualified. *Alexander ab Alexandro*, has reported the Customs of all Nations thus to do; and *Tiraquellus*, his learned Commentator, has added to him in this kind. *Diodorus Siculus* confirms this, *lib. 4. c. 1.* and when *Plato* would have them begotten in holy Marriages, what does he but intend they should be *γενναίος & ἐπιτραυμαίους γενεῶς*; be nobly endowed with blood, and educated, that so *ἀπὸ τῆς τροφῆς, &c.* That both from their nourishment, institution, and descent, as *Clemens Alexandrinus* phrases it, they may be rendered fit for their charge. For, according to *Pythagoras*, they thought *τὸ ἀρχὸν τῆ χειρῶν & οὐκ ἔστιν*, and that *δαίμον χαρακτῆρα*, that noble note they would have upon the Priesthood, *πῶς ἂν ἀναγκασθῶσιν*, saith the Philosopher, *κρίσιν περὶ τῶν συμπερίσταν & τῶν δικαίων*, and *c. 9. ὅν μὲν τῶν ἀνδρῶν πόλις ἐστι συνέστασεν*; without which to determine differences, and distribute justice as Gods to men, Congregations of men cannot subsist, *Marsilius Ficinus* on *Plato's Conviv. amoris*, p. 103. has told us the Of-

Myftagog. lib. 2.  
sect. 2. ad finem.  
τὸ γὰρ δὴ τῶν  
ἑρῶν, ὁμίλια,  
καὶ τὸ τῶν μαρ-  
τυρῶν ἐν μάλα  
φρονήματι &  
πληρεῖται καὶ  
δύξαν σφραγῖδι  
λαμβάνει.  
Plato in Politic.  
p. 550.  
Lib. 2. Genial.  
c. 8.

Lib. 6. De Repub.

Lib 5. Stromat.

Stobzus, Serm.  
41.

Lib. 7. Repub. p. 3.

pag. 436. Vol. 1.

fice of these Priests as Heathenly, they were venerated, *ut, quæ hominum officia Deo amica sint, quâ ratione Deo homines amici fiant, nos doceant, qui amoris charitatisque modus ad deum, ad patriam, ad parentes, ad alios tam ad vivos quam ad defunctos sit adhibendus.* And hence it may be the Egyptians observed for long time that Law, *ἡ δὲ ἕξις βασιλῆα, &c. no King reigned but as priested.* The same Law had the Greeks in some parts, as *Plurarch* confirms it.

Plato Politic.  
p. 350.  
Plutarchus in  
quæst. Romanic.  
p. 291.

*Ulpian's* appellation then of *Sacerdotes*, as applying it to Lawyers, was in relation to the old Priesthood of the Jews and Heathens, who committed all their *sacra* to wise and well descended men; who did not make a profession and gain of the Law, but did rectifie the peoples errors by their learned integrity, which *Budæus*, on this word of the *Pandects*, thus expresses; *Siquidem sanctissima res est civilis sapientia quemadmodum autem apud antiquos Sacerdotes sui, singulis diis consecrati erant, qui de futuris atque agendis, consulentibus responsa dabant, sic venerandi illi jurisconsulti, omni genere literarum instructissimi, gratuitam non quaestuariam jurisprudentiam habentes, in publicum quotidie procedentes, unicuique civi consulentes, se antiquo instituto præbebant, & tanquam oracula justitia præmebant.* So he. Whereupon *Athenæus* tells us, these were termed the Heroes, and rightly too; for they were propitious to communities, and nothing studied themselves more, then to be fitted for usefulness. But how the Chancellor should apply this to men now a days, though Lawyers, I not well know; unless in that sense, that they do *sacra scire & docere*: And if *Sacerdotes* they must be, they can be onely *Sacerdotes brevium deorum*, as *Varro* calls some, and *Gyraldus* after him. It is true indeed, learned *Hopperus* says as much as may be for them, when he says they were called *τεμπύσιος*; and *Sophoi*, as *Sempronius* by the Romans was, because they had a concentration of the Philosopher, the Priest, the Lawyer in them, *tum quia eâ scientiâ præditus est, tum quia sibi præsit ut Philosophus, Reipubl. ut jurisconsultus, sibi & Reipubl. ut sacerdos.* But as learned a man, as he, tells us, whatever the Antients were, and how great their deserts were; yet though some of their Successors in time, answering them, ought to be answered in suffrage of honour from men to them; others ought not to be; the great *Parisian* Chancellor is the man who reproaches some of his Contemporaries, *Disciplinarum omnium non modò ignaros, sed etiam contemptores, μωρογῆλυς, quasi omnem literarum elegantiam nitor emque dicendi perosos, Doctrinis humanioribus abhorrentes, Rusticos, invenustos, ihæpidos, hircosos.* Thus he.

In Pandect. p. 24.  
Edit. Basil. 1534.

Syntag. 17. De  
Diis, p. 461.  
Hopperus, De  
vera. Jurisprud.  
lib. 4. tit. 30.

Budæus in Pan-  
dect.  
T. 14. edit. Basil.  
1534.

But I forbear more of this, though I think the Chancellor's Etymologie will not agree to the name, as it denominates universally the men, and is exegetical of them, for they do not always *sacra dare*, nor do they ever *sacra docere*. *Ferdinand King of Spain* knew that, for when he sent *Pedrarías* Vice-Roy into the *West-Indies*, he forbid him, *Juris consultos aut confidicos secum deducere*; adding the reason, *Ne litium semina qua illis regionibus nulla erant, ab ipsis importarentur, & perniciosâ contagione pacem illarum ac tranquillitatem interficerent.* The like is reported of the *Pannonians*, that when *Matthias Corvinus* their King, sent for the best Civilians out of *Italy* to set over them, they requested the King to send them back again, and so he did, *ad lites eorum ingenis nâtas sedandum.*

Mausæus in  
proemio, De studio  
militari.

Gloss. p. 416.  
16 Inst.

Nor did our *Sacerdotes* trulier, *sacra dare*, or *docere*, here in *England*; for in *H. 3<sup>ds</sup>* time *William York*, and *Robert Lexington*, pretended, as *Justice Itinerants* over the Land, to reform Justice; but instead thereof, exacted great sums of money from the Subjects for the King, contrary to the Law. So did *Thorpe*, *24 E. 3. Berners*; *E. 1. line*, yea, all the Judges, except *Mettingham*, and *Beckingham*, *Qui non abierunt in consilium impiorum*, *18 E. 1.*) were sentenced and executed for *baenefs* and *bribery*. So *11 R. 2.* there was but one skip with *qui solus inter impios mansit integer*, saith *Sir Hen. Spelman*; yea, in *H. 7.* his time, *Empson* and *Dudley* were as faulty as any *Miscreants* before them, and thereupon executed: so that the name of *Sacerdotes*, as they do *sacra dare & docere*, in their Etymological import is, not infallibly due to all our late *jurisperiti*, as to the antient prementioned Heroiques. Though I know many of them have, and deserve to be remembered as brave and couragious men; especially such as Judge *Hales*, for his fidelity to *Queen Mary*, Judge *Montague* in *Hen. 8.* and *Edward the Sixth* his time; yea, and before them all, many of the late Judges, Serjeants, and other Professors of the Law, some of which yet living in great honour and dignity, suffered for their loyalty, whatever the savageness of the late troubles, by *Fine*, *Imprisonment*, *Sequestration*,



questration, and other severity, could possibly express, to their eclipse and diminution; notwithstanding all which, their loyalty and Consciences kept them close to the principles of Integrity, which they are now deservedly compensated for, in the peace of their Consciences, the favour of their Sovereign, and the love of all good men: Which is a sufficient ballance to the levities of others, as well elder as later; and gives me the just occasion to assert a truth, to the honour of God, the King, and the Nation; That the Laws of *England*, distributed by the Reverend Judges, are with more integrity, and impartiality, accommodated to the people then in any part of the World, Laws are: Nor is there any Nation under Heaven so void of corruption in judgment, as *England* is, wherein the Judges chosen for virtue, knowledge, and gravity, descended mostly out of Knightly Families, and endowed, for the most part, with great Estates. Neither need, nor possibly almost can, those circumstances considered, be suspected of favouring any thing, but Justice in their Judgments; nor fearing any thing, but to offend God, the King, and the Law; if otherwise then according to their Oaths they should do. And hereupon I shall use the *Psalmist's* words, *Blessed are the people that are in such a case, and who do receive the Law, à Talibus Sacerdotibus.*

*Sacerdotes*, then, in a borrowed sense, Judges and Lawyers are; but in the true notion of *Ulpian*, and our *Fortescue* too, I suppose Lay-men were not intended to be expressed by it; for they did *militiam potius quam literas administrare*; but in all parts, both of *France*, *Normandy*, and other Nations, men in Civil Judicature were, till *E. 1.* his time, Ecclesiastiques; and till then 'twas not onely *nullus Clericus nisi Causidicus*, but *nullus Judex nisi Clericus*. And when the Judges of the Courts of Common-Law were Clergy-men, they would not suffer any usurpation upon the Common-Law, faith Sir *Edward Cook*, to their honour.

By *Sacerdotes* then, *Ulpian*, from whom our Chancellour deduces his instance, meant the flower and prime of men, whom the Antients expressed by names, alluding to their employments, *ἱεραὶ, νεώκοροι, ζήκοροι, θύλαι, τέλνσαι, ἱεραργαί, καὶ δασταὶ θεουργοί*; the *Latines*, *Sacerdotes*, *Curiones*, *Orgyones*, and other the like, of which *Gyraldus* writes; and all to shew their dignity and duty, to whom the Mysteries of Law, Justice, and Religion, to God and Man, were delegated.

*Quia ut dicunt Jura, leges sacrae sunt quò eas ministrantes, & docentes, Sacerdotes appellantur.*

In what sense the Laws are sacred, I have heretofore shewed, and that is as they are *ἄγμα θεῶν ἔξ ὀφθον*, the invention of the Gods, and from them delivered by Wise-men, as *Demosthenes* his words are, as they are so prevalent over men, that they do what is just of their own accord, without their rigour over them, as *Agésilus* said, his Subjects would. And when they have such a Reverence with the Ministers, and Dispensers of them, as *Glanvil* writes of in his time, *tanta aequitatis, & suae celsitudinis curia, &c.* When, I say, these that do *ius dicere*, though not *dare*, (the Judges are such) then as the Laws are holy, so do they deserve to be accounted reverend and worthy; though not Priests, yet Priestly men, Fathers for Wisdom, Oracles for Integrity, and Sanctuaries of every excellent thing; because then they have the *duos sales* Sir *Edward Cook* mentions, necessary to their ingrediency, *Salem sapientia nè sit insipidus, & Salem Conscientia nè sit diabolus*. And how great Jewels such men are, *Cressolius* has notably in his *Anthologie*, p. 52, 107, ad 174. observed.

*A Deo enim sunt omnes leges edita; nam cum dicat Apostolus, quòd omnis potestas à Domino Deo est; leges ab homine condita qui ad hoc à Domino recepit potestatem, etiam à Deo constituuntur: Dicente auctore causarum quicquid facit causa secunda, facit & causa prima altiori, & nobiliori modo.*

Which words contain an irrefragable Argument, for the sacredness of humane Laws made by a lawful Power. For the Chancellour being to deal in a nice point, wherein Carnal Reason, and Interests in Religion, is apt to byass beyond, and besides the one and onely mark of truth; the right fixation of which, having a strong influence on practice, and carrying a not to be retunded Argument of duty, to be obedient to the  
Laws

M. Paris. in Gu-  
liel. secundo.  
2. Instit. p. 285.  
on Stat. Westm.  
1. and p. 98.

Syntagm. dec-  
imum 17. p. 462.

Oratione.  
Contra Aristogi-  
tonem.

Plutarch. in la-  
conicis Apotheg-  
mat.  
In Prolog. ante  
lib. legum. Angl.

Pleas Crown.  
4 part. p. 147.

Laws of Powers for Conscience sake. This so necessary to prevent Murmur and Rebellion, which first by derogation from, then by insolency against Magistratique Power, threatens, if not enervates it, our Chancellour backs and confirms from Scripture and Reason. From Scripture, that of Saint Paul, Rom. xiii. 1. *Let every soul be subject to the higher Powers, for there is no Power but of God; the Powers that be, are ordained of God: whosoever therefore resisteth the Power, resisteth the Ordinance of God; and they that resist, shall receive to themselves damnation.*

This Scripture I have ever held the *Magna Charta* of Power, and because it hath such a pat and direct aspect on the supportation of it, Pride and Treachery have ever discharged their witty Canon on it, to batter, or at least abate the Obligation of it: nor were there ever more dangerous glosses, and religious cheats, put upon the literal truth of it, then of late by some of our seduced pretended Zealots, and their Theological Enthusiastiques. For though the Apostle has guarded this Canon of so great concern, with all possible strength, through which nothing but levelling fury, and Anabaptistical Treachery can possibly break; yet have as great endeavours been made by men of more pretended sobriety, as could well, by wit and ill-will, be machinated. But this Scripture has, and I hope, ever will hold its own with all sober Christians; as well of these, as of the Primitive Ages; and so Saint *Augustine* defended it against the *Donatists*, who would disobey Magistrates, upon pretence, that God was rather to be obeyed then they; which was true, but not in their sense; and then boast, they suffered for Conscience, and so were Martyrs, I say, as he reproached them, saying, *Non ergo qui propter iniquitatem, & propter Christiana unitatis impiam divisionem, sed qui propter justitiam persecutionem patiuntur, ii Martyres veri sunt.* And again, *Potest esse impiorum similis pena, sed dissimilis est Martyrum causa.* So that divers Orthodoxly amongst us, and by name, and very early, when the poyson of it did but pullulate, the late learned Bishop of *Chester*. So that considering, what is in the Text, and what has been said upon it, one would wonder, what confidence of man durst own so reasonless a Principle, as prophanation of this Text, endeavours to set up to the ruine of all Governours, and confusion of all Government. For, first, the Apostle being to preach a Doctrine necessary for the suffering times of the Church, under *Ethnique* Princes, and rigid Step-Fathers, terms them yet Powers, and Powers ordained of God; and then knowing, men-sufferers would be tempted to stand upon terms, when they had multitudes to back them, and so would raise a purpresture against the Design of God in his Churches Clarification by suffering, and on the waste, and to the nufance of the Lords of these Earthly Soils, publishes obedience and subjection to them. Why, they are Powers, and higher Powers then to be coped with, or resisted by any their Subjects, while they command things lawful and just, actively, when otherwise, passively to be obeyed; *Si contra Proconsul jubeat, non utique contemnis potestatem, sed eligis majori servire nec huic debeat minor irasci, si major pralata est,* saith the Father; yea, and as there is by this Rule a latitude of obedience, so of persons, every soul, not one, and not the other, but all, high, low, rich, poor, Christian, Heathen, Master, Servant. *Let every soul,* saith Saint Paul, *hinc jam assumenda est fides tua tanquam sentum in quo possis omnia jacula inimici extinguere,* saith the Father. And the reason of Power, to be in all things, and by all persons obeyed, is *ratione ortus & auctoris*; 'tis of God, appointed and commissioned: 'tis of God, his eminently; mens in Magistracy derivatively. Now this the Chancellour proving, in behalf of Powers Constitution, extends to Powers expressi- on. If Magistracy be of God, and Laws be made by it, for the ends it self was constituted, then Laws are of God, because effects of that Power which was ordained by God: so that Scripture is an Assertor of humane Laws as from God. And Reason seconds it, whatever the second cause does, the first cause more singularly and nobly does: Magistrates are the second cause of Laws, and they are of God, their first cause: therefore Laws made by them are of God; by men his Delegates, whom he empowering, as he is τῶν ὄλων ψυχή, the soul that enliveneth all, ἀνδρα καὶ πατέρα τῶν ὄλων, &c. the husband and father, that begets and support every thing, ἀρχὴ καὶ τὸ ἀρεσβύτατος λόγος πηγὴ, the principle and fountain of original wisdom, as *Philo's* words are; enables, to make wisely and exactly to see obeyed the Laws they so make, as the Candle lightning argues the Sun, the enlighter of it much more light, and the fountain of the Candle light; and the Earth producing food for man, argues the Earth, the maternal cause of man so supported:

Lib. De Correctione Donatistarum, c. 6. ad Bonifac.

Dr. Fern.

Serm. 6. De Verbis Dom. secund. Matthzum.

Philo, lib. 1. legis Allegor. p. 57. Lib. De Agricultura, p. 132. Lib. quod det Potior Infidias. Sol. p. 190.

ported: so in Laws; what Magistrates, as the second cause, do, is by, of, and from God, their first cause. And hence it is, that the Philosopher says of God, that he is not blessed from one good in him, *ἀλλὰ δι' αὐτοῦ*, as he is the general nature of all. And so far as these refer to their first cause, God, are indispensably to be obeyed, upon penalty of that which the next verse calls *damnation*, *κρίμα*.

Seneca, Ep. 65. *Hæc exemplaria rerum omnium Deus intra se habet, numerosque universorum qua agenda sunt, & modos mente complexus est; plenus his figuris est quas Plato Ideas appellat immortales, immutabiles, indefatigabiles.*  
De Republ. lib. 7. c. 1.

*Quare Josaphat Rex Judæ ait iudicibus suis, judicia qua vos profertis, judicia Dei sunt, 2 Cor. XIX. & vobiscum Deus in iudicio.*

This is added to confirm the Preposition, for *Jehosaphat* was a very holy King, 2 *Chro.* xvii. 3, 4, 5; 6. and, by God's direction, I believe, gave this charge to his Judges, the intent whereof was not so much to incline them to care and integrity, from fear of his severity, and ill resentment of their miscarriage; but from consideration that they were *que Dei sunt altari*; yet the judgments they passed, were *vice Dei*: therefore they should do as God would, were he himself on the Bench; Judge righteously; *μεθ' ὑμῶν λόγος & κείσως*, says the *Septuagint*, that is, *ye are temporary Gods, and are such as have reputed infallibility*. Take heed, do nothing rashly, nothing contrary to evidence, nothing for favour, fear, or wrath. Remember Kings are properly Judges, and judgments properly belong to them from God; and when Kings depute Judges to bear part of the subaltern Burthen of Government, they are taken into a near conjunction with Kings; for the same conjunction that is between God and the King upward, is between the King his Judge, downward, said our once *English Solomon* of famous memory.

King James in his Speech, 1616.

This Scripture puts a great dignity on Judges, and calls for a great circumspection in their duty to God and the People they sit upon: For though it was primarily and personally spoken to *Jehosaphat's* Judges; who judged by the *Mosaique* Law; yet inasmuch as the words are, that God is with them, *ἐν λόγῳ κείσως*, all Judges that have *λόγος κείσως*, are within in it, one way or other, and there is a duty on, and a reverence to them, by virtue of this Scripture. And this wise Princes apprehending, constitute the best of Lawyers, both for Learning and Integrity, Judges, such as *Pomponius* mentions, *Servius Sulpicius*, *neque enim magis ille juris consultus quam justitia fuit, itaque que proficiscabantur à legibus, & à jure civili, semper ad facilitatem, aequitatemque referebat; neque constituere litium actiones malebat quam controversias tollere*, saith *Budæus*. And such as *Cains Aquilins*, *Ita justus & bonus vir fuit*, (*Cicero* writes of him) *ut natura non disciplinâ consultus fuisse videatur: ita peritus, & prudens, ut ex jure civili non scientia solum, veram etiam bonitas nata esse videatur*. Fond Judges are to be taught their notes, as *Nightingales* are by their Mothers, and to make Musick as they do, *ἐ δὲ μὲν δὲ*, &c. Not for favour, or affection; nor for reward, or advantage, but for pure Justice sake, and in obedience to God, their King, and the Laws. For the Laws are *regala permanentes, non nutantes*: and as they punish bribery, and passion, as in the fore-mentioned Examples is made out; so have they punished easiness, and unjust lenity, as a blemish to Justice, and an usurpation upon her. Justice *Ingham* paid in *E.* the First his time, eight hundred pounds for a Fine spent on building the Clock-house at *Westminster*, for razing a Roll in an Action of Debt recovered against a very poor man, and making the thirteen shillings four pence thereupon entered, six shillings eight pence; which Justice *Southcot* in Queen *Elizabeth's* time, remembered *Catelyn*, the Chief Justice of. For when *Catelyn* would have expressed such a like mercy to a poor Wretch, *Southcot* denied assent to it, saying, *He meant not to build a Clock-house*.

In Pandect. fo. 1. edit. Basl. 1521.

Plutarchus, lib. De Solertia animalium, p. 973.

Sir Edw. Cook, 4 part Instit. Pleas Crown, p. 72.

*Ex quibus erudiris, quod leges licet humanas addiscere, est addiscere leges sacras, & editiones dei, quò earum studium non vacat à dulcedine consolationis sanctæ.*

This is a good inference, and carries a great Argument to the study of humane Laws, that they are, in a sense, God's Laws, because made by God's Power, and to God's end, order, and justice; and therefore as study of Gods the primæve and original Law, whether *Natural*, *National*, or *Mosaique*, is the best adjunct to the understanding of those humane Laws, which are formed from them: so the comfort, delight,

light, and benefit, which men have by the one in such degrees, reflects on the study of the other, as makes an ample compensation for the time expended about, and impended on them. For though in the Laws of nature and men, there is mysterious abstrusity, which toils and troubles the Learners brain, in perscrutating and understanding them; the effects whereof are visible in the morosity and separation of their Students, from the pleasures of conversation and diversion; yet are the events and issues in comprehension of them to such degrees, as are confectionaries and rewards of double diligence, very grateful, and perceptively congenial to the expectation of those excellent minds, who after busie disquisition into them, reap *dulcedinem consolationis sanctæ*. There may God be seen in all his emanations and bounties to man, in the Work of the World,

*Quæ cum se disposuit & partibus suis consenti. & ut ita dicam continuit. summum, bonum tetigit nihil enim pravi, nihil lubrici superest, nihil, in quo ardet, aut latet, omnia facies ex imperio suo, nihilque inopinatum recidet, sed quicquid agit, in bonum exit facile, & paratè & sine reconvalescence agens. Senec. lib. De Vita Beata. p. 654.*

in the harmony and consent of Creatures, in a natural Worship of God, and a noble conservation of themselves, in the various expressions of virtues and vices, according to the differences of Climates and Tropicks, under which Nations are, and the accidents of their Changes, Subversions, Discoveries, and Laws, in the prevalencies of Interests, which hurry up and down, sublevate and depress persons and things, as they are acted by the Furies and Concerns of their Entrigo's and Compostures. These, and such like

particulars, learned by study of the Laws of Nature, Nations, and Countreys, do so enrich and fortifie the mind against penury and ignorance, which the divinity of it abhors; that truly 'tis not possible to be a stranger to God, the chief good, and to be ignorant of the wisdom that is above, while we study that, which is revealed of that wisdom, in these several things, and in the traditions of them to us. Hence the *Moralist* lays down a notable Rule for the chief thing, a Wise-man is to propose, *Erigere animum supra minas & promissa fortune, nihil dignum putare quod speres, quid enim habet dignum quod concupiscas, qui à divinorum contemplatione quoties ad humana recederis, non aliter caligabit, quam quorum oculi in densam umbram ex claro sole redire.* Now this attained, and a man so rarified and abstracted from vulgar feculencies, how can this, effected by study of the Laws of men, be less than *dulcedo consolationis*; not that *dulcedo consolationis* is bound up in them, *quâ* such, for so they do *merum corticem hominis tangere*, as they are humane, and have man for their scope and circumference, since in his capacity they amount to *vanity and vexation of spirit*. But as they are Directions and Manucts to God, to whose wisdom and power all these are subject, and in whom they are what they are, and as they inable the mind to understand it self, designed to serve its principal, and by every exotique advantage, to be improved to its principals, glory, and dignity; so the knowledge of them affords *dulcedinem consolationis*.

Natur. Quæst. lib. 3. p. 167.

*Nec tamen, ut tu conjicis dulcedo hujusmodi causa fuit, cur Moses, Reges Israel, Deuteronomium legere præciperat; nam causa hæc, non plus Reges quam plebeios ad ejus lecturam provocat, nec plus Deuteronomii librum quam alios Pentateuchii libros legere, pulsat causa ista.*

Here our Text-Master prevents the mistake of *Moses* his intent in this Prescript to the *Israelitish* Kings, that *Deuteronomy* is referred to, because it, in the matter of it, or in the intent of God, relates to the pleasure of a King more then other men. For God and *Moses* in it takes no notice of this; 'tis an Argument which, by the bye, has a superaddition comes in, like that *Moyses dicitur*, our Lord mentioned, *Matth. vi. 33.* that which God and *Moses* from him commends in *Deuteronomy* to the King, is the *utile dulci associatum & conjunctum*, the holiness, the justice, the conformity to God, which a holy and divine soul counts its chief comfort, and that peculiar erudition in the method of Kinglyness, which from that Book Entry is perspicuous and knowable. For though all the parts of Scripture are full of Instructions, and favoury Precepts, directive to man in the latitude of his duty, and holy meditation will, by an effectual Chimistry, drain from them spiritual succulency: yet none are so fitted to a King, as those parts of it which treat of Kingly matters; *These words, in season, have the beauty of Apples of Gold in Pictures of Silver*; all parts alike, all parts of them beauteous. And therefore 'twas not the sweetness of meditation, nor the particular affection that *Moses* had to this Book, as his *Joseph*, that made him specially refer his love and direction of the Prince

Prince thereto: but *quia in Deuteronomio, plusquam in aliis libris veteris Testamenti leges inferantur quibus Rex Israel populum regere obnoxius est, ejusdem mandati circumstantia manifeste nos informant*, that is, as I said before; because in *Deuteronomy*, as the second thoughts of *Moses*, the Laws formerly delivered but in part, and, as it were, confusedly, as the emergent occasions produced them, is completed and digested into a fit and formal method. And the Prince that follows them, will know how *duritiam multarum legum ex aequo & bono moderare*; for as it follows,

*Stetinius in Claudio, c. 14.*

*Quo & te princeps eadem causa non minus quam Reges Israel exhortatur, ut legum quibus populum in futurum Reges, tu sis solus indagator, nam quod Regi Israel dictum est, omni Regi populi videntis deum Typicè dictum fuisse intelligendum est.*

Still there is a perfect coherence in our Text, every thing ushers in its fellow, every antecedent word its subsequent, and that upon a reason of order; for in that *Moses* did not write this Law as a Prescript of *Israel's* Kings, and determined the direction to them, in the line of their order, and succession of their Government; but made it morally typical of all Governours, and Governments, who thence should take pattern. Our Chancellour tells the Prince, the direction of the Law in *Deuteronomy*, will reach him, as well as the Kings of *Israel*; and that God having given the Law as a Counsel and Prescript to all Kings, will require the breach or neglect of it from all Kings, as well others, as *Israel's*. Indeed, some things there were delivered to the *Jews*, which were appropriate to them, and determined with their Oeconomy, the Rites of their Priesthood, the Judicials of their Civil Government, was literally limited to them, though there was some fiber and string, as it were, of moral duration and influence in them also: but for things that relate to conversation with God, men, and ones self; that, being moral in its nature, was adapted to the *Jews* as prior in time to us: but not more obliged by the bond, or privileged by the franchise of it then others their Successours. And therefore as our Lord renews the Precepts of old by his Gospel mentioned *Matth. v.* and *Saint Paul* says, What is written, \* was written for our instruction. So may I say, in this case of the King, as referred to *Deuteronomy*, God intended the direction there to all Successours to the first Kings in their Kingship, and to such enlargements of Governments, as time should discover, and power and prudence erect; and having done this, the counsel or command there reaches all in their duty to understand, attend, and obey it. And therefore the Chancellour proceeds.

*Ante tunc non convenienter utiliterque proposui tibi mandatum regibus Israelis latum de eorum lege addiscenda, dum necdum ejus exemplum; sed & ejus autoritas figuralis te erudit, & obligavit ad consimiliter faciendum de legibus regni quod annuente domino hereditaturus es.*

This the Chancellour concludes with as a reddition of the premises, with an appeal to his reason, so justification of his service to the Prince's accomplishment therein; no vain ayrie Romance, no nugatory delight, no sordid mendication is preferred by our Chancellour; those would weaken, not fortifie, the Prince's mind; and beweed, not cultivate it to an artly trimness; that which he promotes, is apparently worthy: 'Tis the Law of God, Nature, Nations, and what is as becoming him, to observe as any of these, because these all brought into, and become the Law of his Government. Now this so antient, exact, approved, idoneous esteemed, as he conveniently, so profitably presenting to him, was a good office, without all doubt or peradventure: many things, experience tells us; are convenient, but not profitable, (if profit be calculated according to the common notion) many things are profitable, but not convenient: but this being profitable for the nature, and convenient for the season, deserves to derive an honour on the giver, and oblige the receiver to a gratitude. And with this he ends his third Chapter.

## CHAP. IV.

*Non solum ut deum timeas, quod & sapiens eris, princeps colendissimus, vocant te leges cum Prophetâ discente, venite filii, audite me, timorem domini docebo vos; sed etiam ut felicitatem, beatitudinēque (prout in hac vita nancisci poteris) ipsa leges ad earum disciplinatum te invitant.*

ὁ μὲν οὖν  
πᾶσι τὸ  
θεοῦ δόξασθαι  
Theolog. apud  
Stobzum. Serm.  
110. p. 703.

**H**ere the Chancellour prosecutes his precedent Argument for the Laws, by shewing that the Laws of Government, and especially those of England, the marrow of all the fore-mentioned Laws, do not onely instruct Princes in the way of Religion to God, and of Justice to men; but also of self-conservancy, by a well-ordered virtue, and a through-paced prudence, to attain temporal felicity of state and mind. And the better to possess the Prince with the opinion, that this the Law does, he engages him to the belief and tryal of them by these gradations.

De Natur. Deo-  
rum. Cic. post radi-  
tum.

First, in that he complements him, as *Princeps colendissimus*, he does bespeak him to love and follow the Law as that was has all the learning of right living, and just governing in it, and that which makes men submit willingly to, and venture resolutely for him, men being apt *pię sanctęque colere naturam excellentem & præstantem*, as *Tully* has it, and *memoriam beneficii colere memoriã sempeternã*, as the same Orator: For though *nobilissimus*, and *clarissimus*, may make men dreaded and awed; yet *colendissimus* supposes a virtue, which seizes on the Reason of man, and awes his Conscience, and thence works a divine veneration, performed to a Prince, as a mortal God, whom Religion commands to honour, because good, just, merciful, as well as because great, terrible, and not to be resisted.

Ep. 75. Senec.

Secondly, in that he proposes the Laws of Government, as founded upon the Law of God, Nature, and Nations, to be prescriptive of all virtue, accumulated in the fear of God, *the beginning of wisdom*, and applies that Text, which King *David* spake as a Prophet to the Law, as hers, in his mouth; *Come my Children, hearken to me, I will teach you the fear of the Lord.* Words of weight and wisdom, like those the *Moralist* calls for, *Non mehorcules jejuna esse & arida volo qua de rebus tam magnis dicentur, neque enim Philosophia ingenium renunciat*: for the *Psalmist* is no dry bone, that lives not in pathetiques, without a miracle; his words here do not so much *se, ut res ostendere*, but when others are oratorious to no purpose, but to enchant and seduce, to cog and overreach their Auditors, by the lurch of their own credulity, *hic animi negotium agitur, non quarit ager medicum eloquentem sed sanantem*, as the same *Moralist* goes on: and therefore these words that he transplants to so good purpose, are much to be heeded, since they propose the counsel, command, and practice of a prophetique divine King, to the Prince, that the Chancellour supposes God has appointed, and the men of England ought in due time to have accepted their King, and as such to have valued him.

Et. 55.

Thirdly, in that he works upon passions of love and desire, which the Prince, as man, and young, might have eager set on felicity and blessedness, as attainable by this fear of God, wrought in him by the Law. This is to decorate, and introduce the Law into his love, by that *lata porta*, which is august, and by an entertainment of amplitude. Indeed, the Chancellour herein seems more happy, then *Seneca* thought himself, when he was discoursing of *Plato*, *Mille res inciderunt, cum fortē de Platone loqueremur, qua nomina desiderarent nec haberent*; for whereas that *Rhetorician* had an excellent person to speak of, but by exility of words failed in a reddition of him commensurate to his merit, and his mentioners intendment and ambition, to evidence, our Text-Master, as writing of a better subject, *the Laws*, then he did of a *Plato*, who was but a man, *passant through the Zodiaque of mutability and infirmity*, neither wants words to waft his matter in, nor matter to ballast and carry his Reason to his Readers persuasion; but having *temperamentum ad pondus*, produces it to a very serious and savoury purpose, telling him, that though life was short, and felicity in, and beatitude after this life, was the instigation and reward of all Endeavours in Kings and Commoners, *δικαιοσύνης ἢ ἀγαθμύλας, &c. that Princes must devote to God Altars of Justice, Temperance, Magnanimity, & Χρυσῆς; not of Gold and Silver, but of Virtue, which they rather*

Plut. Lib. De Py-  
thiz Oraculis,  
p. 401.

rather accept. Yet this so truly the Mistress and Minion of all persons' perfections, and persuasions, was lodged in, and acquired by the irritation and irradiation of the Laws. For in that the Laws have the precepts of virtue practised, and vice abhorred, and in that, serenity of soul, and success in affairs associates, and fame and heroique Canonization succeeds their practical punctuality, what can be more truly asserted, nor more really assured a sequacious and virtuous Prince, then that he living according to the Laws, shall be made an *amor & delicia humani generis* by them, and attain an *Elysium*, not fictive, but real, his hearts wish, not the *multa vota qua sibi fateri pudet*, as *Seneca* expresses it, but the *parca que facere coram teste possimus*. Such desires he may obtain of God, by such a demeanour of, and conforming himself to the Laws, as *Solomon* had granted, when he wisely asked it, a *wise and understanding heart*; such as *Hezekiah* prayed for, *Let there be peace and truth in my days; ad hunc disciplinatum te leges intrant*, saith our Text.

Lib. 6. Benef. p. 117.

*Philosophi namque omnes, qui de felicitate tam variè disputabant, in hoc uno conveniunt, viz. quòd felicitas sive beatitudo, suis est omnis humani appetitus.*

This is brought in to compleat the Laws to the purpose of putting the Prince in possibility, and possession of felicity and beatitude, by following the direction of the Laws: for they do not make a man guess, and look upon them by rote, as we say, *τὸ ὅδ' αἰδῶναι*, &c. *All men may as well do this as wise men*, says *Aristotle*; but give a man an exact and perfect view of, and direction to, yea an inheritance in them. For as the mind makes the man in whom it resides, *αἰσθητικὸν ὑπονοούμενον*, as the same Philosopher lays down the position: so the Laws score out the features of beatitude and felicity, for those are consistent onely with Virtue, and Justice, which they also specific. The Philosophers therefore who were the antient *Nomotheta* among the *Greeks*, acknowledged the sum of all the wisdom revealed by the *Numina*, and acquirable by men, to consist in felicity and blessedness, the adequate end of virtue, beyond which no man could, no man did ever wish; and though *Seneca* condemns them, as all other things, under that seeming hard sentence, *Tota rerum natura umbra est aut inanis aut fallax*: yet in his 89. *Epistle*, as he recites the various opinions and definitions of Philosophy, and Philosophers; so does he conclude, *Stude, non ut plus aliquid scias, sed ut melius*. And this to follow him in, there are two things that are to be touched upon in this Clause; the persons produced, the actions they are reported to do their Conclusion; Philosophers are the men, Disputation concerning felicity and beatitude, their recreation and employment; fixation of their consistency in virtue, that their consent and agreement.

Metaphysic. Lib. 1. c. 2.

Lib. 10. De Moribus. c. 9.

Ep. 89.

*Philosophi*, these were not onely lovers of Wisdom, but men, *penè divini*, compared to others, *ἔτοι παντοῖο ἐπισιζόμενοι*, *omni-scient*, as *Theodor.* in *Plato* asserts; and *Socrates* confirms divine, The ground of Philosophy being admiration, *ἡ δὲ ἀλλή ἀρχὴ φιλοσοφίας ἡ ἀδύνη*, as it follows. Philosophers must needs be admired, as the onely men of profundity and miracle that were almost not understood by men, but thought Gods in the likeness of men. And hence *Ficinus* makes *Plato* in all his works, proposing nothing so requisite to a Philosopher, *Quàm copulam ex fortitudine pariter temperantiâque constatam, ut per illum alta petantur, per hanc non spernentur humilia, & utrimque nihil unquam nimis aut audeas, aut metuas*. *Plotinus* makes a Philosopher so compleat, that he is not conversant with any speculation beneath, *τὰ ἀράγματα*, &c. *A Crafts-Master in the cause and being of them*, which he calls, *τῆς φύσεως θεωρία*. *Platarch* accounts them so exact, that he enjoyns the young man that is but saluted such, to be careful to avoid all indecency, least the jest of *Menedemus* be applyed to them, *That they came to Athens to School Wise; after became Philosophers; further Proficients then Orators, able to utter their Conceptions with applause*. *Τὴ δὲ χεῖρὸν ἀποϊόντων ἰδιώτας*, at last rude, and utterly vain, swollen with arrogance and pride, which was no fruit of Philosophy, but the errors of them the Philosophers, since Philosophy taught, *παντὰ γὰρ καλὰ, &c. every thing that is good, and necessary concerning the Gods*.

Lysis. p. 506. In Sophista. p. 153. In Theoret. p. 115.

Argum. in Republic. lib. 3. p. 609.

Ænead. 1. lib. 3. p. 21. 22.

Lib. De Profectu virtut. p. 31. Lib. De Socrate. genio. p. 561.

Yea, he commends *Socrates*, as grave and good speaking from a right judgement of the causes and natures of things. *Philostratus* tells us the *Indians* did much honour to Phylosophers, and tryed them se-

*Ἀνάγκη πάντα ἐκβασιάζειν τὰ τὰς ἐπ' αὐτῶν ἰδίωτας*. *Philostr.* in vita Apollonii, c. 12. p. 92.

Topic. lib. 1. c. 14.  
p. 119.

1 De Oratore.  
Budzus in Pan-  
dect. priores. p. 11.

Rhetoric lib. 1.  
c. 6.  
Lib. 1. De Mo-  
rib. c. 5.

Lib. 1. De Morib.  
c. 2.

Genial. lib. 4. c.  
14. cum notis  
Tiraquelli.

Lib. De Congres-  
suer. erudit  
gratia, p. 435.

Lib. De his Ver-  
bis reliquit Noc.  
p. 222.  
Seneca, De Bea-  
ta vita. p. 653.  
Epist. 66.

Senec. Ep. 87.

verely before they approved them for such; and the *Philosopher*, in making a *Philoso-*  
pher to enquire, *κατ' ἀλλήθειας περὶ ἀνθρώπων πραγμάτων θεῶν, What does he less, then make it*  
*Divinity, and the practicer of it divine.* So that whatever was possible to be beloved,  
and admired in man, being concluded in them, we may well fix them for men of re-  
marque; and as such, record in our minds their memories, for so the Oratour characte-  
rizes *Philosophers* worthy, *Is qui studeat omnium rerum divinarum & humanarum*  
*vim, naturam, causasque nosse, & omnem bene vivendi rationem tenere & persequi, nomine*  
*hoc appelletur.*

The Disputation is next, many men of many minds, and all men so far in love with  
their own shadow, that they, from different apprehensions, proceed to different de-  
terminations, and so to oppositions, heats, and civil Wars, which fill the World with  
Contests, and Hurries; and, in the end, looses Science in passion, and Reason in oppo-  
sition.

*Aristotle*, he makes felicity to consist in such a satiation, as arises from the presence of  
some useful virtues, *righteousness, courage, wisdom, &c. joyning with them corporal goods,*  
*as health, strength, which some call, bona via;* but beatitude he terms ἀγαθὸν τὸ  
μᾶζον αἰετῶτα ἐστὶν αἰεὶ, &c. *the greatest of goods, the perfection of acquirements, the end*  
*of action; bonum parria, as Divines call it: yet the same Philosopher says, that learned*  
*and wise men have digladiated about it, and counts the rehearsal of their varieties,*  
*altogether useless; yet he says, τὸ εὖ ζῆν καὶ εὖ πράττειν, &c. Well to live, and well to*  
*do, is to be blessed. Alexand. ab Alex. gives a large account, that Philosophers thought*  
*all blis consisted in otio & quiete; and surely, if all action be to rest, and rest be ces-*  
*sation from labour, and that be felicity or beatitude; as our Chancellour confuses*  
*them; then our Chancellour, and the Philosopher, lib. 10. De Morib. c. 7. are at an*  
*accord: And though they do logomachize, to try mastery of words and wit; and*  
*thereby to beat out discovery to greater perfection, and to spin a finer thred of art, and*  
*give it a renovation of beauty and delight; yet are they confederate in the main, and*  
*do not vary in the definition of the nature, but the wording of their apprehension:*  
*for they make not felicity or beatitude, to reside in sensuality, or visceration, in vio-*  
*lence or depredation, in morosity or sullen incommunicableness; but in that assimila-*  
*tion of nature, to the chief good, and prime cause, God; and to those figures of his*  
*immaculate, unalterable, and influential good, which he has communicated to excellent*  
*Creatures, and by which they are rendered, esteemed, and unvulgar. And this I take*  
*to be the sence of our Chancellour, in making Felicity and Beatitude tant amounts, not*  
*that they in Logical acceptations, or in Critical examinations, are exactly the same;*  
*for though they mostly agree, yet are they unlike enough, to admit a discrimination;*  
*but because the main ingredients to their perfection are the same, and the reward of*  
*both one, as to what we apprehend, the same virtue being the via recta to blis, the*  
*finis itineris. And hereupon those learned men, that did disceptare de modo, disagreeing*  
*in the collateral, and less material circumstances, coincided in the upshot, which is their*  
*determination, quod finis est omnis humani appetitus. And their conclusion is, that beati-*  
*tude and felicity is the end of all mans desire; of his desire, as rational; not onely ἐπι-*  
*τήδωσις σοφίας, a meditation of wisdom, as Philo calls it; but a wisdom, which is ἐπι-*  
*τήδωσις θεῶν, &c. as he enlarges, and carries a man to such a mastery of himself, and such*  
*a magnification of his Mistris nature, and her and his Maker God, as puts us upon de-*  
*siring him as our chief good, and every thing as our happiness, in order to; and our beatitude*  
*with, and in fruition of him; for, as the same Philo observes, no receptacle can be fit*  
*for God, πλὴν ψυχῆς τελευτῆς, &c. but the soul that is purged and prepared to receive him,*  
*the best good. And therefore the supreme good, take it as Moralists denominate it,*  
*animus fortuita despiciens, virtute letans, ant invicta vis animi perita rerum, placida in*  
*actu cum humanitate multa, & conversantium cura; or, summum bonum quod honestum*  
*est. Ep. 71. Ex natura voluntate se gerere, perfectus status in quo quis summum voti*  
*sui invenit. Take it for such a Resolution, as makes a man a free man, though in Pha-*  
*laris his Brazen Bull: yet all this, if it could be separate from virtue, were nothing;*  
*Quis sit summi boni locus, queris? animus, hic nisi purus & sanctus deum non capit.*  
Alas! alas! they are but refracted, and minute determinations of the chief good that  
*Philosophers make; They are strangers from the Common-wealth of Israel, and ignorant*  
*of the Covenant of grace, and without God in the world of their fancy and opinion. Their*  
wits



wits are a wool-gathering, they seek living light in the dismal and tenebrious Caves of their obcecated mind, where the true light is not; all the good they can reach to, is, τὸ κατὰ τὰς φύσεις καὶ τὰ φύσιν, as *Arrianus* says, to live according to *Natures norm and discovery*: nay, though *Porphry* be the director to seek good, ἐν τῷ συνίπειν, &c. in conjunction with the Authour of it, the soul. Though therefore they agree, the desires are carried to beatitude and felicity; yet in that they specify it so different from the truth of its being, they confer little to satisfaction: nor have they at all satiated in their discourses of Philosophy about these, and other points, the World in any age; though they have been the Patriarchs of Heresies, and illaqueated many in snares of ill belief, and suffurated time and parts from other matters, (more Books being writ of Philosophy, and Philosophers, than of any Science whatsoever,) as is evident in *Fabian Justinian's* Index, and in other Bibliothekes. For there have none of the great Sects of them agreed, but been, if not diametral, yet divers from one another. For while the *Peripatetiques*, *Aristotelians*, or walking Philosophers, then which sort of men, *Tully* says, *Nil est uberius, nihil eruditius, nihil gravius*, determined felicity, or beatitude in virtue. The *Stoiques*, or *Zenonists*, whom their Master taught in a Porch, called in *Greek*, σοὰ, and thence are named *Stoiques*, though they do *re concinere*, yet *verbis* do *discrepare*, as *Tullie's* words are, with the *Peripatetiques*; for their Beatitude is in honesty. From both these, *Epicurus* his followers with him differ; for these either determined it to reside in pleasure, as reflecting on the Garden where *Epicurus* is said first to principle his Clients, according to *Demetrius Magnesium* his account of their Institution; or in exemption from sorrow, and a vacuity from all passion, and the felicity of it. Now, though I say all these, or è tenuis, did differ; yet in the upshot and conclusion, they coincided: for the *Stoiques* honesty, and the *Epicureans* pleasure, is but in other words, the *Peripatetiques* virtue, since the one and other abstracted from virtue, as the mean and rule of them are but *vana & exilia nibila*; and so *Epicurus* himself is quoted by our Chancellor. To conclude, *nihil esse voluptuosum sine virtute*; and so *Porphyrus* limiteth beatitude and felicity, ἐν τῷ ἀποδοῦν, &c. not to be fascinating and venereous pleasure that enchants the mind, but grave and serious pleasure, which consists in pureness of virtue: τοῖς ἐν ἀρετῇ, &c. exercising it self in just, good, and necessary actions of life. And therefore *Philiscus* in *Dion*, miscalculated Beatitude, while he made it to be in a sound body, and an avoidance of cares, which whoever enjoys, πάντα τὰ ὑπὸς ἐν δαυνοῖαν, &c. has the fruit of all felicity. This, I say, is not rightly accented, because it terminated felicity to a self-fruition, and not to any thing without, and above it, which *Porphry* rightly called conjunction, which its Authour, and the Scriptures, make to be in the knowledge of God. This is life eternal, to know thee the onely true God, and whom thou hast sent Jesus Christ, and in the enjoyment of God in grace and glory. Blessed is the man, to whom the Lord imputeth no sin, and in whose spirit there is no guile. There is God enjoyed by his potent presence in the soul, chasing away all corruption inconsistent with him, and refining the soul from the impurity of its lees and dregs. And they shall be with me, that where I am, there shall they be also, which is the promise of Christ to his, as their compensation and beatitude; which is the fruition of them in glory. For so said the Spirit, Blessed are the dead, that die in the Lord, for they rest from their labours, and their works follow them.

Unde secta illa, ut dicit *Leonardus Aretinus*, in hoc concordaverunt, quod sola virtus est qua felicitatem operatur.

This Authour, *Leonardus Aretinus*, is not that *Florentine*, which *Pogginus* so acclimates in the *Epistle* he writes to him about *Jerom* of *Prague*, but one of the same name and kindred much elder. *Possennine*, and *Gesner*, make no mention of this Authour; but *Drandius* does to his infinite advantage, making him the Authour of many excellent Books; amongst which, this *Isagoge* here quoted, containing ten Books on *Aristotle ad Nichomach* is not the least worthy. It was, I suppose, a Manuscript in our Text-Master his time; but about 1607. it was printed at *Jean*. And it is a notable Discourse of Moral Philosophy, that part of Philosophy that concerns the manners of men. Now though that of *Seneca* be true, Non quicquid morale est, bonos mores facit; yet may they be called Morals, quasi non aperte & statim flexu, vel subsidio aliquo ad bonos mores docent, saith *Lipsius*. And of this nature are Morals in Philosophy, because they

In *Epictet. lib. 3. c. 7.*

*Philosophi. Patriarcha Florentinorum. Ecclesia puritatem peruersa maculaverit doctrina Sanctus Hieronimus. ad Celsiphontem adu. Pelagianos.*

*Cic. 1 Acad. c. 24. 3 Tuscul.*

*1 De Nat. deorum.*

*Senec. Lit. De Beata Vita, p. 653. De Vita Pythagoræ. p. 198, 199. Hofstein Interp.*

*Dionis Hist. Lib. 38. Cicero Exal. p. 71.*

*In Fasciculo rerum expetendarum & fugiendarum, fo. 154. Draudius Bibliothec. Class. p. 1041, 1087, 1095, 1116, 1117, 1251, 1366.*

*Epist. 121.*

*Noris in locum.*

they do *componere animum*, as natural Philosophy does search into causes of things, and rational Philosophy discuss the propriety of words, and structure of Arguments. *Seneca* in his 89. *Epistle*, gives us a large account of Philosophy, and the contrariety of Philosophers one to another, in stating and dissecting Philosophy: yet his conclusion is, *causa rerum ex naturali parte sunt, argumenta ex rationali, actiones ex morali*: so that *Aretine* writing of the moral part of Philosophy, had unavoidably to do; which felicity, and beatitude, as the end of all man's desire and tendency, in the practice of virtue. And that which he is quoted for, as coagulating all the Sects of Philosophers, (and Sects denoted *habitus animorum & instituta Philosophica circa Disciplinam*, that is, additions to a particular profession, according to the reverence men have of him that institutes, and as chief in it professes it) all these Sects, I say, he amassing, as it were, into one term of expression, declares them to own virtue alone, the means to attain felicity; that is, in other words, no felicity is enjoyable by man, but in a state of reduction of nature to its primæve purity, and in a subserviency to its Maker, in all those actions wherein his pleasure is notified: which *Seneca* words more elegantly to my sense than ordinarily; *Ut quanti quidque sit, judices, that we rightly understand what every thing is; Ut impetum ad illa capias ordinatum, temperatumque*, that is, that we love and hate, use and not use it, according as it is auxiliary, or obstructive to our end; in pleasing God and our selves. *Ut inter impetum tuum actionemque conveniat; ut in omnibus istis tibi ipsi consentias*; that is, that in the rise to, and action of our virtue, we do nothing but what is rational and proportionable to our being, who are made after the Image of God on our reasonable soul. This is truly to be happy, to be what we ought, and onely such; all other felicity is but nominal, *in a dēreī, weak remiss felicity*, but a Badgers footed felicity, halting before the best friend it hath to commend it; for so *Epicurus* concludes, *αὐτὸ ἀρετῆ τὸ, &c. all virtue consists in pleasure, and to live delightfully, is to be happy.*

So that all Sects of Learning and Wisdom, though diversly denominated, as those from the place of their birth, or first appearing; as the *Elienses, Megarenses, Eretrici, Cyrenaiici*; or of their teaching and Institutour's School, as the *Academiques, and Stoiques*; or from guises and accidents, as the *Peripatetiques*; or from reproaches, as the *Cyniques*; or from effects, as the *Endemonici*; or from their height and pride, as the *Φιλαληθῆς*: From the nature of their Writings, and names of their Masters, as the *Socratici, and Epicureans*. These, and all other Sects of them recited by *Laertius*, yet do all make up an harmonious suffrage, that virtue onely operates felicity. And this *Aretine* assenting to, and corroborating, is here quoted by our Authour, in the following words.

*Quo & Philosophus, 7 Politic. felicitatem definiens dicit, quod ipsa est perfectus usus virtutum.*

This definition of *Aristotle*, is the same with what he says elsewhere; for discoursing of felicity, and aggravating the glory and lustre of it, he says it is termed by some *φρόνις*; by others *σοφία*. This, or that excellent endowment, as Prudence, Wisdom, Beauty, Strength, Riches, Friends, which were but slips from, and diminutives of it, but he concludes it, *πᾶσι ἀρετῆ ἢ ἴσιν ἀρετῆ*, that it was a concentration of them all in their end, and noblest resolution, and an arrival at that which was the *meta ultima, ultra quod non*: And hereupon he concludes it, *ταύτης ἡ κατ' αὐτὴν ἐνέργεια*, the perfect enjoyment of the end, and that perfectly. Now in that he calls felicity the perfect use of virtue, he means, that virtue is the means to it, and then is perfect, when it has its end for which it was designed, and to which end it is the vehiculation: So that felicity being the perfect use of virtue, argues its end in that endless beatitude, which we living having not, cannot be properly said to have the perfect use of virtue; yet comparatively we may, as we are laid by others, who are less virtuous; and so *Heathens* that know not God, lodging Beatitude in these inferiour accomplishments, to any remarkable degree obtained, above the vulgar account, that perfects virtue which is by them expressed. So the Philosopher calls that perfect, *ἔ μὲν ἔστι ἔξω πὶ λαβεῖν*; to which there is nothing to be expected addable, because virtue is perfection it self. This is their notion of perfect use of virtue, when a man is so assueted to virtue, and has such a conquest over his passions of all sorts, that he can conform himself to his exact duty, and neither desire more than he has, nor

fear

*Est autem secta disciplina certa quaedam disciplinæ formula, factio, studium, ratio vid. Cic. I De Orator. Secta & ratio vid. Cic pro Cælio.*

*Laertius, p. 795. edit. Colon. 1616. Laertius in Epicuro, p. 791. edit. Colon. 1616. Gassendus A. thicæ, Lib. 1. De Felicit.*

*In Proemio.*

*De Morib. c. 11.*

*Καὶ γὰρ τὸ ἔχειν τέλος τῆς ἀρετῆς. Metaphys. c. 16. p. 296.*

*Metaphys. c. 16. p. 296. Virtus proprie dicta est habitus constituens potentiam in ultimo gradu perfectionis suo altius debens, Aragonius in Sanctum Thom. Artic. 5. De virtute fidei Explic. Text. p. 110.*

fear more then he ought, nor endeavour to do otherwise to God, Man, or himself, then as perfect virtue limits. This is the *perfectus usus virtutum*, which Saint Paul translates into carrying a Conscience void of offence both towards God, and towards man. But Saint Paul's definition of it, transcending the Heathen's notion, is not to be insisted on as Aristotle's meaning, which went no further, then that before-mentioned. More of this might be added out of Durand, Suarez, Saint Thomas, and Arragonius, and Aurelius on him: Also from Scotus, Parisiensis, Turrecremata, and others the Schoolmen, who have treated of perfect virtue, and the use of it. But I refer the Reader to them, avoiding the superfluity of quoting them here, and concluding with that of Philo, that God doing all things like himself in weight and measure, *κατεξέλει τοῖς ὑπάρχουσιν, &c. indulges his Creature nothing defective beneath perfect, though not in the absolute and exact act, yet in such degrees as he accepts perfect.* And thus Noah, Daniel, Job, and others have been accounted perfect by him, and been blessed, in such the perfect use of virtue, from him.

In Lib. De Migratione Abrahami, p. 399.

*His jam presuppositis considerare te volo, etiam ea qua sequuntur leges humane, non aliud sunt quam regula quibus perfecte justitia edocetur.*] This is to set forth, that as beatitude is attainable by virtue, so virtue is by knowledge of the Law: And as all virtue, so that which though inclusively, is general; yet, in common understanding, one particular justice. This the Law inclines to; and teaches a Prince so the method of, as nothing else besides it can, or does. For Laws being the wisdom of Ages, and men having such additions, and subtractions, as make their complements symmetrical to their end, must needs be the most faithful, and unerring Counsellours, which has caused Monarchs, in power and wisdom, to dye for Laws, and the *πάτεραι ἡδύ*, as well as for Religion, because Religion and they, directing one rule of Justice equally, call for courage and constancy in mens observance of them. Now, though it were too bold a confidence, for any one to arrogate this rule of perfect justice to any single body of humane Law; yet it is well-beseeming a sober man, to own the Chancellour in his vindication of humane Laws as such; because some, or other Laws of men, do supply what others want, and so amongst them, while yet they are together; but *humanae leges*, do notwithstanding *perfecte justitiam edocere*. For since the Rule of Justice with men, is the Laws of their Government, and the topique Customs of the place of their being, and those are knowable by study and practice, and the knowledge of them in both kind, is the perfectest acquisition, our nature is capable of. In the same sense they may perfectly be known, may they be accounted perfect Rules of virtue; since the virtue perfected in us by the Law, is but a conformity in practice to the speculation we have of it. And hence it is, that, as in common speech, we call that a perfect Copy, which is *verbatim* to the original; and that a perfect Child which has all the integral parts, and that a perfect book which has no leaves torn out: so the Law may be taken for a perfect Mistress of Justice, when it gives, *κατὰ τὸ πᾶν, Rules for Justice*, and is as indefectuous in it, as integrity of method and prudence, equity and exactness, composed by man, and generally approved by experience, can arrive at; which Budens well expresses, *Quod in legibus, senatus consultis, rebus judicatis, juris peritorum autoritate, edictis Magistratum, more, equitate consistit, &c.* This is the rather to be insisted on warily, because all Laws, like all Law-makers, are not always such as virtue requires. Nay, no Laws or men, how transcendent soever, are either in their present times so well ballanced, or against the necessity of emergent changes and accidents, so omnisciently provided for: but there will need some either abolition of, or mitigation from, or declaration about them, and their senses in them. Constantine was a brave man, and intended splendidly, in building anew, as to the Laws and Polity of it, Constantinople. No doubt but he had all the thoughts of perpetuity in his head imaginable, and resolved to live in the glorious memorial of that justly ordered Government, which in the memorial of his name, did, in a sort, immortalize him: yet Ignatius remembers us, *multas leges rogavit, quasdam ex bono & equo, plurasque superfluas, nonnullasque severas, primusque urbem nominis sui ad tantum fastigium evahere molitus est, ut Romæ amulam faceret.* And Grotius, that memorable man, then whom, I think, few have been more profitably learned, acknowledges some Laws imperial are not just; as that of wrecks at Sea, *Nulla enim procedente probabili causa, dominium suum alicui auferre mera injustitia est,* saith he: yea, he further shews, that the Heathens abominated any thing like this, that

In Pandect. Priores, p. 19. edit. Basil.

Lib. 10. De Constantino.

Jur. Belli. & p. 4.  
lib. 2. c. 7.  
p. 175.

Brethrus ad le-  
gem. 42. Lib. De  
Verborum signi-  
ficatione. p. 121.  
Lib. 2. p. 377.  
Budæus in Pand.  
p. 185. edit. Balii.  
Eustathius in  
9 Iliad.

Lipius in Notis  
ad secundum, Po-  
litic. Tom. 1.  
Oper. fo. 130.

Lib. 1. De Vera  
Jurisprud. tit. 21.

Regula est pluri-  
um rerum compen-  
diosa narratio  
facta traditio.  
Gloss. in Tit. 3.  
Digest. De legi-  
bus Senatufque  
consultis. p. 74.

Lib. 1. De Legib.

In 22 colib. 19.  
Sancti Augustini.  
De Civit. Dei.

Papinianus, lib. 1.  
Definit. c. 1. Di-  
gest. lib. 1. tit. 3.  
p. 72.  
Lib. 4. De Benefic.  
c. 12.

Ep. 71.

Lib. 7. De testo-  
rio opere.

men should lose their lives and goods for submitting to God, who causes, and allays winds and storms at his pleasure. Alike hard, not to say unjust, they thought those Laws of the Nations, that punished Children for their Fathers crimes, which God Interdicts in Israel, as *Ethnique*, and irrational, saying, *The Son shall not bear the iniquity of the Father; nor the Father of the Son, but the soul that sinneth, it shall die.* The like injustice was in the Laws of the Persians, and Macedonians, vowing their Neighbours heads in sacrifice: These, *δυσουλας*, Laws made by men, like the Poets, *Ata, offensiois & noxa contubernalis, δαμώνιον τι*, for her enmity and spight, as it were, to Mankind; *πλάτυσ' ἀνθρώπους*, as she is set forth diule-like, (*ἀτὴν ὁ δῆρα βολῶ & ὁ ἀνθρώπων*) saith *Suidas*. I say, Laws so made, are not probable to have any rectitude in them; and therefore the Statute of 1 M. 2 Sefs. c. 1. censures and repeals those Statutes of 25 H. 8. c. 22. 28 H. 8. c. 7. for though Laws they were, because the establishments of Power; yet just Laws they were not, mistaken and mis-named Laws onely Cousin-germans to those of *Nebuchadnezzar*, *Dan. iii.* which made denial to worship the Image he idolatrouly set up capital, Laws they may be, and those accepted by great and wise Nations, as the *Sallique* Laws are; but yet hard, and agunst the opinion of Nations, yea, determination of God in *Zelophehad's* Daughters cases; yea, and against the experience of Females fit to rule, where righted to it; witness *Q. Elizabeth*, and witness the judgment of our state and Law, which establishes the Crown on the Heirs Female of our Kings, for want of Male, 1 *Q. Mary*; the second *Parl. c. 1.* These, and the like Laws, may be unjust, and therefore are not *regula, quibus perfectè justitia edocetur*, but injuries to Governments, and unjust Usurpations upon the reasons of the Subjects to be governed, *Qui leges injustas constituit, non Dei, sed suo ore loqui dicitur, suis niti inventionibus, ex ambitionis, libidinis, avaritia fontibus deductis ejusmodi sunt omnes leges Tyrannorum, & Hypocritarum, quæ non ad justitiam in Rempub. inducendam, sed ad opinatum, & falsum commodum eorum qui illas condunt, diriguntur*, saith *Hopperus*.

Which considered, our Chancellours shafts against this inconvenience and mischief, are not shot at random, but prudently levelled at the mark he aims at; satisfaction of the Prince, that the Law, as *ars æqui est boni*, is the best and safest discipline of administrative virtue. And hence is it, that he calls Laws, Rules: now Rules do not incline to things, but things conform to Rules; because there is no ametry in Rules, but a fixed and exact rectitude, Rules being truth adapted to ends of use, and tracks, according to Wisdoms discovery of her self, in the practiques of Sciences and Mysteries: so the Laws, as Rules, are not to condescend to mens mutable humours, but to retain their majesty, and immobility, as Rules do, and ought; allowing always Reason and Magistracy regent in it, liberty, *in licitis & honestis*, to alter, as Prudence advises, and Providence, in affairs, shall over-rule them.

While then Laws are Rules, and such as do *perfectè justitiam edocere*, they must be of high descent, *From the Father of Lights*, larded with virtue and wisdom, in every part and nook of them: not framed, as if *Epicurus* were their Patron, who taught, that nothing was just, *sed naturâ sed metu*: or according to *Thrasimachus* his latitude, whom *Plato* brings in, asserting that to be right, which is pleasing to the chief Power; but understood, as *Sulpitius* intended, whom *Tully* reports to have referred all things, *ad æquitatem facilitatè que*; and as the ancient Lawyers directed their learning, *Tollere controversias non constituere.* And that purely, *Ut pax, & inter homines, & in unius, cujusque servetur animo, quæ nil majus natura ipsa gaudet*, saith *Vives*.

And good reason there is, that the Law should be a Rule, by which virtue is so perfectly taught, since it has all that can go to make a Rule, such as it ought, and is pretended to be, *mensura æqui & boni*: For besides its influence from God, *Papinian* in his definition of it, *Lex est commune præceptum, virorum prudentiam consultum, delictorum que sponte, vel ignorantia contrahuntur, coercitio, communis Reipubl. sponsio.* I say, in this, he has published the deserts of the Law to be received for a Rule. For besides that *Seneca* in the name of all wise men, calls the Law, *justi injustique regula*; and writing of honesty, says, *Hoc nec remitti nec intendi posse, non magis quam regulam, quæ rectum probari solet, quam si flectes, quicquid ex illa mutaveris, injuria est recti*, Passing by this, the Rule has profit, firmness, and delight in it, which makes is accommodate to every Artist, and to every person that is concerned in it. And hence, as *Vitruvius* observes, the Rule in every part of Architecture, though he reduces lengths *ad lineam* &

& regulam; heights *ad perpendicularum*; and corners, *ad normam*, and respond they all must to these, or else there is not just mensuration. So does our Chancellour, in terming the Law a Rule, refer perfect virtue to it, as well to be gain'd by, as protected in it. Nor is there any virtue learnable by any man, but what the Law can, and will teach him, if he will hear, and obey it.

And as *Demosthenes*, whom *Pliny* styles, *ille norma Oratoris & regula*, had not been an Orator so eminent; nor at all, if he had not conformed *norma loquendi*. Nor he, in *Tully*, a good man, had he not resolved, *Dirigere vitam ad normam rationis*. So cannot the Prince be, what he ought in charity to be; good to his own soul, *nisi servatâ illâ, quæ quasi delapsa de calo est, ad cognitionem omnium regulâ, ad quam omnia judicia rerum diriguntur*; as *Tully* smartly.

Which considered, no wonder though the Chancellour make Justice that is in man's Law, inseparable from the Law; because God, the Fountain of it, has instructed, and commanded man in place and power under him, to promote and practice it, as that which is a Ray of him, and raised by him to an esteem, as the Architectonique Virtue that includes all others, since *Consequens, est ut qui ad legem se applicet, Justitia quoque eadem operâ adhaerecat, nam secundum regulas Geometricas quæcunque uni, & eidem sunt aequalia, inter se sunt aequalia*, saith *Hopperus*.

Ep. 203.

Pro Muræna, 2.

Lib. 1. De Finib. 97.

Lib. De Vera Jurisprud. 2. tit. 3.

*Justitia verò quam leges revelant, non est illa quæ commutativa, vel distributiva vocatur, seu alia quævis particularis virtus, sed est virtus perfecta, quæ justitia legalis nomine designatur.*

Here our Master disclaims that narrow sense of Justice, which mistake may impose upon him, and lays claim to the latitude of Justice, as that which is in, and teaches men, from the Law, the practice of it. And this the better to obtain, he premises, that Justice, as it is in *sente*, and essentially in God, is like God himself inscrutable, having the veil of inaccessible glory before it, and dazzling mortales eyes to an inperception of it; which yet, through the mediation of the Laws composed by wise men, and worded aptly to ordinary capacity, is in such a measure revealed, as it may be learned in some competent measure by them. And this adds much to the renown of the Law, that it discovers so excellent a Jewel, as harmonizes the World, and keeps it in any tolerable Concord; which because Justice does, 'twill be pertinent here to write somewhat additional, to what is before delivered of her.

Justice, either is considerable alone, as one of the Virtues, or as *complex*, and including all virtues in her. In the first sense, my Text-Master intends her not here; nor shall I in that here enlarge on it: but as she is the Lesson, that the Law learns both Prince and People; so she is to be acknowledged summarily all virtue. The Schools define Justice to be *rectitudo impressa voluntati à rectitudine rationis quæ dicitur veritas*, and vast disputes they have about her: yet all agree, that she is the *Aurora* of all Perfections, attended by such an equipage, as no Monarch beneath *Jehovah* has. For if *Solomon* in all his Royalty, be not clothed like a tender and trite Lilly of the Field, which every eye may look upon, till it have looked it self into darkness, and every hand touch, till it hath defloured its glory, and withered into deformity: How unlike, in the pomp and grandeur of their Train, are *Solomon's* Peers to this his Peerless Mistress that is to them.

Sanctus Thom. prima secunda, 960. art. 3. O. Lessius De Iustit. & Jurc.

*Tanquam inter stellas luna minores.*

*Tully* makes six Virtues to attend the Train of Justice, *Macrobius* seven, *Andronicus* nine, *Aristotle* and *Theophrastus* all virtues, *ἡ δὲ τῆς ἰσότητος ἐστὶν ἡ ἀρετὴ ἀρετῶν*, &c. *Xenophon* says the same, calling it, *μείζων τέχνη*, &c. The greatest Art the Queen of all excellent Virtues, *Polus* the *Pythagorean*, as I find him in *Stobæus*, is so transported with it, that he calls it *ἀκουσία*, and adds no man, without it can be accounted wise or magnanimous. *Plato* makes it so beloved of the gods, that be his condition never so distressed, they will never forsake him alive or dead, because he is useful to the Publique, and so like the gods themselves. *Epictetus* makes the same account of it, *Ἄσφαδὲς πᾶσι τόπος*, &c. every place is safe, where a just man lodges. Infinite to this purpose are the accounts might be given of the *Encomiums* of Justice: but those are

Lib. 5. De Morib. 2. 3 & 5.

Lib. 4. De factis, & dictis Socratis.

Serm. 51. p. 128.

189.

Lib. 10. De Republ. publ.

Stobæus, p. 206.

Aug. lib. 19. De civit Dei.  
Budzus, in Pandect. p. 73. edit. Basil.

Methodius.

Lib. 1. Com. Juris Civilis, c. 13.

Dion. Cass. Hist. lib. 44. p. 256. Partus prima, p. 280.

are but tinsel trickings to the glorious tyres, and invaluable ornaments, Scripture puts on her, *Justice is the habitation of God's Throne, the exemplification of his essential Magnitude, and illustricity to us. The Lord is known by the judgment he executeth.* Justice is the whole duty of man, and that which prepares him for every good, against every evil: 'tis the Establisher of Thrones, the credit of Weights and Measures, the sweetner of Crosses, *ἅπαντα ψυχῆς φιλοσοφία*, as Saint Chrysostome notes it; yea, that which is *περίτροπον πάντοθεν ἰσὺν καὶ ὁμοίαν*, round every way, universally the same at all times, and to all persons, according to the differences of circumstances, which are to be taken in, in *exercitial Justice*. So that the Laws of Nations being *artes equi & boni*, and administering to People under the regency of them, such just proportions of punishment and reward, good instruction, and seasonable prevention, in good and evil; and being straight, certain, safe, useful rules of life, both in the ruling, and ruled parts of Societies, and the tropiques upon which Communities are harmoniously managed, they may, in very right, be allowed Weight, according to our Text-Master's Ballance, in those words, *Quibus perfectè justitia edocetur*. For so Donellus also asserts them, in the intendment of his words, and in that sense which Wise-men dispense them in, *sequamur potius quod justum & equum quàm quod strictum est, quòd strictum jus nihil habet auctoris præter verba, efficit ut sit maximè contra ejus sententiam & voluntatem, at verò sententia non verbis astringenda est, sed verba potius sententia atque adeò aequitati servire debent, quàm servari, est ex mente legis*; and that the performance of this is a necessary part of the Laws Justice, Salmuth upon Panciroli, doth in many examples, and by sundry authorities, make good. This shall suffice, for what our Chancellour, out of Leonardus Arctinus, Homer, and Aristotle quotes, to the phrase of Justice, as it is the Parent of all other Virtue; and particularly the Prerogative, and Royal Embelishment of Kings: For so it follows.

*Justitia vero hæc, subjectum est omnis regalis curæ, quo sine illa Rex justè non judicat, nec rectè pugnare potest.*

In this sentence, our Master applyes Justice to the King, as the Rudder that must move and actuate him that is the Mover and Spirit of all his Government: For in Government, the King and the Law, though two in number, yet are but one in nature, both making but one Head; which Head, our Authour says, ought to be filled with no Proclamations but Justice, and the care of it. Care did I say, yes to purpose; Princes find it so, that rule well and justly, *θεὸν φοβέσθαι τὰ μέγιστα, μέγιστα καὶ πάχιστα κακὰ*: Oh! the tortures and troubles of Crowns! what anxious thoughts, what discomposed pleasures, what Earth-quakes of popular murmur and insolence, does greatness totter upon? Antigonus had so much of it, that on a day, when a poor Woman admired him for his Diadem and Purple Robe; he cryed out to her, *O Mother, if thou knewest the guilt and trouble of these, ἔκαστὸν ἐν κομπίαις*, &c. that is, *thou wouldst not take it up from the ground, if there it lay, and thou mayst have it for taking up, the charge attends it*. Indeed, did people know how real deservers Princes are of their duties; what laborious Bees they are to bring them the honey of peace; what Clouds of plenty they are, and all to disgorge their Tributes and Customs in protection and orderly government of them, they would make more Conscience of duty to them than now they do. *Est enim ea hominum conditio, ut si quando justum Regem habiti sunt velint potius illi subdi quam esse liberi, etiamsi Rex hic sit Tyrannus, quare Dominari te & tibi Orbi conducit*, was Virgil's counsel to Augustus, when he was in a quandary, whether to hold, or resign the Empire. For what Pliny said to one is here true, *Parenti tibi imperium dedit, tu illi reddidisti, ultro dantem obligasti, communicato enim imperio sollicitior tu, ille securior factus est*. People have more from Princes, in care and vigilance, for, and over them, than Princes have from people, in tributes and perquisites of their Crown, which they carefully wear, to those purposes of publique good. Which considered, that speech of Augustus to his Livia, *τίς γὰρ ἀλάστον*, &c. *Who woman can be quiet a moment, who has so many and great Enemies within this Government*, &c. is but what all Kings and Chiefs do in their minds speak, and have too just cause to bemoan, as that which makes them sometimes necessarily act, what they do not applaud, as exactly just. What then they do besides the Rule, and beyond Justice, lyes on them to answer to God; for their

Square

Eurypid. in Alc. mzo. in Stobzus, p. 148. 504.

Stobzus, Serm. 148.

Cerda in vita Virgilii.

In Panegyct.

Dion. Cass. Hist. lib. 55. p. 537. edit. Leunclavii.

square and tether is Justice that the onely subject matter that Regality should express care in; and that done, security will flow in upon King and Kingdom. For to promote this there is a kinde of necessity in a Prince to take this glorious Mancipation on him. And did not God kindle ambitions of glory, by publick beneficencies in great mindes, they would never deny themselves the delights of private living, to take the envy and murmure of Government and Rule upon them; for when Subjects sleep, Princes wake; when they eat and drink to freedom, Princes are to keep cool heads, that they may be ripe and ready in counsel and action; when they love and marry whom they please, Princes are, and must be bound up by Reason of state, and marry to their best Interest, and strongest Allyance; when they command hours for private devotions, and hug their pillows as their ease, casting off care with their cloaths; Princes are masters of no privacies; hurried they are up and down in the day, and perplexed in the night with myriads of thoughts, tumultuating one upon another; every shadow presents suspi- tion and fear to them. And they knowing not what a moment may bring forth, are in no moment hereby quiet: when they see a Subject popular and wise, they fear his discontent, disaffection, and the fruits of it Rebellion: When they hear of Multi- tudes querulous, and parties among the people, their prudence aims to head none of them; but to ballance them both, so that neither may have the advantage of other, but the Law regulate both. When they observe Princes their Neighbours, in warlike paradoe, they must arm too, that the noise of their vigilance and preparation, may pre- vent what is malevolently designed from abroad against them. And when their own Subjects are in Arms, they take care, lest they should not be distributed into their first parties without inconvenience. When they are to court Forreign Favourites, they are dubious to trust, where they have not tryed, and found fidelity; and when their way is made, then their care is to improve by subtilty, what prudently they have gained. For not to proceed wisely in what is begun, is to retrograde in publique reputation; and to proceed faster then the good speed of Affairs dictates, is to be less advised then Princes ought to be. When Affairs are on foot, they must be sup- plied with Instructions, money and all other necessaries; and when they are brought to their growth and birth, then the case is, how to produce them gallantly, and to be moderate under the interpretation of them with men, whose bolts will be diversly shot, and censures boldly delivered upon them. These, and myriads of such like emer- gencies, discompose the lives and peaces of Princes, and great men, and deny them the serenato's and calms that privacy delights their possessours with. When *Bajazet* the Fourth had lost his Son *Orthobulus*, and his City *Sebastia*, he could sing no Notes so cherrily as the shepherd, whom he sighingly cryed out happy, because he had none of them to lose.

Yet these cares are all but in order to the highest care of Kings; Justice, which be- ing the project of God, in the government of the World, calls them as dutiful Chil- dren, wise servants, and worthy Patrons of Popularities, to imitate him the Father, Ma- ster, and Defender of his Creation, and the Polities in it, which they can no ways to the life do, but by Justice.

Justice is the cement and soul of all Polities, the hinge upon which order winds it self into humane accommodation. *Diodorus* writing of the virtues of *Noah*, concludes, that he taught them *τὸ πρῶτον δικαιοσύνην*, &c. Justice and integrity of soul above all. And *Trogus* speaking of the Golden Age under *Saturn*, attributes this to it, *Tanta jus- titia fuisse fertur, ut neque servierit sub illo quisquam, nec quicquam privata rei habuerit, sed omnia communia, & indivisa omnibus fuerint, veluti unum cunctis patrimonium esset.* Take away Justice, and all that we see and read of, becomes *Chaos*. Take away Justice, and what are Kingdoms but *Magna Latrocinia*; and Kings, but *violentia numina*. Take away Justice, and what are Laws but *nuda & nugatoria Ceremonia*; pompous nothings, and ridiculous Gloworms. Take away Justice, and what is property and privilege, but *libidini holo-austum*: and who may not by *Ahabs*; and sons of *Belial*, be made a *Naboth* for his Vineyard? Set aside Justice, and all Religion to God, and order amongst men, ceases. Yea, Justice being the end of Government, (*cujus qui- dem rei argumentum est, quod qui primus inter mortales à Deo constitutus fuit, Melchise- dec, id est, Rex justitia*, saith *Hopperus*) is so necessary, that it cannot be removed

R without

Bibliothec. lib. 5.

Justin lib. 43.

Sanctus August. lib. 4. De civit Dei Alciat. lib. De Verborum significatione. ad legem 150.

Lib. De Justit. Principis.

without the dissolution of all : 'Tis the Sun in the Firmament , God's Bow in the Clouds, an eternal witness of his love to man.

*Quo sine illa Rex justè non Judicat, nec rectè pugnare potest.*

Hopperus, lib. De  
Inst. Principis.

Lib. 3. De Motib.  
c. 12.

Lib. 4. Reipub.  
c. 10.

Alciat. ad leg. 15.  
Lib. De Verbor.  
signific p. 43.

This is added, to shew the necessity of the presence of Justice in every act of Regality, Peace and War are the two hands of Government; and both these are to be bound and loosed by Justice. And hence has it ever been the care of good Princes to be just, that they may be beloved, and well reported of: and thus onely they knowing, they must be by the Laws of their Government strictly stood to, has made them keep to it resolutely and throughly, *Boni Principis est summum honorem legibus exhibere, ne quicquam sine illis nisi ultimâ necessitate tanquam tempestate cogente agere, ne si aliter faciat, in anceps periculum se conjiciat, & loco Regis Tyrannum se exhibeat*, is a Statesmans rule from the great Secretary of Nature; who, because the Laws are respective of the good of many concerned in them, makes the observation of them so important, that he concludes, *That a good King more eyes his Peoples good, then his own greatness.* That then Peace and War are regulated by the Laws, proceeds from the justice of the king, who is Head-Dispenser, and Protectour of his Laws. And hence it is, that the Wisdom of Kings has ever admitted their Laws to be of the *quorum*, in conclusions about them: yea, and from this is it that mostly Peace and War has been successfully managed, where Justice, according to Law, has associated them. For God having intrusted power with Princes, to felicitise, and not ruine their people by it, prescribes Justice, as the method of its dispensation to this end; and the Laws of God and men stating Justice in every application to them, conducts Princes to their Prerogative, and instructs people in their Allegiance readily and religiously; so that the Law being *ars aqni & boni*, and justice the end of it, being that which Prince and people are made happy by, there is reason that the Law, in assertion of Justice, should be adhered to.

*Unde cum perfectus usus virtutum sit felicitas, & justitia humana que non nisi per legem perfectè nanciscitur, aut docetur, nedam sit virtutum effectus sed & omnis virtus.*

This is the recollection of the premises to produce the conclusion, which our Text-Master makes in justification of the Law, and of the excellency of Justice taught by it. For since the end of all active virtue is felicity, & that is acquired by nothing more then Justice, and that Justice is specified by the Law, which is the Rule and Model of it, and which onely can teach it perfectly, and make the knowledge of it productive of those fruits, which are comfortable with Justice, in all the latitude of her relation to God, men, and a mans self, it reasonably follows, that not onely the Law is excellent, as it is repleat with Wisdom, and answers the ends of Gubernative Policy; but as it implants in, and exercises the mind that is furnished from it, with that perfect notion of felicity by virtue; which because it is a complex of all attainable goodness, and furnishes a man to every good word and work, is here called Justice; for so are the next words.

*Sequitur quòd Justitia fruens felix per legem est, & per eam ipse sit beatus, cum idem sit beatitudo, & felicitas in hac fugaci vita.*

*Justitia fruens felix per legem est.* The phrase *fruens* referring to the Will, *Quia frui est in voluntate*, helps much to the comprehension of the Chancellour's meaning, That the felicity which man attains by the knowledge of the Law, ariseth from the delight of the subject, in which it is to Justice; when in the Apostle Paul's words, *I delight in thy Law in my inward parts*; or as the Prophet David said, *I had hid thy Law in my heart, that I should not sin against thee.* In this case, the Soul that is every way quadrate, and that looks to all God's Commandements with an indifferent and just eye, not daring to dispense with any part of his duty, may well be pronounced happy by the Verdict of Law. For God has given it that just confidence, that it shall stand in Judgment, that it shall not fear evil tydings, since its principle, which is fixed on the Rule, leads to Beatitudo, and to what is the Porch of it, humble confidence. And indeed, what

ὄπλον - μέγιστον ἔστιν ἡ ἀρετὴ θεολογία.  
Stobæus,  
Serm. I. p. 2.



what can make a man happy, but that Justice of principle and practice, which the Law justifies? And what of this nature does the Law allow as a virtue, worthy its encouragement, but that which is tending to Justice: There is a mutual reciprocating of Echo's, 'twixt Law, Happiness, and Justice; they answer each other, as parts of that Line of Communication which connects Heaven and Earth together: For when all things are at a stun, when Beauty gives way to putrefaction, Riches, Honours, and Wisdom weep out their woful farewell, *Righteousness delivereth from death*; not from death, as a debt to Nature, for it is appointed for all men once to dye: but from death, as a terrour; from the despair of comfort in, and mercy after death. This it delivereth from, thus in *Hezekiah's* case, That *Remember, O Lord, I have walked before thee with an upright heart*, was his Cordial against the cutting off of his days; it being the course of God, to give unto all men somewhat of comfort, or terrour in their departure, suitable to the merit, or demerit of their lives.

But, I trow, there is another sense more genuine of this *Justitia fruens felix per legem est*; which is this, he that has the benefit of Justice, is by the Law happy; for that the Magistrate, which is the *Living Law*, is appointed by God to speak, and do comfortably to those that live under his charge, and are inoffensive to his power. And truly, it is no mean degree of happiness, which the Justice of Magistrates conveys to those under their charge, if the particulars of it be duly weighed; *To live peaceable lives in all godlyness and honesty, to sit under our own Vine and Fig-tree, and to possess ones good things in peace; to drink of the water of our own Fountain, and to have the credit and comfort of God's blessing on our propagation; to keep our fleece on our backs, and not to have them shaven, and our lives taken from us, to colour the injury. To have the knowledge of God run down in the Land like a mighty stream, is happiness, carrying its witness with it. And blessed are the people that are in such a case; and with this outward advantage, have the Lord for their God. But all this is from that Justice, which the Law, by the Magistrate, makes good to us. Were it not for Justice, the Laws Grand-sir, and from the fruitful Womb of Order, which Magistracy doth impregnate, who would be happy, but those whose powerful wickedness carried them forth to drink healths in the Bowls of the Sanctuary, to prophane the holy things of God, and to violate the sacred rights of men. But blessed be God, there is a bright Star in the Firmament of Rule, which illuminates the cloudy face of Force, and makes us see Justice expanding her Wings of Protection, favour, and comfort to all her Clients, and she can do no less then cheer all that love and follow her; for she is a Ray of the Light sprung from on high, and is descended with a Cornucopia of good to Mankind. And therefore the Chancellour had a good reach when he said, *Justitia fruens felix per legem est*; for as he told the governed their happiness, so the Governour his duty, which is to love justice in himself, that he may administer it to his Subjects. For it is a sin not to be just, and a greater in the Prince, then in the People, because of the eminency of the one above the other. And that Prince that is unjust, and yet will be owned as *Custos utriusque tabule*, had need seize his Subjects reason as an Fsheat, and make a Law, that people should believe nothing good or bad, but as it is published to be by him; for if men be left to the just latitude of their Reason, they will conclude him no worthy Prince that is not just. Wherefore the happiness that people enjoy under just Princes, is not onely from their good will, free concession, and gracious indulgence, but from a benefit also drilling down from Princes by the Laws of Nations, on People, as the Vallies which they water, and therefore Laws are accounted publique Treasuries, that buy out common slavery into Enfranchisement. And therefore the Law is called by the Greeks *ἰσομετρία*, some say *ἀρέτων*, which signifies, to distribute; as telling us, that whatever happiness subjection has, is from the justice of Kings by their Laws. *Eurypides* says there are but three virtues which he would have his Child learn, *To fear the Gods, to honour our Parents, and to reverence* *ὠμίσε Κοίνας Ἐπιτάξας*, the common Laws of Greece; as conceiving the reverence of the Law to be next duty to God, and our Parents: and whatever assurance Government has, is from the same source; for the Law of Natural Justice teaches, that protection is to be recompensed with subjection, and subjection to be maintained by protection; both which are best kept up by Justice; which Justice makes man happy according to Law.*

*Injuria semper iniusta est, Ladi etiam aliquis iuste potest. Nam & qui iure damnatur, ladamur, sed non injuria. Ascenius Prædianus, apud Philoxenum, Lib. De Serim. Latino. P. 747.*

*Quod sol mundo est & sanitas corpori, hoc animo & Reipubl. est Justitia. Nam res ad vitam necessarias non ideo querimus ut simus, hoc enim brutorum est, sed ut bene simus, quod est iustitia; & bellum cum hostibus gerimus, non ut vincamus, alioque servitute opprimamus, nam hoc Tyranni faciunt, sed ut in pace beati vivamus, quod a iustitia profuit. Hoppeus, De Inlit. Principie.*

*Stobzus, Serim. r. p. 1.*

*Quo & per eam ipse fit beatus, &c.*

Well added, for no man can be sure of a good end from an ill beginning, *non habet eventus sordida prada bonos*; the just God has joyned together Justice, which is in effect, all virtue, to happiness, that men may know the way to the one by the other. For men must pay toll at the Castle of Justice, before they come to the Basileopolis of Happiness. And since Pairs are so beautiful in their conjunction, the Chancellour has by an elegant Synonyma identified *beatitudo & felicitas*, at least in *hac fugaci vita*; in the condition whereof, we men are onely meet apprehenders of them. For he supposes, that the upshot of all man's motion in his calling and sphere, is but to attain rest; and that rest, from the toil of life, he fixeth in his Chair of State old Age, under the Canopy of his Night-Cap, and in the Robe of his Gown, having in his hand the scepter of his staff, and his Cough as the Herald, making room for him to the grave. Now that obtained, he accounts himself happy to live in credit, dye in peace, leave a good name to survive him; that's all that the beatitude and felicity of this life amounts to, and this is onely attainable by Justice. *The just, saith the Wise-man, shall be had in everlasting remembrance*; and in another place, *the memory of the dead shall be blessed*. And this blessedness shall the Law pronounce, when it testifies, that we have lived to the true and just purposes of life. For we were not made to study, serve, love, and delight in our selves, but to serve our Maker, to love our Neighbour, to promote Virtue in our selves and others. And this we ought to do, considering that it is our duty, and we must give an account, *Quid, quando, quibus, quare, fecimus*; *What*, for the nature; *when*, for the time; *to whom*, for the persons; *wherefore*, for the motive to our doing; yea, and considering above all, that the time we have to work in, is but *fugax vita*, short time, slippery time, gone like a tale that is told, passing as shadow, as a brook; time past before us, time past after us, time present, called life, onely ours: therefore we ought to be active, while the day lasts, because the night comes, wherein no man can work.

ὁ δὲν ἐσμέν  
πλὴν οικίας  
ἐικότης. So-  
phocles apud  
Stobæum,  
p. 807.

ἡμέρας μίας  
ἀλυπία μέγα  
ἐστὶ καὶ δόξ.

Diogenes So-  
tadis apud  
Stob. p. 808.

In Pandect. fo. 58.  
Basil edit. 1534.

Qui quidam ordo  
cum invertitur, &  
major opum ar-  
morumque, poten-  
tia, quam religio-  
nis, & justitia ra-  
tio habetur, fit, ut  
res illa primum  
fastu & luxu ci-  
vium corrumpant  
deinde autem ipsa  
met aufugiant, &  
pro libertate ac  
opulentia, extre-  
mam servitutem,  
& paupertatem  
relinquunt. Hop-  
perus, lib. De In-  
stitut. Principis.

*Cujus & per justitiam ipse summum habet bonum.*

The Chancellour, as one in love with Justice, makes the *summum bonum* of life to consist in it; and so it must, considering he asserts it beatitude and felicity, which is the *summum bonum* of any thing, for what is the beatitude of a thing more then the perfection, and what is the perfection less then the felicity of it: so that there being as perfect a concord in the Chancellour's words, as soul; I cannot but wish, that may be in our times, which learned *Budaus*, speaking of the *Areopagita*, says of them, they were such friends to justice, that they would endure no Oratory, lest their affection should be led aside from the truth, to favour that party which had the best Language in its defence, and did sit on Judgments in the dark, that they might not be led by favour, or know friend or foe; yea, that their integrity might appear, he adds out of *Isocrates*, *Tantum priscos illos Areopagitas monumentum virtutis ac continentia sua, illo in loco posteritati reliquisse, ut etiam suo tempore quo jam mores antiquos multum degenerasse conqueritur, observatum esset eos qui moribus alioquin intolerandis antea fuisse videbantur, si quovis modo ad Areopagiticum forte consilium obrepserant, tum demum temperare sibi solitos esse, & tanquam loci genio afflatos, ex ingenio suo migrare. malleque institutis tanti consilii quam institis sibi vitis, aut ingenitis insistere*. To this I say, *Budaus* adds, *Utinam benigntate divina, in amplissima curia nostra similis aliquis posthac genius existat*. By all which it appears, that Justice is a most excellent virtue, and that which our Chancellour both practised, when in office, and had the comfort of having so done, when exofficed; and this makes me conclude, in commendation of Justice.

*Tamen non nisi per gratiam lex poterit ista operari.*

Herein, as in other places, the Chancellour, like a devout man, and a knowing Christian, recalls his former extolling of the Law (as the Rule of Justice bestowing upon man the felicity of this life) by interpreting himself, as ascribing the main work to

to Grace, and to God the giver of it. For though that be true of Laws, which *Plato* desires of men, *ὅταν βιάηται θεὸς ἐν πόλει, &c.* When God intends well to any man, or place, he raises up, and increases good men in it, which *Morellus* says, has been verified in France, wherein *Reges sapienter & justè regnantes ad nouis septenos concessit*: yet all that ever Art or Nature does to our perfection, is nothing, without God's concurrence and benediction in that gracious Providence, which effectuates what it will. Now this the Antients called by many names, as desirous to convey it most to the advantage of its splendour. *Moses* termed it *θεὸς δάκτυλον*, the finger of God; and *Solomon*, *θεὸς χεῖρα*, God's Hand; *Pindar*, *θεὸς παλάμαν*, God's Palm; *Plato*, *θειαν μοίραν*, God's Lot; *Aristotle*, *θειαν δύναμιν*, that divine virtue which contains every thing in, and brings every thing about to it; the old *Academies*, *λόγον τὸν διοικῶντα*, &c. Reason moderating, and ruling powerfully in all, *θειαν ἡγεμονίαν*, that divine gubernation and order of all things. These, I say, in other terms, mean the same with *χεῖρὶν πάντα ἐνεργῶσαν*, that special grace and favour which he bestows on man, and by which he makes the Law effectual to this purpose in him. For though I well know the Law is just, holy, and good, and all Laws have the most presumptions of success, in what they undertake to teach, and seldom do lead into any thing beneath the most exact habit and action of virtue; yet in that they do this in conjunction with, not abstracted from divine grace, I think it just to ascribe all the perfection in virtue that man attains to by the Law, to God's blessing which derives energy to it. Indeed the Law can, as a System, and collection of divine truths, and prudent Rules, method us in justice, and teach us to use virtues, in order to beatitude; that is, excite the faculties apt to take and retain principles, it can propose the rule to the understanding, and thence to the will and affections. But it cannot persuade his ear to hear, and his heart to embrace what is good, and accordingly to do it, *Quia ad hunc actum Deus nos adjuvat & interioris confirmando voluntatem, ut ad actum perveniat, & exterioris facultatem operandi prebendo*; as *Durand* notably. This is solely an act of grace from God, whose Prerogative it is to do, and not to do, as he pleases; and therefore without God, man's free will is nothing; nothing without God's co-operation. He, he, must carry our endeavours to their issue, or they will be abortive, and have no figures of amiableness in them. And therefore our Chancellour has written no more here of grace, then the Schools generally assert. And *Brunser*, though he would allow as much to man's will, and Piety's merit, as may be presumptuously arrogated, yet brings in a four-fold grace of God indulged man, suitable to the four-fold evil he is immersed in: The evils are, 1. *Combat with Satan's temptation.* 2. *The wrath of God.* 3. *The guilt of sin.* 4. *The sequel of sin.* The grace that God vouchsafes, are, *Protection, Deliverance, Extraction, Salvation.* So that the triumph of a sinner over his toil and impossibilities, is from this grace of God, which enables him to every good word and work. This grace is therefore as the gift of God to, so the work of God in us; 'tis that which excites us to, retains us in, and rewards us for well-doing; because it is a largess of God to us expressive of eudochy, and complacentialness; it's that which God answers men by: if not *secundum identitatem desideriorum*, yet *secundum equivalentiam*: if not just as they desire, yet in the best exposition of their desire, that is, in such good as he sees best for them. No wonder then that *Heathens*, in all great undertakings, addressed to their Gods, praying their aid and influence, since they found themselves impotent to reach any things of remoteness without them. For God himself has declared it his Prerogative, *to bless, and curse; to raise up, and pull down.* And the Law can do nothing, either to convince of sin, or conduct to virtue, but as God's rescue in Magistrates hand. 'Tis God above, that must open the eye of the understanding, and incline the heart to good; yea, and 'tis God's grace onely, that when the good and excellent path of life is discovered, puts man in, and keeps him on from halting or deviation; not onely by an act *in formationis & denominationis subiecti*, presenting good to us, *sed redditionis operis meritorii*; as *Durand* too durely phrases it, that is, rendering it accepted in the beloved Lord *Jesus*.

*Prefations in lib. Senec. De Provident. p. 14.*

*Durand. Dist. 26. q. 3. lib. 2.*

*Dist. 27. q. 3. p. 397. Bradward. lib. 2. c. 5. De Causa Dei.*

*Bonaventur. lib. 2. Dist. 27. Diffinit. 26. Qu. 3. lib. 2.*

*P. Mirandul. in Hexap. c. 5. p. 30.*

*Dist. 26. q. 1. lib. 2. p. 395*

The consideration of which brings in grace in Scripture, under so many honourable, and useful attributes, that it's hard to think of benefits, whereof our nature and condition is capable, which this grace and favour of God does not accommodate us with; it restrains from sin, it excites to duty, it conflicts with despair, it actuates faith, it erects fortitude, it debases pride, it adorns humility, it promotes self-denial, it is victoriously

valiant

*Non te existimes  
donum Dei jure  
hereditario possi-  
dere, ita videbitur  
securus de eo quasi  
nanquam perdere  
possis, ne subito  
cum forte retrave-  
rit manum, &  
subtraxerit do-  
num, tu animo  
concidas & tri-  
stior quam oppor-  
tet, fias.  
Sanctus Bernard.  
Serm. 21. in  
Cant. Cantic.*

valiant against the enemies of the soul; yea, it keeps the heart equanimous, neither presumptuous, nor despondent, but equilibrated, as a Son should be, between the fear of duty and mercenariness. Hereupon St. Paul ascribes this mutation from a *Pharisee* to an *Apostle*, to be of grace; *By the grace of God I am that I am*, teaching us to put our selves for the fortuation and felicitous sequel of actions on the mercy of the Almighty, wherein no man that rightly aims, and religiously means to that end, can possibly miscarry. All that we have to do, is to walk regularly and humbly before God, and thereby our inward man will be kept from predominancies inconsistent with this grace. For, as in the body, the prepotency of malignant humours, impedes the operation of the noblest Portions; so in the soul, till grace have obtained the mastery over the brutal and lower Regents, there is no effects of grace probable to appear. It must be God that first excites, then by a concomitation crowns our endeavours with a desired issue. He gives recompence to diligence by wealth; to patience by victory; to humility by exaltation; to penitence by pardon. All that art and industry can do (abstracted from this grace as its benediction, which includes its fiat) is nothing. Lewis the Ninth of France was a wise and pious Prince, yet he made but two Voyages against Infidels; one into Egypt, and the other into Barbary, and miscarried in both. In the first, he himself was taken prisoner, and his whole Army overthrown. In the latter, he dyed of the Plague. *Cesar Borgia* fearing that his Father Pope *Alexander* the sixth dying, the Papacy would come into the hands of his Enemy, ordered affairs so dexterously as he thought, that which way soever they steered, he should be out of danger: Pope *Alexander* shortly after dyed; and *Cesar Borgia* fell so sick, that he could execute nothing he had designed; and so the Popedom came unto his professed Enemy: so that the Chancellour's Position is most true, *Non nisi per gratiam lex poterit ista operarii.*

*Neque legem aut virtutem sine gratia tu addiscere poteris, vel appetere, cum ut dicit Parisiensis (in libro suo cur Deus homo) virtus hominis appetitiva interior per peccatum originale ita vitiosa est, ut sibi vitiorum suavia, & virtutum aspera opera sapiant.*

This is added, to shew how impotent the best Prescripts of Nature are to any excellent and certain end, in their abstraction from God's grace: neither the whole duty of man, which our Chancellour means by the Law, in which 'tis proposed; nor any part of it contained in single virtues, can be either desired, or practised by us, but with assistance of God's grace. First, we cannot, *appetere legem aut virtutem*, without grace; for *appetuntur quae secundum naturam sunt, declinantur contraria*, is Tully's rule. Now the nature of man is so averse to virtue, as subverted from its created rectitude, that it opposes it self to it, and declines it so, that if it be brought upon the love and practice of it, it must be by a divine persuasion, and sweet compulsion, from grace moving the Will to follow an enlightened understanding, and engaged affections. And then secondly, man cannot *addiscere*, that is, not onely learn, as Oratours sometimes use the word, but *quasi aliquid addere ad ea quae didiceris*, as our Text intends. No man can add to what nature instructs him in, concerning virtues divine and moral, but by grace; for thereby onely corruption is discovered, and the means of recuperation and restitution, by improvement, revealed. Neither of these so necessary to our compleatness, are attainable, but by the grace of God, which brings the light and truth of God's discovery to the Conscience, in compunction and contrition; and then carries the convinced subject to *Jesus*, the anchor, the price, the pattern, the donour of integrity, from which corrupted nature is the lapse. Indeed, in *Heathens*, and pure moral-men, there may be suddain options, and passionate transports, reflected from the terrours of natural Conscience, which may cajole a man to ingenuous confessions, and seemingly serious protestations of amendment. But these being the products of no solid and sincere conviction, but the fruits of God's terrour, which he often injects into, and sometimes long continues upon wicked men, are but *splendida peccata*, no acts of grace, but of power: which as a Creator, not a Father, God expresses himself to his Creature in. By these he over-wrought *Balaam* to bless, whom he resolved to curse, and *Abimelech*, not to take *Sarah*, whom he resolved to prostitute; which had they not been, neither the good words of the one,

Lib. 3. De Natur. deorum.

1 Offic. 21.

*Non dat natura  
virtutem, ars est  
bonum fieri. De-  
erat illis justitia,  
deerat prudentia,  
deerat temperan-  
tia ac fortitudo,  
omnibus his virtu-  
tibus habebat si-  
milia quaedam  
rudis vita, virtus  
non contingit ani-  
mo nisi instituto &  
adfecto, & ad sum-  
mum assidua ex-  
ercitatione perda-  
ta. Senec. Ep. 90.*

Let me die the death of the Righteous, and let my latter end be like unto his, Numb. xxiii. nor the chaste deeds of the other, in not touching carnally Abraham's Sarah, had not succeeded their actions, which were prævius and ordinated to the contrary. So that whatever these, and other Heathens did, in order to self-mastery, magnanimity, contentation, patience, justice, charity, though they are effects of general grace, that is, of the largels of God the Creatour, to man his creature, yet are they but imperfect works, because they did them as lures to their own fame, and as defensatives of themselves from miscarrying in the deluge of censure and defamation, which hurries down into the lake of dishonour all sordid, illiberal, debauched courses, and hence they deserve to be accounted not so properly virtues, as the umbra's of them: because, beyond the Elysium of fame, there is no reward for these; for so, according to their calculation, is their reward in this World: for all they aimed at, was to appear to men; God, the principle of their activity, was superiour to, though not at all in their intendment and purpose; and subjected they were, to what they could not oppose. *Bona ipsa opera qua faciunt infideles, non ipsorum esse, sed illius qui bene utitur malis;* said that renowned Father of our Church against the Pelagians. And therefore there is vast difference between the Works of Grace and Nature, of Heathens and Christians; because, though in the externity, and materials of them, they may have an equipollency; yet in the intention, rule, principle, and purpose, (which bears away the reputation with God) there is no agreement. The righteousness of these gracious souls, exceeds the righteousness of Scribes and Pharisees, who yet were exact and rigid in the Rites of their Worship. The wisdom of these reaches to eternity; they consider their latter end, and desire God to teach them to apply their hearts to wisdom. The charity of these, is not onely to those of the household of Faith, but to all Mankind; not onely to a cup of cold water, but to actions of heroickness, whereby Coals of fire are heaped upon their Enemies heads. The patience of these, is not to the loss of their goods, but lives, so they may keep their souls spotless. The perseverance of these is such, that with Job, though God kill them, they will put their trust in him: the humility of these is so real, that they put their mouthes in the dust, and bemoan themselves with Ephraim, *If I have done evil, I will do so no more.* These are the fruits of God's Canaan in the soul, which worldly men, as false Spyes misreport. These are Jacob's hands, as well as Jacob's voice; the same in deed, as in word: there is no tincture of Alchimy or alloy in these, they are all Gold, whereas nature gives men but the Vermillion of seeming: this presents the Rose and Lilly of perfect beauty. And hence comes it to pass, that God owns it as his work, and promises himself the reward of it unto the soul, *vide quid Christiani facere possint quorum in melius per Christum restaurata est natura, & qui divine gratia juvantur auxilio,* saith the Father. Which considered, 'tis well added by our Chancellour, that thus to do, is *divine bonitatis beneficium, non humanae virtutis.* For as it is not flesh and blood that reveals it, so is it not flesh and blood that performs it, *natura humana etiamsi in illa integritate, qua condita est, permaneret, nullo modo seipsam creatore suo non adjuvante servaret, quum igitur sine gratia Dei salutem non potuit custodire, quam accepit, quomodo sine gratia Dei potest reparari, quod perdidit,* is Saint Augustine's judgment. For if by the power of nature separate from grace, the virtue of Justice could by the Law have been taught and learned, man needed no other School but that to teach him his duty, and to make him actually perform its dictate. But inasmuch as our Lord has taught us, that without him we can do nothing as we ought, and God will accept, and the holy men of all Ages have recurr'd to God's grace, as the *sine qua non* to their progress and success: it highly befits us to ascribe all to grace, and to disclaim merit and self-sufficiency, that he alone may have the honour, *who is the authour and finisher of all good in us.* For it is one of the great and undeniable explorations of Omnipotence, and that which argueth God the Regent and Provider of the World; that he makes every thing accountable to his end, and subservient to his purpose, not onely the proper effects of grace, renovation of principle, and melioration of practice, but also the punishments of grace despised and neglected, *Sicut mali Dei bonis male utuntur dum non corriguntur, sic contra Deus, etiam malis eorum bene utitur ad justitiam suam, & exercitationem suorum,* said the Father; and to the same purpose Synesius, *αι νανονσιν δουλουνς,* &c. that is, *even the sinful liberties men take to satiate themselves with sin, work out God's justification in their punishment, and satisfy the pious, that he must needs be good, who gives so just rules to life, and they be out of measure sinful, that obey them not.* No

Bradward, De  
Causa Dei, lib. 2.  
c. 5. p. 287.

Beda, cap. 13.  
contra Julianum.

*Malè velle, malè  
facere, malè dicere,  
malè cogitare de  
quoquam ex aquo  
vetatur.*  
Tertullianus  
Apolog. c. 36.

Bradward, lib. 2.  
c. 5. p. 487.

Epist. 106. ad  
Paulinum.

St. Augustin.  
Ep. 59.

Epist. 57.

No wonder then the Scripture says; *obedience is better then sacrifice*, because sacrifice being a devoir of the man externally conforming, may flow from the less noble and degenerate proposal that men make to themselves; of assimilation to those they converse with, and are planted amongst, by complying with whom fame and advantage is acquirable, which they call *humana virtus*, and from reason and experience is moved and promoted; but to obey God, in owning his goodness the motive, and his power the Parent of what we attain to by study, action, friends, fortune, and to account our selves and all collateral aids, blind and passive seconds to his omniscency and wisdom, the energy and effectuality of the first cause God, must be *divine bonitatis beneficium*, no man can disclaim what he loves so dearly himself, but he that in the glass of God's perfection sees his weakness and insufficiency, and by the mastery of mercy over his corruption, ascribes all he is, or does, to his Makers good-will to him, and the enablement he has from it.

*Nam tunc leges, qua praeveniente & concomitante gratia omnia praemissa operantur toto conamine addiscende sunt, dum felicitatem, qua secundum Philosophos est hic finis & complementum humani desiderii, earum apprehensor obtinebit, quo & beatus ille erit in hac vita ejus, possidens summum bonum.*

This is a good inference from the premised assertion, since all mans chief good, by Philosophy is made to consist in felicity or beatitude, this felicity or beatitude is attainable by Justice, this Justice taught and learned by the Law, the Law made effectual by Gods grace accompanying it. Hence argues the *Chancellor*, if such be the attainments by the Laws, then the Laws of God, Nature, Nations, are to be chiefly learned by a Prince, Indeed the Argument has as much of cogency, as *utile* and *decorum* can give it; and while there is a tye of grace upon the Laws, without which they are counted ineffectual, there is no fear, supererogation, or attribution of ought to them in derogation to grace, which is the gift of God by them; as it is not bread that supports life, nor air that cools and refreshes the inwards, nor light that promotes order, nor physick that procures health, but God's fiat and creative permission and benediction, whereby not onely their innate and specific virtue, in a beneficent exertion, accommodates it self to, but is conducted and confirmed by the omnipotence of God so to do: so is it not the Law that can bring the mind by understanding the definition, to affect the direction, and execution of justice, except God incline, and circumspect the heart to the completion of it; and that by a grace of prevention, taking out of our way those rubs that imply avocation, making us of unwilling willing; and then by carrying on those beginnings to procedure, by breaking out the crepusculum into the bright day, *ne frustra velimus*, that is, by assisting us to run the race with patience that is set before us, looking unto Jesus. O 'tis a rare Prospect of the Crucifix, that brings us to make our selves vild, and of no reputation, that we may be obtainers of preventing grace, and do the will of God, by aid of his co-operating grace. Our Lord Jesus gave us the president to follow him, that we might be enjoyers of happiness with him, *Gratias agamus domino & salvatori nostro, qui nos nullis praecedentibus meritis vulneratos curavit, & inimicos reconciliavit, & de captivitate redemit, de tenebris ad lucem reduxit, de morte ad vitam revocavit, & humiliter confitentes fragilitatem nostram illius misericordiam deprecemur, ut quia nos misericordia sua praevertit, dignetur in nobis non solum non custodire, sed & augere munera, & beneficia sua qua ipse dignatus est dare*, was Saint Augustine's counsel: And, O Lord, grant me, who am thy poor valet, and have presumed to write of thy grace, such assistance of thy preventing and concomitating grace, that I may neither sin against them by my pen, or in my life, but that I may so write of grace, and so live to grace, that it may appear I covet the grace I write of, and magnifie the assistance, that in this unworthy endeavour of mine, thy grace afford me; while my heart conscious to it self of many falsehoods in friendship, and coolness in zeal, to the glory of thy grace, yet presumes to cry out with Saint Jerome, *Semper largitor, semperque donator est, &c.* Thou, O Lord, art always bountifull and givest, O let me be an ever receiver from thee, for it will not suffice my hungry soul, that once thou givest, unless thou often and ever givest; I am covetous to have the most I can of thy gracious bounty: as my soul is never satisfied with receiving, so let not thy grace be satisfied with giving to it; for the more it has, the more it desires of

LH. 1 Homil.  
Homil. 14.

The Author's  
Prayer to God.

of thee. Thus that Father, and I from him: For, without this continual, and effectual influx, how shall I write aright of grace, which worketh in us whatever is right in the sight of thee my gracious Judge.

The Author's Ejaculation.

Without grace then, the Law is ineffectual to bring Princes by Justice to beatitude, since it will not inform them of the excellency of virtue, nor subdue them to its method by efficacy of conviction, which makes practique virtue, and carries to, and ends in beatitude, but by help from above. Moral swasions are weak Physick, to carry away peccant humours prepossessing: it must be grace from God that vehiculates them to the parts disaffected, and by them works evacuation and restitution to a better habit. If our rightousnesses, that are as filthy rags, become clean garments before God: if our Salt that has lost its savour, be favoured by his acceptance; if our darkness become light in the Lord, through the Lord of Lights irradiation on us; if our covetousness of the Earthly Mammon be converted into the earnest covering of the best things; if instead of crying out against our selves, when we have done all we can, that we are unprofitable servants, as our Lord commands us. It must be the work of grace.

Our Lord, in room of that, makes himself that blessed Call to us, *Come ye blessed children of my Father receive the Kingdoms prepared for you.* This happy change is from something of God in, on, and with us, his grace of prevention and concomitance. This, this, is the soul, rule, guide to the Laws, wherein Justice, as the way to beatitude, is deposited. And without this grace of God, the Worlds Philofopy, the Laws learning, nay, Justice to the highest proportion imaginable for man to arrive at, will be but Apples of Sodom, beauteous in appearance, but rottenness and nullity in the proof of it: so true is that of the Wise-man, even in this riches, as well as in any other; *The blessing of the Lord maketh rich, and he addeth no sorrow thereto.*

Quicumque est victoria dignus, non est ex se dignus sed ex Dei gratuita voluntate, que & dignum victoria efficit, & victorem. Bradward, lib. 2. c. 6. ad suum, p. 490.

And therefore no wonder, though our Chancellour says, *toto conamine addiscenda sunt leges*, when he joyns the grace of God with the Law, and makes the Law sacred by its conjunction with, or rather subserviency to God's grace. For this premised, nothing can be imagined more pleasing and profitable to the Reason and Religion of a Prince, then the Laws, because they lead to the chief good by the best aids; to God, by God. This is no other then Scripture Divinity, God the chief good apprehended by Faith in the eye, Hope in the heart, Charity in the hand, Humility in the knee, perseverance in the foot, which are all but other wordings of grace, preventing and accompanying. Since to attain these, as there is no means but that of God's grace in chief, and our obsequiousness to it, as the consequent of it: so are those to be followed to this heavenly purpose *toto conamine*, no faint, remis, refracted, minute desires, will do to purpose this deed. This Heaven on Earth is for the violent and laborious Bees, that let no endeavour pass untryed to attain it, refuse no hazard or toil to conquer and atchieve it. He that wrestles with God in prayer night and day, he it is that does *toto conamine*, endeavour knowledge of the Laws: For *Conamen* here signifies not so much the act, as the endeavour and desire to it, which expresses it self in a fixation and unmovableness of intention upon it, when all the man sets to it (*conari manibus, pedibus*, as Terence says,) 'tis such an expression as Cicero meant, when he uses *magno conatu studioque agere*, to set out industry, or a *conatus cum impetu*, such an one, as Beasts and Brutes express, when they are carryed to or fro from things they love or hate; *To do what we do with all our might*, as Solomon's words are: This is *toto conamine addiscere*; nor can it well be otherwise, for it is in order to the greatest and utmost good, to Justice, the delight of God, and perfection of a Prince: yet this, though insisted on with all imaginable strenuity, will not be effected but by grace; and that present and concurring, nothing can be wanting; That God has declared the true *Elixar* that makes what ever it touches partaker of its virtue, and transforms it from what it was, to what is more excellent; not by Sir Edward Kellets mystical juggling (no better then commerce with Satan) whereby brasse is transformed to silver, and copper-wyre into gold, as some Chymists report him to have done. For that lightly and unlawfully come by, as lightly and loofely goes; as it is said to do with him, who was so vain as to give four thousand pounds worth of gold wyre away in Rings at a Maid-servants Wedding; no such effect of this *Elixar*: Grace, it turns an hard into a soft, a proud into an humble, an hypocritical into a sincere heart; yea, it teaches a man to delight in the Law of God in the inward man, and to be deservedly what *Pits*

Andr. 5. 4. Pro Quinto 27. Pro Sylla 56.

Theatrum Chymicum, p. 481.

De Scriptorib.  
Anglic. p. 716.

Lib. De Exilio,  
p. 605. edit.  
Paris.

Pfal. 119.

Leges Magistratus & judicia quaedam quasi sunt numina divinitus constituta in Republ. Hoperus, lib. unico, De iustitia Principis.

reports *Feckenham* Abbot of *Westminster* to be, *Erat in eo* (saith he) *in signis pietas in Deum, mira charitas in proximos, singularis observantia in majores, mitis affabilitas in inferiores, dulcis humanitas in omnes, multiplex doctrina, redundans facundia, incredibilis Religionis Catholicae zelus*; and while a man obtains this by the Law, is he not amply compensated? has he not the utmost bliss, this state of viatoriness is capable of? I trow yes, and if so, then the Laws of God and men from them are the most ready and useful accomplishments of Kings and great men, because they put them into bliss, in their deepest miseries, and in the unnaturallest desertions their vicissitudes can acquaint them with. For that Princes may be unhappy in accidents of life, is but what has been, will be, must be, *ἔσθ' οὖν οἱ δοκίμοτατοι*. Now, saith *Plutarch*, the most deserving men have been most incumbred, most afflicted, most ruined; but in that they can be chearful, patient, humble, and holy, under the pressures Providence permits to impend them, argues a great enablement from God, who gives grace to those that beg it, suitable to his own glory, and their good.

And this I conceive our Text-Master found experimentally in himself, God had made him a Martyr for Loyalty, a Champion for the Laws, whom because they could not bend, (who would have their wills the Law, and not make the Law their Wills) they resolve to banish, and break in mind, fortune, body; and he, though he had undoubtedly many friends of *Henry* the Fourth's party, who would, and could have made his peace, and procured his freedom to live at home, yet he rather chose to live free abroad, then a slave in a free Countrey, and under a free Law, as *England* ought to have been, but was not. Hereupon his leisure, and loss of practice by business at home, proves his opportunity to study God, affliction; men, his own heart, more and more thoroughly. And now he cries out, *If it had not been for God's Law his delight, he had perished in his affliction*. Now he owns gratefully to God, *that it was good for him to be afflicted*. Now the fruits and comforts of Justice in his profession, place, practice, quondamly return on him the reward of their integrity: Sure he that writes so divinely of Justice, & presses the Law as the Rule of Princes in it, found the Justice of Laws great subterfuges to his disconsolacy, and retreats to his once mistakes of God's dealings. The greatest discoveries men have of God's light and truth, are from the midst of Lightnings and Thunders, Afflictions Storms end in a calm of merciful sublevation; when the bush burns, and is not consumed, *Isaac's* throat is under the knife, then the Ram caught by the horns is welcome to *Abraham*, as God's provision for a sacrifice of redemption. So often as I think of *Patmos*, the place of *Saint John's Revelation* of, and prospect into the mysteries of glory, of which the fuller sight is reserved for hereafter, I cannot but conclude our Chancellour, was made what he so divinely by his being driven from house and home; for now he being taken off from the troubles of visits, and distractions of business, which storm-like, come in crouds, and cross waves of different import, has thereby leisure to converse with God, and to commune with his own heart; and being removed from the impulsion of this World's Hell, which by force and fraud either terrifie or allure men into snares. The judgment that he (in this condition of separation being more impartial) gives, carries the stronger reason, and will be more influential, by how much the more sincere it is presumed to be, since nothing so embases counsel and instruction, as the præ-occupation of interest, to the proportion and scope of which it is often experimented mercenary: which being not to be suspected in our Chancellour, renders his words not onely swasive, but in a sort imperative, as they flow from the almost infallible Oracle and Fountain of great Learning, grave Experience, entire Affection, and noble Loyalty.

*Verè etsi non hac te moveant qui regnum recuturus es, movebunt te, & arctabunt ad disciplinatum legis Prophetæ verba, dicentis, erudimini, qui judicatis terram.*

Still our Text-Master proceeds to inculcate on the Prince a valuation of the Law, which, though he had by many pregnant Arguments, commended to him, he yet surther urges from a higher Authority then that of Philosophers, and men of age and wisdom: For though it were enough to youth, that antiquity found in the way of righteousness, commended this or that to them, because multitude of years teach wisdom, and the Spirit of God in that counsel or command, *Thou shalt rise up before the Hoar-headed,*



be aded, gives youth to know his acceptance of respect shewed to them, then which, greater cannot be testified then to be directed and instructed by them: yet the Chancellor brings in the irrefragable advice of God's Spirit, by the Kingly Prophet, in the person of Christ Jesus, who being the Prince of peace, as well as power, allures all his Delegates, to submit themselves to his Scepter willingly, throughly, constantly, and to be lessoned, that thus to do, is to advance their power, and atone the displeasure, that obstinacy may treasure up against them: *Be instructed* (saith he) *ye Judges of the Earth*. Now this he brings in out of the second *Psalme*, not primarily, (for then he might have been thought to distrust the efficacy of his pre-engagements of the Princes reason, since Justice lodged in, and learned from the Law, is of concern enough to move a man, a Prince, in order to a King, to value, and endeavour to understand the notion and practice of it, as the *sine quâ non*, to his very essence and being *quâ such*.) But the cause that this Scripture is superinduced, is rhetorically to overbear the Prince, that all excuse laid aside, he should as a man, and as a King, incessantly apply himself to holy instruction in the will of God, revealed in his Law moral, and in the extracts from it, the National Laws fitted to his Government. For though true it be, that perhaps when our Chancellor wrote to the Prince, *Henry* the Sixth was alive; or if dead, the Prince was not actually King, as in Title and Truth after his Father the Chancellor conceived he ought to have been: yet the good Chancellor bespeaks him, to prepare before against the time of tryal, to imitate *Solomon's* Pismire, that laid up in the Winter of ruines store, against the Summer of rule, provokes him by all the engagements of Providence and probability, to antedate his Regality, and become a King in Learning and Endowment, before he becomes King in fact and acknowledgment. And this he does not, by kindling in him thoughts of revenge, and flames of abhorrence to those persons and practices, that raised War against his Father, and forced him abroad; yea, threatened his never return, but by courting him to learn of God, how to war, and how to abound; how to be without subject or subsistence, and how to use both moderately, and to the ends of God's glory, and Governours institution: which wisely, and well to learn, he directs him to attend the counsel of holy *David*, a King and a Prophet, *Ex utroque Caesar*, a man of valour, and a Prince of piety, to be instructed, and that because he is to judge others: and thereupon that he may not either not do what, or do otherwise then what he ought to do to men, as one of the Judges of the Earth, to be well grounded in knowledge, the rule of action. Now, though I know it becomes not any Subject to treat of the duties of Princes but with reverence, which many men have forgot in their late Treatises concerning them: yet shall I be bold to touch upon this subject here, as my method leads me, in the Exposition of this Scripture, though that but shortly, modestly, and I hope with submissive wisdom above offence. The quotation then out of *Psal. ii. 3. Erudimini qui iudicatis terram*, though it was largely intended to all, to whom instruction is proper; yet pressly and primarily was directed to the great men of the World, whom the Prophet foresaw to be industriously composed, and pertinaciously resolved, against the reception of Christ in his Gospel, Government, and Doctrine. And this I suppose the *Psalmist* had revealed to him particularly from God, whose prescience and omniscience discovered it to be such in the Revolutions of time, and productions of men, that both the pronunciation of it might accord with other Prophecies in the testimony and truth of mens opposition to the Son of God; and that as the godly might be prepared not to stumble at it, so the wicked might be left without excuse, when their pertinacy suffers the just indignation of God's Son against them.

Which premised, the words have respect to somewhat implied, and somewhat expressed: The implication is, that great men, Judges of the Earth, need instruction: not onely as they are men in common with others, subjected to the consequences of sin, which have labefacted all the Integrals of created Faculties, and made us dark in our Intellects, averse in our Wills, dull in our affections to good; yea, in a sort estranged us from the love of duty to, and subjection under God, but as they are persons peculiarly elevated above others, apt to be flattered by, and inflamed from the vain delusions of their Parasites, that they are made believe (unless God give them more humility to know themselves) the best and happiest of men, when (God knows) their Cedar heighth, lyes in the storm and heat of all temptations; and having such snares about them, better  
were

were it for them to hear of the frailty of man, of the justice of God, of the duty of humility. These more commemorated in their representation of things to them, would render them more happy in their souls and bodies, then often they are. *Ahab* loved not *Micaiah*, the Holy Ghost says, because he told him the truth, when all the Prophets of *Baal* covertly betrayed him to sin and judgment; yet *Augustus* did not so by *Mecenas*, when he was more sharp then some think he needed; for since he kept him a favourite, as one that should bring him off anger, and cool his enragings, he gently bore, yea, he kindly took, and accordingly desisted from his severity, when his friend put in that rubricque, *Ἀνάστη, &c. Arise Sir, you have been terrible enough.* It is, I confess, a happiness to serve Princes of mild and ductile natures, whose hearts reflect on soft and virtuous friends with candor and kindness, which *Augustus* was so frequent and fervent in, that next to the indulgence of God, who gave him a good nature, and a docibleness to be guided by love and experience, which sedates jealousy and rage; he owed as much of his stability and glory to his noble *Livia*, and his prudent *Mecenas*, as to any other Princely endowment, or benediction he enjoyed; which that florid, and stupendiously eloquent *Moralist* does incomparably mention, *Hac cum clementia ad salutem securitatemque perduxit, &c. This Piety, saith Seneca, accompanied with Clemency, arrived him at safety and security: this made him a Conquerour, before he had actually conquered his insolent and implacable Foes: This, at this day, makes him dead, famous above most living Princes; men voluntarily for this, not by command, account him of a God-like goodness, descendedly a Parent, and a good Prince to his Country; and that because he passed by contumelies, which Princes often take worse then injuries, and revenged them not.* Thus *Seneca* of him. But he could not say so of *Nero*, though his Pupil, and one whom he put more milk, then blood, in the principles of his education; his *Quinquennium* shewed what he was from his Masters tuition, before the vices of greatness, and the luxuries of effeminacy had enchanted him, he ought to have reasoned with himself; *Ego ex omnibus mortalibus placui, electusque sum qui in terris deorum vice fungerer, &c. I, of all men, am favoured of the Gods, and deputed to be their Deputy on Earth; this favour and prelation, shall not make me wrathful and cruel; nor shall either the heat of youth, or the rashness of choler, or the vain-glory of being known in my dreadful power, provoke me to be savage: but my ambition shall be to purchase glory by virtue, and to carry the sword as an emblem of severity to awe vice, but to support virtue: so will I be ruled by Law and Reason, as if I kept them within my heart, and would make use of them as I had occasion.* This ought to have been his thoughts, and according to this his Master, the Cultivator of him, hoped he would prove. But *Nero* had so debauched his mind by effeminate transports, that all the imbibings of his educations were expectorated. Now all the *Lenitives* and *Morals* that art can prescribe, are *Apocryphal*, and come too late either to be welcome, or followed. *Nero* was proceeded *Tyger*, such a degree in inhumanity, as had no name before him. To tell him, *non regem decet fava, & inexorabilis ira*, to proclaim to him affability, love, compliance, as that which would not make him execrable, but adorable, was such a *Solæcism* to his ranting Resolution, that he counted it *melius non nasci quam inter publico bono natos numerari*; yea, so impatiently did he suffer his fury to be in danger of allaying, by the mildness of his Master, and the majesty of his Reason, that he opened tyrannously the veins of that body, the soul wherof lodging in the blood and spirits then expiring, had impregnated him with better principles. Die *Seneca* did a Martyr to *Nero's* rage, who endeavoured to make *Nero* mild and virtuous? I could tell you of *Demetrius Poliorcetes*, *Fausanias*, the *Lacedemonian Alcibiades*, *Agathocles*, *Pisistratus*, *Sylla*, *Catiline*, *Mark Anthony*, *Domitian*, *Manuel Comnenus*, *Offa* King of *Mercia*, *Pope Alexander the Sixth*: All which, and fundry others, who had eminent vices as well as virtues, and not well observing the Rules of practise virtue, had need to be instructed against forgetting God, themselves, and their people. This confirms, that they need instruction, because their plethorique fortunes and stations are subject to more predominant vices, and their ears are less (then is necessary) supplied by virtuous freedoms, and serious monitions, softning the heart, and lifting it up in gratitude to God.

This our late martyr'd King *Charles the First*, considering, breaks out into this expression, *Publique Reformers had need first act in private, and practise that on their own hearts, which they purpose to try on others. Christ's Government will confirm mine, not*

Ἰὺς πὶ γὰρ  
βῆγῆς ἀνδρῶν  
ἀποπελάδῃ.  
Dion. Cas. lib.  
55. p. 552.

Lib. 1. De Clem.  
ment. p. 624.  
c. 10.

Lib. 1. De Clem.  
c. 1.

Postea adeo sui  
dissimilis evasit, ut  
monstrum non ho-  
mo dici mereatur.  
Sueton. De Ne-  
rone.

C. 10. Eicon Ba-  
sil. p. 187.

overthrow it, since as I own mine from him; so I desire to rule for his glory, and the Churches good. So he that was the best of men and Kings his contemporaries, discovered the reachings of God to him in his afflictions: And as that they need instruction, is implied, so that they may, and ought to be instructed, is expressed, and that by a King, Peer to any Successour in Kingship, and a Prophet, which no King after him I think was, Solomon excepted, who was his Son; if a Prophet he was, which I am not sure of.

Erudimini, said he, to the Judges of the Earth, who was himself a Judge of the Earth, not thereby to become an authority to insolent spirits, to reproach or discover the nakedness of Princes, if any such there be, as Chams in all times have cursedly done: no, nor to render Majesty cheap by these abasements, which even suspicion of defect in some degree, occasions. But the Erudimini here is, ἐπαύξαι καὶ ἀποκαλύθειν τῆν φύσιν, 'tis to follow and imitate nature, embrace plain and naked truth, θέσει δικαιοσύνης ὁπορεύειν, to see good Laws and right Constitutions obeyed in all parts of Government, as Philo's words are; and this to do, as to do it, is that which is insculpt on the Table of man's heart, to obey God, who has fixed Governours to rule for him, and will have account of their trusts from them. So is it to be followers of God as dear children, in all those imitable acts, which as a Father, and King of order, he proposes to them in his example. The prophetique King here takes great men to task as their Monitor, and he bids them, וְרַבְרָבִים, castigate vos, he bids them understand, that whereas God has given them exemption from mens castigation, yet he requires they should restrain and curb themselves; for the root, רָבַ, signifies such a restriction, as men in bonds and fetters have, nē pro sua libidine evagetur & vivat: 'tis not barely to know; for that the Holy Ghost have expressed by וְרַבְרָבִים, for of that the wise King speaketh, Prov. xxii. 6. Teach a child in the trade of his youth, that is, as Rabbi Jonah expounds it, teach him pausatim paulatim, ut ferre possit; nor is it an instruction like that of Tyro's, who learn methods of War and Com-

Lib. De Temul. lencia, p 245 P. 261.

Pagninus in Verbo.

bat by exercise; for then the word would have been וְרַבְרָבִים, as the Psalmist uses it, Psal. xxxiv. 12. Come my little children, hearken unto me, and I will teach you the fear of the Lrd: nor is it רָבַ, such a fear as is preparatory to God's instruction, such, as Kimchi says, implies, preparationem verborum cujuspiam in alteram cum rationibus, & offensione juris; but it is chiefly רָבַ, that is here used. And the Prophet's sense is, Learn to know God's mercy to you, that though he has prelated you, yet 'tis, that you should deny your selves what you might, to do what you ought. This is that the holy King invites his fellow Kings to; and the holy Prophet counsels them that govern the Earth, in God's name to do, and that because they are judicare terram. Indeed, the consideration of duties incumbent on men in power, should make them as less seekers, so less servers of themselves in it: for besides that it is a burthen too heavy for the most Atlantique shoulders, which has ever been the reason why Deputations have been so frequent, and that of old, as Jethro counselled Moses, and as Paternulus tells us, was among the Romanes, and as is in use at this day with us, and amongst our Neighbours. Men in power had need to have extraordinary parts, and self-masteries, to know and perform their places to a conscientious and creditable latitude. God requires Talents for Talents, every ten Talents of power must have ten Talents of Justice to men, and glory to God returned for it. And hence comes it to pass, that the Erudimini here has much more in the scope, then the meer phrase carries with it. For my part, I humbly conceive those three heads of Saint Paul's, predicated of the Gospels Revelation, that is, teacheth to deny ungodlyness, and to live soberly, righteously, and godly in this present evil World, is whatever this Erudimini imports, nay, whatever God has in expectation from Kings, the best and God-likest of men. To live soberly to ones self, so as to have a reverence to ones body, becomes every man, but especially a Prince, because he is θεῶν τὸ, a diety in flesh; and if he be the Oracle that men repair to for solution of doubts, reparation of wrongs, preservation from violence, and example to virtue; to keep his head cool, his affections restrained, his desires moderate, is the way to be quadrate to his dignity, then he will not erre in judgment, when he judges impartially first his own body and soul, and keeps such quarter in them, περὶ τὸ πρῶτον ἑαυτοῦ, &c. that he suffers nothing to be done by him, but what is suitable to nature's rule, and the good of Mankind. This the Emperour Mark Antoninus prescribes. This

Rare eminentes viri, non magnis adjutoribus ad gubernandum fortunam suam usi sunt. ut duo Scipiones, duos Lælius quos per omnia æquaverunt sibi, ut dicit Augustus. M. Agrippa & maxime ab illo Statilio Tauro, quibus novitas familia hæud olfissit, quò minus ad multiplices consulatus, triumphisque, & complura miserentur sacerdotia. Paternul. lib. 2.

z Titus 11.

Lib 4. Sc. 7. 12. edit Sarakeri.

takes off all those exuberances, that besot and lose Princes in obscenity and dissoluteness. To live righteously, that is the joy of all Subjects; because where it is radicated in the soul, 'twill distribute it self in all expressions of power. The same Emperour gives a noble advice  $\mu\eta\ \alpha\pi\omega\sigma\sigma\eta\mu\beta\epsilon\delta\omega\iota$ , not to wander from the punct and indivisibility of Justice, but ever to have justice as the Rudder that steers us,  $\epsilon\pi\iota\ \pi\acute{\alpha}\nu\tau\epsilon\varsigma\ \phi\alpha\upsilon\lambda\alpha\kappa\iota\alpha\varsigma$ , &c. to watch over the understanding, and hold it free from love of any appearance. The learned Gataker glosses thus on the words, *Nè aberres vel tantum, aut ab aequitate in conatibus, aut à veritate in assentionibus.* This is that which Seneca magnifies so, in that it does not *virtutem dare voluptati, sed nullum bonum putat nisi honestum, qua nec hominis nec fortune muneribus deliniri potest, cujus hoc pretium est, non posse precio capi.* But to live godly, that's the top-lesson of Princes, 'tis *doctrina principi congrua*, because it keeps all the Springs and Artifices of action and contemplation in awe; God himself declares this use to be made of it, *I am a great King, saith the Lord of Hosts, and I swear by my self every knee shall bow to me.* Kings, though compared to men, they are Gods, not to be bowed against their wills, but to be bowed to that they may will well; yet to God, they are men subject to his Iron Rod, and his word of mutation works on their souls, bodies, and affairs. Hence, not onely the Apostle prefixes the true fear of God to the honour of the King; but Antoninus, according to the sense of Scripture, gives the rule to all Kings, as well as other,  $\alpha\delta\delta\epsilon\ \theta\epsilon\omega\varsigma$ . Fear, saith he, *the Gods, and then οὐτε ἀνδραπίπυς, preserve men.* All government of men ought to be to that end, which Julian alleadges Marcus Antoninus to answer to Silenus,  $\tau\omicron\ \mu\upsilon\mu\epsilon\tau\omicron\zeta\ \tau\upsilon\varsigma\ \theta\epsilon\omega\varsigma$ , *So to live over men, as to be both just and merciful to them; as God is just in point of punishing errours, merciful in point of relaxing burthens.* *Deus est mortalis juvare mortalem, & hac ad aeternam gloriam via, hic est vetustissimus referendi bene merentibus gratiam mos, ut tales numinibus adscribant,* saith Pliny.

So that all these considered, the *Erudimini* here has much in it, and a strong force it carryes to the gaining of Princes to follow it, if they would be subject to the reason of it, the Prophet is no lax and faint Rhetorician in this soft, yet significant language; but he does by a pathetique, *artare & movere verbis*, as our Text-Master comments on him; he does *movere vigore*, and *artare ratione*, and as he sets all his spiritual love on work to perswade, so all his learned Reason to compel and over-rule the Judges of the Earth, *scire institutum Dei, & sequi disciplinatum legis*; for as learned King James of happy memory once wrote.

Lib. 4. Sect. 22.  
p. 27.

In lib. 4. c. 22.  
p. 145. Com-  
mentat.  
Epist. 89.

Essay xlv. 23.

Lib. 6. Sect. 30.  
p. 52.

Hist. Nat. l. 2. c. 1.

King James to  
Prince Henry,  
lib. 1. Basilic.  
Doron, Sonnet  
before the first  
Book.

God gives not Kings the stile of Gods in vain,  
For on his Throne his Scepter do they sway,  
And, as their Subjects, ought them to obey,  
So Kings should fear, and serve their God again.  
If then you would enjoy a happy Reign,  
Observe the Statutes of your Heavenly King,  
And from his Law make all your Laws to spring,  
Since his Lieutenant here ye should remain.  
Reward the just, be steadfast, true, and plain,  
Repress the proud, maintaining aye the right,  
Walk always so, as ever in his sight,  
Who guards the godly, plaguing the prophane;  
And so ye shall in Princely virtues shine,  
Resembling right your mighty King Divine.

And this our Chancellour setting out so emphatically, makes me conclude him to be *Rara avis in terris*. One in his own soul so just, and so incessant an Oratour with the Prince, for Law and Justice according to it, that to other *Acurssuses, Legulei viliora eligentes, non juris consulti*, as Budens words it, he deserves to be accounted a *Servius, a Pomponius*, a what not, that proclaims him a Saint of the Long-Robe: And as Budens wished to France in his time, (and a learned and wise Chancellour he in his time was) so in my humble and hearty wish to England, *Utinam verò nunc tres servos haberemus pro sexcentis illis Accursianis, id est, tres viros justos, pios, germanosque, & ut ita dicam, majorum gentium juris consultos*; that is, say I, not as he, in the specificque words,

but

but in analogie of good wishes, would to God we had more good, and less bad Lawyers then we have. And this I wish, for God, the King, and the Countreys sake, that Religion, Allegiance, Justice, and Charity, might be, by their Learning and practice, the more and better promoted. But I return to the Text.

*Non enim ad eruditionem artis factiva aut mechanica hic movet Propheta, cum non dicit, Erudimini qui colitis terram, nec ad eruditionem scientia tantum theoretica quamvis opportuna fuerit incolis terra, quia generaliter non dicit, Erudimini qui inhabitatis terram, sed solum ad disciplinam legis, qua judicium redduntur, reges specialiter invitat propheta in his verbis, Erudimini qui judicatis terram.*

These words our Text-Master adds, as an expatiation and ornament of his main Argument; not that he thought it not sufficient to carry the weight he superstructed it, but to obviate any mistake of the sense of Scripture, apt to be distorted through peevishness, or mistaken by ignorance. To rectifie which digressions, from the intendment of the Prophet, our Chancellour proposes this allegation of the Holy Ghost's, as directly relative to Rulers of all ranks; not onely as they are men, for so they are concerned in common with all others; but also, and chiefly, as they are the highest and most influential of men, either to good or evil. And because they may be engaged to do good, their Architect who has built their power so many Stories high beyond other mens, whose foundations are more in the dust, and whose houses are of Clay, when theirs are of Cedar and Marble; whose Companions are the Dogs of the Flock, when these sit among the Gods, is by the Prophet more pressly catechetique to Princes, not onely to call them to, but to instigate them by the commemoration of their received bounties from God, to learn their duty, and practice their subjection to, and zeal for him, that has so dignified them.

It's true indeed, there is an *Erudimini*, which all men, at all times, in all stations, need; the Apostle, by the Spirit of God, calls on Christians to study, and exhibit to view that Catholicon that cures prejudice, and commends to peace and Charity, *Let your moderation, saith he, be known to all*; and there are particular Scriptures exhortative to men in mechanic and active Callings, which are to be heeded, God has left no man without his *mortalis genius*, his *ἰνδὴν διακασίμων*; yea, and his Monitor from above, such Scripture-dictates as if he follow, he will please God, and pleasure himself in the peace of a rightly informed from, and rightly conforming Conscience to, God. To this purpose are Scriptures applicable to particular conditions: *The Priests are to read the Law, to preserve their savour as salt, and lustre as light, to study to shew themselves work-men; To carry Consciences void of offence both towards God, and towards men; To become all to all, that they may gain some, and the people are to enquire the Law at the Priests lips. Count those that labour in the Word and Doctrine worthy of double honour; receive with all meekness the ingrafted Word able to save their souls; To labour to make their calling and election sure; To press forward to the mark of the price of the high calling of God in Christ Jesus.* These, and such like Scriptures, are accommodated for instruction of Priest and People.

There are other Scriptures adapted to other purposes of practick use, not to be proud, for God resists the proud; not to glory in abundant Revelations, not *πύλας πύλας πύλας* *πύλας* *πύλας* *πύλας*, to lift up our horn on high; not to glory in riches, wisdom, beauty, strength, but to glory in this, that we know God; to glory in the cross of our Lord Jesus, whereby the World is crucified unto us, and we unto the World. To Parents, not to provoke their Children; to Children, not to disobey their Parents; to Servants, to be obedient to their Masters; and to Masters, not to be hard and severe to them; to Wives, to submit themselves to their own Husbands; and to Husbands, to love their Wives as their own flesh; to Christians, to love one another, and to provoke each other to love, and to good works; to Souldiers, to be content with their wages, and to do violence to no man. To Schollers, to be wise to sobriety, and not to search into the secret things which belong to God, but content themselves with things revealed. To people, to obey those that are set over them. To fear God, and honour the King, and to give subjection to every Ordinance of man, for the Lord's sake. These, and such like Scriptures, are inserted into God's Holy Word, as particular documents, to particular persons, stations, degrees

Phil. 4. 5.

Mark 9. 50.  
2 Tim. 2. 15.  
1 Cor. 9. 19.  
Mal. 2. 7.  
1 Tim. 4. 17.  
Jam. 1. 21.  
2 Pet. 1. 10.  
Phil. 3. 14.

Jam. 4. 6.  
Adag. Chil. 1.  
Cent. 6. Adag.  
22. 23. p. 236.  
Jer. 9. 23.  
Gal. 6. 14.

Ephes. 6. 5. 6.  
Ephes. 5. 22. 25.

Luke 3. 14

Deut. 29. 29.

Heb. 13. 17.  
1 Pet. 2. 13.

degrees of men. But this Scripture before us, *Erudimini qui iudicatis terram*, is the Scripture that concerns Kings and Judges, that they should consider what God requires from them, and what their Prelacies, *ex aequo*, imports them to do. And this, if ever any man did, I believe our late King Charles the blessed, was taught by God to do: Hear him, *I never had any victory, which was without my sorrow, because it was on mine own Subjects, who, like Absalom, dyed many of them in their sin; and yet I never suffered any defeat, which made me despair of God's mercy and defence: when Providence gave me, or denied me victory, my desire was neither to boast of my power, nor to charge God foolishly, who I believed at last would make all things work together for my good. I wished no greater advantages by the War, then to bring mine enemies to moderation, and my friends to peace. I was afraid of the temptations of an absolute Conquest, and never prayed more for victory over others, then over myself: When the first was denied me, the second was granted me, which God saw best for me.* This was the Piety and probity of a King, *vivendo nobilis, moriendo nobilior*, which I believe he had conveyed to him, through the mercy of God, by the instructions of his learned and pious Father of happy memory King James, the first King of England of his name, and the second Solomon in the World, as I believe. For hear him, concerning a King's Christian duty towards God. *Think not therefore that the highness of your dignity diminisheth your faults, much less giveth you a licence to sin; but by the contrary, your fault shall be aggravated, according to the height of your dignity, any sin that ye commit not being a single sin, procuring but the fall of one; but being an exemplare sin, and therefore drawing the whole multitude to be guilty of the same; remember then that this glittering worldly glory of Kings is given them by God, to teach them to please, so to glister and shine before their people, in all works of sanctification and righteousness, that their persons, as bright lamps of godlyness and virtue, may, going in and out before their people, give light to all their steps.* And in the second Book, treating of the King's duty in his office, he saith, *A good King thinking his highest honour to consist in the discharge of his calling, employeth all his study and pains to procure and maintain, by the making and execution of good Laws, the welfare and peace of his people; and as their natural Father, and kindly Master, thinketh his greatest contentment standeth in their prosperity, and his greatest surety, in having their hearts, subjecting his own private affections and appetites to the weal and standing of his Subjects, ever thinking the common interest his chiefest particular; which, by the contrary, an usurping Tyrant thinking his greatest honour and felicity to consist in attaining per fas vel nefas, to his ambitious pretences, thinketh never himself sure, but by the dissention and factions among his people, and counterfeiting the Saint, while he once creep in credit, will then (by inverting all good Laws, to serve onely for his unruly private affections) frame the Common-wealth ever to advance his particular, building his surety upon his peoples misery, and in the end, as a step-father, and an uncooth hireling, make up his own hand, upon the ruines of the Republicque.* Thus incomparably that King.

By these, and the like senses, which good Kings have had of their duty to God and men, it appears, that the Prophet's words here to Kings, are of more consequence, by how much they tend by the greatest project, to end in the greatest emolument, that of Kings bettered both to God and men in their beneficence, as I may so say to both, in that they do as *Marcus Antoninus* advises, *Μὴ δὲν ἐπιεργαυα εἶναι*, &c. *Do nothing rashly nor vainly, nor otherwise, then as exactly corresponds with the rule.* When they do as Artists do, *in minutissimis quibusque artis sue, & precepta observant, & specimen edunt, ita & Apelles ex linea unice ducta solo, Protegeni innouit*, saith this learned Commentator on him.

Which considered, as good Princes are to be ever solicitous of their duties, and vigilant over their thoughts and works, that they wander not to an eccentricity, and dishonour themselves by the returns of the ventures they have made unhappily on them: So are all good Subjects to pray for their Princes in secret, and pity their temptations, rather then revile their seductions by them. For Princes had need of great graces, and self-denials, that remain virtuous, where every Wit, every Beauty, every Courage, is their humble Servant, and gives themselves a free-will offering to before they ask them. No wonder then the fear of God is called the beginning of wisdom, and Justice the establisher of the Throne, and both pressed by our Chancellour from *Moses* and *Solomon*, as Prescripts to Kings, because they being in *excelsa positi*, as they have great storms

Eicon. Basilic.  
v. 19. p. 177.

Basilicon. Do-  
ron. Book 1.  
p. 143. fol.

Tag. 156.  
Book 2.

Lib. 4. Sect. 2.  
p. 23.

Garaketi An-  
notar. n. lib. 4.  
fol. 2. p. 122.

Quod in Cesari-  
bus rarum compe-  
ries perpetuo sa-  
nus.  
Frasin. in Epist.  
ad Suetonium  
De Augusto.

Storms to shake them, so had need to be firmly rooted in the love of God, and in care and watchfulness over themselves, for their Subjects sakes. For if they that are the Guard be surprized; if the Wall of the Vineyard be broken down; if the shepherd wander out of the way, and be lost in the Wilderness of sin, where no path of God is; Religion, Peace, Order, Honesty, Renown, Power, all, evaporates and dissolves; Kings are Bonds that keep all together they are nerves and sinews, veins and arteries, that preserve strength, and convey nutriment to the body: they are Suns, and Moons, and Stars, all Constellations of felicity to the inferiour World their Subjects, who move from them, if they keep their brightness by day and night, suffering no sin vastative of the Conscience to reign in and over them; but by humility, and severity of life, rescue themselves from the Eclipses of immortalities; All the World will love and fear them, as good, and great, and all mouths will be filled with acclamation of them, as they did in Solomon's Case; *Blessed be God who has given to David a wise Son to reign over this great People*; and as they did to Antoninus, whom the Senate acclamated thus, *Antonine pie, dii te seruent*. The like to Alexander, (b) to Severus, (c) to Gordianus, (d) to Claudius, (e) to Tacitus, (f) to Probus. (g) Yea, 'twill be said of them, as 'twas of the Medicean Family. *In Cosmo Mediceo fuit hoc in primis admirandum, &c. This was most admirable in Cosmo Medices, that though he himself were unlearned, he loved the Learned, and allured them to him by rewards and honours; and his Father Laurentius Medices was both himself a learned man, and loved the learned; which caused the World to say, that the family of Medices, were the Patrons of Learning, who restored Arts almost lost, and gave the Greek and Latine Tongues a resurrection in their learning and bounty.* Oh 'tis a rare Character the Princely Pope Leo the 10<sup>th</sup> has, *Tu ille orbis amor, &c. Thou, O sacred Leo, art the Worlds darling and delight, the restorer of Peace, the determiner of War, the author of safety, the setler of troubles, the Father of Studies, the Nurse of Arts, the restorer of all decay in Science.* For when a Prince follows the Orator's rule, *ἡρῶ τὸν ἀρχοῦνα ναλῶ, &c. When he seeks rather to be rich in fame than wealth, when he endeavours, as Chrysantas says, ἀρχὸν ἀγαθὸς, &c. a good King differeth nothing from a good Father, as Tullius, the old Roman King, was to his Subjects, πᾶσι τοῖς πολιταῖς, &c. when he accounts his Subjects children, and is to them a Father; when he is in his Reign not a Darius, narrow minded Prince; nor a Cambyzes, severe and violent Lord, whom no man can either obey, or resist; but a Cyrus, a Father, quia mitis, bonus, beneficus, benignus: A Prince that thus is taught of God to know his mercy, and to make men bless God for the fruits of it that they find, in living peaceable lives under him in all godlynefs and honesty: such a Prince deserves to have the happiness, which Nicoles said Physicians had, *ὅτι τὰς μὲν ἐπιθυχίας, &c. whose virtues the Sun and all eyed men see with admiration, and their frailties not see in charity, but bury them in grateful forgetfulness.**

*Malos principes faciunt nimia licentia, rerum copia, avari improbi, satellites detestandi.*

*Vopiscus in Aureliano.*

*Vulcatius Gallicus in Avidio Cassio, p. 156. Rom. Scriptorum.*

*(b) Lampridius in Severo, p. 268.*

*(c) Capitolinus in Severo, p. 221.*

*(d) Idem, p. 228.*

*(e) Trebellius Pollio, p. 267.*

*(f) Flav. Vopiscus, p. 284.*

*(g) Idem, p. 292.*

*Ulrichus Huttenus ad Leonem x Pontif. in Prefat. ante Vallam.*

*Ulrichus Huttenus de Leone x. Papa. in Prefat. ante Vallam.*

*Ifoocrates, Ep. 7.*

*Xenophon. Pædag. lib. 3.*

*Dyonis. Halicarnas. lib. 4.*

*Herodot. lib. 3.*

*Anton. Colloq. lib. 1. c. 56.*

*Et sequitur nè quando irascatur dominus, & pereatis de via justa.*

This is quoted, as it is added in the Psalm, to acculeate the perswasion, to learn to know how to judge for, as God, that is righteously. For though it be enough to a good man, to do what is good and just, because good and just are the properties of God, and the provisions of his Institution in Magistracy: yet forasmuch as the servility of our nature being the effect of sin, evidences us more driven by fear, then drawn by love, the Holy Ghost has brought up the duty with a danger in the failer of it: And the sense is this, that the wisdom of God is not to be perverted by us, nor the power which he has intrusted great men with, to be abused to rage and fury, which is but the backside, and dark Representation of that Cloud, in which Magistracy is wrapped, for its further and fuller awe on Mankinds disorders; lest God reveal from Heaven his wrath against such unrighteousness of great men, and they perish from the right way, that is, lest when they are too big for men to deal with, God take them short by death, or other anticipation, and they have not the just power continued to them, which, while they had, they unjustly abused. And this indeed, is a great Argument, which should move men in power to study knowledge, and practice of their duty; to consider, that God is higher then they, that they are but dispensers of his talents; and that therefore they ought to carry wise minds, and wary hands, in ordering publique affairs. Oh I hap-

Sidenius, lib. 1.  
Ep. 2.

Ep. 31.

py was that *Goth, Theodorick*, and happy those people under him. *In bonis jactibus tacet, in malis ridet, in neutris irascitur, in utrisque philosophatur*; when Governours are concerned in no passion, but as it still is in subserviency to God's end in their Governments felicity, then are they out of fear of the Son of God's wrath, and their perishing from the right way. Nay then that is more true, then *Seneca* perhaps meant it, *Dedit tibi natura, illa qua si non deserveris, per Deo surges, hoc est summum bonum, quod si occupas, incipis decorum esse socius, non supplex.*

*Nec solum legibus quibus justitiam consequeris, fili Regis, imbui te jubet sacra Scriptura, sed & ipsam justitiam diligere. Tibi alibi praecepit, cum dicat, diligite justitiam, qui judicatis terram, Sapientiae, c. 1.*

Lib. 1. De Abstinencia, p. 7.

Still our Chancellour fills the Prince's ears with fresh Reasons; fain he would that he should be just, who is a King's Son, and he hopes is to be a King in God's time: And hereupon, as he had formerly acquainted him, that Justice he must know and practice, son ow he tells him, that the must do what he does not so much in policy, as in love to Justice: not because he would be well thought and spoken of; not for that it is commodious to fix Government, though this is a warrantable motive; but from love to Justice, as the imitation of God, and a partaking of his essential perfection in such a measure as we are capable of, and it is possible to be derived on us. And hereupon Princes are to love Justice, and to hear the Laws that commend it; which Laws were not made by men of force, *ἐ γάρ η ἀνάγκη ἢ ὑνάστυτικῆ δυνάμει*, as *Porphyrus's* words are, but *γενήσεται τῆς ψυχῆς*, by wise and worthy men, who considered them; as they were suitable to the reason of Nature, and the Religion of right Reason. And thus our Chancellour presses it from the first of *Wisdom, v. 1.* as both a Moral Divinity, and a Divine Morality. That which both to *Heathens* and *Christians* as men, is commendable, and without it, whatever is seraphically pretended in either, is just nothing. For whereas the Text in *Wisdom* is, *Love righteousness, ye that be Judges of the Earth*: our Translators referring to Texts in the Canon, suitable to this *Apocrypha* in the Margent, mentioned *1 Kings iii. 3.* The words are, *Solomon loved the Lord, walking in the Statutes of David his Father*; and *Esay lvi. 1.* where the words are, *Thus saith the Lord, keep ye Judgment, and do Justice*: which put together, do in their, and any good man's sense, amount to our Chancellour's drift, That to love Righteousness, is to love the Lord the fountain of it, and the best way to see him with his reward with him, that is, with comfort and salvation from him, is to keep Judgment, and do Justice, that is, to do Justice, by keeping Judgment, since no King can be just to his own power, and peoples preservation, who keepeth not the Judgment to discern of good and evil, and diligently searcheth not out the conveniencies and contraries that are in his Government, and suits not Laws congruous to them. And so our Chancellour, and I after him, conclude the fourth Chapter.

## CHAP. V.

*Sed quomodo justitiam diligere poteris, si non primò legum scientiam quibus ipsa cognoscatur, utcunque apprehenderis.*

**I**N this Chapter, the Chancellour presents the key to this invaluable Cabinet of Justice, in which all the Wealth of Heaven and Earth lodges; and though he has before me, and I, in all humility, after this great example, have been bold to write of it, what to rude and loose minds may seem superfluous; yet on so noble and necessary a head, containing under it all virtue, especially in a Prince, as he has not sparingly invited me to proceed; so shall I not abruptly, and with disrespect to so superiour a president and command, desist, but further ampliate the dignity of Justice, as in these words of this Chapter, introductory to its subsequents, 'tis expressed to us.

Lib. De Abraham, p. 353.  
Lib. 1. legis Allegoriarum, p. 53.

That Justice is lovely, besides those many precited Authorities, *Philo's* attribution to it, is notably confirming of it, *ἀμεινον ἐστὶν δικαιοσύνης*, &c. *Nothing*, saith he, *excels Justice, but it presides all other things, and adorns them all*: yea, it is *κατασκευάζει τὸ ὄψι*, &c. a fruit-



a fruitful guest, cherishing the soul in all conditions. But how to come at Justice, to know, and love, and possess her, is that which the Chancellour most drives at, to inform the Prince of, and to enamour him with.

This he resolves to be the knowledge of the *Laws*, as the Repertory and Mine of Justice, wherein God has manifested himself to Mankind. *Hopperus*, a very learned Councillour to the King of *Spain*, an Authour, for the knowledge and use of whom, I owe the first discovery to the Lord Chancellour *Ellesmore*, though the fuller, to my very learned and worthy friend Mr. *Langford*, a *Bencher* of *Grays-Inn*, a notable Contemplatour of this Authour. I say, *Hopperus* calls the Law, *summam divinae mentis rationem, & vocem cum bonitate & potentia conjunctam, qua posita in Republ. jubet ea, quae facienda sunt, & prohibet contraria, ut exhausta iniustitia iustitia particeps efficiatur*: According to which computation, all *Laws* are essentially the same, as they came from one God, but differ gradually, as they came to be revealed, or as the subjects they respect are various. By reason of the latitude whereof, and the denomination of things just and unjust, according to the varieties of *Laws*, there was a necessity that the wisest of men, should both at first make them; and after expound, and administer them.

In the case of the *Postnati*.

Lib. 1. De Vera Jurisprud. iii. 20.

And good reason, the best and bravest of men, should have to do with *Laws*; since they are the Standards of Justice, and the Rules of Conscience, in matters civil, and not *mala per se*, both to Kings and People; and upon this ground, not made by advice of raw and hot-headed youth, those, of old *assistebant curia foribus, & concilii publici spectatores, antequam, consortes erant*, as *Tacitus* teaches us, but as Justice was specified by nine several *Laws*, the divine Law, the Law of Nature, of Nations; of the Church, the Civil Law, Customary Law, the Law of Honesty, Necessity, Positivity, as *Phavorinus* has noted it, and according to all these things are determined just; so the Justicers of these *Laws* had need have great abilities to know and apply their Judgments to the severalties of them, and their emergencies. The consideration of which, in the consequence of it, has dictated to men, prudently to acquiesce in the judgments of learned and well-parted men, as the competentest distributors of Justice to the rest of the World, who being better qualified to act, yet are less exact in matters of design and decision than they: So that the great work of enablement to Legislation, for which *Fabius* and *Sabinus* were called the *Cato's*; *Domitius Ulpian*, and *Julius Paulus*, the two Poles *Vertices Legum*; *Pomponius* the Oracle skill'd, *usque ad finibriam & extremae scientiarum*; *Papinianus Juris Asylum*, the Prince of Law, and Refuge of distress: I say, that which proclaimed these so useful in their times, was the universal Science they had of right and wrong, good and evil, and the Catholique disquisition that they had made of the usages and apprehensions of Nations, and men concerning them.

Budæus in Pa. dect. p. 54. edit. 1521. fol.

Parte primâ, De Excellentia hominis, c. 59. p. 172.

This they termed *Knowledge*, the door to practise Justice, and wisdom of action: So *Epictetus*, *ἡ μὲν πρώτη ἐπιστήμη, &c.* first *Knowledge* enters into man, then her sisters *Fortitude* and *Justice*. For as in the World, the first Creature was Light; so in man, the initial virtue is *Knowledge*, which is not barely the use of Reason, but a distinct and applicative apposite use of it to persons and things. For by this method, doth God in nature carry man to improvement and action; by his speculative Intellect he understands good; by his practical Intellect affects it; by his reason, he discerns between good and evil; by his freedom of will he chooses, by his will consents, by his wit finds out *mediums* to his end, and by a close of all, comes to the mark he aims at. So that as *Phavorinus* marshals them; that which Sense perceives, Imagination represents, Cogitation forms, the Wit searches out, Reason judges of, Memory retains, and the Understanding apprehends, and is brought on by contemplation, that is said to be *Knowledge*: So that the knowledge of the Law, that the Chancellour ushers in here, is not knowledge of comprehension, which the *Greeks* call *ἡλαμβάνειν*; for that, though some Oratours use promiscuously with *apprehendere*; yet *Quintilian* discriminates, *Latior comprehensio*, says he. For so to know the Law, and Justice from it, is impossible for man, unnecessary for a Prince; comprehension in this sense being *bonum patria non via, peculiare Dei & deificorum, non humanum*, according to that of Saint Paul, *We know but in part*. But knowledge of apprehension is that *quæ ad mensuram refertur, ἡλαμβάνειν*. 'Tis to see as far into a

In Cebetis Tabula, p. 43.

Quod sensus percipit, imaginatio representat, cogitatio format, ingenium investigat: ratio judicat, memoria servat, intelligentia apprehendit: contemplationeque adducit, scientia est. Parte primâ c. 59. p. 172.

Lib. 2. c. 5. 10.

Mill-

Mill-stone, as the opacity and compactness of the body will suffer, and our optique vigour can pierce to. This mediocrity, in our knowledge of the Law, is that which the Chancellour puts the Prince upon attaining; For although deep speculations become Professours of Arts, who live and thrive by the fame and gain of their procedures therein, yet to men who study for delight, and to know how to regulate themselves to God, and to others, lesser proportions of criticalness and profundity will serve: yea, it sometimes falls out by God's judgment on curiosity, that our sin, in searching beyond our tether, brings us to arrive at averfation from God the chief God, and enmity against his Image in his adorers, and to be made up of ill ingredients, as *Porphyrus* was; of whom *Holstenius* professes, he can give no other reason of his hatred of Christianity, and that madness, that he vented against it, *Quam quod animus atra bilis fermento turgens, & nimia eruditionis copia inflatus, semet ipsum non caperet, ita & hujus exemplo patuit, mundi sapientiam insipientiam esse apud deum.* So that the apprehender is here, is a term of restraint, wherein the prescriber limits the universality of his counsel, the Prince he would have to know the Law, because it's the Rule of Justice, and that the Crown of Government, and that the Earthly Paradise of Kings: But this knowledge he would have modest and moderate, true for the nature, but not ambitious of ultimacy, to know *ultra quod non*, to boast and brave with, but as the *Stoique* advises, *τοσοῦς δεῖσθαι, &c.* to shew our selves bettered by it; men that are intent upon, and act according to reason, and are not acted by transports, and giddy fanaticismes, which makes much of what is little, and most of what is nothing, but folly and madness.

*Dicit namque Philosophus quod nihil amatum nisi cognitum.*

This the Text adds, to make knowledge of the Law, more to be affected by the Prince, because 'tis the means of loves both admission and perfection. For as there is no desire of that we know not, so no degree of desire of it and love to it, further or other, then the knowledge of it is in us. 'Tis true good is the object of love, but because good, is not to us good, but as known and apprehended so by us: therefore the Philosopher first, and our Chancellour next from him, tells us, *nihil amatum nisi cognitum*, which brings to my thought the wisdom of *Plotinus*, in making love the consequence of knowledge, to be descended from the two extreams of *πνία* indigence, and

*πλεονεξία* affluence, to shew, that it is the mean between their excesses, and compounds want and abundance, to make a conjunct content; for as if it were all good, and wanted nothing, 'twould not look abroad in the power of a communicative effect: so if it were wholly void of good, and clogg'd with misery, *πὸ ἀγαθῶν ἀπορροῦς* *ἕλθοις*, it would never endeavour after good. The power and providence of God is then notable, in so dexterously composing

things, that as knowledge occasions love, so love improveth knowledge; since as that we love we enquire into; so that we enquire into we love: so says experience from reason by the Philosopher here quoted, *Dicit namque Philosophus.* This Philosopher here is *Aristotle*, the Master of *Alexander* the Great, called here so *κατ' ἔχολω*, and *κατ' ὑπεροχὴν*, because no less a Conquerour of Art and Nature, then his Pupil was of People and Countreys: as the one did reduce all to his power by puissant Armies, laying level all opposition against him, and making the inaccessableness of their situation and obstruction plain before him, that every one might see *Alexander* a Conquerour, who chalked out his quarters every where, and had no more to do then *veni vidi vici*: so the other, in his subtle Philosophy, and laborious History of Nature, did denude those secrecies that before him were not known, and made men after him a fair access to the most cryptique, and obscure Veins and Mines of intellectual riches, which the learned World finding, attribute to him more then mortal Eulogies, and prefer him in their Doxologies beyond any that is meer man. I know the *Greeks* had high value of *Socrates*, and *Pythagoras*; the *Indians* of *Apollonius Tyaneus*; the Poets of *Hercules* and *Tully*, taking this rise from the interpretation of the Oracle, which from the Bees sitting on *Plato's* lips, when but in swadling clouts, presaged his incomparable Eloquence; though I say *Tully* admire *Plato* so far, that he terms him, *Deus Philosophorum*, *Deus ille noster Plato*, as he wrote to his friend, *Princeps ingenii & doctrinae.*

*Cic.*

De Vita & Scrip-  
tis. Porphyrii,  
c. 6.

Aenead. 3. lib 5.  
p. 5.

Amor cum ex pulchro amato quasi ex patre &  
ex pulchri cognitione una cura ejus absentia in  
amante conspecta quasi ex matre ducit origi-  
nem. Phavorinus. lib. De excel. hom.  
Parte prima, c. 7. p. 38.  
Lib. 6. p. 290.

1. De Divinitat.  
Lib. 2. Denat.  
Deorum.

Cic. Quint. fratri. lib. 1. Exagitor omnium rhetorum in Orat. 2. 4. though he calls Plato gravissimus; yet Aristotle will carry the name of the Philosopher, a name given him for his eminency in knowledge; for which the Antients gave names of honour according to their peculiar merits; Bion they call ὁ ῥητωρικὸς, the Rhetorician; Arrianus φιλαλήθης, the lover of truth, Athenæus, ὁ δειπνοποσίσις, the Wise-man at Meals; Strabo ὁ γεωγράφος, the Geographer; Dyonisius ὁ περιηγητὴς, the Describer; Stephanus Bizantinus ὁ ἐθνικολόγος, the Writer of Nations and Customs; Julian ὁ παροβίτης, the Apostate; Hermogenes Rhetor, ὁ τῶν σάτων ἐξηγητὴς, the writer of the state of causes; Herodian Grammaticus, ὁ τεχνικός, the Artist; Chéroboscus, ὁ τεχνικός γεωγίδης, the Countrey Artist; Charon, ὁ ποδηλάτης, the Ferry-man, &c. Yea, in our own Nation, it has, and is used thus, Bede was called the venerable, Halensis the accurate, Scotus the subtile, Bradwardine the profound, Ockham the invincible, Hooker the judicious. All which names were given them, not ad excitandam invidiam; sed ad perpetuandam memoriam of their incomparable respective merits. In like manner, as the Holy Ghost does affix reproaches on evil men, as on Jeroboam, he who made Israel to sin, & malo exemplo, & malo, præcepto; and Ahab, he who sold himself to do wickedness, ex malo proposito, & in malum finem, and Judas, he that was called Iscariot the Traitor, because he sold his Master, Malo genio, & pro malo lucro; and commends the virtues of good men, by terms of Dignity, as Abraham, the Father of the faithful; Noah, the Preacher of Righteousness; Moses, the Law-giver, and friend of God; Job the patientest man; David, the man after God's own heart; Solomon, the wisest of men; Paul, the Apostle of the Gentiles; John the Divine. So other prophane Authours, in the like cases, have done, and by so doing, as they have stained and battoon'd the Coat-Armour of divers Hectors in villany and Herefie, so have they adorned with all possible Trophies of virtue the memories and names of others. Amongst whom, our Aristotle the Philosopher, is not the least nor last to be placed; to make good which Verdict, a Jury of Authours, good men and true, shall be produced to confirm this Title on him; not so much in the name ὁ φιλόσοφος, for all Authours allow that to him, but in the merit so to be called.

Porphyrus says, the Pythagoreans did account Aristotle a Collector from, and a Refiner of Pythagoras his Discoveries and Doctrine, as he was the tenth eminent person from him, after Plato the ninth: and this must argue him, as both judicious to be able to do it, so notably benefited in Science by so doing. Plato gives so large a testimony of him, in calling him ἀναγνώστης, the Reader of all Authours; that he almost deifies him, and makes him to Books by ἀναγνώστης, what Saint Paul asserts God to men in his ἀναγνώστης.

Quintilian knows not, (though he himself be, of Oratours one of the first three) what to write worthy him, Quid Aristotelem, &c. What shall I say of Aristotle, whom I know not whence mostly to commend, for knowledge of things and Books beyond measure, sweetness of expression, acuteness of invention, and variety of all Learning.

Ammonius records of him, that in Philosophy ἐπέβηκε τὰ ἀνδραγαθήματα, he exceeded the proportions of man, having gone through the exact course of that study.

And what could Laertius say more then he does of him, when he publishes him the great Master of Arts, and sums up his Works to 445290 Verses.

Plutarch ascribes much of Alexander's Victory to the parts that Aristotle's institution raised and enlarged in him.

Averroes (as I find him in Rosselinus) accounting him a Prodigie, and Blazing Star of knowledge; breaks out into these words, Laudemus deum qui seperavit hunc unum ab aliis, &c. Let us give thanks to God, that has separated this one he to a perfect knowledge of all things, having appropriated wisdom to him, whom he calls the Father of Philosophy, and Master of Method.

Pliny publishes him, vir summus in omni doctrina; which is as much as if he had said, He had read whatever was written, and digested into use whatever he had read.

Tully extols him as the flumen orationis aureum, &c. the Golden Sea of Speech, most admirable, and abundantly knowing. Yea, so far exceeds himself; that he positively avers Aristoteles is the He, whom I most admire.

Seneca grants him, the Captain of all good Arts, making Theophrastus his famous Disciple beloved by him.

Cic. Attico, lib. 4. 85.  
Vossius Hist. Græc. lib. 1. p. 15.  
Cel. Rhodig. 1. Antiq. c. 22.  
Dugardus in suppl. ad Vigeri Idiosism. Græc. Livy Impres. hom. 1647. p. 387.

1 King. 14. 16.  
1 King. 21. 26.  
Math. 26.

De vita Pythagoræ p. 205.  
Incertus Author de vita Pythagoræ & Photio. p. 210.

Lib. 10. Instit. Orator. p. 156.

In vita Aristot. At πῶς αὖ μὲν ἐλάττω σίχων. Læcius in vita edit. Caufabon. Lib. de virtute & fort. Alexandr.

In Trismegist. Pymand. lib. 1. c. 4. p. 160

Historia Natur. lib. 8. c. 16. & lib. 18. c. 34.  
4 Academ. In Orat. 2. 2 De Oratore.

Lib. de Brevitate vite.

Lib. 4. c. 9. De Hi-  
ROGICIS GRÆCIS.

In Epist. ante  
Opera.

In Epist. Brulatio  
Cancellatio  
Gal.

In Pandect.  
prior. Edit.  
Fasil. p. 198.

In Apologia.  
p. 79.

Vossius contra  
Des Chartre in  
Censura Novæ  
Philosophiæ.

Sueton in Nero  
DE.

Rigordus in Vita Philippi Augusti ad Annum  
1229. Campanella. Ne quis eos de cætero scri-  
bere aut legere presumeret, vel quocunque  
modo habere.

Lib. quod mundus  
sit incorruptibilis,  
p. 940.

Lib. 1. c. 27. in  
Astrol.

Analytic prior.  
lib. 1. ad initium.

Rhetoric. lib. 2.  
c. 4.  
Ænead. lib. 5.  
p. 291.

Vossius calls him *Magnus Aristoteles, non Philosophus modo summus, &c.* not onely a great Philosopher, but a Patron to History and Poetry.

Cassabon protests him, *summum (bone Deus) virum, &c.* the most excellent man, the Eagle of Philosophy.

Diurnal compares Aristotle's Works, and so him, to the Purple Vest, which Alcisthenes had to the Wonder end; for which Dyonisius the elder gave one hundred and twenty Talents; adding, *nihil hic vile videas, nihil abjectum, &c. omnia pulchra, honesta, optima, præstantissima.*

And Budæus says as much as they all in those words, *Is author qui res omnes ratione, &c.* He is the man who rationally, and in a way of Science, treats of all things; yea, even of those things, which without him, would hardly have held capable of such treatment.

Well then might Aristotle be called *ὁ φιλόσοφος*, though he had, as Aldrovandus, Gassendus, and even Plutarch himself make good, sundry mistakes, as no man is without them (no not his Correctors) though after him incomparable Authours, since he not onely shewed the way to all after ingenuity, but even made it so facile, that not to exceed him, (which is not ever the happiness, though the possibility of after discoveries, is a piece of non-proficiency,) as *Picus Mirandula* has at large discoursed.

This I the rather here touch upon, because the passions of men have been so keen and virulent upon account of this Authour; some crying him up as the onely he, *panē post Deos Deus*, and making his Philosophy, and all of him, so far divine, that to vary from him in a tittle, has been by them censured of folly, and to oppose and decline him, condemned for a kind of Sacrilege. Others so fervently acted against him, that they thought no envy truculent enough to his person, no severity too tart for his Writings. As when he lived, he was fain to peragate, to avoid the fury of destruction in his own Countrey, every *Momus* carping at him, and bedirting his name with their mordacious Libels, till at last he made the Proverb good, *τὸ τέχνηιον πάντα γαῖαν ἑλίου*; for his learning made him welcome abroad, whom it could not render quiet at home; which shews the benefit of breeding, whereby men support themselves under the vicissitudes of fortunes, which *Nero* comforted himself with, when he was fore-told by the *Mathematicians*, that he should be deprived of his Empire; and *Dyonisius* of *Syracuse*, found his onely refuge, when his Tyranny left him, to take up the Trade of teaching Arts and Musique. I say, as *Aristotle* had these ruffles alive, so since has he been courselly dealt with by passionate men, and the storms of their fervours impelled by interests. The whole *Parisian* Colledge, in *Anno 1229.* decreed his Books to be burned, as ill Doctrine to men, and Blasphemy against God.

And *Philo* long ago, though he debacchates not against him, yet speaks with an indifferency, which amounts to a reproach, *ἄριστοτελὴς δὲ, &c.* Aristotle, saith he, whom I know not how piously and soundly learned, says so. All which tells us, that envy attends great parts, as many have to their sorrow found it; and further more shall. And therefore, though great parts are seldom kept in, but time and actions evidence them: so do they often make their havens unhappy; some in making them feared, and pack'd abroad, least, as Eclipses to Favourites, they should darken them, that would be all that lustre and favour can make them, or putting them upon such thristleless searches, as waste fortune, and reduce them to need. So far are men from admiring and loving, what God has made conspicuous, as was this Philosopher *Aristotele*, who had *consummatam scientiam rerum omnium*, as *Mirandula* makes good against the *Astrologers*, that their eye is evil, because his has been good. So much of this *Philosophus* in our Text. Now of what he wrote, *Nihil amatum nisi cognitum.*

This Position, *in terminis*, as here, is not from ought I can find in the Philosopher, but the sense, and very near the words of it, is in him, in these words, *πᾶσα διδασκαλία καὶ, &c.* that is, *all Learning, and Discipline in Art, is from antecedent knowledge*, which is so necessary, that, as without the senses, no orderly and pleasant life, if any at all, can be; so neither without knowledge can life of love be. Hence the Philosopher makes society, familiarity, and alliance, furtherances and progresses to love, and the height of it friendship. *Plotinus* confirms Aristotle; for he calls love to be *ἄδωτον ἐν ταῖς ψυχαῖς ὁρεῖται*,

ἄξιον, &c. an implanted apprehension, notion and cognition, on which his Commentator observes, *Actus quidem intellectus omnino immobilis est, actus imaginationis omnino mobilis, actus denique rationis est mixtus, neque potest anima esse congruum universi mediam nisi tria hac in se possideret*, And Plato calling love *Eros*, and Plotinus *ἀεργος* having its substance from vision, seemes to conclude love a matter of knowledge: for though it be true, that love may not know, neither that which is most lovely, nor all, that is lovely in the Object it loves, yet it is also true, that where ever any degree of love is, there is some knowledge introductory to, and obnoxious of it; for love moves from the understanding to its termination in the will, and before the act of the will, there is no liberty in the intellect; so that when, what the understanding presents, the will complies with, then love warms it self in the affections, and thence communicates it self to the object of it, and the object of love being good, and good being the object of knowledg, it followes, that as whatsoever we desire to know, we love to obtain, so what we obtain by knowledg, we love, as good: and nothing can be the object of love, but what is so made by the prospect of knowledg, which God confirms by several Texts in holy Writ, when he promises that all *his shall know him, from the least to the greatest*, and what then, they shall know him as the means to their trust in him, which is the perfectest act of love, *They that know thy name, will put their trust in thee*. And our Lord intended this in the order of those words, *If ye know these things, blessed are ye, if ye do them*.

Comment in Plotin lib. 9. Ennead. 2. p. 355.

Legge Rossellium in Pymand lib. 2. c. 2. p. 67. & l. 1.

*Quare Fabius Orator ait, quod felices essent artes si de illis soli Artifices judicarent.*

This sentence of Quintilian's is some what like that of Plato's, which Marcus Antoninus had almost alwayes in his mouth *florere Civitates, &c. That Cities flourished when either Philosophers ruled them, or they that ruled them, were Philosophers*. Now this Fabius was Fabius Quintilian, (son to Fabius Causidicus, Grandson to the Quintilian Declamator, which Seneca makes his Contemporary, and the renowned tutor to Calius, and honourably mentioned by Martial,

Julius Capitolinus in vita Antonini.

Lib. 6. disquisitionum.

*Quintiliane vaga moderator summa juvenata  
Gloria Romanæ Quintiliane togæ.  
To Rome's youth learnings law, Quintilian gave,  
Their long Robe by his glory became brave.*

2. Epigr. 90.

yea, not onely famous in Rome for notable defence of causes *viva voce*, but evidencing a Magistracy in that faculty by his institutions of Oratory, and his Declamations which to this day are of great esteem and authority, and that so upon the account not onely of parts but virtue, if he practised what he wrote: for besides, that he began his twelfth Book with a Chapter entitled, *Non posse Oratorem esse, nisi virum bonum*; backing his assertion with nervous reasons, concluding *Mutos nascere, & egere omni ratione satius fuisset, quam providentia munera in matruam perniciem convertere*; all good Authors do give him Characters not contrary to the merit of such virtue and learning: Trebellius Pollio publishes him *Declamatorem Generis humani acutissimum*; Sidonius Apollinaris mentions *acrimoniam Quintiliani*, others term him *Romana eloquentia Censor, Coriphæus Oratorum, Criticorum omnium xerxartatos, Optimus decendi artifex, Orator, eximius ac necessarius*. Now this Fabius is not called Rhetor (as those were, *qui artem Oratoriam profitentur, & dicendi precepta tradunt*, as Tully's words are; for these, though by some made equivalent to Orators, I take a form below them) but Orator of the rank of those whom Tully describes, *Orator est vir bonus dicendi peritus, qui in causis publicis, & privatis, plena & perfecta utitur Eloquentia*; such as were not onely Advocates at home but Embassadours abroad, *Federum, pacis, belli, indaciarum Oratores*, of these Seneca in his 40. and 100. Epistle writes notably. Thus much of our Fabius Orator who; now of what he wrote here quoted, *Felices essent artes si de illis soli judicarent artifices*: by arts he means that which Sipontinus defines *esse facultatem que preceptis quibusdam ac regulis continetur*; Tully makes it *constare ex multis animi conceptionibus*; indeed when all is said, it is but reason of practice and observation followed by diligence which comes to be *dux certior quam natura*. As all ingenious inventions are termed arts, so have arts attributions from Authors suitable to the variety and diversity of such Inventions, there is *Imperatoria ars, armorum ars, Medentium ars,*

Lib. 12. Instit. Orat. c. 1.

In Posthumio Jun. lib. 5. Ep. 10.

Dempster. Lib. 2. de Finib.

1. De Orator.

2. De Legib.

4. Academi. 45.

4. De Finib. 101

Quintilian. lib. 2. c. 7. c. 17.

ars, *Magica ars, Palearica ars*, every thing that is what it is, *ex cognitione & comprehensione rerum*, Tully allowes art.

1. De Finibus.

Pro Foenice.  
1 De Divinat.  
265.

Now whereas he sayes, *Falices essent artes*, he means as much as *fortunata & succedentes*: so *Virgil 3. Æneid. Vivite falices quibus est fortuna peracta*: so Tully, *ad casum fortunamque felix vir*; so *quod bonum, faustum, felix, fortunatumque esset, prafabantur rebus omnibus agendis antiqui*, his meaning is, 'twould be a gaudy time, and arts would be undoubtedly prosperous, if onely they which had art, were Judges of art.

Lib. 2. c. 14. 4.

*Si de illis soli judicarent artifices*, that is, if onely men of Judgment in arts might judge of arts, for though I know any man is counted an Artificer, who exercises an art, yet as to this sense of *Quintilian*, that is required to be taken in, which he sayes, *artifex est qui percipit artem*: and so *Festus, Artifices dicti quod scientiam suam peractas exerceant, sive quod apte opera inter se ardent*, so *Plin. lib. 22. c. 24.*

1. De Orator.

Quanto magis hos  
Anacharis deno-  
tasset imprudentes  
de prudentibus ju-  
dicantes quam im-  
micos de micos.  
Tertullianus A-  
pol. c. 1.

So that *Artifices* here are men of proficiency, Masters; so Tully calls exact men, *dicendi artifices & doctores*, and *suavitatis artifex consuetudo*, and *morbi artifex*, and generally every Excellency is called *artifice*; from whence I gather, our Text-Master thought arts then onely well dealt with, when they were not concluded before heard, nor judged by injudicious men, but had a legal and rational tryal *per pares*.

Eras. Adag. Chil.  
1. Cento. 7. p. 282.

Which if it were, arts would not hear so ill as they do, some reproach them as the roads to ruine; breed up a man ingeniously, and a beggar by all means he must be; that is the prattle of ignorance *Αἰὺλὸν ἀτυχίας*, &c. *Art is to men the Port of misfortune*: and *Julius Gracinus* found it so, whom the Historian writes to be a Senator of great eloquence and wisdom in ordering publique affaires, but he adds *iisque virtutibus iram Caii Cæsaris meritus*. Indeed many brave men finde it so through the occult providence of God, and the manifest envy of men, *ἡ δὲ ἰσχυρία*, &c. *Ignorance make a fortune where knowledg onely disconers art*, this is the lot of scientifiquenesse often, but not always; many multitudes of men have by learning and arts, come to riches; hōnour, what not? when they have been so happy to be understood aright, and lived in an age and place, where arts were acceptable and fairly valued; for which *Virgil* was not onely by *Augustus*, who therefore was his munificent Patron, but also by the great wits of ages, *Macrobius* long ago gave a noble testimony of him, *Est tam scientiâ profundus quam amans ingenio, miranda est hujus Poeta, & circa nostra, & circa externa sacra doctrina, non potest intelligi profunditas Maronis sine divini, & humani juris scientia*; so *Pliny* terms him *solertissimarum aurium solertissimus blanditor*; *Cerda*, *Donatus* and *Servius* are not behinde, but above all *Scaliger*, *Resplendent gemma in ejus carmine; componit mellita, & nectarea; addit tot venustates quot verba; Inest in eo phrasis regia & ipsius Apollinis ore digna, sic puto loqui deorum proceres in celestibus conciliis, non si ipse Jupiter Poeta sit, melius loquatur*; these encouragements do the learned give learning by the values of them. And hence comes it to passe that learning is so necessary for a man in power. For learning in a man of power and place makes him unprejudiced, and cleares his Eyesight to an Eagle-eyed clarity, it distinguishes between Subjects and accidents, between what learning does, and what the man in which learning is, does; and when it condemns the man, it justifies his art; hence comes *Quintilian* to account arts happy, if Artists onely judged of them: because, they will not onely value them as they are, but not undervalue them for some adjunct defects; *Protogenes* valued one plain line of *Apelles*, and the foam, or any minute and unbeautified particle of Picture from *Zeuxis*, or any he that does *pingere aternitatem*. Or one sentence of Masculine wit boldly and bravely worded, shall have more Commendation from a knowing and accomplished Master, then all the *Hecatombs* and *Pyramids* of rodomontado'd Impertinences, which are Darlings to the *plebs*, shall have: whereas others judge of arts as blinde men do of colours, hab-nab, hit or miss, no matter whether, crying up as the superstitious *Athenians* did, a false god; nay inscribing an Altar to the unknown God, when they decry the true one onely God; so they advancing trite, vain vile, artlesse art, decry real and regular art, reversing the Escutcheon of rectitude, and making that vile which is excellent, as *Polemon* the Grammarian did by *Marcus Varro*, the most learned of the *Romans*, whom he called *Porcus*, when he was the Jewel of his age; and the Jewes did by our Lord, whom they made a Devil, and a friend of Publicans and sinners, and the Ethniques, did by the Christians, whom they proclaimed disturbers of Governments, and flagitious, when none were more holy,

Lib. 1. Metaphys.

Lib. 1. Saturnal.

Lib. 17.

Scalig. lib. 5. de  
Virgilio.

Petrus Crinitus  
lib. 9. c. 10. De  
honestâ discipl.

hum.

humble and submits then they; I say while men and things are thus misjudged, and the keen edge of ill will, or the blunt of ignorance is turned to them in their judgement of them, no *Halcyon* dayes of art can be hoped for. But when God reduces things to rights, and puts men of art in place and power, then arts are like to thrive, *quia iudicantur ab artificibus*, as the Poët said of that Pope,

*Excoluit doctos, doctior ipse prius.*

And therefore that reproof of *Tully* is very appositely to be brought in here, *Hic quidem quamvis eruditus sit sicut est, hac Magistro concedat Aristoteli cauere ipse doceat, bene enim illo Proverbio Græcorum præcipitur, quam quisque nôrit artem, in ea se exerceat*: for since that of the Harper in *Athenæus*; *εσθ' ου τις ην' ιγασος εσθ' εις τ' εχλυω*, every man is the properest Judge of his own harp; learning and arts are never properly judged, nor to the proportion of their merits, till they be judged by Artists.

i. Tusc. Quest.

Lib. 8. De pnc-sophist.

*Ignotum vero non solum non amari, sed & sperni solet, quo Poëta quidem sic ait, omnia qua nescit, dicet spernenda* Colonus.

If knowledge be the window that lets in love, ignorance is the nuisance that annoyes and obscures the light and lustre of it, for it does not onely cause an inexpression of love, but an expression of hatred its contrary, since hatred of good arises from ignorance of it; for did we know good to be what it is, we would love it as we ought, which caused the philosopher not onely to light a Candle at noon day, to seek a wise man in the multitude; but professes that if virtue could be denuded, so that men could see her pulchritude, they would be impatient to be absent from her, and to be in any condition without her.

Indeed it is a part of the penal pravity of our natures to be ignorant of the life of God, and without him in our understandings, and while we continue in this obcecation, as God is not in all our thoughts, so is nothing more the study of our corruption then to set light by his Counsel, Commands, Rule, Spirits, Son, all that has his Impresse on it, and the reason is onely from our ignorance of God, he is not in all our thoughts, and hereupon not before our eyes, but instead of loving him as the most excellent, (which knowledge of him would represent and perfectly assure to us) we postpone him to all objects we prefer before him in love as we apprehend above him by our Knowledge; and so the rule is in all things, so far they are loved and despised, as they are more or lesse known by us.

Every thing says *Solomon*, has a season in which it is most gay, and in every man, and creature there is a pleasure and grandeur which with the contraries of them are appropriate to them, *ὡς ἀρμασιν ἰπποῦ*, &c. said the Moralist, the horse delights in his traces, the Ox becomes his Yoke, the Dolphin pleases himself to passe by the Ship under sayl, and to see men his darlings aboard them; the Boar loves hunting and the prey of it; the Dog is eager on his sport according to the scent of his kinde: and so amongst men, *ἔπρεν δ' αὖν ὁ βασιλεῦς ἀντιπρεν*, &c. The Conster pleases the Swayn as well as the Scepter the Prince; and the sword as highly accomplishes as the Souldier thinks, as the book does the Scholar him, so much is the love of man tethered to himself, and so does he philautize his own feature and the objects of his pompous Fancy, that he is apt to make that his Canton, which *Seneca* layes down, *Tantum sapienti sua quantum Deo omnis atas patet, est ali-quod quò sapiens antecedit Deum*, on which *Muretus* writes, *Impia & intollerabilis arrogantia Stoicorum, quò non satis esse docebant sapientem suum cum Deo ex aquo componere, nisi etiam anteponerent*, and justly, for the excesse of his pride ought he to be condemned, who thus raises a Scalade against the Knowledge of God and the humbling effects of it.

Plutarch. lib. 1.  
ὡς ἐν δ' ἀντιπρε-  
ν.  
Athenæus dipno-  
sophist. lib. 8.

Epiß. 51.

Which alas to their just grief; if they had eyes to see and hearts to mourn for it, not onely the best of men are subject to, but even the basest; not almost he, that is hardly worthy to be fellowed with the dogs of a wise mans flock, but abounds in conceit of himself; not onely *Alexander* will be a God, *Julius Caesar* make a Marriage between Heaven and earth in his power over both, *Oclavian* reduce the mettall of Rome to a Vassalage under him, beginning to dare the Senate at twenty yeares of age, and keeping Roysters about him, who shall nose the Senators, and tell them pointing to their Swords, *Hic faciet si vos non feceritis*, No wonder, though these Monsters in Manhood Leviathan like, swallowing up all thought of God, *Mali malorum demo-*

Sueton. in O-  
clav. c. 26.

Raro simul homi-  
nitas & bona  
fortuna & bona  
mens datur. Liv.  
lib. 30.

num & filiores & Sacerdotes & cultores, as the Father terms them, are so hot-headed, but to find the fox and tail of Mankind thus *αἰθεῖν ἐν κόλλῃ*, to smell of pride; that's somewhat strange; yet most true; so it follows,

*Quo dicit poeta quidam, Omnia quæ nescit dicit spernenda colonus.*

This is a Verse out of some of the Poet Minors, the sense of it is, That even the reasonleffest of men, who are but one degree on this side Beasts, have yet the sensuality, or senselessness rather, to contemn what they know not; which made *Maro*, the *Socrates* of Poets, say,

*O fortunatos nimium cives bona si sua norint, Agricolas.*

*O fortunate the Country Swain,*

*Though his life be a life of pain.*

Accounting them happy in that Country serenity, which their life of exemption from trouble gives them: though God knows, stupid souls that they are, they are seldom thankful, or contented with what they have. This onely they excel in, that they can judge as well of *utile* and *dulce*, as any men, and make as little use of it, beyond rude huffs, and high-shooe insolence, in which sense the *Adage* is verified of them, *οἱ τυφλοὶ παῖσι* proud and ignorant; not *παῖσι δεικνύουσι*, conspicuous and illustrious in acts of hospitality and kindness; but *ἀζύλοι παῖσι*, whom their happiness affects not, because they understand it not. This makes them think themselves the best of the pack of men that live in Kingdoms, because they know not wherein by men of more exact breeding and parts, they are out-gone.

What this *Colonus* is, needs little explication; properly it imported *cultor agrorum*, a husband-man, whom *Tully* gives *Epeithites* of *Optimus, parcissimus, modestissimus, frugalissimus*; and as it imported a Citizen of *Rome* sent abroad to plant, and obliged to live according to the *Roman* Laws, so had it also a note of depreciation on it, and differed a little from a slave: to which *Plautus* alludes, when he scoffingly speaks of *Colonus catenarum*, for one held in prison. And *Tully*, when he would turn men to the most barbarous Masters of reason, bids us, *à colono rationes accipere*. Concerning these, the *Digest* speaks much; and *Alciatus* on the 227<sup>th</sup> Law. Our Law also, because they are men of narrowest reason, and lowest breeding, decryes them all offices of note; no man of this rank can be Justice of Peace, Knight, High Sheriff, or Member to Parliament. Yet these men having skill in Country affairs, and being ignorant of any thing beyond the Plough, and the Utensils of Husbandry, contemn Books and Arts, as useles and unnecessary.

*Et non coloni solùm vox hæc est, sed & doctorum peritissimorum quoque virorum.*

Which he adds, in confirmation of the rule he gave, that nothing is beloved further then 'tis known: for not onely the vulgar sort of men, who covet no accomplishments besides how to dig, delve, sow, reap, hedge, ditch, whistle, and tend horses; yet are in love with their employments, because they know them, and are onely intellectual proficients in them, but even artly men value Art upon no other grounds; for as their knowledge is of, so their addiction to, and affection for them, is. For though it be common to all men, to know the common notions of night and day, black and white, which perhaps gave rise to the Proverb, *οἰδὲ το λῦκον ἢ το μίλαν*, yet to search into the abscondita of things, and thence to report the nature of them, where men and things do as the *Sepia*, or *Cottle-fish* do, to prevent its being surprized, send forth a quantity of black blood, which so thickens the water, that its white body cannot be seen: to which *Athenæus* alludes,

*Ἡ κόνη ἰχθύος ἐξοπτὸ λεῖκον,*

*ἢ μίλαν εἶδε.*

*O're her fair body she can draw a Cloud,*

*Then lose her takers, and her own life shroud.*

And *Catullus* describes *Caesar*, notwithstanding all his disguises,

*Nil nimium studeo Cæsar tibi velle placere,*

*Nec scire utrum sis, albus an ater homo.*

*I nothing study much, not Cæsar thee,*

*Whether th'art white or black, is nought to me.*

This, I say, to do, must proceed from knowledge, and is called art in him that knows how thus to demean himself. Hence *Tully* makes *Rubrins Cassinas*, who took one that

1 Georg.

Adag. 5. Cent. 3.  
Chil. 3.

2. De Oratore.  
Cic. 3. De Nat.  
deorum,

In Añn. 7.

Pro Cocinna.  
Lib. De verbo-  
rum signific.  
p. 490.

Adag. 91. Chil 1.  
Cent. 6.

Deipnosop. lib. 4.



that was little of eminency in appearance, and made him his Heir, and thereupon minds him of his love to him; *Te is quem nunquam vidiſti, fecit heredem, & quidem vide quam te ama* it is qui albus atēve furis ignorans, fratris filium prateriit. I say, Tully not onely in that remembers the person so favoured to be mindful of, and thankful for it, but censures *Rubrius*, as more doting by passion then directed by judgment, as *doctissimi* and *peritissimi* here ought to be. For Tully has matched these *Epethites* together, to set forth the double nature of art, both in speculation and action. *Doctissimi theoria, peritissimi praxi*; for unless they both go together, they make no fair shew to perform the excellent end of right judgment, and to fix love upon the foundation of Arts known, and thence delighted in.

2. Philip.

Cicm Salust. 5.

*Nam si ad Philosophum naturalem, qui in Mathematica nunquam Studet, Metaphisicus dicat, quod scientia sua considerat res separatas ab omni materia, & motu secundum esse, & secundum rationem, vel Mathematicus dicat, quod sua scientia considerat res conjunctas materia, & motui secundum esse, sed seperatas secundum rationem, ambos hos licet Philosophos, Philosophus ille naturalis, qui nunquam novit res aliquas seperatas à materia, & motu essentia vel ratione, spernet, eorumque scientias licet sua scientia nobiliores ipse deridebit, non alia ductus causa, nisi quia eorum sententias ipse penitus ignorat.*

Here the Chancellour instances in Philosophers, the wisest and learnedest of men, as dissenting and detracting from one another, as the parts of Philosophy, which they are particularly versed in, and bent to prosecute, are divers from each other in the object of their Science, and the reason of them. For since Philosophy is the study of wisdom, *θεος η δεινότητα οντος χριμα, A Study of divine and admirable Mystery*: And Philosophers are not *φιλοσοφωμιμοι*, men of prate and discourse, versed in no good and profitable method of art, having heads swollen with vapour and ostentation, but men that do wholly give up themselves to contemplation and disquisition of nature, as Philo at large discourses, since they are *Asaphs*, men that do wisely ruminate, and perpend what they do. This considered, (as heretofore in the Notes on the fourth Chapter, has been largly written of) invests Philosophers with great respects, and expects them men of much reason, and therefore probable to be exact and scrupulous.

Tullius 1. Offic.

Aristor. lib. Dees Mundo profas. ad Alexand.

Lib. De Vita Contemplativa, pag. 850.

*Cum sapientes proprie vocemus eos qui sublimia quadam, & a vulgi capis remota intellegunt, Quomodo Anaxagoram, Thaletem, Democritum, Sapientes nominavit antiquitas, certè qui ad ea perquirenda oculo studio incumbunt, quo quis tenent, sapientes habentur, si proprie dicendi sunt Philosophari. Muretus, in notis ad primum Natur. Quest. Senecz. p. 842.*

Now these Philosophers our Text calls by three several names, as they intend three distinct parts of Philosophy; the natural Philosopher, the Metaphysitian, the Mathematician: all which, says our Text, have principles so different each from other, that as the one may be ignorant in, so obstinate against the principles and practises of the other; and that from this ground, that every one reduces Art to his own Standard, and will have all that is not what he knows and loves, false and useles.

Here now I might ravel out into a large field, and discourse of Philosophers and Philosophy to an infinity of needless trouble to my self, and my Reader: but I shall study more thrift of time, and compose my discourse to those modest limits, and soft touches, as best suit with a Commentator that intends profit and delight to his Reader.

Certainly Philosophy is a most excellent gift of God, and ornament of man; Philo says it's the chief ingredient into man's prerogative, above the other works of God's hand; and *Plotinus* calls men learned in it, *ετοιμοι η επιδραμενοι*, prepared to fly high even to Heaven, in the power of their mental endowments thereby, which was the reason, that *Architas* said a Philosopher was σοφωμιμο, and *Homer* stiles him *αδρσις*, as one, *habilis ad omnes disciplinas*, according to *Phavorinus*, which should mind him that professes it, to live as one that has his mind divinely endowed, and called upon to all exemplary and practical virtue, which *Philo* makes so peculiarly the part of a Philosopher, as nothing more is: For as it is not bags but money; nor deeds but lands; nor books but knowledge,

*επιδραμενοι αραδον εκ ηλδων εις τον ανδραπινον βιον. Lib. De Mundi Opificio, p. 11.*

*Aenead. 1. Lib. 3. p. 20.*

*Parte prima, De excel. Homi. c. 59. p. 173.*

*φιλοσοφίαν αμβροσι μεν εως εχρησε δε ο Ανδραπινος. vñs. Lib. De Specialibus legibus, pag. 806.*

to make use of them; nor numbers of men, but discipline and courage, that declares a man rich, learned, fortunate, victorious; so is it not the notion, but practice of Philosophy, that derives on men the honour of being true Philosophers. This was the cause Plato was wont to say, and *M. Antoninus* repeat from him that saying, *Then Cities flourish, when Philosophers govern them, or when they that govern them are governed by Philosophers*; which the Antients were so zealous in, that *Seneca* answers us, *Antiqua Philosophia nihil aliud quam facienda & vitanda praecepit, &c.* The antient pristine Philosophy consisted onely in rules of doing good, and eschewing evil, and then Philosophers were most excellent plain men; but when they came to be so critically learned, as afterwards they became, all sincerity took leave, and learning was judged rather to consist in subtilty then virtue, in wrangling wit, rather than in a good life. So he. And hence it is, that where-as virtue was the study of Philosophers, and their heats and passions were lulled asleep in the pursuit of her. Now since she has been deserted, and her professors have pretended, rather than practised Philosophy, she hath degenerated into cavil and contest about words and forms. *Rhenanus* hath learnedly collected a large Catalogue of dissent amongst Philosophers, which argues onely the disproportion of Mortals apprehension, and the vehement chollers that they are upon interestes of fame and fury expressive of, vitiaes not the reputation of art, for that still remains *sacrum quoddam & venerabile*, as *Seneca* terms it. Ep. 56. *Vita lex*, Ep. 95. *Ultimum instrumentum & additamentum*, Ep. 17. *inexpugnabilis murus quem fortuna multis machinis laessitam non transit*. Ep. 83. *Omnibus praferenda artibus, rebusque*. Ep. 29. and the Philosophers, not being defective to themselves, and *ὡς περὶ αὐτῶν*, &c. high talkers of, while little livers to virtue, make not themselves a reproach, but rather recover their antique reputation by such severities, as may eliminate all vice, and stop the mouth of all detraction. So *Seneca's* rule is, *Sapiens omnia quae debet sine ullius mala rei ministerio efficiet, nihilque admiscebit cujus modum sollicitus observet.*

Which premised, the divisions of Philosophy into parts, is rather a matter of method and order, then any thing else; and since it is the contemplation of wisdom, in preparation for action, can have no variety in it, but what is gradual, and has a sense of ministratation to the consequention of the noble end of it, to wit, how to know to do.

Whereunto, because the several Atoms and minute Particles (making the mass and bulk) with the variety of their use, and operation in ascent to the culmen of it, is to be considered, which perhaps is somewhat towards that which *Plotinus* lays down; *ὁ ὦς δίδωσι ἐνσεργεῖς ἀρχάς*, &c. the understanding gives perspicuous principles, which done, the soul compounds couples, and distributes them, till they come to perfect understanding. I crave leave therefore not so much to cherish and confirm debate of words, and variety of expression, as to write somewhat useful to the practical Philosophy, to which the speculative is but ducent. For to little purpose is all knowledge of essences, and abstracted notions, if they refine not the reason, and brighten it to a perfect oriency in a life of exemplary virtue.

*Aureolus* ingenuously casts the Sciences, which is Philosophy, into this model: the first three he calls *Scientia Sermocinales Sciences of Speech*; *Grammar*, *Logick*, *Rhetorique*. To speak properly, and according to use, subtilly and according to rule, floridly to the height of captation and eloquence, either in prose or verse. The second three he calls purely sensible and experimental, *Natural*, *Moral*, *Medisinal*. To know the nature the virtues, vices of things, and the adjuncts to rectitude, and the restoration of declensions from it. Two purely *Mathematical*, *Arithmetique*, and *Geometry*, which instruct the use of Numbers, Weights, and Measures. Three medious between the *Mathematiques* and experimental Sciences, *Astrologie*, *Harmony*, *Perspectivive*; one meerly intellectual *Metaphisicks*. Thus that Golden Wit.

Nor is *Philo* the Jew much, if at all behind him, who compares Philosophy to a gallant Plantation: the *Physicks* answers trees and plants, the *Moral* fruits; the *Rational* to hedges and bounds; now (says he) as the fences and hedges secures the fruits, so the rational Philosophy is the defence of the *Moral* and *Natural*. From both which I collect, that God has made a harmony in art, the preservation of which is the life of Science; there is then no difference in Philosophy, but what arises by accident, and either pride, or wilful mistake of men: For as the Fly does as well set forth the majesty and power of

God

Julius Capitolinus in Antonino. p. 148. Edit. Sylb.

Epist. 95.

In notis ad Senec. ludum. p. 936.

Epistetus apud A. Gellium. lib. 17. c. 19.

Lib. De Ira. 14.

Ancad. 1. lib. 3. p. 21.

In Prologo art. 2. p. 57. In Sententias.

Τὸ μὲν οὐρανὸν αὐτὸς θεὸς ἰσοῦς καὶ οὐρανὸς θεὸς ἰσοῦς. Lib. De Agricult. p. 189.

God in this production, as the Elephant; so in the least principle of service, the bounty and wisdom of God is patified, as well as in the greatest.

The natural Philosopher he searches into the nature of compound things, and their Revolutions, Elements, Generation, Corruption, Meteors, Minerals, tendency of Beasts, Vegetables, and all their species; the Metaphysitian he understands indeed substance, accidents all sensible beings, yet separate from matter, the Mathematician he makes distinction of those things which he can make good the reason of, by demonstration obvious and plain to the sense; but *Metaphysiques*, being the contemplation of divine and abstract beings, that is of things separate from matter and form, is the foundation of all other things, not the *Mathematicks* excepted; yea, and all these improving (to that we call a practical Philosophy) makes up *Budeus* his compleat character of a Philosopher, *Is qui studeat omnium rerum, &c.* He that studies to know the nature of all things divine and humane with the causes of them, and applies his knowledge, to produce a life of virtue and reason, suitable to such knowledge, he deserves worship to be counted a Philosopher, are his words full of weight and worth.

Aristot. Analec-  
lib. 2. c. 2. p. 329  
Volum. primo.  
Pharorinus, parte  
prima, cap. 95.  
p. 171.  
Vives in consura  
operum Aristote-  
lis, ut. Metaphy-  
sic. Basil. 1542.

Καὶ τῶν μαθηματικῶν εἰς τὴν ἀρχὴν  
ἢ σοφίας ἢ ἀλλοῦ. *Metaphys.*  
lib. 1. c. 1. ad initium.

In Pandect. priores, p. 13.

Order then is to be kept in Sciences, which will best be done by love to them, founded upon knowledge of them; for whence come heats but upon ignorance, on the assaillants part, and zeal of knowledge on the Defendants: the composure of which will best be brought about by their unanimity, to credit study with practice. For when all is done that art can witness to, and woo the world by to love her; if it leave the man that has it like *Barlaam the Monk*, whom the Historian makes a rare Critique in *Euclid*, *Aristotle*, *Plato*, but vitiating all this *πᾶσιν ἐνερῶσιν*, by filling a peaceable Church with discord and cavils, fire-balls thrown about by his wit. Better I say, know nothing, then thus to know any thing: better to know a little usefully, then much to no other end; but to dishonour God, and disturb men.

Contractuzenus  
Hist. lib. 2. c. 29.

As then there must be knowledge in Science to make men value them, so where there is not, there will be contempt of them, which their followers not enduring, proceeds to enmity at last between them; yea, and if the learned side get the Victory by argument, yet if they have not a strenuity of practice to consort with their learning, well they may obtain of men flashes of fame, but real and true Victors they will not be. *Philo* elegantly reasons this with the learned man in these words, *Τὴν ὁμοίωσιν, &c.* What reason, says he, hast thou, O man, to consider the nature of Heavenly bodies, and vault up into the knowledge of things beyond thy reach: What sensuality hast thou by this skill purged out of thee? What mastery over desires and passions obtained? art thou more divine, and less carnal by this than thou wast? if not, *καὶ δὲ μὴ δὴ δὲ μὴ, &c.* as Trees signify nothing, if they be barren, and bear no fruit; so the knowledge of nature amounts to nothing, if it advance not virtue in us.

Lib. De honi-  
num mutatione,  
p. 1055.

From all which, argued upon occasion of our Texts instance of Arts so far, and no farther loved then known, the conclusion is, that knowledge is the key to love, and all the fruits of it. And where it truly and soberly is, does not heighten passion, but trims and polishes it to a serious purpose, that is, to magnifie God, accord with men, and exemplifie virtue in a daily practise of it; which well executed, will evidence to men, that God has made a connection of Sciences, and that where any truly is, there are such degrees of universality, as make men civil to those Arts they are not Masters of, and rude Dictators in nothing that is cryptique and mutable: so true is that of *Calcagninus*, *Ita juncta & copulata sunt inter se natura, ut sine piaculo disjungi non possunt; nam sicut in corpore humano nihil frustra positum est, quod ad suum opus est institutum, caterisque partibus respondeat, ut non sine pernicie avelli possit, ita disciplina, id est, humana vita membra inter se connexa sunt, ut seorsim posita manca & mutiles sunt, nemo ergo Physica sine Logica, nemo Logica sine Mathematicis, nemo omnia sine orationis praesidio assequatur.*

Caelius Calcagni-  
nus nepoti suo.  
Quaestionum,  
lib. 2.

Though therefore, there may be upon various degrees of apprehension, more or less proportions of zeal and indifference towards Arts, and the Rules of them, according to the measure of mens expending of themselves upon them; yet will there ever be in true Philosophers such a moderation, as keeps from the derisive of our Text. For though our Chancellour phrases thus the effect of ignorance and disaffection, yet does

he uses this *Hyperbole*, rather to make his Arguments more weighty, then to affirm the very specific effect of them to be *derision*. For that, importing scorn, argues enmity, and superb prevalency in the soul against the principles of wisdom, which calm and soften it. now a wife and virtuous man will rather pity, and pray for mens reductions from errors prejudices and mistakes, then contemn and reproach them for such their defects and alloys. And hence is it seen, that those that are the merry mad *Satyrists* of Ages, whose wits run to waste in palquillous invectives, and mordacities, *Lucian*-like, sprout into such prodigious excesses of folly, that they need no Hell more then the vanity of their own actions procures them; while every calm

*Filius amor oculorum nitet in lumine, sapit in ere, mulcet in aure, videt in facie, placet in cute, intus auctus est venenum Sardinium quod nimirum quos peremit, visu perire facit, Cyrellus lib. 1. Apolog. Moralib. c. 19.*

*In Apolog. per Platone.*

*Adag. 19. Cent. 6 Chil. 2.*

*Cent. 5. Chil. 1. p. 215*

*In collectaneis Dionum Rhetoric.*

*Deridere atque contemnere, lib. 3. De Oratore Cic.*

mind acquiesces in the serious study of himself, and in the charitable opinion of others, whom because he knows not erroneous from pertinacy, he uncharitably censures not to be abominated; so that though wise men may with *Plato* smile, yea and laugh, which *Bessarian* says he never did; yet do they not do it with levity, so as to reproach their internal gravity, or to injure their brother in nature, whom they are bound by the Laws of civility, to preserve in his reputation, as to that vanity they are ἀγλασδι, neither γλαῖς συγκρέσθ, that laughter which makes men quake till they tickle again; which *Philostatus* renders by παρσυγλαῖν, *latè diductò que ore ridere*, which we call, to laugh out, and is ascribed to fools and mad-men, nor that γλαῖς Ἰώνικθ, γλαῖς μεγαροῦδος, γλαῖς χιθ which the profuse effeminate *Greeks* were overtaken with in their feats of lubricity and compotation: nor that γλαῖς Σιδώνιθ, when men laugh deceitfully, and from a heart enraged and malicious, which *Eudemus* understands the meaning of that phrase Ἀρ' ὕψος ἡγλαγλαῖς μν, *thou lookest down upon me, and deridest me*. I say none of these laughs are good and grave men subject to, because this is not onely to prophane the gravity of their own minds, but to reproach God, who having made nothing in vain, abhors the contempt of any work of his hands. And therefore, though men of learning and charity may disapprove what some other say and write, from the better apprehension they have of things, then those who attend them not perhaps have; yet still will they abstain from that which the Text says, is the too common consequent of different Judgments to deride. *Ipsos deridebit.*

*Sic & tu Princeps Legis Angliæ peritum miraberis, si dicat quod frater, fratri ne quaquam uterino non succedet in hereditate paterna, sed potius hereditas illa, sorori integri sanguinis sui descendet, aut capitali domino feodi accidet, ut escacta sua; cum causam legis hujus tu ignoras, in lege tamen Angliæ doctum hujus casus difficultas nullatenus perturbat; quare & vulgariter dicitur, quod ars non habet inimicum præter ignorantem.*

This Clause was that for which the fore-going was instanced in; for the Chancellor intending instigation of the Prince to the study of the Law, as before he had enforced it from the excellency of the Law, as the guide to Justice, which Justice he proposes as the desert of fame, and the foundation of duration in Government: so now does he in this Clause shew how impossible it is to love what we know not, and to be zealous for that, which our Conviction of the excellency and use of it, does not excite us to. And this, as he does rhetorically, by presenting the worst effect of ignorance, opposition, and that with vehemence of whatever is unknown to, and unbeloved by us, so does he discover the dreadful effect of that prepossession by *deridere*, a carriage of contempt and vilipendency. And this he tells the Prince, if he knows not the Law, he will make appear by his personal demeanour to men of Law, whom thereby he will disoblige and discourage. To prevent which, he inculcates his counsel of him to the study of the Law, which alone can make him love it, because acquaiut him with, and fit him for the execution of it.

The great consequence of which wise men fore-seeing, do so direct Princes in their education, that next the knowledge of God, they prefer the instruction of them in the Laws of their Polities above all other parts of breeding, as that which mightily relieves them in all the exigencies of Government, and shews them the Prescript of serenity, if any there be in those heights of honour and sublimation, which *Charles* the 5. assured his Son he never found in them; and thereupon in the Session at *Bruxels*, when he resigned up the Government to *Philip* the second his Son, he thus spake to him, *Compatior tibi, mi fili, &c. I pity thee my Son, on whose shoulders, by my resignation of my Crown and Government*

verment to thee, I put a very weighty burthen; for in all the years that I possessed it, I enjoyed not a minutes time of ease and joy, free from cares and fears.

So that the Chancellour's application to the Prince in the precedent clause, being confirmative of *nihil amatum nisi cognitum*, points at some inconveniencies, which unskil'dness in the Law will devolve on him.

First, the Muncipe Law, which is obvious and clear, *Anglia perito & in lege Anglie docto*, will be strange to him.

Secondly, he will be to seek of the Law and reason of that, which as King he must defend, and according to which, by his Judges in his Courts, he must determine in cases of the half and whole blood.

Thirdly, he will not know whether estates go, if they have no legal Inheritour, and the owner of them dies, *sive herede sanguinis*.

Fourthly, he will be grieved, when he sees the ill effects of them, which are onely avoided, and the trouble of them waded through by knowledge of mind.

Fifthly, a Prince will know, that if ignorance does so incommodate him and his affairs, and art so promote and beautifie them, in pure Justice this art and knowledge, where by such advantages are acquired, ought to be promoted and valued; since *ars non habet inimicum prater ignorantem*.

First, As all arts are obvious to Artists, so is it in the Lawes, they are plain *peritis & in legibus doctis*, such the Chancellor calls not those *quidam*, who are all for prate and noise, *Litium strepitu gaudentes*; but such as *penè omnia profitentur*, men versed in all points of Law, in no portion of its necessary Knowledge defective, *rerum divinarum, humanarumque notione, justis atque injustis scientia instruiti*, according to *Ulpian*; I mean not, nor do I think our Chancellor did mean such an Attainment of Knowledge, as is to a perfection so properly called; for so no man is capable of Knowledge, the perfect God is onely thus perfect, but such a perfection as is haveable, *Cum factum est, illud quod fieri inter partes convenit, qui ita consummavit scientiam, ut jam in usu esse possit*, as *Alciat* note is, such as enables a man to give counsel and direction, what to do in every case, and a judgement, in cases determined and adjudged.

1. De Oratore.

In Legem 139. ad Legem Juliam & Papiam p. 319. lib. de verborum signific.

This is the sense of *peritus & doctus in legibus*, *Peritus* coming from an old Verb *perio*, or (according to *Nonius*) *aperio*, as if one *peritus* had not onely opened the way, but gone through the path of learning; some have made these two words nothing discrepant, but *Tully* has given *peritus* the cast beyond *doctus*, for *doctus* a man may be in point of reading, and the wisdom of the minde, who is not *peritus*, for that implies *doctus* and a faculty to set it forth to the utmost advantage, which we call a dexterity; so *Tully* mentions, *Sapiens homo, & multarum rerum peritus*, and he commends *Ælius* as one, *antiquitatis, veterumque scriptorum literate peritus*, so a good Orator is called *dicendi peritus*; a good Soldier, *peritissimus homo belligerandi*; a good teacher of youth, *docendi peritus*; a good Musitian at the voice, *cantare peritus*; one that defines things well, *definiendi peritus*; yea a Husbandman, that is thorowly versed in culture, *peritissimus de Agricultura*: all which are Excellencies of action, and demonstrative Skils; so here [*peritis*] intends the Masters of them so well versed in Law cases, that not onely the present Age wherein they that thus excel, live; but after-Ages by their writing conclude them learned, and for that cause reverence them.

Itaque quum sit docti, à peritis facile desunt sententia 3. Offic. 19. Pro Fronteio 14. De Clar. Oratoribus 108. Quintil. 1. 1. c. 2. Virgil. 20. Elog. 3. Offic. 79. Varro 1. de Re Rustica. c. 2.

Secondly, To these then, though the case may be clear, that the Brother of the half blood, shall not succeed to his Brother, but rather the Sister of the whole blood; yet to a man, that knows not the Law, 'twill be strange. Hereupon, if the King knows not the Law, he will be ignorant of the reason of the Law; which is this, The Brother of the half blood shall not inherit; because, he not being of the compleat blood, is not a compleat heir: so *Bracton* sayes, the Law ever was, that an Heir must have *sanguinem duplicatum*; and *Fleta* lib. 6. c. 1. de propinquitate heredum, so *Littleton* sect. 6. and so is my Lord *Cook*'s opinion on him, not onely, *Quod linea recta præfertur transversali*, but because the whole blood is, *pluis digne de sank*, and the general allowed Law of England, *Propinquior excludit propinquum, propinquus remotum, remotius remotiorem*.

Lib. 4. p. 279. B. & lib. 2. p. 65. 1. Instit. lib. 10. Fecc.imple. p. 14.

Reg. Paris.

Thirdly, Nor will a Prince without Knowledge (in some degree) of the Law, know whether estates will go: if there be not *fratres uterini*, yet the law directs to the Sisters of the whole blood; and in this case the Law is clear, a Sister of the whole blood

Lib. 1. sect. 9.

shall be *in statu*, as a Brother, and inherit *quasi* he, so *Lisleton*, and all other Authorities; the reason whereof is, because proximity of blood, takes of all defects, not only in the Crown where no Salique law is good, but in particular Estates to the injury of Sisters, whom God admitted Heires to their Father's Estates, they having no Brothers, *Numb. xxxvi.* and for defect of these Heires, either of the body, or the blood, or by will testamentary Heires; though I know till the Statute 33 H. 8. c. 1. Lands were not devisable by will. Lands are to descend as an Escheate to the Grand Lord, either the King as the *supremus Dominus & heres*; or to the Lord to whom he has granted this Benefit of his Prerogative, as his Escheat. *Escaeta* a word of art, *Escaeta vulgo dicuntur*, (saith *Ockam*) *que, decedentibus his qui de rege tenent, &c. Cum non existit ratione sanguinis heres, ad fiscum relabuntur*, these Sir *Edward Cook* makes to happen, *aut per defectum sanguinis, aut per delictum tenentis*, see more of Escheats in *Fleta* lib. 3. c. 10. What the Common Law calls *Eschaeta*, the Civil Laws I suppose names *Caduca*; so *Paulus, Veterem sponsam in Provincia, quam quis administrat, uxorem ducere potest. & dos data, non fit Caduca.* This word *Caduca* from *cadere*, they apply to all things that do casually happen, *Caducas frondes*, for leaves ready to fall: *Caduca Hereditas* is used by *Tully*, and *Juvenal. 9. Satyr. 9.*

Cap. quod non absolvitur.

1. Instit. en Littl. p. 13.

Digest. lib. 23. Tit. 2. de ritu nuptiarum. p. 2114. Virgil. lib. 1. Georg. 10. Phil. &amp; lib. 3. De Oratore.

— propter me scriberis heres  
Legatum omne capis, nec non & dulce Caducum.

Adverf. lib. 23. c. 15.

And that he is called *Caducarius*, that is Heir to him, that has no Heir, *Turnebus* is Authority; see *Brecheus ad legem 30. p. 92. lib. de verborum significatione.*

Fourthly, These things as they are obvious to men of parts, study, and businesse in the Law, so would be very troublous and hard for a Prince to understand, that wholly neglects the consideration of them; to prevent which, the Chancellour conjures the Prince to study the Law, that he may be ready in understanding of, and right judgement concerning it.

And lastly, All the precedent Arguments he presses to hinder a dangerous and necessary effect of ignorance, Enmity to Art and Law: for notwithstanding all the good Offices, Knowledge of Art, and of that of the Law, doth, yet will it not carry a letterless minde above a barbarons hatred of that which is most beneficial; nor has ever learning been more courfully dealt with, then from those that know it least, *Ars non habet inimicum nisi ignorantem.*

For God having made man after his own Inage, in the Endowments of his reasonable Soul, with those Perfections in remiss Degrees which are eminently in himself, has no doubt in him; if improved to the utmost of his ingenuity, a capacity to act to the life the specificque actions of every creature under his Subjection, as *Phavorinus* very notably asserts: and that he does not effect great things by the illuminations of his intellect, proceeds, partly from the penal accessions of sin, which have blunted their edge, and dulled their perception; and partly from the torpor and negligence of us, who do not put forth what of the remains of our creation is yet upon us. From whence alone it is, that we are so ignorant of our duty, and so unprovided to comply with the Providences of God towards us: this makes us ignorant of and pertinacious against things, because we are at a losse concerning them, *Si bona fide sumus, &c. If we were in earnest, and answered the Prescript of God, we would contemn the meretricious avocations of this world, no delights of sense should interrupt our commerce with divine objects; 'tis a light wit that lockes nothing inward, but is wholly swallowed up in the gait of externals.* And in his 95. Epistle, *Totum mundum* (saith he) *scrutor, &c. I search the whole world and give my self a liberty of delight, great things rouse me up to contemplate their transcendency, this makes me fortified against all unpleasing accidents, which I eye not as casualities, but God's designs, which I am readily to comply with, and chearfully to follow, not as that I cannot, but will not wave, because it is the best fruit of my duty.* Thus does Divine learning fit a man to deny himself, and to be free to peruse the Errand of his Maker, St. *Jerom* tells us, that *Hippias* the Philosopher called by the Greeks *Omniscius*, was wont to glory that he made every thing about him with his own hand, while he had a knowing head, and a contented minde, his hand was able to supply him with necessaries to nature; and for humour and phantasie he had the Mastery of those; his learning

Parte prima De Excell. Hom. c. 55. p. 160.

Ep. 56.

Ep. ad Heliodor.

learning had made him free from all those little states and airy Punctilio's, that ignorance affects, and now he being arrived at wisdom, was by it manumitted: no wonder then *Galen* calls arts, ἐκδοτικὰ μαθηματα, and *Aristotle* ἐκδοτικὰς ὁμιτίας, and ἐκδοτικὸν λόγον, which *Brutus* opposes to those, πωλὺς ὁμιτίας, and ἀνὰ δόξους ἀγοραίους, because when these deceive a man, and prove no subtillities in want; the liberal arts are a kind of portable Mines, and Magnetequ's that draw fame and fortune to them every where, which confirms that as all knowing men do love Knowledge in others and promote it, so none are Enemies to, and oppose themselves against it, but such as are ignorant; which that the Prince may not be, the Chancellour proceeds to dehort him in the sublequent words.

In reliquis partibus p. 298.

*Sed absit à te, fili Regis, ut inimiceris legibus regni, quo tu successurus es; vel, ut eas spernas quum justitiam deligere, prædicta sapientie lectio te erudiat.*

These words do signifie some fears in the Chancellour, and those probably not groundlesse ones, that the Prince being young, bred abroad, and martially addicted, might be drawn by those treacherous lures of love and revenge, to decline the love of the common-Law, and admire some other Law, which had more compliance with absolutenesse, and Martial rigour then our Law has: now this the grave Judge foreseeing of evil consequence, the people of *England* admiring nothing above their Lawes, nor loving any Governour further then he rules according to them; he seriously dehorts him from, and cautions him against such humours, and that not cooly and Courtdly, but by an amicitial vehemence, and oratorious *Pathos*, in which all arguments of dissuasion were couched.

*Absit à te*, as much as if he had said, Sir, such an error in judgement and choice becomes you not, nay rather you are so to abominate, as men do Carrions, and Sacriledges, Incests and Sodomies; the Hebrews expresse this *absit* by *הִלֵּלִי*, quod prophane & impura rei notionem habet, and the learned say 'tis used cum rem diram atque atrocem abominamur, when the Children of *Reuben* were charged to have built an Altar to confront God's Altar, their answer begins with this *absit*, God forbid that we should rebel against the Lord, and turn this day from following the Lord, c. xxii. v. 24. res prophana est, servis tuis hujusmodi facinus designare, so the *Chaldee* Paraphrase, *absit abominantis sermo est*, *Estius*, *Erasmus*, and *Grotius* jointly affirm, and so *Saint Paul* uses it, *Rom.* iii. 4, 6, 13. vi. 2, 15. vii. 13. ix. 14. xi. 1. I *Cor.* vi. 15. *Gal.* ii. 17. iii. 21. vi. 14. yea the Jews long afore *Gen.* xlv. 7. I *Sam.* xii. 13. xx. 2. I *Chron.* xi. 19. *Job.* xxvii. 5. *Luk.* xx. 16.

Matius in *Josh* xxii. 29.

To the same purpose the Latines *absit procul*, so *Cic.* *Ut illiberalitatis, avaritiaque absit suspicio*, and *Martial.* *Absit à jocosorum nostrorum simplicitate malignus interpretas*, so *Pliny*, *procul à nobis, nostrisque literis absit ista*: thus 'tis in its own nature to be avoided.

2 *Offic.* 9.

lib. 1. 29.

But *absit à te, fili Regis*, there's another step to the dehortation, Sir, You are Son to a King, and a pious King, who, though he suffered, yet was more then a Conquerour; your Father loved and lived in Rule according to the Lawes, and he has principled you with justice, according to those Lawes the Standard of it; do not stain your high blood and noble greatnesse by actions of meannesse, let Peasants and men of low birth expresse lubricity and weaknesse by such illiberal courses as consist with regal Magnanimity; let the Lawes (Sir) have the honour of your studying of them, that they may have the fruit of Proficiency, your love. And truly if the considerations of τὸ ἐπίπλεον will not work with men, what will. For since the glory and praise of every thing is from that decency, which it carries with it, and that Conformity which it expresses to the Canon of its regulation; as to fight advisedly, and with courage, commends a Souldier, to speak fluently, and with apt tones of Elevation and Cadence, a true Orator; to argue subtilly and with nervosity, an exact Logician, to distinguish critically and with Scripture clearnesse, a ready Casuist, to dance nimbly and with erect body, a trim Courtier; to plead boldly and with apt strains of captivation, a good Advocate, so to love the Lawes from experience of the use, worth, and benefit of them, to the ends of gubernative

Quod decet, honestum est. & quod honestum est, decet. *Cic.* 1. *Offic.*

*Plaut.* *Deus decet opulentia.*  
*Decet me hac vestis, Plaut.*  
*Decet me his verbis fabulari, Plaut.*

*Exemplis grandioribus deest uti,*  
*Cic.* 1. *Divinat.*

tive

Decentia, Conventientia quadam & pulchritudo Cic. 2. Nat Deor.

Gen. xviii. 25.

Gen xxxix. 9.

Nehem. vi. 11.

Bassus noster videbatur mihi prosequi se, & componere, & vivere tanquam superflus sibi & fortiter ferre decidium sui Seneca. Epist. 30.

Non est viri timere sudorem, huc & illuc accedat, ut perfecta virtus sit, aequalitas ac ratio non visa per omnia consonans sibi, quod non potest esse, nisi verum scientia contingat, & ars, per quam divina & humana nosseuntur. Seneca Ep. 31.

Nimirum existimo praeferendum non in virtute Trajanum, non Antoninum in clementia, non in gravitate Nervam, non in gubernando arario Vespasianum, &c. Trebellius Pollio in Victorino.

Prov. xxxi. 4.

True Law of free Monarchies, p. 195. of his works.

tive virtue, becomes a Governour, and he that reasons not with himself from the point of honour and decency, to the Motives of his action, will never act as becomes him: this was it that made *Abraham* implead God's purpose against *Sodom* (as with reverence I write it) using a Phrase of Cogency with men, when he supplicated God, *Shall not the Judge of all the world do right? to slay the righteous with the wicked, that be far from thee*; he takes advantage from the nature of God, to plead for the actions suitable to it; God is the Judge of all the world, and Judges are to do right, now sayes he, far be it from the Judge of all the world to put good and bad into the same common calamity, and to reward good with evil; that's, O Lord, contrary to thy nature as just, to thy Prerogative as a Judge, the Judge; to thy eminency of all the world, to that interest in thy Justice which all men thy creatures, and the good especially, expect, *To have right done; that be far from thee not to do.* So *Joseph* when he considered *Potipher's* confidence in him, and the reservation of his wife to his own fruitions, yea the contradiction that was between a Servant and a Par amour, and the ingratitude that his acceptance of the invitation to his Mistress's embrace implied to God and *Potiphar*, reasons thus, *How can I do this wickednesse, so Nehemiah* rescued himself from subtile inactivity, when God's cause was so concern'd, by this *shall such a man as I sty.*

Indeed all the great actions of Heroiquenesse that men do, are (next the grace of God) upon the Instigations of the congruity to do, or to forbear, which actions have with our Conditions, professions, obligations, and such like circumstances; Because Kings runn'd not at the Olympique games, *Alexander* would not; because *Pompey* saw his affairs lost without his Presence, he contemned the danger of his Attempt with this, *neesse est ut eam non ut vivam.* Because *Julius Caesar* had the resolutions to be the *Phoenix* of his age, he overlook'd the dread of resolute Senatours, eying him as their Supplanter and vowing his death; and hence became he their sacrifice, who, had he observed his praecautions, had evaded them; what shall I say? *Seneca* makes this an argument beyond most, when he advises to debate with a mans own heart, when proclive to sin, *Major sum, & ad majora genitus, quam ut mancipium sine carnis meae*; which had *Victorinus* the fifth of the thirty Tyrants done, he would not have left that one Record to his blemish that he has: *Julius Aterianus* sets him forth as the Deputy in *France* after *Posthumus*, and second to none in the office; not to *Trajan* in virtue, not to *Antonine* in clemency, not to *Nerva* in Gravity, not to *Vespasian* in ordering his Treasury, not to *Pertinax*, or

*Severus* in martialling his Military course of life; but all the glory, and fame of these virtues, his libidinous desire and use of women defam'd, so that no Historian durst applaud his virtues, so stained by his vices. And therefore no wonder though our Chancelour brings in this (*fili Regis*) to back his *absit*; so did the Mother of King *Lemuel* do to him: *It is not for Kings O Lemuel, it is not for Kings to drink wine, nor for Princes strong drink, lest they drink and forget the Law, and pervert the Judgement of any of the afflicted.*

Especially when this to do, is an *Inimiceris*; for to be ignorant of the Law is not to love it, and not to love the Law the rule of justice, is to affect in justice, and to resolve irregularity, and that is to proclaim an enmity against the Law, and against such a Law as is the Law of your own Country, to which your Father and his Progenitors swore Observation, in the presence of the great God of Heaven, and the great men of your Nation. This is the force of the Text, *Absit a te, fili Regis, ut inimiceris legibus regni tui*, why? 'tis *inimicari tibi, & tuis*, 'tis to proclaim thy self not a Royal minded Prince, who art a Father to thy people, but a severe Lord, who wilt rule them by will, and rule over them by power: 'tis to decline the Oath in the Coronation, which wife King *James* said, *Is the clearest civil and fundamental Law, whereby the King's Office is properly defined*, yea and the office of a Father, which by the Law of Nature (as well as Policy) the King becomes to all his Leiges at his Coronation: 'tis *Spernere justitiam*, to think justice too trite a path to walk in, though it be the path of peace and subtilty, *For certainly a King that governs not by his Law, can neither be countable to God for his administration; nor have a happy and established Raign: and a good King will*



not onely delight to rule his Subjects by the Law, but even will conform himself in his own actions thereunto, always keeping that ground, that the health of the Common-wealth be his chief Law. So wrote a King that knew how to rule, and to value the Law too, learned King James. Pag. 203.

*Prædicta sapientia lectio te erudiat.*

This refers not to the vulgar saying immediately before, *Art hath no Enemy but ignorance*; but to the passage out of the second Psalm, mentioned in the fourth Chapter, *Be wise, O ye Kings, and be instructed, ye Judges of the Earth, Kiss the Son, lest he be angry, and ye perish from the way.* Which being the counsel of the Holy Ghost, and penned by his amanuensis, and that to the intent of pressing Justice on them (upon account of propitiating the chief Justice of quick and dead, the Son of God *Christ Jesus*) may well be called *electio sapientia*, and justly termed *illos erudire*; for if any prudence be by man in this militant state expressed, 'tis this, of laying up a good foundation, of labouring for the meat that perisheth not, of confirming him our friend, who is commissioned by God with all power in Heaven and Earth. And if any method be more indubitate and exquisite to this end then other, 'tis that which Justice, known, beloved, and practised, directs us how, when, and where to use, this virtue therefore as the rapsody and accumulation of all excellency. Our Chancellour does ever touch upon, as that which is *subiectum regalis curæ*, and without which the foundations of the Earth will be out of order.

*Iterum igitur, atque iterum, Princeps inclytissime, te adjuro, ut leges regni patris cui successurus es, addiscas.*

The consequence of Justice, as our Chancellour has largely explicated in the fourth Chapter, so does he here re-intimate, by his earnest and vehement conjuration, seising upon all that is tender and noble in him, to love and embrace Justice, treasured up in the Laws of England. And first he bespeaks him to do this, as what best becomes him, as he is *Princeps inclytissimus*; the first Head on a Subjects shoulders; the second in the Kingdom, because the Heir, but one degree, as was supposed, on this side the Throne; and then he is as *Inclytissimus*, one that was for endowment of mind as conspicuous, as for external accomplishment acclaimed; for so *Inclytus* (of which *Inclytissimus* is the superlative) signifies in its bare positive notion, *inclytus, insignis, gloriosus, veluti fulgore quodam fame resplendens.* Hence every thing of remarkable and signal eminency, is expressed by this word. *Livy* writing of the justice of the elder *Romane* times, expresses it thus, *Inclyta justitia, religioque eâ tempestate Numa Pompilius erat*, and *Plautus* his *Inclytus apud mulieres*, *Virgil's Arnis inclytus & gloria inclyta fama*; and *Mania inclyta bello*. These, and such like expressions, in florid Authours, argue our Chancellour here, using the word in the highest notion of it, to intend the height of prevalence with the Prince, whom thus highly he prefers. And then the Chancellour's edge to propend the Prince to the Law, as the rule of Justice expresses it self by such rhetorical Charms as are not to be avoided, *Iterum atque iterum te adjuro*, a form of comprecation, which emphatizes it self in the reduplication, *Iterum atque iterum*, a Flower transplanted from *Maro's Garden*, *Iterumq; iterumque monebo, iterum atque iterum fragor intonat ingens, Iterum & sapius in Tully, Iterum ac sapius in Pliny, lib. 10. c. 12.* And then to adjure him thus multiplied that's more then usual, for it has not the sense of intreaty onely, but of obligation by Oath, *to swear by all that's obliging and sacred*: so *Terence*, *per omnes tibi adjuro deos nunquam eam me deserturum*: so *Tully*, *Adjurâsque id te invito me non esse facturum.* This *adjuro* the *Exorcists* in *Act. xix. 13.* used to the evil spirit, *ἑπιζόμεν*, say they to the evil spirit, which *Lorinus* says, was a constant adjuration of the devil by certain words, in the elder Ages fewer, after confining of more, the devil grew more impudent, and adhesive to his possession. Now, though in some Authours, Orators, and others, *adjuro* signifies no more then *juro*; yet in the Scripture and Ecclesiastical use, it implies *obtestationem ac reverentiam divini numinis, rei que cujuspiam sacra*, and is not used onely by good men, to perswade to do, or not to do; but also by unclean spirits, to set their delusion more firm on them that hear it. Thus the

*Livius* 1. ab urbe  
73.  
*Plautus* in *milite*  
*Virgil* 6. *Ancid.*  
96.

2. *Ancid.*  
3. *Ancid.*  
*Pro lege Manilii.*

*Jurare vehementius & gravius.*

*Ancl.* 4. 2. 11.  
2. *Philip.* 36.  
*Lorinus* in 19.  
*Astorum*, v. 13.  
*Baron. Annal.*  
*To. 4. p. 103. ad*  
*annum Christi,*  
362.

evil

Gualterius. In.  
19. Actorum,  
v. 13.

De Oratore 32.

evil spirit that came out of the man, *Mark 5. 7.* uses the word, *I adjure thee by God, that thou torment me not.* For as the Apostles, and primitive Worthies, did cast out evil spirits by miraculous power indulged them for the Churches honour, and Religions prevalence, against the *Heathen Superstition*; so has the devil in the World, *prophani circulatores & agryta*, such as the seven Sons of *Secura* were, to delude them by into the blindness of error, and under the power of Satan to hold them: which tye he possessed the World to be so sacred, that vengeance attended the violation of it, which made *Orpheus* of old mention *Ὀυρανὸν ὀρκίζω σε, I adjure thee by Heaven*, as somewhat sacramental in its intendment. Add to this, *Ut leges regni patris tui addiscas*, and then there is as much of swasion, as wit and love can allure by. For what can bear rule more with a Son than the president practice approbation of his Father, and since *Henry* the sixth had the Laws of *England* for his guide, and appreciated the knowledge of them, as the means to value and love Justice commended by them, what can be more probable to prevail with his Son to love and allow them, then the consideration of his Fathers doing, which when he follows and improves, he does what *addiscas* imports, and what the Text thereby presents him; for *addiscere* is *addere ad qua didiceris*, and so *Tully* writes it, *Quid quòd etiam addiscunt aliquid, ut Solonem in versibus gloriantem vidimus, qui se quotidie addiscentem senem fieri dicit.*

*Nè dum ut inconveniencias has tu evites, sed quia mens humana qua naturaliter bonum appetit, & nihil potest appetere nisi sub ratione boni, mox ut per doctrinam bonum apprehendere gaudet, & illud amat, ac quanto deinceps illud plus recerdatur tanto amplius delectatur in eodem.*

This Clause has indeed the marrow of all perswasion in it; for it not onely acquaints the Prince with what is fit for him to learn from the Law concerning Justice, as it is therein prescribed; but it presents him with solid Reasons, why in love to himself, and in reason resulting from it, the Law (*ars equi & boni*) ought to be known, and delighted in by him. And these Reasons are privative, and positive. There are inconveniencias, that a Prince by knowledge of the Law shall avoid, and there are advantages to be acquired; for by knowledge love is gained, and by love delight in, and joy at the prevalence of the Law over injury and disorder. This is the sum of this Clause. And indeed what can be prescribed to a Prince's accomplishment, which this method leads not to: For as to attain conveniencias, is to possess ones self of virtue; so to avoid inconveniencias, is to shun all the diversions from it, and from the comfort of its enjoyment. As then *convenientia* is an Oratour's word for fitness and aptitude of any thing to our purpose, and that in a measure of proportion between extreams, as wholesome and nutritive diet is called convenient food by *Agur*, and a house suitable to ones degree and family, a convenient house, and a fortune proportionable to a man's charge and breeding, a convenient fortune, and a wind to fill out the sails, yet not endanger the Mast, a convenient wind; so is *inconvenientia* the opposite thereto, betokening exuberance, and somewhat uncomely redundant: which flaw in the Chrystal, or rather Adamant of Princes, much abates them. For as in *Architecture*, the essential beauties of building are delight, firmness, convenience; so in the formation of Princes minds, and in the building of them up to their after glory, no delight in, no firmness of their esteem, except there be a proportionation of their loves and natures to the Nation they preside over. The best help to which is, the knowledge of Laws, for they rightly understood and conformed to, take away wholly, or at least lessen inconveniencias in Government; so that the rule of Law, *Quod est inconveniens aut contra rationem non est permillum in lege*, reduces inconveniencias of disproportion to the Law, as the first-born of Reason, the King is *caput regni & legum*; for an inconvenience it would be, that the Head should be thought incapable to direct, judge, and order, what is to be done, both regally and judicially. The King is, though a Child, *plena atatis*; it would be inconvenient that his Council should not supply his corporal inabilittes, during his personal nonage. The King can do no wrong, because he judges *in curia*, by Judges, and not *in camera* by his Will, and it would be inconvenient, it otherwise should be. These, and such like inconveniencias, being *publico malo*, and injurious to the compleat and indefectuous being of Majesty, the Law supplies, by directing how they shall either not wholly be, or be

*Et debent in his  
Roria poni ab Hi-  
storiographis,  
qua aut sugenda  
sunt aut sequen-  
da  
Julius Capitolin.  
in Gordian. Tr.  
p. 238. edit Sylb.  
Cic. lib. 1. offic.  
23.  
2 De Nat.  
Deorum 72.*

*Vide Heresba-  
chium, lib. De  
Educaadis Prin-  
cipum liberis.*

be wholly compensated for. Thus as men stop up an inconvenient light, and fill an inconvenient Pond, and repair an inconvenient way, and improve an inconvenient house, and change an inconvenient air, and avoid inconvenient company and diet; so does a wise Prince by the Law judge of what is inconvenient in Government, and either wholly abrogate, or mutilate and new form it to an improvement; and hereby does he avoid the inconveniencies of either real vilipendency, (for in that he discerns by the Law evil from good, he vindicates his knowledge of, and affection to the means of such his judiciousness) or reputed negligence, which being so great a scar to him, will best be disowned by his acceptance of the Laws for his rule to govern by. For he that governs men rationally by Laws, and justly by the Laws of their own Government, doth not onely *intra se vivere & addiscendo leges sapere*, but appeals to God for protection and success in his Government, and cannot easily fall into the paroxisms and distempers, which extrajudicial courses occasion, and in which Princes and people are unhappy. For a sure rule it is, *vim facit qui patitur*, Princes that either abate their Subjects of their rights, or suffer themselves to be abated (by their Subjects) of their Royal Rights, are accessary to the inconveniencies that follow them, and by so much the less know they the Law, as they permit the invasion and breach of it, either in themselves, or others. The Chancellour then that counsels, *quomodo tu evites has inconvenientias*, is well to be listened to; for as the counsel is grave in the conception and mind of the giver, so is it generous, wise and affectionate in its tendency and scope, which is *gravem & securum reddere principem, dum modum rectè evitandi inconvenientias, & realis & supposita ignorantis legis addiscit*. For since the mind of man will be busie in some disquisitive activity, and natural desires are to nothing but what is either really and in very deed good, or else seemably, and in appearance such; which is the reason, the Schools say, *finis & bonum convertuntur*, the Chancellour does wisely and worthily, to bespeak the Prince's youth to adhere to the Law, as his choice and pleasure, and to expect no good as a man, and a King, but such as that informs him of, prepares him for, and onely will render useful to him; as *Antoninus Pius* found it, who by the *Historian* is character'd to be *σπουδὴ πᾶν ἔργον ἔχων*, &c. An honest upright private man, but signally, and to a greater degree, honest and upright, when made publicque. For no sooner was he in the Throne, but he grew the admiration of all; terrible he was to none, bountiful to all; moderate in using power, a preserver of just men to rule under him. Learning then in the Law must not onely enter the Prince in the love, but confirm and establish him in such love; to a delight in, and a resolution of prelatting the Law above all. For else, as in a calm, the ship moves not though all the sails be out; and in the midst of dainties, there is yet want where there is no stomach; so in the love of the Law, there will be but remissness, if knowledge and valuation of its use, enhance not its appreciation, valuation is the daughter of discovery and Science, and so far do we esteem, as we understand: therefore all the ports of Science are to be set open, that love and delight may enter at them; yea, and daily increase, as the knowledge of them increaseth. For so it follows in the words.

O praeclara informato doctrinarum munere calesti indulgentia felicitibus, qua vel vitiofas naturas sapescoluit, Ammianus Marcellinus, lib. 29. p. 483. in Valentiniano & Valente.

*Quo doceris quod si leges praedictas quas jam ignoras, intellexeris per doctrinam, cum optima illa sint, amabis eas, & quanto plus easdem mente pertractaveris, delectabilius tu fruereis.*

This the Chancellour subjoyns by way of application; for having reasoned before with him, that knowledge causes love, and love desires to enjoy, and enjoyment fixeth delight, and crowns it with a *non ultra* of felicity, he deduces this from it, *That the Laws of England being the measure and Mistress of her Governours happiness, not to know them, is not to know how and whereby to be happy*: And therefore he advises him once and again, not onely to content himself onely to know there is a Law, and to appoint men of Learning to judge in Courts of Law according to the Law, and to see that right be done to all, as well poor as rich, and to punish them that do contrary; though this, I say, be a rare Princely virtue: yet is not this the very specificque virtue, he perswades the Prince hereto; which is *intelligere leges per doctrinam*, that is, to dig for the wisdom of them, as for hidden treasure: to knock early, often, and loud at Wisdoms gate; to gain by search, and sweat, the language, terms, books, sense, and reason of the Laws, and

Hiſt. bell. Civil.  
lib. 25. in Juliano

in ſearch after this to be exact and ſtudioſus; not to follow Pompey who in his wars was effeminate, *In caſtris Pompeii videre licuit triclinia ſtrata, Magnum argenti pondus expoſitum, recentibus ceſpitibus tabernacula conſtrata*, as *Ammianus Marcellinus* reports: that is, not to think an hour or two enough for ſtudy, and then perhaps when the mind is overcharged with other thoughts: but to follow that courſe in ſtudy, which *Julian* did in the wars, *ſtans interdum more militia cibum brevem, viſemque ſumere viſchatur*; according to the Lawes of learning to keep cloſe to the book, and to admit no interruption, till ſomewhat toward the Helm of art be gained, this once obtained, and the Lawes and our Reaſons kindly cohabiting our Minds, then they will be loved as good, materially formally finally good, ſince all their Precepts are ordinated to the *bonum ſuprà, intrà, infrà, circà*, to God, man, our ſelves, and all the things that relate to them.

*Nam omne, quod amatur, trahit amatorem ſuum in naturam ejus; unde ut dicit Philoſophus, uſus altera fit natura.*

Theſe words give the reaſon of the former from the mouth of Nature by the hand of her Secretary, *Ariſtotle*, whoſe poſition is, that love is of a transforming quality, making the lover become ſo much what it loves, that he rather lives

*Tunde quantum vales, Anaxarchum non tanges, tunde quantum vales, opinionem non mutabis; nihil Anaxarchus bonum eſſe credit, quod animi non eſſet, nihil malum quod ad animum non pertineret.*

Heinſius in Orat. de Stoica Philoſophia annexa Senecæ p. 48. ad finem

where he loves, then where he lives; which is the reaſon, that of all the effects of love that's mentioned by *Solomon*, he is the moſt concluſive of this, *Love is ſtronger then death*; not onely becauſe it ſurvives and evicts death, having aboad in Heaven where death is not, but chiefly becauſe death can but part the bodies, which by union of ſoules were combin'd in a fierce and firm reſolvedneſſe of willing, killing, joying, fearing, delighting, abhorring, chuſing, reſuſing, imbracing, avoiding; but it cannot by its terrour cauſe thoſe latent ſimilarities to be inexpressive or neglectfull of keeping an uniſone in touch and time: for while they continue a capacity to love, they will expreſſe the fervour and Conſtancy of the reſolution they have to each other, and the reaſon is, becauſe love is a perfect ſurprize and conqueſt which reſts not in a bare Sympathy, but paſſes from thoſe inchoat Noviciſms to the *non ultrà* of Con-naturality; nor is it hard for any man or woman to be brought of to be of the ſame judgement, dyet, delight with thoſe they love; for in the aſſimilation each to other is the Continuation maintained, and the Degrees of love ſublimated: there was no Key to *Sampſon's* ſtrength till the dallying with *Dalilah* delivered it to her, and taught her how to ruine him, who, but for that lubricity, had not been to be dealt with by *Philiftins*; nor could *David's* warmth ſo have afflicted his own Soul, and blaſphemed his God, (as in the caſe of *Uriah* ſlain and *Bathſeba* enjoyed) it did, but that his love was the ſole Provocation to that action of Infamy.

Lib. 7. De Mori-  
bus c. 11. p. 56.

No wonder then the *Philosopher* attributes ſo much to uſe, as to call it as another Nature (*τὸ εἶδος καλεῖται ὅτι τὴν φύσιν ἑοικέναι*), and quotes *Evenus* his verſes to confirm it.

Φημι πολυχρόνιον, &c.

*What many years men are accuſtom'd to,  
As ſecond Nature they delight to do.*

Lib. de Amicitia.  
60. in Dialog. De  
Oratore.  
Epitome Dionis in  
Commodo. 18.  
p. 374. Edit. Syl-  
burg.  
Or thographia per  
totum librum.  
In lib. 1. Enead.  
3. p. 226. art. 3.  
Nam ſi is poſſit ab  
ea ſeſe derepente a-  
vellere qui cum tot  
conſueſcit annos, non  
enim hominem du-  
cerem. Ancy. 4.

This is the reaſon that Authours aſſign ſuch Potency to uſe and cuſtome, as amounts to a ſecond Nature, not leſſe effectual in her influences and ducts, then the firſt; *Tully* tells us of *vetuſtatis & conſuetudinis vis maxima*; *Tacitus* makes in *conſuetudinem vertere*, to be all one with *in naturam*. *Xiphilinus* reports that *Commodus* was what he was, *ἀγνοεῖ τὸ ἀπὸ τῶν*, firſt, by ignorance of what was good, then by ill cuſtomes, he at laſt arrived at ſordid and effeminate manners flowing from a contaminated and debauched nature. *Quintilian*, *Dorsquius*, *A. Gellius*, make all parts of Grammer and learning, even to Orthography, to be ruled by uſe; and *Marfilius Ficinus* on *Plotinus* makes good the force of uſe and cuſtom as another nature; yea *Terence* when he expreſſes a mans application to a woman that pleaſes him, and from whom he can ſoon die as part, calls it, *conſueſcere cum aliqua*. The conſideration of which ſhould turn men to right uſages and cuſtoms, if they would preſerve themſelves virtuous, for

if nature be by them altered and the course and current of it diverted, there ought to be great care that we habituate no evil to us, *Consuetudo peccandi tollit sensum peccati*, and this amongst others I conceive to be one reason, why *Solomon* advises to teach a Child in the trade of his youth, virtue, that when he is old, he may not depart from it; but of this *Saint Jerome* in his Epistle to *Demetriades* writes at large, and *Cornelius A Lapide* on *Ecclus. xxx. 1.* and *Heresbachius de educ. Principum liberis.*

Scholastici.

Pag. 133.

*Sic ramusculus pyri stipiti pomi insertus, postquam coaluerit, trahit in naturam pyri, ut ambo deinceps merito pyrns appellentur, fructusque producent pyri, sic & usitata virtus habitum generat, ut utens eâ deinde à virtute illa denominetur, quo modestiâ pradius, usu modestus nominatur, continentia continens, & sapientia sapiens.*

Here the Text-Master instances the force of custome and conjunction from that, which is somewhat equivalent to it in vegetables, and has analogie in that kinde with the effects of virtues and vices on the minde; for though it be true, that no general rule is exempt from an exception, and no second cause is so absolute but may be overruled by its first cause, yet is it also ordinarily true, that God leaves Nature to her work, and impedes her not but upon high Concerns, and in notable Cases: indeed there are Instances that God, contrary to all humane probability, has brought men and things into esteem and renowne which have been unlikely so to be. *Valerius Maximus* brings in *Tarquinius Priscus* in the Head of these, a man born at *Corinth*, and *Damaratus* a Hogherd his father, and a bastard to boot, yet for all this miraculously brought to *Rome*, and that with such multiform advantages to his greatnesse, that in short time, he grew the Love, Dread, and Sovereign of all degrees, and the Historian gives us such a Record of his Bravery, as eternally monuments him for a Mirrour of men; *Dilatavit fines Romani Imperii, &c.* He enlarged the *Romane Empire* by brave Conquests, he honoured the Solemnities of religion with additional graces to them, he made the Senate and Orders of *Knighthood* more ample and capacious for great merits; and besides these the great virtue in him, was, that he so demeaned himself in his charge, that the City of *Rome* had no cause to repent she chose a stranger for her Emperour, and passed by her own Sons. The like doth *Egnatius* report of the Emperour *Iustine*, a *Thracian* born; and so of *Mahomet*: *Basilus, Tullus Hostilius, Phocion, Iphicrates, Viriatus, Narses, Jacobus Parefortus, Mutius* the Founder of the *S. Forzan* family; and sundry others meanly bred and born, who yet have come to great fortunes, and brought about mighty designs to the amazement of men, that beheld or read them. These things, I say, have been and yet are at the pleasure of God further to permit, but this extraordinary course is not God's frequent Method of his Manifestation to men; his usual direction to Attainments are by Industry and Assuency of ones self to labours of the minde and body, and by that he gives men the successe of facility and pleasure in that, which before they were habituated to, was difficult and displeasing; that as in Vegetables, fruits generically the same, are reconciled in their specifick difference by inserting them into one anothers stock, the Cyons of a Pare or Apple being grafted on the stock each of other, and Plumbs inoculated into each other will produce the fruit of the stock and kinde, into which they are let: so in the minde of men, there is a real transformation suitable to the nature of the Company men consort with, and the Objects they fix their delight upon; for use begets an habit, and habits delight in suitable activity, and such as the soul and minde of man is, such will be his delight either in good or evil, so true is that of *Seneca*, *Natura duce utendum est, hanc ratio observat, hanc consulit, idem est ergo beatè vivere & secundum naturam*, and surely where virtue is in the soul, in quocunque habitu est, prodest, as he notably.

Lib. 3. c. 4.

Lib. 2. Pop. Rom  
Valer. Max. lib. 3.  
c. 4.Lib. De beata vi-  
ta p. 654. lib. De  
Tranquil. p. 68ce

For it is the *Θείον* of virtue habituated to, and radicated in man, that transforms him; naturally he is void of all good, and sets himself in a resolved hostility against whatever is divine, and may disociate him and his rude præpossessions by vice and enmity to virtue: but when God touches the natural Conscience, and causes the beauty of virtue to irradiate, when there is one Beam of discovery let into the understanding, of a more excellent way then it has found, this causes it so to augment and dilate it self in desires and endeavours, that at last it brings in the perfect discovery of virtue, and releases men from their bondage to sins service, so that they once beving accustomed to be

Lib. De Providentia, p. 226 f.

In Sententiis Holstenio interpretate, p. 221.

Gal. ii. 20.  
1 Cor. ix. 14 & v.  
Phil. iii. 8.

Philostratus in Vita ejus, lib. 2. c. 14. p. 100.

Plinius Hist. Nat.

In Athanasii persecutiones universum conjugatum orbem, & commotos fuisse principes terrarum; gentes etiam, regna, exercitus coisse adversus eum, Ruffinus, lib. 1. c. 18, 19.

continent, just, modest, patient, liberal, magnanimous; cannot tell how to be other, nay wonder at themselves for bruits and not men, when they were in their pristine barbarity, this was that made *Seneca* profess with truth; *Nilil cogor, nihil patior invitus, I do not serve God being compelled, and obey him because I must, but I am willing to be what he would have me because I ought; I knew nothing is casual but certain, as to him who has laid out every occurrent of my life, so that whatever falls out is but the very effect of his disposition.* O this habituation of the soul to virtue is the felicity and upshot of all acquirements, 'tis the *viaticum*, that supports the Journey of life, and serves us with all necessaries to our conclusion. *Porphiry* made it peculiar to wise men to enjoy, for while he allowed all men to dy the way of all flesh, *λυσιμὸς τῶ σώματος ἀπὸ τῆ ψυχῆς*, by a departure of their bodies from their soules, yet he restrains the departure of the soul from the body onely to *Philosophers*, supposing them onely to live chiefly in the joy of those abstracted virtues, which they contemplated in order to practice: this *St. Paul* meant more metaphysically then any *Philosopher* could understand or act it, *I live, not I, but Christ that liveth in me: I bring down my body, I account all things losse in comparison of Christ: How so, holy Paul? the love of Christ constrained him to deny himself for him, who had called him from a Persecutor to become an Apostle.* Thus prevalent was the habituation of sanctity to *St. Paul*, that he could deny himself in all his complacencies, and in all his transcendencies, so he might fulfil the will of his Master, whose vassal he was, and from whom he had command so to do; yea, and no further is the Philosophy of this World rational, and religiously moral, then it fixes us in this resolution of training up our minds to virtue, and choosing apt helps to advance it in us, good rules, good company, good discourse, good pleasures, that by all these, we our selves may be good. For true is that which *Apollonius Tyanens* spake of to the Emperour *Vespasian*, *My companions*, said he, in *Philosophy*, *τὰ μὲν ὄψα δεῶσιν, keep their heads cool, and undizse, that they may see clearly what they ought to do in the course of steady virtue; nor are they ambitious to know what is not fit for them, ἀλλὰ ἐπρεσκέτες ἰού, &c. they hourly, and every minute consider with themselves, what is their duty to do, and intent, they are upon it, early and late.* This, this is the way, to be every way what God and Nature requires, to keep our selves up to the precise rules of virtue and to be habitually and dispositively good, is not onely the path of being, but also of doing good: *By this the Elders obtained a good report; and through this, difficulties have been rendred facile, and impossibilities compossible.* What makes the *Nightingale* out-note her fellow *Choristers*, in the suavity and perfection of her modulation, but her continual singing fifteen days, and fifteen nights without intermission, till she has made her notes natural to her? What makes the Sun to shine, and all things in their Elements to move with vigour and indefession; but that position of natures to such perfect actions in those spheres? And what makes *Martyrs* constancy not onely to lye hid in a Well six whole years without seeing light, as *Athanasius* did, but even to dye all sorts of cruel death, and that with joy and exultation? but this contemplation of dying daily, this mortifying of their Earthly Members, glorying in the Cross, endeavouring to have the same mind in them that was in *Christ Jesus*. The habituation of themselves to those virtues of self-denial and humility, made them not onely prepared for, but Proficients in, all excellent virtues. For knowing the nature and use of them, they delighted in, and at last were partakers of the plenitude of them. Thus *David* made the *Law of God* his delight, by meditating in it day and night. And thus the *Law of God* made *David* the delight of God and Man, while it made him in wisdom to excel all his teachers, and in integrity to be a man after God's own heart, and to fulfil all his will.

*Quare & tu Princeps, postquam justitia delectabiliter functus fueris, habitumque legis indutus fueris, merito denominaberis justus, cujus gratia tibi dicitur; dilexisti justitiam quo & odisti iniquitatem, propterea unxit te dominus Deus tuus oleo latitiae prae consortibus tuis regibus terra.*

The former Clause was but illustrative of the force of Use and Custome; this is applicative to the Prince, in the habituation of whose mind to Justice, as the Law propounds

pounds it, there will be a suitable effect: For since all Laws that are just, being extracts out of the Law of God in nature, and the positive enlargement of it as emergencies required them, are to all respective Countreys, and the men in them, the measures of just and unjust; and the Law of England is such to the King and People respectively therein, his humble address to the Prince is, that the Law he would study, and by considering of, so delight in it, that his principles being Law and Justice, his practice may be also such, and so he not erre in Judgment, nor cause the people to wander out of the way by his ill example, or complain of hard usage under his Government, when God should reduce him to it. This is the scope of the Chancellour, which he wisely prosecutes, by not onely commending the Law as a study of delightful knowledge, the Magazine of Justice, but as that which is attainable to some kind of intellectual plenitude, I mean to such a proportion as is necessary for him: so that from knowledge of, he shall proceed to love, delight, and take a complacentiality in the Law, as the Scheme of Justice, that his mind ought to be conformed to, and thence his actions. And this once had, he concludes him not parasitically, but meritoriously just, and applies to him that of the Psalm xlv. 7. *Thou hast loved righteousness, and hated iniquity; therefore God, even thine own God, hath anointed thee with the oyl of gladness above thy fellows.* Which the Authour of the Hebrews, chap. i. 8. applies to Christ, the King of Righteousness, whom he makes super-eminently endowed with, and superlatively honoured for it, *Thou hast loved Righteousness; not greatness, not victory, not riches, but righteousness, that's the darling of thy soul, that's the secret of thy Government.* Thou hast not onely said to Kings, *ἐξουσίαν τι μὴ ἴδμεν*, as much as *Laws are not to be violated, because they are the exemplars of Justice, the glory of Crowns; and injustice in the Soul of a Prince, is the riot of sensuality against Reason, and a warp of the less noble faculties from the Law of their conjunction with, and subserviency to the more noble:* but thou hast (O Lord Jesus) to thine eternal honour and admiration, loved righteousness as thy choice, thy self, *bonum tuum quia bonum te;* Oh! but how does that appear? the next words confirms it, *odisti iniquitatem*, as thou lovest Justice, so thou hatest whatever is contrary to, and inconsistent with it. Thou hatest thy Scepter which is *σκηπτέρον ἐνδοξότερον*, should be other then of pure Gold, and endure the touch of all tongues, thine enemies being Judges; thou wilt not by that oppress the weak, nor bruise the broken, but bind them up, because thy Scepter is like thy Kingdom, which represents all righteousness, having no fellowship with iniquity. Here, O holy soul, thine eyes may see the King of Saints in his beauty, far greater then Solomon in all his Royalty, *loving Justice, and hating iniquity*, as never man or King did, or could do before, or ever can, or shall do after him. Now also consider the compensation that the Father is mentioned to give the Son for this his love to righteousness; that follows, *Wherefore God, even thy God, hath anointed thee;* because thou art so qualified to rule as a King, God has called thee to Kinglyness by *unction*; as he has given thee a name above every name, so has he prefer'd thee in thy *unction* above all *unctions* of men. Their *unctions* make their heads and hearts often ake with care, because their affairs are sometimes disastrous, and at best troublesome: their Crowns gird their Brows, and make them bend them for pain; but God hath anointed thee, *O blessed Jesus, ἐλαίω ἀγλαΐσμου*, with such oyl, as cheers and incandorates thy face, (for ἀγλαΐσμου signifies the same with ἀγλαΐσμα, *oblectamentum, ornamentum, honestamentum.*) God has put such sovereign oyl into the Springs of thy Rule, that thy Scepter easily turns thy Subjects to thee; *Thy people are a willing people in this day of thy power, and they call unto thee to draw them, and promise to run after thee gladly and constantly, and all this above thy fellows;* no Angels in Heaven, no Kings on Earth, are so anointed as the King of the Church was: For whereas their *unction* is but the work of art, Christ's *unction* was the work and spirit of God, whereas theirs was but poured out in measure, Christ's was an effluxion of divine virtue without measure, whereas theirs was but temporary, as their Kingdoms are: Christ's was eternal and perpetual, as his Kinglyness is; whereas theirs was but to signify their separation and sanctification to the rule of their Subjects onely, and those onely during their lives, Christ's was emblematical of his indeterminable and capacious power, which was

*Inter dicta Pythagoræ, apud Porphyrium in vita ejus, pag. 199.*

*Injustitia in anima, est ignobilium partium à naturali lege disfidium. Tapia, lib. 9. p. 9. De Triplici bono & verâ hominis nobilitate.*

Grot. in Locum.

Phil. 2;

Plal. 110 3.  
Cant. 1. 4.

to extend to all persons, and to indure beyond all time; and therefore well expressed, *Pra consortibus tuis, regibus terra; quippe qui etiam habuit potestatem, &c.* For Christ the King of the Church had the prerogative above all Kings, to forgive all sins on Earth, and to have an everlasting Kingdom, as he had deserved, so to have his glory be by his purchase of it with his body on the Cross, which was an expiatory sacrifice for the sins of the World, as *Maister* and *Clarius* both on the Text.

This Scripture thus applied to Christ, our Chancellour brings in here to his aid, the better to prevail upon the Prince to love the Laws, that declare the measure and proportion of *English* Justice: For as the end of Laws is to determine right and wrong, (and the Common-Laws of *England* were composed and methodized so to do out of the *sarrago* of Laws that of old were here amongst us, and which *Brompton* says, were *nimis partiales*; and therefore by *Saint Edward* the Confessour meliorated, and by all Princes added to, explained, or substracted from, as their wisdom in Counsel saw fit:) so is the exactest and unerringst method of Justice to be learned by Prince and People from these Laws; which they that addit themselves to know, will love, and in loving be just and happy in life and death. And so our grave *Maister*, and after him, I conclude the fifth Chapter.

*Brompton in Chronicis, pag. 956, 958. edit. Londini.*

*Legum ministri magistratus, legum interpretes iudices, legum idcirco omnes servi sumus, ut liberi esse possimus. Cic. pro Cluenti.*

## CHAP. VI.

*Nonne tunc Princeps serenissime, hac te satis concitant ad legis rudimenta, cum per eam, iustitiam induere valeas quâ & appellaberis iustus, ignorantia quoque legis evitare poteris ignominiam, ac per legem felicitate fruens, beatus esse poteris in hac vita, & demum filiali timore inbutus, qui Dei sapientia est, charitatem qua amor in deum est, imperturbatus consequeris; quâ Deo adherens per Apostoli sententiam fies unus spiritus cum eo.*

*Edw. Whitchurch.*

**H***ic epilogat Cancellarius totius persuasionis suæ effectus, saith the Editor of my Text in Hen. the 8. time on this Chapter: And not amiss, for having pre-discoursed of the excellency of Justice, and the consequentiality of its being, and being beloved in a King, who is to distribute it according to the Law of his Government, which Law known, will be delighted in, and conformed to by him: He now comes to annex, by way of motive and assurance, the felicities that do flow in upon just Princes, and do distinguish them from others, both in life and death. And this he doth; first, by telling him, that Righteousness and Justice is so peculiarly the Garment of Kings, that they must wrap up their whole man in it, as garments cover all the body, and the Robes of Princes are long from top to toe, significative of their plenary power and augustness. In which sense, God is said to put on Righteousness as a Garment, and the Saints are said to be clothed in the garment of their elder brother, and that to render them beloved.*

So the Chancellour intimates to the Prince, that by knowledge of, and love to the Law, he shall be so invested with, and habituated to Justice, that it shall be his nature, and as impossible for him not to be just, as not to be in warmth motion and sense while living.

Secondly, he presents him with another benefit, *ignorantia legis evitare poteris ignominiam*, and that's no small one: For as ignorance is the botch and deformity of humane nature, (which God has endowed with a reasonable soul, *divina particula aurea*, and made capable by the vastness of its intellect, to understand and judge of all things:) so is ignorance of the Law in a Prince, so great a deformity, as no corporal one comes near in the despicableness of it. For as he will make but an ill oration, that knows not the rules of speaking, and he but a pitiful Sea-man, that skils not the use of the Compass, and he a rash Souldier, that considers not of the advantages and disadvantages, which



which he is to provide for in fighting; and he an ill Counsellour, who has never read the Rules of Policy, nor seen the effects of them in practice, so will he prove himself but a soft and despicable Prince, who knows little or nothing at all of the Law, according to which he is sworn to govern. For as all other mens eating, sleeping, fruitions, are inbeneficial to him, if he have not health to enjoy them himself; so is the knowledge of all other things incontributive to his real quiet and effulgency; if in the Law, which is *anima regiminis*, he be unversed, and letterless, *frustra foris strenuè, si domi malè vititur.*

3. As knowledge of the Law will avoid the shame of ignorating it, so will it accrew a complication of positive goods, contributive to the comfort of life and acquirement of fame after death, *Per legem felicitate fruens, beatus esse poteris in hac vitâ*, that is, the Conscience of just governing his people, according to his Oath and his Laws, which are their Birth-right, will give him such a calm and stability on his Subjects love, and such an humble confidence in God's mercy and protection, that he shall not fear the evil day that it should come on him; or if it do, he shall be assured to overcome it by magnanimity, and innocent Hectorism. And whereas guilt makes Kings *succumbere*, ashamed and unbold to assert themselves; the Justice of a royal soul, notably evidenced in a just Reign, shall make him that has it, more then a Conquerour in life, and nothing less then a Martyr at death; yea, it shall go near, (though not come home to the pitch of merit, for that's no proper phrase in reformed Oratory and Doctrine.) to deserve a Canonization, by the favour of him that accepts and rewards all admirable actions flowing from virtuous principles; yea, inasmuch as such a procedure in beneficence, must argue an intern fear of God, and a wisdom effected by it in the soul of the practitioner; who therefore is such to men, his equals in nature, and his inferiours in polity and order, because Charity commands him so to be, and the love of God towards him in his prelation above others, and in him, provoking him to crown worth in all he sees it in, and to proportion his favours according to the Justice of his divine office. I say these effects of Justice, resulting from the knowledge and practice of the Law, will so exhilarate and quicken the spirits of a Prince, that he will not onely be calm within, and not incumbered with the terrors of the Almighty, but be abundantly beloved by his Subjects, live in peace and plenty, dye renowned and lamented, 1 King. iii. last v. *All Israel heard of the Judgment which the King had judged, and they feared the King, for they saw that the wisdom of God was in him to do judgment.* Yea, and be made as the Chancellour reports, from the Apostle Saint Paul, *Be made one spirit with him*, that is, not onely submit to God, and follow him in all his Directions and Prescripts of virtue, as a good Child does, who makes his Fathers will his Law; *Nemo enim Deo conjungi nullo modo potest, in cuius voluntate situm non fit, vel illius disciplinam, & imperium sequi, vel ingrâte repudiare, cum autem beata, tota sit in divina conjunctione posita vita sequitur, ut astrictâ voluntate, nemo possit vitam beatam adipisci*, but also as a fruit and confectary of that conjunction, have a sameness of glory in Heaven, as they had a sameness of sovereignty here, always understanding the sameness *secundum mensuram hominis*, though *secundum veritatem Dei*, as true a conjunction with God in glory, as they had here in power, a reward commensurate to their actions rightly and religiously performed, *sic autem fit ut justis hominibus regnum illud immortale, non solum, ut merces, & premium, sed etiam, ut legitimum patrimonium patris sapientia, & benignitate fundamentum, optimo jure debeatur: si enim æquitatis ratio postulat, ut servis operâ suâ egregiè fun-ctis, merces domini benignitati consentanea persolvatur, si leges amicitie præscribunt, ut omnia bona sint amicis communia, si jure statutum est, ut filii legitimi in paternorum bonorum possessione collocentur, non obscurum est juris æterni rationem flagitare, ut summus ille omnium dominus qui bonorum amicus, & pater est, vel servis diligentibus, vel amicis fidelibus, vel filiis charissimis sempiterna gloria fructum largiatur, sicut Orosius.*

*Quomodo justitia vindex erit, qui exspoliat alios? quomodo suam amabit Remp. qui de The- sauris cogendis, dies, noctesque cogitat? quomodo rebus agen- dis advertet animum, qui lucro totus inhiat? Nihil rectè geritur quod rei privata studio geritur; nullum facinus generosum suscipitur absque fama ex- istimatione. Hanc verò in pra- cio non habet animus vilis, ab- jectusque, avaritia deditus. Savedra in Symbolis Politicis.*

Lib. i. De Justitia, p. 85.

*Sed quia lex sine gratia ista operari nequit, tibi illam super omnia explorare necesse est, legu quoque divina, & sacrarum scripturaram indagare scientiam,*

This

Rom. i. 16.

Lage P. Mirandul.  
in c. 5. Heptapli  
p. 30.

In locum.

Psal. l. 15.

Math. xxi. 22.

This is judiciously inserted here to abate too much recumbence on the Law, and too high admiration of Justice, as she is proposed by it, for as the beauty of the sun overdoted on, proved an argument to the *Eastern* world to adore it, and as the learning of Nature belotted *Philosophers* unreasonably to expend themselves about it, till they despised the wisdom of God and undervalued it, *the power of God to Salvation*, beneath their delirancies and Enthusiastique conceits, so is justice though beloved of God, and that which he commends to man as his duty and glory, apt to be mistaken as the onely acquirement of study, and the lesson of the Law alone, if the Prince be not informed of the proper cause, from whence onely it is blessed to be what it is; and that is God by his will in his word: indeed God permits us to own study as a means, and that by which he ordinarily begets and expatiates virtue in man: as the minde of man from what he reads or hears, has the principle of his actuation excited, so arts and study so Lawes and Systems of Justice may be owned by him as great helps and methods to those excellent ends; but God endures them not partakers in the glory of successe, and prevalence, which onely is his, and theirs onely by his permission, and so far as he pleases: so that though the Lawes of men, and of *England* may be most just, and such as can teach the Prince how to be just actively, and that to all the proportions of Kinglynesse; yet can it not do this *ex infra vi*, or *ratione innata potentie*, but must be helped to do this by grace, the gift of God: which grace and favour thus to be adjuvated, is, to be obtained by prayer; so *Solomon* obtained wisdom, and so every good thing is to be obtained. And to that must be added diligent Meditation of Scripture, not a light, and oscitant reading, but a deep and solid ruminatiō, not now and then, but constantly and affectively; *indagare* is to seek as men do at the bottom of wells, and in blinde corners, wherein, if they look not intently, they cannot finde what they seek. God will have us call earnestly and seek passionately for his blessing on our endeavours, before he will give us our desires: were justice an easie lesson, did the Law infallibly make the Student of it just, there were no more to do, then to read over the Law Books, and consider the judgements in them, and then the whole attainment of justice were had. But because the Law is but (of it self) a dead Letter to this quickning Issue, therefore God will have his fiat begg'd by Prayers, and this Method learned from his minde revealed; and the Knowledge of these, proves ever the readiest way to the blessing of them. The Law, saith *St. Paul*, is holy, and just, and good *Rom. vii. 12.* where *ἅγιος καὶ ἰσθός* is v. 14. explained by *πνευματικὸς, ὑποπὸς ἁ σπικιτυαλι βονο προσέτα*, God indeed has intended the Law, holy, *quoad ceremonialia*; just, *quoad judicialia*; good, *quoad moralia*; as *St. Thomas* observes: O but whatever it is, it proves not without God's blessing, that opens the Mystery, and applies the Energy of it to the understanding and will, and thence lets a man into the pleasure, and profit of it: nor is God's blessing on endeavours obtainable but according to the Enactiō of his word; therein he has taught, that Prayer is the Scaladōe of heaven, and that the violent in holy devotion take it by force, *ascendat oratio, ut descendat miseratio*; he has invited his to call, and promised to hear and answer them, and our Lord bid his Disciples ask, assuring them that whatsoever they shall ask the Father in his name, shall be given them: which the *Psalmist* in his own experience confirms so to be, as promised, *The Lord heareth the righteous, and his eares are open unto his cry*. As then to beg the blessing of God on studies, not onely humane, but those of Scripture, is the way to obtain it; so is study without it as un sanctified so mostly unsuccessfull, 'tis to labour for things of naught, 'tis to loose time on shadowes and bubbles, *sapienter descendere ad infernum*; so it followes in our Text,

*Cum dicat sacra Scriptura, quod vani sunt omnes in quibus non subsit scientia Dei, Sapientia. c. 13.*

Trasat. in lib.  
Solomonis.  
Euseb.  
Lib. 2. c. 17.Magdeburg. Cent.  
9. c. 4. p. 111.

This sentence is true, and collectable from Texts of holy writ, but as it is a part of the Book of wisdom, not written by *Solomon*, for *St. Jerom* sayes, *Liber sapientia apud Hebræos nusquam est, verum et ipse stilus Græcam magis eloquentiam redolet*; but by *Philo* probably, whom the learned think so to have named it, because *Christ* the wisdom of God is therein set forth both in his Advent and Passion, because of which, the *Jewes*, as the *Centurists* tell me, wholly rejected it; this Book I say, being written by

none

none of God's Penmen, ought not, as I humbly conceive, to be accounted *Canon* in the *Catholique Church*: though I know *Lorinus* and generally all the *Romanists* account it sacred, and part of the *Canon*, *Prefat. in Com. in lib. Sapientie* c. 1. but our Church rejects it, and so does *Chamier. lib. 5. c. De Canone*. The learned Bishop of *Durham*, now one of the Reverend Fathers of our Church, has notably vindicated the Canon of Scripture against *Apochryphal* intrusions, as well as unwritten Legends, to him therefore, as matchlesse in that Argument, I refer my Reader, humbly protesting against all Novelty on either extrem; for though some wholly reject, and others fondly extoll them to a kinde of rivalry with Scripture, yet our Churches moderation shall be my temper towards them, to allow them their place, as rules of Prudence, and direction for manners; not as foundations of faith, and this I suppose, has been ever the *Catholique* account of them; so St. *Augustine*, *Et si in iis invenitur aliqua veritas, tamen propter multa falsa, nulla est Canonica autoritas*; and *Philastrinus*, *Et si legi debent morum causa, à perfectis, non ab omnibus legi debent, quia non intelligentes multa addiderunt, & tulerunt, quæ voluerant Heretici*; and *Angelom*, when he gives the reason of their Reception in the Church, concludes yet, *Hi à quibusdam excipiuntur, non propterea à ut illos approbent, sed ea quæ necessaria sunt ad confirmandum, recipiant.*

*Secunda lectionis vel ordinis, Bellarminus De verbo Dei c. 4. King James to all Christian Monarchs p. 309. oper. Lib. 15. De Civitate Dei, c. 23. In Catalog. Hæres.*

*In c. 9. & 10. Regum.*

Though therefore most true it is, that all Knowledge that leads us not to God, in love to, admiration of, and conformity with him, be unprofitable, and therefore vain, forasmuch as it leaves a man, short of the best good, and the onely perfection, and argues his soul unactive to the immense nature of its Divinity in God's purpose of infusion; yet is not the book out of which this is quoted, sacred Canon: but God having made use of the Authour of that Book, as a notable Instancer of truth in that which the wisdom of the world often deceives great Scholars by, (as it did particularly that *Abel* Bishop of *St. Andrews*, who upon the Gate of the Cathedral there wrote, *Hec mihi sunt tria Lex, Canon, Philosophia*, and was wittily replied upon, *Te levant absque tria, fram, favor, vana sophia.*) There is reason there should be regard done it, next to that of Canon.

*Reddidit causam, quare in ea peccata de quibus supra dixit, inciderint Egyptii & Cananæ, ac illorum occasione incipit in genere tractare de idolorum superstitione quæ triplex erat; quedam enim animalia viva colebant pro diis; alia creaturas ut elementa, & corpora caelestia; alia vero etiam imagines verarum rerum. Jansenius Annotat. in Loc.*

*Spotswoods History Church Scotland. p. 44.*

*Hic igitur Princeps, dum adolescens es, & anima tua velut tabula rasa, depinge eam, ne in futurum, ipsa figuris minoris frangi delectabilis depingatur.*

Here the grave Knight improves the *Maxime* of *Philosophers*, *intus existens prohibet alienum*, for finding by experience the minde of man taken up with action, and youth the warmest, and most vicious part of life, (being the time from fifteen to twenty five,) carrying the man to good or evil with impetuosity, he bespeaks the Prince to anticipate vice by prepossession of his soul with virtue; and that he may the more successfully rivet on, and drive home his swafson; he not onely considers the soul as the mint, and formatory of all things, which have their rise in youth, and their ripeness in age; the soul of man in its actions on the body being like the seasons of the year, loaden with sap in the spring, and blowings and leaves after, and then with knitting and increase in the youth and Mid-summer of it, and then withering, and returning to its first Principle as the sap doth: but as a *Virgin-Table* on which there is a space to write what a man will, and hence as one that is yet a *Novice* in vice, and has a minde like the *Galaxy* pure and undebauched, he commends to him the fair *Arras* and *Imagery* of virtue to adorn himself with, and prays him if he would be one of *Justice his Triarii*, *sub vexillis innocentia subsidere*, to keep himself unarmed, *ὅταν ἀπογνοῦν ἡντι ἀλπίς, &c.* that he may come to the succour of justice, when things are desperate and hope of recovering almost ceases; for as in wars and Combats the bravest *Hectors* are those that are so bred up from their youth, because to them courage in, and contempt of danger is a second nature, and no need there is of terrifying them by such a Law as the *Megaritans* had, who decreed, to fight disorderly or fly cowardly, should bedearth; their resolution being *ἢ φάγειν ἢ δύναιτο μάχης ἀνδρῶν. &c.* not to fly any disadvantage of an enemy in battel, but either dye or overcome: so are they the most just men, whose youth

*Petr. Crinit. de honesta discipl. lib. 5. c. 9.*

*Dionysius Halli-catnall. lib. 5.*

*Herodot. lib. 7.*

is accustomed to justice, and who inure themselves to love Lawes, and orderly courses even from their Cradles: this was *Solomon's* reason in his counsel, *Train up a child in the trade of his youth, and he will not depart from it in his age*, Prov. xxii. 6. And the experience of the necessity, and importance hereof has so swayed with wise Parents, that as they have omitted no improvements of their children, which their tenderest ages were capable of: so have they chosen the most professed Masters and Tutors, both in learning, 'prudence and piety, to instruct them, and accounted them their Benefactors and Parents, as to those fair fortunes of fame and usefulness, which those educations have fitted them for, and admitted them unto in after-times.

*A prima adolescentia observandis sideribus deditus* Gassendus, Tom. 5. in prefat. ad vitam Tichon. Brahe.

Zuniger. *Theatrum vite humane*, vol. 1. lib. 4. p. 94, 95.

Heresbachius *de Instit. Principum liberis*.

Εἰ ἐκ τῆς ἡλικίας ἐκείνης ἐκείνην ἐκείνην, Laetius *in vita ejus*.

Picus Mirandul. lib. 2. c. 2.

For though natural ingenie give men great helps to excellency in what ever they undertake, yet the main is God's blessing upon

industry and diligence, provided those be prudently directed, and that they be so; helps of exact Masters are great furtherances, nor have any men in the world proved so noble Lustres to their Orbes, as those that have had their youths well seasoned with all the varieties of compleat institution, as was *Laurentius Medices*, whom *Mirandula* thus writes of, *Efficaci adeo vir ingenio, &c. Of so ready and generally a dexterous wit was he, that he seemed equally exact in every kind of ability, and has this admirable in him, that though he were ever taken up with state affairs, yet he always either spoke or meditated some learned and scientific thing*. And our *Edward the sixth*, of whom 'tis hard to write any thing to such a height of *Hyperbole*, which his just deserts advanced him not to be represented by. Since then it is incident to youth to be ill-principled, as he was, whom *Suetonius* reports, *Luxuriam, libidinem, crudelitatem veluti juvenili errore exercuit*; and as *Coligni*, who was heard often to say, *That neither Alexander nor Julius Cæsar were superiour to himself*, and the ill habits that are atcheived then, are seldom if ever receded from, but remain as dead flies to inquninate the compositions of the most eminent virtues. It is of high concernment to inure the minde of youth to virtue and humility, to courage and justice, for this will so ballast and steer the after-ages, that nothing will disseise them but death, which is the great Usurper of all mortal glories and triumphs in their determination.

*In præmio de ente & bono ad Angel. Politianum. p. 159.*

*In Nerone. c. 26.*

Which premised, our Chancellour does most worthily to attack the youth of our Prince with such defensatives, as may abortivate the Attempts of passion and lubricity upon him; for in that he commends not airy Romances, not Poëtiqve fictions, not parasitiqve drolleries, but sober reason and sacred Scripture to his rumination: what doth he lesse then endeaour to make his choice in youth, an *Iliads* to repose his fame in, and teach him to live in the glory of a matchlesse piety, far more then *Homer* did in his Poems; which yet *Tully* sayes were so contributive to their Author, *Ut nisi Ilias exstisset illa, idem tumulus qui corpus ejus contexerat, nomen ejus obruisset*.

*Bochartus prefat. in lib. de Coloniis*

And truly if the holy Scriptures, which are the most antient record extant, far before the *Peleponesian* war, beyond which *Thucydides* acknowledges in the Greek stories nothing is certain, and which was but about *Artaxerxes* and *Nehemiab's* time; I say, if the Scripture does discover to us, *Moses, Job, Samuel*, three notable Instances of sober youth, and such men in their age as few exceeded, and thus probably they became by the seasoning of their youth with piety and probity. Is there not much more from the authority of the Book, from whence these authorities are quoted, and the nature of the Instances hence made to perswade a Prince of reason and religion, then from any Ethniqve Author, or lesse credible Examples: surely I think, yes, and so I believe the Chancellour doubted not but to convince the Prince of; for since the word of God is a sword and a Hammer to cut asunder and mall down all opposition against and interposition between it and its end and drift, the Chancellour has done well to draw forth this weapon to terrifie all contradictions, that he did but fear probable; for since nothing became a young Prince more then readynesse to learn, and ductility to take learning in that Méthod his Tutors should convey it to him, it was a dexterous practice that our Chancellour uses to implant virtue by, to wit, the Commendation of Justice from the Law of God and the Law of *England*.

*Nè in futurum ipsa figuris minoris frugis delectabilibus depingatur, quia etiam, ut sapiens quidam ait, quod nova testa capit, inveterata sapit.*

As the former Clause had *argumentum ab utili*, so this has an argument *à damno contrarii*; if virtue be not superinduced, vice will be; for *natura non patitur vacuum*: so his Motive to virtue is not onely a *decoro* from the beauty, but a *damno evitato*: for if he give up himself to virtue (and abandon every evil way, and every evil consort; then there will be no vacuity for vanity and vice to portray it self on: that, as probably of old, *Candidates* in any arts had Tables in which they wrote, or on which drew; what they had to say or do, which when all was full, and no room left; those that had no place therein could not be carryed up to the Judges to be approved of and chosen: so from thence does he apply to the Prince the *simile*, beseeching him so to fill up the Virgin-Table of his minde with virtues of all kindes to his Princely compleatnesse; that when the heat and vigour of youth importunes him to release that severity his resolution has virtuoussly brought him under, he may deny those insinuations admission and acceptance, considering that what's once well done, ought not to be undone: nay; there is a kind of necessity to persist in an inexorablenesse, where to change is to become worse, and to retreat the field, to lose it.

For youth is the foundation of ages superstructure, and though it sometimes falls out, that dissolute youths prove stanch ages, yet mostly 'tis otherwaies, since the indications of Manhood are conjecturable even from youth. *Julius Caesar* told the world what he would be man, when but a boy, *animum habuit semper ingentia semper infinita expectentem*, and those drowsie inactivities that many have, who do *plus quiete, quam agendo, atque movendo proficere*, shew, that to place them in active lives is to make them unhappy and uselesse, so that the great secret of institution is to know the Genius and delight of youth, and to give it prospect and scope that way, not to abate their courage by continual droppings of displeasure, nor to raise their insolence by intemperate praises, but so to carry a mean in all things, that they may be kept warm, and not put into a flame and feaver of distemper, for *tantum ingenii, quantum ira*, and so to be cooled as not to be chilled and mortified; for if wisdom said, *vellem in juvene aliquid amputandum*, and *Politian* foretold of *Peter de Medicis*, that he was like to make a wise man, who was so forward a Boy; then there is danger in breaking the spirit of youth by frequent and imprudent discouragements. As barren-grounds brings forth nothing good, so over-lusty grounds too much to be good; extreames are the errors which Mediocrity corrects: such a strength of Soyl as enables production kindly and plentifully; and no more then does inable so to do, is good in ground. The like proportion of discretion is to be allowed to the Tillage of youth, neither too much severity, or too great liberty, but an even hand is to be exercised here: for hereby not onely the ingenuity will be dexterously fed, and the stomach of it kept quick and unnauseate, but the memory will also remain unbroken; and that being the *sine qua non* to all learning, *Quintilian* allows a youth onely capable of so much ingenuity to learn; as he has memory to retain; because it is the Christal Glasse, which has in it lifes, yea arts *Elixir*, set that over too great a flame, and the Glasse breaks and the *Elixir* is lost: burthen a youths memory with immense cares and manifold studies transcending his proportion, and he is ruined by an immemorativenesse: and again, wholly disuse memory, and it will shrivel up into a narrownesse and incapacity; the right use of memory is moderately to exercise it; for action perfits habits as food and motion increase life and all the concomitants of it; yea and this prudence will exercise it self towards youth in a right disposing of it to delights, and a real principling of it against ill manners, and ill Maxims. *Timothens* the Musician would have a double reward from those Scholars, whom he took to teach from other Masters; with whom they were entred; and his reason was, because he had a double labour with them, *dedocendi, docendi*; unlearning them what they had been ill taught, and then teaching them what was better: and true it is, that he that will be a good Tutor to youth, must imitate both the plastique Artist and the Carver, add and subtract as he sees occasion, as they

Cuspinian. in  
vita ejus.

Alexand. ab A-  
lexand. l. 2. c. 25.

do, which made *Michael Angelo* to say, *Sculpture was nothing else, but a purgation of superfluities*, which being better done abroad than at home, the cockerings of Parents fostering an impatience in Children to be corrected for faults, and directed how not hereafter to commit them, makes breeding of children of such consequence; that as the women of *Nombre de dios* seldom are brought to bed there, where they conceive, but chuse a better air in which to bring forth; so wits (saith Sir *Henry Wotton*) thrive better transplanted then in their native soyl. Youth then being such tinder, 'tis good to prevent that by care, which negligence makes fatal; For as in *Picture Gladnesse*, and *Grief*, though opposites in nature, are such Confiners each on other in art, that the least touch of a *Pensil* will translate a crying into a laughing face: so in education of youth, vice and virtue are so near Borderers one upon another, that it is easy to plant either of them on young stocks; and many hopeful Persons through the inobservance of Parents, Guardians, and Tutors shipwrack, which had their Pilots been knowing and careful, had brought the rich *Gargazon* of their mindes to a Market of gain to their reputation, and advantage to the age of its Production, which was the unhappinesse of *Robert de Veer*, of whom *Walsingham* thus writes, *Qui quidem juvenis aptus fuerit ad cuncta probitatis officia, si non desuisset ei in pueritia disciplina*. The palpability of which injury to Children is such, that even the grossest sort of men avoid it, and train up their Children to courses of life suitable to their aptitude, and probable to afford them supports for life. So in the next words it follows:

Page. 164. Of his works.

Page. 254.

In Hypodeigm. Neustriz. p. 146.

*Quis artifex tam negligens profectus sua prolis est, ut non eam dum pubescit artibus instruat, quibus postea vita solatia nanciscatur, sic lignarius faber secare de labro, Ferrarius ferire malleo filium instruit, & quem in spiritualibus ministrare cupit, literis imbui facit, sic & Princeps filium suum qui post eum populum regulabit, legibus instrui dnm minor est, convenit.*

Here the Chancellour tells the Prince, that the zeal that he has to his understanding of, and delight in the Law\* as the rule of *English* Justice, arises from that principle of paternal sagacity, which age and experience has brought to perfection in him, and his duty to *Henry* the sixth, his Liege Lord, and the Prince's Father, (now either in prison, or made away, could not in regard of the troubles of his life, and the absence of the Prince from him disenable him to) commanded from him. For though it be true, that young Princes, probable Heirs to Crowns, are in reputation above all other persons; yet may they want helps of instruction from their inferiours in station, who being zealous for their good, may not be rude and uncourtly, in communicating their counsels to them, in words pregnant, and with reasons solid. Nor will any but *Reboam's* despise it, since whatever love offers, is not to be reproached, though discretion may not accept it at the rate it is offered. If our Lord commended the Widows Mite cast into the Treasury, because she gave it freely according to the penury of her condition; surely any address that good will makes, is to be received with kindness, especially when it comes a *digno*, and *dignè*, when the Chancellour, a Father in years, presents to the Prince, as a youth of Majesty, his humble and hearty counsel; yea, indeed not to be concerned in the education and principing of this Prince, according to Honour, Law, and Justice, had been an offence against, and a breach of all the Laws of Charity and gratitude, which called the Chancellour forth to a more then usual manifestation of himself; that by producing a proportionation of care and zeal in Parents, *quâ* such to their Children, he might convince the Prince, that what other discipline to meaner mens Children is, that, the Justice of Law known, is to a Prince, who without it, will be to seek of one of the Flowers, and choicest Jewel of his Crown.

As therefore it is the care of worthy Parents to provide for their Children, fortunes to live splendidly upon, if God please to succeed them in that just and commendable sollicitousness; so is it no less their study, to instruct them in such Arts, Callings, and courses of life, as renders honest industry, and convenient support and reward. And this the very reason of nature, in the lowest impartment of it, teaches Parents to do to their Children

dren; for besides that Brutes do teach their young how to forrage, prowl, and provide for themselves, according to the nature of their kind. The most rude, as well as knowing of men do train up their Children in Callings, that they may know how to live another day, as the Proverb is. The Carpenter he accustoms his Child to cut with an Ax, and a Saw; the Smith to beat with the hammer; and if a Child prove, as that brave Butchers Son of *Ipswich* did Cardinal *woolsey*, so spritful and eager after Learning, so zealous in Religion, that a Clerk, or a Church-man he must be; then all that the Father can wrap and wring shall be expended in Schooling, and all this that youth may be fitted to the purpose his *genius* directs him to, and best furnishes him for performance of; so does it become Princes to express a proportionable care of their Sons educations, as their proof is of greater consequence for good or evil: nay, there is no such a *convenit*, that a common Parent should be intent on his Child, to provide him good breeding and a Calling on which he may live comfortably, as for a Prince, because his influence being general, the care of him, in order to a general good, concerns the generality, whom his not being virtuous, endangers to be in no degree happy. The Kingdom of *Macedon* was lost by the covetousness of *Perseus* the King of it. The Treason of one *Count Julian* was the cause that the *Moors* conquered *Spain*, and possessed it six or seven hundred years. The temerity of *Consul Varro*, in giving battle to *Hannibal*, was the loss of the *Romanes* at *Canna*. These, and such like evils, are produced by the defects of men in place, and therefore great care is to be used in their education and conduct, that they appear in their actions compleat to the extent of their quality, and the proportion of their influence. To promote which, in a more then ordinary measure, the Chancellour presents Justice, resident in the *English Law*, as the aptest aidant of him, and the thrickest enterprize he can set upon; yea, because the pliancy of youth gives advantage to the perfection of acquirements, and fixes attained habits in an unalterdness to their age, he perswades him to accept of serious and virtuous institution in his youth, and to believe that the *Laws of England* are the best study he can engage in, because they are not onely the effects of reason experienced and methodized, but the peculiar Rule of right Government, and Religious Order; the learning of which will be most facilitated, by beginning early, and persisting earnestly in the love and study of it from ones youth; which the Chancellour inculcates on him the rather, because he sees the inconveniencies that want of Justice in the minds of Princes, brings on them and their Subjects, making them not meditative of their respective duties, but vigilant to over-reach and afflict each other: which evil spirit, so contrary to God's institution, and approbation, he beseeches him to abhor and discredit, by being the example of a just Monarch, who by a religious and righteous Reign over Subjects; conjures them to a subjection suitable to his Government: and this, if he does, he will not onely be a Son of his incomparable Father *Henry* the sixth, but of his Heavenly Father *GOD*, whose place he in reigning bears. And so the sixth Chapter, and the Notes on it end.

Plutarchus 2.  
Emilio.  
Tolet. l. 5. c. 14.  
Liv. Dec. 3. lib. 2.

## CHAP. VII.

*Silente extunc Cancellario Princeps ipse sic exorsus est, viciisti me vir egregie suavissimâ oratione tuâ, quâ & animum meum ardore non minimo, legis fecisti sistere documentum.*

**T**His Chapter represents the Prince, as sweetly and gratefully recoyling upon the Chancellour, whom he not onely confesses potently oratorious, but sweetly a Victor of his Reason, into a resignation of practice to his Precept; so mild so ductile was our Prince, that though it was not *Job's* hard-maid, whose counsel he despised not, yet in that he was so observant of the wise advice of his inferiour, it argued him not onely not evil, like him the Prophet mentions, *who hated him that reproved in the gate*, but very

Plutarchus in  
vita eius.

Per intempestivam  
libertatem & su-  
perbam stultitiam  
Arianus lib. 8.  
de gestis Alexand.  
Venenum perimen-  
tis sub pallio consu-  
lentis.  
Garimbertus.

In Epist. de  
Theodorico.

Gladiatori quam  
Senatori propior.  
Vel Patercul. l. 2.

D Avila p. 25.  
F. 507.

Il perde souvent d'  
avoir trop bien  
servi.

very good, whom sober suasion, and affectionate tenderness did so effectually move, which is not ever the issue of good counsel given, to be kindly taken, and exactly followed. For mostly good advice is like to water spilt upon the ground, lightly set by, till it be dearly paid for, in the neglect of timely observance, which would have asserted the Sovereignty of it. *Solon* lessoned *Crasus* the right use of prosperity, by preparing for its contrary before it came, but the Philosopher was thought pedantique, and censured of pragmatique arrogance, till the time of *Crasus* his trouble rush'd on him; and then in his distress he cries out, *Solon, Solon*, wishing he had credited his premonition, when there might have been hopes of anticipating his now miserable surprize: *Cæsar* had an intimation not to be at the Senate the day he had his stab, but he contemned it, and lost his life by it. The Duke of *Guise*, in *Henry* the third of *France* his time, was fore-warned of his being slain not onely by nature, when she swooned a little before the Duke fate at Council, but by a note sent him by a friend; to neither of which he hearkening, was murdered; *Archias* had had notice of the Conspiracy against him, but he putting off the Messenger that brought it, *eis to auctu, till to morrow*, and it acted on him before he would hear the discovery of it. But the Prince here was better instructed by our Master, who prefaced his advice, not as *Calisthenes* fondly did, *by freedom more bold then becoming, more rude then welcome and friendly; bringing death in by the usbery of love, and using the cloak of counsel to palliate the dagger of dispatch*. No such projector, and half-faced Traytor, was our good Chancellor; a Gentleman he was born and bred, and a Christian spirit, his piety and misfortunes by God sanctified, had begot in him; and therefore he was not of Cardinal *Prato's* spirit, whom *Francis* the first of *France* condemned to an Iron Cage, which was onely able to keep his pride within compass, nor of Cardinal *Patavinus's*, who rather then miss his plenty and extravagancies, would comply with any party, and serve any vices: no such miscreant our Chancellour, he chose (good man) the noble attendance of his Princes Pilgrimage, before the enjoyment of his Country, without his King ruling in and over it, and being of so Masculine a soul, that, *as prosperity made him not to boast, adversity not complain, neither passionate; under all calm and conscientious*: this, I say, being the virtue of our Chancellour, deserved from the Prince the Title he here gives him, to be *vir Egregius*.

And justly such, for he was no *Rufus Egnatius*, more a *Ruffian* then a *Long-robe-man*, but one singled out to this service, *Egregius, quasi ex toto grege electus*, saith *Festus*; one, not to be pæred in his age, nor to be fellowed for loyalty, not like *Nazianzens* Country of *Ozizala*, abounding in flowers but barren of Corn, that is a man of shew and talk, but of no sincerity and truth of wisdom; no such man was our Chancellour, but a Sage of incomparable honour, piety and ability, whom no advantage would buy off from Loyalty, and such he being, good reason he should be accounted, as indeed he was *vir Egregius*, yea, and without dishonour might his Sovereign son say to him, *vicisti me suavissima oratione tua*; for surely whatever his judgement dictated fit, his love put him to promote to his Princes improvement; no unprincipally narrowness did he principle him in, or counsel him to follow; though undoubtedly he had *Metrodorus's* enough to sollicite him to accept of treachery to a good end: for his brave soul, like that of *Sextus Pompeius*, disdained to gain great things by indirect means; and thus he serving his Prince, could not but be acceptable to him, and the onely man of influence on him; yea happy in some sort beyond the usual proportion of superlative meriters; for least he should have enter commoned with them in the misfortunes that the brave old Marshal *Ademorancy* (had by a remove from *Conit*, and *Mounsiert de Vins* notwithstanding his receiving a Bullet at the Siege of *Rochel* into his body to save King *Henry the third*, to his grief found true, according to the saying of *Lewis the ninth* of *France*, *too good service often undoes many men*.) God called him out of life before he came to try what compensation his loyalty would have; so that as he lived so he dyed an honourable Victor over all difficulties, and received the testimony, that he had not onely asserted reason, but advantaged it by suaviloquious Oratory, which is here termed, *suavis oratio*.

And indeed if any thing have Potency in it, 'tis the Rhetorique of affection, and the words of the soul warbled from a passionate and surpris'd lip, for its near allyance to if not sameness with the heart, having the merit of all possible acceptation, can never



never fail of the utmost reception of kindnesse, and that is, victory over the ear and heart it addresses to: this pleasing effect, language expresses by sweetnesse as delectable to the ear as so also to the tast, to both which senses 'tis applyed in *Prov. ix. 17.* and *xx. 17.* *Stollen waters are said to be sweet, and bread of deceit is sweet.* In *Job. xx. 12.* wickednesse is termed sweet: the influence of the Pleiades are termed sweet, xxxviii. 31. friendly counsel is termed sweet, *Psal. lv. 14.* quiet sleep, sweet, *Prov. iii. 24.* supply in necessity, sweet, *xxvii. 7.* yea, God himself condescending to the termes of mortal infirmity and apprehension, expresses his value of persons and things under this notion of sweet, *Cant. ii. 14.* *Let me hear thy voice, for sweet is thy voice*; and the Church is permitted, yea dictated to language her holy Enamourments to Christ in that Pathetique acclamation of his sweetnesse, *Cant. v. 13.* *His cheeks (sayes she of Christ) are as a bed of spices, as sweet flowers, his lips like Lillies dropping sweet smelling Myrrhe,* and *Cant. ii. 3.* she saies, *his fruit was sweet unto my tast,* the delight that God takes in his servants and their sacrifices is termed sweet, *We are unto God (saith St. Paul 2 Cor. ii. 15.) a sweet savour of Christ,* and *Phil. iv. 18.* *An odour of a sweet smell, a sacrifice acceptable and well-pleasing to God;* yea the sacrifice of our Lord Jesus is termed *an offering and a sacrifice to God for a sweet-smelling savour,* *Ephes. v. 2.*

So that the Prince in acknowledging the Chancellours satisfaction of his doubts, and delighting his eares with words of reason and eloquence adapted to the Conquest of his understanding and will, may well be expected, to not onely honour his Chancellours gravity and learning, but to own his particular seisure into the power of efficacy of them. As it followes,

*Qua & animum meum ardore non minimo legis fecisti scire documenta.*

By this it should seem, the Chancellor baited his hookes to catch the Prince by very subtilly like a Master of the Assembly, not with airy notions and soft triflings of can-  
Eraſm. Adaq. Chil. 1. Cap. 6. p. 254.  
 ting words, but *Jovis & Regis Cerebro, with the brain of Jupiter,* with that *Νέκταρος* *and that flower of Nectar,* that *ἠγαυδίας γάλα,* that milk of Venus, yea that *Ἥλενης βρώματα,* that food of Helen, which the Poets expresse their Hyperbolique fancies in; for Princes being born, what Subjects are by accomplishment, cannot be surprized with ordinary forces of reason and quaintnesse, their Mother understandings and abilities being Paramount to them. In that therefore the Text sayes, *vicisti me suavi oratione tua scire documenta legis,* and that, *non minimo ardore,* it insinuates to us that there was somewhat above ordinary art, expressed by the Chancellor, upon which so notable an effect followed, and 'tis easie to be believed, if the consideration of the Chancellor's Origin, Education, Practice, Office, Ingenuity, all which speak him probable to be a Master of language, as well as judgement; yea, and if we consider to whom he applyes himself, and about what Errand; to a Prince, and for his polishing to a general after-benefit, these things premised will easily offer a conclusion on grounds of reason, that he did speak apt words to every purpose of prevalence, yea, and in that he bore away the testimony of making the discovery he tended to, our Chancellor seemes more fortunated by God, then every brave Actor in his brave action is; for whereas they often miscarry through the Inconformity of events to the latitude of their Projects, he seems (if this language be the Prince's) to be arrived at absolute successe, and to be in the Conclusion what he intended in the Attempt: the Prince his affection, and respect he has gained, no man has his eares, no delight his heart more then the Chancellor and his counsel has, the onely scruple resting unsatisfied now, is to appear, which if he can resolve; he's what he would be, and that's shortly this,

*Sed tamen duobus me huc illucque agitantibus animus ipse affigitur, ut tanquam in turbido mari cymba, nesciat quorsum dirigere proras; unum est dum recolat quot annorum curriculis legis addiscentes earum studiose conferant, antequam sufficientem earundem peritiam nanciscantur, quo timet animus ipse, ne consimiliter ego prateritam annos juventutis mea, &c.*

Herein

Herein the Text-Master brings in the Prince acting a part of great anxiety, and as it were labouring against Wind and tyde the swift stream of his Masterships reason; for his Highnes being but young and unfixed, and being mismatched by such a masculine and sturdy Artist, who was to seek of no Ram, Petar, Morter-piece, or Canon of Reason and Art, to make his way through and through this Royal Stripling, had so distressed his Profelyte, that he professes no Cock-boat rides more untowardly, and with greater danger of shipwrack; then he does in the high sea, & on the superficies of those surly doubts, and dissatisfactions, that possess him to a menace of o're-bearing him, fain he would please the grave Chancellour, in being, as he would have him, a Student of the Law by knowledge, as well as the probable Protector of it by office, and to the acquisition of skill in it, any reasonable time and toyl he would allow the study of it, but he fears the Lyon in the way that stands between the Law and his attainment, he sees many men spend many years in study of that, and that onely, and the abstrusity of it infructuates all their endeavours, their pleasure, their age, their strength intending its vestal fire spends; yet they find no Elixar of perfection, still they are to learn, and cases every day emerge to their non-plussing, and loath the Prince is to engage on a long, desperate, profitless attempt, which will, after many years, and much industry, return him nothing but unsatisfiedness, loath the Prince is to have vanity and vexation of spirit inscribed on all his pains and time allotted the study of the Law. This is the force of his first Argument.

His next is, *An Anglia legum, vel civilium, qua per orbem per celebres sunt, studio operam dabo. Nam non nisi optimis legibus populum regere licet, etiam ut dicit Philosophus, natura deprecatur optima.* Indeed he is willing to be directed what well and wisely to do, and since he cannot better be by any then this aged Knight, learned Judge, and incomparable Chancellour, to whom he promises indisputable obedience, (*Quare libenter super his quod tu consulis, auscultaremus,* are his very words.) He desires solution, which of all Laws are the best to study to know, and know to govern by. Whether the particulare municiple Laws of this Island, which are purely strange to all Nations, or the Laws *Romane* and *Imperial*, which are the directory of all civilized Nations, and are as famous for their justice and reason, as the *Romane* Government, which introduced them, was for its Conquest and prevalence. This is the sum of his Argument, which because he starts not out of curiosity, as one nice and inquisitive, but that thereby he might be skilled in the best method of Law, to the best end, order, peace, and charity. This evidence of his choice to be of the best, when he shall be directed to it, adds emphasis to the Arguments scruple, and calls for the answerers care and cordiality, which the Chancellour assents to undertake, professing, that though there be weight in the objections, and they are worthy the Son of a King to make them: yet is not the Law under such an obscurity of phrase and form, nor the Books of it so many and divers, but that as little time and toil will be taken up in the study of them, as of other Laws; and thereupon he proceeds to answer the particulars in the following Chapter, in these words.

In immenso aliarum super alias acervatarum legum cumulo, fons omnis publici privati que juris, Livijs, De x. Tabulis.

Q. 1. Infit. p. 75.

#### CHAP. VIII.

*Philosophus in primo Physicorum dicit, quod tunc unum quodque scire arbitramur, cum causas & principia ejus cognoscamus usque ad elementa.*

**T**His our Chancellour begins his Reply to the Prince, that he may appear to him resolved, to give his scruples a fit and full satisfaction. The Law indeed, the Prince very much seemed to approve, and the study of it to acknowledge convenient, and in a sort necessary for a Prince; but that which he doubted of, was his possibility to attain it to any competent degree, in some convenient time; as also which of the Laws he should adhere to as his choice, to study and govern by. To both these our Text-Master gives solution in this Chapter, and that by such a breadth and depth of foundation, as will carry currantly all his superstructure. To explicate which his design, he brings in what he has to write with this Position of *Aristotels*, *That every thing is sh:n said to be*

be known and understood, when its cause and principle, even to its elements, is considered and ruminated upon.

This sentence quoted out of the 1. *Phys.* is, in sense, in other places of that Author, *εἰδέναι δὲ τὸ πρῶτον οὐδὲν οὐδὲν, &c.* Nor can we be said to know any thing, till we apprehend the cause of it, for which, and by which it is such. So *Analytic. Poster. lib. 2. c. 11.* and in other places. Yea since God has so connected things in nature, that they depend on him, and from him on each other, and pass through changes and degrees to their accomplishment, there is no understanding of the World in its mass, but from the apprehension of its *πρῶτον αἴτιον*, its efficient cause, *τὸ ὅθεν ἔσται*, the cause from whence, *τὸ ἐξ ἧς ἔσται*, the matter of which, *τὸ πρὸς ὅ, ἢ τὸ ἑξ ἧς ἔσται*, the end for which, or the exemplar after which it is made. For since the material principle of the World is *Atoms*, which amassed, makes by their infinity the Moles to swell in bulk, and by God's art in Natures work, to be in very deed beautiful, as it is necessary to contemplate, and venerate God as the prime cause and efficient; for they are both one, though nominally they differ; so is it also the readiest and onely way to conceive rationally and judiciously of the whole by the apprehension of the minute, particles, and small beginnings of them; and the advances they being (blessed by God) make to after grandeur. Which *Philosophers*, as wise searchers after nature and reason, do therefore busie themselves in, because they find the ascent to a close view, and accurate prospect of them attainable onely by these degrees of motion from the Centre, *God and Nature*, to the Circumference, effects of them. Three words then here are proposed to couch the gradations of knowledge under; *the causes, principles, elements of things*: which the Commentator, probably *Averroes*, thus explains; *Per principia intellexit causas efficientes, &c.* By the principles, he understands the causes efficient; by the causes, the causes final; by the Elements, matter and form. Thus that Commentator. Indeed, without these three, understood in some competent measure, knowledge of any natural body or thing, is but dark and undelightful.

The principle of every thing some say is the nature, rather than the matter of it; so says the *Philosopher*, for he makes it somewhat above what is gross; therefore he says, *ὅθεν ἀρτὴ τὸ πρῶτον αἴτιον*, that from which any thing moves, is called the principle of it; and *πρῶτον αἴτιον ἢ πρῶτον*, this is common to all beginnings; to be first in order of time, existence and influence. Hence is it, that *Philosophers* call these principles efficient causes, because they are the Parents of all increase, and the products of all existence; for whatever is, is, what it is, by force and actuation of its principle, God the first cause, and his benediction on the specific nature, to which it appertains, and is principle. Thus the principle of all Being is in God, and the delegation of it from him to every created form and species under him. And therefore that passage of the Apostle, *In him we live, and move, and have our being*, is exegetical of our dependance on God, as our supream and sovereign principle. The causes here termed final, are in effect, the same with principles: so says the *Philosopher*, *πρῶτον γινώσκον*, that is, a principle whence any thing is known: therefore inasmuch as effects discover causes, and so things, they are principles, *ἐξ ἧς γίνονται*, &c. that is, a cause from which any thing is what it is, saith the same *Philosopher*. Now though there be variety of causes, according to the several notion of men and things, which *Philosophers* and School-men abound in, to a needless extravagancy, and men lose their time and judgment sometimes, in considering about them in the vastness and variety of their elaboration; yet as they are soberly stated and considered, they are very useful, and assistant to the understanding of all Science. For causes have order in their operation, because the end is the reason of the agent, as the Schools say, and thereupon because acts declare ends; (for knowledge is not *secundum quod est in potentia, sed quod est in actu*) we are onely made knowing by the perception of causes in their actings, which we call effects; or the ends of their regency over, and energy in things. And thus God being the cause of the cause, is cause of the thing caused, because he gave to such causes power in subserviency to him the chief, and what the under causes does, the upper cause is entitled to; either as effecting, or permitting. For though reason be the order of procession from the cause, yet the cause is the impulse producing the act: And hence is it, that some learned men have derived *causa* from *καύσις*, *ardor* and *incendium*. because men are inflamed and set on fire with desire to do, as if they could do no other, but do what they do.

Lib 2. Natur. Auct. Fract. 3. c. 3. p. 330. C. 19. Tract 4. De Cognit. primarum principiorum.

Glassend. Physic. sect. 1. lib. 3. De Materiali rerum Principio. c. 8.

Lib 4. De Causis rerum. c. 1. vol 1. p. 283.

ἀπὸ τοῦ δὲ οὐ-  
σις μᾶλλον ἢ  
ἕλκε. Lib. 1.  
De partu ani-  
mal. c. 2.  
5 Metaphys. c. 1.  
De causis Ana-  
lytic. lib. 2. Tract.  
3. c. 11.

Gassendus lib. 4.  
De causa effici-  
ente rerum. c. 2.  
c. 5. c. 7.

Metaphys. lib. 5.  
c. 1.  
Lib. 5. c. 2.

Causa habent in-  
ter se ordinem,  
quia finis est ratio  
Agentis, Sanctus  
Thom. prima  
parte, q. 5. art. 2.

Vox elementis fuerit primitiua attributa igni, aeri, aqua, terra, hoc est, quatuor corporibus. Gassendus lib. 3. De Materiali Principio. c. 1. To 1. p. 226.

Quippe author natura, legibus natura non adiungitur, ac infinita potest. xi. quã distantiã illam quasi usitata saperet, qua interiacet inter aliquid & nihil. Idem.

Lib. 4. De Cælo, c. 5.

Τὸ πρῶτον ἐνυπάρχον ἐκείνω, &c. Lib. 4. Metaph. c. 4.

Metaphys. lib. 4. c. 3.

Litera Elementi figura, elementum litera vis & potestas propria. Priscianus, lib. 1. De Litera.

Non enim inquit ex una re sicut Thales ex humore sex ex suis propriis principiis quasque res nasci putavit, qua verum principia singularium credidit esse infinita. Sauctus Augustinus De Araxmiando. apud Gassend. Physic. sect. 1. lib. 3. Tom. 1 p. 237.

Suidas in verbo

Ἀρχή

Lib. 1. c. 1. 17. Cicero 1. De Orato.

literarum elementa, as Quintilian terms the ABC of Arts, are to be learned, because they are the principles of Speech and Science, and lead to the greater mark, which they call matter and form, that which distinguishes all bodies each from other, and defines their particular Species. Thus knowledge is perfected by understanding the principle, whence all things arose, God's power, goodness, wisdom, manifested in natures order and efficacy. The Causes final, or end, wherefore God reduced them to the position they are in, and has given them a Law which they cannot disobey without Rebellion and Apostacy, that is, his glory and praise, for which they are, and were all created. And thus to know to the least punct of our duty, as rational Creatures, is that which the Philosopher intends by scire arbitramur, because made up of the knowledge of causes and principles to the very Elements, that is, somewhat of insight into the whole Chain of Art, and into every Link of it.

*In legibus verò, non sunt materia & forma, ut in Physicis, & Compositis; sed tamen sunt in iis elementa quadam, unde ipse profluunt, ut ex materia & forma, qua sunt consuetudines, Statuta & jus Natura, ex quibus sunt omnia iura regni, ut ex materia & forma sunt queque naturalia.*

Here the Text-Master shewes the agreement which is between natural Bodies, that consist of matter and form, and politique bodies, beautified by Lawes of order and use, which have the same accommodations to the ends of their contexture, as natural bodies have to the purpose of theirs; as the matter of bodies natural are elementary, and the form flowing from the soulary Nature of every species is active and energical according to the denomination of its being, so is there in the Lawes, reason, wisdom, justice, aptly worded, and orderly digested, which is called *anima Legis*, and ushers in *formam Legis*, which the Lawyers understand by *modo & forma*, and *forma legalis*, so frequent amongst them.

Now the Chancellour sayes, these Elements of the Lawes do give occasion to those effluxions, which are equally correspondent in the Law to matter and form in natural bodies, and of three sorts he makes them, (as Sir Edward Cooke does also after him;) Customes, Statutes, and the Law of Nature. Mr. Perkins makes six grounds of the Law of England. First, the Law of Reason. Secondly, the Law of God. Thirdly, General Customs of the Realm. Fourthly, Principles or Maxims. Fifthly, Particular Customs. Sixthly, Statutes.

1 Instit. c. 10. lib. 2. sect. 165.

Doctor & Student, p. 8. b.

The Law of Nature what it is, is to high for me to determine, onely the use of it, God foreseeing, stamped the Characters of it on all mens minds: so that it is the seeds, and prime bounty of God and nature, whence what ever is right and Law in the world between man and man, proceeds, thus Hepperus; and the same learned man, after he has spent much profitable discourse about it, concludes, That nothing is more peculiar to man to excell in, then Justice, for the practice of which virtue God especially created him, and appointed him the earthly Temple of it. And hence is it, that the scripture has not onely commended Justice, and set forth God the President and reward of it, but in the Law of Nature has so instituted man, that if he follow it precisely, he cannot but in propriis actionibus convenienter agere, that is, do every thing according to what God requires, and the Law of his makers pleasure: for though positive Lawes do variate according to diversity of men and times, yet this Law of Nature being moral and permanent alters not, but is central and fixed, and so the main ingredient of all obligations to virtue, and abhorrencies of the contrary. And on this ground the Law of England is said to be built upon the Law of Nature, because it opposes every thing malum per se, and discovers the turpitude of it, and promotes what ever is just, honest, and of good report, which is the sum and end of the Law of Nature; concerning which, see the notes on the third Chapter.

Prima illa Dicitur, ac nata a deo sine fontina in animis nostris insita, unde quicquid iuris est, est legitimum, enascentur ubi 3. Tit. 7. de vera iustitia Lib. 3. Tit. 24.

Vide Tractatum Durandi Episcopi Meldensis de Legibus circa iniuriam.

Customes are the second Triangle, and these are of an high nature, so that in the Philosopher's sense, they are the great Regents in all the world, so favourable to evil, that God charges the vanity and provocation of Idolatry to the account of Ethnique customes learned by Israel, and reproaches them for vain, Jer. x. 3. but these are not the Customes the common-Law is built upon, for whereas they are mala per se, and tend to evil, setting up mischief as a Law. The Customes of the Common-Law are the harmlesse and approved usages of the Nation, time out of mind, and without interruption, and these are so far from being evil, or if they be so, from being continued such, that nothing of that nature can justly be charged upon them, which the Prudence of Kings in Parliament have not, and may further as they see wisely and worthily fit, remedy. The Jewes (great doters on Customes) have several words to expresse them by, דרך, denoting the addiction men have to it, while they make it their path and way to walk in, natural to and beloved by them, Ezech. xx. 20. and Gen xxxi. 35. by דרכיה, so Ps. cx. 4. Then art a Priest for ever, על דרכיה, secundum morem vel consuetudinem Melchisedec, which the Authour to the Hebrews renders κατὰ τὸν ῥαξιν, according to the order of Melchisedec, or as vers. 7. κατὰ τὸν ὁμοιωτισμὸν, according to the likenesse of Melchisedec.: by שפשו, denoting a long use from the Law of Nature and Nations, by סקול, Levit. xviii. last, derived from סקל, statueret, insculpere, vel imprimere effigiem, alluding to the force of Custome, which transformes man from what he was into somewhat which Custome makes him to be, as a Carver makes a peice of wood rude and rough, by his art, symmetrical and lovely, or the contrary; so Custome rules men to what it self in nature is, pro decreto & statuto habetur, saith Kimchi, these words so various and significant expresse the Jewish notion of Customes. The Greeks called Custom ὁ νόμος ἀγραπτός, the unwritten Law; ἀπὸ τοῦ σημείου, as a sign or direction to what is to be done, and whereas Law is written Custome, that is, the mos gentis vel loci, is presumed for the good of people, and by them as such observed: this Custome as here understood is not, as Suidas sayes, εὐνην ἀνθρώπων, &c. onely the invention of men, but the act of life and time, not working τρεφνὸν καὶ φόβον, by force and fear as Lawes of penalty do, but by inclining men willingly to a resignation of themselves to it, makes in time it self absolute Lord of them, and brings them under a pleasing subjection, in which they are resolute and unwearied. Our Law under the word Custome couches many things, 1. Common-Law, 2. Statute Law, 3. Particular Customes. Rent-Services. 5. Tributes and Impositions. 6. Subsidies.

ὅτι τὸ νόμος ῥαξιν λέγουσι, ὅτι τὰ νόμοι εὐνην.

Suidas in verbo νόμος.

2 Instit. p. 58.

1 Instit. p. 100.

Lib. 1. c. 3.

But these are large notions of Custome, that which the Text intends by Custome, is more presse common usage, time out of minde, and peaceable without lawfull interruption; of this Bracton a learned Judge in Henry the third his time writes thus, Consuetudo quandoque, &c. Custome sometimes is observed for a Law, especially where it is generally approved, for there it is the Law; for use of ancient times and customes is not of mean authority. This of Bracton is the voice of Policy and Gubernative wisdom in all Lawes, Inveterata consuetudo, &c. Ancient Custome is most deservedly allowed Law,

saith *Julian*; the like say *Ulpian*, *Hermogenianus*, *Paulus*, *Calistratus*, *Mo destinus*, and all Lawyers, yea those Passages in the Civil Lawes, *consuetudo dat jurisdictionem, est optima Legum interpret*, That Custome gives Jurisdiction, is the best interpreter of Law, that the Custom of a place derogat legi in illo loco, prevailes against the rule of Law in that place: *ΕΞΗΚ' jus or justitia*, Homer takes also for *ἔθ' & Custome*, yet such a custome, as is *jure receptum*. These and hundreds of such

Lib. 94. Digest. Digest. lib. 1. Tit. 3. 32.  
p. 21.  
Digest. lib. 3. Tit. 4. Gloss. margent. p. 407.  
Digest. lib. 1. Tit. 3. de legibus, Senatūque  
consultis. p. 82.

affirmations indulgent to local customes, declare the vigour and virtue of Customes, as that unwritten Law that is antient, acceptable, and convenient for that place; hence is it, that the Law of

England allows Customes (cloathed with time and usage, long and quiet without legal interruption) of great Authority: for as every place almost, so every Court has its peculiar Customes, which are Lawes to it, yea the High Court of Parliament, *suis propriis consuetudinibus subsistit*, has its peculiar Customes, which are called *lex & consuetudo Parliamenti*; and though, saith Sir Edward Cook, *Ista lex ab omnibus est querenda, à multis ignorata, à paucis cognita*, yet such a Law and Custome that sacred *Sanbedrim* hath. Indeed Customes, *mala per se*, are void in Law, and so are those that are contrary to National Justice; as were the Customes in 43 E. 3. mentioned by Sir Edward Cook, and that other in the case of *William of Brimington*,

2 Infit. p. 46.  
p. 654.

*Consuetudo licet magna sit auctoritatis, nunquam tamen praesudicat veritati*, Reg. Juris.

17 Ed. 2. c. 16.

Cambden in Gloucester Shire p. 385.

and the Tenants of *Bramsgreen* and *Norton*, which therefore were judged void, because they were contrary to reason: and some will be apt to say of that nature, may be that Custome in some part of *Gloucester-shire*, That the goods and Lands of condemned persons fall into the King's hands onely for a year and a day, and after that expired, return to the next heires: but in other cases where

Customes are reasonable, just and good, there they are presumed of great validity, and to have a good and sage Commencement, though we know not the precise moment and manner of it, so resolves the learned *Selden* in the many cases he instances in. And so is the Judgement of *Linwood*, who describes the proofs of custome thus, the witnesses are upon their Oathes and Consciences to say, *Quod semper sic viderunt tempore suo*, &c. That they have always seen it so in their time, and heard it so from their Elders; neither did they ever hear or know the contrary, and that the common Opinion is, that so it is, and has been in all times, in the memory of all men; and it is required, saith he, that the witnesses that depose a Custome should be born in, and dwellers near the Country and place, where the Controversy is: thus *Linwood* in the case of a particular Custome, which yet is far short of a general one: for that being the Common-Law of the Nation beares down all pleas against it, that are not established by regal Sanction in Parliament, which the Text calls *Statuta*. These are the Lawes of the King made by the Assent of the three Estates his Subjects by his Authority called and kept together; Statutes, not Statutes of *Omni*, of disloyalty, treachery, disorder, but Statutes of loyalty, piety, probity, humbly preferred, judiciously considered, sovereignly passed; these, and these onely our Lawes allows Statutes; favours of the King to his people upon the presentations of their requests by their Trustees the Commons, and the Advise and Assent of the Noble Peers, the Lords of the Clergy and Laity, to his Majesty for his Assent and Consent, which is the inspiration of their soul into them. These Lawes thus formed and emanating are the third Basis of our Lawes, and indeed the most probable Engine of our rectification imaginable, since by this blessed act of wise and worthy Legislation, Lawes in cases omitted may be made, in cases dubious explained, in cases obsolete be vacated, in cases hard be indulged; in all cases be accomodated to God's glory, the King's honour, and safety, the Peers lustre and dignity, the peoples peace and prosperity. But because, of this I should have occasion to write in the notes on the 18. Chap. He desist further procedure on them here.

Titles honour p.  
714. 715.

Lib. 3. fol. 69.

Doffor and Student c. 7.

See the 7. Stat. of  
Eliz. c. 23.

4 Infit. p. 25.  
notes on Chap. 1.  
of Parliaments.

Cook Jurisdic.  
Parliamenti. p.  
24. 25.  
See the Preamble  
to the Stat. 7 H. 4.  
c. 1. Ann. Dom.  
1405.

Onely in that the Chancellour says, all the Lawes of England do proceed from these as their Elements, and constituent parts, there is a good Argument to admire the Lawes of England, as most useful in, and most just for the Government of the people. For since the wisdom of God in the Law of Nature, the Customs of People in the common consent of the Nation, the divine soul and sentence of the King assisted with his Peers, reverend Prelates, and renowned Lay-Lords, (men in whose Counsel, there is science, serioufness, and security.) Since these, I say, do all co-operate in maintaining the Lawes in this their Triangularity, there is a most undeniable Argument, that the Law of  
England

England is a choice Law, extracted from, composed of the quintessence of all Laws, and suitable to all gubernative purposes, and in no sort defective to the carrying on of piety to God, loyalty to the Prince, and charity to one another. And therefore, though the Rules and forms of Law, are the marrow of the knowledge of it, yet are the letters of which the words, and the words which make the sense of Law, as of all other Learning, to be well understood by the Student, since they are as the elements of compound bodies, the grounds and inchoat ducts to the more consequential parts. 'Tis true, as in the body, the eye, brain, heart, face, as the most conspicuous and useful parts, are first honoured, yet cannot the body subsist, nor the anatomist exactly read of the structure of it, without knowledge of the less useful and honourable parts, and consideration of them in their respective position and use: so in Arts and Sciences, as this of the Law, without elementary knowledge, all other is unattainable, not possible to subsist: therefore the Text says, *Et ut ex literis, qua etiam elementa appellantur, sunt omnia que leguntur.* What Atomes are to the Earth, Drops to the Ocean, Rays to the Sun, Sparkles to the Center of fire, that are Letters to Science. Nature works gradually, and her increment is by progression from little to more, and from more to most of her capacity. And hence is it, that as Painters that are Masters in Picture, have Pensils of all sizes and colours, intense and remiss, in the equality of whose mixture, the vigour of colours, mediocrities of shades consist: so is there in the Rule of Nature such a Lesson taught us, as first to inure our minds to the smaller and less burthenome things of Science, Letters, before we approach those that are ingenerated by their introduction: Principles must, in this sense, follow Elements, as words do succeed Letters.

*Principia autem, que commentator dicit esse causas efficientes, sunt quadam universalia, qua in legibus Angliae docti similiter, & Mathematici maximas vocant, Rhetorici Paradoxas, & Civilista regulas juris.*

The Chancellour pretermits no Animadversion that may adorn the Law, and make it venust and taking, for though it has its Pendants and knots of Elements, which trick and adorn onely, yet has it also the more elaborate and becoming parts of lovelyness and feature, which are so necessary to its operation, and rational acceptance, that without them it would not evidence so just and ingenuous a merit. Now these he calls *Maxims*, which carries a sense of grandeur in it, as intending to dignifie the things understood by it with a note of transcendency. These *Maxims* are the *μεγαλὴ τῆς τέχνης*, the depths, and restorative quintessences of Law; that from whence all inferior things have their invigoration and spiriting. Thus the *Lawyers*, as the *Mathematicians* in their Art call *Maxims*, such notions as are the best in their kind, and productive of many excellent illations from them, and that from the authority of Antiquity, which not onely termed God the Architect of the Universe, *Maximus*, but all things superlative in their kind by this Title. The greatest Overseer of the *Roman* Ward, was termed *Maximus Curi*, and *Celsus* calls Land held by a high tenure, *Optimus Maximus fundus*, and the *Lady Princess* of the *Vestal Nuns*, is by *Valerius* and *Suetonius*, called *Maxima Virgo*, and *Maxima Vestalis*: so that our Lawyer by *Maximus* understands, a sure foundation or ground of Art, and a conclusion of Reason. So saith Sir *Edward Cook*, and *Flowden* seconds him, *Quia Maxima est, &c. Because great is its authority and dignity, as that reason which is indisputable, and not to be contradicted.* So is the Authority of 12 *Henry* the first, *N'est ny a disputer l'ancien principes del Ley.* Of the same nature also are the *Rhetoricians Paradoxes*, *παράδοξον ἀπερὶ δυνάστον δαυμασδν*, that which is beyond the common notion of men: and admirable in their opinion, is a Paradox. So the *Civilians* have their notable Observations represented under what is equivalent to either of these, and they call them *Rules*, which they define, a *Rule*, say they, is a delivery made of many things, by a compendious narrative of them, that is, a short account of the substance of things of moment. And as the Law is by *Chryssippus* called *πῦλον βασιλεύς*, the King of all; so the Rule is,

*Edit. Basil. Moris certè, & instituta nostra, jusque omnino moribus nostris introductum exceptumque, quas consuetudines dicimus.*  
*Budzew in Pandect. prioris. p. 314.*  
*1 Iustit. p. 10.*  
*Flowd. Com. p. 27. b.*  
*Doctor & Stud. c. 8.*  
*Suidas in verbo.*

*Regula est plurimum rerum compendiosa narratio facta traditio.*  
*Marcianus lib. 10. Instit. Tit. 2.*

*Legis*

## A Commentary upon FORTESCUE.

*Legis Regina*, the Queen, and most excellent part of the Law; that which there is no receding from, but upon unavoidable necessity. *It needeth not to assign any reason, why at first they were received for Maxims, for it sufficeth that they be not against the Law of Reason, nor the Law of God, and that they have always been taken for a Law;* saith Doctor and Student.

Doct. & Stud.  
c. 1.

*Ipsa reverà non argumentorum vi aut demonstrationibus logicis dignoscuntur, sed, ut secundo Posteriorum docetur, inductione, vià sensus, & memoria adipiscuntur.*

In these words, the Text-Master shews the nature of principles transcending grosse-ness of sense, and therefore not to be examined by, and calculated exactly according to it. For as in matters of Faith, there is no reduction of it to the narrow limits of humane brutishness; but the Rule of belief is the persuasion of the truth believed, & the recumbency of the believer on God, who is truth it self, in the assertion of that which from him mans understanding is informed of, and affections sharpened on to believe: So in Maxims and Principles of Science, there is no pre-existency to be imagined to them in the art; but all that is knowable, is emanation from them, and the majesty and reason of their conclusion and positivity, which is the reason that the Philosopher allows no disputer to deny a principle; for that done, undoes all that is subsequent, and takes away the very being of Argumentation. For how can any Artist advance an Argument in any Art beyond the first discoveries of that Art? And how can any demonstration be made beyond the line of discovery, and demonstrability? For the Rule and Principle being the *ultra quod non*, beyond that there is no discourse or discovery. Let then Principles remain Mysteries, not to be dived into, but adored, because of their coparcenry with Divinity, and let the senses and memory of man content it self with such attainments, as are conceded them by God, in the right improvement of Nature, and the religious use of her indulgencies. And as no man can define light, as it is in its principle, because it is like God, indiscrivable, being a Ray from his essential glory: so can no wise man properly and wisely determine principles by any common notion, or rational apprehension of them. For though they are, and are declared to be what they are by their effects, yet are they hidden, and cryptically reserved by God from the plenary discovery of our senses, that we by them unknown, might be kept humble and dependant on his Omniscience, which onely has access to all things, or rather, from whose brightness all natural things are illuminated: And this being, as I humbly conceive, the true apprehension of Principles according to the here alleadged authorities of the Philosopher, *primo Physic.* and *Topic*, his inference is rational.

*Igitur Principiis imbuendi sunt, quicquid gliscunt aliquas intelligere facultates, ex eis etenim revelantur cause finales, ad quas rationis ductu per principiorum agnitionem pervenitur.*

That is, as no man can regularly build without square and line, which do measure proportion, and keep the symetry inviolate; and no man can war, except he have knowledge of, and care to adhere to the principles of Conduct and Battle; so no man can understand Science, unless he allows Principles, and conform his notions to the Canon of them. For his end in study and disquisition, being to attain knowledge in, and mastery over the difficulties of the Art, and so subjugate them to his understanding, and to accomplish himself by helps of them, there is a necessity (miracle not being taken in) that Reason operating, by the Principles yielded to, can onely bring him, and his end together. For Principles are the advances, to the end knowledge; they are the single numbers; by which the numerals of Art are made up; they are the *guttula*, which in their Musters, and Rendevouzes, amount to a Sea of Art. And those that contemn these steps of ascent, will never mount the Throne of Science. Take away the knowledge of these, and Arts will be under as great an Eclipse as the Earth would be, when the Sun were routed the Firmament: dispute these, and deny them to be their own testimony: we shall be all *Sceptiques*, and seekers after what we know not, nor shall ever find: and as he that builds without a foundation, will be but a foolish builder; so he that studies, without acquainting himself with these *fundamental universals*, shall bring his study to a vain



a vain issue, and prove ridiculous; for as by the pregnancy of the soul, the *fetus* is fo- mented and invigorated to birth, and from the life thence commenced, takes augmen- tation by the nourishment of its Mother; so Art is quickned by the principles of obser- vation and experience, which imbibed, render the means study (next under God) able to produce something towards perfection of knowledg. And as where there is not a hailness of constitution, & the body is not prepared by the *common good* habits of health, to nourish the *embrio* to quickning, and after to assist it in birth; no compleat vigorous infant comes forth; but rather a Chix, or a lump of flesh and blood, appearing articulately per- fect, but not compleat, as to the integrals of internal soundness; So where there is an unfavouriness of Conception, and the mind, by being vitiated by ill prepossessions, ca- vils at, and is carried with a leaven against old Rules and Maxims received, there the greater pains is taken, to know the further perplexity, and mental fury is contracted, and men grow rather averse and obstinate, tetical and opinionative, then sober, civil, use- ful, and learned. For true knowledge begins first at our selves, *γνώθι σεαυτὸν*, and pro- ceeds to know others *aright*, by valuing their virtues, and pitying their infirmities, then it comes to view in the glasse of a pure speculation, what it may possibly, ought rationally, and doth effectually know; and because it finds its knowledge, is but as a point in the latitude of the Universe, it more endeavours to search, then boasts of attain- ment.

And hence it comes to pass, that the great *boasters* are not the great *gainers*, nor are men of singular ways and expressions, always of soundest judgment, and sincerest hearts: For as Creatures that are of wild & ravenous nature, affect devious paths, and avoid the ways of conversation; so men of design, to be tragical, and ruinous to any cause or profession, forsake the old way, the good way, and in just return, are often forsaken; for as the truth makes men free, so error leaves them in bondage. And therefore the old Chan- cellour has drawn herein to the life the portraiture of a good Artist, while he presents him *oculo ad calum, manu ad clavum*, calling on God for a blessing, and expecting it from him, while he keeps in his way. God has an especial favour to order, 'tis himself, and what of it is in us, is of him, a drop from his Ocean, a Ray from his Sun, a beam from his light, an emblem of his infinite perfection. And those that go the way of God and Nature, may expect the reward of both. For minds and bodies are so near of kin, that a roving head seldom keeps a healthy man; and none are so apt to lose all that is in this world of value, time and health of body and mind, as those that are inquisitive after more then is fit for them to find, or appointed for them to know. God has confined study to his Rules; and the principles of every Art, are to bound the Artist; for they are necessary to the knowledge of it, *necessitate medii*. Therefore (saith the Chancellour) *Principiis imbuendi sunt, &c.*

*Ex eis enim revelantur causa finales, ad quas rationis ductu per principiorum agnitio- nem pervenitur.*

Now that a *Pythagorean*, *εὐθε εἶναι*, may not bind up the Prince to a rigid confor- mity, and implicate belief, without any conviction of his own reason, which is a kind of Divine Judicatory in him, the Chancellour here shews the necessity of knowing the principles of any Science from this consideration, that they are the Lines of Communi- cation, which reach to the end, center, tendency, and drift of every Profession; for the Rule and Principle is of the height and marrow of every Constitution, and the end is the perfection of every thing. Since it is that, for which every thing is; and there- fore because it is to be advanced to with much consideration and resolution, notwith- standing the impediments to proceed, and not to be hindered, the Chancellour adds, *Ad quas rationis ductu per Principiorum agnitionem pervenitur*. For as there can be no mo- tion without life, no augmentation without motion, no sensation without organs of sense; so there can be no apprehension of principles without rational organs: for it is Reason which apprehends and improves every rational Creature, not onely by direc- ting it to what is good, but fore-warning it against what is hurtful. And therefore no man's procedure is lesse or more then his reason; nor his reason other then suitable to the organs prepared for them. For the soul is the formatory of all our Reason, and the

the emanation of it, and the actions of rational Creatures are so far praise-worthy, they are directed to a good end, which ever is carryed on by good means.

*Unde his tribus Principiis, causis, & elementis ignoratis, scientia de qua ipsa sunt, penitus ignoratur.*

That is, the Science consisting of the knowledge of the efficient cause, the final cause, and the elements. If these be not known in their command, subserviency, and congruity each to other, all that is thought to be known is but *Babel*, Rubbish and Mortar to the noble structure of Art, a Chaos of notions or omniformity of fancy, no polish'd or trim fabrique of Learning. For example, In the point of Law, and knowledge of that, the efficient cause of the Law are Governours and People excited by God, out of ends of good to *civil society*, to make Laws by consent, or obey good Laws made by command of their Superiors, though against their wills, yet for their good. For Laws are the effects of Power, and have the stamp of Empire before they are owned such. And again, Laws are in *remedium & tutelam*, and therefore are ever acknowledged to be made for good, or at least so apprehended, therefore I term them made for ends of good, and I consent to them, as made by men excited by God: for since Laws are advantageous to good, and hinderances of evil, and man naturally is evil, and inclinable to evil. What he is an efficient of good, must needs be by the over-ruling of the supream cause God, who is the author of every good and perfect gift, and who emphatically is called *deus dicens, the Law-giver*. For Kings, Princes, Parliaments, and all the learning of men and ages, are but seshues in the hands of God to point us to duty; and if he does not sit in the Assembly and Judge among the Gods, Laws will be *ligula non regula*, Withs to bind the Poor, but not able to hold *Sampson's*, whereas Laws ought to be *regula ad omnes*.

Then the *causa finales* of Law are Order, Justice, Concord, Peace. These were in the mind of God, when he thought upon making man, and politizing the World; and these he works in the hearts of men in place and power, to propagate and effect, as they have opportunity. And therefore the Student of the Law must endeavour to know what Justice is, and how it respects not onely the peace of his own soul, but of the whole Nation, and how it has regard also to so reign correspondency. For *Justice* is indeed all virtue. Hence was it that *Athenians* tells us, that Antiquity represented Justice to have, *τὸ χρυσοῦν πρόσωπον, &c.* a golden face, and golden eyes, tokens of amability, and purity; yea, the first Altars they erected were to Justice, as the diety subsidiary of all. And he that is deservedly an *Aristides ὁ Δίκαιος*, may well be prayed for, that his Children may be numerous, and that they may in Justice be like their Father; since Justice is like the Cement, which keeps the parts of the structure together under the common bond of union; and by such connexion, prevents scissure and fraction, which in time, effects dissolution. And therefore as Divines that preach sanctity of life, and likeness to God, that call on the people to be mortified, and to be subject for Conscience, should themselves, of all others, be most holy, most pure, presidents of piety and patience to others; not heady, high-minded, effeminate, disturbers of order because they have daily Lectures of preciseness herein from the severity of their profession, and the effect it should have on their own lives: so of all men none should be so averse to injury, so free from strife, so gentle in bearing with the follies of the *plebs*, so resolute to propagate order, honour, and learning, as men of Law. For their profession is *ius dicere & docere*, Right is the *genius* of their study; and to prevent wrong, ought to be their practice. Since the end of Laws, is to keep men in government by the contexture of Law, and the distribution of Justice according to it; and they who profess the Law, and use it onely as a decoy, to call fortune to them, by over-reaching weak men, and suppressing right by power of argument and favour, are Lawyers *per Antiphrasin*, as *Richard the third* was Heir to his Nephews, of whom the Bishop of *Carlisle* said, he was *malus heres*, they are possessours of the name, but not virtues of those pristine Lawyers, *Pomponius, Cajus, Aquilius, Servius, Papinianus, Bracton, Glanvil, Littleton, Gafcoyn*, and others since, who were not temptable to injury, neither by favour nor frown.

Deipnos. lib. 12.  
p. 547.

Unde

*Unde his tribus, videlicet principiis, causis, & elementis ignoratis: scientia de qua ipsa sent, penitus ignoratur.*

That is the *media* and passés to perfections being obstructed, or rather not made, there is no possibility of the perfection to be attained which they are ducts and con-voyes to; as without eyes and eares man can see or hear no Letters, without reason nor judge, without Memory not retain, so without consistency and sobriety, not submit to Principles, and be ruled and swayed by them; the want of which rational passivity causes all the pedantry and scepticism that is in the world. For though it be a brave daringnesse of reason to consider and search into things, and perfection, as it is attainable by man, is thus advanced to, yet is there danger in too far ventures, to be immerged and in the depth of new discoveries to lose all footing of pristine science; for laxation of Principle once assaulting new Discoverers, brings them to such a levity and itch of Progressse, that they acquiesce in nothing but uncertainty, and grow unnatural to the pristine Principle of their fixation, which if they would as to the main adhere to, would encourage them to many rational advances, by which from the concluded root and maxime of art, many notable slips of science might be attained, which would make a pleasant shew in the knots and borders of arts implantation: tho I well know it's a very hard matter to form with nobly ingenious *des Cartes* a new Philosophy, and not with his transcendent Genius to resolve to do it by a declension of all former preconceptions, and a pleasure to unlearn whatever he has afore learned. Thus as the civil Law accounts a house or ship, that has been so much and so often mended, *ut nihil ex-prisina materia supersit, that it is nothing of what it first was, but all new*, yet the same it first was, notwithstanding all its changes; so is it to be accounted possible, that men may finde out new discoveries, as has been abundantly by our famous Country men in Physick and Mathematiques of late, yet be still loyal to the Principles, Elements and causes of science, which they overturn not, but understand more-rightly, and apply not contrarily but diversly, as their notion and indagation directs them to.

Tit. De legatis. l. 1.  
lib. 65. si ita ff. 2.

Doctor Harvey,  
Mr. Boyle and  
others, most worthy  
Honour.

For since all the knowledge and discovery our nature can make, is but confused and dark, by effects to know the causes, so far as they explicate themselves, and are served by proper instruments. As it becomes the reasonable soul of man to actuate it self proportionably to the Divinity of its constitution, so does it also import it to keep close to truth; and to be conducted by sobriety to the search and service of truth, least while it peeps into the secrets of God to see what there is, (which it ought onely to admire, contenting it self with what God has revealed as its boundary) it fall into a phrensy and raving in which it loses its self, and gives too just cause to censure, that not desire to know, as knowledg is the Image of God, and in the rectitude and sanctity of it is usefull to man to inform him of his duty to God, his neighbour and himself, was the Motive to disquisition, and the unctious liquour that fed the Lamp of its persistency, but pride and sacrilegious ambition to exceed others, and thereupon to brave with, and boast against them: that I say these were sinister propopes of their minds, which kept them in this fruitlesse toyl. But it followes,

*Sic Legem divinam nos nosse judicamus, dum fidem, charitatem, & spem, sacramenta quoque Ecclesie, ac Dei mandata nos intelligere sentiamus, cetera Theologia mysteria Ecclesia presidentibus relinquentes.*

This is added to shew, that all men in the Church called Christians, as they have nor alike in place and office, so have not like endowments, nor ought necessarily to be alike knowing and scientificque. All men without doubt that believe there is a God, and are baptized into the name of *Christ*, and have resigned up themselves by Baptismal vow to be God's, in knowing his will that they may do it, and deny all ungodlynesse contrary to, and inconsistent with it. I say all Christians within the Pale of the Church and *Cruce signati*, are without dispute to know the Elements, Principles, and Fundamentals of Religion, which (though all may not) yet are chiefly and in their vividst representation brought in here under the ternary, that *St. Paul* makes the sum of

*Fides, spes, & charitas sunt virtutes theologice. proprie in mente sita, sicut in intelligentia fides sit, in memoria spes, in voluntate charitas. Hoppeus lib. 2. de vera Jurisprud. Tit. 5. p. 36.*

*Quid non invenit fides? attingit inaccessa, deprehendit ignota, comprehendit immensa, apprehendit novissima, ipsam denique aternitatem vastissimo suo sine quo dammodo circumcludit. Sanctus Bernard, Sermones 76. in Cant. e. Præcepta quæ Deus per seipsum, mandata quæ per alios mandavit. Aquin. prima secundæ Quæst. 99. art. 5. Concluf.*

Tom. 1. p. 249.  
440. 248. 245. 596.  
Bellarminus lib.  
De Sacramentis  
*Fides sine ope charitatis non justificat.*  
Bellarminus lib. 1  
de Justific. c. 5.

The Author's application to himself.

all Religion; Faith in God as, *He is, and is a rewarder of all that seek him, as all the promises of God are in Christ Jesus, yea and Amen. As it is the evidence of things not seen, and the substance of things hoped for.* Love to God for his own sake, as the infinite, eternal good, and to men for God's sake, *since he that loves not his Brother whom he hath seen, cannot love God whom he hath not seen,* and hope, as the soul's Anchor, that keeps the heart from breaking of from God by temptation or despair, and knits it to him according to that of King David, *I had verily fainted in my affliction, but that I hoped to see the goodnesse of the Lord in the Land of the living.* I say, these graces as the principles of adhesion to God, discretion and religion towards men, support and comfort to a man's own soul, ought to be the study, and diligent intentnesse of every man to get, not onely to talk, and in the notion and superficiality of their apprehension to understand, but plenarily and affectionately to know that they may apply the comforts of them to their souls; for Theology being an affective and practique science, is then onely rightly known, when 'tis applyed in the comfort and practice of those excellent graces it speculates and professes. Then we know and understand what faith is, when we live not by sense, not by the impulses of putid reason, *but as seeing him that is invisible, as having an eye to Christ the president of sanctity,* who calls us in our desires and delights from this world, in which we are but strangers and Pilgrims to our Country above, the Inheritance amongst the Saints in light. Then we hope upon good grounds, when our Conscience witnesses with God's Spirit, that we are God's purchase, and thereupon may expect and hope for his promise: that we are those that live to God, and *having this hope in us, purifie our selves as he is pure.* Then we love God as we ought, *when his love shod abroad in our hearts, makes us love all his Commandments by keeping them, and not thinking them grievous, all his Servants for his likeness in them and love towards them, all his Ordinances for his impresse upon and glory from them.* For though the Scholes and after them the wits of men may distinguish *Præceptum* and *Mandatum*, making those onely Precepts, which God by himself commanded, and those Commandments which by others he gives to his people: and hold themselves obliged to know and practise the former when they dispense with the latter, which surely is of equal Authority; and so our Lord saith, *He that heareth you, heareth me, and he that despiseth you, despiseth me:* though I say these partialities and haltings in duty to God, according to the measure of our enlightning, may hurry some unstable minds into Precipices in which they will finde no Comfort. Yet this is, *Mandata Dei intelligere;* when the intellect officiates in order to practical piety and devout zeal, when it puts a man not so much upon Myriads of accumulated notions, and ingenuous speculations, as upon the one thing that is necessary, parting with all we have and are for God, counting all our parts but as filthy rags and prostituted loathsomnesse in comparison of his glory. Indeed if a Christian reaches but this note, he hath voice enough to beg heaven with, and obtain it by, no need of the vast learning, subtle arguments, quaint strains of seraphique Philosophers, and potent Orators; these graces in truth, will bring heaven down into the soul of their Possessors, and carry their Possessors into the Mansions Christ has purchased and prepared, which if so they will in a competent measure enworthy us for the right use of the sacraments of the Church, which, they onely know comfortably, who live in faith, hope and charity: for suppose a man could discourse of the Sacraments not of, but rather in the Church (for the two, Baptism and the Lords Supper are Christ's Sacraments, instituted for the Churches edification) though *Baronius* tells us the Apostolique times expressed some other things by the term *Sacrament*, the other five being the *Romish* Churches, shall be no part of my Discourse.) Suppose, I say, a man could dispute and write of them, as never man did, rather, as the best of men have done; yet if the power of them appear not in his life, all is to no purpose. Christ will never own men for their Knowledge but Practice, nor shall any man have a place in glory as a reward of his ingenuity but virtue; wits make men sometimes favourites here, but grace onely is the object of acceptance with God: *Be, O my soul, a good Christian in the holynesse of an humble life, and live up to the bond of thy Baptismal vow, examine thy self of thy sincerity, resolve against that sin, which makes and continues thee unworthy of the body and blood of thy Saviour in the Sacrament, and thou hast learning enough to make thee happy, and out-shine all this worlds Lucifers; thou shalt not need to envy the greatest parts, or the gravest years, or the goodliest growth*

growth of learnings Splendor; thou hast all in thy unfeigned devotion; and in thy firmer  
affiance in God for the reward and interpretation of it.

*Cetera Theologia mysteria Ecclesia presidentibus relinquentes, &c.*

This is subjoyned, to teach us, that there are many things in knowledge appendicious,  
and exploratory of compleatness; which are not fundamental, and requisite absolutely  
to make us secure from the wrath to come. God, as he has not made all men of one  
mould and stature, of one likeness and capacity, so has he not in his Wisdom and Ju-  
stice appointed one and the same proportion of parts to be in all men; nor will he judge  
all men according to one and the same expression of themselves. Indeed, the chief ex-  
trinsicque Wheel of Faith is Science, which through perswasion blessed by God, works the  
soul into a submission to God; but God alone is the first mover, and the intern cause  
of our motion towards him; and therefore there needs nothing to our security, be-  
yond our humility before God, our sincerity to God. This will avail for our happyness,  
as much as we shall need; yet are there accomplishments, which men in place and ex-  
traordinarily gifted attain to, which are not onely Ornaments to them, but influences  
of good to others. The Church of God has her *βασίλ*, and her *μυστήρια*, as well as any  
other society of men, and the *Bishops* and *Governours* of her are the proper Oracles of  
them; men of years, learning, piety as they are and ought to be, are the probablest  
to know, and the meetest to handle those sacred Rites, and renowned Mysteries, which  
are then perverted and distorted, when the discourse of ignorant and impudent men;  
wherefore Antiquity (to make Religion venerable with, and influential on the peo-  
ple) kept the *plebs* at a distance from the sight and audience of the mysteries of Religion,  
*μυστήρια κρυπτά τῶν ἀκούστων*, &c. because the bearers of them were by the Law of their  
constitution; to shut their mouths, and to tell what they heard to no man. Of all the Reli-  
gious Rites and Mysteries, none were among the Heathen like the *Eleusinian* ones;  
those were so serious and solemn, that none who were not *sacris initiati*, were to be pre-  
sent at them, and while they were *μυσταί*, which was a twelve moneth, for their proba-  
tion, they were kept at distance; after that, they were admitted to the greater my-  
steries, and were called *ἐπιμύσται*; to which Saint Peter alludes, 2 Pet. i. 16. but were eye-  
witnesses of his Majesty: yea, so much further reverence were these *ἐπιμύσται* enjoyed,  
that they had an oath given them, not to reveal any of the great mysteries to the  
*ἀκούστοι*, those that were but entred. These devoted to the service of *Ceres* and *Proser-  
pina*, Cicero alludes to, when he enjoyns the Orator to conceal  
what his Clyent has committed to his secrecy, as if it were a myste-  
ry. Of these mysteries, Alexander ab Alexand. Agellius, Jul.  
Capitolinus, Aelius Lampridius, Ammianus Marcellinus, Xi-  
philinus in Epitom. Dismis, p. 356. In Adrian, Herodian, lib. 3. p.  
527. and particularly Lilius Gyraldus, these, and multitudes of  
other Authours, have written of the trash and trumpery of these  
devotions; which here to mention, were to abuse the Reader, and  
to misuse time. The mysteries of Christianity are no such silent  
nothings; God has indeed committed to his Church-men, the Ora-  
cles of God, the Word of Reconciliation; and the Church, as the  
Spouse of Christ, is to be conducted in her march towards Heaven,  
by these *Præsidentes Ecclesia*, who are Guard to her, which is a  
City by them watched, the Spouse of Christ by them adorned, the sheep of  
Christ by them fed, as Saint Bernard notably; and therefore it be-  
ing their duty and office, *ornare sponsum non spoliare*, To adorn; not  
rob, to keep, not ruine; to institute, not prostitute the Church; God has  
given them power suitable to their trust. They are now lifted up above the meaner de-  
grees of men sacrated to God, and are made Watch-men and Overseers of their Spiritu-  
alities: and the presidency God has invested them with, being for edification, not  
destruction, deserves from them double honour, who by their care and conduct are  
kept from wander and error; yea fed with the sincere milk of the Word, and may, and  
ought to grow spiritually thereby. Though then all men are bound to know the things  
of God which are revealed in his Word, as matter of their duty, and which by reason  
of God's postulation of them, he has given them possibility, and convenient helps; to

Fides gignitur et  
nurtitur per scien-  
tiam extrinsecam  
tantum persuade-  
ndo. sanctus  
Thom. 1. part.  
art. 2. q. 22.

Suidas in uerte

Tantum tanquam mysterium tenere aliquid.  
3. De Orator. Ad Attic. lib. 4. 87.

In Alexand. Sever p. 213. lib. 19. p. 364.  
& 481. 407.

In Symbol. Pythagoric p. 493. Titulo  
Silentium. & p. 413. Histor. Deorum  
Syntag. 17.

Civitas est Ecclesia, vigilate ad custodiam.  
Sponsa est. Studete ornatus; oves sunt, inter-  
dite quaestus. Serim. 76. in Cantic. 7.

Serim. 77.

their indoctrination, such as are the grounds of Faith, the Law of Conversation, the Institutions of Christianity, which are all couched in those words, *Dum fidem, charitatem, & spem, Sacramenta quoque Ecclesie*: Yet are those whom he hath made his Ambassadors and workers together with him, secondary Apostles, not stinted to this proportion. There are *Cetera Theologia Mystera* to be studied, and understood by them, over and above those *merè necessaria*, which other Christians are obliged to. They are to be salt and light, furnished with greater proportions of illumination and discretion, than the people are; because the people are to enquire the Law at the Priest's Lips, therefore God has promised those, *their lips shall preserve knowledge*, and chiefly sure, that knowledge that is peculiar to their Calling. For though it be commendable in Divines to know every part of Science, and the more accomplished they are in the universality of their reading, the probabler they are to shew themselves Work-men that need not to be ashamed: yet for them that are in Holy Orders, *Catholicely, Apostolicely, Canonically ordained*, for these to be *Goliaths* and *Apollos's* in other skills, and rude and unstrenuous in Divinity, for them to know least in that which they profess, and by reason of which they have care of souls in the Church, is very much a blemish, and I had almost said, a Blasphemy: Sure I am; 'tis a botch and spot, which is not the spot of God's people in the Priesthood.

(a) Lib. 1. cap. 2.  
Sum. Eccles.  
(b) In Psal. 86. Qu.  
2. Disput. 1. p. 225.  
(c) Tract. Petri De  
Palude, De cau-  
sa immediata  
Eccles. Potesta-  
tis.

Durandus Episc.  
Meldenensis, lib.  
De Orig. Jurisdic-  
tionum, art. 5.  
De potest. Epi-  
scoporum.  
Tom. 1. Annal. p.  
435. 497. 498.  
567.  
Sanctus Cypria-  
nus apud Baroni-  
um, To. 1. Annal.  
p. 134.

Whether then the *Præsidentes Ecclesie* be here meant largely; for such as are in the Order of *Evangelique Priesthood*, which (a) *Turrecremata* affirms to be instituted by Christ in his Holy Supper, when he himself Priested all his Apostles: whence (b) *Benzonius*, out of Saint (c) *Chrysostome*, as he alleadges him, calls them *Vicarios Christi, immo ipsum Christum*; and out of others, *Sacerdotes Deos quosdam esse inter homines, &c.* Or for the Fathers of the Church, the *Episcopal Order*, which he says Christ instituted, when he consecrated Saint *Peter*, and in him, all his Successours in that Superiour Order. Or if not so ordered, yet of *Apostolique Origin*, and *Catholicque approbation*, as is evident in all the Histories of the Church, which do unanimously give testimony to *Episcopal Jurisdiction* and *preheminance*. I say, whether the Text be understood in the lax sense, or rather in this more press one, for Governours in the Church, (called by the Statute of the 13. of *Eliz. c. 12. the Bishop or Guardian of the Spiritualities*: by the 8. of *Eliz. c. 1. the State of the Clergy, one of the greatest States of this Realm, Arch-Bishops and Bishops*; who by reason of their dignity, deserts, and influence, are termed the Church; and so also are expressed in the Statute of 25 *Hen. 8. c. 21* and which *Baronius* tells us the honourable account this Order had, being early after Christ called Apostles, which perhaps Saint *Cyprian* might allude to in these words, *Unde scire debes Episcopum in Ecclesia esse, & Ecclesia in Episcopum.*) The Rule is very good; that the more copious and curious knowledge of Religion is proper and peculiar to them to know, that they may be able Ministers of the New Testament, and be meet to every Ministerial purpose.

*Quare Dominus Discipulis suis dicit. Vobis datum est nosse mysterium regni caelorum, ceteris autem in Parabolis, ut videntes non videant.*

This Scripture, in *Mark iv. 11.* comes in patly to confirm the Proposition; God's Ministers, Bishops and Presbyters presiding in the Church, are to know the mysteries of Religion beyond the proportion of other men: Why? because they are set apart to that work: how? by God specially qualified to such accomplishment, not as men, for so they partake in common with others, and are more or less apt, as they are more or less endowed with natural parts, and noble acquisitions; but as they are *hereditarii Christi Apostoli*, as they are set apart to God, and have renounced this World, so they seem to be entituled to greater proportions of illumination, even by virtue of this Scripture, which though spoken to the Apostles on a particular occasion, yet has a kind of promissory benediction in it, which is descendable on all the successions of men in the Ministry of the Church. And because this Scripture is alleadged here so pertinently, and carries so much of the pregnancy of divine reason in it, I shall take leave to touch upon the

*Eruditio & Scientia Pontificis in Ecclesia Evangelica, tanta esse debet, ut & gressus ejus & motus, & manus, item digiti, & universa partes corporis vocales sint ita, ut veritatem mente concipiens, & ito eam habitu resonet & ornatu, Benzonius in Psal. 86. quest. 17. p. 348.*

the particulars of it so far, as they illustrate the purpose of our Text-Master.

Τῶν Τῶν,] who were they? not the ὄχλος πλῆθος the multitude spoken of v. 1. who sat on the Sea side to hear him, and to whom he taught ἐν ᾧ πολλὰ πολλά, many things by parable, v. 2. but the ὄμν refers to the tenth verse, when he said when he was alone οἱ ἀκούοντες αὐτὸν οὐκ ἔδεισαν, those that were about him with the twelve; That is, some candidate Disciples that had given Testimony of their extraordinary sincerity, in resigning themselves up to our Lord; These with the twelve Apostles, who were of our Lords Family, and stood dayly before him, his Reverend Privy Chamber-men, who had dayly access to, and acceptance with him; to these is the ὄμν intended, for these being the persons that took a welcome confidence to seek solution of their doubts from his Infallibility, he assures this Privilege to of knowing plainly what others doe but in shadows, darkly and imperfectly.

Δίδεται. ] It is given, 'Tis not gotten by your Industry, nor deserved by your Excellency, nor purchased by your Wealth, but given; God bestowes his largesses as fruits of his Bounty, and tokens of his Munificence, and his word to lesson us humility phrases all our receivings as matter of grace and gift, the gift of God is eternal life; so God loved the Word, that he gave his onely begotten Son; if thou knewest the gift of God; I will give you another Comforter; he will give the Holy Spirit to them that ask it; it is GOD that worketh in us both to will, and to do of his good pleasure; and every good gift, and every perfect gift cometh from above. These are the Scripture phrases, and in this tone does our Lord convey the impartment of his Indulgence to his Disciples above others; To you 'tis given, freely without your merit, fully without his restraint.

Γινώσκειν,] not onely to heare and to see, by which two senses the intellect has great additions; but γινώσκειν, as much as κρίνειν, to judge and discern, which is the knowledge of a practick understanding, and a discreet judgment, to know so as to be able to make others know our knowledge, to know with assurance and demonstration far beyond the reach and certainty of pure rational Evidence; this the knowledge of Faith, the Evidence of things not seen, is that which is the γινώσκειν here, Christ had wrought faith in their hearts which drew the from them world to the love and relyance on him; and he tells them that they had received an ample reward for their service, to wit, the gift to know the mystery of the Kingdome of Heaven.

Τὸ μυστήριον τῆς βασιλείας τοῦ Θεοῦ; ] The mystery of the Kingdom of God, that is a singular expression to a plural sense; the knowledge of the Apostles was of all the necessary matters to their comfort and compleatness, God is one and all that is knowable of him; he teaches his the mystery of; Thus complex is the word τὸ μυστήριον Rom. xi. 25. I would not Brethren that you should be ignorant of this Mystery, so 1 Cor. ii. v. 7. We speak the wisdom of God in a Mystery, Ephes. iii. 4. whereby when ye read, ye may understand my knowledge in the Mystery of Christ. Coloss. ii. 2. unto all the riches of the full assurance of understanding, οἰς ἐπίγνωσιν τοῦ μυστηρίου τοῦ Θεοῦ, to the acknowledgment of the Mystery of God, to you 'tis given to know the Mystery, that is, God calls you into the Mount to a close view of him, when others see in dark and uncertain proportions, and through thick cloathings of Divine Glory interposing between them and their seeings. When they heare but part, and not the full mind of God in the latitude of an affectionate bounty: ye shall know the Mystery of the Kingdome of God, Non communicandum prophanis, saith Erasmus, in the Sacramental efficacy of it, ye shall have the Kingdome of God in the graces of your hearts; which shall by a Mystery of love and goodnesse change and refine you.

Τοῖς δ' ἕξω, But to these without. ] This alludes to the people and plebs of followers, so is τοῖς ἕξω, taken, 1 Cor. v. 12, 13. Col. iv. 5. 1 Thess. iv. 12. and so Grotius sayes, St. Clement, and the Ancient Christians held all that were not professed Disciples who heard Christ non discende pietatis animo, to profit by his Doctrin; and to be in a Conformity to it, but as the Athenians are sayd to spend their time, Act. xvii. 21. In hearing and telling newes; These who are onely eye servants, and hearers for fashion sake, whom the loves and the miracles, and the sublimity of our Lords Divinity, made to follow him as a satisfaction of their curiosity, necessity, or such like self gratification, such who were touched with no zeale, inflam'd with no ardor, ballasted with no judgment in their following of him: our Lord feeds only with the Crumbs, somewhat these dogs

Hoc autem  
peccati  
veteres ex-  
plicarunt ma-  
gnam ad  
laxiore notio-  
ne. Grot. in  
Mar. iv. 11.

Rom. 6. 23.  
John 3. 16.  
Luke 11. 13.  
Phil. 2. 13.  
Jam. 1. 17.

In Mat. 4. 11.

In Lou.

of

of the Flock must have from the Lords bounty, and that they have, is but hard food, which has such an Incrustation in it as the power of nature will hardly break thorough.

Ἐν παραβολαῖς τὰ πάντα γίνεται,] All things are propounded in Parables, that is, whereas Christ to his Family speaks familiarly, though he shew these his followers, and as it were fellow-Ambassadors, all the Treasures of his Wisdom and Knowledge, though he make them privy to all his secrets, and give them the Key of his Cabinet, in which are lock'd up his Receipts and Prescripts, for pleasing God, and following him accurately and acceptably, though these satisfactions of the mystery of his Eudochy be the Childrens bread; yet to those that are without, all that he discovers to them, is onely in Parables.

Ἐν μόναις παραβολαῖς, sine carnis aperture explicatio, Grot. in Loc.

Παραβολή λόγος αἰνιγματώδης ἢ κρυμμένῳ πρὸς ἀφέλειαν φέρων. Suidas in verbo.

Now Parables were dark and mysterious speeches, which in few words carried large senses, and truly profitable; antiently these were much in use, παραβολή, δὴ γινώσκω ἀρχαίων λόγων, a Parable is the explication of words of Antiquity, the discovery of what wisdom in the beginning of time thought. Sampson in Holy Writ, is first that I remember mentioned to use them, Judg. xiv. 12. I will now put forth a Riddle to you; saith he, σεβῶμαι τὸ σεβλήμα μου, I will deliver my dark saying to you. So the LXX. Heb. נִתְּנָה, comes from נִתְּנָה to speak smartly and mystically, as we use to say, with a guard upon our words; and the learned make it synonymous with נִתְּנָה, to speak acutely, and with all the dexterity that oratorious emphatiqueness can advance to and arrive at. This form of Speech, God not onely in nature taught man, but expressly and by the positivity of a command, put the Prophet Ezech. upon using, for in the 17. of his Prophecy, v. 2. God bids him put forth to the Son of man a Riddle, and speak a Parable to the house of Israel, where פָּרָבֹה, to speak a Parable parabolically, is read oftner by dominari, and κλειδῶν, then by any thing of a soft sense. God would have his Prophet speak to them in a form of speech, that had authority and majesty in it, that could command their attention and obedience, like those words of our Lord in the Gospel, which were by his Adversaries testified to be spoken with authority, and not as the Scribes. Hence it is, that learned men say, Adages, Sentences, and Parables, which Principatum in sermone tenent, none used, but those that were eminent, and far above the vulgar. Thus our Lord Jesus here uses Parables, to convey to the Jews, what he saw they were capable of, and fitted to improve. He knew they were a rough and fierce people, whose ingratitude had obliterated all the memorials of mercy, and that divine favour had not bettered them, but yet they were settled upon their lees, and were under a confirmed obduration; and therefore, though he could not but propose his love and light to them anew, and usher it into their acceptance, with all advantages of probable success; yet he fore-saw their obstinacy would reproach his goodness, and thereupon he reveals himself to them in Parables; to tell us that whatever God conceals of himself from us, is in condescension to our weakness, and in punishment of our wantonness. For if there be any Scalado to the secrets of God, 'tis that of humility and holy fear; the secrets of the Lord are with them that fear him. And if the eyes of men be blinded judicially, 'tis penal of their Primitive sinful choice; because they would not see when they might, God has concluded them under a Sentence of irreversible blindness, ut videntes non videant. So dangerous obstinacy, against God's conviction and approaches to us, is, that it is just with him to suffer us not to know at all the things of our peace, who will not know it in his time, and by his means, and according to his proportion; which they do not, that abound in their own sense, and limit not their studies to sobriety; as the Apostle in the first of Rom. 22. and 12. 16. cautions, and our Text-Master after him.

De Parabolis lege Nicronimum De la Rua Tolerantium controversi nona de Psalmis, & sensibus S. Scripturae, p 814. Imp. Martini Anno 1620.

Sic & tibi, Princeps, necessarium non erit mysteria legis Anglia longo disciplinatu rimare, sufficet tibi ut in Grammatica in profecisti, etiam & in legibus proficias.

Here the Chancellor applies the Premises, and makes the Prince to apprehend the substance and drift of them, which is, that in every Profession, the exact and utmost notions and possibilities of Science, are not so usually the labours of men of fortune, and speculative pleasure, as of Artists that intend to live by, and to be exact in them, and that from their



their progress, fix a reputation and advantage to themselves from them: So in knowledge of the Law, though Lawyers may toil and travel to apprehend every nicity, and take view of every punctilio in their Profession; yet the Prince being so great a Personage, and having others in substitution under him, to judge according to the Laws, shall not need to search year-Books, view Records, turn over Prefidents, and toil in the varieties of these many mysterious nicities, that's not necessary, nor what the Chancellour judges correspondent to his state and degree. For as in Grammar a man may be competently learned, so as to deserve the name of a Grammarian, though he be not able to answer the nice questions *Tiberius* put to the Grammarians he delighted in, *Quæ Mater Hecubæ*, &c. who was the Mother of Hecuba, of what account Achilles was among Virgins, what was the subject matter of the Syrens notes. Yea, though he attain not to the exactness of (a) *Chrysoloras*, (b) *Lascaris*, (c) *Gaza*, (d) *Urbanus*, (e) *Calcondylas Minutius*, or other later, not inferiour to the best of them, because the excellency of their knowledge, was rather in the curiosities and nicities of words and speech, then in the necessary rules which are indispensably to be known; and therefore those that know the *ἡρώτα σοιχέα τῆς γραμματικῆς τέχνης*, and make a right use of them to all the four parts of Grammat, and the issues from them, may with credit enough to themselves, and benefit to others, rest contented in their acquirements: So in the Law, though the Prince be not a *Littleton*, a *Cook*, a *Dyer*, a *Plowden*, yet if he be but acquainted with the terms, language, and maxims of the Law, that will be enough to accomplish him, without any further travel into obstrusities of discouragement.

Suetonius in  
Tiber. c. 70.

- (a) *Erotemata Impr. Paris. Calcondylas. 1547.*
- (b) *De octo partibus orationis.*
- (c) *Introductiones Grammaticæ. Basil, 1529.*
- (d) *Institutiones Græcæ Linguae, Basil. Imp. per Sebastianum Henric. Petri.*
- (e) *Instit. Gram. edit Wolmarri Basileæ.*

Now the Chancellour urges Grammar-knowledge, as the Introduction to all that is *Technical*; so *Quintilian* terms it, and he adds, That unless a good foundation be laid in that, all after-structures will totter and fall; and judicious (a) *Melancthon* seconds him, The other Studies succeed according to Grammars tyrocinie; for Grammar being not well grounded in, all other Institutions are to little purpose; and the use of it being taken, *ἡρώτα σοιχέα διδάσκων*, to teach the first Elements: thereby it becomes necessary to Youth, and in its progress delightful to the greatest proficiencies of age, prescribing the method of reading and pronounciation, of understanding and explication, of distinction and emendation, of judgment and discrimination; which are made by *Varro*, and others after him, the parts of practical Grammar, under the names of *ἀνάγνωσις*, *ἐξηγησις*, *ἐπιρρησις*, *ῥησις*, I say, the Chancellour producing this, as the chief strength of his Argument, makes me think of that of *Tully*, the great Master of Language, whom *Quintilian* calls *exactiora sperimus*, so rigid to his Son, in keeping him to the punctualities of Grammar, and not dispensing with any omission in the exactness of it, because he best knew the ill consequences of neglects in it, which wise Grammarians are by *Quintilian* instructed to avoid, as that which will render their Schollars little credit, or comfort to them.

*Ars caterarum omnium veluti fons & origo, cujus fundamentum nisi quis fideliter jecerit, quicquid superstruxerit, corruet*, lib. 1. c. 4: *Instit.*

(a) *Præfat. Epist. ad Grammat. Suidas in verbo.*

*Necessaria pueris, jucunda senibus, dulcis secretorum comes, & quæ vel sola, omnium studiorum genere plus habet artis quam ostentationis*, Fab. lib. 1. c. 4. *Institut. Orator.*

Lib. 2. c. 2. *Instit. Orator.*

*Grammatica vero perfectionem, quæ ex Etymologia, Orthographia, Prosodia, & Syntaxi quasi ex quatuor fontibus profluit, non seccie tenus induisti, & tamen Grammatica sufficienter eruditus es, ita ut merito Grammaticus denomineris.*

These words are a representation of Grammar, as a Paradise that is encompassed with a four-fold fountain of delight and variety, as God's *Eden* was with four Rivers; the first whereof is *Orthography*, the art of writing aright: concerning which, *Claudius Dorsetius* has most ingenuously, and floridly written large Books, and mentions 57. particular Authours, who have preceded him in that Argument. That which I shall add, is, that use and custome of time and men famous in their Arts and Ages, is the Standard of Rectitude herein: For in every Age and Authour almost is there somewhat exempt from the common road, which yet is not accounted improper, but obtains

*Antiqui novique Orthographica Impr. Tornaci, Anno 1632.*

*Victorinus Asar. lib. De Orthographia.*

tains

Vernam Orthographiam consuetudini seruis, ideo que saepe mutata est, lib. 1. c. 7. &c.

Sylburg. Rudiment. Græc. ling. p. 11. & seq.

\* Pag. 31. 38. 41. 43. &c.

Lipsi. De recta pronuntiatione Ling. Lat. ad finem Vol. 1. Oper. Orthographiam, id est, formulam, rationemque scribendi à Grammaticis institutam non adeo custodiri, ac videtur sequi potius opinionem, qui perinde scribendum ac loquendum existimant. Suetonius in Orlav. c. 38.

(a) 1. Academ. 46. lib. 1. c. 6.

Aut enim Etymologia est, aut allusio, aut allegoria, aut cetera hujusmodi. Brechtus ad Legem 123. lib. De Verbo sig. p. 387. Alciar. ad legem. 123 p. 392.

Animadvers. in Plutarchum 48. 49. Edit. Patif. 140; 141.

Contines in se multam eruditionem, sive illa ex Græcis oria tractamus: sive ex historiarum veterum notitia, nominum, locorum, hominum, gentium, urbium requiramus, lib. 1. De Orat. c. 6.

Grantus in Gr. Ling. sp. cileg. p. 133. B.

Lilius in Gram.

Profodia est que rectam vocum pronuntiationem statuit, Idem.

obtains by the users fame, and the favour of usage, an adoption into propriety, and an enfranchisement from the bondage of censure, as *Quintilian* grants, and as by the perusal and comparing of *Priscian* and other ancient Grammarians with latter ones, frequently appears: for as fashions in cloaths, and cookery of meats, and figures of building, and words of language, change with men, as their humours or the accidents of their lives, or other contingents rule them; so does Orthography alter, that being practiced by one age, that is distasted by another, as \* *Melanchon* in many places of his Grammar makes good, and as both *A Gellius*, *Lipsius*, and others make appear.

Though therefore there be a rule in Orthography, which *πρὸς τὸ πρῶτον*, be to be observed, yet where it is capable of Correction, and Improvement, the nearer writing comes to the tone of speech, the more proper and usefull seems it to me to be, nor are, as I

humbly conceive, the omissions of superfluous vowels, or the addition of Letters supernumerary, errors or beauties in writing.

*Etymologia*, ] As Orthography marshals Letters into words, so Etymologie presents the true Notion or Notation of Letters in their word: the Latins call it *Veriloquium*, *Quò verborum explicatio probatur*, &c. *Etymology* the Greeks call the *Explication or the reason*, *Why things are called so as they are*: after him, *Quintilian* (a) says the same, this, *Aristotle* calls *ἀμφιβολία*, that which carries the indication of every thing in it; for names being significative of Natures, and conform to somewhat Relative to that they are called by, no better a Calculate can be made of any thing, then that, which is deducible from the Notation of its name. Though *Rualdus* takes upon him to censure *Plutarch*, *Varro*, and other exact Grammarians upon Etymologies by them given, and concludes them vain: yet

as *διώνυσια*, *σημείων*, *μνήσθημα*, import much in Crittiques, so doth Etymology to, which *Carolus Sigonius*, and *Beckman*, assisted by all florid Suffrages make good; for though I know that Etymologies are not alwayes to be depended upon, but that sometimes the uncertain tye of them occasions losse of truth, as well as of smartnesse of Notion; yet for the most part whatever is discoverable either from the Greeks or latter Historians, concerning places, men, Nations, Cityes, is much the effect of Etymology. This is Etymology in the general and large capacity of the word; yet in Grammar, Etymology is taken for the *ratio cognoscendi casuum discrimina*, having relation to all parts of speech; and so it is here to be taken as our Chancellour refers it to Grammar, and makes it a part of it.

The third part of Grammar is *Syntax*, the Concord and Regimental Order of parts of speech, whereby they are made to coincide, and mix together in the harmony of propriety and exactnesse, Grammarians define it to be the fit Connexion and absolute comprehension of perfect speech; that which does *afferre sermeni venustatem gratiamque*, gives a grace and Majestique order and consent to speech, and indeed this is that part; that rescues speech from Barbarism, and that which they call *ἀυτογία disproportion*: For Syntax making a Concord of words each with other in Gender, Number, Case, manner, time, person, introduces convenience the Companion of delight, which is an harmony, and reaches the fourth and last part of Grammar which is *Profodia* from *ᾠδὴς* and *ᾠδή* a musical consent, which keeps exactnesse in all notes of speech, whether lowd or low, shrill or soft, whether those that are distinguished by labour and care, either to extend or deprese the syllables, or appear in the production or correption of them, by which, time is regulated. This no lesse necessary to a gracefull and good Orator and Poet is to be diligently observed, as the other parts are; and whosoever has any competent skill in them, will deserve the name of a well instituted Scholer, though not to the proportion of *Erasmus* (whom Crittiques allow the restorer of curious learning, and as it were their second Genius;) but to such a degree as will in a good sense merit the title of a Grammarian.

*Consimiliter quoque denominari legist a mereberis, si legum principia, & causas, usque ad elementa discipuli more indagaveris.*

Still the Chancellour proceeds to animate the Prince in his pursuit of the Law by the example of successe in elementary learning, for as in Grammar a man may attain enough to be termed a Grammarian, though as I said before, he be none of the first three, so in the Law a man may have credit of Proficiency, though he be none of the profound ones. Indeed to be exact a *Papinian*, a *Pomponius*, a *Plowden*, a *Dyer* requires a whole man in his best expence of time, and with the best of Divine blessings on his reading and ruminacion; and that no man can reasonably have ambition to attain to, or greive in falling short off, but he that by length of time, eagernesse of study, strength of memory, sharpnesse of conception, approaches it: but to be entred into and have a superficial knowledge of the Law by which the Student (suppose the Prince) may have (as I said before) insight in the language and common Notions of it, will give the Prince as great a title to the praise of the knowledg of the Lawes of his government, as he shall need to have; and in having them will abundantly finde himself accomplished; *For as they are the best Lawes for any place, that most suit with the disposition of the State and Manners of the people that there live, so is it the best knowledg that a Prince can acquire, to know Gods mercy and indulgence to him in the Method and Prescripts of the Topique Lawes of which he is Guardian, and according to which his prudence and piety makes him conformable; the degrees of which knowledge are not necessary to the latitude of the Continent, but to such Ascents as are in order to Regal Enablement.*

Selden notes on Fortescue, p. 20. R. James speech Whitehall, 1607. p. 513. Of his works in folio.

*Non enim expediet tibi propria sensus indagine legis. Sacramenta rimare, sed relinquatur illa iudicibus tuis, & advocatis qui in regno Anglia servientes ad legem appellantur, similiter & aliis peritis quos apprentisios vulgus denominat.*

This the Chancellour expresses, to take of all doubt in the Prince, of more expected from him, then is probable for him to attain to with convenient industry: For though he press upon the Prince love to, and skill in the Law; yet 'tis not such a skill as is irksome to get, or takes up all his time to arrive at; 'tis not *Sacramenta legis rimare*, but 'tis to know what is common and introductional to knowledge of use, and credit of conversation. For though necessary it be to know *Legis Sacramenta*, the all that is to be known of the Law, the rise, reason, progresse, variation, policy, and interest of the Law, and what in all these Notions is couched, and how these have beneficial operations on the mindes of those that know them, to inable them to every scientificke and practique purpose, yet is this not fit for Princes so far to engage them, least it take up their thoughts too strictly, and possesse them too fully to give way for other regal Offices to be thought upon and beloved by them. To get a pregnant use of reason and to use it according to the prudence of Government tempered by Law, which rectifies all violencies; this is enough for a Prince to know when young, the rest that is more perplex and burthensome, the Chancellour sayes, *relinquatur iudicibus tuis, &c.* For the King being a *Body-Politique*, as he commands by matter of Record (for *Rex præcipit, and Lex præcipit, are all one*) and judgeth not propria sensus indagine, but according to the Law distributed in his Courts; so he knows in a Politique sense the Law by his Judges whose Judgements are so politiquely the King's, that intentionally, and in the virtue of it, it is his. And hence comes the *relinquatur iudicibus tuis*. That is, let others whose particular study and skill it is to intend it, ease you of your burthen, and distribute the Lawes of which you are Head and supream Governour to your people: Nor is this late and lazy counsel; but grave and great, as old as *Moses*, and given him from *Jethro* his Father in Law, Priest and Prince of *Midian*, as an expedient to prevent *Moses* his toyl, and overmuch trouble of himself. For *Moses* having told *Jethro*, how he behaved himself to the people, and in what capacity he was apprehended by them, *Exod. xviii. 16.* and *Jethro* having wisely weighed the employment, and compared it with the condition and temper of *Moses* his mind and body, does not

*Ipse jus dixit asidue; & dixit autem jus non modo summa diligentia, sed & lenitate* Sueton. de Octaviano Aug. c. 33. Cook a. Instit. on c. 151. Westminster. p. 186.

confirm him in his laborious, and not to be endured toyl, but friendly, and in a way of pathetique kindness reproves him, *ver. 17. The thing that thou doest is not good.* Not thereby meaning the Act of Legislation to *Israel*, or his standing in the place of God for *Israels* accommodation, was politically or morally not good: For good it was, that people should be kept in order by a good Magistrate, and the prudence of nature dictates this: But in that he says, *the thing that thou doest is not good*, that is, *modo & forma*, in the way and kind of thy doing it. Thou art indeed *Moses*, kind and useful to the people, but cruel to thy self, and to the people too, if what thou doest beyond thy strength, shorten thy life, and leave them, without thee, miserable: so *ver. 18. Thou wilt surely wear away, both thou, and this people that is with thee; for this thing is too heavy for thee, thou art not able to perform it thy self alone.* This is the reason of his debortation and argument, *ab incommodo*; 'tis injurious to thee first, and then reflectively to *Israel*, therefore cease to do what would be better undone: yet that he may not seem to loosen, what he cannot fasten again, and more usefully he annexes an affirmative direction, how to accommodate himself, and his government by a more mediocrius method, *Hearken now* (saith he) *unto my voice, I will give thee counsel, and God shall be with thee, &c. ver. 19, 20.* And after all he adds, *ver. 21. Moreover; thou shalt provide thee out of all the people able men, such as fear God, men of truth, hating covetousness, and place such over them, and let them judge the people at all seasons.*

This Scripture is the grand Record of Judges, both as to their antiquity, qualifications, and power, which is worthy to be written of, because the subjects of it are (under supream Princes, and their great Officers of State) the most considerable in any Nation, especially in this of *England*; where, though they can not *jus dare, make Laws*, yet they can and do *jus dicere, interpret the Laws made*, according to the true sense thereof. And therefore no wonder, though this Scripture be the glass through which the Kings of this Land have seen the portraictures of those excellent persons, whom they have worthily in all Ages, chosen to, and placed in those Offices. Judges have been ever very antient in all the civilized World, and those chosen men, not forward to prefer themselves, not men of *Abalom's* spirit, that are swollen with ambition and populacy; but men picked, and by experience found fit to be deciders of controversies, who will, as the Philosopher expresses it, *δικάζουσιν, ὡς δικαστῆς, &c. be so just to divide differences into equal shares, and give every one his portion*, as Parents do the matter of brawl between their Children, and thereby appease them.

Now because men of brave spirits are set in their proper Orbs, when in places of Judicature, and then have the opportunity to shew the virtues God and Nature have endowed them with; the Holy Ghost directs men by the dictation of *Jethro*, approved by *Moses*, to begin with men of virtue, *אֲנָשִׁים יְרֵאָהִים*, our Translators render it, *able men*, which is seconded by *Grotius*, who makes this ability to extend as the *Rabbins* lesson him; and the notation of the word will bear it to all kind of ability, of body, mind, fortune, in which sense we call usually those that excel, able men, *ἀνδρας δυνατους*; so the *LXXII* men of courage, that will go through stich with the work of Justice, that will not fear the face of any he, that offends, and the better to keep courage, (besides innocency and the fear of God, which makes men bold and brave,) Fortune and estate is a great muniment to a Judge, and *Rabbi Selom*, as *Munster* quotes him, makes this *able men* to be meant of rich men, *able to subsist themselves and their charges, without dependence, flattery, and the acceptation of mens persons in judgment*; which truly is much (no doubt) of what the sense of *Jethro*, and of what the Holy Ghost means in *אֲנָשִׁים*, for though it be true, that integrity will preserve a man from desires, yea and admissions of corruption, yet it has a shrewd assailant, when need or shortness of tether beleaguereth it. For though a vicious mind will never permit a rich man to be just or good, where he is tempted to be otherwise by the vice he dotes on; yet 'tis probable the fear of censure, fine, and imprisonment, may awe him that has an estate solvable in that case, from attempting, or accepting, what on other grounds he would be more inclinable to. And since that of *Budens* is true, *Ad judicem ire, ad jus est ire, &c. The Judge addressed to, is an address to the Law, since he is the living Law.* It concerns Princes, whose all power within their Jurisdictions legally is, to be exact in their delegations to meet persons, men of ability in wisdom, courage, fortune.

s. De Morib. c. 7.

Ποῖν γὰρ ἐμ-  
παρὰς ἐπὶ τὸ  
ἀξίωμα,  
Rhetor. l. 2. c. 17.  
Grot. in loc.

Viri fortes sunt  
divites quibus non  
est necessitas adu-  
lentur, & acci-  
pianit personas.  
R. Selo. apud  
Munster, in loc.

In Pandect. prio-  
res, p. 62. edit.  
Basil.

וַיִּירָא אֱלֹהִים, *Fearing the Lord,*] This is added, as that which knits the knot of the former abilities so fast, that it will be indissoluble. *Hieronimus Porcarius* (whom *Tiraquell* terms a most knowing man in the Law, and expert in Government) has observed, that there are four things that subvert Justice, *hatred, favour, bribery, fear*; and against all these, this *fear of God* is a preservative; for it will put a man upon hatred of every evil way, and observation of God's eye intent on him: and his judgment independent on his wandering, it will make a man watch and ward his ways, that he offend not in any defect of duty. For when the word *וַיִּירָא*, is put absolutely, as here it is, the Learned say it signifies *Curare*, *Psal. xlix. 17. Be not thou afraid, when any one is made rich, אַרְרָה תוֹרָה, ne cures, Be not solicitous and anxious, do not fret at the prosperity of wicked men.* *Jethro's* meaning then is, *choose men fearing God*, that is, that are solicitous, and thoughtful to do their duty, in obedience to his declared will, and according to the notions they have of his pure nature, and provident appointment of Magistracy, to preside over men for their good.

*Tiraquell ad lib. 5. Genial. diernm. c. 14. p. 637. 638*

אֲנָשֵׁי אֱמֶת, *Men of truth,*] Who having knowledge, conscience, and sincerity, which King *James* declared requisite in Judges, dare to do nothing unworthy their places, or the Laws Prescript. For men of truth are opposed to loose & lewd men, in whom there is no thing but falshood, and to whose words there is no heed to be given. From this censure, as too great a blemish for Innocence to bear, the Sons of *Jacob* sought to free themselves; for when they were charged to be Spyes, and *Joseph*, in *Gen. xlii. 16.* appoints them to discover *הֲאִמְתָּ אִתָּךְ*, whether truth were with them, they joyn issue upon his own terms, and having *ver. 11. alleadged, כִּנִּי, relli nos,* and proceeded in their justification, *ver. 19, 31, 33, 34.* They avoid the just reward of *perfidie*, which those corrupt Judges in *Herodotus* had, one of which *Cambyses* caused to be flead, and his skin to be set over the Judgment Seat, and the other *Sandoces* by name was by *Darius* suitably proceeded against. For since the Law of God commands neither to look upon the person of the Poor or of the Rich in judgment, but to fear the Lord and his punishment: the Laws of all Religions and Governments, look upon incorrectitude in a Judge, as that which can have no penalty transcending the demerit of it, because it is an abusion of God's power, and the Sovereigns grace, while both those royal purposes direct the use of that expedient to the divine end of righting wrong, and animating virtue; it follows *שְׂנֵי בָצַע, hating covetousness: the Greeks* render this by *μαροξία*, which is a word, importing desire of having plenty above others. The word *בָצַע*, signifies all manner of evil desire, be it by what means it will, or in what degree it can; whether the way to accomplish it be calumny, force, flattery, or which way soever, that is inordinate. And because Covetousness obstructs every good sincere action, which is not subsidiary to some advantage of the covetous person, as is evident in many examples, but especially in *Henry* the seventh, who had a desire to *Saint Henry* the sixth, but that the *Pope* asked too much money for his (Canonization; which *Henry*) the seventh not willing to part with, omitted *Henry* the sixth's Canonization, as loving money better then the honour of his Predecessours memory and piety; therefore God by his Prophet *Habbakkuk* pronounces a woe to him that covets an evil covetousness that is, *va qui congregat avaritiam malam*, saith *S. Jerom.* So *Prov. xv. 27. so Exod. 18. 21.* this very verse of the Text is understood by the learned, to be meant of those who follow not the desires of the world nor are unlawfully acted by the love of riches or power, but use them, and endeavour to possess them so far onely, as they are comforts of life, and may be illustrations of virtue. And thus to limit covetousness, being to hate it, is to avoid the Judgments threatned against the intemperance of it, *Isa. lvii. 17. Jer. xxii. 17. Jer. li. 13. Mic. iv. 13.* In all which places, the very same sin, by the same name, is most highly menaced, and the great severity of God in the warring of Nations, attributed to it, as the procuring and meritorious cause of it.

*Speech in Parliament. 1609 fol. 494. of his Works.*

*Lib. 5.*

*Lib. 7. Polyn. n.*

*Drusius in loc.*

*Hall & Fox. in H. 6. ad annum, 1471.*

*Chap. 2. 9.*

*Qui non sequuntur mundi desideria, nec divitiarum amorem, aut dignitatem; at odio habent, abominanturque opum congregationem nisi quatenus ad vitam sunt opera pratum. Pagninus in verbo. בָצַע*

*Παροξία μέγιστον ἀνθρώπου κακόν. Menand.*

Judges then being by the Prescript of God to be thus qualified, they that are such, and so endowed, ought to have high value from the people, as they have received the token of it in their trust from the King; and since this place is so precise in the requiries

*Preface to the 4. Rep.*

*Caveat sibi, ne in sede judican-  
di, qua est quasi Thronus Dei,  
quonquam loco suo substituat  
insipientem, & indoctum, con-  
tempibilem, vel severum, ne  
pro luce ponat tenebras, & manu  
indoctâ modo furioso, gladio feri-  
at innocentes, &c. Fleta c. 17.  
De Justitiariis substituendis.*

(a) Sir Ed. Cook Preface to the  
8. Rep.

Notes which precede, beseeching God, that they that judge the people for God, and under the King, may so continue, ever to demean themselves, that when they be super-  
seded by death, they may give up their accounts with joy, and not with grief.

This considered, the Chancellour may well advise the King, for the main of the  
Laws knowledge, to refer himself *Judicibus*. For as the Sea abounds in Water, the  
Sun in Light, the Earth with Atoms, and no vacuity is in nature; but God has com-  
pleted the World to all intents of Providence, in the circumaction of his purpose, and  
the sustentation of his Creatures; so are the Judges, as men of years, reading, and ex-  
perience, so plenary, and critically versed in the Law, that there shall need to be no

*Cum vix possint omnes casus,  
qui quandoque incidere, certâ  
lege, edito, senatus consulto  
comprehendi, prudens judex ne-  
gotium, quo de agitur, ex simili  
aquisatis regula desinet. For-  
nerius ad legem 52. p. 139. De  
verbor. signif.  
Speech Star-Chamber, 1616.  
p. 556.*

doubt, but that with our Saviour's good man, *Out of the good trea-  
sures of their hearts, they will bring forth treasures old and new*, that  
is, be able to give Solutions to all doubts, upon old and new Laws,  
and that not according to mens conceits, but according to the true  
meaning of the Law, as Interpreters of the Law, as those that find  
out the reason of the Law by Books and Presidents. So true is that  
of King James the wife, *Though the Common-Law be a Mystery  
and a Skill best known unto their selves* (speaking to the Judges)  
yet if their interpretation be such, as other men which have Logick  
and common sense, understand not the reason, I will never trust such an  
Interpretation. So he. And, if in the multitude of Counsellours  
there is safety, as the Wise-man's words are, and the Judges many

in number, and learned in nature, are serviceable to the King to counsel him as their  
Lord and Master, and according to Law and Justice, which he in the execution of the  
Law solemnly has sworn them to, and to perform which, they are upon penalty of  
God's Curse, and the Laws impartiality, bound to observe; the *graviora legis* may  
well be left to them; for in this case, that rule is true, *Qui facit per alium facit per  
se*, and the King that thus knows the Law by them, may in a good politique sense be  
said to know the Law as becomes him, which is part of the sense of *doctrina principi con-  
grua*, often spoken of by the Chancellour. But here no more of Judges, because I shall  
have more occasion to discourse of them in the 51 bapter.

*Et advocatis, qui in regno Anglia servientes ad legem appellantur, similiter & aliis  
peritis quos Apprentifos vulgus denominat.*

This *Advocatus*, is a name of office and employment, comprehending all those per-  
sonal honorary distinctions of men, which are gradual in the Law; for though every  
man that is called to the Bar, and has read, be an Advocate, yet every Advocate is not  
a Serjeant, nor an Apprentice of the Law: (for under those names are comprehended  
the choice veteran eldest Sons of that Science, who do *proprie & quarto modo advocare*.)  
when others, Advocates in name sometimes, are nothing less in deed.

*Afcon. Pedianus,  
lib. De Divinat.  
Brethrus ad le-  
gem 52. p. 139.  
De verb. signif.*

An Advocate then is a Patron, who undertakes the cause of men in Judgment, and  
pleads the Cause juridiquely before the Judges that are to determine and judge of it,  
and he acts divers parts, that of an Oratour in proper wording it; that of an Attorney, in  
diligently watching and observing, that no advantage be taken against the Cause; that

of a Lawyer, in producing Arguments from the Text, to maintain and support it. Now; though in all Causes, one Advocate at least is necessary, no Court ordinarily allowing parties to plead their own Causes, especially in Civil Causes: nor is it for their advantage so to do, who being ignorant in the Laws, may by that pragmatiqueness injure their right in the Judgment of the Court upon it: yet in dubious Cases, and those of more then ordinary consequence, Antiquity followed now adays, allowed two or more Advocates, that by their joint counsel and assistance, they might the better go through what they have undertaken with solidity and success. These Advocates so useful and frequently imployed, the Law allowed great Dignities and Priviledges to them, *Ludovicus Bologninus* has counted them to be 130. Grand ones, besides the many additional, which is confirmed by the Glosse on the Text, which sayes, *Esse Advocatum, honor est*; and our Law capacitating them to great Offices and honours, thereby still keeps up the Rate and Honour of Advocation, yea so long as our Lord *Jesus* is owned to be the Advocate with the Father: the calling and honour of Advocacie, as 'tis the Prestation of good Offices of Charity and Beneficencie to men, will be in high repute; but of this I shall speak more on the 50 Chapter.

Brechezus ad Legem 52. p. 139. De Verb. sig.

Digest. lib. 3. Tit. 1. De Postulando in Glosf. D. p. 333.

*Judices, & Advocati Regis, qui in regno Angliæ servientes ad Legem appellantur,*

These *Fleta* terms *Milites & Clericos locum Regis tenentes in Anglia*: which alluded to the use of making Clergy men antiently, as well as Lay-men, not onely great Officers in the State, but also Judges in the Courts of Law, in which the Kings Lieutenancy resides, who therefore were called *Locum tenentes*, because they did *locum Regis in judicio tenere*, the office of Judicature being originally and sonally the King's, and his Judges onely by delegation, as commissioned to, and intrusted by him with that dispensatory power, so that *serviens ad legem* is no term of diminution or base office, but of honour and dignity; that as in Heraldry the term Esquire in Latin (*serviens* as well as *armiger*) is given to the best and bravest of men under the degree of Baronage or Knighthood, as a token of their Portage of the Arms and Ensigns of honour, which they, or those whom they descended from, personally bore in War before the Princes and Peers, they in that way officiated to: so is the term Serjeant in the Law's import, the title of one who does attend the service of the King and his people in study and profession of the Law, and by carrying the Emblems of his Proficiency in his habit, supposing a judicious head and heart, uttering his acquisitions with a ready and well-languaged Tongue, and the not onely common Civility of the Nation attributes dignity to him, but the King, the Fountain and Sovereign of Honour, dignifies him, as one of those *Patricii*, out of whom the Senatours, the Judges are chosen, so sayes Sir *Edward Cook*, *Ex servientibus hisce tanquam è seminario Justitie, &c.* From amongst these Serjeants, as the seminary of Justice, the Judges are called: for none but a Serjeant at Law can be either Judge of any of the Benches, or chief Baron of the Exchequer, or claim place in either of the Houses of Serjeants; because those Inns are properly the Lodges of Serjeants, not of Judges. So that Oracle of the Law, which learned Mr. *Selden* confirms, and seconds in his Preface before the *Scriptores Angliæ*, p. 44.

*Cum igitur non sit possibile, quòd solus [Rex] ad omnia terminanda sufficeret per Justitiosarios, & Comites, & alios ministros viros sapientes, Deumque invocantes &c. De necessitate oportebit eum his subveniri.* *Fleta lib. 1. cap. 17.*

*Tis Dupius è νεποδύτης, Athenais.*

*Seldens titles Honor, p. 833. M. Paris, p. 312, 393, 396. Hypodigm Neuftrixæ, p. 118.*

Preface to the 10. Rep.

Serjeant at the Law then is a Title State and Dignity of great respect, so that it is counted next degree to a Knight; yea, there are many arguments from the Writ of his Creation, which Sir *Edward Cook* directs me from him to collect for the honour of the Serjeant: that he is no *Sponte nascens*, nor *self-Creatour*, but arises from the Womb of the Morning honour, the King majested, *à Rege de anisamento Concilii inde evocatur*; and so is a fruit not onely of the King's affection, but of his choise by Counsel. Secondly, 'tis *non nutu capitis, nec iltu gladii, nec verbo oris, sed brevi sigillato*, but by his Writ somewhat issuant from his politique Wisdom, and of kin to matter of Record, a dignity in Nature of a Patent, *brevi regio*, by a Writ of summons. Thirdly, the Writ is plural in the expression of the Person serjeanted, *vocabulo vobis dignitatis argumento singulari*, as if the King in the honour did convey and intend him some participation in the rays of Eminency with him. Fourthly, he is called *ad sta-*

Lib. 28 E. 1. fol. 18.

*Seldens Titles Honour, p. 832. Preface 10. Report*

*Quid aliud est Juriconsultus domus nisi Oraculum Civitatis. Cic.*

Preface to the 10.  
Rep.

*tum & gradum*, which, the statutes not of 8 H. 6. c. 10. but of 8 E. 4. c. 2. 24 H. 8. c. 13. do allow and insert them in, as if the King incorporated them into the Tyrocinny of Nobility; these and such like parts of their dignitie is by that worthy Author observed;

*Topulo ad actiones suas pronuntiandas, & defendendas usque ad sententia examen pro Honorario suo deservituri, Specul. Justitia- riorum.*

Mirrou des Justices cap. 2. selt 5. des  
Counters.

Lib. 2. c. 37. p. 37. Edit. Seld.

nor had they these without great duties expected from, and performed by them, as *Narratores* and Counters, for (so they were anciently called) and they did stand as Patrons to the People throughout all their causes, to plead and defend them according to equity and right. The Mirrou sayes also, *Chescun Serjeant est chargeable, &c. Every Serjeant is bound by Oath not to defend wrong or falshood, if he know it so to be, nor assist his Clyent any longer then he perceives his cause is just*: the same *Fleta* writes, with this addition; under pain of imprisonment a year and a day &c. By which

wisdom of our Law, so advising the King to imitate the *Athenian Areopagus*, the Band of Serjeants have been the learned Brotherhood whence the brave Judges have ever since been chosen. The Kings of this Land being by their learned Chancellours; and chief Justices advised of the Worths of men, though their own Modestyes consented to their temporary obscuring of themselves. In the 5 H. 5. *Mariyn, Babington, Pool, Westbury, June, Rolf*, were called by the King into Parliament for refusing to take the state and degree of Serjeant; to which they had been by Writt called; which they persisted to refuse, as counting themselves not fit for the state and degree, but in the end with much adoe, they took it, and divers of them (saith Sir *Edward Cook*) afterwards did worthly serve the King in the principal Offices of the Law.

Ror. Parl. 5 H. 5

2 Instit. p. 214.  
In Stat. 1. West.

And these being Serjeants Counters, so called, because they recite and count in actions appointed by the Judges before them at the Bar, are distinguished from other Serjeants, which are of lesse honourable degree then these at the Law are. And though these are the prime of those *periti in Legibus* mentioned in our Text; yet there are others who passe under the name of Apprentises at the Law, who yet are not Learners and

Apprentisii.

*A Dupondio nummo quasi duorum asibus asstimantur: ALCIAT. lib. 4. De Verborum signific. p. 579.*

*In praxio Digest. p. 49. Gloss. D. ut legum anigmata possunt subtiliter & acutè dissolvere. ALCIAT. loco praecitato.*

Novices, but *Antesignani* Standard-Bearers of science; no *Dupondii*, youths entred into study, of no more honour in their Art, then those we proverbially call *Two penny Lads*, Pupils who are under Discipline and Coverture, Freshmen; no Students of 4 years standing, which the *Digest* terms *Αυτὰς*, (*qua vix solutores significat, importing a proficiency in explicating and resolving the knots and difficulties of the Law terms*; ) but *Περλιῶν*, those who are compleat apprehenders of the Law, and want no competent Perfection in the know-

ledge of it. These who have been near twenty years or above at the Inns of Court, and done all the Exercises that the House, of which they are, requires; and having read openly before the Society upon some Statute, or point of Law, as the probation of their Judgement, and acquisition in their Profession, by Lawyers are called Apprentises: and these so grave, so learned, are often mentioned in year-Books, and their judgements and arguments therein much to be valued; yea when they have written any thing in the Law, they have subscribed their names as Apprentises of the Law. And though in E. 1. time anno 20. Attourneys are named before Apprentises, after which *Fleta* so also marshals them, yet are those Attourneys not to be named in a day with Apprentises (unlesse Attourneys were more then now adayes they are, which I know not,) for Sir *Edward Cook*, terms these Apprentises *Sages Gents*, intended in the Statute of 28 E. 1. c. 11. and so declares them in his Preface to the tenth Report. And the learned *Selden* produces a notable Record out of the Tower, wherein King E. 1. directed his Judges to select a certain Number of these Apprentises to attend the King's Courts, who perhaps were hence called *Apprentisii ad Barras*; of which, *Andrew Horn* makes mention in those ridiculous verses, as Mr. *Selden* calls them before his Mirrou.

Stat. 24. H. 8. c. 15.  
1 Ed. 3. fol. 17.  
Kitchin.  
Finch.

*De Attornatis, & Apprentisii, Dominus Rex injunxit, &c. 20 E. 1. rot. 5. Dorf. Fleta lib. 2. c. 37. Notes on this 8. Chap. of Fortescue. p. 2. Spelm. Gloss in verbo Apprentisii*

These Apprentises then of the Law were men of note, as not onely appears by the forementioned instances, but from their wonted separation from the Inns of Court, (where they spent their younger studyes) and their locations in hostles proper to them. For as the Serjeants had their Inns, so had the Apprentises theirs, *Tavies-Inn* in *Holborn* was one of them (and others no doubt they had, though the memory of them is lost) yea and as is concludable from the Roll of 5 H. 4. when that thing, meaning to make

*Hospitium in quo Apprentisii legis habitare solebant. 21 E. 3.*

make



make good his Title, and fearing least the Lawyers in Parliament should obstruct it, directs Writs to the Sheriffs of all the Counties, *That they should not suffer any Apprentise, or other learned man in the Law, to be returned to Parliament.* Hence saith the judicious Sir Hen. Spelman. This Parliament was called, *The lack-learning Parliament, and that Convention which put a hard yoke upon the Church.* Whereas then our Chancellour says, *Quos vulgus Apprentisios denominat,* He means not to disclaim the term *Apprentise* (as not a word of legal honour, but a nick-name originated from the mistakes or malevolence of the Rabble) but he uses the phrase *vulgus*, to shew the community of its approbation, and the willingness of the most knowing men in that Profession, to derogate from themselves, so they might arrogate the Law; and to lesson also men to put a value on Lawyers, whose travel and pains in the abstruse study of the Common-Law is such, that when they have studied as long as their bodies will endure, or their eyes assist them; yet after all, do not arrive to be *Doctors, Professours, Exprofessours*; but in the most accumulate advances are but *Apprentisii & servientes ad legem.*

*Melius enim per alios, quam per te ipsum judicium reddes, quod proprio ore nullus regnum Anglie judicium proferre usus est.*

This Clause resolves two doubts; First, why the King need not *Legis Sacramentum rimare*, not toil himself in the intricacies of the Law, but leave those to the Judges, because it will be better to do it by others, than by himself. Secondly, why more convenient and better, because so used to be done by the Kings of this Land, whose practice was upon weighty grounds: for *melius* here is not strictly and Grammatically to be taken, for then it would have a sense of diminution, and reflect on the Prince, as if any thing might be better done, then he that (*quâ* Prince,) is perfection it self, and cannot be out-done, because he is the fountain of politique action, and Judgments cannot be presumed to be justlyer judged, then by the Prince, who is Justice it self, and by his accession to the Crown, is under no presumption of defect. But *melius* is to be taken for *equius*; so Tully, 3. *Offic.* 80. *Convenientius*, that is, it will be more comely, in relation to their State as a King, and proportionate to the indifferent and equitable nature of their Justice, to determine matters by Judges, men unconcerned in the losse and gain of Causes, then by their selves, to whom in all Capital Causes, the forfeitures of Peccants Escheats; and in Causes between them and their Subjects, they may sometimes be Judge, who are Parties. Yea, and *melius*, because also their Serjeants and Judges, being more versed in the mysterious parts of the Law, are more likely to extricate the truth, perplexed in the heats and covins of contention: this I take to be somewhat of our Chancellours mind in *Melius*. Thus Authours expound *Melius*, *Anima melior* in Virgil; *Servius* terms *aptior mens, melior*. *Donatus* renders *bona & tolerabilis*, and *natura bona*, by *Plena, Magna, Pinguis*. *Melior pars dici*, by *Major & prima pars*; and Tully coupling *melius* with *equius*, as he does, makes the sense plain, according to the strictness of Oratory, as well as Law.

*Per alios, quam per te ipsum judicium reddes*] All Judgment is the Kings, though by the dispensation of the Judges; and of old, Kings and chief Magistrates did personally decide Cases, and dispensed Laws, as it is evident in the Case of the Judges, and *Solomon*, and all Kings, both in holy and prophane Story; *Philip of Macedon, Demetrius, Poliorcetes, Augustus Caesar, Claudius, Charles the Great, and Charles the Eighth*, as is confirmed by *J. Lipsius, in monitiis Politicis, c. 9. p. 241.* And in England, the Sons of the Kings of this Land have sate personally in the Courts of Law; as by name, *E. 4. secundo Regni.* And Prince Arthur rode from shire to shire in Circuits, to hear and determine Causes depending between man and man. And others of them have by Charter exempted certain persons from being drawn into Judgment before any persons, *Nisi coram nobis, vel capitali justitia*, which seems to reserve power to themselves judicially to judge. Yea, though *Lipsius* is positive, *decere, expedire, debere*, that Kings ought, and may personally hear and judge Causes: yet the more agreed Rule of our Kings legal pleasure and practice, is to judge *in curia* by his Judges, whose Authority his personal presence in Courts (I humbly conceive) does not dissolve, though in other Cases the Rule be good, *The power of the less ceases, in the presence of the greater.* Now this the King has yielded to, and established in the practice of Law, that all passion and prejudice to Justice might be avoided; and that the Judges may be indemnified, they are sworn to do Justice according to Law, without consideration

2. Par. Claus. in  
Dof. n. 4. regni  
5 H. 4.  
Hinc Parliamen-  
tum illud Lauco-  
rum, & indolite-  
rum quo & jugu-  
lum Ecclesia  
utrocius peteba-  
tur. Spelman in  
verbo.  
See Stat. 24 H. 8.  
c. 1. Rofal ac  
large.

Ancid. 5.  
Terent. Adel.  
Lib. 3. Offic. 80.

Selden on cap. 8.  
art. 3. p. 4.  
Mittour cited by  
Sir Ed. Cook & In-  
stit on the Stat.  
Quo Warranto,  
p. 498.

In monitiis & ex-  
emplis Politicis,  
c. 9. p. 240. Qu. t.

Cessat potestas mi-  
noris, in pre-  
sentia majoris.  
Reg. Juris.

15 E. 3. juramen-  
tum Justitiar.  
L. cum quem 79.  
ff. 1. ff. De iudice.  
Novel. 115. c. 1.  
Bocerius, De  
Bello, c. 24.  
5. Speech, Star-  
Chamber, 1616.  
p. 556. of his  
Works in fol.

Sir Edw. Cook on  
the Stat. De Ju-  
daismo, 2. Instit  
p. 507.

Lib. 7. De Moni-  
tis & exempl.  
Politiciis, p. 232.

Eicon. Basil. e. 19.  
p. 178.

of any thing in obstruction of it ; though Prudence dictate to them, in arduous Cases, to consult with the Prince, *qui ipsis de jure respondere solent*, as the *Civilians* say ; and in matters of Staté and concernment to the Crown, *prius consulere quam constituere, & declarare*. So did that wise Monarch King *James* admonish his Judges to do ; *Incroach not* (quoth he) *upon the Prerogatives of the Crown ; if there fall out a question that concerns my Prerogative, or Mystery of State, deal not with it, till you consult with the King and his Council, or both ; for they are transcendent matters, and must not be stubberly carryed with over-rash wilfulness, for so may ye wound the King through the sides of a private person*. So that Oracle. And so have, and do the wise Judges always ; that so the King being rightly informed of the nature of Causes, may voluntarily, as the Sovereign of our National Justice, honour Justice above himself ; if those can be imagined distinct which the Law seems to me to have made one and indivisible. And this blessed effect of Majestique Condescension to humble and loyal subjection, have the Subjects of *England* experimentally found from their Princes almost always : not onely *Edward* the first manifested it in the Statute, *De Judaismo*, whereby though the Kings of *England* had from 50 H. 3. to 2 E. 1. 420000 li. 15 s. 4 d. profit to their Chequers, when the ounce of silver was but 22 d. yet *Edward* the first, though he had a great need of supply by money, his expences being great, did, for the honour of God, and ease of his Subjects, banish the *Jews*, and all their Usury, by the Statute in the eighteenth of his Reign ; and *Edward* the first, in the Statute of Treason of the 25. regni, c. 2. but also the late martyred King *Charles* the first, of blessed memory, in sundry Acts of Grace by some of his graceless Subjects abused. And above all, our now Royal and renowned Sovereign, has to a wonder, and an eternal obligation of his Subjects admiration and gratitude, made appear in that never to be forgotten Act of Oblivion and Indemnity, whereby all his Subjects not excepted therein, are remitted all penalties both for life and estate : Both which, thousands in the Nation, had in rigour of Law forfeited to him. This shall be written, *that the Generations to come may know it, and the people that are yet unborn may praise the Lord, for those admirable restraints of anger and indignation in him*. The consideration of which magnanimity, and royal fidelity, as it entitles his Majesty to the superlative love, and resolute assistance of his Subjects, cordially as well as politiquely his, and to the blessing of God, who onely fortunateth all undertakings : so does it censure to Hell, as ingrate and horridly inhumane, all thoughts of treachery, or malevolence to his Royal Person, Posterity, and Successours in Government : the punishments of which, if any should be so wicked and wretched to deserve, not onely will be greivous in the legal terrours, but in the regrets, that Conscience will give the deserved sufferers. My prayer shall be, *that God would make us fear him, and honour the King, and not meddle with them that are given to change ; ever remembering that Power is best and safest, when in its proper channel and centre. And that God, whose Vicars Kings are, has given that greatness of mind to them, that as they are above mean thoughts, so will they not alloy the glory of their Thrones, by actions of narrowness to their Subjects. Lipsius has quoted rare professions of piety, and love to Subjects from Emperours, Tiberius, Trajan, Vespasian, Henry Son to Frederick. To which may be added the words of that late martyr'd Majesty, Those victories are still miserable ; that leave our sins unsubdued, flushing our pride, and animating to continue injuries ; nor do I desire any man should be further subject to me, then all of us may be subject to God.*

*Tamen sua sunt omnia judicia regni, licet per alios ipsa reddantur ; sicut & judicium omnium sententias Josaphat asseruit esse judicia Dei.*

*In urbibus, aut noviter structis, aut bello acquisitis, effecit ut essent Judices 32. Qui de causis civilibus, & capitalibus non exceptis cognoscerent.*  
Grot. in 2 Chronic. cap. xix. v. 6.

Here the Text not onely asserts the Kings propriety in the Land, people, strength, and Law of *England*, but confirms the judgment of the Judges appointed by the King, to be the King's judgment from a Text of Holy Writ, 2 *Chron.* 1. 6. wherein *Jehosaphat*, a famous King of *Judah*, charging his Judges to be exact, calls their Judgment, *the Judgment of God*. For as the Judgment of *Jehosaphat's* Judges, is called *the Judgment of God*, because it was in execution of the design of God's Justice in the World, and by the authority of the Magistrate, the Minister of God ; who being set by  
God

God to govern, makes by his Delegation, the just actions judicial of his Judges; *the judgment of God*, because judged by power derived from God: so the judgments pronounced by the king's Judges in his Courts, are the king's Judgments, because they are from those Benches that he erects, and protects to that purpose, and from those persons that he commissions so to do. For *causa causa est causa causati*. If the King empower any man to act for him, his Action is in reason and reputation, while within the Verge of his Commission, the Kings; and the contumacy that is expressed against that Power or person, the King and the Law expounds as done against the King. And hereupon, as the Person and Palace of the King is to have no force expressed in it, under grievous penalties, so the Courts of Law, in which the King's Judges sit, are to have no action of violence or ryot expressed in the view of them sitting. He that strikes a Judge sitting on Judgment, or that strikes any other, the Court seeing, and sitting, *loseth his hand, and shall suffer fine and imprisonment at the King's pleasure*. He that appears not at the Summons of the Court, is in contempt of the King, and may be out-lawed, and so be out of the King's Protection. These, and infinite such like Cases, argue the Judges in the King's Courts to be Ministers of the Kings, and the Actions they legally do, authorized by him. And hence, in reference to the Judges, King James of blessed memory told the two Houses of Parliament their dignity, in those words; *Beware to disgrace either my Proclamation, or the Judges, who when the Parliament is done; have power to try your Lands and Lives; for so you may disgrace both your King, and your Laws.*

*In iudicando estis vicarii iudicis summi, sic & Rex in regnando; & à Deo auctoritas & potestas iudiciaria derivatur. Ideo iudices sunt & Principes, dii in scripturis vocantur, Carthusianus in loc. & Reporr. De Jure Regis Eccles. p. 3. b.*

King James's Speech, *Star Chamber*, 1616. fol. 550. of his Works.

*Dicatur autem curia, primo de regia seu Palatio Principis, inde de familia & iudicis in ea habitis, ut ostendit Spelman in verbo.*

Speech at *White-Hall*, Anno 1607, p. 517. of his Works in fol.

*Quare tu, Princeps serenissime, parvo tempore, parvâ industriâ sufficienter eris in legibus Angliæ eruditus, dummodo ad ejus apprehensionem conseras animum tuum.*

This inference is very proper from the premised matter: for since the King's of England are furnished with learned Judges, Serjeants, Apprentices, and other men of learning in the Law, whose life is spent in study of the Anatomy of the Law; and since they, how well versed soever in it, or any part of it, are obliged to serve the King by their Counsel, and otherwise with such their parts, whereby the King is politically compleated in all points of his Regal Function. Since these things thus are, they do excuse the King from that pains and care to understand the legal distribution of Justice in his person; which, but for these supplements, he must have held himself obliged to: so that now, all the King is in this case to do, is, to give his mind to love and comprobate the Law, and in that delightful humour to please himself, such minutes as he can spare from action and pleasure. For though a Serjeant at Law, whose glory and grace it is, *Ut serviendo discat, & discendo alios perdiscat*, as men of that degree did at their *Parvise*; of which *Chaucer* speaks,

Selden's Notes on Fortescue, fol. 56.

*A Serjeant at Law, wary and wise,  
That often had been at the Pervise.*

Though I say such men are to know whatever can be known in the Law, because it is their Profession, and they do *illud agere*; yet the Princes work being that of an *Architect*, not a *Labourer*, calls him accomplished, when able to oversee others due discharge of their duties. To do which, he is presumed to be knowing and intent; and those will direct him so well to choose Judges, that having chosen them, he shall have no cause to repent his choice. *Sufficienter eruditus* then is to be taken restrainedly, not for a sufficiency of possibility, the how much a Prince may attain to; but a sufficiency of convenience, and creditable use, such a Learning as may suit with the state, dignity, and opportunity of a Prince. Thus *Ulpian* expresses *Sufficienter*, *sufficienter alere & vestire debet secundum ordinem & dignitatem municipiorum*. For as Saint Paul was a most learned Preacher of Christ, even to the conviction of *Ethnique Philosophers*, who had

*Munus regium Architectoricum esse, sc. ut non tam ipse agere, quam alius agentibus praesidere, & ad officium eos compelleri debeat, Hopperus, lib. 1. De Instit. Principis.*

*Ulpianus in r. sed & si quid ff. r. ff. De usu fruct.*

all the art of evasion and evasion of his Ministry imaginable, which yet he through the grace given him overcame, though he professes, *He Was not sufficient for these things*; and as many men are sufficiently learned Lawyers, that arrive not at *Salpitiu* his height, whom *Budæus* makes the *Phoenix* of his profession, and more a *Fountain of Law*, than an *Age of Lawyers* put together. So sufficiently quaint Orators, though they have not what *Tully* requires in an Orator, *The subtilty of Logicians*, the wisdom of *Philosophers*, the words of *Poets*, the memory of *Lawyers*, the voice of *Tragedians*, the gesture of the most excellent Persons in all Professions. And a man may be sufficiently a man, having all the integral parts of man-

hood, and being able conveniently to expresse them, though he be not a *Goliath* or a *Sampson* for strength. Besides your Education, it is necessary you delight in reading, and seeking the Knowledge of all lawfull things, but with these two Restrictions: first, that ye chuse idle houres for it, not interrupting thereby the discharge of your office; and next, that ye study not for Knowledge nakedly: but that your principal end be, to make you able thereby to use your office, so was the Counsel of King *James* to his son. So a Prince may be *sufficenter eruditus in legibus*, that does give his minde to skill the language, read the lesser and more methodique Authors of the Law, and by conversation with the practise and Enactions of Courts, dispose his minde to enquire into them. In short, Doctor and Student, the four parts of the Institutes and the Statutes, which are to be read, *parvotempore & parvâ industriâ*, will instruct a Prince so, as to make him, *in legibus sufficienter eruditus*, but these Authors being written long since, our Text-

Master his *sufficenter eruditus* may be supposed relative to another Method. The *Jura Corona*, the Rights of the Crown, the *brevia Originalia*, which being grounded upon some original Law, for the violation of which, that is the way to bring the offence to tryal and judgment: the *Maxims* of the common Law, which are most obvious, and the Statutes, these in any competent measure read and understood, will make the Prince *sufficenter eruditus in legibus*: for it will declare him a friend to Justice, and one that so highly promotes it, that he yeilds himself a servant to it, and that *Diogenes* was wont to call *ἰδὸν*, *ἡ βίωσις τοῦ βίου*, a pleasure, and as it were sufficiency or perfection of life. Not onely as he does judge and distribute the Law by his Judges, who are Oracles in this learning, but if *Lipsius* a most learned man, may be the Judge, in all causes upon the account of these, and beneath these abilities, *Da Simplicem, da Probam*, &c. Let but the Prince set himself in the sincerity of his heart, and with the utmost skill of his prudent attainments, to do his judicial duty, and I dare say, (so are his words) there will rarely be any cause, wherein he will not finde out the truth, or near the truth; yea, God often inspires Princes with wisdom beyond other men, when he sees their hearts are set to serve him conscionably in their office, according to that of the wise man, "A Divine sentence is in the lips of the King, therefore he shall not err in Judgment, thus *Lipsius*."

The Consideration of Law and Justice as the *ἀρχὴ καὶ ἀεικέλιος*, which the Philosopher makes the rule of every one; and which is onely to be distributed by the Prince and his Commissioners, so wrought upon King *James* of happy memory, that though he came not to the Courts of *Westminster*, yet he, in a very great Presence in the *Star-Chamber*, did wisely and Christianly declare himself a King of parts as well as power, and of piety as well as of both, or either: for there, he not onely shewed what he understood, his duty to his people, and what his desert of the people; but he also gave such a Charge to all his Judges, and other Ministers, concerning all the points and parts of their duty, that 'tis hard to say wherein they could possibly err, if they composed themselves onely to the Conduct and Observance of those rules; which makes me take notice of that Passage of *Baldus*, where writing of the Judge, his words are *Non aliter judicaturus*, &c. That the Judge is for his wisdom and lustre of Justice so to manifest himself to the honour of his trust, and dignity, as the Prince himself is to do, if he were actually in the Seat of Judgment; whence I think I may properly infer, that the

Omnes qui ex omni aetate, hæc in Civitate intelligentiæ juris habuerunt; si unum in locum conferantur, cum Servio Sulpitio non fuerit comparandi, Budæus in pandect. priores, p. 9. Edit. Basil.

In Oratore inquit acumen dialecticorum, seu sententia Philosophorum, verba prope Poëta. am. memoria jurisconsultorum, vox Tragædorum, gestus panis summorum artificum est requirendus 1. De Oratore.

Basilicon Doron. 1. Book p. 175. fol

Restripa Originalia, fundamenta esse & totius legis quasi Cardines; & quam ræsse ab illo Juris Principia appellantur, firmat casus illud quod sentit, Bractonius lib. 5. fol. 413. ubi dicit, Breve formatum esse ad similitudinem regula Juris, in Tractat. ante 2. Rel. Cook.

Stobæus Sermone nono, De Justitia, p. 105. 2

Da simplicem, da probam, affectuum expertem, audeo dicere, rara causa erit, in qua verum aut juxta verum non videbit, immo Deus plerumque inspirat, & talibus mentem movet, &c. J. Lipsius in monitiis Politicis, cap. 9. p. 240.

Rhetoric. ad Alex. cap. 1. p. 609.

Anno 1616.

Digest. lib. 1. Tit. 11. de Offic. Praef. Praet. p. 126. A Texto

the Law supposes a King to be sufficiently wise and worthy to endeavour his accomplishment in all the Parts of his Regal Duty, that he may appear to be a Pattern as well as Precept to all his Judges.

*Sufficienter eruditus* then, must have a soft and sober sense allowed it, for in the latitude of the Notion, no mere man, no Prince but *Solomon* ever had sufficient learning in the Laws of Nature and Government; for since art is long, and the well out of which truth is fetched, very deep, and the life of man, though inched out to the utmost period of *David's* computation, be a long time, compared to lesser portions of living; yet in order to Art, and the expatiations of Art to be inquired into in that time: nay, though the whole time should be spent in the one only study of the Laws, the Student would notwithstanding be o're-taken, before he were an attainer to his *meta ultima*. For if consideration be had, how many years of life are lost in Childhood, in Youth, in mistake, which we are to rescue our selves from and retrograde, what casualties of sickness, necessities of life, pleasure, friends, avocate and steal away time, what treacheries, unexperience in the conduct of studies and converse, betrays us to; and how various the notions of men are in the passes of them through the several ages of their life. These, and sundry other leaks to the vigour and virtue of study, and mens accomplishment by it, proclaim *sufficienter eruditus* in the latitude and utmost sense of attainment and possibility, not to be here meant, because that cannot be gained *parvo tempore*, or *parvâ industriâ*, as this *sufficienter eruditus* proposed by our Chancellour is said to be. The true notion then of it is, that which I said before, then the Prince is *sufficienter eruditus in legibus*, when he knows the key and language, the reason and phrase, the rule and maxime, the more useful and common Laws called the Statutes; because by this knowledge he shall be able to know his own, his Ministers, his Subjects duties; and this is sufficient learning in the Law for a Prince; nay, this is able to make him as an Angel of God to discern between good and evil. For as in Souldiery, he may be said to be *sufficienter eruditus*, who knows all parts of Souldiery, Horse and Foot, Field and Garrison, the Laws of Command and Obédience, the use of all Machins, the Enemy he is to fight with, the ground he is to fight upon, the forces he is to fight by; and so in other Arts and Mysteries, as I say, an Artist thus able to perform his undertaking, may be said to be *sufficienter eruditus* in it, though he be not an *Hannibal*, a *Porphyrie*, an *Aristotle*, a *Drake*: so he may be a Prince *sufficienter eruditus in legibus*, who does know what he himself is, and other under him ought to do according to the Laws of his Government, of which he is the maintainer and defender. For as *Büdenus* says of *Tully*, *Quid non explicare potuisset illa vis ingenii, &c.* what cannot so rare an apprehension make plain, what so quaint a tongue express, what so wise a heart conceive, as resides in a Prince, to whom the Laws of his Government is pleasing, and the study of them his delight.

*Parvo tempore, & parvâ industriâ.*

This is that which in another place he expounds by *anno uno*, a small time to so gainful a purpose: But I suppose the Chancellour either tols him on by an engagement of facility and possibility of attainment, a harmless trepanning to study of the Law, or else looks upon his Princely Wit, which the *Greeke* call *εὐρυμία*, which makes a man, as *Socrates* was said to be, *πρὸς ἑδὴν ἀνού,* dull to nothing he was set upon: but as *Pythagoras* is by *Apuleius* written of, *supra captum hominis angustior, capacius above the proportion of man*, as that which will accelerate, and bring about that in a short, which ordinarily is a long time in operation and circumduction. This he concluding, may be justified in his prefixing *sufficienter eruditus* to *parvo tempore & parvâ industriâ*. For well did the Chancellour know, both what was sufficient Law-learning for a Prince, and how to perfect youth in that. For he had, as *Pisians* tells us, instituted many young Noblemen in the Elements of Law: and therefore being himself so learned, and having instructed others in the incoate and necessary knowledge of the Law. I conclude him able to perform his promise in instructing the Prince, *parvo tempore, parvâ industriâ*; brief and curt methods being useful to Learners, when to know the Law, as *ars equi & boni*, that is, to set the mind upon the Law with might and main, *proprium est juris consultorum institutum*, is the proper breeding of Lawyers, and that which they are to intend. The

*Punctum est quod vivimus & adhuc puncto manus. Senec. Ep. 49.*

*Πρῶτον δὲ ὅτι τοῖς ὀνόμασιν ἔχουσι δὲ τῶν. Epictet in Enchyrid. lib. 2. c. 14.*

*In Pandect. prior. p. 18. Edit. Basil.*

*Hollsemius in notis ad vitam, Pythag. à Porphyrio script. p. 66 in Florid. De Pythag.*

*Apud Budzum in Pandect. prior. p. 12.*

Chancellours sense then is, that intentness and addiction to any thing, will perfect that in short space, which otherwise will be more tedious in compassing. As the Fish *Aphia* (which gave occasion to the adage, ἀψία ἐστὶ πῦρ) is no sooner shewed the fire, but it is broyled, being naturally of so unctious a nature, that it yields to the warmth of the fire, and takes its impression straightways: so does some mens Wits capacitate them to any thing that is imparted to them; which is the meaning of *Parva tempore, & parva industria*. Though then ingenuity in the Prince, and method in the Chancellour, may make the Prince's learning in the Law, not so long in the time, nor so laborious in the toil of attainment, as otherwise it would be: yet time and industry there must be in some measure, ere ever there be attainment of learning the fruits of God's blessing on the Prince's time and industry, which two *time* and *industry* are fit to be considered.

Time is the measure of life, and the opportunity to every action: *Pythagoras* called it τὸ σφαιραειδὲς κίνημα, the *Globe of a moving Body*; *Plato*, αἰώνος εἰκόνα κινητῶν, the *moveable Image of Eternity*; *Eratosthenes*, τὸ πρὸς ἡλίου κίνημα, the *motion of the Sun*; the *Philosopher*, τὸ πρὸς ὅλην κίνημα, the *motion of the Universe*, τὸ σφαιραειδὲς κίνημα, the *Sphere of all motion*. *Suidas* renders it, δίδασκα τῆς οὐρανίας κινήσεως, all one with *Aristotle*. And *Solomon* above all says, 'tis that which is given by God, as the punct in which we are to perfect every duty, and in which the glory due to his Sovereignty is returned to him by every created Being. From which, because the time of action is that of light, which we call day; the *English* word, for present time, *Day*; *To day if ye will hear his voice*, is derived from the *Hebrew* יוֹם, which is one word they express time by, which יוֹם, they make to have the sense of יָסוּף, *sufficit*, as accounting it that which answereth every purpose under the Sun; unto which, perhaps, our Lord alluded in those words, *sufficient to the day, is the sorrow thereof*. The *Hebrews* also calls time, פְּשָׁע, which in the root signifies, *to pervert*; insinuating, that the prevarication of man distorts the provision of God, while he gives us time to serve him in, and we turn it to his disservice: though I know, פְּשָׁע, has also a sense of preparation and seasoning, which the *Greeks* render by *καρπός*. So *Eccles.* iii. 2. *Hag.* i. 4. *Judg.* xxi. 14. *Eccles.* ix. 12. There is also, שֵׁנָה, in the Holy Language, for *time*, as it is the *series & order* of things and actions: so *Esth.* ii. 12. *Cant.* ii. 12. sundry other words have they for *time*. Time then being either past, present, or to come, though known to God; yet is only ours in its present punct. That which is past, is gone; that which is to come, is uncertain; the present is onely ours, and that's *parvum tempus*. *Thou hast made my age as a span long: every man therefore in his best estate is altogether vanity*, saith King *David*. *Industry* that puts upon *time* its due burthen, and improves it to its utmost fertility. This is that which provokes men to labour and motion with chearfulness and placidity, φιλοπρωσία τις ἀγχινοία, says *Suidas*, φιλόπρωσιον πρὸς τὸ πονεῖν κερδοῦμα; *to be industrious, is to be carried to any thing with an indignation against whatever hinders and abstracts it*. This was that which carried *Alexander* above his discouragements to his Conquest. *Nicias* was famous for this; for by his intentness on his study, he grew so immemorative, that he was wont to ask his Servants, εἰ λούεται καὶ εἰ ἐσθίουσιν, whether he had washed, or eaten. Many are the promises and praises of *Industry*: *The diligent hand maketh rich; seekest thou a man diligent in his business. He shall sit among Princes*. Both *Solomon's* Aphorisms. And the Son of *Syrach* counsels, γίνε ἐν τερεχῆς, *Be diligent, and no Disease shall hurt thee*.

The Fathers appropriate much to industry; *Saint Chrysostome* advises to it, ἵνα μὴ αἰώντων ἐκπίσωμεν ἀγαθῶν, that we fall not short of eternal good things, πρὸς ὀλίγον χρόνον, &c. the time of labour is but short, and the reward in rest eternity: the Bee is but a small Bird, but the Parent of all sweetness, she alone brings honey. So is *Industry*, but a small time to be expressed in, but always to be rewarded in the fruit of it. So true is that of *Democritus*, τὰ μεγάλα, &c. men attain to great and good things onely by industry. And therefore the *Hebrew* word is מְשַׁבֵּחַ, coming from שָׁבַח, signifying, *cogitare, computare, ratiocinari*, implies the intention of the whole man, which *Solomon* calls, *doing with all our might*, that is, actuating our reason to design, and seconding it by the subserviency of sense, leaving no stone unturned, to effectuate our projection. This *industry* is made up as it were of Joints and Ligaments, of strength in order to action. *Rabbi David* terms it, *ars supputandi, and Arithmetica Philosophia*; because in it, men do bring all the refracted particles of their toil and search into a mass, to make it more

Erasm Adag. 12.  
Chil. 2. Cent. 2.  
p. 460.  
Athenus Deip.  
nos. lib. 13.

Plutarchus, lib. 1.  
De plac.  
Philosoph. c. 21.  
Physic. lib. 4. c. 10.  
Eccles. 3. 1.

Math. 6. v. 23.

Psal. 39. 5.

In verbis.

μὴ δὲ ἀνα-  
καλλόμενος.  
Salmuth in Pan-  
citol p. 192.  
Stobzus, Serm.  
118. p. 374.

conspicuous, and to be regarded as the wise Builder in *Luke* xiv. 8. who before he layes the foundation of his structure, sitteth down, and counteth the cost. The Hebrews knowing the consequence of this *Industry*, have according to the variety of its nature several words to expresse it by מלאכה, a word of large extent, primarily denoting riches and substance; but translated by *Industry*; because thereby riches and substance is gotten. It also signifies *Pecus, Angelus, Nuncius*; because as the Eastern riches consisted in Cattle, and those nourished to increase by *Industry*, as was remarkable in *Jacob*; and as an Angel is the Guardian of man, and watches over him by God's Command, to keep evil from him; so *Industry* is the probable means to keep the Woolf from the door, to prevent poverty and want, which ever follows *Idleness*, שׂוּר, also is a word for *industry*, and that denotes such a vigilancy, as is that of a Commander, who keeps a Garrison in an Enemies Country, he is ever on his charge, diligent to consider every useful occurrent, and to improve it; no person, no moment is out of his eye, but his thought is busied about it, and careful to make it commodious to his purpose.

This word is opposed to סבל, or נטל, which signifie *inconstancy*, and *vain levity*; such as the Holy Ghost reproaches in the *Ostrich*, who lays her Eggs in the Sand, and considers not the foot of the Traveller may crush them.

The sense then of our Chancellour by *industry*, is to commend such a proportion of time, as the Prince can spare from the more important things of his office, to spend in the study of the Law. As for the study of all liberal Arts and Sciences, I would have you reasonably versed in them, but not preassing to be a Pals-Master in any of them, for that cannot but distract you from the points of your Calling. So wise King *James*; which he probably might thus intend, that he in his *industry* in the study of the Law should aim; first, *scire linguam*, to know the Language of it, that he may understand what he reads; then *scire libros legis*, that he may, by knowing Authours, and culling the most pithy and methodique of them, improve the most he may, the time that he spends in perusing them. Then thirdly, *scire regulas legis*, for they are the Tropiques upon which the Law moves. Then fourthly, *scire rationes legis*, for that's of the form and constitution of it, and declares the mind of the Legislators of it. Fifthly, *scire fines legis*, for the end of the Law, is the motive to, and the merit of the Law: so that when he does think of little time, and little toil, there must be a vigorous and thrifty expence of that little, and that will make it go a great way. For all time is lost, and all travel in study to no purpose, if there be not a close application of the mind to the thing we prosecute; and that once vigorously set a work, carries all to the desired upshot; not onely lets a man into the secrets and abstrusities of knowledge, so that he knows good and evil, and employs his time and diligence in obtaining the one, and avoiding the other; but it prevails against even the morosity and untractableness of wild Beasts, as *Plutarch* in his excellent Book, *De solertia animalium*, has made good. Therefore *dummodo ad ejus apprehensionem tu animum conferas*, is the indispensable limitation. For though by Miracle God can, as he once did, give learning *imbre linguarum* in a moment, without any contribution of mans, previous to the collation of it, as was plain in the case of the Apostles, on whom the spirit descended in *fiery tongues*: yet the ordinary way of God is by those steps and assistances of time and labour, that bring about Conquests in Arts, as stupendious as *Alexanders* in Arms, and that *parvo tempore*, and *parva industria*, that is, while the searchers into, and after them, are young, and their pains is in the nature of expression of a pleasure; that as extraordinary fire, aptly conveyed through meet conducts, intends more to the liquefaction, and rarefication of any thing in a day, then otherwise it would in a longer time; and apt Moulds prepared, and reflexions on Fruits and Plants maturateth them in three or four Moneths, which in the ordinary course of season would be a much longer time in production: so in study, intentness of mind, and earnestness of labour, brings about that in a little time to great perfection, which but for it, would not be so circumacted. For here the Proverb is true, *Faint heart never wins fair Lady*. Time and toil will never bring to the Port of Learning, except the addition of the Students mind, proceeding from a love of Learning, accompany opportunity and endeavour: love and labour do sweeten each other, and promote their consequent success; it being pleasure, not labour, to follow our loves, though we lose our lives and wits in the chase and pursuit of them, and bury our beings in the Mine,

Basilic. Doron.  
2. Book, p. 177.  
Works in fol.

Page 599. &c.  
edit. Paris.  
Arts 2.

Mine where her Oar lyes even *Archimedes*, and *Eudoxus*, will both lose their lives to illustrate the Art they were enamoured of; and *Aristotle* not think the compiling of his History of Creatures tedious, because he loved to search and know what was to be found and known. O this application of the mind, is that which has all natural potency in it; 'tis the door to all speculation and action: This makes men excellent and general, because indefatigable in study; the praises of *Miltiades*, the renown of heroick acquisitions, rewarded in those that have preceded them, stirs them up to an emulation, which draws off their eyes from sleep, and keeps their hearts musing upon their darling. This is that holy charm, that *Moses* prays God to bestow upon his people, *Psal.* 90.12.

So teach us to number our days, that we may apply our hearts unto wisdom, וְנִבְיָא לִבְבֵנוּ כִּי נִבְיָא נִבְיָא ut adducemus cordis sapientiam, which is ad verbum, that we may bring to our heart wisdom, that wisdom and our hearts may be one and the same, the root נִבְיָא, in niph'al, signifies (according to *Rabbi David*) vaticinari, receptionem à Deo & sermonem quem jubet Deus ut loquatur, & then the sense may be, that our hearts may have wisdom, as truly and fully revealed to them, as the Prophets had Visions, and that by considering the nature of our days on Earth, we may fore-tell our future condition, either of weal or woe, and endeavour to make us friends of this unrighteous *Mammon*, that when we fail, they may receive us into everlasting habitations. So that dummodo ad earum apprehensionem tu animum conferas, imports a delight in, and an endeavour after the knowledge of the Law: for animum conferre ad aliquid, is as much as to ponder on, and steer all ones actions to a thing, to make it the mark we aim at, and the Goal we make to, and the Centre we acquiesce in. This, though the Chancellour did not in the strictness of the notion persuade the Prince to, since he had other employments, which did more immediately take him up, the intrigoes of State, and secrets of Policy, the interests of his Crown, and the conducts of Counsels. These being the more weighty matters of Regality, and requiring more of the personal intention of the Prince, were in order of concern and prudence, to be the chief and main of his study. Though I say in the severity and height of the notion, the Prince is not here pressed animum conferre ad earum apprehensionem, yet in such a competent and convenient measure, as he can, and his other affairs will permit, he is, and the more he is, (other things not being neglected) the more accomplished is he like to prove; since as *Lucius Crassus*, that great Lawyer said, *Omnia sunt posita ante oculos. &c.* Every day, and with every man there is good use to be made of the Law; which may be understood not one-ly as in the bulk and greatness of the Author, containing the Ocean of its variety and learning, but as its practice in ordinary administration patesifies it.

Cicero Dialog. De Oratore, dictum Livii Crassi.  
Budaus in Pandect. pag. 15. edit. Basil. 1594.

Nil est quod pertinet ad opera, & diligens cura non expugnat. Seneca.

pleasurable industry, that a year well and profitably spent therein, may in a good measure perform; and thereupon he says, *Parvo tempore, & parva industria, Because there is nothing which constant endeavour, and diligent care will not attain and overcome.*

*Nosco enim ingenii tui perspicacitatem.*

Qui vel Roscium illum histrionum decus, hypocrisis & arte mimica superare etiam possunt. In Pandect. prior. p. 608. edit. Basil. 1534.

Here the Chancellour by a Courtly Concession, tempts the Prince to a rendition of himself to his swasion; and thus he does not as one of those, *Pseudo Catons perniciosissimi*, &c. which *Budaus* says, *Study mens humours rather than their virtues, and pimp to the one, while they subvert the other; exceeding even Roscius, the Phoenix of Actors in their Theatrical Imposture*, as *Budaus* sets them out; but as a good and grave Gentleman, who considering the mercies of God to the Prince in his endowments of mind so ripe and pregnant, calls him to gratitude to God the giver, and to a good and virtuous employment of them so given. Indeed, this is the best construction Christian ingenuity can make of extraordinary mercy; not to abuse it, but to fix it upon the noblest object God, and to be satisfied in no sphere beneath, or besides his glory promoted, and charity to man auxiliated by it. It was undoubtedly a noble Proposal that *Tully* made



made to his mind, or rather his mind to him, when he thought, *Juris civilis disciplinam in artis rationem formamque redigere*; And that by these steps, the whole body of the Law he would refer to several common heads, then reduce every general head into members, then determine the state, use, and operation of every of them. Every brave and generous mind should do so by the memorie of the mercies of God, considering them in the latitude, as they are effluions from the sovereign bounty of the Creatour to his Creature and then applying them to his condition, and affecting his soul with the obligation of them, and exciting himself there from to a proportionation of every virtue, which God requires to be performed, and when performed, he promises to accept.

Now this being the duty of men endowed with such rare perfections; as ripe wit and ready apprehension, which the Text calls, *ingenii perspicacitatem*, the good Chancellour remembers the Prince in the excellency of the blessing; to perform the requiry of the obligation; for that he had a ready and accurate understanding, whereby he could *εὖ μάλα τὰ μαθητέονα*, &c. whereby he could easily learn whatever he would, and retain what so he had learned, and distribute those good parts of learning he had, to publique good, is plain from what the Chancellour, who best knew him, intends hereby to publish of him, yea, and his choice of Arms for his love and study to excel in, which his condition told him was properest to aid, restore, and adorn him, unto his expected Kingly condition, does sufficiently confirm to me. For to the amazement of all his Contemporaries, he not onely boldly came in the head of an Army to fight the Usurper; but when he by misfortune of War was a Prisoner, justified his fact to the teeth of his Opposite; which declares, that he had *ingenii perspicacitatem*, and saw that it was his interest above all things, to be in his addiotion Martial, and this he accordingly being, is said to be *perspicacissimi ingenii*, as being a man in wisdom, while a youth in years; yea, a Prince, who had a complication of all the promising excellencies of prudence in him. And this the Chancellour thus charactering in him, informs us, that a Gentleman he was above his years: For *perspicax* implies *Prudentia*. Tully writing of *Palamedes*, says there was in him *perspicax prudentia*, and the Greeks calling this by *πρόνοια*, which *Suidas* expresses by *πρόνοια δαμνα*, and intends such an insight into things, as men have who look with not onely both their own eyes, but with all the other mens eyes they can be helped to see through things by. And the Chancellour seeing in the Prince a more then ordinary Princely smartness, (I say Princely, for God ordinarily does qualifie them above others, as he designs them for greater charges then others have) the Chancellour I say, perceiving by the first appearance of the Sun in the Morn, and the early appearance of his life, calls upon him to direct his ripeness to a right object, and by right and proper means, to wit, the Law, which he may sufficiently, to credit himself to men, and to answer comfortably to God, learn knowledge in *parvo tempore & parva industria*; since as quick and intense fires, make that warm through in a moment, which slow ones will be long in piercing; and Birds fly that ground in an hour, which feet will not carry horses and men to in three: so readings, and forward parts, will furnish a Youth plainly to perform that, which others with great labour, and long intentness on it, cannot bring about. And this is the reason of all the admirable masteries in Learning, and sagacity that some young men arrive at, and are made famous by. Not onely in Arts; as *Papinian* and *Celsus*, who publicquely read the Law, before he was 17 years old; *Marcus Antoninus*, who in the 15th year of his age did *virilem togam Philosophi sumere*; that son of *Jannus Drusus*, who began to learn *Latine* and *Hebrew* at five years old, and within less then two yeers had learned them, with the *Greek*, *Chaldee*, and *Syriack*: at seven he so rarely interpreted *David* in the *Hebrew* Tongue, that a *Rabbie* then at *Eyden* heard him with admiration: two years after he read *Hebrew* without puncts, and found out the reason of their use: like performances to this he made in the *Greek* and *Latine* Tongues, &c. dying in the 21. year of his age. Yea, in our own Nation we read, that *Glanvil* began to be famous for Learning in the Law, in *ipsa adolescentia*; while-but a young man, he was famous for his judgment in the Law. Sir *Thomas Frowick*, Chief-Justice to *H. 7.* was renowned for judgment in the Law, and a Judge of it

Bridges in Pandect. loco præc. 120. p. 17.

Xenophon, lib. 2. De Sociat. D. 2.

1. Offic. 142.  
2. Offic. 122.

Such another was our Edward the sixth.

Patricius Instit. Reipub. lib. 4. p. 147. 148.

Salmuth in Pancitol. Tit. 10. partis secunda, p. 222.

Capitolinus in vitæ ejus: Drusus, Centur. 1. Miscellæ, p. 45.

Franzins de modo legendi S. Bibl. p. 15, 16, 17.

Pitæus ad annum, 1230. p. 307.

before

Valler Worthies England. in Middlesex; p. 183  
(a) Epist. ad Lupset Inter opera Tho. Mori. Imp. 1566.

Plutarchus in J. Cæsar.

Salmuth in Pancirol. p. 222. Lib. 2. c. 2.

Lib. 7. c. 28.

In Epist. ante Catalogum sermo- rum poetarum, historiam partu secundæ, p. 229.

Lib. 2. c. 6. p. 27. edit. Savil.

In H. 2. p. 1046. edit. Lond.

Patticius, lib. 4. Instit. Reipub. p. 147, 148. De Themistocle, & De libris Xenias.

before forty years of age dying, *floridâ juventute*. Add to these *Grocinus Lupset*, whom (a) *Budæus* terms *juvenum doctissimus*, Sir *Philip Sidney*. These, and many others, dead and alive, not inferior to them, are Benefactors to Arts, and to a Miracle, great Proficients in them, and beyond their years. So in Matters of action, youth hath strangely been prodigious; *Alexander* subdued the World before he was 27 years old, which made *J. Cæsar* rub his head with indignation, breaking out into that Pathetique, *Nos vero quid? Cneius Pompeius* in 18. and *Octavius* in the 19. year of their age engaged eminently in the Wars. *Severus*, before he was 20 years old, rendred himself *egregium militaris disciplina exemplum*, saith *Fulgosus*. *M. Manlius Capitolinus* before 17 years of age, took two spoils from the Enemy, *Equus omnium primus*, &c. the first Knight, saith *Pliny*, who wore the Mural Crown. Count *Guido Ranyone* is by *Giraldus* set out as a Mirrour of youth this way: And all this by the blessing of God on the pregnancy of Nature, which excites to, and perfects them in these projects so early. For though it be not infallible, what is conjectured in order to the futurities of youths proofs from the present lines of their faces, and lineaments of their actions; but that it may not, as well as sometimes it does, fall out according to judicious prognostications, and judgments on them: yet mostly it is too true, that the vices as well as virtues of men, appear in their Cradles and Infancies. *Malmsbury* tells us, *Alfred* embraced his Grand-child *Athelstan*, looking upon; and seeing in him grounds to believe excellent things of him. And Saint *Bernard* seeing our *H. 2.* when a Child, and at Nurse in the Court of France, looking on him, said, Monkishly and mischievously, *De Diabolo venit, & ad diabolum ibit*, saith *Brompton*. And all this, from that impresson, which in Natures order and method has been fixed on them in the principle of their Generation, which has for the most part so direct and vigorous an influence on them, in all the after choices and expression of their lives, that they are what is more suitable to that, and mostly abhor what is in contradiction to it, unless by divine grace and natural prudence, they are preponderated. Hence is it, that Children and Youths of great wits and forwardnesses, are either the comforts or griefs of their Parents, the joys or terrours of their Governments. For they being *rasa tabula*, whatever is first written in them, they retain with a vehemence assisted by their *acumens*. And since whatever they undertake, they perform with much pleasure, and persifitency, they may be pressed upon to perform that *parvo tempore, & parvâ industriâ*, which others not being so happy in a perspicacity of Wit, must without remedy be longer about it. And so this *nosco ingenii perspicacitatem*, was the reason why he tells him, he may be *sufficenter eruditus in legibus, parvo tempore, & parvâ industriâ*.

*Quo audacter pronuncio, quod in legibus illis licet carum peritia, qualis iudicibus necessaria est, vix 20. annorum lucubrationibus acquiratur, in doctrinam Principi congruam in anno uno sufficienter nancisceris.*

This is added, to evidence the Chancellours judicious experience of his assertion, and it extends not onely to *nosco ingenii perspicacitatem*, but to the whole scope of his words precedent, that he could by God's help, and would by his submission to his Prescription, make him undoubtedly sufficiently learned as a Prince in the Laws of England, *parvo tempore, & parvâ industriâ*, which he limits to one year. Now though it be a small time to so great a task, yet may with method suffice to instruct the Prince in that part of the Science of the Law, which he calls *Doctrina Principi congrua*, that is, in the common notions of Law, and elementary rectitude, in the skill of preserving the *Jura Corona*, and the rights of the Subjects from clashing and interfering, in the Sanctions of Parliament, which either explain and clear, or add to, or abridge the Common-Law, or remove new obstructions, which incommode Government. These may be sufficiently read to, and rivetted into a Prince, *anno uno*, and (I humbly conceive) are sufficient knowledge for him, according to the sense of the Chancellor. Nor does the Chancellor in this, *audacter pronuncio*, speak hyperbolically, but according to that gravity and truth, which the Judgments and Reasons of his, in the Year-Book of *H. 6.* from the 22. of his Reign onward, record of him, and the experience that on other young men whom he had in his time instructed to some such proportion, made good to

to him, he could to the Prince perform, yea, and if this he did do, he did nothing but what others since him may be presumed to attain to, or what is equivalent to it. *Hopper*, a learned Civilian and Counsellour to *Philip* the second of *Spain*, undertakes the like in the *Civil Laws*. His words speaking of the institution of a Prince; are these, *Ad quam rem plurimum juvabit tractatus Pandectarum, &c.* To which end, the reading of the *Pandects*, in which are the rules of the old Law, conduces much to the preparation of a Student towards his procedure, so as he begin with the institutions; then the books that expound the words and rules of the Law; and lastly the rubriques of the *Pandects*, Code & Novel, which he calls the labour of the Student the first year. Thus that great Master, whom my learned and religious friend *Mr. Langford*, heretofore mentioned having thoroughly studied, and that with design upon these very words of our Chancellour, has attained to much (I believe) of that which the Chancellour and *Hopper* intend the work of one year in either Laws; for having in the comparing of these two Authours on this head, made a kind of symphony between them; the *nosco ingenii tui perspicacitatem* in our *Fortescue*, with *natura, ingenium, labor, diligentia* in his *Hopper*. And our *Doctrina Principi congrua*, with his *ars Regia*; and our *sufficienter eruditus* with his *ne quid nimis*. And our in *anno uno* with his *primi anni studiorum labor*. He concludes, that the Chancellours *audacter pronuncio*, is no boast, but what the Chancellour himself very well knew how to effect, and what he after him, by God's help, is able to instruct youth to do: which that judicious Authour of *Doctor and Student* promoted, as to the utility of its design, and the profit of its consequence, in these words, *If the Noblemen of this Realm would see their Children brought up in such manner, that they should have learning and knowledge more then they have commonly used, or have in times past, specially of the grounds and principles of the Law of the Realm, wherein they be inherit, though they had not the high cunning of the whole body of the Law, but after such manner as Mr. Fortescue in his Book that he intituled, De laudibus legum Angliæ, adviseth the Prince to have knowledge of the Laws of this Realm, I suppose it would be a great help hereafter to the ministrations of Justice of this Realm, a very great surety for himself, and a right great gladness to all the people.* So *Doctor and Student*.

Lib 4. De Vera  
Juriprud. nr. 12.  
De Speciali Juris  
interpretatione.

Doctor. & Stud.  
Book 2. c. 46.  
F. 148. b.

These things I note, to shew that smaller degrees of learning in the Laws are sufficient to the accomplishments of Gentlemen and Princes, then Professours and Judges; and that the twentieth part of that Science, which is but *unius anni filia*, the fruit of one year will suffice for the one, when the study of twenty years will *vix iudicibus sufficere*, scarce serve to the necessary accomplishment of a Judge: which eminently sets forth the eminency of Learning, which a Judge ought to have, who after three Apprentiships of years, one under the Bar *legendo & scribendo*; the second at the Bar, *audiendo & practicè observando*; another, *ruminando & maturè judicando*: yet how well soever he improves them all, arrives but at the title of *Serviens ad legem*: For since the Text says, *Vix viginti annorum lucubrationibus, the skill of a Judge is attained*, there is great reason the judgments of them so perfitted, should be in high value. For since the Judges have no power to judge, according to what they think to be fit, but that which out of the Laws they know to be right, as is the resolution of all the Judges in *Calvin's Case*; it becomes the Judges to be men of great standing and study, as blessed be God and the King, they are, that they may distribute Justice to the glory of God, and content of the King, his people, and their own Consciences.

First, then this time of study presumes great parts attained, and grave experience in the practice; as well as Theory of the Law arrived at. For the Rule being,

Μηδὲ ποτὲ κείναι δὲ δαίμονας ἀνδρας ἐόντες,  
Τῶν σοφῶν σοφὸς ἴδύμι, τῶν τεχνῶν δ' ἰμώτεχνον.

Men judge of things as th'are in mind endow'd,  
To Kings in art, judgment of art's allow'd.

Phocylides apud  
Stobæum, Serm.  
4. De Imprud.

And the Judge being a Representer of the King, ought to be so qualified, that his place may from his indiscretion have no disparagement. And thus to do, will require vast knowledge, not onely in Laws of all sorts, but in men and things, and in the conversation with, and

Ita jus reddi debet, ut auctoritatem dignitatis  
sua ingenio suo augeat, *Callistratus, lib. 1. De  
Cognit. Digest. lib. 1. nr. 18. p. 150.*

H h

operation

Lib 5. De Morib.  
c. 7. p. 47.

Lib. 51. ad edictum  
Digest. lib. 3. tit. 3.  
p. 403. H. Arbitratu in Glos.

Jornandes, lib. 6.  
p. 641. 642. edit.  
Sylburg.

Tarum atatis  
multum gloria.  
Malmshur lib 2.  
De Gestis An-  
glor. c. 6.  
Plin. lib. 7. c. 41.  
Lilius Gyrald.  
Dialog. 8.  
Histor. Poetarum.  
Vopiscus in  
Tac.  
Thearr. Vita  
Humanz.  
p. 3142.

Non enim aut se-  
veritatis, aut ele-  
mentia gloria est  
affektanda, sed  
propenso judicio  
prout quaque rei  
expositulaz, est  
statuendum.  
Hopperus. De  
ver Jurisprud.  
p. 22. Tit. 15.  
Stobzus, p. 547.

\* p. 134,  
135, 136.

operation of them, the knowledge of these must not onely be, *μῆτις τῆς οὐκείνης, have a part in him*, but be the *τὸ ὅλον αὐτοῦ, the whole of him*. For a Judge ought to be the *living Law*, and the *speaking Justice*; so says the Philosopher. And this to be to all intents, and in all Cafes, calls for not onely great assistance from God, but great industry and intentness on study, and all little enough to carry the weight and burthen of his place, and creditably to execute it. No common Custome of the Nation, no Entry or Year-Book, no Judgment, no Writ, no Title, nothing that may make to the dilucidation of causes, must he be ignorant of: Nay, if he will rightly execute his Office, he must be seen in Arts, Histories, Mechaniques, and all occasions of Conversation, that so he may know how to unriddle the abstrusities of Cafes, and know where Frauds lye, and obviate them: for since that of *Panlus* is true, *Omnis qui defenditur, boni viri arbitrato defenditur*. And that the gloss renders, by *boni judicis arbitrato*, a Judge is to be a most accomplish'd man in the gifts and graces of his Intellect and Mind; and this he cannot attain easily to be, nor continue to practice, till the heats and temptations of youth are over, and the solidity and indiversions of age and maturity be arrived at, which is seldome attained under the age of forty, or above, by which time they may have a full twenty years time to store themselves. I know there have been some young men, who have lived little in time, but long in fame; *Scipio Africanus* the Master of *Africk*, was but a young man when he obtained that Title. So was *Fabius Cunctator*. *Ashestan* was such an one, whom no man before him did excel in the majesty and prudence of Government, and others heretofore I have quoted Presidents of it; but these have been but rare, as rare in men, as successions of brave men are in Families; in which, though one Family of the *Curio's* in *Rome*, produced three Successions famous Oratours; and one Family of the *Fabii*, three chief Senatours one after another; and the *Annei* of *Corduba*, three Brethren famous for Learning, and exactness of Morals; and *Tacitus Augustus* continued the honour of his Family, even unto *Cornelius Tacitus* his time. Yet have more brave men and Families been degenerous, and abated the splendour of their Ancestry by their vicious imparities to them, as *Zuinger* in many examples confirms. And so, though in the Law some may be culled out, that extraordinarily profit, and are for learning, temper, grace, and integrity, fit betimes for Judges, perhaps some time within the space of 20 years; yet such are but *rara aves* (one *Phoenix* perhaps of this kind is in an Age) generally the rule is peremptorily true, that a Judge's Knowledge and Learning is hardly got in twenty years time, if then.

A Judge then therefore is so long attaining his qualifications, because not onely they are many in number, and different in nature, but depend upon some masteries of self, and intuition into the mysteries of things, which are the product of great years, and much wisdom collected from them: while youth is warm, and passion keen, when the apprehension is not fixed, nor experience has corrected the volatility of fancy and humour, there is no room for unmoveableness, and a rectitude equally distant from the extrems. Now such an equilibriumness being the perfect mean of virtue, and Justice directing a Judge, *not to seek and affect the glory of clemency or cruelty*, but to keep himself to Evidence, and to the truth of the Law, in censure and judgment of the fact: Is it probable, such and so great Masteries of Nature and Corruption will be in young men, who are all fire and tow, all tinder and quick-silver, as in those whom twenty years study have cooled and settled on the solid and serious Basis of Prudence and Piety, which onely fits men to be of the *Sages gens, Gods to men, ἀνασσίους ὄντα, μὴ δαρείου, Servants to Justice, not Engines of oppression and extravagance?* Which considered, our Charcellour has done well in giving twenty years to the accomplishment of a Judge, not thereby outing earlier attainments of the fruits of God's blessing on their studies, and the King's favour in Calls to the Bench, if sooner the attainers of them are thought fit; but to let the World know, that the most of learned men are in no competent measure qualified for that trust and dignity, under that standing; and dangerous it is to call men to that preferment sooner, unless for extraordinary deserts, least they should *sub gravitatis purpura nepotari*. And this, as I said before on the 8th Chapter \*, justifies the Kings of *England* in all times, and our now Liege Lord at this time, not to make any Judges before they have emerted, and exceeded the Chancellours limitation, which I am sure the youngest Judge now has almost twice, if not altogether over, and which is the reason that the Courts are so learnedly filled with Justices, and the people so satisfied

tified with the justice of their Judgments. So true is that of *Plutarch*, *παιδαρχικὸν ὄρον ἐστίν, Ἰουθεν ἡ ἀσθενία, ἀλλὰ ἡλικία ἡ ἀρετή, καὶ ἡλικία ἡ ἀρετή*, *Youth is the season of obedience, but old age best befits Rule, and best carries on Government.*

*Plutarch in lib. an seni sit gerenda Respp 7 19. edit. Paris.*

*Nec interim militarem disciplinam, ad quam tam ardentem anhelas, negliges, sed cæ recreationis loco, etiam anno illo tu ad libitum perfrueris.*

Here the Chancellour applyes himself to the Prince by a wise insinuation, adapted to the humour of youth; which being delighted with actions of pleasure and gayety, is frequently kept from other more serious and useful accomplishments, by the prejudices it has, as if they were inconsistent with the other things of recreation, and externity of pomp; which because the Chancellour knew a dangerous anticipation of his counsel, he endeavours to remove by a calm and swaviloquious grant of Recreations, and a competency of time to Military Affairs, without any frustration of his sufficient accomplishment in knowledg of the Laws in the proportion, and within the time aforesaid. And to good purpose does he do it, for had he told him, that the recreation he had chosen, was to have been refused, that learning in the Laws alone could make him good in his person, and good to his Government, had he kept him to the rigid and austere Rule of Study, and not given him some relaxation, and allowed that best spent, in what he most delighted in, and would really find a great ornament to him, *Military Discipline*, he had wholly lost his ear and heart; which done, all the reason he could speak or write, would have been ineffectual, because coming from a Tongue and Pen unfavoured, and therefore suspected; but in that he does so comply with the Prince's youth, and yet follows on his intendment, argues him to be both a man of civility and sageness: For as labour is wearyness to the bones, a punishment of sin, and the waster of life; so is Recreation, and cessation from it a re-invigoration, or second enablement of Nature to bear her burthen. Thus *Pliny* uses *recreare* for *instaurare*, *Si enim defecta longis agri-tudinibus corpora recreantur. Afflictos bonorum animos recreare*, So *Tully*. And *amicorum literis recreari; conspectus vester reficit; & recreat mentem meam; afflictam & perditam provinciam erigere & recreare*. By then *recreationis loco*, he intends that he shall not be kept that year he is proposed to set apart for instruction in it, close like a prisoner, or an Apprentice, but he shall have his play-times; and those not onely as often as he profitably and ingeniously may (study also being conveniently considered) but in that specific delight, which he does above all others choose as his Mistress and Darling. For as the eye, always intent on reading, will at last be weak, though its composition and visual Organ be never so strong, and the Bow, if always bent, will grow weak, and the Treasure always drawn from, will in time be exhaust; and as shades are made of many colours, which any one colour will not perfect: so is the mind not onely pleased with, but refreshed by variety; and therefore, as wise Physitians prescribe no physick to the body, but such as it will bear; nor no oftner to repeat it, then they find morbid matter adhering, and then the strength and spirits of the Patient will permit, but prescribe intervals by which the body is restored, and the strength in some measure recuperated: so do wise Tutors gratifie their Pupils with such refracti- ons of them from their intencness on study, as may make them come to it fresher, and continue at it willing, since by them they are made more apprehensive of their read- ing, and more emulous to deserve well, which they are so kindly dealt with. Though then our Chancellour did pres vehemently for the Princes training up in the know- ledge of the Law, and that by an intencness of mind for one year, in which he (so in- genious and docile) might be by the Chancellours method taught it; yet did he not desire all that years time to the Law, but allowed him part of it to matters of Arms and Chivalry, part to Devotion and Piety, part to Food and Necessity, and part to Friend- ship and Courtesie; which he I suppose did in a method, much like that my worthy Friend Mr. *Langford* has imparted to me, and he himself has profitably disciplin'd young Gentlemen in *Grays-Inn*. The natural days 24 hours he thus distributing.

*Lib. 22 c. 23. 7. Lib. 12. c. 1. 2. Ad Attic. lib. 4. 11. Pro Planc. 5. Verr.*

A Benchet of *Grays-Inn*.

From 5 in the morning to 6. *Ad Sacra. Begin with God by reading and prayer.*

From 6. to 9. *Ad Jura. Read the Law carefully and understandingly.*

From 9. to 11. *Ad Arma. Carry on harmless acts of Manhood, Fencing, Dancing, &c.*

From 11. to 12. *Ad Artes*, Forget not *Academique learning*, *Logick*, *Rhetorick*:

From 12. to 2. *Ad Vitium*, Eat seasonably, moderately, and allow time to digest.

From 2. to 5. *Ad amicitias*, Visit civilly your friends, and repay kindness in kind.

From 5. to 6. *Ad Artes*, Read *History*, *Poëtry*, and *Romances*.

From 6. to 8. *Ad Vitium*, Take food often, but not much, nor heavy.

From 8. to 9. *Ad Repetitionem & Sacra*, Repeat your Parts, and say your Prayers.

From 9. to 5. *Ad Noctem & Somnum*, To Bed be times, and rise betimes again.

Which Proportion of the dayes of a year exactly kept, will not onely allow every part of life its due share; but determine to the Princes Comfort and Content that Engagement, and the possibility of performing it, which was by the Chancellour made in those preceding words, *parvo tempore & parva industria*. And so concludes the eighth Chapter.

## CHAP. IX.

*Secundum verò Princeps, quod tu formidas, consimili nec majori operâ elidetur. Dubitas nempe, an Anglorum Legum, vel Civilium studio te conferas, dum Civiles supra humanas cunctas Leges alias, fama per orbem extollat gloriosa.*

AS the first disanimation of the Prince was taken from the perplexity of the Laws study, and the supposed impossibility of conquering it to any tolerable perfection in short time and with moderate study; so the second is, whether Law the Prince shall choose as the subject of his Study, whether the particular, Insular, Municipale Law; which no Nation knows or owns but England alone, or the civil Lawes which are the Lawes of the Continent, and to which almost all Nations, and the learned men of them generally subscribe.

This I confesse is a rational scruple, and that which in point of choice, a man of parts and single eye who unengaged seeks truth, and would bottom his actions thereupon, would be diligent to seek, and rejoyce in the obtainment of. For Good being the end of mans desire and action, and it being deposited in the Lawes of God and Nature, whence all active good, that of Prudence and Conduct is extracted: to chuse the best Method of them is the highest Act of Concernment, next the souls affairs, man can be employed in. This the Perspicacity of the Prince diving into, conveyed such doubts into him, that he could not *jarare in verba Magistrum*. and take his Chancellour's choice till he had concocted the Arguments he proposed to his Solution, and Satisfaction therein. And truly, if it be considered what Tully sayes of the civil Law, *O rem præclaram vobisque retinendam Judices, &c. O the Divinity of that Law, which yee, O Judges, are to keep, as your Jewels and life; such it is, as neither favour will bend, nor power break, nor money corrupt, which if removed, all right and propriety ceases, and all things fall into Confusion*, thus Tully: And if what infinite other Authors, and the wisest Nations of the Continent have of honour done to this Law, be here rehearsed, it would make many Volumes, and extrude the series of my intention in this Commentary, and may well stumble a young Prince which of the Lawes to chuse, at least to refuse the civil Lawes, which so great Governments do admit to their regulation: and this effect, I suppose by the words of the Text-Master, this debate, and irresolution of the Prince in his choice (supposing him free) had on him; for else the Chancellour would never have dehorted him from perturbation, which he calls *mentis evagatio*, a wander of the minde from its rational Basis, and its station of Consistence against passion, and the distortings of it. For since the Prince had long, and fruitlessly (as he thought) waited God's return, which the height of his forward youth would ripen sooner then Omnipotence pleased, since he saw another in his Father's Throne besides himself, and was greedy to contend and evict that which was supposed his right; this considered, I say, may give us shrewd suspition, that the Grave Chancellour saw him impatient, like that ill-advised man in 2 King. vi. last verse, *This evil comes from the Lord, why should I wait for the Lord any longer*; and in a hurry and storm of passion meditate to be revenged of the Lawes, the sacredness of which seem-

*Apud Budæum in Pandect. priores p. 23. Edit. Basil.*

1534.

Fabianus Justinianus in *Indic. Universal. ad lit. Jus, &c. à p. 270. ad 272.*

Fossevinus *Bibliothec. selecta lib. 13. c. 10. & seq. ad finem p. 150.*

ing to throwe his Antagonists possession, made his accession upon him more difficult. This probably the old Chancellour sadly considering, occasioned his Counsel of recollection to the Prince, not onely to allay the present fervor of his youthful Mettal, but to convince him, that when he had bussled all he can, and fretted his minde into a tempestuous heat, hazzarding all the serenity of his hopes and the comfort of God's Reverter in mercy to him, he could do nothing Princely, but what must and ought to be legal and just: and this he tells him is in the Lawes Case resolved, past doubt or alteration; As a man that is married cannot use his Wife as he please, but according to the Nature of Marriage, and the right of the Privileges thereof; so the King of England cannot *salvo Sacramento, salvo Jure, salvâ Conscientiâ*, change the Lawes of his Government at his pleasure, but does and holds himself obliged to do nothing regally, but what legally he may, which he not being able (*salvis his*) to do, the Questio on is answered in the Negative,, *Non potest Rex Anglia.*

*Nam non potest Rex Angliæ, ad libitum suum Leges mutare regni sui. Principatu namque necdum regali, sed & politico ipse suo populo dominatur.*

This the Chancellour wrote not to assault or lessen the King's power, but to render it by its soft and gentle Edge not onely lesse terrible, but more obliging to the Subjects, towards whom it expresses it self so mercifull, and truly did I not humbly resolve by God's grace assisting me, to be just to truth, and modest to the great power of my dear and dread Sovereign, it would have become me rather to do by this subject, as *Patroclus* did by *Achilles* his Spear, not meddle with this of any to comment on, because it is so easie to err about it: But as I humbly implore the wisdom of God to direct me to write the words of truth and soberness; so do I in all humble reverence to the Majesty of my Lord the King, beg his pardon and favour; that what I write may be esteemed to proceed from a Justice and Loyalty, which aims at nothing but the real explication of the truth herein; to which, since the Text leads me, and a truth there is much to the illustration of the excellency of the Monarchy of this Nation reported in it, I will, with all ingenuous modesty, write a few words of it. And the Clause analyses it self thus,

Μόγυς ἐκ ἐτόλμησεν τῆς πελαγῶς θίγειν ἀλλ' ἀπῆκεν. *Plutarch. lib. De Adulat. & amici discrimine, p. 59.*

First, there is the subject matter, or the noble thing he speaks of, that's a King, and a King of England. Secondly, there is the negative predicate, what this King, and King of England cannot do, *non potest ad libitum suum leges mutare regni sui.* Thirdly, here is a production of the reason, why thus he cannot do, he is *Rex Anglia*, that's *argumentum ab officio*, and then they are *leges regni sui*, and thence arises the Subjects interest in them. The Kings, with the consent of the three Estates his Subjects, has accepted, and in Parliament made them; and though he could have denied his consent, and so not have made them Laws, yet having once passed them, they are not to be altered at his will, because the subject, for whose good they are, is concerned, & *nihil potest Rex quàm quod de jure potest.* These Heads take up the sense of the Clause.

1 Eliz. c. 3.

*Rex Anglia*; This is the Title of the mighty Monarch of England, whose Imperial Crown is a Monarchy independent on all but God: And as it is a Monarchy the best of Governments, because the Government of God over the World; so is it the best of Monarchies, not onely in regard of temperateness, but succession: A Monarchy it is, in which the Image of God's glorious Sovereignty resembles its *protoplast*, being made such as it is by his mercy, and by the clemency of the Monarchs of, and the Laws in it. A Government it is, not such an one as the Philosopher calls *φουλός μωραχίας*, the blot and blemish of Kinglyness; but such an one as answers every end of God and Man, a Kingdom wherein *ἡ βασιλεία εὐλαξ*, the King is the Keeper of Order and Religion, peace and property, and the people kept by him are his faithful Lieges, to defend his Title in, and to the said Imperial Estate, Place, Crown, and Dignity, in all things thereto belonging at all times, to the uttermost of our possible powers, and therein to spend our Bodies, Lands, and Goods, against all persons whatsoever, that any thing shall attempt to the contrary. They are the words of the Nation in Parliament,

25 H. 8. c. 19. 26 c. 1. 28 c. 16.  
24 H. 8. c. 12. 25 H. 8. c. 22.  
1 M. 2 Sess. c. 4. 1 Eliz. 1.  
1 Jac. c. 1. 5 Report de Jure Regis  
Eccles. p. 40. b. *Stobæus Serm. 40.*  
*Philo lib. De Monarchia.*  
*Crockier in Thes. Aphorif. Politic. lib. 1. c. 3.*  
*Contzen. lib. 1. Politic. c. 21.*  
*Lipshius in Politic. c. 4. p. 29.*  
*Arist. 8 Moral. c. 12.*  
*Ficinus in Platonis Politic.*  
8 Moral. c. 12.

Stat.

Stat. 1 Eliz. c. 3. confirmed by 1 Jacob. c. 1. Thus happy is the King of England, that he rules the valiant'st people, the richest spot; by the renowned'st Laws, and in the religious'st method of any Monarch in the World. For it is a principle congenial to our Kings, *not onely to delight to rule their Subjects by the Law, but even conform themselves in their actions therunto, always keeping that ground, that the health of the Commonwealth be their chief Law.* So saith King James.

Since then the King has the power of Arms, Courts, Coy'n, Justice, both in criminal and judicial matters; for they are all by, and under him, administered and actuated; that yet notwithstanding all this, he should keep himself within the bounds of Justice and Mercy, argues him highly blessed of God, and deservedly beloved of men. Since as a King, *he is above the Law, as the author and giver of strength thereto: yet as a King of England, bears the limitation of Laws of his own free-will, though not bound (as others) thereto.* Which considered, the Chancellour's negative predicament, is a truth; in a qualified sense, *Non potest ad libitum suum, &c.* For *non potest* does not respect the absolute and strict power of a King, for then who of his Subjects shall dare to withstand his pleasure, and impede his resolutions any more than a Whippit dare ruffle and enrage a Lyon, or a Smelt contend with a Whale. As God over the World, so Kings over their Subjects, have an omnipotence not to be disputed with, but adored by them. If David will eat the *shew-bread*, which is onely the viands of the Priests, and take the Wife of *Uriah*; which is the proper treasure of her Husband, there is no opposing him. But the *non potest* is with respect to lenitive Concomitants of absolute Kingship, reverence to God, veracity to the Coronation Oath, valuation of Justice, and honour with men, Peace in the Prince's Conscience. All these come in to modify the *non potest*, and to put weight upon it, so as to make it as the Centre of the Earth unmovable. And this is that which the Kings of England have not onely consented to themselves, and such their consent confirmed by Oath, *I think my Oath fully discharged in that point, by my governing onely by such Laws, as my People, with the House of Peers, have chosen, and my self have consented to.* So the martyr'd King Charles; but sworn also their Judges to observe in their delegations of power to them; *Ye shall swear, that well and truly, ye shall serve our Lord the King, and his People, in the Office of Justice, &c.* and after, *and that ye deny to no man common right by the Kings Letters, nor none other mans, nor for none other cause, and in case any Letters come to you contrary to the Law; that ye do nothing by such letters, but certifie the King thereof, and proceed to execute the Law, notwithstanding the same letters,* are the words of the Statute, 18 E. 3. and if the King cannot rationally and politiquely command his Judges to judge against Law, because they are discharged by the Kings own Laws from such commands, sure he that is the fountain of Justice, can not reasonably and plausibly approve that in himself, which he condemns in his Ministers, *For the King willeth that right be done, according to the Laws and Customs of the Realm, and that the Statutes be put in due execution, that his Subjects may have no cause to complain of any Wrong or oppressions, contrary to their just rights and liberties; to the preservation whereof, he holds himself in Conscience as well obliged, as of his Prerogative.* So that our Chancellours *non potest*, is but in other words thus much, since the King rules by Law, and Parliamentarily makes and repeals Laws, &c. the King cannot lawfully, *ad libitum leges regni sui mutare.* And the reason is twofold; First, *Quia Rex Anglia, he is a King, not a Tyrant, and all Kings that are not Tyrants, or perjured, will be glad to bound themselves within the limits of their Laws; a lawful King, not an Usurper, King of England, a Land of freedom and riches, God's Earthly Western Canaan, Regnum Anglia regnum Dei, was an old saying, and he ruling as God does, by a Law, and that a just convenient and wise Law, which answers all purposes of Government, cannot change that Law, that is, bring in another Law in room of that by his Will and Prerogative; nor shall he need to do it, or have any of the Kings of England, that I have read of, attempted to do it.* The Laws of England being so fitted to the people, that the Oracle of Monarchy spake and wrote it, *That the grounds of the Common-Laws of England, are the best of any Law in the World, either Civil or Municipal, and the fittest for this people, and so subsidiary to the honour and security of the King; that no Law can be more favourable and advantageous, and extendeth further his Prerogative then it doth; and for a King of England to despise the Common-Law, is to neglect his own Crown.* And thus the *non potest* refers to Prudence, *prudenter & utiliter non potest, quia Rex*

In the true Law of free Monarchy, p. 203. Inter oper. in fol.

Idem eod. loco.

3 Instit. c. 62. of Indistments, p. 136. c. of Simony, p. 154.

Cook 2 Instit. Notes on 29. Chapter, Magna Charta, p. 47.

C. 6. Upon his Majesties retising from Westminster. Juramentum Justiciariorum, 18 E. 3.

King's Answer to the Petition of Right, 3d Car. Petition's Stat. p. 422

King James's Speech, 1609. p. 511. of his Works in fol.

Cook 2 Instit. on 29 Chapter, Magna Charta, p. 47.

Speech, 1607. p. 512.

Speech, 1669. p. 522.



*Rex Anglia*, and ought to advise what is good for him and his people. Secondly, *Conscienter non potest*, because they are *Leges Regis*, in regard of emanation, fontality, and sanction; and *Regni*, in regard of application, appropriation, and interest: by all which, subjects are so inserted into the propriety of them, that they cannot be legally taken from them, (and illegally they must be, if without their consent altered) without great dishonour to their Violators, and great provocation of divine vengeance upon it; which the piety of our Monarchs considering, ever abhorred. For though in some times, and upon heats and cholers, there has been somewhat interpreted like a tendency that way; yet has it ever been but an *embrio*, and soon turn'd into ruine of those that advised it. For the Common and Statute Laws of *England* are in the mass and bulk of them unalterable, being Fundamentals of all *English Order and Authority*, which is the cause our Text says, *non potest Rex Angliae ad libitum suum regni leges mutare*.

Calvin's Case,  
7 Rep. p. 17. b.

Which words are not rigidly to be taken, as if the Chancellour by them fully disseised Regality of Nomothetique and Regal Power in their legal sense; and as according thereto our brave Princes have juridically expressed themselves, for then the Majesty of the Crown would not be such and so Imperial, as the prealleged Authorities assert and confirm it to be; or as if the Chancellour thought the System of the Laws in his time, so compleat, that no addition could be made to them, no explication be made of them: for to dream of that had been altogether absurd, since no wisdom of Law-makers was ever so exact, no method of Laws so absolute, but some *casus omitti* have been discovered in them, to which Additions and Declarations have been in supplement, as appears not onely by all Acts of Parliament, made in succession of time, but is also in words set down in the Statute 25 H. 8. c. 21. No such intent had the Chancellour in his *non potest mutare leges* to assert; for unreasonable it had been so to have written, since Laws, as Garments, are good and comely in some Ages, and in some temper of Affairs, which in others are ridiculous and cumbersome: yea, if this latitude were not allowed Princes politiquely to do, no obviation could be of emergent mischief, no provisions be made for reward of occasional virtue. Both which power has occasion to apply, as to its judgment seems fit. And therefore the Chancellour, as a man of State, and Law knowledge, intends not his *non potest mutare leges*, &c. thus to be understood: no, nor does he by *non potest Rex Anglia*, take upon him to infirm the Crown, and make it defectuous in any point of necessary and just dominion over the Subjects of it: For as in Divines disputes about God's power, though it be usual for them to say, *God cannot do any thing that implies contradiction*; yea, *that it is impossible for God to lye, because he is truth it self*, yet they mean the impossibility to be, *ex parte rei, non ex parte Dei*, not from any defect of divine power; *sed ab ipsa rerum, aousa est, but from the incompatibility between truth and a lye*. For God, as Lord of all, can by his essential absolute power, do what he will; and when it is said, *he cannot do any thing*, 'tis not *ex defectu potentia ejus, sed quia repugnat facto in quantum factum, vel in quantum tale*, as the Schools say. So in this case of the Kings, *non potest leges regni sui mutare*, our Text-Master intends not to dispute what the King in the height of Majesty and of absoluteness, *quâ* God's Vicar, may, or may not do, for that's between God and him, and to that God onely sets bounds: but that which the *non potest* refers to, is such a power, as he himself that is King, has in the Law admeasured out to himself, and sworn to observe inviolably, and to cause others to see observed. Concerning this, glorious King Charles writes thus: *I never was counselled (quoth he) by any, to alter the least of the Laws of England, much less to alter all the Laws: nay, I tell you this, I think no body durst ever be so impudent, as to move me to it; for if they had, I should have made them such an example, and put such a mark upon them; that all Posterity should know my intention was ever to govern by the Law, and no otherwise*. Thus he. And therefore, as the Kings of *England* are Fountains of Justice and Law, and from them, with assent and consent of their Subjects in Parliament, Laws of publique good, and private restraint are made, in which the King is pleased to ratifie that *Maxime, Nihil potest Rex in terris quam quod de jure potest*. So I say, these things considered, the Chan-

*Nulla leges ita scribi possunt, ut omnes casus qui quandoque incidunt, comprehendantur, sed sufficit ea, quæ plerumque accidunt contineri; si quid extra ea acciderit, de ea interpretatione aut jurisdictione certius statuitur vel etiam novis legibus secundariis, quæ ex primariis deducuntur.* Hopperus, lib. 4. De Vera Jurisp. Tit. 27.

cellor

Ad dominium non est necessarium, quod possit quis uti re cuius est dominus, in omnes usus. Arragonius, Quæst. 62. in secundam secundam St. Thom. Tit. de dominio, p. 83.

Grot. in Heb. 6. 18.

Leges Arragon, in Sentent. Quæst. 22. D. Præceptis. Spei, & timoris. art. 1. p. 190.

Speech to the Bill of Attainder, E. Sec. May 1641. Reliquia Caroli. p. 10.

cellor

Calvin's Case,  
7 Rep. p. 17.

1 Instit. Chapt.  
Flattery, p. 208.

Speech to the  
County of Nor-  
tingham, 1642.  
Reliq. Carolinz,  
p. 25.

Cook 4. part, In-  
stit. c. 1. p. 25.  
2 Instit. p. 334 on  
Stat. 2. Westmin.

33 H. 6. 55.  
13 Ed. 1. Stat. 1.

18 E. 1.

2 Instit. p. 169.

2 Instit. p. 187.

Quod omnes tan-  
git, ab omnibus  
trahari debet,  
Reg. Juris.

Sir Tho. Smith,  
De Rep. Anglor.  
lib. 2. c. 2. 3.

2 Instit. p. 120.

Answer to the  
Petition of Right,  
3d Caroli. 1628.  
109, p. 1433.

cellour makes bold to say, and I from him, both of us in all humility, that the King of England cannot alter any or all the Laws of England, by his own power, because there is no power but Parliamentary, can alter any one Law, much less the whole Laws (as was the design of William de la Pool, Duke of Suffolk, in our Chancellour's time, to have done, and in room of them, to bring in the Civil Laws, which Sir Edw. Cook says was the occasion of our Chancellour's writing our Text in the commendation of the Laws of England.) Because when Laws be altered by any other Authority, then that by which they were made, your foundations are destroyed, said our once noble King. Now if foundations be out of order, what shall the righteous do, is a Scripture phrase, implying good mens sad condition, then surely to keep them in order, is the way to make them happy, and that is by the good old way of making and repealing Laws by King, Lords Spiritual and Temporal, and Knights, Citizens, and Burgeses in Parliament: all other new Doctrine is Apocryphal. For other foundation then this of making new Laws additional to the common and customary Laws, or repealing any of the common or customary Laws, I humbly am bold to say, I know no man can safely or learnedly lay. And therefore if the non potest be here applied to the King, it is not in diminution of his power, God forbid, (that is sacred, and not to be spoken of but with reverence;) but in declaration of his justice, condescension, and piety to his people, who in thus restraining himself, doth like a kind Father for his Children Subjects good: and thus are to be understood the words of the Statute of Alton Burnel, The King by himself, and by his Council hath ordained; and the words of the Statute, Quo Warranto, wherein de gratia sua speciali, is said by Sir Edw. Cook, to bind the King in this particular of his Prerogative, Quod nullum tempus occurrit regi. So are the words to be understood, 1. Westminster 15. where the Act being penned, in the name of the King, and the King commandeth, therefore the King bindeth himself (saith Sir Edw. Cook) not to disturb any Electors to make free Elections; and so is to be understood that Speech of Sir John Markham to E. 1. That the King could not arrest any man for suspicion of Treason, or Felony, as any other of his Subjects might, because if the King did wrong, the party could not have his Action. Not by these could nots or cannots, to lessen or abate, but to magnifie him that thus denies himself to do good to his people. For the King and his Subjects make one body, and the Laws concerning the whole, are to be considered of by the whole, the Head as well as the Members, and thus conjoynedly Laws, may regularly and Parliamentarily be altered; and without this Authority, to do any thing to alter Law, has not been the practice of our Kings: For since to draw the Freeholds, Inheritances, &c. of the Subject, ad aliud examen, and to make them judged by any Law then the Common-Law, is termed a disherison of the King and of his Crown, the disherison of all his people, and the undoing and destruction of the Common-Law at all times used as in the Statute 27 E. 3. c. 1. appeareth, its safe to keep to the common warrantable use of making and adnulling Laws; for the peoples properties are hereby preserved, and that said our late martyr'd Master, strengthens the King's Prerogative, and the King's Prerogative is to defend the Peoples liberty.

Principatu namque nedum Regali sed & politico, ipse populo suo dominatur.

This is the reason why he cannot *salvis praconcessis, salvo jure, & salva conscientia*, alter the Laws of England, other then by Parliament and National consent, because he has himself owned and established the Law, as that by which he will rule, and not otherwise; and that also, because he is a King by right of inheritance and succession, according to the Laws of his Government; and this the Text calls, though in other words, yet to the same purpose, that Solon said was the best state of Government, where the Subjects obeyed their Prince, and the Prince the Laws: and this one of the bravest Kings that ever the World had, thought so just, that he says, *A continual Parliament I thought would but keep the Common-wealth in tune, by preserving Laws in their due execution and vigour, wherein my interest lyes more (says he) then any mans, since by those Laws my Rights as a King would be preserved no less then my Subjects, which is all I desired, more then the Law gives me, I would not have, and less the meanest Subject should not.* So he: And truly, the consideration of this every way beneficent Government both to King and People, has so wrought upon the consideration of all of the Kings of this Land, that they have disowned

Εάν μὴ οἱ  
πολιταί, &c.  
Stobzus, Serm.  
41. p. 248.

Eicon Basil. c. 5.  
upon passing  
the Bill for a  
Triennial Parlia-  
ment.

disowned all Titles of Conquest and absoluteness (as in opposition to Laws) to adhere to the mild and lasting ones of regal and politique Contexture; which though the wife of *Theopompus* reproached, telling her husband, he would leave to his Children a *diminished Empire*; yet he told her, *it would by it be more stable, and lasting*: for when *Galba's*, *Otho's*, *Vitellius's*, whom *Apollonius Tyanæus* called *Theban Emperours*, because undurable in their Offices; when those soon were buried in the oblivion of their defamed and execrable names, Princes like ours in *England*, who of free would voluntarily engage themselves to rule by their Laws, and not otherwise, have not onely the glory to say, and that truly, *Omnia peregi meipso imperatore*, as *Pompey* did; but also the just confidence to fly to God for custody, against Treason and Rebellion; yea, and when God is said to give salvation to Kings, may well hope to have salvations multiplied in their number, and heightened in their nature to such gracious and serene Kings, as recede from the extremity of what they in greatness might claim, to express themselves in a gracious and qualified Sovereignty, *Sovereignty like Gods of mercy as well as power*. This our Text-Master calls *Principatu nedum regali, sed & politico dominari*. For though its Government has whatever is incident to Regality in the proper and just latitude of its notion, according to God's allowance; nor does, or can aim to abate any thing of the sacredness of the Kings unction, or his powers divinity in his person, which being instituted by God, retains ever the nature of its Institution; yet does it so mitigate, and render Majesty in formidable, that subjects love the Princes, who thus appear to them, rather than fear them, and by their loves are so affianced to them, that they count all they have as it were too little to supply their wants, to propagate their honours, to support their Governments, and really give themselves up to them, as Children to their Parents, in obedience free from all dispute. By these words then *Principatu namque nedum regali sed & politico, ipse populo suo dominatur*. The Chancellour concludes the Government of *England* a Paternal Regality, as I may so say, that is, a Monarchy mixed with love and tenderness, in which absolute power is regulated by Law, and legal Order protected by regal and legal Power: so that as the King can do nothing but what is just, because he does onely as just what the Law directs, which is the rule of Justice: so cannot the King suffer any injury from the Subject, but what the Law will right him in, who is *caput regni & legum*; which considered, though there be a recession in this Contexture from what Kings in their original power might do in *individuo vago*; yet is there no frustration of the end of God in setting up Kings, or mutilation of them in their happy advantages, to serve God's glory, and benefit men in subjection to them, but an advantage to both; as all the temptations of passion and partiality are removed, and the clearer and readier way advanced to publique benefaction and endearment. And this I humbly conceive was the reason, that the Laws of *England* have carryed on this mediocrity, having both Justice and Mercy, restraint and liberty; yea matter of captation and allurements both to good and bad, both to Prince and people, and leaves checks on all degrees, to correct their mistake, and to conduct them into the Channel of safety, both in point of obedience to the King, and of protection from the King; The Law and its Prescrip, 21 *Jacob. 2. That the King's Majesty, his Heirs or Successors, shall not at any time hereafter, sue, question, impeach, &c.* for as absolute Regality would be too much under the Line and Solstice of power, *sub zona torrida*, which made the Martyr King say, *Let your liberties, properties, priviledges, (without which I would not be your King) be secured*. So meer politique Government would be too far *North* to have any vitality to subsist upon, because *sub zona frigida*, the conjunction of them both in a happy tertian, which is the mixture of them, makes the rational religious moderate durable polity of this Kingdom, in which the Sovereigns do not onely, *regaliter sed politice dominari*, that is, are to all men, as their virtues or vices deserve they should be to them; to the pious and peaceable encouragement, protection, promotion; to the perfidious and prophane terror corporal pecuniary; nay, if cause require, death: so that as the Law allows the King to have two Capacities, a personal and politique one, (though not in the *Dispensers* and others traiterous senses,) yet in a sense of truth, annexing Allegiance to both the Capacities, and in no sort severing them: so does the Law allow of two several presences of power

*Sed magis stabile.*  
Cuspin.

Eicon Basil. c. 50

See King Charles's Message for Peace from *Holmbury*, 1647. fol. 118. From the 11th of *Wight*, p. 128. and p. 170. Reliq. *Carolinæ*.

See Preamble to the Statute. 1 *Maria*. c. 1.

2 *Instit.* p. 454. *Westmin.* 2.

King *James's* Speech 1609. p. 531. of his Works.

3 *Instit.* c. 87. p. 188.

Speech to the *Parliament* at *Oxford*, 1643. *Reliq. Caroli*. p. 46. See *Sir Thomas Smith*, De *Rep. Angl.* c. 4.

Resolute Judges in *Calvin's* case; 7 *Rep.*

in the King of *England*, the one of lustre and glory, which is (as it were) not to be looked upon, this is that of the King, as he is armed with terrour, and has the power of

Ἄλλα ὅταν χρυσότης, ἢ φιλαν-  
δρωσία τὸ στυμνὸν κραδί; ἢ ἀν-  
σηρόν τῆς ἐπικρατείας ἐπιμελῆς, ἢ  
πρόφρον ἢ προσύτης ἢ ἐπιβουλήν  
καθίσταται ἢ ἑὸς μάλιστα τὸ ἔ.δ.θ.  
ἠγχομίας φιλεῖται ἰσὺ τῶν  
ἀρχομένων. Jamblicus in Epist.  
ad Agrippam, apud Stobæum,  
Serm. 44. p. 315.

life and death; and this he hath in common with all *Kings*. The other of amiableness, as it has wisely shrowded its astonishing brightness by some interpositions of condescension; this is that our Text-Master calls Politique Dominion, such an admission of regulation in rule, as sweetens men to obedience, by working upon their reason and good nature, and gives their indulger a security from the lenity of his Government over his Subjects, whom because he is good and gracious to, he is beloved and defended by them. This is capable of mis-interpretation, unless the Law be the Arbitrator, and that has recogniz'd the King only under the power of God, if he violate his Oath. But the Subject is under an indi-

ispensable tye to God and the King, *in foro culpa & pœna*; and the reason is, because the person and fortune of the subject is under the legal dominion of his Prince, but the Prince is under the only dominion of God. The consideration of w<sup>ch</sup> has notwithstanding wrought great effects of restraint on Martial minds, and that (even then when they meditated

Theatr. V. Ham. Vol. 14. lib. 1.  
Tit. Reges Principes quâ se legi-  
bus subjecere.  
Suetonius in Tiberio, c. 21.

the greatest inundations of restraints) not onely abroad in the World, the instances whereof are in *Zwinger* collected to my hand, but also in this Realm of *England*, when it had a Prince in it, that promised not much better then *Tiberius* did, of whom the noble Emperour *Augustus* said, *Miserimum Romanum populum, qui sub tam lentis maxillis erit*. I mean the Conquerour, who though he came in fiercely, and won the Field by Battle, yet did

Ita ipsum loco patris colebat, ut  
cum ille Rex cæteris imperabat,  
ab illo Archi-Episcopo voluit  
aquam imperari, J. Brom-  
pton, p. 962.

not onely suffer himself to be admonished by *Aldred* Arch-Bishop of *York*, whom he honouring as a Father, suffered to mollifie and cool him, and by him was restrained from those fiercenesses, that otherwise he would have expressed. And therefore before he was solemnly crowned, he renouncing his Martial Title, and entering as a Politique Governour, did before God, and the good Arch-Bishop, Nobles, and the people there present, take Oath; That he would defend the Holy Church, and the Governours of it; that he would govern the people subject to him justly, and as a Prince prudently should do; that he would settle right Law, forbid Rapes, and all unjust Judgment. Yea, he made up a confirmation of his love to the Laws of

S. Dunelm in W. 1. p. 195.  
Brompton, p. 562.  
Stubbs, p. 1702.  
R. De Dicet. p. 480. edit. Lond.

In proœmio confirm. Legum D.  
Edvardi, Anno Reg. 4.  
Spelman Glofs. p. 398.

*England*, and his resolution to be swayed by them, by swearing 12. men of every shire in *England*, to report the truth of the Laws without concealing, adding, or in any sort varying from the truth. This, and much more *Ingulphus*, Abbot of *Crowland*, tells us; and Sir *Ed. Cook* from him and others. And though I know the Conquerour little regarded this Oath, but disseised Natives of their Estates, and gave them to his *Normans*, making havock of all that was preyable, and made the *English* his base Vassals; so that before his death, there was scarce in *England* an English Noble-man left, it being a reproach to be called an English-man, as *Knigh-ton's* words are.

Pref. to the 8th Rep.  
W. Thorn, p. 1787. edit Lond.  
Dicet, p. 487. P.  
Brompton, p. 982.  
Simon Dunelm, p. 213.  
Knigh-ton. p. 2344. p. 2354.

Yet that such things he submitted, and swore to do, when in full power, argued more a conviction, that so religiously and prudently he ought to do, then any tear upon him; and that sufficiently answers my purpose, to confirm that Regal and Politique Government, joyn'd in our Chancellours sense, makes a good legal *English* administration, and that when heats and humours are asswaged, all high and martial Princes fall into it of course, to save their own troubles, and their peoples lives and fortunes; yea, as by the just judgment of God, mens opportunities are their discoverers, and shew them bad at heart, notwithstanding all their external and flattering good appearances: so *Diagoras Milesius* was known to be an Atheist; for being in an Inn, and wanting fewel to dress his dinner, he took the Image of *Hercules*, reputed in that place for a God, and cast it into the fire, saying prophanely, *Tertium decimum, &c. Perform now the thirteenth labour, O God Hercules, and boil the broth of Diagoras the Atheist*. As God, I say, does by these acts discover some mens follies; so

Salmuth in Pan-  
cirol. tit. 10. partii  
secunda. p. 181.

does

does he qualifie the vices of some notable persons with great virtues, that makes them not so enormous and truculent, as but for them they would be: *Hipparchus* was a Tyrant, but yet a great favourer of Learning; his first work was to intitute his Citizens in Letters: so of *Cleomenes* the *Spartan*, and *Francis* the first of *France*, Historians write. *Ignatius* that tells how *Phocas* reduced all the *Romane* freedom to *Persian* Vassalage, yet reports one thing worthy praise in him, *Romanum Pontificem principem omnium jure declaravit*; so did this our Conquerour deserve some good words, and he has them: Authours tells us, he built Abbies, Monasteries, and religious houses, *ut esset expiatio quadam effusionis tanti sanguinis Christiani*; but above all, *Tanta pacis author fuerat, &c.* he was the author of so great safety every where, that a Maid might have carryed a load of Gold all over *England*. These and such other actions of publick influence are lustres in Princes, who, under favour of their Greatness, ought to improve God's preferments to his Glory; considering that life is but short in men, and the greatest actions in probability have expired even with the lives of their Actours, which often have been then running the last sand, when they thought of nothing but diturnity and paramountship. *Alexander the Great*, when he had conquered the East, resolved to march into *Africk* and subdue that with *Europe*, *sed festinata mors tantas spes abruptis, Alexander dyes*, and his Journey is hushed. *Majoranus* Emperour of *Ravenna* would forsooth make an onset upon *Africk*, but a Disease prevented that Enterprize. Our brave *H. 5.* of *England*, when he made Cock-sure of *France*, dyed by Poyson. *Hen. 2.* of *France*, when he had settled his Affairs with *Spain* and thought to enjoy quietness, was slain by a pafs at Tilt in *Paris*; so *Francis* the 2. not long after, when he meditated fierce things against the *Hugonots*, was prevented executing them by an Impostume in his head, whereof he dyed. No wonder then that wise and worthy Princes study calm Methods of rule, and look upon their Subjects as Children, and as such preserve them free, since they have an account to make to God above other men, and may as soon make it as other men; which our Kings perhaps especially considering, though they ey'd Monarchy as the most excellent form of Government (nay the onely; (others being but wanders from it, as it is the prime and essential Government) yet they consented to such a temperament of it, as *Philo* calls *τὴν μέσλην*, &c. the mean between the two much, and too little of other Governments, which the King of *England* ruling according to, is by the Chancellour said, *Principatu nedum regali, sed & politico dominari*, that is, so to respect himself a King over, as to respect his Subjects as free and felicitous under his Government.

Zainger Theatr  
p. 89.  
Lib. 2. De Princ  
Roman.  
Dicet. p. 482.  
Brompton. p.  
961. 982.  
Knighton, 2354.  
Dicet. p. 488.

Sabellicus lib. 10.  
c. 13.  
Morbo inopinato  
preventus in nihilum sunt redacta  
omnia. Culpin.

Plutarch. in lib.  
De Monarchia.  
Aristocrat. &  
Oligarch p. 826.  
Lib. De Creati-  
one Princip. p.  
725.

*Si regali tantum ipse praestet eis, leges regni sui mutare ille possit.*

This rationally followes, for if absolute he were, as *Nimrod*, *Ninus*, *Belus*, and the Eastern Monarchs to this day are, then his will were the Law and would work upon change of the Lawes as they regretted him or he them, or as he observed more use might be made of other Lawes then them, every absolute Ruler either dictating Lawes or suffering those onely to be distributed as did lacquy to his absoluteness: but in that the King is said not to can a change of the Lawes at his pleasure; it argues him not less absolute, but more kind and conscionable in not trying what he can to the injury of what, as a father of his Country and the people of it, he ought to be. God can do what he will, but yet he suffers *Abraham* to interpellate for *Sodom*, and *Moses* for *Israël*, and till those potent intercessors were answered, God gives us leave to think in kindness he could do, what in greatness by his power we know he could: so likewise it pleases serious and sober Princes to be told, they cannot do that as Lords, which they cannot be pleased in doing as Parents, as Husbands to their Governments: Nor does any boundary trouble a virtuous Monarch, where his generosity consents to fix it for the reward of Loyalty or an allurement to it.

This politique dominion then is no effect of force on, but of love and grandeur in the Kings of this Nation to their people. For Kings we had and were free under them above a thousand years before *Caesar* came upon us, if *Polydore Virgil* misinform me not, and thus we have continued down all the Reigns of the Princes almost six hundred years, (the Common and Statute Lawes of *England*, with the allowance of Customes local,) yea, and the superaddition of Ecclesiastical Lawes not contrary to the

Καὶ τὸ πρῶτον  
βασιλῆος (εἰ μὴ  
τὴν ἀρετὴν  
ἀρετῶν  
πῶς ἔργου  
ἐν δαίμονι  
ἐπιταγῆς, δι-  
καιωσύνης κα-  
τὰ τὴν ἀείων  
παροῦσιν.  
Libanius in Ulyss  
Declam 2. p. 220.  
Britannia 1040.  
annos libera, suos  
Reges habuit: tan-  
dem per Julium  
Caesarem, Cassemu-  
lano Principe, Ro-  
mano Imperio sa-  
lla est vestigalis.  
lib. 2. hist. Angl.

9 H. 3. c. 16. 3 &  
4 L. 6. c. 31. 12.

The words of the  
Stat. 1 Jac. c. 2.

3 Instit. c. 74. p.  
146.

Laws of God and the Laws of the Land, Civil Law in the cases of Matrimony, Probate of wills and Maritime affairs, serving all in their respective places to the continuation, and convenient carrying on its administration, and to the prevention of any thing that might justly be suspected contrary to the same. Yea, when the happy accession of King James to this Crown, whereby in his Person, and the matchless and incomparable Descendants from him, the Crown of Scotland was united to this, when, I say, his wisdom thought upon an union of Laws as well as of Empire, and took so much pains in it, that he prevailed to have the Stat. 1 Jac. c. 2. passed to empower Commissioners to consider of it; yet this endeavour, though professed by him to be far from his Royal and sincere care and affection to his Subjects of England, to alter or innovate the fundamental and ancient Laws, Priviledges and good Customs of this Kingdome, and apprehended by the Lords and Commons in Parliament to intend no more, or seek no other changes or alterations, but of such particular temporary or indifferent manner of Statutes and Customs, as may both prevent and extinguish all and every future question and unhappy accident, &c. Notwithstanding the Union had this Declaration concurrent with it; yet because the resolution of the English were to prefer their Laws and Customs above any others, and to yield to no tittle of Alteration in them, thereupon by the 3 Jac. c. 3. the things which were to be done by force of the Stat. 1 Jac. 2. were capacitated to be performed in any other Sessions of the Parliament of 3. and by the 4 Jacob. 1. all Laws of hostility between Scotland and we were repealed, and the Stat of 5 R. 2. c. 2. included, and that was all that came of the desired union: for it was resolved by the Judges (Sir Edward Cook being the King's Attourney-General then, and being then and there present, reporting their resolution) that Anglia had Laws, and Scotia had Laws, but this new erected Kingdom of Britannia should have no Law. Since then, the Assent of the Subject is necessary to change Laws, not onely common and Statute ones; but local Customs and Tenures; and without it the Kings of England have given their Subjects leave juridiquely to say, they cannot by the power the Law understands them to have, at their pleasure alter them; it followes in confirmation of our Chancellours words, that the Government of England is a paternal, as well as a regal Government, and that the Laws of it cannot be altered, but by the King with Assent of his Subjects in Parliament.

*Tallagia quoque, & cetera onera eis imponere, ipsis inconsultis; quale dominium denotant Leges civiles, cum dicant, quod Principi placuit Legis habet vigorem.*

This followes unavoidably from the premised matter; if the King cannot change the Laws other then by Parliament, then the Laws not allowing any charge on the Subject, other then is laid in Parliament on them, as Sir Edward Cook our Law-Oracle makes good, *Tallages are out of doors and illegal to be laid upon the English Subject.* And therefore all our good Princes have disown'd and disclaim'd, as other fierce and grating ones have imposed them: hence some think those granted in the Parl. of H. 4. were hard; for *Walsingham* sayes, there was *Concessa Regi taxa insolita, & incolis tricabilis, & valde gravis*; and he tells us he would have described it, but that *Concessores ipsi, & Auctores dicti Tallagii, in perpetuum latere posteros maluissent*; yet he sayes, though they did what they did, they cautioned it should never be drawn into example, nor the evidences of it be in the Treasury or Exchequer, but after the Receipt of the income of it, all the memorials of it should be burned, nor any Writs or Commissions be revived or sent out to enquire the value of it, thus *Walsingham*: this I confess is a Matchless President, but usually 'tis otherwise; for they being presumed never to grant without cause, in their so doing, the people are to submit and pay willingly; for Princes ever acknowledged pecuniary supports from their Subjects, the fruits of love; and their Subjects declared ever themselves in reason, religion, and gratitude obliged to yield them. And therefore as wise Parliaments have ever calculated Prince's affairs and supplied them with Counsel, and Money to carry them through with honour and success: so gracious Princes have been thrifty and sparing of Receipts from their Subjects, being willing rather to pinch in their personal and pleasurable Accomodations, then either spare from the publick Concerns, or press their people beyond their good wills and reasonable powers; and regular

Cook on Magna  
Charta. p. 61.  
Preface to R. Rp.

An. 1404. Walf.  
Hypodeig. Neu-  
striz. p. 164.  
In H. 4. p. 412.

regular Princes have had Reliefs by the pleasing wayes of *Subsidies, Disms, Quinzims,* and the like, generally consented unto. And the Subject sometimes having found Privy-Seales good security, has lent money on them as men do on other securities; and when its a voluntary act, there is no injury done, *volenti non fit injuria.* But Tallages or loans of compulsion, or such things not laid by Parliament *more majorum,* the Subjects of *England* have ever regretted. And of this nature were these Tallages here spoken of, a word made Latine from the French *Taille, quod vectigal significat;* this word *Tallagium,* is in Historians ranked with *Exactiones,* to shew the execrable nature of them. In the Council of *Lateran* amongst other Complaints made by the Clergy to the *Pope* against the Laity, this is one that they did *tam Ecclesias ipsas, &c. Burthen the Churches and Churchmen with Tallages and exactions.*

Tallage then as it was an imposition, so an Imposition on Land, called otherwise *Hydage;* anciently it was taken by some Kings of *England* upon all Land, where not exempted by Grant, as the Lands of *St. Augustine* in *Canterbury* was. It was a charge on every Hyde of Land, which Hyde contained not 20 Acres of Land, as *Polydore Virgil* mistakes himself, but 100. which they in those times called a Plough land, that is, enough to employ a Plough; so *H. 3. in Anno 1083.* sent out Justices of Inquiry into all Shires, who, upon the Oaths of men were to inquire *Quor Jagera, &c. What quantity of Acres of Land in every Village, employed a Plough;* and *M. Paris* adds, and how many Castell would till a Hyde of Land, and their return was an 100. Acres. So that this proportion of Land was upon all occasions the subject of this Charge; sometime many Hydes of Land were jointly charged, so *Etheldred* in *Anno 1008.* to oppose the *Danes,* charged every 310 Hydes with one ship, and of every eight a Coat of Mail and a head piece; the Conquerour charged every Hyde with 6. s. So *Rufus* to enable him to hold his right in *Normandy* laid 4. s. on every Hyde; *Henry 1.* towards the Marriage of his Daughter charged every Hyde with 3. s.

These and the like, as *Danegeld, Lestage, Stallage,* are by Historians called *Exactiones,* and never had acceptance from the people of *England* when they were not consented to, and charged on them by Parliament, but things of foreign President; and therefore put upon them contrary to the Lawes of their freedom, and not suitable to the calm Government of their Princes, who have delighted more to be accounted indulgent fathers, then rigorous Lords: yea that Tallages may appear odious, (as un-Parliamentary imposed) that Answer of the Clergy of *England* to *Pope Innocent,* *Anno 1246.* is remarkable; for when the Bishops were by his Command to exact of their Clergy Tallage, they were commanded by the King to resolutely and unanimously answer,

*That no such Tallage or Aid could be or had been accustomed to be laid without great Prejudice to the dignity of their Sacred Sovereign, and the dignity of his Crown, which they would not, nor could not suffer to be disparaged or injured, as thereby it would.* And when *H. 3.* so ruffled his Subjects, that they thought not fit to deny him in Parliament a Grant of unusual loanes and Tallages; yet so unwillingly did they do what they did, and so against their minds, could they have avoided it, *That they made a saving of the Subjects Liberties, and inserted it into his Charter, Quod illa exactio vel alia precedentis non traherentur in consequentiam.*

*Eis imponere, illis inconsultis.*

This is added, to shew that the Law cannot be reasonably such as tyes up lawful power from alteration of it, if it appear to be useless or inconvenient; yea, be the Law what it will, if it be such as I will not take benefit by, and in so doing am not injurious to others, the Law intends not the restraint of me by it. The Law is, the King cannot take my goods without my consent, or rate my Land, but by a legal rate: yet if I will freely pay the King out of my estate so much, and give him such of my goods, I may do it notwithstanding the Law, for that and this are consistent; that being made for my benefit, if I will accept it; this being a testimony of my love and consent, which abates the

See Cook 4. Inst  
on c. 1. p 34 Hig h  
Court of Parli-  
ament.

See Cook 2 Instit. on c. 29. Mag. Charta  
on the Statute 14 E. 1. De Tallagio non  
concedendo p. 523. 524. where our Text is  
quoted by Sir Ed. Cook, fo p. 524.

Gervaf. Tilbur. in Chronic. p 1452.  
Edit. Lond. 1456.

Chronic. Thom.  
p. 2006.  
Glofs Twysd.  
annex. legib. Sax-  
onicis, p. 218.  
Gervaf. Tilbur.  
c. penult.  
Spelma. in Glofs  
p. 352.

Huntington lib. 6  
Hig. Wigornienf.  
ad Annum 1084.  
M. Paris ad An.  
1083.

Brompron p 957.  
Greg. Tolossanus Syntag. lib. 8. c. 7.

Cives Londinenses iterato ad quingentas mar-  
cas Talliati quasi servi ultima conditionis  
ad regis arbitrium, non obstante aliqua liter-  
tate jugum subeunt servitutis. M. Paris. p.  
919.

M. Paris. p. 708.

M. Paris. p. 581.

the injury, and makes the acceptance a courtesie. Hereupon, though the King cannot by his own pleasure lay Tallages upon his Subjects, yet by their consents he may, and no grievance is it, no oppression in it, since *volenti non fit injuria*, and nothing being more free than gift: if they in Parliament consent to it, then it's a legal charge; and this the Chancellour mentions, to tell Prince and People, that extraordinary courses are not to be practised, where legal and warrantable ones may be brought about; and to tell them further, that the way to serve Princes affairs, and the just ends of Parliaments, is to compose Parliaments of religious, sober, sincere, and knowing Members, who will be diligent during the time of their service, who will be sober, that they may serve the King and satisfie the people, and who look for no result but God's blessing, the King's honour and safety, the peoples good, in which their and their Posterities goods are involved. These so fitted to every proper judicial purpose (as they will lay no charge, but *ex previsa ratione*, as did the Parliament of 3 E. 1. on which words of the Preamble, *A son Parliament General*, Sir Edw. Cock has this Note] So called, because all the Laws then made were general, and that great and honourable Assembly were not entangled with private matters, but with such onely as were for the greatest good of the Commonwealth; for the end of this Parliament is, *Pour le common profit de Saint Esglise & del Realm:*) so in their so doing, the people will rest satisfied, and the Crown have its dues willingly, and in good time paid and answered; otherwise, it comes like drops of blood, which a generous Prince cares not to have come into his Coffers: for as God loves a chearful giver, so do Princes love Presents offered them freely, as well as fully. And therefore the Provents of Tallages, and *alia onera*, such as are all preterlegal charges, not warranted by Common-Law, Custome, and Concession of Parliament, have been little addition to the real Grandeurs of their obtainers, because what they gained by them, they lost in the good will of their Subjects. Hereupon H. 1. made a Charter to his people in these words, *Quia regnum oppressum erat injustis exactionibus, &c. He promises to take away all ill Customs, by which the Kingdom of England has been oppressed.* For there is nothing that has sown such Cockle and Tares of trouble in this Nation, as unusual Taxes, I mean such as are not granted *more majorum*. For though the Commonalty may be wary whom they send to Parliament, to represent them; yet when sent they are, the charge they consent to lay, must be paid by them: nor is it violence to exact it, but right to the Law of its Constitution. And since no wise Representatives can be presumed to give more than they are in their principals able to answer, supposing the Granters wise men, and if not so, the more unwise their Choosers and Impowers; and supposing the grants in such a proportion, as is suitable to the rational motives of them to grant it, the matter and kind of the grant must be made good, and this they are charged withall, *ipsis consentientibus*, and that is *non in vitis*.

*Quale dominium denotant leges civiles, cum dicant, quod Principi placuit, legis habet vigorem.*

This Sentence cited out of the Civil Law is *Ulpian's*, and the application of it is thought to fix the power of absolute Regality, upon whatever is of Subjects for it to take hold of, which perhaps is not the Lawyeys meaning, but with some restriction; that Kings do not make Laws upon their own Wills, but as assisted in Council by their learned and sage Counsellours, who advising them what to declare Law, accompany them also in a mild interpretation and execution of it. For so the same Law qualifies the generality of this rule by that *omnia sunt Principis quoad jurisdictionem & protectionem, non quoad proprietatem*; and therefore though in absolute Regalities, where no Laws of modification are, this rule is made use of to warrant high courses; yet may this have a calmer interpretation in the nature and intendment of it. A Woman is under her husbands plenary power, he may do with her, for he destroy her not, as he please; her person is at his pleasure; her fortune subject to his dispose; her allowance and manner of living solely to the *quantum & quale* of his proportioning them: yet no wise man will hence conclude, that Husbands do, where good, improve this to a Tyranny over, or a vexation or diminution of their Wives; rather wise men know, and worthy wives finde, that from deserving Husbands their Virtues have all the Compensations and Rewards that this Prerogative of the Husband over them can devolve upon them, and though the

1 Instit. on c. 29.  
Magna Charta.

On Westminster  
1. 2 Instit. p.  
156.

1 Instit. on  
29 Chapter.  
Magna Charta.  
p. 46.

Math. Paris. p. 51.

Sir Tho. Smith,  
lib. 2. c. 2. De Re-  
publ. Anglix.

Lib. 1. Instit. Di-  
gest lib. 1 tit. 4. De  
Constitutioni-  
bus Principum.

Digest. p. 42. In  
gl. ad Proam. C.



the nature of Marriage favour the man, yet the Courtesie and nature of man retorts the fruit and kindness of such favour and prelation on the Wife, because she is willing to obey, she rules, and by resigning to her Husband, has assignation of his right to rule by him all he has and himself too: so in the case of absolute Kingship, though Kings may by the high Sovereignty of their Dignity curb their Subjects, that they dare not deny whatever they ask, or refuse what they command, because God has made their Swords of straw, against their Princes of Steel; and their hands are bound, when their Sovereigns are loosed, and onely can be bound by God: yet that by virtue of this position; and the sacredness of it, they should so do, is no necessary consequence, though too often true. And truly, we in *England* have cause to sweeten this hard Exposition of this Rule, when we consider our Princes, as true Monarchs as any, and as independent on any but God; yea, as well protected against the insolencies of Subjects, as any Monarchs, yet have for the most part been very calm, considerate, and ruleable by the Laws of the Land, and not laid yokes upon us, but such as either some of them have been ill counselled to, or by necessity of affairs put upon, and have remitted, with a kind promise of not so doing hereafter. And if they have obtained consent in Parliament to any thing of extraordinary advantage to them, yet it implying National consent, ought to be accounted no pressure upon their people. Kings may have necessities more then ordinary upon them, and they must have suitable supplies for them, which if they have by Parliamentary Levies, they have them by undoubted Legality, and the Subject repines not against the Prince for it, but owns the Law, which by his own consent has bound him from repining, and to the payment of his proportion towards it. Such a favourable interpretation then being given of this *Quod Principi placuit, legis habet vigorem*, it follows, that the rigidness of the general rule may be allayed by a particular instance of goodness. And therefore the Kings of *England* having never made Laws but in Parliament, Courts that they call not only *modestia ergo antiquam consuetudinem servare*, as a Forreigner falsely writes, as if they signified no more, then to do whatever they were commanded to by the King; so that (in his words) ¶ *Parliamenta regiarum magis cupiditatum larva quadam sint, quibus in rerum dubiarum consultationibus laborem & incommoda, in periculosis autem rebus damnum subterfugiunt, quam ut per ea potestatem suam moderari velint*, as that malevolent *Romanist* slanderously reports. I say the truth of things being examined, and the Kings of *England* using such wisdom, temper, and regularity in their proceedings, though *quod Principi placuit, legis habet vigorem*, primitively had a sense of asserting Kingly absoluteness, his pleasure being the Law, and his Word the Warrant, without any abatement from Princely Grace and Justice; yet in as much, as in the Regal Government of *England*, tempered by the Politique, there is no prerogative of just Regality usurped upon, but the Crown remains Imperial, notwithstanding the politique composition with it. There seems to me reason to conclude, that *quod Principi placuit, legis habet vigorem*, may be interpreted of the legal and virtuous pleasure of the King, the Will of him counselled by his Sages about him, though not so (perhaps) in *Ulpian's* meaning, or the common intendment of *Civilians* by it, which is the reason why our Text-Master applies it as here he does.

2 Instit. p. 158. on Stat. W. 1.

11 H. 7. c. 27. 2 Instit. p. 158. on W. 1.

¶ *Thesauro Politico* Impress. Francofurt. Anno 1610. De Regno Britannico. p. 216.

*Quod Principi placet legis habet vigorem, eas scilicet, quas super dubiis in concilio desinendis, procerum quidem consilio & Principis auctoritate accordante, vel antedemum constat esse promulgatas.* Fleta in Proemio.

*Sed longè aliter potest Rex politicè imperans genti suæ, quia nec leges ipse sine subditorum assensu mutare poterit, nec subiectum populum renitentem onerare impositionibus peregrinis.*

This the Chancellour adds in the positive, as before he had in the negative asserted the indulgence of the *English* Government, which he was the more bold to write upon. The King of *England* being not a Prince of rage, as *Caracalla* was but a Father of mercy, who delights to hear his duty modestly remembred him, does not do by his *Papinians*, as *Caracalla* did, destroy them, because they will not destroy Conscience and truth, the Image of God in their souls; but cherishes and considers their counsels, and steers his course by them; which lenity, makes the Chancel-

*Papinianus jurisconsultus ab Antonio Caracalla securi percussus est. Caracalla enim interfecto fratre Geta, ei mandaret, ut in Senatu, & apud populum facinus dilueret, Papinianus respondit non tam facile parricidium excusari posse quam fieri. Irà commotus Caracalla. Sanctissimum virum occidi iussit* Spattianus in *Caracalla*.

four

Legibus astringuntur restores Politici, nec ultra possunt procedere in prosecutione iustitia, quod de Regibus, & aliis Monarchis Principibus non convenit. Quia in ipsorum peccato sunt leges recondita prout casus occurrunt, & pro lege habetur, quod Principi placet sicut iura gentium tradunt; sed de relictibus politicis non sic reperitur, quia non audebant facere aliquam novitatem prater legem conscriptam. Sanctus Thomas, lib. De Regimine Principum, c. 1.

King James's  
Basilion Doron,  
2 Book, p. 155.  
Works in fol.

Contzen, politic.  
lib. 10c. 21.

His Majesty's  
Protestation in  
the head of his  
Army at Staf-  
ford, Septem. 1542.  
p. 38. Collect.  
Speech to the  
Members of  
both Houses at  
Oxford, 1643.  
p. 44. Collect.  
Contzen Politic.  
lib. 1. c. 21. p. 67.

Sir Edw. Cook on  
Stat. Merton, c. 9.  
p. 97. 2. Instit.

jour, and me by this example, humbly bold to proceed in the modest explication of the words; *Sed longe aliter potest Rex, politice imperans genti suae.* In which words, our Text-Master joyns political power to absolute regal, and sweetens the *potest*; that is solely *voluntatis & placiti*, by that which is politique, and *secundum dictamen juris*. For whereas by absolutenes of power, a King is understood to do what he pleases with the Laws, and people of his Government, as the Eastern Monarchs at this day do: By this the King can do onely, *quod de jure potest*. This King James of blessed memory sets out notably in these words: *The one (says he) acknowledgeth himself ordained for his people, having received from God a burthen of Government, whereof he must be accountable; the other thinketh his people ordained for him a prey to his passions and inordinate appetites, as the fruits of his magnamity.* This is a *longe aliter potest*, no degradation of Majesty, but an attenuation of greatness to a more placid, and less terrible representation of it self. While as God, though he can do what he will, yet is pleased to give us leave to say, he cannot do what is contrary to his nature, nor often does contrary to his declared Will: so Princes, though by that men call the incircumscriptions of their boundless authority, they can do extraordinary acts of greatness; yet God so deals with them, that the Laws of their Governments are the usual methods of their administration, & contrary to, or beyond them, they do not (as good Kings) pass; and Contzen makes it good, that it is not only advantageous to the people, but also to the Prince, or publique Magistrate, to have no power to do some things of himself, without the consent of his inferiours, and he makes the first thing to be, *that he put no new Charges, Tributes, and Tolls;* and the second, *that he make not new Laws, nor abrogate old without them.* And this, had it not been for the quiet and interest of our Princes, as well as of us their people; they who knew so well the *arcana imperiorum*, would never have been so zealous imparters of the power, and so faithful maintainers of it in its right channel; no one King of England, that I remember, ever claiming absolute Regality separate from politique infusion. (*I do solemnly promise in the sight of God to maintain the just priviledges and freedom of Parliament, and to govern by the known Laws of the Land, to my utmost power; and particularly, to observe inviolably the Laws consented to by Me this Parliament. Let your Liberties, Properties, Priviledges, without which I would not be your King, be secured and confirmed, and there is nothing you can advise me to, I will not meet you in:*) But acknowledging any think like it an error in him, through the suggestions of ill Counsel, and cautioning against its being brought in president for time to come. And therefore as the Law has secured, that the King should not be diminished, and made *præcario regnare, sed ubi iuste & secundum leges imperarit, summa illius sit potestas*; making him in his great Council and Courts Judge of all, (and requiring the Allegiance of all his Lieges to his person, as the *Living Law*.) So has the Law obtained from the King, leave to modify things between Will and Law, and to make them both a Composition of Harmony, and kind understanding between Sovereignty and Subjection. The truth of this is collectable from the words of H. 1. surnamed *Beauclerk*, in his Letter to Pope Paschal, *Notum habeat sanctitas vestra, &c. Your Holyness (quoth the King) knows, that by God's blessing on my life and Reign, the Prerogatives and Usages of Our Kingdom of England, has not been diminished or usurped upon: And if I (which God forbid) should consent to mine own, and the Nations Eclipse therein, my Peers and the whole People of my Realm, would by no means endure it so to be.* And so in the Letters of the Nobility of England, by assent of the whole Commonalty assembled in Parliament at Lincoln, the words to the Pope are, *We are bound by solemn Oath, to the observation and defence of the Liberties, Laws, and Customs of the Realm of England, which with all our power we will hold fast, and secure with our utmost vigour; neither do we permit, or will we permit; neither will we, or ought we to pass any unwonted, undue, and prejudicial things to our King, though he would pass by them, and should favour the same.* And the reason they give of this their adhesiveness is, because the premises do manifestly tend to the dishonour of the Crown and Dignity of the King of this Land, and to the subversion of the State of the said Kingdom, and to the prejudice of the Liberties, Customs, and ancient Laws of the same. Thus in that Letter; which shews, that the Kings of England have yielded their Subjects a

non-asset, if they should attempt to alter Laws, or make them contrary to the legal Establishments; and this comes up to the Chancellour's words, *Nec leges ipse sine subditorum assensu mutare poterit.* And \* *Carrarius* makes it plain by all authorities and acknowledgments, that Princes are bound by the Laws of their Governments. And as it is not Kingly in them, contrary to those Laws, to take away any thing that is their Subjects, as Saint *Thomas* plainly proves, so especially not their Laws; nor, as I said before, has it ever been justified by any King of *England* so to do, but the contrary, and that in relation to the No Law in being, whether *Common-Law*, *Statute-Law*, or *Custom*, upon which *Inheritances* depends, can be changed by the King alone, or by the *Lords* and *Commons* alone, or by the *Lords Lay* and *Commons*, excluding the *Spirituality*; but by the King, as the Head of the three Estates, the *Lords Spiritual* and *Temporal*, and the *Knights*, *Citizens*, and *Burgesses*, in the *Commons House* in *Parliament*. These must co-operate to the change of a Law; and without they do, no Law can be changed; nor can any *Custom*, though but local, upon which Title of Land, or such like interest of the Subject dependeth, be destroyed, or be legally taken away, or made null, but by Act of Parliament; which how to pass (besides the prementioned Authorities) the 11<sup>th</sup> Chapter of *Doctor and Student* sets forth. And hence it is, that in all Commissions of *Oyer & Terminer*, &c. these words are in the King's Commission to his Justices, *Faenri quod ad justitiam pertinet secundum legem & consuetudinem Angliæ*; which shews, that the Laws are, as enacted, so commanded by the King to be executed according to Law and Justice, and this makes the Chancellour's next words true.

¶ *Lib. De literali & Mystica Juris interpretationi. q. 4. art. 3. p. 312.*

*Lib. 3. c. 3. De eruditione Principum.*

Law, which says,

Speech of King James, 1605. p. 506.  
Speech of King Charles, pass. Bills in Answer to the Petition of Right, 3 Car. rolli.  
Sir Edw. Cook, on 1 Westmister, 3 E. 1. p. 15.

3 Infit. p. 165.  
1 Infit. Sect. 97.  
2 Infit. c. 30. on Magna Charta, p. 60, 61, 62.

2 Infit. on 29 Chapter. Magna Charta, p. 56.

*Nec populum renitentem onerare peregrinis impositionibus.*

This expatiation of the former *non potest*, produces this Clause, as full of emphasis's, as words, *Populum*] that's a word of capacity, more then *gentem*; for *gens* signifies a kindred and relation; but *populus* imports a whole people; not onely the *plebs*, and obscure part, but the best, noblest, and most honourable; and the intent of the Chancellour, is to shew in the generality of the phrase, the extent of *Impositions* to all, high and low, noble and mean, Church and Lay-men; all are under the term *populum renitentem*] as supposing, that naturally men reluct charge, and subjects usually publique ones: if the people be willing to pay what is laid on them, the Text does not reach their willingness, nor debar them of it; but it priviledges them, unwilling to be compelled otherwise then by Law. For as no man can be compelled to serve against his will any command, *extra patriam*, because that is to exile him, and make him *perdere patriam*, which the Law so makes his, that he cannot be, other then by judgment of Law, without his consent severed from it, as was determined in Sir *Richard Pembrugh's* Case; so in his Countrey can no man be imposed upon, either in person or estate, other then as he is willing, or according to Law, *Stat E. 1. c. 1.* And the reason is, because that is *onerare*] and burthens, the Law eases, lays not on any shoulders. And for our Kings, the Law otherways provided. They had their *Custuma antiqua sive magna* granted to *Edward* the first, and their *Custuma parva & nova*. They had their *Butlerage*, *Prisage*, and *Tunnage* and *Poundage*, from the latter end of *H. 6.* to King *James*, to whom it was granted for life. They had *Quinzims*, *Fifteenths*, *Tenths*, and these were accounted truly theirs, and no burthens, because legally founded. For as whatever the Law lays on the Subject, is in our Texts sense no burthen: So whatsoever is without, and against the Law laid on him, is nothing less then a burthen; and that he submitting to unwillingly, and wishing no good with the obtaining of it from him, it often appears little advantage to the Princes that acquire it. *Walsingham* tells us a notable story of the *Lack-learning Parliament*, which gave so great a Wound to the Church, that when (possibly by their irritation) Sir *John Cheyky*, and his Military Comrades, desired of the King the Lands of the *Norman Abbies* in *England*, in recompence of their service, God gave the then Arch-Bishop of *Canterbury* such a successful

*Alciatus & Brechtius ad legem, 238. p. 508. De Verb. signific.*

*Volenti non fit injuria.*  
Stamf. Pl. Coron. 116, 117.  
Infit 2d part on 29 Chap. Magna Charta, p. 48.  
Poulton, p. 91.

1 *Eliz. Dyer*, 165.  
Cook 4 Infit. of Parliament, p. 29.  
Pag. 33.  
Pag. 34.

Anno 1404.  
Temps H. 4.

Si Rex quod absque vestro satisfecisset execrande proposito, non esset opulentior uno quadrante sequenti anno. Et erit prius hoc caput exponam gladio, quam Ecclesia destitatur minimo jure suo, p. 415.

¶ Resolution of all the Judges, 4 Jac. See 3d Instit. c. 24. of Purveyour, p. 84.

See the Preamble to the Stat. 13. Charles 2d. for the 1200000 li. per annum.

Parvi dejectique animi est, de subditis non profectum querere suditorum, sed quantum proprium Sanctus Bernardus, lib. 2. De Confid.

cessful zeal for the prosperity of the Church, That he (Prelate-like) contragiously chrested against it, telling them to their faces, that they did it to satisfie their covetise; and assuring the King, that if that their execrable desire were accomplished, he would not be richer one farthing the next year; and sooner will I (said he) have my head cut off, then submit to lose the Rights of the Church. And the reason was, because it was *impositio*, not *concessio*, a fruit of their importunity and ill advice, not a grant after Judgment, considering what, and why to do; and *peregrina*, not more majorum; and hence relucted, as dangerous and of ill president. For, the Common-Law hath so admeasured the Prerogatives of the King, that they should neither take away, nor prejudice the Inheritance of any; and these Monopolies being malum in se, and against the Common-Laws, are consequently against the Prerogative of the King; for the Prerogative of the King is given him by the Common-Law, and is part of the Laws of the Realm. So that the sense of the Chancellour is, that no charge, but what for its nature is usual, and for its authority is legal, is by our Text to be laid on the Subject contrary to his consent, that is, other then by Parliament, which onely can naturalize these *impositiones peregrina*, and make them passable; and without which, as lewd women of pleasure, are by *Donatus* termed *peregrina*, and *Valla* opposes *Peregrinus* to *Hospes*: so do the Laws of England brand *Impositions* of this kind, as spurious and rejectitious, and all good Princes have abhorred to exact them, after they have been informed the ill nature and consequence of them.

*Quare populus ejus libere fruatur bonis suis legibus, quas cupit regulatas, nec per regem suum nec quemvis alium depilatur.*

This follows, to shew the benefit of good Laws, by which just Princes suffer themselves to be bound. All Tallages, Burthens, or Charges, put upon the Subject by the King, either to, or for the King; or to, or for any Subject, by the King's Letters Patents, or other Commandement or Order; is prohibited (by 25 E. 1. and 34 E. 1.) unlesse it be by common consent in PARLIAMENT. And hence, because the Kings of England do not claim power over their own Laws, or their own Subjects purses, but according to Law; it comes to pass, that the Laws of freedom, in both the former Cases, and all the Descendants from them, remain firm, and are not attempted to be violated; nor can by the wit of man a safer way be found out to preserve the Virgin purity of Laws in these points, other then by setting such Revenues upon the Crown, as well husbanded, will amply satisfie the necessities of it. If the King wants, the State wants, and therefore the strengthening of the King is the preservation and the standing of the State, and woe be to him that divides the weal of the King from the weal of the Kingdom; and as that King is miserable, how rich soever he be that reigns over a poor People (for the hearts and riches of the people, are the Kings greatest Treasure) so is that Kingdom not able to subsist, how rich and potent soever the people be, if their Kings want means to maintain this State; for the means of your King, are the sinews of the Kingdom, both in War and Peace. For since Princes have great cares, charges and sluces of expence, and want of money is such a dishonour to a Nation, and defeat to the politique affairs of it, as nothing can be greater: It well becomes Princes in reason, as it is commendable in policy, to supple their Subjects to such settlements, and Subjects of loyalty and wisdom (to such unquestionable good ends, as preservation of peace, and interest abroad and at home) will easily consent to it, and think they do God and their Countrey, as well as the King, good service in so doing. And by this means do they prevent all attempts of the King by his Agents and Ministers, to supply himself extraordinarily when he has of his own, whence he shall be enabled to defray the expences of his Crown. This, I suppose, is the reason of the establishment of that constant Revenue of the Customs on our now Gracious Sovereign during his life, and the other additions, to make up a constant Revenue of 1200000 li. a year. For though by the Stat. 1 Jac. 33. rehearsal is made of Subsidies on all goods, which H. 7. H. 8. E. 6. Queen Mary, Queen Eliz. had and enjoyed by Authority of Parliament; yet the Grant of Tonnage and Poundage, &c. for defending the Seas, was even then thought a small

¶ Instit. p. 534.

King James's Speech, 1605. p. 540. of his Works.

By the Stat. 12. and 13. Car. 2.

See Preamble to the Statute 1 E. 6. c. 13.

small Revenue for so expensive a purpose, and this was but during the life of King James. After I find no perpetuation of it, but 3 Carols, c. 7. four entire Subsidies are granted by the Temporality, to supply the King's mighty occasions, more then his constant Revenue can supply; so are the words of the Statute. So that Tonnage and Poundage, being as some thought before our troubles, not settled by Act of Parliament, but taken away by the Statute 17 Car. 1. in Anno 1641. by which Act (more saith the King in his Speech the 22 of June 1641. was granted of his right then ever was by any of his Predecessours) the Revenue of the King was but meanly provided for till this settlement; which truly all things considered, will appear to be, though a great, yet a wise and worthy one; and as is by wise-men believed, no more then the necessary expences of his Majesty will require. And if it do prevent the inconveniencies of neediness, (one of the most worrying mischiefs to greatness) the Subject will have great cause to pay willingly, and joy in the prudence of so convenient a settlement, as will prevent what follows, *Peeling and polling of Subjects.*

*Nec pet Regem suum, aut quemvis alium depilatnr.*

This follows, to shew that though the King, *quâ King*, can do no wrong, yet necessity may make him so give way to the injuries of his Ministers towards his Subjects, that they may in a sense become his, since *qui non prohibet peccare cum possit, jubet*. Now though true it be, that our Kings have ever considered; first, *an liceat*; secondly, *an expediat*; thirdly, *an deceat*, in what, for the most part, they have done, and have never been of *Emilius Censorinus* his mind, who was so grievous to his Government, that he would reward those that invented new and unheard of punishments for his people: yet is it also true, that in some of their Reigns too much advantage has been given to discontent by Monopolies, and new courses of raising money, which (good Kings) they have made little profit in the end by. Of these illegal courses, *Walsingham* relates in *E. 2.* that he did *ponere maculam in gloria sua*, and that his rage against *Walter Langton*, his Father's Treasurer, was such, that he seemed to be *erectus in Tyrannidem; unde mox contraxit infamiam perseveraturam temporibus disturnis*. This the Law frowns upon, as contrary to the nature of *English* freedom, and thereupon by the Statute of 21 *Jacob. c. 3.* it is declared a grievance and inconvenience to the Subject, contrary to the Laws of the Realm, &c. and remedy is given against it; yea, our Kings have taken great pleasure in releasing grievances: so did *Henry* the first, *edito statim per Angliam misso, injustitias à fratre, & Ranulpho institutas prohiberet, aliquarum rerum moderationem revocavit in solitum*. For they remembered, that a wrong it was to oppress Subjects that are bound to obey, and that God, whose to do right is, would be the helper of those in distress, and the punisher of their Distressours: so true is that rule of *Saint Thomas*, *Multum timenda & cavenda est rapina Principi, & in se & suis collateralibus inferioribus, multum enim est Deo, & sanctis exosa, diabolo placida, homini nociva, &c.* and dreadful are the effects of God's Judgment on evil Princes, as the same *Saint Thomas* makes out in the particulars of its misery. Now *depilari* signifies, in our Chancellour's sense, a diminution, or taking off the good nap and rich covering that an *English* man has, and not onely shearing, but shaving him to a baldness of poverty and servility. For *depilatio* was the dishonour of slaves, as covering the head was token of enfranchisement; and truly, to reduce the Subject of *England* to such a condition, as to be naked of Law and property, was too much for the stout stomach of the men of *Kent* to bear in the *Norman William*. For when they were begirt by his Army, they then resolutely told him, and his *Normans*, *That they would wage a fierce War with him, being resolved rather there to die the valiant Assertors of their Laws and Liberties, then to submit to the loss and antiquation of them*. And sure such an *Egon*, as had an *Eagle* greatness in his Kingly Breast, would not aim at so mean thoughts, as to dishonour his own people, by depilating them: yet fierce man as he was, he did *depilari*, both in *France* and here, and he paid dear for it on his Death-bed: And justly deserved he to be bereaved of a Subterfuge in the mercies of God, who had so much of mercylefs savageness to men; himself in nature, his subjects in relation, and his vassals in misery. The Chancellour then uses *depilatnr*, to express the cruel nature of Kingless exaction, which ought to be so much the more inveighed against by a Subject to the King of *Eng-*

*Sanctus Thom.*  
*lib. 1. c. 5. De Eru-*  
*dit. Principum.*

*Plutarch in Pa-*  
*rallelis, p. 315.*

*Walsingham in*  
*E. 2. p. 63. edit.*  
*London.*

*Malmesbur. lib. 5.*  
*in H. 1. p. 22.*  
*M. Paris, p. 55.*  
*& c. 56.*

*Lib. 4. c. 5. De*  
*erudit Principi-*  
*pum.*

*Lib. 6. De 6.*

*Boni pastoris est*  
*tondere pecus, non*  
*deglubere, dictum*  
*Fiberti apud*  
*Sueton. in Tibe-*  
*rio, c. 32.*

*Holingshed, p. 2.*

*Plutarchus in*  
*Orat. De Forti-*  
*tud. & virtute*  
*Alexandri, p. 340*  
*Knighton, p. 2353*  
*Chronicon, W. 1.*  
*p. 29. Brompton,*

land, because it has been much against his Dignity, (so no Princes ever in the World have been more mercifull, less pressing on their Subjects, then the Kings of England ( for the most part ) have been. And therefore *depilatur* is brought in here, as that which is looked upon to import dishonour, since hair is an ornament to the head, the noblest part; and 'tis the emblem of the vigour of nature, which some lose upon decay of succulency; or as a punishment for some enormity. Among the *Jews*, the *Nazarites* men sacrated to God, were not shaven; no Razor came on their head, and *Abfalom's* hair so large and thick was his ornament, rendring him acceptable with all *Israel*. The *Lombards* thought shaving of the head the greatest and most opprobrious punishment, saith *Alvarotus*. Among the *Saxons*, to shave off the hair, and make a man ball'd, was the punishment of Theft; and if a Woman were incontinent, she was shaven; so if any one pulled off anothers Beard, he was punishable;

*Quod poena genus istis fuerit coma detonso in vispendium, & opprobrium delinquentis constituta, in ff. De pace tenenda in U. sub. Fendorum.*

*Spec. Saxonie, lib. 2. c. 13.*

and *Baldus* gives the reason, *Quia barba est membrum in homine*; and he that considers, that *Julius Cesar* took it for a favour from the Senate, that he had a Crown granted him to wear, by which he covered his baldness; and *Carolus Calvus* was named so, not onely for distinction, but in a sort of reproach; and the Mother of the Sons of *Clodoveus*, the first Christian King of *France*, chose rather to have their heads cut off, then their hairs polled. He that considers this, will easily grant that baldness, this *depilatio* here, intends such a peeling and polling, as amounts to not only poverty, but dishonour, thus the *Jews* took baldness. As this is collectable from that scoff of the Children to the Prophet, *Come up you Bald-pate*. The *Hebrews* therefore rendred this by *קַרְטָה*, a word that signifies to pull by the roots, *radicibus evellere*, and it implyes not onely enmity in the doers, but pain in the sufferer, *Isa. 50. 6. I gave my back to the smiters, and my cheeks קַרְטָה, to them that pulled off the hairs*, that is, to violence and cruelty in the high actings of it. Thus this Text is applied to Christ as Prophetical of his sufferings, and fulfilled in them: so that the Chancellour by his *depilatur*, means such an impoverishing of the Subject, as renders him naked of all plenty and beauty, and exposes him to be in the nature of a Villain, under the lash and pleasure of his Lord, as horses in a Team are. For so *Cowel* interprets the word *Theam*, *Regale privilegium est, quo qui fruitur, habet villanorum, id est, servorum & mancipiorum intra feudum suum propagationem & potestatem de illis, ut de ceteris suis seu liberis seu bonis mobilibus vel immobilibus, pro libito disponendi*: so he. And this I am sure has been so unlike the Royal mind of our Princes to endeavour, that they rather have desired to add to our freedom and riches, then detract or impair them.

2 King. 1. 23.

*Cowel in verbo Theam.*

*Consimiliter plaudit populus sub rege regaliter tantum principante, dummodo ipse in Tyrannidem non labatur.*

Here the Chancellour shews, that where Regalities own no National Laws; yet if they restrain their power and wills, to prize Justice, and gratifie not their passions above general good, and so tyrannize over their Subjects, making their lives grievous them, there also people cannot choose but be happy. This the grave Historian *Xenophon* notably confirms, *Τὸ μὴ γὰρ ἐκόντων τε τῶν ἀνδραγαθῶν, &c. That Government which is over men, willing and readily submitting to the same, and wherein the Laws are the measure of Rule, is called a Kingdom; but where men are ruled by no Law, but by the will of their Ruler, against their own wills, this is a Tyranny*. For there being no Governour, or Government, but acquiesces in those common notions of Order and Justice, which interfere not with power, but co-operate with it; it must needs follow, that Subjects under such a Government, though never so tart and severe, yet if it be just, shall not (while they continue wary and worthy) find any grievance of the power, but find a blessing in, and from it. For it is not greatness of power, that betrays men to abuse of it, but their own corruption, which thence takes occasion to vexatiously exercise it. And this is the Rise of all Tyranny, when men obtain power to eliminate virtue, and that once discarded, to become Monsters and Tygers in man's flesh, *ὁ δὲ ἐν φιλοσοφίας τῷ ἀσχερῶτι, &c. For Reason and Wisdom residing in a Prince, and being (as it were) the keeper of his soul, whatever in his power is dangerous, it sweetens and allays and leaves onely the kind and useful parts of it for him to express*. Against which abuse of God's

*Lib. De Memorabilib. Secretis.*

*Plutarchus ad ingentem ducem apud Stobzum. Serm. 44 p. 119.*

God's bounty in Princes prelation; there is no more expedite a Cordial and defensiva-  
 tive, then to consider God the Lord of all, as a resister of the proud, and a giver of  
 grace to the humble, and take a resolution to practise such a dominion over ones own  
 minde, as may reduce it under the Empire of reason and justice (which *Bias* expres-  
 sed, when he wept upon condemnation of a man to death, and one asked him why he  
 wept for what he had occasioned, his answer was, *ὅτι ἀναγκασθὲν ἔστιν*, &c. because 'twas ne-  
 cessary that the affections of nature should give way to the directions and Commands of the  
 Law) so to do to others, as they would have others do to them, and then to pro-  
 pound such Presidents of equanimity or rather Magnanimity, as are famous in their  
 kind in men of great place and opportunity. 'Twas a rare demeanour of *Ælius Pertinax*  
 which we read of, when the Romane Senate besought him that he would call his Queen  
*Augusta* and his son *Cæsar*, his reply was, *sufficere, inquit, debet quod ego ipse inuitus reg-*  
*navi quum non mererer, nimis aequissimus, omniumque communis*; yea  
 if so great ingenuity be in the soul of power, it will not express it  
 self to any heighth, but what is consistent with general content and  
 common advantage. I do not read that *Solomon's* Reign had any  
 thing but plenty and blessing of the King, yet *Solomon's* power  
 was in a sence absolute; nor that *Constantine*, *Marcus Antoninus*,  
 or *Trajan's* Reigns were branded with ought oppressive to their  
 Subjects, though they had all the absoluteness, that just Kings  
 could have. So long as there is a noble heart and a vice-less mind,  
 which to gratifie greatness descends not beneath it self, there is no  
 danger: nay so long as Lawes of mitigation, gagg'd by Reli-  
 gion, have onely the force of remembrances to Princes; Subjects  
 are more to pray for good Princes then good Lawes. For there  
 may be good Lawes in a Nation, where under a bad Prince the Sub-  
 ject may be miserable, but under a good Prince bad Lawes seldom  
 do hurt; for his goodness prevented their ill influence, and whol-  
 ly annihilated them by superinducing lawes of remedy and rela-  
 xation. And hereupon Conscience being under the aw of religi-  
 on, and the Law of God binding Subjects from capitulation and  
 violence, to prayers and tears; if the Lawes be good and the Prince so too, all is sure  
 to be well; but if otherwise, and they must be parted, better a good Magistrate over  
 bad Lawes, then good Lawes under a bad Magistrate: for so it follows.

*Aphd Stobæum  
 serm. 44. p. 3. 5.*

*Jornandes lib. 1. De Ælio Per-  
 tinac.*

*Legibus namque regni & consuetudinibus de  
 ratione introductis & diu obtentis, & quod  
 laudabilis est salium virorum ( licet subdi-  
 torum ) rex noster non dedignatur consilio,  
 Quos morum gravitate, peritia juris, & regni  
 consuetudinibus, sua sapientia & eloquentia  
 prerogativa alius novis præcellere, &c.  
 Glanvil in Prolog. ante Tractat. De Legib.  
 & Consuet. Anglix.*

*Ὁ μὲν ἀδικεῖν, ἐστὶ δὲ δεινὰ  
 νόμου τὸ καλῶς ἔχειν καὶ κατὰ τὸν νόμον  
 εἶναι, Stobæus serm. 9. de Justi-  
 tia. p. 101.*

*De quali Rege dicit Philosophus tertio Politicorum, quod melius est civitatem regi viro  
 optimo quam Lege optimâ.*

This Maxim of the Philosopher, is, I suppose to be accounted, true upon Considerati-  
 on of two things. First, That good men were more ancient then good Lawes; for good  
 Laws were invented by good men, instituted by God in Providence to the declension of  
 men from rectitude, as conversation and discovery of the world occasioned their warp:  
 for in Patriarchal times, & in the Innocency of the golden Age, Nations and Continents  
 submitted to one or few in whom they saw most Divinity and Heroiqueness, and from  
 those did they willingly receive the rule of lite and all the Prescripts of their publick  
 and private Concern; and when to such Rulers and Law-givers there was no Law but  
 their own wills, no question of their Commands but presently they were obeyed; yet  
 even then did the virtue of these Chiefs and Patrons keep them from Tyranny, and affe-  
 ctation to themselves with injury to the publick. But when once Vice had boyled off the  
 grain Colour of virtue, and there was adoration given by men to the Idols of Pomp,  
 Power and Magnificence; then there was a necessity to limit Encroachments, and to  
 impede Advantages against popular Credulity by politique Sanctions, and to make  
 those accessable to rule, who were most demonstratively just, and had the most gene-  
 rous and open latitude of epidemique Justice in them, which policy made all men of E-  
 mulation Candidates to Government, and those onely sure to have it by publique  
 suffrage, who had the most pure and publique Spirits in them. Secondly, Better  
 good Kings and Rulers then good Lawes, because good Lawes are nothing without  
 good Kings and Rulers that execute them; Alas, the Law is but a dead Letter, 'tis  
 the

the Minister of it that quickens it, without him the best Lawes are but like Medicaments in the Apothecary's shop, unavailable to the sick man, who dies notwithstanding them. Indeed as *Demosthenes* said, Πόλις αἰ ψυχὴ τῆ τοῦ νόμου, &c. *Lawes are the soul of Governments*; but what are souls without bodies in which they move: *Israel* had good Lawes in *Ahab's*, *Rheboam's* and other ill Kings times, but the Nation was never the better but the worse for them, because God was more provoked by them, as they were not improved aright under evil Kings, and thereupon all people are to pray earnestly for good Governours, *That under them they may live peaceable lives in all Godliness and Honesty*. For as it is not fire in the hearth that makes warm; nor air in the sky that carries to the Port; nor light in the Candle that enables to read; nor money in the purse, that feeds man, unless they be adapted to us; and we within the sphear of these, whereby they may properly effect their end upon us: So is it not good Lawes that felicifies a Nation, unless they be made happy by a good Guardian and Defender of them. *Isocrates* calls *Evagoras* such an one, for his Empire was so moderate and just, that all his life time in it he led εἰσενα πῶ ἀδικῶν, &c. *without injury to any one, honouring the good, ruling over the bad, and punishing evil men onely according to the Lawes*; for such an one will not onely execute good Lawes in being, and suspend the rigour of ill ones, till they can be repealed; but festinate the substitution of good Lawes in room of ill ones, and remove the snare in which Subjects may be harmfully caught; and hence good Kings are called Fathers of their Countries, because as they do *ignoscere delicta*, so do they *agnoscere debita*; and if *their Children ask them bread*; they will not give them stones: if fishes, not scorpions: and this the Philosopher said was the end of Kingdoms, which were to preserve virtue from the rapine and prey of multitudes, the Extravagance of which ends in Tyranny. For if all things followed the suffrages of popularities, there would be more Jews in vote to crucify truth and depose its regency in the minde, then cryers out for it; because the whole world lyes in wickedness. And hereupon though good Lawes are rare blessings in themselves, yet compared with good Kings, they are less blessings; because Kings are the Executioners that make them what they are in their exercitial goodness, and upon this ground I suppose that of *Pythagoras* is notable, ἢ πολέων ἐκείλω χερσῶν, &c. *that was the best of Cities, which had most good men in it*. It is then a truth, *That good Rulers are better then good Lawes*, because they make good Lawes, and execute good Lawes when made, and that with such moderation as argues them wise and worthy Masters of their own mindes, and thereby not tempted to injustice; which *Dioctlesian* eminently made good, for though he were no friend to Christianity but a vehement impugner of it, yet he was successfull and great in esteem with his Souldiers, Subjects and Confederates, and the first of all the Roman Emperours that resigned the Empire to lead a private life; and the Historian sayes, he had a suitable honour done him for his temperance, *Of all private Persons of his time he onely was deified*. For surely, he that could leave so great a Command contentedly, without doubt used remarkable justice in it; for had he delighted in making his will the law of his Government, he could not have willed his diminution, and proposed alone when none other did or durst, his own discharge from that Royalty into the degradation of a privacy: but God dealing with the haughty nature of man, does by his distillations of reformation, and through the liquefactions of virtuous candor, so incline great mindes, that they can deny themselves contentedly, to benefit others certainly. Thus did a matchless Monarch, whose words were but the report of his deeds, *I studied to preserve the rights of the Church, the power of the Lawes, the Honour of my Crown, the Priviledge of Parliament, the Liberties of my People and my own Conscience, which, I thank God, is dearer to me then a thousand Kingdomes*. And this is the cause of the Philosophers position, *That better it is to be ruled by good Men then by good Lawes*.

Isocrat. in Evagora apud Sio-bzum serm. 46. p. 329.

Ἡ μὲν δὲ βασιλευσία τοῦ βουλιβαν τῶν ἀπὸ τῶν δίκων, τῶν ἐπιχειροῦντων γέροντες; Arist. lib. 5. De Rep. c. 10. Excellencia rei est in athen non in habitis, Scholastici. Stobzus serm. 41. p. 247.

Μὲν γὰρ ἀναγορεύθη θεός, Eutropius in brevuario, lib. 9. ad finem.

Eicon. Basil. c. 27. To the then Pr. of Wales, now our dread Sovereign.

Sed quia non semper contingit Presidentem populo hujusmodi esse virum, Sanctus Thomas in libro quem Regi Cipri scripsit de regimine Principum, optare censetur, regnum sic institui, ut Rex non liberè valeat populum Tyrannide gubernare, quod solam fit, dum potestas Regia Legge politicà cohibetur.



This Book of Saint *Thomas*, is amongst his *Opuscula*, and 'tis a most nervous and pious tract of policy, which he, or as some think, *Agidius Romanus*, wrote to the then King of *Cyprus*, to manifest his love to him, in a right conduct of him through all the passages of Government, and the duties, that as a Governour he was to express to his people: and the sense of this passage, here by the Chancellour quoted, is out of the second Book, the eighth and ninth Chapters; and it is according to the suffrage of reason: for because the will of men in power was found to degenerate, by the temptations they in their prosperity had, & the impatience of men under rule, made them fly out into furies against their Governours, by reason of his severity towards, and absoluteness over them: therefore Nations did treat with their Governours, not always as a pre-contract to their acceptance of them, but often as a favour from them to their people; that they obeying them so and so, should be free from such and such expressions of their power. And this mutual understanding, being formed into a Law, makes the politike ally to the absolute regal Sovereignty, which he here (as considering it inconsistent with Laws) opposes to it. And truly, if there be any probable means to preserve Majesty and Mercy, 'tis surely by Laws; which, though they do not oblige under humane penalties, Princes, as they do private persons; yet do remember them of a Justice and Veracity, which they are ever to prefer, before their passion and bare pleasure; and that not onely in order to God, who requires truth in the inward man, but also in order to reputation, which Princes are to value above other men. For, as far as a King is in honour erected above any of his Subjects, so far should he strive in sincerity to be above them all, and that his tongue should ever be the true messenger of his heart; and this sort of Eloquence, may you assuredly look for at my hands. For the word of a King is the *sacrum quiddam*, which ought to be held inviolate: since a King that governs not by his Law, can neither be countable to God for his administration, nor have a happy and established Reign: so said King *James*. And hereupon if Kings that do own Laws, do violate them, and not rule according to them, they do somewhat unlike the lenity and grandeur of their Office; for in that they imitate God, who is just and good, and in this they contradict the Attributes, which illustrate and besplendour their Crowns: for set aside the good that results to Governments by Kings administering them, and their power will be terrible, and more feared then rejoiced in, when that it may not be, the exercise of it by, and according to Laws, is by them admitted, and the King's power and goodness exercised in his Courts of Justice, which are called *liberates* (saith Sir *Edm. Cook*) because in them the Laws of the Realm, *qua liberis faciunt*, are administered: And in the practice of it, there is no easie degeneration into extravagancies, since Laws are made by publique Spirits to publique purposes of virtue, justice, and freedom; but Tyranny is the exaltation of a private peculiar humour, and will, in contradiction to, and destruction of the good of all others besides him, which *Entropius* says *Trajan* so much abhorred, *Τοιαυτα δεινλα τα κατω της πολικης*, &c. He overcame his Military Renown by his Civil Administration, and made his Government as a Prince, excel his dread as a Soldier. So just and true did he approve of *Antigonus* his monition to his Son; *An ignoras fili regnum nostrum gloriosam esse servitatem, & qui aliter sentit neque regius nec civilis homo, sed Tyrannus judicabitur*. And therefore, though success, may carry Princes aloft, and by them they may be happily accounted of, though they little deserve it, as did *Charles* the eighth of *France*, deserve the same he had by his successes in the Kingdom of *Naples*. I say, though these may sometimes befriend Princes; yet the durablest, and most lovely stability they have, is the love of Subjects, made theirs by their goodness, kindness, Conscience, to govern by their Laws. The old Emperour *Marcus* is highly for this, mentioned in Stories. For so beloved by the people was he for his virtues, that they called him not onely the *Poor man's King*, but *παιτρης χριστου*, &c. a bountiful Father, and a brave King; a fortunate Captain, a moderate Governour; and added, that all this he was from integrity, demeaning himself so, that his death was a common sorrow to all *Mankind*. And such another was *St. Ericus*, King of *Sweden*, about the year 1150. who made such just and good Laws; *Ut non à rege in cives*, &c. That one would think they were not made by a King to his Subjects, but by an indulgent Father for his most dear Sons: which they may with Reason and Religion punish the violation of, in the treason and enormity of their subjects, when they themselves do not transgress the Law, but keep close to the Directs of

Leges argumentum operis.

Leges lib. 3. c. 11. De Regimine Principum inter St. Aquinas. Opuscula.

King James's Speech in Parliament, Anno 1603. fol. 497. of his Works.

In the Law of Free Monarchies. p. 203. of his Works.

2. Instit. c. 1. on Magna Charta. p. 4.

Entropius, lib. 8. edit Sylburg. p. 113. *Alian*, lib. 2. c. 1. Variarum Histor. Omnibus fere natura animaque / dotibus vacuus, ut monstris similior, quam homini videretur. Guicciardinus, lib. 1.

Herodian, lib. 1. p. 467. edit Sylburgii.

Jo Magnus, l. 19.

Protestation at  
the Head of his  
Army, betwixt  
Stafford and  
Wellington, Sep-  
temb. 19. 1642.  
Collect. p. 38.

Aquinas, lib. 1.  
c. 10. De Regi-  
mine Principum  
inter Opuscula.

3 part Instit.  
c. 2. petit Treason  
ad finem, p. 36.

it, which a gracious Monarch so thinks upon, that as he desires to govern by the known Laws of the Land, and that the liberty and property of the Subject may be by them preserved, with the same care as his own just Rights, so when he willingly fails in these particulars, his integrity says he will expect no aid or relief from any man, or protection from Heaven: so was the protection of glorious King Charles the first. Which considered in the Kings of England, as parties voluntarily consenting to their own obligation, with reverence I write it, to their eternal honour, the subject is bound to return them a most faithful and just subjection and loyalty in all things, according to the duty of subjection by the Laws of God and men. And he that is perfidious and disloyal to his Sovereign, who thus lets him be free under a just and merciful Law, the free execution whereof he impedes not, but defends to that end, yea, submits to in all things wherein the Law concerns it self. I say, he that is other then loyal, loving, and cordial to such a Prince, is a Varlet ingrate, unnatural, a sinner of a Cham-like unnaturalness, and thence the more abominable, because such without all provocation. And it is a very sage Oracle of the Laws observation, *Peruse over all Books, Records, and Histories* (says he) *and you shall find a principle in Law, a rule in Reason, and a trial in Experience, that Treason doth ever produce fatal and final destruction to the offender, and never attaineth to the desired end, (two Incidents inseparable thereto) and therefore let all men abandon it, as the most poisonous bait of the Devil of Hell, and follow the Precept in Holy Scripture; Fear God, honour the King, and have no company with the seditious: so he.*

*Gaude igitur Princeps optime, talem esse legem regni in quo tu successurus es, quia & tibi & populo ipsa securitatem prestabant non minimam & solatium.*

This is well subjoynd, to excite the Prince to a just return to God for his favour, in giving him the reputed Title to so fair a Crown, and so flourishing a Law as it was held by. Indeed, every mercy should oblige a man to gratitude, and he is not worthy the Air he breaths in; the Earth he treads on, the meanest indulgence he entercommons with the Creation in, that does not express his gratulation to the fountain of his enjoyment: but Princes that have Crowns put upon their heads, and are to rule by just and wise Laws, have myriads of thanks to return God for their prelation, and ought to be paramount to others, in returns of service suitable to their predignification. And this is the sense of the Texts *Gaude*; not to kindle in the Prince a joviality, arguing levity, and youthful froliqueness; but to raise him to a comfortable demeanour under so great an indulgence: so to be affected with the mercy, as to think of King David's *quid retribuam*; for it is a mercy to have a Law; and gracious Princes think it so, that they may testify, that they fear: if their Wills were the Law, the Law of God and Justice would not command their Wills: But to have such a Law as England has, that has the marrow and best of all Governments in it, and that establishes Prerogative and Priviledge in a consistency each with other, that asserts the King a free Prince and his Subjects free People; that bounds the Crown not to swallow up property and priviledge; nor property or priviledge to juggle with, or oppose themselves to the Crown. This, this is matter of joy to a Prince, probable to succeed his Father to it; and that because where all parties concerned, are agreed in their respective stations, to promote the noble ends of this politique Harmony, both peace will be to the Prince in soul and body, and comfort to the subjects in their enjoyment of their good things in peace; which thing, in other words, was notably declared, to the satisfaction of all sides. For the then King Charles the first declared this to his Parliament, *That those things which have been done, whereby men had some cause to suspect the Liberties of the Subject to be trenched upon, shall not hereafter be drawn into example of our prejudice; and in time to come, in the word of a King, you shall not have the least cause to complain.* And this he calls *severitatis & solaminis prestatio*, both as it begets a right understanding between Prince and People, and makes a Gordian knot of their mutual confidence in, and corroboration each of other; and also as it strengthens them against all the counterblasts and discomposures, which are occasioned by emergent evils; the sense of which is unpleasing and insupportable, where guilt and envy is predominant; which since the Laws ruled by, and subjected to, do anticipate; the Chancellour, had good reason to write, as here he did, *Quo & tibi, & populo ipsa non minimam prestabant securitatem & solatium*

Δεῖ δὲ τὸν νό-  
μον τὸν κέρ-  
ρωνα καὶ τὸν  
πόλιον ἐκ πᾶ-  
σων οὐδέ τινος  
εἶναι τῶν ἀλ-  
λων πολιτείων,  
&c. Aichytas  
Pythagor. apud  
Stobzum. Serm.  
41. p. 268, 269.

3 Caroli, Tulon  
Stan. p. 1433.

*solatium.* For as fortunate courage gets dominion, so politique circumspection settles it and secures it against its retrogradations; which *Severus* made provision against, by that wall which he built in *Britain*, τὴν ἀρχαίαν ἀσπίδα, &c. that he might preserve his Conquests, and be secure against their relapse. For nothing in prosperity is desirable; but grace to use it well, and a perpetuation of it; whence onely arises the comfort and content of it. And therefore as security falsely grounded, is the road to ruine, because it is exoculate and lulls men asleep in confidences of fallacy, till they be irreversibly ruin'd; which is the reason that prudence detects it, and ranks it amongst those defects that argue fatuity and incircumspection; whereas in the Chancellour's notion it is the fruit of diligence fore-thought, and the upshot and compensation of all right conduct, and of all real wise design; which the word *ΠΡΟΒ*, in the Holy Language represents, when it, in the conjunction of its import, signifies boldness and confidence, past all fear, *Prov. 10. 9. Prov. 1. 23.* and is opposed to fear, because 'tis that boldness which is rationally and prudentially so, upon the ground of all the lines of virtuous endeavour conducting to, united in it. This is that which the Wise-man calls, *The wisdom of the Prudent is to understand his way; With the well-advised is wisdom: through wisdom is a house builded*: by all which are implied the delight of security, ἀσφαλτοῦ οὐλαξαι σαυτοῦ, saith *Suidas*. And therefore as all men endeavour to secure what is dear to them, their Wives from force, their houses from robbery, their lands from waste, their evidences from purloining, their children from seduction, their reputation from suffering, their lives from treachery: so ought Princes to secure all they have, and are by good Laws and a right and reasonable execution of them; which when they do, their Subjects are sure to be quiet, and their power established; yea, their persons so contributive to publique serenity and order, modestly deified; for as no man can choose but think that Prince worthy pity, who with *Censorinus* has the Character to be *felix ad omnia, infelicissimus imperator*: so no man can choose but account him an object of veneration, who makes himself a *numen* of preservation to Mankind. And happy is that Prince who turns his ears from Parasites, such as were *Hubert de Burgh, Pierce Gaveston, the Spencers, Tresilian, William de la Pool, Lord Hastings, Sir John Catesby, Empson, Dudley, Woolsey*, who all injured their Princes by their preterlegal counsels; and happy is that Prince that hearkens to the Laws and to such brave Spirits, as with *Charles Brandon, the valiant Duke of Suffolk*, do good to all, and harm to none. Oh! such Counsellours, will make a King beloved and adored, if he will hearken to them.

*Eltopius. lib. 2. p. 118. To. 3. ultima Syll.*

*Quod confidentiam sequatur securitas, Pagn. in verbo.*

*Prov. 14. 3. Prov. 13. 10. Prov. 24. 30.*

*3 Instit. c. 99. p. 205.*

*Tali lege, ut dicit idem Sanctus, regulatum fuisse totum genus humanum, si in paradiso Dei mandatum non praterisset.*

This Clause I do not, in *terminis*, find in *St. Thomas*; but the sense of it I do, in these words; wherein he does prefer Politique Government with Regal, to onely Regal Government, and that he does, 1. *Si referamus dominium ad statum integrum humane nature; qui status innocentia appellatur in quo non fuisset regale regimen, sed politicum*: for God having so ordered man in that state of innocence, that he might not have sinned: had he continued upright, there would have been no distinction of states and degrees of men, which are the effect of man's fall and sin, nor would any have usurped over each other: but though there would (perhaps) have been degrees amongst men, yet there would have been a sweet harmony and condescension each to other, according to the congruity of their common and sinless condition. This I suppose, and humbly conceive, is the sense of *St. Thomas*, which the Chancellour takes from him, and applies to the Laws of *England*, to display in the Oratory of his Conception, the grandeur of his love to the Laws. For no man can imagine, that these words are less then hyperbolique, though they have in their *pathos* a nervosity of truth, pointing out to the Laws Medicinality, in that it rectifies all ill humours in the mass of the Politie constitution, and preserves the head in its vital pre-eminence, and the members in their loyal subserviency; in which two necessary offices of distributive efficacy, it makes a correspondency to God's Institution, and carries on his order in a regulari-

*Lib. 2. c. 9.*

*Quamvis in statu innocentia nulla esset miseria nullaque ignorantia, non tamen essent futuri omnes homines aequales in sapientia & virtute & in aliis dotibus animae, tam naturalibus, quam supernaturalibus; & ideo, qui inter eos sapientia & virtute praevalerent, dominerentur aliis absque aliqua tamen molestia. Aragonius q. 66. in secunda D. Thomae. p. 89.*

*Si homo non peccasset nulla fuisset agrorum divisio, sed omnia communia. Bonavent. Serm. 18 Tom 1. p. 55.*

*Nomen & conditio servitutis culpa genuit, non natura; & prima hujus subjectionis caput, est peccatum, Sanctus August. lib. De Vera Innocentia, c. 164.*

In his account of the Island of Zeylan, c. 14 Voyages to the West-Indies.

Hottoman in Praefat. ante Commentar. Julii Caesaris.

ty of method: and this I take to be the *all* that is deducible hence. For as no man knows what form of Law God would have prescribed Man, had he continued upright; because then he had needed no Law, but that on his heart. For in the formality of it, Law was added, because of transgression: So to say what Law would have been, or not have been, is besides the meaning (I suppose) here. The onely use of the instance is, to shew that Regal Power, mixed with Politique; as in the temperament of *Englands* Politie, is the best Government to make both King and People secure of God's mercy, and their mutual aid and affection each to other in order to their joynt and severall capacities and conditions, happyable thereby: Nor is there any Government in the World so true a Paradise to its Enjoyers, as this of the Municipal Laws of *England*, accompanied with such supplements of the Civil Law, as are legitimated with us; yea surely, if Paradise must be in an Island, as *Lindschotten* will have it, this Island of *Britain* must be the *Seylon* where it is, and the Laws of *England* must be the Paradise in it; for from them doth flow that quaternion of streams, *Piety, Order, Riches, Renown*, which render us the admiration of all our Neighbours. And hereupon methinks, I may say of our Chancellour, as *Quintilian* does of *Julius Caesar's* Commentaries, *Tanta in illo vis est, tantum acumen, ea concinnatio, ut illum eodem animo dixisse, quo behavit, apparuit.* So much doth my Text-Master say in few words, that I know not what to add to him, in commendation of the Laws. For as he likens them to those of Paradise the best state; so to those of the Lives under the Judges the next: For it follows,

*Tali etiam lege regebatur Synagoga, dum sub solo Deo Rege, qui eam in regnum peculiare adoptabat, illa militabat.*

*Hac autem politia eodem modo temperata videtur, qua dicitur Lacedaemonum illa perfectissima ita, ut Moses regiam quodammodo potestatem habuerit, sub Dei tamen veri tunc & unius Israelitarum regis auspiciis. Corn. Bettrum, De Politia Judaica, c. 6. Exod. 32. 9. Prov. 29. 10.*

*Cunans, De Reipub. Hebrorum, lib. 1. c. 1.*

This relates to the times, from *Moses* to the end of *Judges*; a government of about 400. years; and in all which, God used the ministrations of men to rule under him, keeping the Monarchy over them to himself, and entitling no man to it, and in all this dispensation of God's goodness to *Israel*, the people of his love and delight; whom he carried upon *Eagles Wings*, and made the head, and not the tail of Nations; not absolute Sovereignty, but a politique dispensation of himself by Laws of moral equity, and prudential convenience, did God carry *Israel* in the Wilderness, and into *Canaan*, with a mighty hand, to the consternation of all their Enemies: yea, and so did he qualifie all men in deputation under him, during that tract of time, and those tedious variations, that they did not affect any usurpation upon God's indulgence to the people, but bore with them, and prevailed against the roughness and choleric of their nature (for they were people עִרְוָה, of a stiff-neck, not bettered by reproof) by their ingenuous mansuetude, knowing well that God would have it so, whose the people were, and under whom they had the conduct of them. This Oeconomy of God's, our Text-Master proposes, as the pattern of ours in *England*, and ours he likens to it, *similitudine vestigii*, though not *imaginis*; for though every thing answers not, yet in the main integral parts, in the compolure of the smartnesse of absolute Regal, with the bluntnesse of politique Government; there is that aimed at which makes somewhat near the lovely figure of God's Government, while he ruled *Israel* as their King, and besides him they had no visible humane King. And this speaks more then all Arguments for politique Government with Regal: for in that God allowed, nay established it as his choice, it appears to have all those integrals of perfect Government, ayiming at righteous ends by righteous means, and to be equally adverse to all extremes, either of defect or nimety.

*Sed demum ejus petitione, Rege homine sibi constituto, sub lege tantum regali ipsa deinceps humiliata est.*

This our Text-Master brings in, to shew how God's establishment had its *Supersedeas* not by force; for he was a King neither to be deprived by power, or deceived by falshood, or over-reached by subtlety, or flattered by oratory; no such artillery could

could impeach his Regality, no nor could the Moth of time or periodique fatality, which determines Governments and transfers them from one to another, work on his Government, that was from everlasting in the root, and would have been to everlasting, not onely in a sense of divine Perennity and essential Indeterminateness over the whole world, as Lord of the Universe, but as to such a proportion as the sense of his temporal exercise over the Jewes was applicable to, over them: but by condescension to their desire, and in punishment to their murmure and machination, which rather aimed to gratifie their curiosity in being like other Nations, then to acquiesce in a gratefull submission to God, and a willing subjection to his Deputies set over them. And the Chancellour not onely sets down their sin in desiring man rather their King, then God, but the Instrument of their Prevalence, and the Engine they imploy, which is Prayer to have their Government passed over to a King of flesh and blood, bone and bulk as themselves, yea and the effect of their desire they begg'd inordinately, and God gave them their hearts desire to their after-terroure. This does the clause set forth, not to depreciate their desire of a King, but to blemish their inordinate Principle in desiring a King in opposition to and declension of God their King; and therefore God, though he gave them their desires upon their requests, yet he so imbittered his gift, that it should ever carry the memorial of their sin with it. And this shews us both the corruption of nature, which delights in change, and the danger of change by reason of such corruption. Not onely, *Man being in honour abode not*, but in his prevarication became *se ipso humilior*, beneath the beast that perisheth; so that not onely the Principles of which Nature consists being changeable, incline to change, but even the tendency of man in the lubricity of his will inclines to it, and that by a Judgement of God on his understanding, that takes evil for good, and is restive in loveing and improving it to his ruine and annihilation. Nor is it ever seen that changes in this Militant State, without great grace from God, are for the better, but most an end for the worse; of all the changes of *Israel*'tis said, *They changed their glory for shame*: their freedom for bondage, first, to the *Egyptians*; then to the *Babylonians*; then to the *Romans*, and now to the *Turks*; and of all personal changes, little can better be said then was in that, That of all the *Casars*, *Solus Vespasianus mutatur in melius*; yea when people are fond on change, what products do such incests bring, but tyranny and confusion, unless God be in the change by a gracious influence on it, as he was in *David*'s change from a Shepheard to a King; in *Joseph*'s from a neglected younger Brother to a Father to *Pharaoh* and all *Egypt*, in *Saals* change from a Persecutor to an Apostle; in Time's change of *Julians* for *Constantines*.

I say, unless God be the effectual mover of changes, and fortunates them to their blessed and lawful issue, Changes *quæ* such are dangerous, and when they are gratifications and holocausts to popular levity, become plagues and torments to their promoters; who because they are Children in discretion and are led by hurry and eddy are to be resisted in such Attempts, and the rods of severity are by Lawes made for such fools backs. Thus then it came to passe with *Israel*, God was their King, and another they would have as the Nations had; the Contumacy of *Israel* under God's gentle Empire had provoked him to conclude a punishment for them, and now their corruption gives the occasion to its operation upon them; God gives them their hearts desire, but not to their end but his own, *To be his Punisher of their Perverness*; and thus that which they intended the Display of their Triumphal Banner, and a Trophy of their National Grandeur, becomes their breaking a pieces; so that no Grain of their pertnesse and mettle remained unpounded; broken they were under the Iron Mall of their own designation: and just it was with God, that since Liberty caused Insolence, Oppression should compel Duty, and the Law of God dictating to Duties, moral and religious, being contemned, the will of man contrary to these, even when it commands contrary to these, as a Curse on people, be in place of a Law, and chearful obedience to a lawfull Government being stomach'd at; if not denied, a lawless smart and severe one should be introduced, for the justice of God punishes sin in the kinde it is committed; because People are voluntarily rebellious against good Princes, God makes them necessarily subject to bad, who trample them and theirs under foot.

*Sub qua tamen, dum optimi reges sibi præsuerunt, ipsa plausit, & cum dyscoli ei præessent, ipsa inconsolabiliter lugebat, ut Regum liber hac distinctius manifestavit.*

Here our Chancellour uses a double Dichotomy of Persons and Things. Of Persons, *Reges optimi*, and *dyscoli*. Of Things, *ipsa plausit, ipsa inconsolabiliter lugebat*. It is concluded that good Kings are better then good Lawes from this; that while good Kings were over *Israel*, the severity of regal power was not injuriously felt by the Jewish people, though transferred from a milde to a sharp Government; for the Text sayes, *sub ipsa plausit Synagoga*, now *plausus* is opposed to *placētus*, and as by the one the heart's sinking into the heel (as proverbially) is deciphered, so in the other the Capreols and vaultings of the heart, the *plaudite's* and *Eccho's* of exaltation and approbation are intended. When then the Chancellour sayes, *ipsa plausit*; 'tis as much as *Pliny* expresses by *sibi blandiri & placere, seu nimium amare*, Ep. 91. and declares the People to be highly satisfied with their Enjoyment, and hugg themselves as happy in their acquisition of a Governour that is good, and to them the best, because their own. For there are twofold Kings mentioned in the Clause, 1. *Reges optimi*; who are those? not any had *Israel* properly so; for if there is none good but God, then no Kings, at least none the best but God, who has no equal but is super-superlative; the answer is, they were the best Kings who were better then the worst, who were most good compared to others less good; and those the book of the Kings mention to be *David, Solomon, Asa, Abaz, Hezechia, Josiah*, these the holy Ghost records *To doe that which was right in the sight of the Lord*; and these, when ruled by the Law of God with his sacred Priests, though absolute in power, yet were so conscionable in the use of it, that the people were happy under them to their hearts wish. They

*Plaudere est manibus pulsare & strepitum facere, quod vel lætitia vel ærificationis causa fieri solet quoties alicui pro re bene gesta congratulamur, lætitiâque ostendimus. Cu. ad Q. Frat. lib. 1. 2. 9. Prius autem sanè regum merita, in hbris Regum non parvalaudantur, in Israel autem reges, alios magis, alios minus, omnes tamē reprobus legimus. Lib. 17. De Civit. Dei. c. 2.*

*Ex maxima parte Deo similis esse putatus, neque autem facile ullus, aut in bello eo felicior fuit, aut in pace moderatior, nullo tempore ante eum Rex Romana magis floruit, Eutopius lib. 7.*

*Hic Romam deformem incendiis & ruinis, permissa, si Domini deessent, volentibus adificandi copia, Capitolium, eodem pacu, Claudii Monumenta reparavit, Aurelius Victor, in Vespas.*

*Quod illum, & Senatus, & populus ante Imperium, & in Imperio, & post Imperium sic dilexit; ut neque Trajanum, nec Antoninum, nec quemquam alium Principem sic amatum, Trebellius Pollio ad finem. Speech in Parl. 1603. p. 495, Of his Works.*

ruled as *Octavian* is said to rule; *Though long in time, yet little in account of people, who were so happy under him, that they thought the time run away too fast, and his Government would too soon end: for all the fifty and six years he reigned seemed but as one day, because his virtues made him so beloved and desired.* O when Princes are like *Vespasian*, Builders, Beautifiers, Restorers of ancient paths to walk in; then, as *Vespasian*, they deserve eternal Memorials: yea, they will never die in the Records of stories, and on the tongues of Subjects blessed by them, nor will any power be begrudged them to have, who know how moderately to use it, and mercifully to manage it; for under this *plausit illa*, people that are so happy, need not care for Lawes and Courts of appeal; Virtue, Rectitude, Magnanimity have set up their Thrones in the breast of these Princes, and they are thence propitious to all men; and their Subjects are so gratefull to, and tender of them, that they cry out, as they did to *Claudius*, *Habeas virtutibus tuis, devotioni tue Claudii statuum, &c.* O *Claudius* mayest thou ever have as thou hast deserved a Statue to thy Memory, may thy virtues be ever alive in that. He that loves the Common-wealth will love thee, and applaud thee as we doe; Happy art thou *Claudius* by thy virtues, happy thou in the Senate's Suffrage, yea happy thou both before, and in, and after thy Government and life, as no *Trajan*, no *Antonine*, or other Prince ever was, so he; while then they are such, they may well be accounted *Optimi*, and their people may well *se plaudere* under them. Hear the incomparable Humility and Condescension of wise King *James*, *As the head is ordained for the body and not the body for the head, so must a righteous King know himself ordained for his people and not his people for him; for although a King and people be related, yet can he be no King if he want people and subjects; but there be many people in the world that lack a head; wherefore I shall never be ashamed to confess it my principal Honour to be the Great Servant of the Common-wealth, and ever think the Prosperity thereof to be my greatest Felicity.* And that's the first part of the Dichotomy, *Optimi Reges, ipsa plausit*. The second is *dyscoli*, and under them they are said *inconsolabiliter lugere*; by this *dyscoli* he means the wicked Kings of *Israel*, such as were *Saul, Rehoboam, Jehorobam, Ahab, Jehoram, Manasses, Jehu*, and the rest; who involved the people in wars,

Wars, and by bringing the Curse of God on them, made the Government under them grievous; and these he calls *dyscoli*; because lawless in their wills, and not reasonably to be pleased, since their humours were their Rudder, and their sensuality their Compass, and this has so inordinate a swinge, that it is not restrained or regulated by God's Laws, which onely sweeten the temper, and plain down the rudenesses of Princes, under which subjects do *inconsolabiliter lugere*, and though this often be but a slow remedy, yet is all, the Laws of God and men indulge grieved Subjects to relieve themselves by; which the Scripture calling, *possessing our souls in patience*, refers us by prayer to God to turn the Prince's heart, or else to endue us with patience to endure what is God's pleasure, because he often punishes popular wantonness, and seditious murmures against good Princes, with real burthens, and yokes of torment from evil ones; and by this affliction on them works their preparation for, and engagement in national repentance.

*De vitiosa Monarchia forma, qua Tyrannus dicitur, lege Contentium, Politic. lib. 1. c. 16.*

*Tamen quia de ista materia in opusculo, quod tui contemplatione de natura legis naturæ exaravi, sufficienter puto me disceptasse, plus inde loqui jam desisto.*

In this Clause, the Prince is referred for further satisfaction, and the Chancellour excused from further procedure on this Argument, in relation to a Tract which he has designedly wrote about it, which our Chancellour the Authour calls *Opusculum*, because a short and not bulky tract, and then shews his impulse to the writing of it, *tui contemplatione*, that is, for the Prince's institution and satisfaction; and then the matter of it, 'twas *de ista materia*, that is, the nature of absolute regal with legal and politique Government. This Tract (I confess) I never saw, but am informed 'tis in Sir Robert Cotton's Library, which his noble and learned Son Sir John Cotton promised to accommodate me with when he could find it, which he not yet having done, as I have not seen it, so neither can I give any account of it. I hear also it is in Oxford too, as also in other hands, and I conceive it goes under the name of *De Politica administratione*, which Pitt mentions to be one of his Works, and he here remembers: so much was the Prince, and the age, yea our age, beholding to this sage Chancellour, that he refused no travail of mind, to clear the doubts that might arise in active minds concerning Government and subjection. In both which cases he was as well able to give solution, as any his Contemporary; for besides that he was a profound Lawyer, as his Judgments in the Year-Books of Henry the sixth, his several judicious Tracts on serious Subjects, and the opinion of that time of him confirmed, he was also a most just man, who in all his actions went (as he supposed) according to an inlightned and rightly informed judgment and Conscience, and Record gives this testimony of him, that *in hoc summo officio* (of his Chancellourship) *tam pie, prudenterque se gessit, ut omnem illam quam consequi poterat auctoritatem, ad Reipublicæ referret utilitatem*: yet, good man, he had the hard fortune, or rather the honour in an ill time to be banished, or rather to banish himself; that he might keep himself loyal, and be near the young Prince to do good Offices to him. And though he was born, bred, and long lived honourably in England, yet dyed he abroad, as many brave men have done before him, and was ill treated of his Countrey-men as they also were: it being not onely the fate of Scipio to have an ingrate Countrey, the grief of which made him lay his bones abroad; and of Tensira, whom Giraldus pourtrays as the noblest man of his time, yet repudiated by his Citizens, and thereupon dying privately; but also of infinite others, whose not onely lives have been checquered with party-colourings of both good and bad fortune, but have been led one where, and expired another where, *Nascentem Æneam vidit Simois in Asia, raptum abforbuit Numicius in Italia*, which though *Aventine* crosses, in the example of Lodwick, the first Count Palatine of Rhene, Anno 1294. who was born, and dyed in one and the same Chamber at Heidelberg; yet is confirmed in more that dye otherways. Dido was born at Phenicia, but dyed at Carthage; Pythagoras born at Samos, dyed at Metapontus, Alexander first appeared at Pella, extinguish'd at Babylon; the Decii all born at Rome, but all dyed abroad; Cato had his first breath at Rome, but drew his last at Utica; Mantina saw first Virgil rising, but Brundisium entombed him; yea, the famous Earl of Warwick, Beauchamp, whose Character is *parem sibi in armorum strenuitate et regis regnique fidelitate superstitem minimè derelinquens*, though born in England, dyed at Calice,

*In vita ejus.*

*Jus sum civile tum municipale publice docuit, habuitque auditores nobilissimos juvenis quamplurimos, Pitteus in vita ejus.*  
*Nata bene.*

*Dialog. secundo, De Poetis, p. 403. partis secundæ.*

*Zuinger Theat. Viræ Hum. Volum. 17. lib. 3. p. 2677.*

lice, 43 E. 3. and this our Chancellour dyed in *Berry*, and there desisted from his labours; as I shall now from the Commentary on this ninth Chapter of him, which here ends.

## CHAP. X.

*Tunc Princeps illicè sic ait. Unde hoc Cancellarie, quòd Rex unus plebem suam regaliter tantùm regere valeat, & Regi alteri potestas hujusmodi denegatur, equalis sabbigis cum sint Reges ambo. Cur in potestate sint ipsi dispares, nequeo non admirari.*

THIS Chapter is spent in maintenance of the Dialogical Continuity, and it has that spirit of reason in it, which keeps the Chancellour in preparation for an answer of what's therein interrogated; the common Rule is, *ubi eadem ratio idem jus*, and why the politique, mixed with regal Government, since it is a real Kingship, should not have so much Priviledge as its brother Kingship nomore divine, nor no trulyer instituted of God then it is? Is the scruple now to be resolved. For since Regality in both is of God, the Condescension of it in the one and not in the other is no alteration of the Essential dignity, but an adumbration of it for ends of good; which since God does seem for our sakes often to do, when yet he retains his absolute Sovereignty; why the King so doing should seem less then otherwise he would be, is the question to which the Chancellour frames an answer in the next Chapter.

## CHAP. XI.

*Cancellarius. Non minoris esse potestatis Regem politicè Imperantem, quam qui ut vult regalitèr, regit populum suum, in supradicto opusculo sufficienter est ostensum. Diverse tamen Authoritatis eos esse in subditos suos ibidem, aut jam, nullatenus denegavi, cujus diversitatis causam ut potero, tibi pandam.*

THIS Chapter is the pithy breviary of the Chancellour's Responce to the former Chapters Proposals, and it is by way of Concession, that the power of both Kings is the same as his arguments and reasons in the formentioned tract purposely thereupon written, doe make good: all that is of diversity in the powers is not *fundamenti sed exercitii*, not in the nature of the power; for that being God's in the trust of Kings *quà such*, is equally God's, and equally in the Dignity and Majesty of it; Theirs; but the emanation or rather modification of it, is diverse upon diverse reasons, which in the twelfth Chapter he enlarges upon. For as there is no general rule but admits of some Exceptions, and the same Sun melts wax that hardens Clay, so the same power and prerogative variously expresses it self in the one and in the other; according to the subjects it is conversant about and the juncture of affairs it has to cope with, which, because the Chancellour has discoursed upon before, and now remembers, *frustrà fit per plura, quod fieri potest per pauciora*, he in that part refers to what he had formerly resolved in it, and for what is undiscoursed of, promises additional Information, and that he makes good, not by a bold braving, but a modest veracity, *cujus diversitatis causam, ut potero, tibi pandam.*

## CHAP. XII.

*Homines quondam potentia prapollentes, avidi dignitatis & glorie, vicinas saepe gentes sibi viribus subjugarunt.*

THIS Chapter explicates the Origen and Rise of absolute and lawless Monarchie, as men in nature and Gods in power obtained first, and since have in their successional



onal lines held them. Now though he sayes the greatest Monarchs were but men in nature, yet by the stimulations they had to great actions, and the successes they had by them, they appear to be more then men, because stirred up by desire of glory and honour to contemn danger and hazard, which in contest with, and conquest over men their fellows in nature and station, they must resolve to cope with. Now this so patiently works in the nature of great mindes, that it makes them set upon Nations to Master and Lord it over them, and our Text-Master calls it the rise of great Empires. And if all the Heroiques of the world were asleep, and the memory of them perished; the truth of this would be confirmed from the actions of one onely Alexander, who was not onely the worlds Master before he was thirty years of age, which he did by *Counsel, Eloquence, and the art of Rule and conduct*, but envyed any Commander of his own that was successfull: yea Lipsius is my Authour for it, *That he was more wrath with his fortunate and well-deserving Commanders, who did things with merit of glory resulting there from, then with those that executed his Commands, infeliciter & ignavè, unprosperously and with dishonour*, which perhaps is the reason that ambitious Princes disfavoured great Merits, lest they themselves by them should be lessened, and have Rivals and Competitours in that power, which they would have solely theirs, and which they can attain to by no readier an Artifice, then reputation of bold and fortunate, which as it was a serviceable Harbinger to designs of rule and Sovereignty, so made Subjects admire the obtainers of it beyond reason, and arrogate to them a participation of Divinity; so that men no sooner heard but feared, and no sooner saw but submitted to them, as thinking every frown a thunderbolt, and every angry word a Hell-fire for their torment and terrour. Learned Lipsius professes, that he often laughed (as well he might) to read the follies of men in their random admirations of those in power. For when the *Mexicans* swear their King, they exhibited to him these things in his Oath, *That Justice he would do, oppress none of his Subjects, be valiant in warr, hitherto well; but at last comes, That he would cause the Sun to shine and not let it be interrupted in its course, that the Clouds should rain, the Rivers run, and the earth bring forth*. And *Ammianus Marcellinus* tells us, the old *Burgundians* who were wont to call their Kings *Hendini*, did depose them if either they were unfortunate in warr, or the earth failed its fruit. These and such like follies men are sometimes irrationally guilty of, as Preparatory to their shackles and the fetters of their bold and daring Coveters Conquest of them. And thus comes it to pass that *Nimrod, Julius Cesar*, and the mighty Chieftains of the world have subdued Countreys, wasted Continents, prostrated stately Edifices, rent asunder goodly Libraries, dissipated well compacted Combinations; yea in sort uncreated the world by the Prodigality of their furies, and the tragicall effects of it; which though God has often turned to good, and most of the good Lawes and good Magistrates that the world and every part of it has seen, be the Issue of this original Grandfier Cruelty; yet was the Commencement of it altogether roystrous and savage, and in this *καμβουλαία* was there no aim at any thing at first, but to Master, and to have all at the Conquerours pleasure, which was the Government mentioned *Daniel v. 19.* where 'tis said of *Nebuchadnezzar*, *That all people, Nations, and Languages trembled before him, whom he would he slew, and whom he would he kept alive; and whom he would he set up, and whom he would he plucked down*; and which the *Turks* and *Muscovite* practises to this day, and which was the Government of *Inga* in *Brazil*, where no man had any thing of his own but every man at the pleasure of *Inga* and no longer, nor did any thing go to any mans Heirs: which is so hard a Tenure, that it may well be accounted Conquest, and the Subjects under it slaves beneath slavery. This the Gyant-like Monsters of Ambition and Pride did not onely to get them a name, as did the *Babel-builders*, who built *potius ad pompam quam ad usum*, for they built even as high as Heaven, and in the eighth story which *Saint Jerome* makes about 4000 paces, and the *Jews* make 27000 paces, if any truth be in their fictitious *Talcut*; but also to intimidate and lurch men into a dread, that, by the dispiriting of them, should betray them into submission to whatever they please; which the Cancellour words as followeth.

Βουλὴν αὐμύδοτε  
καὶ ἐπιπεμπνδσ  
τιχην, Plutar-  
chus in lib.  
an Seni. sic  
gerenda Resp.  
In Notis ad lib. 3.  
polit. cor. c. 3.  
p. 145.

In Notis ad c. 6.  
lib. 3. Politic.

E. Lopezo &  
Gomara.

Et ritu veteri po-  
testate de posita ro-  
movetur, si sub eo  
fortuna turbaverit  
belli, vel segetum  
copiam negaverit  
terra lib. 27. in  
Valentin. & Va-  
lente p. 479. Edit.  
Franc. Wechelii.

Contzen. Politic.  
lib. 1 c. 16.

*Ipsis servire, obtemperare quoque jussionibus suis compulerunt, quas jussiones extunc leges hominibus illis sancierunt.*

Indeed

Indeed therefore many men have endeavoured to get names of fear and reverence, that thence the dread of them falling upon men, they may be obey'd in whatever they design and prosecute. These the Holy Story called Gyants in the Earth  $\square\omega\eta$   $\omega\eta\kappa$ , men of name or renown. Some would have  $\square\omega$  to come from the word  $\square\omega\psi$ , signifying *desolare*, or *stupescere*, hinting thereby how renown or a name is gained by the fear and terrour men are possessed with, when they hear it. Thus God is said to get himself a glorious name, *Isa. 63. 12.*  $\square\omega\eta\psi$   $\square\omega$ , a name of glory: By what? By dividing the waters before Israel, and leading them through the Deep, which was an act of divine and unimitable power. Now this, men of ambitions and prowess knowing available to their ends of puissance, endeavour as much as in them lyes, to make their Actions as dreadful and cogent to those they had designs upon, as possible they can; and when once they are dunn'd and cow'd, then they will submit lowly, and obey universally, then they will take their curbs into the mouth willingly, and ride at what rate under them they will have them. For dominion is obtained over no people, but by either wisdom admired, or power feared prepossessing them; either or both of those are the sure, if any be the fore-runners of power. These will make people not onely *servire*, become their subduers slaves, but *obtemperare*, as a Son does his Father, whom he will obey and be faithful to, because he loves and esteems his desires as Laws; yea, and not dare to do other then the reverence of Laws to them. This opinion the World had of *Julian*, which made him so successful every where; and of *Julius Caesar*; and all that have been Victors, who have become absolute, by the awe their virtues either Togonal or Martial have prevailed by. And this in time has been the Ancestor to all after calmness; for when the stomachs of men have come down, and both the Ruler & ruled have had enough of force and fight, to prevent it for the future, both of them have consented to terms of civil order and quiet, which in time has antiquated and eliminated all fierceness, and brought in credit, mutual kindness and politike consciencious respect and fidelity each to other: for so the Chancellour proceeds,

*Quarum perpetione divina subjectus sic populus, dum per subicientes à caterorum injuriis defendebatur, in subipientum dominium consenserunt.*

Here the Chancellour shews, that though Conquest possessed the great Monarchs of the World of their Commands; yet consent of the people conquered, recogniz'd and ascertain'd them peaceful to them, and hereditary to their Heirs and Successours; and that not onely upon fear and necessity, because otherwise they could not help themselves, but upon choice, and as we say in Law, a valuable consideration, the Conquerour was to protect them from injuries, and to warrant (with his utmost hazard) their security, against all persons that would annoy them, and they were obliged to be loyal to him, and to live subject-like under him. So that there is hence a reciprocation of advantage; the Governour is secure from treachery and mutiny, the governed from rapine and cruelty: for there is a double rule of the Law that makes to this purpose, *subjectio trahit protectionem, & protectio subjectiorem*, and *quibus modis aliquid acquiritur, eisdem & conservatur*. In both which respects, the joynt concord to so noble and beneficial ends, appears to be wise and worthy, since security from danger is one of the great blessings of life, and that is not to be purchased but by submission to power, which is able to compel, but is willing to comply, and by adhering to that power, to those profitable issues of peace and order. This is the Golden Chain of power, by the Links of which 'tis made conspicuous, durable and communicative; and this composition being so athletique and virile, so rational and effective of good to all parties indifferently, makes it so beautiful, and so lasting. For as it commenced through the wise project of both sides, conspiring to make each other happy in a respective conjunct satiation; so it cannot be dissolved, but with the dissolution of all that is lovely and desirable. For as it follows,

*Opportunius esse arbitantes se animi subdi imperio, quam omnium eos infestare volentium oppressionibus exponi.*

Indeed here is the marrow and motive of all subjection, 'tis *ratiocine boni inde provenientis*.

*In illa oppressio multitudinis effusio sanguinis, ordinis confusio legum violatio rerum omnium perturbatio. Casus de Tyrannide, lib. 4. c. 2. Sphæra Civit.*

*Sed mihi semper obtemperavi tantquam Filius Patri Cic. Ammianus Marcell. lib. 22. p. 406. edito Francof. & lib. 25. p. 438.*

*Reg. Juris.*

entis. For as God the *Proto-Monarch* is not made happy by the Worlds obedience to him, but the World made happy by his defence and preservation of them, whom as a King he protects; as a Law-giver he directs; as a Father he feeds; as a Husband he renders; and as a Benefactor he will reward: so Kings (just and worthy) are not more happy in the subjection of their Subjects, then their subjects are in the watchful eye, powerful hand, subtle head, affectionate heart, and every way expressive largeness he discovers towards them: Nor is there any so compendious a way of peace, as for the Subjects readily and freely to submit to their Prince for Conscience sake; yea, and for the goods sake that thence results to them. For when one takes the duty, and expects the subjection, he puts an end therein to all those pretenders, whose injurious spirits flatter them into a right of doing wrong; & whether it be not better to obey one then many; and a King noble by birth, blood, and endowments, then fellow subjects, let not onely men in the experience of all Ages be Judge, but even God, who in the universal inclination of all Nations to Monarchy, has sufficiently determined the dignity of it, as a Ray from his Oriency, who is King of Kings. But of this I have written heretofore, and shall refer here my Readers to that nervous and ingenious *Discourse of Monarchy asserted*, by a most polite and accomplish'd Gentleman; who truly (I think) has said as much on that noble Argument, as well in so few words can be said, and more then (I dare say) can be answered by any *Contrariant* whatsoever.

Toiostanus Syn-  
tagm. Juris. lib.  
47. c. 15. tit. 6.  
Mr. Matthew  
Wren.

*Sicque regna quadam inchoata sunt, & subjicientes illi dum subjectum populum sic rexe-  
runt, a regendo sibi nomen regis usurparunt; eorum quoque dominatum tantum regalis  
dictus est.*

This the Chancellour like a wise Master-builder, lays down to a breadth proportionable to the intent of his intended superstructure: for being to convince the Prince, that some of the kinds of Governments that were in the World, were according to the comports of Princes and People in ancient times; and that the first subduers of Nations found their tenures by the Sword troublesome, without the consent, and contrary to the mind of the people under the power of it, he lanches out into the discourse of the Titles of those that so acquired and exercised power, which he lays down to be that of Kingship; and though latter times have seemed to give the prelation to Emperour, as couching Kingship under it: an Emperour, in the strict sense of late Lawyers, being the Sovereign of Kings, and having a King his Subject; yet our Law accounting its King an *Imperial Monarch*, according to the Stat. of 25 H. 8. c. 22. 28 H. 8. c. 7. 35 H. 8. c. 1. 1 Eliz. c. 3. 1 Jac. 1. before mentioned, reduces the word King to the pristine honour which Antiquity gave it. For King being the Title of God, who governs and preserves the World, and who deserves the service and love of all his Creatures, honours sufficiently in that Title all that by delegation of his power, are Governours and preservers of men in civil concord, and religious agreement. And that Kings may become their Kingdoms as God doth his, it becomes them to be just as he is; and that they only are, when they are such as the Laws of their Government prescribe them to be. Indeed, in absolute Governments, such as are founded upon Conquest, and the pleasure of the Victor, here Laws have no force: But Justice ever ought to rule the wills of such prevailers, if they will be worthy and beloved. What *Corys* the Thracian King told one that censured his sharp Government to be *Μαρία ἢ βασιλεία*: to whom he replied, *ἢ ἐμὴ αὐτῆ μαρία*, &c. This severity (quoth he) which you censure, though it be sharp Physick, yet it makes healthy bodies, and renders my Subjects wary not to offend, that they may be safe from punishment. I say what he reply'd is very much a truth, but not so much to the lustre of Governours, as the practice of *Evagoras* in his Government, w<sup>ch</sup> I mentiond before out of *Isocrates*, who testifies it to be such, *ἢ τὸς ἀρχομενὸς*, &c. That his Subjects were more happy in him, then he in the government of them, for he gratified no passion of his own; he studied no greatness, but the good he preferred and honoured, and the evil he punished according to Law. And therefore, though Rule may at first be acquired by ill means, depredation, violence, and injury; yet after, may this stinging and deadly Serpent become a Brazen one, not onely durable, but sanative and beneficial. So the Historian says the Emperour *Justin* did, who though he got the Empire by no good means; yet when he was in it, ruled exemplarily, making virtue and every thing worthy praise his design, and according

Valdesius.  
J. C. De  
dignitate Hispa-  
niæ. c. 18. p. 367.  
Monarchia no-  
mine administra-  
tio illa continetur,  
qua unum tantum  
habet dominum,  
qui superiorem non  
agnoscit. Toiostanus  
Syntagm.  
Juris, lib. 18. c. 2.  
tit. 6.

Βασιλῆς ἰ  
δικαίωτα  
δικαιοτα  
ἰ γρημώτα  
τῶ.  
Diogenes Py-  
thag.  
Apud Stobzum.  
Sermon. 46. p. 325.

Isocrates in Eva-  
gora.

Principatum  
dolo partum mag-  
na virtute postea  
administavit.  
rex ille summa  
cum laude, & pio-  
tati studiosissimus  
Egnatius, lib. 2.  
to Rom. Priocip.

to the project every way doing. By which art, what Oblivions have been of fury and injury, and what sodrings to future stability, stories and experiences do abundantly furnish the presidents of. For if the black Atchievements of the *quondam Hectors*, who founded governments, should not be shrowded with the Lawn and Tiffany of Candor, and be sweetned by the forgivenesses of those rudenesses: 'twere impossible to make *Panegyrics* to their Successours memories, and to pay the duty of subjection so contentedly as Subjects, by this courtesie of time burying the stanch of it, and the goodness of Kings deserving it, do yield it. *Sic Nimbroth primus regnum sibi comparavit.*

Here he descends to particulars, in proof of his assertion, concerning the truculent rise of the old absolute Regal Governments: And the first example he produces is of the *Assyrian Monarchy*, the first that ever was, and that in the person of *Nimrod*, who not following the president of *Noah* and his Sons before him, who all were moderate and gentle Governours, tending their people, as Fathers do their Children, brake out into rage and resolution, to make himself terrible, and upon the awe and dread of his force, for which he is called a Gyant (*ratione sevitia, non stature*) he founded his Tyranny. And so *Bodin* confirms, all the *Asian Empires* did after him; yea, and the *Romane* too, which makes *Glareanus*, writing on the lives of the *Casars*, to extravagat, *Quid si dicam* 12. *Latronum, Mentiæne, in Nerone, Tiberio, Caligula, 12. Monstrorum, &c.* I am (saith he) to write on the lives of the twelve *Casars*; what if I say the twelve *Thieves, the twelve Monsters*. Oh! but good words, *Glareanus*, they are Deities, divine honours are given them. His Reply will be, *What did they do to be deified; if Cruelty, Covetousness, Tyranny, Murder, Madness, Pride, Luxury, Lust, Envy, Rapes; if these can make them divine, they are divine; for such onely are their virtues*: so he. But though the first Monarchies and Kingdoms long ago might have this foundation, as to the persons of men first fixing them; yet is this no Argument against the divinity of power, and the duty of men, as such, to obey them. For though the *Anabaptists* and *Phanatiques* do hence make a doubt of obeying Governments that had so ill a foundation; yet this principle of rottenness is easily prostrated, when consideration is had, that Power in it self is instituted of God, though in the Subject using it, it may not always be just and lawful, *Sape res ipsa à Deo instituitur ad quam nonnulli aspirant & aliquando perveniunt, per eos modos & rationes, qua Deo minime probantur.* saith learned *Rivet*. Marriage is instituted of God, and lawful it is for a man to endeavour gaining of the woman he loves, to be his wife; but yet God does not legitimate the sinister means that some men corruptly improve to obtain Marriage by, as Force, Fraud, Theft of Children from their Parents; though when the Marriage is compleated, the fruits of it may be good and excellent: So is it in Empire, though it might at first be gained by ill Artifices; yet had, it may produce excellent issues, and become in time and by common approbation, just. So that the *sic* here is a black note onely on the first demeriter of his fellows, on *Nimrod*, whose name says *Philo* signifies, *ἀποβάναι, transjuge, or running away, because he deserted his Brethren and went to their Enemies, and with them took Arms against them and overcame them; and so had Babylon his Royal Seat, οὐρυεὺς ἀπὸ μολιᾶ, which signifies transposition and being besides his place.* Thus *Philo*. And in this *Nimrod* did but do like himself to be sole, not social in the Earth. And therefore he was called *Nimrod*, a name from *נמרוד*, which signifies, *to oppose, oppress, and rebel*; and this name this person had by special appointment of God, who fore-seeing him to be a man of violence, terms him by that he most delighted in. This word (in this man) is near of kind to the *Chaldee*, *נמרוד*, signifying a *Tygre*, for such he was incarnate, no bounds would keep him within them; he would over all that God and Men made sacred. A proud and elate mind he had, and all others, he look'd upon as vild and contemptible; and being in confidence & courage above others, he brake the yolk, and despised the common kindness, which Nature had settled in her Family, and upon that violence he erects a Kingdom. What this *Origen* was, the Holy Story tells us, he was the Son of *Ghush*, Son of *Cham*, the cursed Son of *Noah*: some will have him to be *Ninus*; of this mind is *Eusebius*, but that is generally disclaimed: But that this *Nimrod* did first exercise Tyranny over Mankind, is the assertion of the Holy Text, and all Authours according to it; which the Holy Ghost willing to stigmatize as the first *Luciferianism* and intolerant instance after the flood, permitted the Character of him to be proverbial. That as we call cruel Tyrants *Nero's*, and desolate

Monsters

Rivet Exercit.  
65. in Gen. 10.

Bertram, De Po-  
litiâ Judaicâ, c. 3

Mercerus, in  
Gen. 10. c.

Lib. 1. De Re-  
publ. c. 6.  
Glareanus, Orat.  
in Suetonium.  
p. 78. August.  
Scriptorum.

Exercit. 65. in  
Gen. 10.

Lib. De Grganti-  
bus, p. 293.

Rivetus Exercit.  
65. in Gen. 10.  
Turreciem.  
Summæ Ecclæ.  
lib. 1. c. 27.

Monsters *Sardanapalus's*; so men of prowels and irresistable ferocity should be called *Nimrods*: for though he was but born and bred as other men, yet as *Florus* said of *Andriscus* though a slave, *Regiam formam, Regium nomen, Regio animo implevit*; and by this daringness did he set up the earlyest and greatest Government of the world. Some have thought this to be the He that the Poets called *Hercules*, a name of valour and paissance, which the great Hectors of the world so doted on, that *Alexander of Macedon, Commodus, Maximinian, Heraclius*, called themselves by his name and built Cities after this name. They called him, as is thought also, *Bacchus* the God of wine, because as wine makes men forget danger and despise it, so his valour made him contemn the discouragements to rule; for he being *Ἦ φύσις πολεμικὸς ἔχ' ἠλιότις ἀρετῆς*, *By nature warlike and studious of renown, did make his way to his desire by his sword*, and by this did *primus sibi regnum comparare*.

Lib. 2. c. 14.

Lilius Gyraldus in Hercule.

*Tamen non Rex ipse*. This is added to shew that mens humours and mettles will carry them often beyond their births and probable obtainments. A man of a great courage he was, and his body bore not patiently others less vigorous then he, to be Comparters in degree with him; and therefore as he was active and potent, so does he manage such his Excellencies beyond others, and becomes a terrour to men as well as to beasts, thereupon whatever he originally was, the Holy Ghost affixes this on him, that he had obtained to be accounted *robustus Venator coram Domino*.

*Robustus Venator* ] This sets forth both his activity of body and minde: of minde, which chose hunting of beasts to discipline him to hunt men: of body, which was athletic and Masculine able to follow the course, and to weary out the nimblest foot, and pull down the sturdiest body. *Aben Ezra* will have him called a mighty hunter, and successfull in his endeavour, *quia partem prada Deo dabat*; but *Mercer* reproaches this in him, and sayes, onely *Aben Ezra* of all Interpreters magnifies this Varlet. A man of courage no doubt then *Nimrod* was, and of violence too, for hunting and hunters in Scripture signifie so much, thus *Esan, Gen. xxvii.* is said to be a cunning hunter, a man of the field: and the malice and vehemence that wicked men have against the godly, is expressed by terms of hunting, *Lament. iv. 18. They hunt our steps that we cannot goe in the Street*; which *Saint Hierom* renders *Lubricaverunt vestigia nostra in Itinere platearum*, so *Lament. ii. 52. Mine enemies chasten me sore*, the Vulgar reads it, *Venatione caperunt me inimici mei*, so *Psal. cx. 11. where 'tis penally said, Evil shall hunt the violent man to overtake him*; *R. David* adds, *Venabitur illum ad impulsiones, adeo ut impelletur à malo ad malum*, so *Prov. vi. 26. Ezech. xiii. 20.* and in other Scriptures violence is expressed by hunting.

Erat fortis & corpore & animo, qui aunderet feras invadere. Vatablus in loc.

Mercerus in 10. Genes.

Now this hunting of Beasts, the Gyants of old did not use for recreation, as our Gallants now adayes do, beasts of prey and Venery; but to accustome their Natures to cruelty and irrelentingness, and to enter them thereby into a making nothing of violence and life, which they found they should the better execute in earnest, when in jest (as it were) they were trained up to it; that as Gamesters begin with pinns and farthings, and Leachers with obscene words, and blasphemers with random and broad speeches, and Drunkards with sipping great quantities of small liquour, and thieves with robbing Orchards and steeling Deer, till at last they act all wickednesse in the heighth and improvement of it: so did the heroique Bravado's of the world, who meant to waft Countries and subdue Governments to their wills, discipline themselves to rustle and butcher men by doing the like first to beasts. Thus *Xenophon* tells us that the *Persian Kings* instituted their sons to hunting; and *Bochartus* from him produces *Thestus, Castor, Pollux, Ulysses, Diomedes, Aeneas, Achilles*, all which were *κρυενοῦν μάκρας*, trained up to hunting, *Chirone illos venandi artem summâ curâ edocente tanquam ad bellicam disciplinam non parùm profuturam*; *Tully* seconds it, *Immanes feræ belluâ nascimur venando, & exercemur in venando ad similitudinem bellicæ discipline*; yea, *Pliny* is in the same tone, *His artibus futuri duces imbuebantur cernere enim fugacibus feris cursu, cum audacibus robore, cum callidis astu*; these and sundry other authorities, as of the Emperour *Proclus*, given to seats of theft; *Commodus* so cunning to snap beasts, that where he would he could have them; *Adrian* the Emperour bred to hunting, all which, with many other Examples do shew, that activity in contemptible things may in time grow to great success. *Amianus Marcellinus* tells us the *Parthian Kingdom* grew from these small rudiments to great things, and (*a*) *Fulgosus* remembers us that *Spartacus* the *Thracian* headed an Army of men that put

Cyropæd. lib. 1. Geogr. Sact. lib. 4. c. 18.

Lib. 2. De Nat. Deorum.

In Panegy.

Flavius Vopisc. in Procl. Herodian. lib. 1. p. 484. Edit. Sylburg. A. Ius Spartianus in Adriano. Lib. 24. p. 417.

(a) Lib. 6. c. 40.

the Romans in fear, and made them send out *Licinius Crassus* the most potent man of Rome against them, and all little enough to repress that whiffling Thracian, who originally was but a fordid person, yet active and bold. And he that considers what *Viriatus* the Lusitanian did, who was *initio venator, & postea latro-factus*, and yet did such a fourteen years service against the whole power of the Romans, must yield that great things in issue depend upon small and unthought of beginnings; yea, the most warlike people of India, the *Cassares* or black people of *Mosambique*, become so terrible and active as they are, by living upon what they get by hunting, the prey of which they feed upon, and thereby are not onely able and bold to grapple with Elephants, but even with all men that come in their way as *Linschotten* informs me. This suffices to make appear that *Nimrod* took a good Method to his purpose, in making hunting of beasts inductive to his hunting of men. In which regard he is termed by the holy Text, *A great Hunter*. And that as it followes.

*Coram Domino, before the Lord.* This is added *opds adē* now the more vividly to set out his Monstrosity; for it has an import of somewhat emphatique, not onely in *Grotius*'s sense, which makes the phrase to extend to things which are both pleasing and displeasing to God, but also and chiefly in that which *Rivet* understands the Holy Ghosts meaning, *coram Domino vel contemptivè, vel simulatè*; for *Nimrod* being a self-admirer, and having found his spirit bold, and his boldness successfull, may well be conjectured to resolve what he was to do, with an intent of despight of God, and in opposition to him, as valuing no eye seeing, no tongue censuring his actions; so audacious was he, that he, in the effrontery of his attempts, seemed to pick a quarrel with God, and to challenge his purity and justice to clash with his lust and violence; or else *coram Domino* implyes his subdalous Hypocrisie, which he conceited so much to prevail against God's omniscience, that he could intend violence and yet pretend onely order, and to make men more devout to him. One of these probably was the cursed Artifice of this Tyrant, whom therefore the Holy Ghost dissects by the Phrase *before the Lord*, to teach the world, that whatever the hidden Hypocrisies, or open Blaphemies of Men are, God sees and censures them as before his eye and under his power, and will make their *Babylons* of strength, by which they think to eternize their greatesse, nothing. Thus did he by *Nimrod*, who though a mighty hunter and a subtle provider against an evil day; for strong *Babylon* he built as the non-such of the world, which should perennate his Empire, and him the first founder of it: yet God in a short time brought him into the dust. And so we leave *this mighty Hunter before the Lord* humbled and reduced to lesser termes then an Empire, all amort in the glory and terrour of his wonted activity.

*Quia ut venator, ferās libertate fruētes; ipse homines sibi compescuit obedire.*

This is explanatory of the precedent words, and the Chancellour by it shews how he exercised his strength and activity, to wit, in chasing beasts as a preface to his Tyranny over men. Wilde beasts are the subjects of the hunters pursuit, because they being *fera natura*, and *nullius in bonis*, and God creating nothing in vain, made them not onely as tokens of his power and omniform wisdom, but as exercises of mans industry and sagement, and as helps to his lustre and accommodation of life; and should not man by hunting and slaying wilde creatures lessen the increase of them, not onely would the world be overlaid with them; but man himself the Lord of all creatures, of whom naturally the dread and fear is in all Creatures, be overborne by the number of his rude and ravenous Subjects, and be less able to master them then comported with the order and absoluteness of his Empire. Therefore God has implanted in man a spirit thus active and daring, that the Creatures void of reason might (though in bulk and strength excelling man) be by the reason of man brought into subjection to him; and this being the secret implant of God in order to mans Dominion over the Creatures, the corruption of man extends further then God originally intended, though not beyond the bounds he has successfullly permitted, and in a sort, *ex parte post*, blessed. For though he loves not Tyranny as 'tis the lustfull and insolent rule of one over many; yet as one good Governor may by his rule over many bad, meliorate them, so he is not a disapprover of it: order and subjection he wills, though the irrectitude of the means, and the truculency

Fulgosus lib. 3.  
c. 4.

Cap. 41. Of his  
Voyages to the In-  
dia's.

*Coram Domino fi-  
eri dicuntur, aut  
qua Deo pergrata  
sunt, aut qua ei  
displicent.* Grot.  
in loc.  
*Rivet. in loc. dif-  
fere. 65.*

Bochartus Geog.  
Sacr. lib. 1. c. 11.  
& lib. 4. c. 14. 15.

truculency of the Subject, who transacts this, he approves not. That which then was reprobable in *Nimrod*, was, that he did violently and savagely hunt men, and suffer them to be quiet no where, till they had taken his yoke and would answer his spur and lash; which our Chancellour expresses by *compescuit obedire*. Because, as Beasts of prey that use to be at liberty and not fettered, are not got into Ginns and Snares, but in order to their destruction, either for the skin, horn, flesh, feathers, or some other parts sake about them; so men are not compelled to submit and obey, but fore against their wills: for though all men dare not do so much for freedom as *Hegesistratus E-leus* did, who taken by the *Lacedamonians* and put in Iron Chains, cut off half his foot to be at liberty, and after that leaped over the Wall and escaped his Imprisonment; yet all love freedom as well as he, and are loath to obey basely, till they cannot shift it. In that therefore our Chancellour sayes, *homines sibi compescuit obedire*, he intends to declare that obedience is the Childe of power, either that which is obtained over Subjects by love the Engine of milde Princes, or by force and anger the Method of angry and savage ones. And such were the following men he writes of.

Herodor. in  
Calliopc.

Xiphilius Epi-  
tom. Diois,  
p. 194. in Augusto  
Czlaro.

*Sic Belus Assyrios, & Ninus, quàm magnam Asiæ partem ditioni suæ subegerunt.*

This *Belus* is diversly thought of among the Learned. *Servius* says this name did not *ratione carere*: it is thought by some that this was the *Jupiter* of the *Poets*, whom the Nations worshipped as a *God*, because he commanded whom, and what he pleased. Others say 'twas *Bacchus*, *𐤁𐤏𐤃𐤃*, and *Hercules*, and I know not who: probablyest he was the same whom the *Sidonians*, and *Phanicians* call'd *Baal*, so often spoken of in Scripture, who was not onely a *πυρρηνός*, as the Father of Tyranny, but as he did tyrannize over the souls of men, in making them give him divine honour; for so *Strabo* tells us, that to *Bacchus*, which was *Baal*, *τὴν Ἀσίαν ὅλην ἐξέπρωσαντες*, &c. All Asia was consecrated to *Bacchus*; and how much he daily devoured to satisfie his Luxury, *Bochartus* has to my hand set down. Now this power of *Belus* is here set down to be over the *Assyrians*, that is, over that tract of ground near and about *Babylon*, as appears not onely from the 51 of *Ier. 44.* where *God* says he will punish *𐤁𐤏𐤃𐤃* *Bel* in *Babylon*; but also from the agreement of *Interpreters*, *Historians*, and *Geographers*, *Strabo*, *Herodotus*, *Pliny*, who all make *Assyria* to be that very place now called *Syria*, having on the *East* of it *India*; on the *West*, the River *Tygris*; on the *South*, *Media*; on the *North*, *Caucasus*; which to distinguish the better, men divide it into *Syria*, *Assyria*, *Leucosyria*, *Calosyria*: others into *Syria* of *Palestine*, and *Syria* of *Antioch*. This was the plain and pleasant Countrey, in which this Tyranny under *Belus* was acted, called *Assur*, not from *Assur* a man's name, as some will have it, but from *𐤁𐤏𐤃𐤃*, blessed, because it was a Land commodious for life, as the Scripture testifies, *A Land of Corn and Wine, a Land of Bread and Vineyards, a Land of Oyl Olive, and of Honey*, 2 *King. 18. 32.* This was *Assyria*, which was and is so noted to abound in delicates, that every thing of rarity was termed *Assyrian*; the *Citron*, a rare fruit called *Malum Assyrium*; the *Rose* of *Jerusalem Amomum*, named *Gramen Assyrium*; the *Drugs* of which, choice *Perfumes* are composed, termed *Assyrii Odores*; the *Garments of State*, which *Emperours* and *Princes* wore of *Purple* and *Scarlet*, *Vestes Assyria*; yea, the *Learning* of the then *World*, was limited to *Assyria*. And hence we read in *Pliny* of *littera Assyria tanquam ibi primum reperta*; and high noted *Orators* that traded in pompous words were called *Asiatici Oratores*: yea, many have made *Eden* the *Garden of God*, to be in *Assyria*: so the *Chaldee Paraphrase*, on 27 *Ezech. 23.* as *Bochartus* well observes.

Lilius Gyraldus  
Syntag. 2. De  
Natur. deorum,  
p. 108, 109.  
Bochartus Geog.  
Sac. partis se-  
cunda, lib. 1. c. 13.  
p. 47 3.  
Geograph. l. 10.  
p. 471. edis. Cau-  
sab.

Lib. 16. Geograp.  
ad initium  
Bochart. Geogr.  
S. lib. 2. c. 6.  
Herodotus in  
Clio, lib. 1. p. 78.

Rivet. Exercit.  
65. Gen. 10.

Geogr. lib. 1. c. 19.  
partis prima,  
p. 273.

*Et Ninus, quàm magnam Asiæ partem.*

This *Ninus* was the Son of *Belus*, and Husband to *Semiramis*: *Nimrod* built *Babylon*, and *Belus* expatiated his Empire over all *Syria*: but *Ninus* was the notable Monarch of *Asia*; for his Empire was the first of the fifth *Heathen* periods of time; *Ninus* his Empire, *Ogyges* his flood, the *Trojan War*, *Olympiads*, *Urbs Condita*; these were the five. I know there are other *Periods* and *Ara's* in *Scaliger* and *Gassendus*; but the *Ethniqne* Accounts

Avip Equi-  
egus d. O.  
Suidas in verbo.

Lilius Gyraldus, lib. De  
ad initium,  
De emendat. temporum.

was

*Ninus primus omnium veterem & quasi avitum gentium morem nova imperii cupiditate mutavit, primus bella finitibus intulit, ad Libyx terminos usq; perdomuit, domuis proximis, cum accessione viruum, fortior ad alios transiret, & proxima quaque victoria instrumentum sequentis erat, totius orientis populos subegit. Diod. Sic. lib. 2. Biblioth. è Cnidio.*

Trogus, lib. 1.

Lilius Gyraldus, *Hist. Deorum Syntagm.* 17.

was from these: and this establishment of *Ninus's*, as it was a great one for Power and Territory according to *Diodorus*, so was it a durable one: for the *Assyrians* commanded the upper *Asia* near 520 years, so fortunate was his small beginning, that after he had entered a League with *Arius* King of the *Arabs*, in 17 years he subdued all *Asia*, which is the third part of the World, as big as *Europe* and *Africa*, and contains in it *Myfia*, *Phrygia*, *Caria*, *Lysia* and *Lycaonia*, the pleasantest and richest part of the World.

This was the subject of *Ninus* his Empire; and of this, *Babylon* was the chief, and *Ninus* the second City. Yet *Ninus*, as great a Conquerour as he was: was conquered by his cruel and false Wife *Semiramis*; to whom, he able to deny her nothing, granted an one days onely Empire, which he intended onely to honour her; but she treacherously misusing, caused her husband to be slain, and so usurp'd his Empire, and was not onely vild and vain in it, but when she was to dye, caused her effigies to be cut in stone near the Mountain *Bagisthenes* in *Media*, and appointed an hundred men as Priests, daily to wait upon it, and present it with gifts and offerings.

*Sic & Romani Orbis Imperium usurparunt.*

As the *Eastern Monarchies*, so the *Latine* was founded upon force. Man had made a *Babel* of his foul by confusion of that divine order and integrity that was in it, and *God* made all the designs of his ambition and Earthly eternity, indurable. The *Monarchies* of *Nimrod*, of *Belus* and of *Ninus*, were great and lasted long; but yet they had many vicissitudes and several Masters, and at last their greatness was eclipsed by the *Western Monarchy* under the *Romans* (which *Plutarch* says, *εἶτος ἢ πῶχον καὶ λαεπικουον*, &c. *Came upon the stage of fortune, and appeared gloriously in the Wain of the Assyrian and Persian Empires; for so great and brave a Government it was, that (saith my Authour) it may well be called the Sister of Justice, and Daughter of Providence.*

Lib. De Fortuna Roman. p. 319. edn. Paris.

*Urbs oritur, quis hinc hoc nlli credere possit,  
Victorem terris impositura pedem.*

*When Rome from small beginnings rose to give  
Laws to the World, who could it then believe.*

To write of *Rome* at large, has filled already the World with great Stories, *Dionysius Halicarnass.* *Plutarch*, *Pliny*, *Tacitus*, *Livy*, *Suetonius*, and all the *Scriptores Romani*, together with the *exserpta* out of them, *Brissonius*, *Dempster*, *Lazius*, and above all *Lipsius* have so largely and exquisitely done it, that to aim at any thing besides them, were a monstrous folly. As therefore I do decline all prolixity, and refer my Reader to the ingenuity of those originals; so I judge it fit for me shortly to write here of the *Romans* Empir'd, to bring them into a proportion with the other instances of our Text-Master; *Rome* therefore of old, the Seat of the *Roman Empire*, was founded, according to Authours, by *Romulus* the first King of it; a man infamous for his birth, being spurious, the product of *Mars* and *Ilia* the Vestal Nun, Daughter of *Numitor* King of *Albany*, who left him (as Stories say) to the Nursery of a Woolf, which educated him in a bestial ferity; the infamy of his birth and nurtriture, he willing to be relieved from, meditated some heroique work, in the merit of which, he might by common consent of men make some addition to himself; and confederating with his Brother *Remus*, built *Rome*, calling it after his own name. This was (I suppose) done a little before the eighth *Olympiad*, and according to computation about the year of the World, 3256, before Christ 748 years, *Sigonius* places it about the first year of the seventh *Olympiad*: when it was certainly built, I am not *Chronologer* good enough to state; hut that it was built, and that by *Romulus*, as aforesaid, I question not for the joynt Authority it has to that purpose. When he had laid the Platform of it, and beautified it with all necessaries to the presence of a Regality, *Primò constitutis sacris legum jura sanxit, fecit & se regis insignibus augustiorem, circa se lictores instituit, asyram aperuit complenda urbis gratiâ Centum Senatores creavit Reipub. consilium; equestri Nep- tuno*

Lib. De Magnitudine Romana.

*Sigonius de fastis & triumphis Romanorum. Annales Armaniani è Fabio Pictore. Imaginem urbis magis quam urbem fecerat. Florus, lib. 1. Messala Corvinus. Lib. De Augusti Progenie.*



tuno ludos finitimis gentibus indicavit. Thus *Messala Corvinus* tells us he began, which new model the neighbouring Nations gazing upon, and becoming Spectators of the Recreations there instituted, gave occasion to the *Roman Planters*, to seize violently the *Sabine Virgins*, and them to wive, and on them to get a succession to their after-greatness. These Rapes dictated by necessity of State, brought Enemies upon the *Romans*, and the enraged *Sabins*, thus spoiled of their Daughters, resolved to give *Romulus* and his Subjects sower sawce to their sweet meat: *Romulus* defends himself and his acquisitions bravely; and Fortune ( to speak in *Roman* language ) so favoured new founded *Rome*, that all things answered the Grandeur of its Founders stupendious project. And as the Infancy of *Rome* was venust, so was its Manhood notably strenuous. To it all people of Prowess and art resorted; in it they stayed; to its glory they contributed their attainments, and so it amplified its renown, that all the world grew *Rome*, and *Rome* almost had no bounds beneath the Universe; this was the orient Gyant, that run his Race into all Quarters, and the *Helen* that bewitched all Loves, the Lap into which all the lots of Conspicuity were concentrated. There and there onely was the City of Kings, the Paradise of learning, the office of honour, the *Campus Martius* of Manlyness; nothing was there wanting that could advance life to an Envy and endanger its Luxury: yea though it were nothing but a pile of violence, inhabited by the Desperado's and Debauchers of all Nations, *Latins*, *Tuscans*, *Phrygians*, *Arcadians*, which *Florus* sayes made one compact *Roman* Corporation: yet did they, upon the interest of common Concern, so cement and co-operate, that they fortified themselves against all incursions, subversions, or earthquakes, which the Magnetiqueness of their external success and increase might reasonably occasion them, and prevailed against all mankind to their Mancipation under them, which made the Writers of them not onely call them, *The People onely worthy of the Worlds Empire*, and of all the admiration of all both Gods and men, but aggravate them with all imaginable Eulogick Hyperbole's, *The Treasury of all Lands*, *the common Castle of the earth*, *the head of Dominion and of the world*, *the Centre and Academy of arts*, *the Sanctuary of Justice*, *the Orb of eloquence*; these were the Tributes the flatteries of men paid to rising *Rome*.

*Rome* thus replete with a Miscelany of Nations and diversities of Constitutions, producing a ferocity of manners and conversation; *Numa* the second King appears, and as he to the ten Moneths instituted by *Romulus*, began from the Moneth of *March*, added *January* and *February*, which make our now twelve, so did he add to the glory of the Government and structure of the City and its appurtenances; and so did after him *Anco Marcius*: but prosperity made the people luxurious and prodigal, and there was a necessity of breathing out these peccancies, least for want of it, the Constitution kindles and flame to its exinication. Therefore in *Tullus Hostilius* his time to action they must, and did, first against the *Albanians*, then the *Latines*; and after once they were fledg'd, and had drawn their Neighbours blood, their fingers itched to be in arms, and since they could finde none, resolved they were to make an enemy with whom to quarrel, which because *Servius Tullius* their King saw to be their temper, and necessary to his subsistence; he formed his Subjects into Methods of Warr, and acquainted them with the dexterity of right encamping: yet as exact as he was in the skill of Souldiery, he lost his Government to *Tarquin*, and *Tarquin*, proud with his Prevalence, brought Regality not onely out of date in *Rome*, but thence banished, where it first was most conspicuous. After him the *Romans* proved fortunate under every Government, and in the *Parthian* War had so much of divine benedictive Providence concurring them, that when the victory was ten to one upon the *Parthians* side, the *Romans* rallying afresh and refighting made it theirs, which caused one of their dying Enemies to cry out, *Itē & benevalite Romani, God Speed you, and much good may the Mastery of the World do ye O Romans, whose valour is such and victory so great, that ye can resist and beat down the Darts of the Parthians*, so that Enemy. So true is that of *Entropius*: that the memory and eloquence of man will hardly serve to commemorate and set forth the flourishing State of *Rome*, what vast Conquests they made, how renowned Lawes they established, what a terrible name they transmitted far off, how rare Examples of Veracity,

In *Juvenem eructus & virum ex omni plaga, quam Orbis ambis immensus, reportavit laurea triumphos; & in senium vergens & nomine solo aliquoties vincens, ad tranquilliora vitæ decussit.*  
*Ammianus Marcell. lib. 14.*

*Florus lib. 3. c. 12.*  
*Signonius lib. 2. De Nominibus Romanorum.*

*O Populum dignum Orbis Imperio, dignumque omnium & admiratione hominum ac Deorum,* *Josuanes lib. De Regorum & Temporum successu*

*Salmuth in Pancirol. lib. 2. p. 5:*

*Vives in lib. 1. De Civitate Dei, c. 4.*  
*Alciat. ad legem 98. lib. De verb. signific. p. 225.*

*Corvinus Messala in Augusti progenie.*

*Florus lib. 3. c. 10*

*Breviar. lib. 1.*

*Contra est Roma velut altera Babylon, & velut prioris filia Babylonis, per quam placent urbem rebellare terrarum & in unam ferocity,*

*cietatem Reipub. legumque perditum, longe lateque pacare. Sanctus Augustin. lib. 15. De Civit Dei, c. 22.*

*Ælius Spartianus, in vita ejus, p. 128. edit. Sylburg.*

*Qua enim res alia furoribus civiles peperit quam nimia felicitas. Florus, lib. 3. c. 12.*

Fortitude, and generosity they were, Histories abound in. Hence was it, that as to be a Citizen of Rome, was to be noble; so to be a Senator, was *supra quod non*, which Adrian the Emperour insinuated in that his Speech upon the senatorizing of Titius, *nihil se jam amplius habere, quod in se conferri possit*. But Rome, as a piece of Elementary mutableness, stood not always thus fixed, and really enviable for her virtue and happiness. For as her Pride made her invade Neighbours; so her Conquests over them, made their vices and pleasures Victors over her *quondam* virtues; Syria and Asia they got, but by them they were effeminated, and the manners of the Age being inquinated with foreign vices, made Rome a Sink of Lubricity, not a Theatre of Masculine Puissance, and Heroick Bravery: for which the Poet, not untruly, reproached it.

Flaccus, Ep. lib. 2.

*Seditione, dolis, scelere atque libidine & ira, Illiacos intrâ muros peccatur & extra.*

*Sedition, Fraud, Lust, Wickedness, and Rage, Have Rome devour'd, made it the Villains Cage.*

So Juvenal, Satyr. 19.

*Qua tam festa dies, ut cesset prodere furam, Perfidiam, fraudes atque omni ex crimine lucrum Quæsitum est, partos gladio vel pyxide nummos.*

*What day so sacred is, which cannot discover Theft, Perfidie, with Fraud, 'bout Rome to hover, In thee Gold is the Goddess men admire; They it by hook or crook resolve to acquire, Thus is the Roman virtue dun'd i'th' myre.*

Yea so just occasion there was for this declamation against Rome's Apostacy, that the grave Philosophiz'd Emperour Antoninus upbraids it, *Is this (quoth he) Rome, in which in elder time, and in the Golden Age, there was upright old men, civiliz'd Youth, valiant and well disciplin'd Soldiers, most just and wise Censors and Senators? Sure this that is now Rome, is but the Picture of that real Rome; for now the Citizens are from watchful, slothful; from men of agility, become vicious; from industrious, become a City of idle and inoccupied men.*

*Hanc esse Romam credis illam ubi prisca temporibus & in auro illo saculo seves erant honestissimi, Juvenes optimè morati, exercitus disciplina observantissimi, & censors senatoresque justissimi? non est hac Roma, nullum habet Romæ vestigium, nullum decus, nullam similitudinem. Epist. ad Pollicionem.*

¶ Paterculus, lib. 2.

And now the Roman name cripples and declines; all the East defects from them, and of the West they hold but a small part; their Wealth refunds it self into those quarters whence it effluxed, and every ambitious and popular party rends and tears a limb from her symmetrical body, and that figure which was the glory of all its Architects and Statuaries, becomes now disfigured by the Triumph of time, and the tyranny of change in her ruining voracity. So that as Nimrod, Ninus, Belus, Tyrants all, had but a Temporal Consistency; no more had Rome in the grandeur of that position, wherein, as Queen of Nations, she gave Laws to the Continent.

*Quare dum filii Israel regem postulabant sicut tunc habuerunt gentes omnes, dominus inde offensus legem Regalem eis per Prophetam explanari mandavit, qua non aliud fuit quam placitum Regis eis præ-essentis, ut in primo Regum libro plexius edoceret.*

1 Sam. 8. 11.

This instance the Chancellour produces, to shew that the Customs of the Nations had infected the people of God to symbolize with them, in desiring the government of a King, rather than that that God guided them by, when he says, *He was their King*, whom in their choice of a King, as the Nations had, they declined, and for which, the severity of their Kings should be a punishment; not that God disapproved Kingly Government, for that is his own Government over the World, and that which his Son our Lord

Lord Jesus is expressed by, *I have set my King upon my Holy Mountain*; but because he knowing the hearts of *Israel*, set on it with a depreciation of him, made it therefore terrible to them, as a punishment of their difesteem of him. In these words therefore the Holy Ghost does exemplifie their condition in the fruition of their desire. And though *Lorinus*, and other learned men largely discourse of the particulars of this their temper of affairs, as penal from God; yet a better and shorter account of it; can no where be produced, then from the Pen of *King James* of happy memory, who in his Discourse of the Law of *Free Monarchy*, treating on it, has comprised all that the words import, in this Breviary, *The best and noblest of your blood, shall be compelled in slavish and servile Offices to serve him, and not content of his own Patrimony, will make up a Rent to his own use of your best Lands, Vineyards, Orchards, and store of Cattle; so as inverting the Law of Nature, and Office of a King, your persons, and the Persons of your posterity, together with your Lands, and all that ye possess, shall serve his private use and inordinate appetite: thus he.* And this makes good our Texts Description of it to be *placium Regis eis presentis*.

*Ejusdem ego sic d  
pinor atque id  
asserere non dubi-  
to Deum immor-  
talem non chari-  
tate atque Repub.  
cura imperium  
Sauli dedisse, sed  
quoniam arrogan-  
tiam sevitissimam  
ejus introspecterat  
comparatione de-  
terrima gloriam  
Samueli quesi-  
visse, ut tali suc-  
cessore desiderati-  
or ille quandoque  
foret Gunxus, De  
Rep. Hebr. lib 1.  
c. 14.*

¶ The true Law  
of the Monarchies,  
p. 193. of his  
Works upon the  
1 Sam. 8. 11.

*Habes nunc (ni fallor) Princeps clarissime, formam exordii regnorum regaliter possessorum, quare quomodo regnum politicè regulatum primum erupit, etiam jam propalare conabor, ut cognitis amborum regnorum initiis causam diversitatis quam tu quaris, inde elicere tibi facillimum sit.*

This *Epilogique Sentence* has much of comprehensive smartness, and oratorious brevity in it: the Prince is gravely, and with due obeysance told what the Chancellour aimed at, and accordingly has performed in the preceding words, *Habes nunc Princeps clarissime formam exordii regnorum regaliter possessorum*; as if he had said, *Great Sir, I have not boasted, of what I could not perform to your satisfaction; you have it (ni fallor) as far I hope as satisfies you, or is discoverable by man, the original of high mettalled domination.* Secondly, the Chancellour rationally promises solution as well as he can, how politique Government came in use, and the effects of it, and this as a piece of right to Justice, that the Sentence may not be passed upon either, but after Audience and consideration of both, *Quare quomodo regnum politicè regulatum, &c.* as if the Chancellour had proceeded to say, Your Grace knows, that the fore-described absolute regality, was a fruit of popular fervour, which delighted in change and assimilation to the most received custome of men; and *Sir*, you are also to understand, that politique regal government, such as *Englands* is, did not come into approbation by chance, as a by-blow, with all the disparagements of ingloriousness upon it, but it did *erumpere*, as that which was expedient and necessary, to prevent both the Rulers disturbance, and occasion the ruled's peace: 'twas such a mixedness of temper for common good, as was equally in the issue of it compenfatave to King and People: for such a sense I conjecture our Chancellour to have, when he says of it *erupit*, which is as much as *cum impetu exiit*; *erumpo* being a word that argues and implies vehemence and importunity, not to be almost denied, like the breaking out of a Spring, which importunes passage, and where it finds, continues it. And I suppose our *quondam Kings*, under whom it first appeared like indulgent Fathers, seeing their Subjects as dutiful Children, prostrate before them to beg the blessing of kindness and freedom from them, did in paternal commiseration and regal condescension, vouchsafe their desires: and thus they did *erumpere gaudio propter concessum regimen politicum*. For the Chancellour does not *novum dogma propalare*, not make the freedom and relaxation of our government to be a fruit of War, or (as it were) a trophy from the spoil of Princes, but he makes it an acquisition of favour, a reward of duty, a stimulation to obediential perseverance. And then lastly, he shews the reason why he does thus produce the governments in their respective nature and fruits, to wit, that his Reason might be satisfied, that *Antiquity* was herein found in the way of righteousness, and therefore to be honoured, and that as well King as People consented to rule, and so to obey; and this takes off all the acrimony of People against their Prince, and all rage and severity of the Prince against his People; which a *Commodus* would never have consented to, for he laid aside the gravity of a *Roman Senator*, and appeared like a *Fencer*, using no companions, but such lewd Roysters; and the reason was, his design was, τὰς μὲν πρὸς ἑ-

rigus, &c. *The grave men and all his Fathers friends he meant to slay, that they might not see the wickedness he was to act, nor reproach him for such villany, as became rather a Butcher than a Prince; but our Princes have abhorred such courses, and consented so to govern, and so to be obeyed, as the Law mentions and prescribes, declining all excesses, as equally dangerous. This their moderation therefore our Chancellour perswading him to follow, introduces the Discourse of Politique Government in the next Chapter, in those words.*

*Est in Monarchia Rex, aut consilio admissus, aut successione designatus; est verò in Tyrannide Trunculentus Leo; in Monarchia proponitur virtus, in Tyrannide triumphat scelus; leges in Monarchia aperte loquuntur, ac in Tyrannide oracula civitatis silent; in Regno communi bono studetur, ac in Tyrannide populus opprimitur. Celsus Sphæx. Civit. lib. 4. c. 2. p. 217.*

## CHAP. XIII.

*Sanctus Augustinus in lib. 19. De Civitate Dei, c. 23. dicit quod populus est catus hominum, juris consensu & utilitatis communionem sociatus.*

*In Epist. ad Tapatam Clement. Othav. ante Tom. 4. Annal.*

*In vita ejus.*

*Epistola dedicata Oper. edit. Frobenii, ad Card. Fonteam.*

*Lib. 3. c. 1. contra Petilianum. In vita ejus.*

*Hic tanta auctoritas, ut nullius Scriptis post Evangelicam Historiam Tarsensique Pauli, major hominum consensus accesserit. Sabellic. lib. 1. c. 7.*

*In Argumento Sancti Augustini ante lib. De Civitate Dei.*

*In Vives Prefat. ante Commentarios.*

**S**aint Augustine is one of the four *Latine Fathers*, whom *Baronius* calls *occidentalis Ecclesia culmina*, &c. *The Spires of the Western Church, the Pillars of the Catholique Faith, the great Lights and Miracles of the World*; a Bishop about the fourth Century of the Church, and one so learned and famous, that though he had bedirted his life and name with Immoralities, Heresies, and other Turpitudes, which not onely he in his own Confessions laments and detests; but also *Possidonius, Baronius, Erasmus, Vives*, and other Authours, do not spare him for: yet did the grace of God so effectually rescue him at last, that he grew the great Bulwark of Faith against the *Goths, Donatists, Manichees, Pelagians*, and all other *Heretiques*, and deserved that testimony that *Erasmus*, that witty and oracularly learned man gives of him, *Quid enim habet orbis Christianus hoc Scriptore, vel magis aureum, vel augustius, &c.* *What* (saith he) *hath the whole World more valuable and magnificent then this Father, who wrote, and spake not by rote, but as it were divinely inspired, aptly, and in a not to be confuted dialect, who had the excellency of all the Fathers concentrated in him, as if the ample gifts of the Holy Spirit were in him above humane proportion, and as if his Soul were the Table on whom the grace of God would exemplifie it self in the lively picture of an Evangelique Bishop every way compleat: thus he.* And not without reason, for God had given him great Wit, solid Judgment, experience of Converse, prospect of the vanity of the World; and having directed these by Conversion, to their right object, and by a preponderation of grace, made his accomplishments Gods, in the intent and devotion of his soul: so to use them, God brought him forth to a Masculine purpose, and placed him in the forefront of the battle of danger and opposition. As a Champion of the Church he stood vigorously and successfully, writing so much, that *Possidonius* strains the truth to commend him, *Scriptis plura quam quisquam legerit*: but one wittily observes, *Is decipi cum opinione credidit, qui omnia qua Augustinus scripsit, arbitratur se legisse.* True it is, that much he wrote, and to excellent purpose, for so great a name gained he by his excellent Learning, Life, and Devotion, that his *Writings, next to Holy Scripture, were revered and owned.* And on this ground did the Church Saint him, not by Popish Canonization, for I think that was not in use then; but by a publication, and recognition of his sacred endowments, and the service he as an Instrument of God's glory in the Church, did. Now as the Authour was an excellent person, so is the Book here quoted by our Chancellour a rare Book, both for the occasion, argument, and zeal of the Authour, in the composing and publishing of it; *Roma Gothorum irruptione sub Alarico Gotho pagani blasphemare Deum caperant, &c.* *When Rome* (saith he) *was incommodated by the Goths under Alaric their King, and I saw and heard their blasphemies against God, and the magnification they uttered of Ethnique Fopperies; the zeal of God against them, made me vindicate the truth against them, and hereupon I wrote the Books of the City of God: they are his own words.* On these Books, learned *Vives*, by the help of incomparable *Erasmus*, commentaried, but with as much discouragement as a painful Commentator could have from an ingrate age, but notwithstanding all that, he perfected his Work, & dedicated it to our *H. 8.* Out of these Books of the Father, to wit, *l. 19. c. 23.* our Chan. quot. is also *c. 24.* *Populus est catus multitudinis rationalis, reram quas diligit*

*concordi communionem sociatus*, which is almost in *terminis* our Texts here, *Populus est cætus hominum juris consensu & utilitatis conjunctione sociatus*; which sentence sets forth the subject, the rule, the end of Government and Order in all Societies. So then Societies are made up of men not beasts, for though number may be of beasts, birds, and fishes; yet Society, arguing amicitia, presupposes reason, which onely men and Angels have. And as they are called *cætus* for the number, so *hominum* for the nature. This *cætus* is a word of a large extent; for it not onely imports ten in Company, as the *Codex* has it: but any great number. The Common Law makes three unlawfully met together a Riot, or a Multitude punishable, and though Sir *Edward Cook* sayes, that upon the Statute of 5 R. 2. c. 7. the word Multitude must be ten or more, yet he adds,

*Est quidem Respub. ordinata hominum mult. tudo, Hopperus ver. Jurisp. lib. 1. tit. 12.*

*Civitatem appellandam esse censeo collectam hominum multitudinem ad jure vivendum, Patricius lib. 1. tit. 3. De Instit. Reipublic.*

1 Instit. p. 257. sect. 431.

*I could never read it restrained by the Common-Law to any certain number*; and therefore since the Statutes 17 R. 2. c. 8. 13 H. 4. c. 7. 2 H. 5. c. 8. 19 H. 7. c. 13. do none of them specify the number that shall positively make an unlawfull multitude or assembly but leaves them to the exposition of time and practise, which interprets three or more a number within those Statutes, that Exposition is the Law of a multitudes consistency. By *Cætus* then is understood a number united having some capacity for action. And though *Cætus* in Authours has some times an ill acceptation as *Suetonius* uses it, *Qui cætum fecerit capitale sit*, and *Augustus* forbade his Daughters to be in the Company of Strangers; yet it having a good sense also not onely in *Tully*, but in our Text there is good use to be made of it, as it is directive to the Conjunction of Societies, who by meeting personally together, become one in affection and order into an oneness of all common Conditions; hence the *Greeks* by *coisias* express any Society either sacred, civil, martial, corporal, *Job. xvi. 7. Job* complains to God of his misery in these words, *Thou hast made desolate all my Congregationem meam*; as if he had said, *Thou O Lord hast withdrawn thy mercifull indulgence from me, and dissolved the Polity and Contexture of my Nerves, Sinews, and Arteries, which carryed vigorously about the motions and operations of nature, and now I am the subject of reproach and abhorrence, I am as it were nothing, all the venust figures of thy Impression on me are defaced and desolated*, so might *Job* be thought to say. Our Chancellour then out of *St. Aug.* understands *Cætus* in a good sense for a Company of men met together, not vagely to do mischief, but prudently to preserve themselves in a justifiable way. *Juris consensu*,

*Juris consensu*, not casually and by accident as birds and beasts do, but upon moral and durable Principles, by common agreement and Concord; and this either, *cum totus coit populus*: or when part representing the whole accord and consent, and then *facimus quod per alium facimus*, sayes *Grotius*. And this consent of a Law for Regulation, and such a Law, as according to the common Principles of honesty and prudence, takes off the combination of men from all injurious intendments, because it supposes them so to love and practise charity and justice, that they will not as Enemies to mankinde be prædatorious, but make the Law their Judge, and of their actions the Arbitrator; which *Plato* declares the end of Law, *ἡμῶν δὲ ἢ ἢ νόμον ἰσχυροῦς*, &c. *To us the Law has this import, that under it the Citizens may be most happy and most friends one to another*: so *Diogenes* the *Pythagorean*, *νόμος ἁριστὸς ἔστι δαιμονίου*, &c. *The Law is the President and Authour of all things that tend to civil concord and virtue of conversation*. For God has so riveted Principles of justice into mans minde, that as he knows to practise it is his duty, so to understand it is his delight, where corruption by a prevalency has not befotted him. And hence is the general suffrage of men for a Law, and zealous they are for the reverence and observation of it. *Archytas* the *Pythagorean* sayes, *δὴ δὲ νόμον*, *It ought to be that that Law and Government be accounted the best, that is the Marrow of all Forms and regulates every action by just Laws*.

*Cætu extraneorum prohibuit filias. In August. c. 64. Quid enim necesse est tanquam mercetricem in matronarum cætu, sic voluptaters in virtutum consilium adducere, Cic. lib. 2. De Finib.*

*Certa ratione atq; ordine Respub. constituit. Hopperus de ver. Jurisp. lib. 1. Tit. 62. Lib. 2. c. 6. De Jur. bell. & pac.*

Lib. 4. De Legib.

Lib. De Sanctitat. apud Stobæum ferm. 41.

Stobæus ferm. 41.

*Et utilitatis communionem sociatus*, this is the noble end of all society, love arising from the common fortune they resolve to partake in. Sin alas made a very great gapp, between not onely God and man, but between man and man, letting in such a Sea of vice and torrent of ataxicall Principles, and all those in depravation of the Image of God and the candor of humane nature; that did not virtue, ordained by God to be the balm of cure to it, interpose, and express it self in civil offices and kinde inclinations to mankinde, and thence conquer the depraved rudeness, no reconciliation would

*Ἡ κοινωτικὸς φιλικὸς, Arist. Lib. 4. De Re-pub. c. 11.*

*Ἡ πόλις ἔστι τῶν ἄλλων, &c.*

possibly be, but that coming in as a Reconciler and good Angel, closes the breach and makes men agree to rule and obey to ends of common convenience. For as in the body-natural, the one head rules all the members, because the noble faculties of Regency are there seated, and the lower and less noble parts willingly submit to its guidance and Dominion; so in the state-body the noblest and best are fittest to rule and probablest to rule well, and one is the best to rule, because after the Model of God and the manner of mankind; and though I know many have carried on and kept up Government worthily among the *Greeks* and elsewhere; yea, and that under their Aristocracy common good has been promoted: yet all Experience tells us, that the least inconveniencies to common good arises from just and well-composed Monarchies, wherein Princes rule for God as God, justly and mercifully, and consider their Subjects as under them to order, not to destroy; to discipline in virtue, not to president to evil. And who so considers the Inconstancies of people in the *Roman's* state, who after they rejected their Kings fell to Consuls, thence to *Decem-virs*, then to Consuls again, after that to Tribunes of the people, those sometimes annual, then changed into Dictatours, from thence to short-lived Emperours; till at last they came to perpetual Emperours. Whosoever I say considers the versatility of the People in their influence on Government, will have cause to bless God for God's Lawes to rule them and good Princes to execute them.

*Corporis hujus certum debere esse caput, & quidem divinum; quoniam homo natura sua non sui generis animalibus parat. (Nam non Oves ab Ovis, sed à præstantiori natura Homine nempe reguntur) sed uni Principi Deo, cujus Vicarii, & quasi viva imago sunt, qui inter homines regnum obtinent.*  
Hopperus lib. 1 De vera Jurisprudencia. Tit. 12.

Tholoff. Syntag.  
Juris Civilis lib.  
47. c. 34. p. 1010.

*Nec tamen populus hujusmodi dum Acephalus, id est, sine capite, corpus vocari meretur. Quia ut in naturalibus, capite detruncato, residuum non corpus, sed truncum appellamus: sic & in politicis sine capite communitas, nullatenus corporatur.*

Here the Chancellour shews, that no Societies of men but have Superiority and Inferiority by common consent amongst them, and that from President of God and Nature in the Constitution of the body of man, the little world after the Model and Polity of which the greater is made and to it conformed: now his argument is as a body, nothing can be said such to be, that wants a head on it, for then it is monstrous and deformed, dead and invivid, a Block and Carcase not a perfect figure of life and lustre; so in Societies of men where some do not rule above others, and the others obey them, there can be no reasonable appellation of a Society, no expectation of joint and several advantage and peace resulting from the glory and guidance of the head. For as that rescinded from the body ceases its soularly influence and actuation, so the Societies of men not subservient to their head are full of confusion, and in no sort regular nor durably successfull in any their actions, but as soon may a wise man hope to see a Post stirr without help of Listers, as these politiquely transact without an head. The head is the seat of life, and the region of the spirits, and nature of man; indeed the heart first lives, but when life is in the heart, then it distributes its energy to the whole mass of Nature gradually, for the Cistern of the spirits, into which they all flow, and where they centre, is the head: so that though the people be first in order of time, yet the Ruler is in order of Dignity, the chiefest and best part of all Societies; for he is the living Law, and makes them he rules either happy or miserable, as his virtues or vices are: And therefore, as, a Ruler cannot be without his People, so not a People without a Ruler, they are *relata's* each to other, and do necessarily imply each other, and are but *nuda nomina* in their separation. For as in the consideration of the World, there is God the Creatour, Man his Creature, the World his Work; so in the Commonwealth, there is (saith Hopper) *quod præest caput, the head that rules, the foot that obeys, and that which is a partaker of both Rule and Subjection, the community and society of the People*: So that as the end of life is not obtained, but by the heads being upon the body; so not the end of Government, but by the safety and proper fixation of the Prince in his Prerogative and Seat of Rule. Which all wise people, in their respective Governments, have ever in such a degree promoted, as was approved necessary to their subsistence and peace: and the people of God so far propagated, that they told *David* plainly, that his security was so important to them, that hazard his Royal Person against rude *Philistims* (who would bend the heat of the battle against him as King of *Israel*) he

Asus in Sphæra  
Civitatis p. 8. l.  
1. c. 1.

Hist. Animal.  
lib. 2. c. 10.

Lib. 2. c. 6.

Lib. De ver. Ju-  
risprud. c. 13.

he should not; and they give the reason, *Thou art worth ten thousand of us*, that is, *thou puts a Spirit into all of us, who without thee should signifie nothing*: and whatever be- tide us, thy courage, wisdom, and influence, will either bring us off when in danger, by sending a convenient and timely rescue, or revenge our deaths and losses, by a brave return of resolution in revenge of injuries. Oh! but why so? one worth ten thou- sand: Yes, thou art the light of *Israel*, and one Sun is more available, then millions of little farthing lights: Thou, O King, art a good of communicativeness, all our dark- ness is brightned, our dulness sharpened, our disorder regulated, our diffusions re- collected and united in thee: therefore we are bound in love to our selves, to secure thee as the fountain of all our good, and the life of all our peace. For though it is a- greed on all hands, that People were before Princes, and Families before Kingdoms, (for Government was in Families from the Creation to the Flood) and from Families to Divisions and Neighbourhoods, thence to Towns, thence to Cities, and thence many Towns and Cities being united made Common-wealths; yet Princes, the most excellent of them, being set over them, and recogniz'd by Act of State, no re-assumption of the Primitive Power, and liberty of People lyes, any more, then it lies in the power of a Woman once married, to dissolve the Marriage Bond; for though it were at her choice, to consent, or not, while she was *sui juris*; yet having once consented to the act of Marriage, she becomes her Husbands, and he has power of her, and all her single liberty is determined.

This then considered, the Chancellour has done wisely to consider Bodies Politique by Bodies Natural, as God in the Fabrication of man made him the pitome and little Model of the World, so our Chancellour makes the head in the body of man the thing by which he sets forth the state of Kingdoms, and their bodies governments. In the body though there be two feet, two hands, two arms, two ears, two eyes, two sides, yet is there but one head: So in the Common-wealth, though there be many ruled, yet but one alone rules; which one is called emphatically a Head, because the Head is sacred, *Sacrum caput* (saith Varro) *à capiendo, quia inde capiunt originem sensus omnes, &c.* all the sen- ses internal, external, are there lodged, as in the noblest part of the body. Hence is it, that not onely *Christ* is called in Scripture, *Head of the Church*; and the man the head of the Woman: but every thing of perfection and excellency is set forth by the head. *Ger- gitius*, whom *Phavorinus* calls no mean Authour, says, that *Rome* was of old called *Cephaleon*, betokening her Empire to be over all the World, and the chief place in her was called the *Capitol*; yea, all safety was expressed by the heads safety, if that were out of danger, the body could not be unhappy; which was one reason, why the *Egyp- tians* venerated the Head; and *Paulus*, the famous *Civilian*, has published for the ho- nour of the head, *Locus ille in quo humanum inhumatur caput, religiosus efficitur, etiam absque aliis corporis partibus*. Although therefore *Monsters* in *Africa* may have their mouthes and eyes in their breasts, yet most of the World knows no place for them but the head, and that on the shoulders of the people, who with gladness bear it up, and are made happy by their support of it: for Princes are to States, as Heads are to Bodies, *Beauty, Life, Regulation*, which three make that one *Divine Harmony*, which the Scri- pture calls, under the name of charity, *the Bond of Perfection*.

First, *Beauty*, that's conveyed to the body by the head, in which the face, the eyes, the nose, the seat of all the senses, both souly and bodily, are. Hence is it, that *Phi- losophers* say, *vultus animi Index*; for all the resemblances of virtues and vice are here- by made known: nor is it often seen that men are better or worse; but mostly that (to wise men) they seem to be; which *Socrates* justified *Zopyrus* the *Phisognomer* in, when he censured him for a bad person, and was derided by them that stood by and knew *Socrates* his worth. Oh, says *Socrates*, *he rightly judged, for such as he described me, I had been, had not Philosophy reformed me*. So may all men say; such we are as we seem, unless we are other by miracle, which none can tell but the author of them: when therefore the head is separated from the body, all the beauty ceases, all the pre- rogative of man above other Creatures expires; a Carcass he is, and no more like what he was, then a Truncheon is to a Scepter (though *Aristotle* tells us of *Jupiter* *Heplym* Priest, that spake after his head was cut off) yet a rude inform costen public thing it is, passive under every insolency, attractive of no respect, hardly worthy of civil Ce- remonies. So is it in the State, if the head be from the body, there is nothing but deformity

Nam nunc tu po- tes roburare sunt nos decormuta Chald. Patapat.

Lipius. 2 Poli- tic et 1. Monic. 1. p 207. Galus Sphara Civitat. lib. 1. c. 1. p. 8. King James's true Law of Free Monarchie, p. 207.

Phavorinus, Lib. De excellentia hominis, partis primae. c. 7 p. 19. &c. Omne quod est perfectum, vocari caput. J. C.

Blemysis tra- duntur capita a lefe, ore & oculis pectus affert. Pin. Na. Hist. lib. 5. c. 8.

In unaquaque fa- cie similitudo magnificientia, a- va ure, probitatis, improbitatis, vigi- lantia, ignavia virtutumque ac vitiorum omnium ectat. Pin. Se- ni. c. lib. 1.

Jab. De partu Animal. c. 10. p. 1014.

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mity and tyrannous monstrosity, the feet and hands will rule, who are Masters of mischief, and good for nothing, but *aut humiliter servire, aut superbe dominari*. And woe be to that Land where the Government is headless. The Holy Ghost records it for an ill time in *Israel*, when every man did that which was right in his own eyes. *Hoc dicit Scriptura quasi super hoc ingemiscit*, saith Reverend Bishop Andrews; and Peter Martyr is positive, that nothing is more pernicious to humane society, then lawlessness, when the itch of popular levity, and the scurvy of their insolent success, makes them trample down Laws, and rebel against the Law-maker. God sets it down so often, *There was no King in Israel, then did every man that which was right in his own eyes*, as

Pet. Martyr. in 17 Judic. c. 6. 13 v. 1. & 10 v. 1. c. 21 v. last.

*Cum orationis mutationem Republica, Deus non seditur; nam Rex semel inauguratus videtur esse loco Dei, immo appellatur Christus Domini.* P. Martyr. in 1 Sam. 8. 18.

Aurel. Victor Epitom. Hist. August. Sanctus Thomas, Lib. De Regim. Principum. c. 1. Rutilius Benzonius in Plal 86. Quast. 4. Prop. 2. p. 200.

the great aggravation of the peoples penal infelicity. God had removed their Governours, and now they by their sins, being without the staff of beauty, God for their sins broke the staff of bands; for a Magistrate is the band that holds all together. God gave them Magistrates, and those they murmured under, and God took away their Governours, and with them the lustre of their government. So fares it often with brave *Aurelians*, though for their good ruling, they deserve *inter divos referri*; yet they feel, as he did, the force of treachery and treason in their deaths: So that Kings are as Heads, beauties to their Politique Bodies, and 'tis as comely that one should rule, and the rest obey in the body politique, as that the head in the body natural should preside over the

rest of the members, and they observe its rule, and submit to it. So the Text is out of *Aristotle*, 1 Politic. *Quandocunque ex plurimis constituitur unum, inter illa unum erit regens, & alia erunt recta*. For as Musick is made up of deep Bases, shrill Trebles, and grave Means; so is beauty in government composed of those symmetrical correspondencies that are between Power and Obedience.

Hist. Animal. lib. 1. c. 15. p. 773. edit. Paris.

Secondly, the head in the natural body is *regimen*, the directive part; for though it be lesser then the trunk, or lower parts; yet 'tis in figure and nature correspondent to the sublime part of the World, the Heavens; Because man is made to be Lord of the World, God has given him senses suitable to his dignity, and lodged them in a repertory sublime and secure. In the head is the soul with all her faculties, if materially any where, or rather circumscriptively; which I do not say; but I mean there, if any where the soul and her faculties be, 'tis in the brain lodged in the head; there are the senses, which subserv the reason, and all the distributions of it. And hence, because the Court of all the noble Constellations is there, it rules, for that government becomes it best: so in the body politique, the Prince, as the *caput regni & legum*, does the offices of the head to the community, he directs what's to be executed, and what not; how, in what proportion, when; he prospects what's good and evil, and is the Authour of both, according as his example inclines to either; which *Plutarch* apprehending aright, admonished *Trajan* of, notably; and that not onely as he loved him, but also as his own credit was concerned in the goodness and prudent demeanour of his Pupil; *Tue itaque virtuti congratulor, &c. I congratulate thy virtue, its good fortune and mine too, if thou soonest thy self worthy the Institution I have given thee; otherwise, sure thou wilt be the subject of detraction, and involve me in the censure with thy self; for as Rome will not applaud a slothful Prince, so will not they forbear reproaching me as thy remiss Master, who did not timely pluck up the roots of vices, whence such weeds now spring; but by sparing them in thee, am accessory to the ill effects of them.* Thus wise *Plutarch*; other words, but in analogie of sense to those of our Lord to his Disciples, *Ye are the salt of the world, have salt in your selves, that ye may season others; for if salt has lost its savour, it is good for nothing: ye are the light of the world, let your light so shine before men, that they may see your good works, and glorifie your Father which is in Heaven.* Lights are not to be put under a bushel, but upon a hill, that all may see by them: so are Princes to be examples of good, and directors of others to be good; heads are parts of government, instruction, and conduct, as well as beauty; so is the Text, *Quare populum se in regnum aliunde corpus politicum erigere volentem semper oportet unum praeficere totius corporis illius regitivum, quem Regem nominare solitum est.*

*Probi mors satis perdidit; omnia prope passa est, qua passur in uno homine mortalitas.* Flav. Vopisc. in Caro Numeriana, p. 299.

*Qualdus in vita Plutarchi cap. 15.*

Thirdly, as the Head in the Body Natural is the life of it; and separate that from the Trunk, and it becomes a Log, *terra inutile pondus*; so is it in the Body Politique, the



the King is head, all the life and lustre of the Common-wealth is in him and from him. Hence the Hebrews called Kings by names indicative of the good Offices they do to people; they called him by מלך, so the King of Tyre is called *Exech. xxviii. 14.* *Thou art the anointed Cherub that covereth, Quod in morem Cherub alas suas extendat longè & ditionem proferat*, saith a Gloſs on it. And by מלך, a word denoting a King lawfully reigning and not a Tyrant, *Prov. xxiv. 21. 2 Kings xi. 12*, and thus God declares *Christ* is set by him *Psal. ii. 6.* yea as the *Greekes* called those that ruled well *πολίτεις*, and the *Latins* *Deos tutelares*, so did they give almost divine Honours to them. And the *Persians* to shew the benefit Kings brought to their Governments by the peace and order of their Reigns; made a Law, that upon the death of every King there should be five dayes *inter-regnum*, by the disorders of which they saw their debt to their Prince, who brought a redress of those Mischiefs; which sadly thought upon, makes all wise men of *Michael Orsagh* the *Palatine* of *Hungary*'s mind, who, when the Peers of *Hungary* would depose *Matthias*, opposed them with this ever in his mouth from his loyal heart, *Quicumque sacra corona coronari videris, etiam si bos sit, adorato, & pro sacrosancto Rege dicito & observato.* To separate those then whom God has joined together, Prince and People, is therefore treasonous; because tending to the Destruction of both. For though the people are the *Embrio* whence God enlivens and makes powerfull the King, yet they are not any thing but cyphers and *Embrio*'s, dead lumps, without the soularly influence of him, *Ex populo erumpit regnum, quod corpus extat mysticum uno homine ut capite gubernatum.* And that Monarchy is the most ancient and just, the most peacefull and durable, the most safe and communicative Government; all Politicians agree; so true is that of King *James*, *The proper office of a King towards his Subjects agrees very well with the office of the head towards the body and all Members thereof. For from the head, being the Seat of Judgement, proceedeth the care and foresight of guiding and preventing all evil that may come to the body or any part thereof. The head cares for the body, so doth the King for his people; as the discourse and direction flows from the head, and the execution accordingly thereunto belongs to the rest of the Members, every one according to their Office, &c.* Even so is it betwixt the Prince and his People; and as there is ever hope of curing any diseased Member by the direction of the head as long as it is whole; but by the contrary if it be troubled, all the Members are partakers of that pain, so is it between the Prince and his People: So that King.

Gyrald. De Divi  
Gent. Syntagm.  
ii.  
Hopperus lib. 7.  
De vera Jurisp.  
Tit. 9.  
Zuinger Theatr.  
Volum. 14. lib. 2.  
p. 2065., 2067.  
& seq.  
Boninius lib. 3.  
c. 4.

Benzonius in Tsal. 36. Quæst. 6. p. 315.  
316. & seq.

Lipſius 2. Politic. c. 1. p. 207. & deinceps.

Johannes Casus in Sphæra Civit. lib. 3. c. 7.  
p. 180. 181.

The true Law of free Monarchs, p. 204. of  
his Works in fol.

*Et sicut in naturali corpore, ut dicit Philosophus, cor est primum vivens, habens in se sanguinem, quem emittit in omnia ejus membra, unde illa vegetantur & vivunt: sic in corpore politico, intentio populi primum vividum est, habens in se sanguinem, videlicet provisionem politicam utilitatis populi illius, quam in caput & in omnia membra ejusdem corporis, ipsa transmittit, quo corpus illud alitur & vegetatur.*

Still the Chancellour follows the Parallel according to the position of *Aristotle*, making the head, though the first in place and dignity; yet, not so in the order of nature. For notwithstanding that *Gassendus* tells us of some that held the head was first generated; *Phavorinus* is for the Liver first, the heart next, and the brain after, *Gassendus* resolves nothing peremptorily, that it is, he knows, but the order he is not positive in; but the *Philosopher* is thorow paced, that the heart is the first and last of life in man, and his reason is, because the life of every thing is in the blood, and the blood in the veins, and the heart being *ἡ πρώτη ἀρχὴ τῶν ἀγγείων*, the Principle of the veins; *ἡ κύβητος ἡ ἀσπίς*, and the Lord of the senses. The heart from which the activity of life flows, must according to him be the first and last: but the dispute of this will be needless, all that is alleadged by it, is, that the life and vigour of the head is by the assistance of the heart. As in the body-naturall, so politique, head and heart must go together to make regular and noble life in both, and as the head will be dull and inactive without the heart; so the heart faint and overwhelmed without the distribution of its self by the head into other Members:

Lib. 4. Physic. De  
Gener. Animal:  
p. 276. Tom. 2.  
De Excellentia  
hominis, Paris  
prima, c. 12. p. 42.  
Lib. 2. c. 6. De  
Gener. Animal.  
lib. De Respir.  
c. 3.  
Lib. 3. c. 4. De  
part. Animal.

Regia potestas ceterorumque Principum civili auctoritas non hominum est inventum, sed ab ipso Deo per Legem naturalem, que sua sempiterna Legis participatio est, sanctissima fuit ordinatio Covarruvias practic. quæstio. lib. 1. c. 1. Conclus. 6. p. 420.

Berzonius in Isal. 86. quæst. 4. Propos. 2. p. 199.

\* Ad significandum illo debere nisi ad nutum Pontificis qui altaris est Dominus Quæst. 3. p. 242.

¶ Si Principes ex nutu seditorum & ad hinc singularium quorumcumque penderens potestate, certè non Reges, sed infelicissima essent mancipia, nec Monarchia sed Democratia esset. peior regno Spartatum. Tholostanus. Syntag. Juris univers. lib. 6. c. 20. p. 140 Tit. 15.

Philo lib. De Creatione Principis p. 723.

Sacramentum sue intentionis ministri non conficitur, Beharminus lib. 3. c. 8. De Justific. p. 964.

Lib. De Creatione Principis. p. 725.

Members: so, that though the similitude may in most things be true, yet is there somewhat of prudence to be used in the commendment of what's truth in it. For though this that our Text-Master calls *Intentio populi*, may *ex natura sua* be the externall Rise of power; yet *ex jure natura*, multitudes may transferr it, and having transferred it according to the Law of nature for the improvement of order and civil convenience, it becomes by humane Lawes and Customs recognized and irrevocably fixed, and as the power is of God, so the exercise of it is by and under God onely; and Kings that use it are not accountable to (Popes as *Berzonius* will have the Ceremony of an Emperours receiving the sword from the Altar to import, \* *That he should use it at the pleasure of the Pope, Lord of the Altar, under the punishment of deprivation*: no nor to people in the greatest representative and most august sense of them;) for still they being but Subjects are not Judges of their betters, nor can make the Law but must be subject to it, as legally impressed by the King to be the rule of all actions. For though true it may be allowed to be, that the particular

forms of Government were of old, and in the first times by God indulged men to order as they saw most convenient, yet did God in the Law of nature (his minde made known to mankind) promulge Government to be safest in the best men who were appointed thereto, and who from being in person and minde excellent, and of great deserts from the Community they governed, had the Government by general Suffrage settled upon them and their descendants, the credulity of the people probably perswading them to believe their issue in a line of successive endowments, would rule suitable to those their excellent Sires, which collation of power by the act and deed of the temporary Possessors of it in the name of themselves and their Successors recognized by the acts of succeeding generations, makes the head absolute, and the intention of the people but precary to the head's ratification. For the head once placed, and furnished with perquisites to its proportion; the intention of the people is no efficient cause of liberty, as the Church of *Rome* makes the intention of the Priest of the Essence of the Sacrament; but declares them to have had thoughts of publick good in their consent of settlement of Government on one, to prevent many Competitours, and in a line of descent to anticipate uncertainty; yea and may be well thought to produce kinde intercourses of friendlynes between King and people, the King being civilly (with reverence I write it) obliged to let them be free from the edge and sanguinary sharpnesse of his power, who had both presented him the sword of his rule and sharpened it by an edge put on it by themselves; and by which they are outed of all claim to reassumption, power of repulsing, or judgement of mal-administration.

This then, that is here called *politica provisio*, is not referable to any terms or compact antecedaneous as some may suppose; but the security which Kings do give to God and their people by their Coronation Oath, which having respect to the national Lawes as extracts from the Law of Nature and Nations, requires that Princes exalt justice as the reason of their Institution and dignification; that as the Subjects must obey in and for the Lord, so the King should command according to and in the Lord, that is, things just and lawfull; of which though he be the onely Judge on earth, that is, by matter of Record and in his judicial Courts: yet is the Judgement of God superiour to it, which alwayes is according to truth. The Consideration of which has sofined Princes as I said before, to take βασιλευς εδωκ τω μισθω, &c. as *Philo's* words are, *The kingly middle way between both extremes*; and to reason and resolve with themselves as *Moses* brings in the King he instructs in the Law to this purpose, 'Οι δε εν εδδοι Κασιλεϊς, &c. *When other Kings use their Scepters for terrour making their Wills the Law, this Direllory from the Law shall be my Will; in this Diadem I will rejoyce, this shall make me victorious and virtuous, a follower of the great Justicer of Heaven; By this I shall learn the Rule of equality by which I shall keep my self from pride and insolence, which God resists, and by this shall I procure the love, prayers, and fidelities of my people, and by this shall I shew myself a Conformist to the divine Law, which enjoines the mean as that which is equally distant from both extremes, thus Philo. For as Philo says,*

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Though there be a Principality in every thing; the Lord in the Village, the Master in the House, the Physician among his Patients, the Commander among his Souldiers, the Master of the Ship among his Mariners: yet none of these do act so to the rigour, but that their underlings are happy for the most part under them, God restraining the nature of men in power, and giving some qualities to Persons under power to be come gracious with power, and so to mollifie and incline it to goodnesse: so it is in Princes, though they can do by the heighth of their power what they please, yet they considering themselves Parents and Husbands to their People, treat them with all kindness and conscience, as parts and Members of their mysticall body; and so the power and vitality that they have by the Law to which their peoples assent is given, enables them to be what Princes ought to be, just and mercifull. And therefore what the Philosopher observes concerning the position of the heart in mans body, wherein onely it inclines to the left side, whereas in all other Creatures it is placed in the middle, that I apply to Kings, the hearts as well as head of Common-wealths; because the living Laws, as they are to have justice on the right-side, so mercy the affections of tender-heartedness on the left-side, that they may as well know how to indulge their peoples freedom, as to heighth their own Prerogative; and then there will be a pleasing and orderly Circulation, no part of the body will consume by the aggrandization of the other, but all motions will be orderly, and a just distribution be to all parts; and this the Text-Master calls artlyly, by *alitur & vegetatur*.

Ev τῷ ἀριστερῷ ἰσχυρῶς κεντρῶν ἔστιν ἐν τῆς καρδίας. Hist. Animal. lib. 2. c. 17.

*Lex vero sub qua catus hominum populus efficitur nervorum, corporis physici tenet rationem.*

As he had resembled the King to the-Head, and the intention of the People to the Heart: so now he does the Laws to the Nerves, which are a part of the Body near allyed to the Heart, as partaking of the strength that it enables it with to all purposes of activity and motion; and generally 'tis held to be commaterial with the bones, and arising from the same origin therewith. For though Nerves receive no spirits as Arteries do, yet are they extendable, which Arteries are not: therefore because the motion of the spirits, is according to the convulsion and distention of the Nerves, it makes good, that the nerves are of great consequence to the vigour and manly performance of any action of life; yea, the later Anatomists, that make the nerves to arise from the brain, do not thereby lessen the vigour and consequence of the nerves. Hence is it, that in Authours the nerves are counted the *compago corporis*, that keeps and girds all together. So Quintilian tells us of *Astringi ossa suis nervis debent*; and Tully in those words, *Nervis & ossibus dii non continentur*, intends to attribute to the nerves much of strength, as well as to the bones. Yea, as *sine nervis esse* is a phrase for debility; so to be nervous, is taken to be valid and strong: so Souldiers, Navies, and Tributes to support them, are called *Nervi Reipub.* by Tully, and *Frangere nervos & mentis & corporis*, is by Quintilian expressed to undo a man's self. By which and such like instances it appears, that the nerves are of the strength of the body, and so are Laws the strength of Politicks. Take them away, and multitudes of men are *numerus, non populus*; for 'tis the Law that brings the *plebs* and *rabble-rous* into order, and entitles them to the honour of being a people. For *Lex à ligando*, because as the Iron Band, which the Antient call'd a Nerve; kept the prisoner to the punishment he was adjudged to; so the Law binds every man to the peace and to consist in his station: its that which directs, protects, compensateth, ascertaineth every man and thing. And therefore, though it may be extended and made to serve every ingenuous and politike purpose; yet take heed men must of abusing the Law, least it be a swift witness against them, *Et merito juris beneficium amittit, qui contra jus aliquid volenter & violenter facit*. And therefore the Chancellour has aptly compared the Law to Nerves; for as Nerves are of the strength of the natural body, so are Laws of the politike body; as nerves are connected with the heart or brain, so are Laws the fruits of the love, and wisdom of Princes and their wise Counsel; as nerves are adjuncts

ἡ μὲν ἀρτηρία καὶ τὰ τῶν ἔστυ ἐν τῆς καρδίας. Hist. Animal. lib. 2. c. 5. L. b. 2. Gener. Animal. c. 6. Μόρον γὰρ δὲ καὶ τῶν πνεύματων ἡ ἀρτηρία. Lib. De Spiritu, c. 5. ¶ Meteorolog. lib. 2. c. 8.

In Procemio, lib. 1. 18. 2 De Nat. decorum. 8. 4. Pro lege, Manilla Philop. 5.

Reg. Jur. Ceterum in omni corpore civili, quemadmodum in humano, & caput & membra sunt, & quedam alia quibus illa colliguntur, veluti nervi, quibus membra singula moventur, & minus proprium exequantur, & quemadmodum illi à cerebro, & capite manantes per totum corpus diffunduntur, sic etiam in corpore civitatis.

vili à bene disposito capite robur in societatem  
subjectam permeat, & status ejus sit legiti-  
mus, qui nervus disciplina dicitur. Tholoſ.  
Syntag. Juris, lib. 3. c. 2. art. 2.

to corporal activity, so are Laws the hinges on which politique bo-  
dies act and move, to what they wisely & worthily incline to; yea all  
the progress and augmentation that virtue hath, is from the Laws:  
so saith the Text, *Sicut per nervos compago corporis solidatur, &c.*

*Et ut non potest caput corporis physici, nervos suos commutare, neque membris suis pro-  
prias vires & propria sanguinis alimenta denegare, nec Rex qui caput corporis poli-  
tici est, mutare potest leges corporis illius, nec ejusdem populi substantias proprias  
subtrahere, reclamantibus eis aut invidis.*

Here the Chancellour proceeds to assimilate the King to the head of man, as before  
in what the head could; so now in what it cannot, *quâ* such, do: For as in the *Apologue*  
of *Mencius Agrippa*, wherein the members of the body conspired against the belly,  
till at last they were all by the bellies emptiness debilitated, and not able to do their  
proper offices; so in the practice of experienced things it is seen, that where the Sub-  
jects rebelliously rise against their Sovereign, all is going to ruine. To prevent which,  
the safest way is to keep within the line and tether of the Law, which is the wise Arbitrator  
under God of all things that come under question: God has placed the head over the  
body, but it is to act according to the Law of its nature, for the good of the body. The  
head, while sound, will part with no member willingly, command no member contrary  
to the Law, and order of its position. *Hitherto shalt thou go, and no further*, is said to  
the Head as well as to the Waves; and so is it in the Body mystical, the Prince is the  
Head, *solo deo minor*; he can do nothing, but what he justly and legally may do, be-  
cause he is a Father of compassion, and a husband of dearneſs, as well as a Head of Sove-  
raignty; and all these importing interest and tenderness, fix the *non potest* (against all  
contradictions to these) beyond remove. See the Notes on the 9<sup>th</sup> Chapter, concern-  
ing what's pertinent to this purpose.

Zonar. Annal.  
Tom. 1. p. 22.

Hæc est voluntas  
Regis, viz. per ju-  
ficiarios suos &  
per legem. 2 R. 3.  
fol. 11. Statute 9.  
R. 2. c. 1.  
Sic Ed. Cook 3 In-  
stit. p. 146.

*Habes ex hoc jam Princeps, instituti omnis politici Regni formam, ex qua metiri pote-  
ris, potestatem quam Rex ejus in leges ipsius, aut subditos valeat exercere.*

In this our Chancellour makes a conclusion from the precedent matter; to wit, that  
politique Governments, were by prudence contrived to respect publique good, and  
general convenience; and that as people intended to reverence, obey, and secure their  
Princes, as Defender of the Government, and Laws of his Government; so Princes in-  
tended and looked upon themselves bound those to defend and against them in any or-  
dinary case not to rule. For that the King has power of his Laws, and of his Subjects, is  
most true; but the line and proportion of his so exercising this power on either, is laid  
out by the Law of his Government, to the observation whereof he is Religiously  
sworn. And therefore when in (a) 34 H. 6. the King did make another Sheriff in *Lincoln-  
shire*, then he that was chosen according to Statute, our Chancellour, and his Brother  
Chief-Justice, in the name of the Judges, said, *that the King did an error*. For since every  
rational action tends to some end, and is so concerned to act, as tends to the scope of  
its intention; the desires of people consented to by Princes in favour to Laws, as the  
method of administering power, are of the very being of the peoples felicity and com-  
fort: for in the Statute of 25 H. 8. c. 21. these words are, *That this your Graces  
Realm recognizing no Superiour under God, but onely your Grace, hath been, and is free  
from subjection to any man's Laws, but onely to such as have been devised, made, and or-  
dained within this Realm for the wealth of the same, or to such other as by sufferance of  
your Grace, and your Progenitors, the People of this your Realm have taken at their free li-  
berty, by their own consent, to be used amongst them, and have bound themselves by long use  
and custom to the observance of the same.* Which Princes considering, do not endeavour by  
any means to anticipate, defeat, or impair, by either using their Power and Preroga-  
tive, as *Anarcharis* said the *Greeks* did their money, *περὸς ἑδὲν ἑταρον ἢ τὸ ἀεικέλιον, one-  
ly to count it, and make themselves great by it*; but to shew themselves willing and able  
to promote their Subjects goods, and to protect them in their honest and just endea-  
vours; which *Severus* dying, asserted himself to have done worthily; *In turbatam  
Rempubl. ubique accepi, &c.* I did (quoth he) enter on my Government, when it was  
disturb'd

Viri boni & sapi-  
entis est parere ra-  
tioni, & ad eam se  
accommodare,  
haud aliter atque  
prudens nauta ad  
maris ac venti  
tempestates se ac-  
commodat, Hop-  
perus, De ver. Ju-  
risp. lib. 4. Tit. 5.  
De legum muta-  
tione.  
(a) Instit. p.  
559.

Plinarchus, lib.  
De profect. vir-  
tutis, p. 78. edit.  
Paris.

disturb'd and in confusion, and I now leave it settled at home and quiet, even in Britain, though I am old and lame, incapable of action; yet the fame of what I have done, shall preserve my Empire firm to my Successors, if they be good; but if they be dissolute and negligent, then they will find it not lasting to them: for they who found the benefit of my care and circumspect Government, will, when they see my Successors not such, be desirous to change, in hope to find such a Governor as I was, who made it wholly my design to have while I lived; and leave when I departed, a happy People. Which never can be done, unless Laws be considered, as Tully delivers them; Not enely as the Decrees of Princes; not as the Injunctions of People; not as the Judgments of the Judges; but also as part of the Law of Nature, and the wisdom of God conveyed to them by the experience of wise men in all times and places, who stirred by an extraordinary spirit, framed them to the purpose of order and civility. And if thus Laws be venerated, and Law-makers provide, that Laws be not so many in number, as good in nature; not dark and mysterious, but plain and perspicuous; nor sharp and vexaticus, but just and prudent; then will they deserve to be the measure of power, and no Prince will desire to rule other then by them, who will deserve the name of good and wise. And other then such, no Prince as such duly considered, ought to be thought, because he being God's Vicar, is presumed to be just as his principalis, and as the mortal Representative of the Immortal God he ought to appear accomplished.

*Spartianus in Severo.*

*Non populorum iustis, non principum decretis nec sententis iudicium constitui, sed natura norma. Hanc video sapientissimorum fuisse sententiam, legem neque hominum ingenis excogitaram, nec scitum aliquid esse populorum, sed aeternum quiddam, quod unversum mundum Reget, & operantis prohibendique sapientia, lib. 1. De Legibus.*

*Hopperus, De ver. Jurisp. lib. 4. tit. 3.*

*Prator quoque jus reddere dicitur, etiam cum inique decernit, relatione scilicet facta, non ad id quod ita Prator fecit, sed ad illud quod Pratorum facere convenit. Digest. lib. 1. tit. 1. De Orig. Juris. p. 61. & Paulo, lib. 14. ad Sabinum.*

*Ad tutelam namque legis subditorum, ac eorum corporum & bonorum, Rex huiusmodi creatus est; & ad hanc, potestatem a populo effluxam ipse habet.*

This passage has primarily regard to the first Ages, and to the contextures of politic Governments in them; in the language whereof, as our Text-Master, so his humble Commentator sometimes phrases things, the better to set forth the lustre and scope of this Argument, which here considers, 1. The person of the Magistrate by his name *Rex*, by his dignity and conspicuity *creatus*, which is a term of magnification, joynd in Tully with *Celsus, Liber, Magnus*, which surely was typified in *Saul*, who is said to be higher by the head and shoulders then all the people, not onely corporally, but officially. 2. By the end of his title and advancement, that's said to be *ad tutelam*, Kings are not onely honours and ornaments, but Fathers and Defenders, in (a) *Varro's* words, *Tutela & sepia*, and the people do as Tully expresses it, *latere in tutela ac presidio regis*. 3. By what is the subject matter of this their beneficence to the publique; *tutela eorum corporum & bonorum legis subditorum*, not only of the Law as the rule, and of the subjects, as the persons to be ruled by it, which is a truth; but *legis subditorum*, so conjoyn'd, and so specified, pointing to them as the antique origin of the forms of power, and as they are the persons that do assist the King in the carrying on the effectuality of power, wherupon the Text says, *a populo effluxam habet*, and then lastly the *modus in quo*, this tuition of the Law & Subjects appears, 'tis in keeping the peace, and punishing the breach of it in the harm of their persons & goods, the felony of which is *contra coronam & dignitatem domini regis*. These things are considerable in the Text, but because I have treated of the severalties of them heretofore, I shall onely vindicate our Chancellour from any intendment here to approve popular Governments or the infolencies of them, which God wot he knew the ill effects of, in the carriage of the people to *Lycurgus*, and others; but to do right to the truth of Antiquity, and to make the wise composition of Politick with Regal Government, not favour of arrogance, or encroach upon the due Majesty and august Sovereignty of God in the trust of his Deputies Kings. For though the Laws should be granted to be *leges subditorum*; yet is it not in any sense as if they were makers of them, or might dispute them with their Prince, other then in his Courts, or by a supplicate *celsitudini* on their knees. No such authority gives the Laws of God or men. No such mistake is in the Chancellour, or would I after him be for all the World guilty of (for

*Cic. pro Dejotaro Ad Attic. lib. 2. Livius, lib. 2. ab urbe 276.*

*Tutela, jus & potestas in capite libero constituta, ad tuendum eum qui per atatem sua sponte se defendere nequit. Paulus, lib. 1. De Tutelis.*

(a) *Lib. 1. De Rustic. c. 14.*

*Ut enim tutela, sic procuratio Reipubl. ad eorum utilitatem, qui commissi sunt non ad eorum, quibus commissi est, gerenda est. 2. Offic. sic. 121.*

*Interest Reipubl. ut pax in regno conservetur, & quacunq; pacti adversentur, provide decernentur. Maxima juris, 2. Inlit. p. 158. 32 H.S. c. 9.*

*Plutarch in Laconic. Apothegmat. p. 227.*

to they are onely the *Kings*, (the power of enaction of them being his, as he gives Sovereignly Royal life to them) but *legis subditorum*, as they are the persons, who by their *Delegates* in *Parliament* assent to the fitness and justness of them, and so are obliged by them; yea, and so interested in the priviledge and security they have by them, that they are called by a Master-Lawyer, *The Birth-right, and the most ancient and best Inheritance that the Subjects of this Realm have*; for by them he enjoyeth not onely his inheritance and goods, in peace and quietness, but his life and most dear *Countray* in safety. So he. And so are the Laws called *leges regis*, not onely because he is the Head of them, and the Parent and Protector of them for the publique interest, in which his Paramount interest is couched; but also because the Subjects and he are not to be divided, being mystically united: and as King *James* wisely once spake to the Parliament of 1603. *What God hath conjoynd, let no man separate; I am the Husband, and all the whole Isle is my lawful Wife; I am the Head, and it is my Body; I am the Shepheard, and it is my Flock, &c.* Answerable hereunto also is the Resolution of the Judges in the Prince's Case, *Chescun subjeet ad interest en le Roy, & nul des Subjeets q'est d'eins ses leyes sont divide de luy estant son teste & Soveraign.* And therefore the Chancellour here by these and the like phraes of *potestatem à populo effluxam ipse habet*, is not to be understood, as applying these words in their strictness to the Government of *England*, which is an Imperial Crown, and is not alloyed by the politique admissions into it, but that it, as to the integrals and essentials of Regality, retains its independency: but as before I noted, where such expressions, as do qualifie the terrour and fervour of Regality are used, they are with relation to the first Ages of the World, and no otherwise applicable to this Crown, then to testify its consent to such provisions, as are for the quiet, honour, and renown of it. And therefore the Law of *England* being formed to take in the good of all Governments, to carry on the Dignity of the Head over, and the security of the Members under the Head, must needs hence be evinced a most excellent wise and worthy Government, both in order to King and People.

Sir Ed. Cook Preface to 5 Rep. 3 part.

21 E 4. 39. b. cited in Calvin's Case, 7 Rep. p. 10.

¶ Pag. 488. of his Works in fol. 3 Report.

21 H. 7. p. 12. 3 Infit. 234 In gram's Case.

*Quare ut postulationi tuae, qua certiorari cupis unde hoc provenit, quod potestates regum tam diversimode variantur, succinctius satisfaciam. Ferme conjector, quod diversitates institutionum dignitatum illarum quas propalavi, predictam discrepantiam solummodo operantur, prout ex rationis discursu in ex. pramissis poteris exhaurire.*

This the Chancellour adds, to shew whence, and whereupon he entred the discourse of the Originals of Government. 'Twas first *postulationi Principis satisfacere*, the Chancellour knew that every good man is bound to serve his Prince, *ultimis viribus*, in body and mind, with his best accoutrements of both, and that according to the nature of his own condition and the legal necessities of his Prince. Now the Prince being young and unfix'd, ready to evaporate his resolution with the next humour of instability, that took this Youth not yet radicated and well principled, his Chancellour runs out into this Discourse of Governments, that he might upon the good foundation of universals introduc'd, make this particular instance a more advantageous Superstructure. For as he will make an ill Sea-man, that understands onely one part of the Compass, or how onely to use the Compass to one Port, from whence, if by distress of Weather he be diverted steerage, he's lost, because out of his knowledge. So will he be but an ill adviser, who does not understand how to distinguish of things and men, and from them to deduce his inference. The premises considered, our Text-Master next makes a concession, that as Democracies, so Regalities do vary in some less consequent appurtenances to them, and such variations he asserts not onely as contingent, and so the act of time and emergence not fore-seen by the first Designers, for of such nature some of those differences in them are; but as *diversitates institutionum dignitatum illarum*. No doubt but the Monarchies of *France* and *Spain* were in the first Founders absolute, as those of *Asia* now are, after they admitted regulation, especially the Kingdom of *France*, (the three Estates and Parliament, wherein were instituted, to sweeten the rigour of the Monarch, and to preserve a serenity of refrigeration against the Solstice, under the direct piercing line of absolute power.) No doubt, I say, but so it institutionally (in a good sense) was, though now it proves other-

*Imperatoremque vocas in quem populus, omne jus & auctoritatem suam leges, regia consilii; unde & dominus terra, & Lex*

3 Infit. c. 62. p. 147.

wife. But *England* was ever a Monarchy so temperate, that the Monarchs in it have ever gloried in the non-positivity of their wills, where not according to, and in affirmance of the Law. So much have they (the more blessed Princes they) abhorred the pernicious and atheistical president, and prophaneness of the Emperour *Frederick*, & Who being displeas'd with the Venetians, told them, that to prosecute them, he was resolv'd to overthrow all divine and humane Laws; and the rigidnesses of *Severus's*, who though he would do many excellent things, yet excus'd cruelty, because his practise: that they were rather of *Probus* his temper, whom *Vopiscus* calls, *Dignus fortis & justus*, &c. A good Leader to War, a good Governour in Peace, an Example of Order and admiration in both. So that not *Aurelians*, not *Alexanders*, not *Antonines*, not *Traians*, not *Claudius's*, are to be wish'd for, because all excellencies of them several, have been united in many of our Princes, who have been every way furnish'd with virtues to admiration; Which is the Prescript that *Seneca* gives Princes, as the means to deserve the love of their people, and to obtain the fame of most heroick Mortals. For though in the Convulsions and Apoplexies of time, when Allegiance is prevailed against by the ill habits and vitious defilements of Faction and Dissolyalty, Princes are necessitated and warranted by Prudence and Religion, to use severity, where lenity is despis'd, and the Laws of love are wholly undervalued: yet gracious Kings do rather choose methods of calmness, then those that are rigid and sunest; and because rigid Government has been sometimes as churlish physick, necessary, and good Princes have delighted rather to be loved then feared; such sweet Princes have chose; rather to resign their Governments then be truculent and secure, as in such junctures of affairs they must have been. *Timoleon* and *Sylla* did, and *Augustus* would have done it, if he could. Which our Chantellour endeavouring to commend the example, and persuasion of a just temper to the Prince, proceeds to present the illustration of the following examples, in words full of modesty: yet having an affirmative vehemence, *firme conjektor*, says he, as not positively affirming what is not in palpable proof (as all things of so remote antiquity are not) but fairly proposing them as probable, and offering what sober reason may be averred for them, and leaving the belief of men at liberty, to take or leave as they see cause.

*Sic namque Regnum Angliæ quod ex Bruti comitiva Trojanorum, quam ex Italiæ & Græcorum finibus perduxit, in dominium politicum & regale prorupit.*

Here he particularizes the institution of politique mix'd with Regal, as he had before of Regal Government alone; and the first he sets upon, is this of *England*, which he makes to be Kingdomed by *Brute*, as King *James* since him has done. *Buchanan*, a learned, though violent *Scot*, has mordaciously taunted this tradition, making *Gyraldu Cambrensis* the Author of it, a doter, delyrant, and I know not what; yea, accusing all men of folly that believe *Brute*, other then a fiction: but *Cambden* and *Leland* (both incomparable Antiquaries) as they do not cry up a story of that Antiquity for infallible, so do they not disparage it as mendacious, but leave it to be believed or not, as men please, though they themselves are satisfied of the probability of it, so does *Math. Westminster*; yea surely, *E. 1.* would not have owned the story as matter of truth, as he does in his Letter to *Pope Boniface*, which *Knighton*, Canon of *Leicester*, at large mentions, had not it been a received story, and not to be reproach'd for fabulous. I shall then take the story of *Brute* for more then a bare bruit, notwithstanding *Buchanan's* invective: nor shall I hold it any more a dishonour to our Nation, to have *Brute* the first King of this Isle, whom they say to be of no legitimate Origin, then if he were otherwise, since *Brute* was not the first nor onely *Famoso* of that Race, whose Military bravery has enfranchiz'd and redeem'd all their alloys into gemms and ornaments; yea, so long as the *Norman William* is remembred, there will be some abatement to the dislustre of them

*maris dicitur, penes quem non solum tam totius Reipub. quam belli & pacis est arbitrium.* Hopperus, lib. 7. De ver. Jurisp. Tit. 8.

*Shute Hist. Venice. p. 108. Soluta unum crudelitatis excusans. Spartianus, De Severo. p. 275 Flavius Vopisc. p. 292. edit Sylb.*

*Debet profecto Principes sive Reges prater justitiam, etiam pietati imprimis studere, ut Tutores status publici nominari mereantur.* lib. 1. De Clem. c. 4. *Tales & dicimus reges qui à bene regendo nomen habent.* Tholosian. Syntagm. Juris, lib. 11, c. 2. Tit. 6. *Basilicon Doron. 2 Book. p. 175. of his Works in folio.*

*Tholosianus Syntag. Juris Civilis, lib. 6. c. 20. Tit. 8.*

*Basilicon Doron. 2 Book. p. 173.*

*Quanta illa est stultitia, existimare magnificum vel illustre, quod à magno scelere vel flagitio est.* Lib. 2. Hist. Scotie, p. 15, 16. *Cambden in Britannia, Lelandus in Indice annex. Assert. Arthuri, ad vocem Britannia.*

*Hist. at at. tertia. p. 14.*

*Knighton, p 242. edit Lond.*

*Fuerunt & alii (prater Herculeum) complures ex adulterio gentis, ut ex veteri constat hist. ria, quorum virtus domi militiaque eximia claruit inter nos. & noster Arthurus Britanniz ornamentum maximum & sui sæculi miraculum unicum existit.* Lelandus in Assert. Arthuri.

even from him the once puissant Lord of this Nation in that predicament.

*Brute* then I take to be a *Trojan* by the surer side, living after the destruction of *Troy*, about the time of *Ely* and *Samuel*, who when his Father had trained up in Hunting and therein made him expert, did unfortunately, mistaking his Father for a Beast he aymed at, slay him: which Parricide, so contrary to the Laws of Nature; the people of *Italy* resenting, expelled him thence. He thus exposed to his shifts, casts about with himself what best and most advisedly he was to do; necessity tempted him to action, and resolution despising the danger of any attempt, made him in his own mind a Victor before an Undertaker. In his wander, (straights being the Womb and Sier of all desperate Atchievements; which though at first improbable, yet many times have glorious events (as in the case of the *Turkish* Empire, and the *Franconians* coming into *France*) having no direct aym, but taking the best Road he thought proper for a booty, to *Greece* he comes, and there meets with some trusty *Trojans*, miserable and discontented like himself. Them in servitude to *Pandrasus* he commiserates; and as their concerned Countrey-man, whose blood boyled with disdain to see *Trojans* of stoutness reduced to Vassalage, promises either their redemption, or his own mancipation: yet he wisely concealed his regret, and served his masculine intendment by such silence, as gave no mistrust to *Pandrasus*, or in any degree defeated the feasibility of his intendment. Finding therefore, that Prowess and Martial Activity was the Darling of *Pandrasus* and his *Peers*, he presents himself the Challenger of all comers to those manly Engagements, wherein he deserved to be, and justly was accounted the first of all the *Youngsters*. Being thus fortunated to a *Military Grandeur*, he looks upon Envy as a Foe probable enough to advance her fatal Standard against him; and knowing that the invisible, though formidable power of that Tyrant, as to others she had, so to him might be, the ruine and marr of all his possibilities, immures himself as wise and subtly as he might, against her. As he taught his Companions valour by his example, and order by his Discipline, so did he gratifie their merits by the spoil of his Atchievements, endearing himself by that munificence to them, that they were but echoes to his voice, and vassals to his commands. His first Rendezvouz was in *Greece*, whither all the roving *Trojans* and disbanded *Debauche's*, resort to him. (*Asaracus* of the Race of the *Trojans*, living in *Greece*, giving entertainment to them on *Brute's* account) when in a Body they were, they complement *Pandrasus* for leave to march through his Countrey; but with resolution to force, what they could not be granted. And though their pretence was to return to *Troy*, and to recover their Native Land; yet their design was to seize on whatever their power could master, and their Lust and Avarice be satiated by. *Pandrasus* looking upon armed intreaties, but as modest Treasons and silent Threats, answers them with an Army well appointed, and martially commisionated, doubling also Guards upon the prisoners, whom he thought confederate with armed *Brute* and his *Trojan Hectors*. But alas *Pandrasus* the King being in possession of plenty, was becalmed with Luxury; and *Brute* being indigent and watchful, soon found an advantage to let him and his Army into their hopes, suddainly surprises the King and his Army, and seizes on the Town, and for himself fortifies it, loosing his imprisoned Companions from the servitude they were in, and enlarging them to be *Compartizans* in his prosperity. The released *Trojans*, who had smarted under *Pandrasus* his severity, call upon *Brute* for Justice against the King; but *Brute* knew the meaning of those clamours, and unwilling to violate the sacred person of Kings, or to pull down vengeance on him by so sacrilegious a fact, thought of some expedient diversive of their clamour, and propitious to his original design of acquisition and perpetuation. Thereupon he proposes in his Council of War, what course they would advise him to steer, that their co-operation being in the Council, the consequence, if evil, should not be onely attributed to his precipitance and ill conduct, but to that publique spirit that was the *genius* to it, and to that Fate, which (as regent) commands (under God) the issue of adventures. Amongst all the Sages of that Senate, none in this exigent, gave so oracular counsel, none so obstetricated the birth of the expedient to answer both *Brute* and his *Trojans* advantage, and King *Pandrasus* his freedom and restoration to his Crown (thus fraudulently and hostilely evicted from him) but old *Memprifus*; who being of great experience and grave courage, gave *Brute* and his Companions the swalve, not to violently come near the intemperate person of the King, whom

Egnatius, De Origine Tucanum, D'Avila; Hist. Fr. p. 5.



whom the Gods, tutelars of their Vicars, do propitiouſly tender, and whoſe injuries they return in violent and tragick Vengeances on their insolent Annoyers; but in as much as the vigour of his youth and the glory of his minde ſuſcitated by thoſe hopes that are ſeconds to brave and victorious undertakings, receive no content beneath their either obtainments, or the ſame of miſcarrying in attempting thoſe difficultyes. His counſel is that *Pandrasus* be treated with for the Marriage of his Daughter to *Brute*, and that in lieu of her (and ſupplies to *Brute* and his *Trojans* transportation) *Pandrasus* be releaſed and reſtored to his Kingdom, and *Brute* with his Lady and armed Company, left to try and take their fortunes, and to diſburthen *Greece* both of their force and fears: this aſwiſe and ſeaſonable, neither beneath the ſpirit of Victors, nor insolent beyond the proportion of thoſe that were under Mortal mutability; and might be ſhortly where King *Pandrasus* was, had the univerſal Concurrence. And according to it King *Pandrasus* was appointed to be treated with.

*Pandrasus* no ſooner heares of it, but as one that bleſſed the Gods who had given him a Daughter, not onely able to redeem her Genitor and Nation, but worthy to be Wiſe to the riſing Son of valour, *Brute*; accepts the offer, cloſes with the motion, promiſes ſupply of ſhipping and victuals for their common ſupport, and gives his Daughter Wiſe to *Brute*. No ſooner was the Marriage over but *Brute* importunes diſmiſſion, and *Greece* as eagerly hearkens to it. To Sea the *Trojans* ſet, and reſolved they were to ſtay where ever they ſet their foot; as Exigence brought them out and Fortune put them in, ſo onely force ſhould compell them from their chance where ever it was. *Brute*, that had a minde congenius (as it were) with *Jupiter*, is ſaid to dream that an Iſland he ſhould ere long diſcover worthy his inhabitation, and fitted for tryal of his Manhood; his undaunted courage wiſhed for nothing more then to ſee the place, and finde the Inhabitants that durſt oppoſe his Landing. Now all the powers of his Soul are become deſire and reſolution; and as one agog to be nibling at the Prey, he bids his Oares chear up and pluck vigorouſly, that the ſooner they may diſcover their freedom and enjoyment, and bring their floats to the foreſeen fortunate Iſland, which in the viſion he had, was thus repreſented as *Leland* records it.

In Gloſs. ad nomen Bruti.

*Brute ſub occaſu Solis trans Gallica regna  
Inſula in Oceano eſt, undique clauſa mari, &c.*

*Brute on the Weſt, not far from France is plac'd;  
An Iſland by the Sea on all ſides fac'd;  
Which Gyants did inhabit heretofore,  
Now have abandoned to receive thy ſtore;  
Make to it, for 'tis thine, and doom'd to be  
The Royal Throne of thy Poſterity.  
Though Old Troy ruin'd is, yet heer 'tis new  
The World with it will ſubject be to you.*

Upon this *Brute* and his accomplices were more then ordinarily animated and uſing all endeavour to accelerate their recovery of this Iſland at laſt effected it, and finding none in Poſſeſſion of it, obtained it without bloud and quietly founded a Monarchy in it; which the Chancellour calls politique: becauſe though probably there were no Lawes precedaneous to *Brute*, ſince no people in it when he came to it; yet by his conſent to reward the valour and fidelity of his Companions by whoſe co-operation with him he acquired it: 'tis probable Lawes were made both touching his Regal Prerogative, and their civil Security in life, member, goods and Lawes; and thus according to this account, *Dominium politicum & regale prorupit.*

*Sic & Scotia qua ei quondam ut ducatus obediuit, in regnum crevit politicum & regale,*

*Scotland* is that part of *Great-Brittain* which hath *Ireland* and *England* on one part, and the Sea on the reſt of it. *M. Weſtminſter* will have it called *Scotland* becauſe it was a Land compounded of *Scots*, *Picts* and *Irish*; though this Tract of Land had much people

Scot. enim illud dicitur, quod ex diverſis rebus in unum accerunt congregatur M. Weſt. p. 102. ad Ann. Chriſti. 72.

Hist. Scot. lib. 4. p. 31. E.

Lib. 4. p. 14.

King James's Sp. White-Hall An. 1607. p. 523. King James Law of free Monarchies p. 201. Opet.

Lib. 6. & 8. Hist. Scot.

(a) See his Notes, on c. 13. of our Text, p. 5.

4 Infit c. 74.

(b) Knighton lib. 8. De Eventib. Angl. c. 4. p. 2483. Edit. London. Brempton p. 1026.

4 Infit. Jurisd. Courts c. 75. p. 345.

*Merum Imperium publici iudicii principaliter vindicat sibi tantum corporales penas; est enim merum Imperium habere jus gladii* Bocerus lib. 1. De bello, c. 14.

4 Infit. p. 343. c. 74.

*Troximum à Diis immortalibus honorem memoria ducunt præstitit, qui Imperium Populi Romani ex minimo maximum reddidisset.* Sueton. in Octaviano Augusto, c. 31.

Seldens Titles Honour, p. 298, 299.

True Law of free Monarchies p. 202 Works in fol.

*Diktatram quam pertinaciter populus ei deserebat, sano constanter repulit.* Sigonius in Comment. De fast. & triumphis Rom. p. 328. Edit. Syl.

people and many Governors in it, *Infulanorum duces cum penè pari dignitate essent*, are Buchanan's own words, all in Hubbub one against another; yet had it no compleat formal King before *Fergus*; which *Buchanan* conjectures was about the time of *Alexander's* Conquest of *Babylon* about 330. years before *Christ*. From this *Fergus* the Kings of *Scotland* have derived themselves, and he coming in with the aid of the *Irish*, made himself King and Lord as well of the whole Land as of the whole Inhabitants within the same, So *Scotland* has continued a warlike and puissant Nation, Goats in our sides and thorns in our eyes, between whom and us much blood hath been shed and hostility acted; as in *Hoveden*, *Matthew Paris*, *Walsingham*, and latter Histories appear; and till they were reduced to be Homagers to this Crown, which perhaps is the meaning of

our Text's *ut ducatus obedivit*, we could not be quiet, no nor then neither, for out they flew upon all occasions, but still we reduced them to terms: which though *Buchanan* deny against the evident Records of the truth of it, which the most learned Mr. (a) *Selden* on this Text has to my hand produced, yet sure it is, that *Scotland* was for many years and many Kings Reigus held of this Crown, and the Kings of it then Homagers for it, so testifies besides the prealleged Authorities, (b) *E.* the 1. in his Epistle to

Pope *Boniface*. And though true it be that *Scotland* never had an utter Eclipse of its ancient Crown, but that it enjoyed its own Lawes; which Lawes *Sir Edward Cook* makes much alike to our Lawes both in the kinds and parts of them: Common-Lawes, Acts of Parliament and Customs, in the books of Law, in the descent of the Crown, in the High Court of Parliament, in the degrees of the Nobility, in the State great Officers, in the Ministers of Justice, in the like Customs, Writs, Lawes accordant with *M.*

*Charta*, in Wardships with *Charta de Forrefta*, c. 11. the Proclamation of the lawes of the Sheriff, Sheriffdoms in Fee there as of old here, in the same vocables of art, in all which that Reverend Sage is punctuall, therefore to him I refer therein my Reader. Whereby it appears Lawes they have a long time had, and exercised them within it self, which was enough to declare it ever a Royal Kingdom; yet the Chancellour's words, *ut ducatus obedivit*, are most true; if respect be had to those services that some of the Kings of *Scotland* did to this Crown as its Tenurers, as did the Kingdoms of *Navarr* and *Portugal* to the King of *Castile*, of *Granada* and *Leons* to *Arragon*, of *Lombardy*, *Sicil*, *Naples*, and *Bohemia* to the Empire, the old Kingdom of *Burgundy* to the King of the French-men: which is according to the practise of Subjects who have Military Charges as *Dutchies* now are, which though in time they may enfranchise themselves, yet originally were dependencies. And this is that which the Chancellour intends by *ut ducatus obedivit*.

In *Regnum creuit politicum & Regale*. This has relation to the Lawes by which *Scotland* has been time out of minde governed. Lawes not antecedent, to but subsequent to Kings, and therefore by their power enacted; For the King being by the eldest fundamental Laws, *Dominus omnium bonorum, & Dominus directus totius Domini*, the whole Subjects being but his Vassals, and from him holding all their Land as their over-Lord, who according to good Services done unto him, changeth their holdings from Tack to Fee, from Ward to Blanch, &c. they are King James his own words. That they notwithstanding this, have the freedom of Lawes arises from the King's Permission, that so the Law shall be, and that so he swears to observe and protect it to be; and this is to make the Government *crefcere in regnum politicum & regale*. Because God's grace working on his kingly nature inclines him not onely to regard his own greatnesse but his peoples happinesse, not how to continue himself a powerful Lord over them; but to make them rich, thriving, and contented Lieges under him. So did *Augustus* carry himself, That when he might have been more then a Dictator, he declined so to be; refusing the peoples importunity to crowd the highest honours upon him, with a pertinacy equal to that of their courtiesie.

Yea if ever *Scotland* had cause to blesse God for an encrease, it was that Union which was made with *England* in the person and Accession of the wise King James, Grand-

Grandfather to our now beloved Sovereign; in whom not onely *England* remembered the Union of the white and red Rose in the person of *H. 7.* from whom he was lineally descended: but the Union of these two ancient and famous Kingdoms of *England* and *Scotland*, which God having so mercifully again made happy in the Person of our gracious Sovereign, who now blessed be God thorowly commands them both. May they, I beseech God, never be disturbed or severed while *Shiloh* comes, but let O Lord the throne of thine anointed be established for ever and his seed and succession prosper in thy sight.

*Alia quoque plurima regna nedam regaliter, sed & politicè regulari, tali origine sua sortita sunt. Unde Diodorus Siculus in secundo libro Historiarum priscarum de Aegyptiis sic scribit. Suam primum Aegyptii Reges vitam, non aliorum regnantium quibus voluntas pro Lege est; traducebant licentia, sed veluti privati, tenebantur legibus, neque id agre ferebant; existimantes parendo legibus, se beatos fore. Nam ab his, qui suis indulgerent cupiditatibus, multa censebant fieri, quibus damna periculaque subirent, &c.*

Our Chantellour brings in here a Quotation in Confirmation of his position from the *Aegyptians* the eldest of mortals, as they both call themselves and are by others believed to be. A people seated in the first part of *Asia* divided into the lower *Aegypt*, and that upper about *Nilus* extending to *Aethiopia* South towards *Sienc*, generally very superstitious and addicted to their Gods, Kings and Lawes. Now because he would press home this argument from Antiquity, and President even of those that were readiest to supererogate in their veneration to their forementioned Trinity; he singles out the carriage of the Kings of that people, as the instance of the power and prevalence law and use had with them, and by the efficacy of which their power continued less terrible then otherwise it would have been, and the Author he makes use of is *Diodorus Siculus*, a Greek by birth and an *Historiographer* by excellency; *Suidas* sayes he lived in *Augustus's* time or afore, which gives credit to *Gjraldus* his account of him in *Julius Caesar's* time, when ever, a man of sore travail and paines he was; for his *Bibliotheca* cost him thirty years journey of his life, for though he wrote other facetious discourses, yet this History was the marrow of his brain, and that wherein he yet chiefly lives. Out of the second book of this History our Text-Master collects many Instances of the Continnence and Moderation of the ancient Kings of *Aegypt*, who were not onely not *Nero's*, debauched, till they endangered their own lives and prostituted the glory of their Governments, but even *Tiberius's* beyond the proportion of man in greatness, humble, not onely to every particular as he was to *Haterius*, whom he cryed pardon from, for dissenting but in Vote from him, but also to the Senate in general; *Et nunc, & saepe alias P. C. bonum & salutarem Principem, quem vos tanta & tam libera potestate instruxistis, Senatui servire debere, & universis Civibus, saepe & plerumque etiam singulis, neque id dixisse me poenitet, & bonos & equos & faventes vos habui Dominos & adhuc habeo*, and not onely so self-denying, though 'tis so far a degradation of Majesty, that I am not willing to believe it ought above a Complement, but much beyond it *αριστην μὲν τιμὴν ἰσβαλλέμεν αὐτῶν, &c.* Their first Kings did not form themselves as exempt from Law and reducing all to their absolute pleasures, but in all things and for all actions were accountable to the Lawes; but what was *ἡδὴ δαυασιώπεια*, more remarkable they could do nothing either of (mere) or severity but just in the Method of the Law, yea he proceeds to tell us, That the ancient tradition was, that *Aegypt* was governed 800, or 1000 years by Gods and Heroiques; and when those ceased, the best and most publick spirit of the Nation was chosen King; Kingdoms being erected saith he, as rewards of those that were most usefully qualified: yea he tells us of one *Sabaco* an *Aegyptian* King, who being sold by the *Theban's* God, that he should not keep his Government long and sure to him and his, unless he put all the Priests to death, marching through their dead bodies with his Troups; chose rather to quit his Government *ἢ λύπην & κλον, &c.* then either to offend the Gods by a nefarious fact, or to make himself great and stable, or defile *Aegypt* with their innocent and sacred blood. This was the pioustemper of pristine Kings as Fathers and Shepherds to tender their people and not to raise themselves on the ruins and oppressions of them; which stories least

Pompon. Meli  
lib. 1.

Demens Aegyptus ob vanas superstitiones & Deorum potentia ab ipsis excogitata. Juvenal. Satyr. 15.

Suidas in Διο-  
γενιδιῳ Lilius  
Giraldus Di-  
alog. 8. De  
Poet. Histor.  
p. 309.

Sape ejusmodi rixis oculorum & vita periculum ad-  
m. Sueton. in Ne-  
rone.

Sueton in Tibe-  
rio. c. 29.

Diodor Sicul.  
Bibl. p. 61. Edit.  
Rhodani Impr.  
Hanoviz, 1604.

T. 41. 45. &c.

any virulent spirit should think fabulous, let him consider the Authour *Diodorus*, whom *Pliny* sets forth, as he that brought the *Greeks* in credit for truth and solidness, and (a) *Rualdus*, the learned Commentator on *Plutarch*, terms *Celeberrimus Historiarum conditor*; of whose *Bibliothèque*, though many Books are perished, as are sundry other most excellent Works there specially named: yet this our quotation is still

Apud Græcos nugari desit. Plin. De Diodoro Siculo.  
(a) Cap. 13. In vita Plutarchi, p. 22. c. 19.  
p. 39.

in being, by the benefit whereof these Stories came here to be instanced in, wherein there is confirmation given, that the true end of Government is likeness to God, in beneficence to Mankind, in propagation of virtue, and suppression of what is immoral, which is to do, as *Philo* says Kings, that consider themselves God's Deputies, and accountable to him, should and do, *Τὸ πρᾶγμα γὰρ τὸ βεβημένον*, &c. *Let who will laugh* (saith he) *I will not be ashamed to say, he onely can every way be a compleat King, who hath gained the Pastoral Skill, and by demeanour of himself in those lesser charges, learns himself what to do in the other greater.* And who in the method of this observes the Laws of his Government, not those sensual ones of his corrupted will, which carries him on to all riot and truculency, but those of Justice, Reason, and common approbation, with the people he is set over, is both a worthy man, and a wise and noble King. For 'tis a dangerous thing to give way to any start from the precise Rule of Law and Justice: no man knows where his heart will stay, who permits it in the least from Equity and Justice to wander, *Jovian* was a brave Emperour, *Armata rei scientissimus*, &c. a rare Soldier, a notable civil Governour, knowing how to keep distance to prevent popular insolence, and the contempt of familiarity; more grave in mind and manners, then years; of a long ear to reach grievances, and as long a hand to redress them, severe in manners, a despiser of riches, liberal to a miracle, an excellent Law-maker. Oh! but *Ammianns* records it of him, that he was an enemy to Christianity, and testified it in that severe Edict, that he would not suffer the *Christian Rhetoricians* and *Grammarians* to teach openly, and the reason was, lest they should withdraw Youth, à numinum cultu, from the *Ethnique Idolatry*. So dangerous a thing it is for Princes to give way to their unlimited Wills, and not to be ruled by the just Laws, which are stanch and inflexible, that it endangers the defamation of all their good deeds. Therefore King *James* the wise spake the mind of himself and all good Kings his Successours; *A King that will rule and govern justly, must have regard to Conscience, Honour, and Judgment, in all his great Actions; and therefore you may assure your selves* (saith he to the Houses of Parliament) *that I ever limit all my great actions within that compass.* And thus to do, will not onely procure the blessing of God on him and his, but prevent those *damna* and *pericula*, those oppressions that make wise men mad; those Treasons and Rebellions that are the issues of popular poverty and discontent; and those are worthy wise Princes, to defend themselves, and their loyal and peaceable Subjects against: and that not onely by the force that subdues them, but the justice and equitable administrations of Government, which shames and reproaches their opposition to, and detraction from the merit and justifiableness of them. Though therefore it be impossible to give satisfaction to ill-will and restive prejudice; and Princes are not to hope to do that, but still they shall be by refractory spirits clamour'd against; yet to endeavour all ingratiating with their Subjects, is their ease, advantage, and security; and that done, a watchful eye over *Dissenters*, and implacable *Contrarients*: will satisfy the Prince's Conscience, that he does not neglect his duty. And let obstinate *Disturbers* abide the peril of their Contumacy both to God and their Prince; for so long as the Law is the *Arbiter*, and the Judges are *Interpreters* of it, there is no danger to the Subjects while loyal and orderly.

Lib. De Vita  
Mosis, p. 612.

Ammianns Mar-  
cellinus, lib. 25. in  
Joviano, p. 439.  
edit. Sylb.

Speech at White-  
Hall, 1609 p. 540.  
of his Works in  
folio.

*Et in quarto libro sic scribit. Assumptus in Regem Æthiopum, vitam ducit statutam legibus, omniâque agit juxta patrios mores, neque premio neque pena afficiens quemquam, præter per traditam à superioribus legem. Consimiliter loquitur de Rege Saba in falsis Arabia, & aliis quibusdam regibus, qui præcis temporibus feliciter regnabant.*

This is added, to make the instances confirmatory of politique Government more plural; for as the *Egyptian* the eldest and religiousst (in the sense, Superstition is taken for

for Religion) of men; so the *Ethiopian* Magistracy was of this kind. Now *Ethiopia* is that part of *Africa* under the *Torrid Zone*, between *Arabia* and *Egypt*, called first *Aethiopia*, then *Atlantia*, and after *Ethiopia*, from *Ethiops* the Son of *Vulcan*. This Countrey also, as *Egypt*, is divided into the part of it on the *East*, and that about the Sea in *Mauritania*, near the *Red-Sea*, therefore by *Lactantius* the Inhabitants are called *Rubentes Ethiopes*. The chief employment of these poor *Heathens* (as black in vice as in face, and as far *North* from virtue, as they are from the World in situation, being as *Strabo* says, the utmost men to the *North Pole*, and beyond whom there is nothing but Sea and Sky) is hunting of *Elephants*, the Teeth of which are their chief Merchandize; though they live rudely, yet have they a great veneration of order, and a willingness to be subject to their King, the first of whom was a Conquerour, *Sesostris* by name: after the people fell into a milder way of Regiment, and chose their King by common suffrage; and while that continued, Βασίλεως τετυθισασι, &c. they chose him King, who either excelled in beauty and goodlyness of body, or skill in Cattle, or strength or wealth, but some superexcellent their King was. Their Priests of old had power over their Kings, and would be so rigid and superb towards them, that they left nothing of Majesty unassolvent: But one of their Kings dissolved that humour by force, and recovered Supremacy to the Sovereign Power. Which had, to consolidate him in his acquisition, he and the people consented to Laws, as their security, and his boundary; the particulars of which Laws, though the Chancellour sets not down, yet he specifies some special parts of them. First, concerning the King's manner of life, that was to be according to the Canon of Law, *vitam ducit statutam legibus*, that is, he was to live regularly, according to that notion of regularity the people of *Ethiopia* in their Laws have established: Which though it may be as unlike virtue and justice with us, as their faces are unlike ours; yet is the rule of it, as to them, takable from the Law of that place and people over which they are set. Which Law, because it is not always, if at all written, those *Barbarians* being ignorant of Letters; yet inasmuch, as it consists in use, custome, and practice, which are *patrii mores*, he is said further to be directed to do, *secundum patrios mores*. Secondly, concerning his Civil and Judicial Administration, that is also to be according to the direction, and not against the Prescript of that; neither in reward, nor in punishment can he go beyond or beside the Law, which was *à superioribus tradita*. Which is to be noted, because the Scripture seems to affirm much to the honour of Antiquity in that expression, *To strive earnestly for the Faith once delivered to the Saints*, as intimating, that the spirit of ingenuity and sincerity dwelt in pristine men and times, when divine and heroick men were Legislators, who stirred up by God to rule, had no design of their own separate from publique good: but did all they did with eye to the lustre and ampliation of the people they ruled in and over. For Tyranny and self-aggrandization came in with the loose and dissolute manners of gross *Ethnicism*, and *Apostate Christianity*, *hodge-podge'd*, and made up into a body of rough pride and self-magnification, which prostrates all Laws and dissolves all Justice before which mens minds were so sincere, that with *Oxphens* they attributed to Justice all imaginable praises, Ω δυνσισι δικαιοσιν, πλυολεβη, ποθενη, &c. *O most just Goddess to Mortals, blessed, desirable, which always doest by thy equity rejoyce men*, &c. and when vice began to shoulder in, then 'twas necessary to restrain by Laws, what otherwise would be without them dangerous in the liberty of using; which was also the wisdom of the Countrey of *Saba* in *Arabia* the happy: in which, as in the other, pre-cited Princes ruled moderately in old times. And thus the Chancellour, as having said enough, and no more (I conceive) then was true concerning the old Kings and times, ends this 13<sup>th</sup> Chapter; and so end also my *Notes* on it.

Plin Lib. 6. c. 30.

Geograph. Lib. 1. p. 3. edit. Casaub. Ἰέτων δὲ ἰσθμῶς πάλω ἐλέφαντων ἴσημ ποταμῶν.

Strabo Geog. lib. 1. p. 39. Lib. 16. p. 769. Lib. 17. p. 823.

Δίκαιος ἂν ἦς πρὸς τὸν ἄλλο χρῆσθαι νόμῳ. Menand. apud Stobzum, Sermon. 9. De Justitia, p. 100. Morum legumque regimen, recepit a quo perpetuum. Sueton. in Octav. Augusto c. 29.

Ex Orphici hymni justitia, Stobzus, Sermon. 9. p. 101.

## CHAP. XIV.

*Cui Princeps. Effugasti Cancellarie, declarationis tue lumine tenebras, quibus obdormata erat acies mentis mea.*

Here the Prince is brought in compendiously abridging what the Chancellour hath in the preceding Chapter discoursed of, which account he prefaces to by a candid and Princely Concession to the Chancellour, whose arguments, oratoriously preferred, had made a plenary Conquest of his reason. And that the Prince may appear a true Son of milde H. 6. his Father, and an Inheritour of all those bountifull ingenuities and heroic Grandnesses that do adorn and belustre the mindes and discourses of Princes; he does not onely not vilpend and not injure his Chancellour for his good counsel as *Heliogabalus* did *Sabinus* the Consul, whom because he was a brave man and not avoiding *Rome*, that Monster Emperour caused to be put to death; or remove him from him, as the same Emperour did *Ulpian* the famous Lawyer, and *Silennus* the famous *Rhetorician*, who were both good men and must not be endured: no such treatment has our good Chancellour from his young Prince; for the Chancellour was no *Togonius Gallus* called  $\dot{\iota}$  λογώπιος, because he was nothing but words; nor a *Cneius Domitius*, of whom *Licinius Crassus* said, *He had an iron mouth and a leaden heart*, but a man of deep reason and learned judgement, the Dulcimer of whose eloquence did so ravish his noble ear and heart, that he professes himself not onely satisfied but surprised. *Effugasti, &c.* A word not at all oratorious, for I finde it in the verbin no good Authour; but a word which our Text-Master his Authority has brought into propriety to signifie a plenary Conquest, which appears in a routing all opposition and making it quit the field, having no root nor branch, fiber or string of hopes and retreat left, untaken off; the Prince is brought in, telling him the darknesse and ignorance of his soul was such, that many prepossessions and false Principles he had imbibed and was destructively seasoned with, which rendred him prejudiced against the truth of the Lawes Excellency, and the influence it ought to have on him. But now the Chancellour having considered and soberly answered his doubts and dissolved his agregated mistakes, he gives the Chancellour the honour of his Atchievment, *Effugasti, &c.* And well he might, for the Chancellour was one of a *Genius elegant and temperate, free from the levities of language and the wander of reasoning, no lax persuasions did his prudense engine by, all the ascents that he made to the judgement of the Prince, were upon the advantages experience gave him.* And being so arrayed with power of words to chase away opponents (*Sciences, falsely so called, the pre-engagements to averfation*) and with strength of matter to confirm him in the real solidity and ground of his transmutation from darkness of minde to light of, not onely discovery, but apparent satisfaction, which he is brought, in expressing, no wonder though, in the following words he professes as he does.

*Quo clarissime jam conspicio, quod non alio pacto gens aliqua proprio arbitrio unquam se in regnum incorporavit, nisi ut per hoc, se & sua quorum dispendia formidabant, tutius quam antea possiderent.*

This is added as Induction to the subsequent matter, and it has many notable particulars insinuated in it. First, The subject matter, as I may so say, of great Governments in their Rise and Ascend, *E Gente aliqua.*

*Gens* is more then a Family, for it contains *agnatos & cognatos*; for whereas *Familia* refers to the *Cognomen* or superadded name; *Gens* takes in the surname or originall name as it refers to the common Ancestry, whence all the particulars of the family issued; so *Festus* defines it, *Gentem esse qua ex multis familiis conficitur.* *Gens* then, though it be largely taken for a Nation, yet primarily

*Sabinum consularem virum ad quem libros Ulpianus scripsit, quod in urbe remansisset, iussit occidi; removit & Ulpianum Jurisconsultum, ut bonum virum, & Sabinum libertorem quem Magistrum Cæsaris fecerat, Lampridius De Heliogabalo p. 202. Edit. Sylb.*

Tacitus.

*Os ferreum & cor plumbeum, Suetonius in Nerone. c. 2.*

*Genus eloquendi secus est elegans & temperatum, ut rati sententiarum ineptius atque in concinnitate & in conditorum verborum satoribus Sueton. de Octavia. Aug. c. 86.*

*Alciatus, Forner. & Brechtus in legem 59. ib. De verb. signific. p. 141, 142.*

*Inter Gentem & familiam illud interest quod gens ad nomen, familia ad cognomen refertur. Sigonius De nominibus Romanis, p. 352.*

primarily it signifies a kindred in nature : so *Suetonius* mentions *ex Gente Domitia dua familia claruerunt* ; thence is it that all things belonging to Families are called *Gentilitia*, the badges of their honour *Insignia gentilitia*, the Memorials of their Ancestours riches *Gentilitia hereditates*, the Solemnities kept by families *Gentile sacrum* and *Familia solenne*, to go habited after the manner of a family was to be *Gestū gentili*, and to be near of a name is termed *Gentilitas nominis*. This notion is involved in *Gens*, which is that of which politique Bodies consist. Then secondly, this Clause sets forth by way of predicate what these Kindreds did do, that was, *corporare in regnum* ; nature taught them that united force was preferable to single, that the weaknesse and dislustre of the single parts of the body was provided for in the union of their situation in the body, where in their conjunction they were both fair and comely, and this lessened them to seek the comforts and conveniences of life in Combinations and forms of living together in civil Society : and when these Rendezvouzes are the Lodges of peace, order, arts, piety, and do not harbour treason and faction against Government, they are in policy and as staples of trade, riches, and learning to be encouraged and amplified. It's true *Octavius Augustus* is mentioned by *Suetonius* to dissolve some Corporations and that justly, because they were factions and they made a party on purpose to disturb Government ; but even then, he did not meddle with the *Collegia antiqua & legitima* ; those that were settled by time and Law were kept up in their beauty, because they had a care to give no just suspicion to their Governours, but shewed themselves forward in fidelity, and thereby secured themselves from Eclipse, which otherwise they could not have done. For Governours are to use prudence both in order to their own establishment and their peoples peace, which Corporations are least of all to endanger because they have the most to lose by trouble and turmoil. Cities and Towns then being governed under Princes by prudent Magistrates, to whom they legally approve themselves loyal and dutifull, are no doubt the strength, glory, and riches of any Monarch ; which *Numa* first apprehending, put, as did *Severus* after him, all the Arts-men of Rome into Companies, *Vintners, Vintners, Cooks, &c.* setting Wardens over them and appointing them their Sphere and Motion : and whether from this *Romane* Example, or from the same Spirit in *Brittish* Magistracy, this way of Incorporation first began in *England*, I know not ; but sure that it has been and is continued with great advantage we see and know : and from them, have in all times come many of the great Estates and Families of Honour in the Nation, *But this is the Honey that Jonathan must not tast of.* And therefore I will proceed to the Text's *Corporavit in regnum*, which is the noblest Corporation, because the bringing of all the petite and distinct Corporations into a joint Stock or publick Mass which is called a Kingdom ; *The Government of one over all, independent on any but God, to whom onely personally he is to give account.* And this is so noble and necessary a Corporation, as I have heretofore made good in the Instances of the Dignity of Monarchy, that nothing I can add more, but to remember men that in this Corporation there are all the ends that reason can aim at for the comfort of conversation, concentered. 1. To live. 2. To live pleasantly. 3. To live safely. 4. To live profitably. 5. To live peaceably. 6. To live blessedly. These are all the fruits of this *corporare in regnum*, but our Text refers onely to the third safety, which it makes the cause of this *corporavit in regnum*.

Thirdly, This Clause discovers how this *corporavit in regnum* came about not *vi cogente, sed ratione eligente & dirigente, proprio arbitrio* sayes the Chancellour ; for though I know, as before I have touched upon, some Nations being victor'd, have been forced to take the Impressions the power over them would force upon them : yet many of the elder Governours were the effects *proprii arbitrii*, or at least *actu postliminio* they confirmed such *popularibus arbitriis*. Now that which the Text calls *proprium arbitrium* was not the vage giddy humour of the people as they were in *face* actuated by faction, humour and lawless Impetuosity ; but it was their judicious, sober, and religious consent according to the Dictates of prudence for self preservation and publique advancement. For if in the latitude of its corrupted sense the peoples consent and will should be regent ; as probably they would chuse a bramble-Government rather

*Sueton. in Nerone. In Jul. Cæs. p. t.*

*Qui simul habitant, unum corpus faciunt civile, & universitati & corporati dicit dicuntur, qui in communione aliqua conscripti vel admisti sunt. Tholosan Synagm. Juris lib. 3. c. 1. & lib. 1. c. 8. Tit. 1.*

*Plurima factiones titulo Novi Collegii ad nullas non facinoris societatem coitant. Sueton. in Octav. c. 32.*

*Tholosan Synagm. Juris lib. 1. c. 8. Tit. 2.*

*Choppinus De Domanio Franc. lib. 3. p. 591. Corpora omnium constituit. Lantpridius in Severo. p. 215. Edit. Sylburg.*

*c. 9. Magna Ch. & Rev. City of London's Case.*

*Nota bene.*

*Casus, Sphæra Civit. lib. 3. c. 4. p. 155.*

rather than sit contented under their Vine; so their actions would be so far from Order and Religion, that their *proprium arbitrium* would be *Blood shed, Confusion, Anarchy*; yea, were not *Kings* and *Magistrates* better to *Popularities*, then they do often wish, or they would in some humours have them, had they the power to hinder them, there would ere long be no Corporation in the World. Such *Tygers* and *Monsters* are men become, through the mistakes of Religion, that 'tis rare to find order in *Communities*, nor more civility then is the effect of fear and force. Hence the Text subjoyns the end, why Nations did incorporate,

*Ut per hoc se & sua quorum dispendia formidabant, tutius quam antea possiderent.*

When man by sin had broken his peace with God, then not onely the Creatures were let loose to great degrees of insolence against him; but the powers of mans soul that before were orderly and restrained, then rioted one against another, and all against him that rebell'd against his Maker. And then the security that men had each with other, while they were at truce with God, gave up its Charter and Priviledge. Now every man grows a *Cormorant* to his fellow, the weak the prey of the strong, and the fewer the spoil of the more in number. This keeping men in terrours, lesson'd them recollection of their dispersion. And therefore of old they did gather together, and make a common pact to defend each other; and to method their common defence, appoint a Head by whom they would be led and ruled. For Nature teaching self-conservation as a primitive lesson, found out no better or other method, then that of Government; nor any Government so peculiarly safe and contributive to peace and security as that of one. For besides, as I said before, Monarchy is of God, and generally approved the perfectest of Governments; it has been found, that more often and fatal disturbances have fallen out in *Aristocracies*, or *Democracies*, then in or under *Monarchy*. *Antoninus Pius* was so happy and wise a Prince, that *Egnatius* writes, *That for 23 years under him there was no War, because love and fear strove for mastery in his time; and as the one permitted not his friends: so the other affrightned his enemies from attempting any thing against him; whom the Gods so favoured, and they ought as a God to venerate.* And the same Author tells us, *that if Antoninus Philosophus had not been in the Empire, when he was; then the Roman Empire had undoubtedly fell.* Whereas it is rare to find such security and peace under other forms, though I confesse the *Venicians* are a noble State, and prudently successful: yet in many Dukes times they have been shrewdly threatned subversion, partly by their home-bred Emulations, and partly by their forraign Assaults. When men grow great and popular, they prove often Earth-quakes to Nations and places; for do but discontent them, and all is in a flame. Thus *Rome* felt *Caesar* and *Pompey*, *Catiline*, *Mark Anthony*, *Sylla*, and who not, that had a name and would thereupon be sure of an Antagonist. So in *Italy*, between the State of *Venice* and *Genoa* upon point of Rivalry; so great were the animosities between those two States for 100 years together, that they never met one another but with the mettle of Furies and the spight of Devils: yea, though they had the *Trovisian* sports to dandle them into a calmness; yet even there, their Jest became a fatal earnest; and so much did their stomachs disdain Captivity each to other, though upon meerly the contingence of War (which ebbs and flows Victory, by an unsteady and blind event to men) that *Andrea Dandolo*, one of the *Venetian Generals*, being taken in a fight, and carried to the *Genoesse's* Gallies, then be a prisoner of War to his Countrey's Enemies: and amongst the *Venicians* themselves, what Plots have the Governments of many Dukes been endangered by? witness that of *Marino Baconio*, who plotted to kill *Pietro Gradonico*, the Duke, and such of the Senate, as pleased him not; and that more fatal one of *Bajamonti Tepulo*, who assaulted the Duke and Senate in the Palace; That of the Rabble in *Giovanni Dandolo's* time. These and such like do shew, that as all Governments are upon prudencies tending to conservation, so are those probablest best effected, when the Multitude are anticipated their mad fits, which ordinarily they are, more in Regalities then other forms. But however in all forms, the intent is to live peaceably from spoil, assault, depredation, and oppression; which in singularities or lesser numbers, not being either so probable or possible, Incorporations into Kingdoms were thought

Covarruvias.  
practic. Qu. lib. 1.  
p. 419.

*Ut per annos tres & viginti nullum sub eo bellum fuit, amor enim & timor gentium in eo concertarunt bellum modere timentibus his adversus principem, quem ut numen aliquod venerarentur.*

*Nisi enim hic praesisset. Majestas Rom. Imperii facile hinc concidisset. Egnatius in vitis corum, p. 564. edit. Sylb.*

Hist. Venice.  
1 Book, p. 163.

Pag. 165.

Pag. 166.

Pag. 168.

Pag. 160.



thought upon and effected. For Kings for the most part have so much of divine Magnanimity in them, that as they were in the first time of the first ages chosen Governours, and since are justly become Lords of their Countreys to do good offices, as Fathers, Shepherds, husbands, Pilots, Numens to them: so do they delight (some particulars onely excepted generally to expresse grandeur of mind, in order to this design of their dignity, which *Claudius*, no very good man, but a brave Prince, shewed himself clearly and generously in. For when it was debated in the Senate, whether he should first resist the Goths or the Tyrants, both which threatned him and his Empire, gave counsel, that first the Goths should be encountred with, because they were Enemies to the Government and Roman Common-wealth, whereas the Tyrants were onely Enemies to him, as Prince and Head of the Empire.

See Law of Free Monarches, King James, p. 201. of his Works. Gothos censuit prius aggrediendo, quod si Reipublica hostes, Tyrannu principis essent. Egnatius in vita ejus, p. 563.

*Quali proposito gens hujusmodi frauderetur, si exinde facultates eorum eripere possit Rex suis, quod antea facere ulli hominum non licebat.*

This is the Argument that the Chancellour brings as inferential from the precedent reason; for *posito*, that Governments were of old by consent of the people, and that such their consent was to better their condition, to defend them from the rapes and violencies of men of fierce spirits, who came upon them with sword, and over-powring them, took away their goods, forced their Wives and Daughters, and sometimes took away their lives, to prevent the clamour of their fact. These things yielded, it will (says the Chancellour) rationally follow, that if the Governour they put themselves spontaneously under, do with their bodies, goods, and souls, what he pleases, they do not avoid the inconvenience against which they intended their subjection a muniment, but are under the same misery under another name, and so are little less then miserable, through the incorrespondence of the actions, with the intent of the Designers of them. For though true it be, that casualties may alter cases, and sweeten demeanours, which but for them would be tragical and barbarous.

Which the Historian offers in *Vespasian's* defence; In whom Avarice was either no vice, or not so great an one, if either the Calamities of his Reign, or the good use he put his exactions to, be considered. Yet truly it is below Princes to be unmindful of God's mercy, and the Laws lesson to them; and seldom are they happy, that resolutely and through design forget either; nor can they by the strictest Edicts, or the subtlest blinds, hinder people from observing, when so they do: but yet if some Princes may, others recompence their omissions by supererogations. Good King *Edward* the first spake what the mind of all his good Successours have said, and done, *En primes voet le Roy & command, que le peace de Saint*

*Avaritiam ne culpes in eo, & temporum calamitas & laudabilis ejus usus facit. Egnatius in Vespas. p. 562.*

*Providente ipso Domino Rege ad Regni sui Angliz meliorationem, & exhibitionem justitiam (prout regalis officii exposcit utilitas) plenioram, &c. Provisum est & Statutum. Prologo Statuti De Marlbridge. Anno Dom. 1267. 52 H. 2. Instit. 2 part. p. 102*

Observe well this Law, 2 Instit. p. 161. on Westminster, l. c. 2.

*Eglise & de la terre saint bien gard, &c. First the King wills and commands, that the peace of Holy Church and of the Kingdom, be inviolably kept and maintained in all things, and that Justice be done to all, as well poor as rich, without respect of persons.* Nor are the actions of Princes so eccentricque, when they are driven by the greatest and most enraged impetuosities, but that even then they have many sparks of Justice in them, at least are much better to be interpreted, then popular insults or the Lordings of fellow-subjects; yea, one time with another, there have been more Heroicisms acted for publique good by Princely spirits, then other men, and less real mischiefs by them, then by men of meaner origin have bin introduced. What may we call the action in *Giovanni Soranza* the 51 Duke of *Venice* his time, but a miracle of love to *Venice*: for whereas the City and Territory of *Venice* had been a long time, and then was under the Pope's interdiction, which caused unspeakable los to them, and crossed their Affairs in all parts of their correspondence. And Pope *Clement* took the business of *Ferrara* so hainously, that he would hearken to no relaxation, though often and earnestly solicited thereto, but obstructed any further audience of them. Which *Francisco Dandolo*, a Noble-man of great honour seeing, came into the Pope's presence, and lay prostrate on the ground before the Pope's Table, with an Iron Chain about his neck like a Dog, until his wrath being appeased, he took away that note of infamy from his Countrey. I say, what can this be called less then a notable instance of great love to ones Countrey, which onely could come from a Princely spirit: which action had its reward

*Shute's History Venice, p. 173.*

reward, for not long after he came to be Duke and procured a Constitution, *That his Country should never be excommunicated by the Pope; for such like action, or any other action whatsoever.* It follows.

*Et adhuc multò gravius populus talis laderetur, si deinde peregrinis legibus, etiam ipsi forsan exossi, regerentur.*

Inconveniencies seldom come single: when Princes are other then they ought to be, Lawes will signifie little to minde or manage them; and ever it is seen, that as virtuous and pious Princes reverence Lawes, and will do nothing knowingly and designedly to the affront and denigration of the credit of them, but let the Law have a free passage, and countenance the modest and legall averment of it: so the contrary Princes take pleasure in nothing more then in despising the Lawes and making them truckle

*Sic vox legis terror, sic legis pena fulmen; Draco non sum Atheniensis ille, neque leges sanguine conscriptas volo, sed hac velim, ut voce panaque legis deterreantur omnes, Casus in Sphæra Civitatis, lib. 4. cap. 8. p. 246.*

*Haud sanè improbandum Principem numina terris dederunt, si quantam literis & militari disciplina vacabat a venationibus, tantam curam ad Rempublicam cognoscendam impendisset, Egnatius De Gratiano, p. 572. Edit. Sylburg.*

*x Westm. 2 In-  
stit. p. 198.*

*Fornarius in leg.  
139. ff. p. 514.  
De verb. signif.*

*Sigonius lib. De  
Fastis & triumph.  
Rom. p. 274.  
Choppinus lib. 1.  
De Dominio  
Francie Tit. 2.  
De bonis advoca-  
torum. p. 99.*

*\* Holingshed. p.  
216, 265, 340, 391.*

under their Contempts and Violations; this the Chancellour calls *leso populi*: and that because the Lawes are the *asylum* and refuge that Subjects have, and if that be no shelter to them, they count themselves miserable; for some Law must be, and if the native Country Lawes do not rule, forein exotique Law must; and that, the Prince is brought in acknowledging too heavy for their stomachs to bear. Nor have any Princes well advised ever endeavoured so to tempt the people to wince and kick, as they ever have done, against Lawes introduced in rivalry with, or supersedal of their Country Lawes: and Princes are never so accomplished for their Governments, as when they make the knowledg and skill of right conducting their publique affairs, *the that* of their Excel-

lency. Which that brave King *Edward the first*, then whom no man was more sad in Counsel, free in utterance, secure amidst dangers, cautious in prosperity, constant in adversity, this Prince I say, whose Justice made his Lawes renowned, and yet continue for the most part to this day; He was a great Admirer of the Lawes and directed them to the good of the Kingdom, as he expresses in the Act 3. *Regni, Que nostra Seignior le Roy ad graund volunt et desire del Estate de son Realm redresser*, &c. For thereby shall they understand at the first hand what the people love and hate, wish and fear, are pleased with and grumble under; and by this shall they make the Law their Guide, and not listen to forein Guises and Customs, which are often more dangerous then advantageous to them; yea, saving that mutuall Correspondence that Nations have each with other, and saving that necessary pass and repass that men have to and from every part of the world, wisdom of Government has exterminated forein things as much as civilly could, especially in Lawes Preferments and Fashions. Not but that there may be good use made of some forein and unwonted things when urgent occasions require them, but to prefer them in love and esteem, because forein, has been ever avoided by wise Princes; yea, and that because they are execrable in Natives eyes, who generally love their Country usages, Customs, Lawes and Fashions, with a zeal that speaks a kinde of scorn of what is unlike or contrary thereto, that look as the *Athenians* were so zealous, that they enjoined a severe punishment to any, who being a stranger took benefit of their Law, by an *Actio peregrinitatis*, which brought the Offender first into Bands, then caused him after proof thereof to be sold, and that at so high a Rate, that his Buyer should vse him cruelly to have, as we say, his Penny-worths out of him; and *Lege Papia* Foreiners were to quit *Rome*, so in *France*, *Spain* and all Countries, Strangers and their Influences are disfavoured by their Lawes, as *Choppinus* has collected to my hand the Instances thereof; and all Nations looked upon strangers (other then upon travail and businesse) with no good eye, but made them incapable of publique offices, and with us the Chronicles tell us the complaints against them and the Domination of them in *H. 3.* time, in *E. 3.* time, in *H. 8.* time, in which they have been ever forward by their Counsels and Assistances to further unusual and illegal courses, and for it have been *Exossi*. Not that our Nation is naturally uncivil, but because hath found the experience of it; and therefore the Text joines to *peregrinis Legibus exossi*: since even all unusuall and not beloved things have been accounted

counted foreign, and thence in our Chancellours words *Exosi*, that is, perfectly hated; hated as *David* did the haters of God with a hatred חַלְוֵי of completeness and universality, at all times in all degrees; *Rabbi David* expounds it by *magno odio, imò maximo odio odi illos*, so is the sense of *Exosi* among the *Latins*, the Preposition *ex* adding vehemence to the notation of the word, to which prefixed. Thus in the very word *Tholossanus* uses it, *Nomen Regis Romanis summopere esset exosum*, and in the like words other Authors; so *Turnebus* notes *Pliny* to use *exalbidus*; and *Palman* on that passage of *Suetonius* where *Caligula* is said to be *pallido colore*, translates it *expallido*, adding *ex enim prepositio, vim & potestatem verbi amplificat*, thus *exanimo* is rendred by *perterrere*, *exardere* by *valde inflammatum esse*, *exarescere* by *sole & vento penitus siccare*, *exaturare* by that we call a glutting a mans self, *exaudire* by *perfectè audire*; and so our Text when it said *eisque exosis*, means such a hatred of grievous and illegal burthens, as makes Subjects complain to God night and day in their prayers for relief from them, yea and so perfectly hate the ill Counsellours of them, that they seldom or never have better ends then *Gaveston* had, or then *Michael de la Pool* and *Cardinal Woolsey* had, whose high and illegal actings were by the Lords and Judges articulated against as high and notable grievances, and offences; *misusing, altering and subverting the order of your Graces Lawes, and otherwise contrary to your high Honour, Prerogative, Crown, Estate and Royal Dignity, to the insupportable great hindrance, diminution and decay of the universal Wealth of these your Graces Realms*, they are the very words of the Preamble to them,

Tul. 119. 21. 23.  
Pagnir. in הלל.

Syntagm. Juris  
lib. 18. c. 2. Tit.  
10.  
Adversar. lib. 22.  
c. 40.  
Nota in Suetoniu-  
um p. 657. Edit.  
Sylburg.

3 Institutes c. 8.  
Title Court of  
Chancery p. 89.  
art. 19. 21. 26.

*Et maxime si Legibus illis eorum minoraretur substantia, pro cuius vitanda jactura ut pro suorum tutela corporum, ipsi se Regis Imperio, arbitrio proprio submiserunt.*

This is added to shew, that as nothing discourages people more then not to be answered in the end of their loyal confidence, so nothing is more to be admired in and valued by Princes, then the practise of doing what they are by office and conscience bound to do; that is, ruling by Law to the prosperity of themselves and their Subjects. For as the Kings then said to command, when he wills by the Law any thing to be done; and the King cannot do it by any Commandment, but by Writ or by Order or Rule of some of his Courts of Justice, as *Sir Edward Cook's* words are; according to which the Statute *Marlbridge* c. 1. sayes, *Dominus Rex de aliquo contemptu sibi illato alium Judicem in regno quam curia sua habere non debet*; so the King is then said to act like himself not onely to his Subjects, but even to his own souls health and happiness, when he does what he does precisely according to rule and prudently according to seasons: for this is that which will best comfort him in his sickness and death, *That he has walked uprightly before God, and done that which was right in his sight*, yea if a King should put the day of death, as a day of evil, far from him, and fancy (as I may so say) a temporal Eternity, generous and patronique actions to Subjects are the onely way to accomplish it. *Augustus* made his Subjects happy and rich by governing them, καλῶς & ἀσφίτως, according to Law and prudence; looking upon them as reasonable Creatures and treating them with no more rigour, nor no less goodness then the paternal Charity and Magistratique care he was to expresse towards them required, and this so abated the fowerness of the *Romans* against Sovereignty, which before they were prejudiced against, that they by decree of Senate thought fit to trust him to doe even what he pleased πᾶσι & ἑὶ νόμον ἀνάγκη, &c. *That he should be absolved from the Band of Law, and that he might do and not do what he would*. For since the end of Society is preservation, and of the best Society, politique Monarchy is to render the Subjects of it happy and secure, which our Text makes to consist in that by which non minoratur substantia, and in that which furthers corporum tutelam, there is good cause for Princes, as ours (blessed be God and them) mostly have done to regard the effecting of this common and commodious intent. For the nature of Subjects is, let them but be free in their persons from slavery, and enjoy their fortunes according to God's blessing upon their industry, and the Lawes fixation of them in it, and they will not onely loyally observe and cry up their Prince as the most deserving Darling of their hearts, but will bear up his person on their shoulders, and his dominion and regall title on their

2 Instit. p. 186.  
on Westm. 1 c. 15.  
Resolution of the  
Judges loco per-  
cirato, p. 137.

Xiphilinus Epi-  
tom. Dion. p.  
192. in Augustio.

Idem p. 197.

Terra centè Italia  
sub Gallorum  
principatu adeo flo-  
ruit ut vetera Ro-  
manorum Prin-  
cipum tempora non  
desiderarent. Eg-  
narius in vita As-  
nulphe p. 596.  
Edit. Sylburg

which I dare call so great a weakness and vanity in them, as deflowrs the merit of all their other excellencies. Nor do I believe there is any true art in any man that envies the good eye of God on others, in making them instruments of addition to men and ages Science. Yea, I know there can no inglorious principle raise men that write to deny themselves the pleasure of life, as they must therefore necessarily do, if they were not excited to, and kept in the resolution of it, by that inclination that virtue works to beneficence, and that testimony they would give to men and times, that they did not live unprofitably, as all they do, that die in person, and bear their Learning out of the World with them. And for my part, I think *Tacitus* his commendation of *Haterius*, to be as much a reproach as eulogie to him. *Haterius* (said he) was a Senator by family and wisdom, noted for eloquence in speech, but died intestate as to any Records of it. What the age he lived in accounted him, was more Nature's bounty then his care; for he did all on the suddain, as inconsidering after-times, so becomes his immortal wit mortal, and the main of his Eloquence inaudible to us. Thus fell it out with *Haterius*, and thus will it fall out with those negligent and incontributive souls, which treasure up (Miserlike) for no purpose, but to be said to be learned; Not considering, that there is no wisdom nor counsel in the Grave whither they go; and that it is a kind of self-felony to abbreviate the life of God's gifts in them; which they do; that make themselves, though learned, die and be forgotten, who by their Works of Learning would live as long perhaps as *Homer*, or *Virgil*, or any Authours, which do out-last Lands and Conquests, Families and Issues. This premised, I return to our Chancellour, concerning whose learned Work the Prince is produced in testimony. And that to which he speaks is to this assertion, that the Power of both absolute Kings, and Kings by politique constitution, are equal; not as they are *in actu exercito*, for so they do evidently differ, but as they are *in actu primo*, that is, as they are proper exercises of power. For power as descending from God, and a Ray of his lustre accompanied with Justice, are in Confort with Equity, which environs and circumvallates it. And as God can do nothing but what is just, because every thing that is in God is God, and every thing that proceeds from God is as God, good and holy and just in its cause and foundation: so every proper act of Power supposing an ordinateness to a good end, and by right and suitable means thereto, cannot exceed the bounds of such restraint, without a forfeiture of its nature and denomination; which makes, that vice and excesses are no proper expressions of power, but rather privations of power, sin having defaced the Image of God in Man, and rendred him naked of that ability and exercise of a right understanding, and a conform'd will to the rule of rectitude, and standard of power. For the abuson of power in its conversion of it self to one mans accommodation, with the injury and vexation of millions of others, as well the Image of God, as that one, is not the true tendency of power; nor does *dare formam* to power, *quâ* such; but is rather the absence of power, in which Lust and lawlessness, as *Master of Mis-rule*, rants and rages to an *excerebration*, which is the reason that Laws of modification are taken in, to qualifie the distemper of surpris'd power. For if the soul of man were emancipated by virtue, it would not need any regulation or monition, besides that of its inward Tribunal; which because sin does usurp upon, has some relief from those *extern adjuncts*. Otherwise, suppose a Prince so tender conscienced as *David* was, when himself, that he durst not cut off the lap of *Saul's* garments. Suppose his heart so soft and flexible, that with *Josiah* he melts before God, and dare not abide the hearing of the Law, which so represents his own sins to him, that he is ashamed to make his returns so unsuitable to God's indulgencies to him. Suppose a Prince so chaste, as was restrained *Abimelech*, and upright *Samuel*, in whom there was no immorality visible. Here the great indulged power to such a Prince, would be no other then what expressed it self in just, holy, and good actions, because the power of them is in being and

Q. *Haterius* familia Senatoria, Eloquentia, quoad virtutem, celebrata, momenta ingenii ejus band perinde retinentur, scilicet impetu magis, quam cura vigiliis, atque aliorum meditatio & labor in posterum valet, sic *Haterii* Canonum illud & profusum ingenium cum ipso simul extinctum est, *Annal. lib. 4.*

Derivativa potestas est ejusdem jurisdictionis cum primitiva. *Reg. Juris, 2 Instit. p. 71.*

Nobis ergo qui de jure disputamus qua sit in principe potestas, non licet nec licebit unquam in principe constituere potestatem, qua ejus libidine & libera voluntate absque reformationis limitibus ducatur. *Covarruvias, lib. 3: Var. resolut. c. 6. p. 261.*

full oriency in the soul: but when the inundations of justice, kindness, and equity breaks out, then is not the height of power to be accused, but want of power by a prevalence of weakness against it. *Moses* was as mighty a Monarch as ever was; his Will was the Law with *Israel*: yet do we not read, that ever he did that to *Israel* that they complained of (excepting onely in their petulant and frenzy fits) and the reason was, he proposed to himself no by-end,

end; no self-aggrandization to lacquy whereto he was to exprefs lubricity and weak-  
 nefs. This is evident not onely in Scripture, in the example of *Joseph*, who had op-  
 portunity, and probably personal power enough, to have unlawfully enjoyed his Mi-  
 strifs; but because God brought into the prefence of his mind, tamper'd with by her  
 fond solicitations, the power of integral nature, telling him it was an immorality, which  
 lie as a man was not to hearken to, and a turpitude; which as a Saint he was to defie,  
 his Mistrifs rested untouched by him, notwithstanding all her resignation to him. For  
 though true it be, that God's restraint on men be the superadded Curb to exorbi-  
 tancy; yet true also it is, that there are laid from Nature, though lapsed according  
 to the good Constitutions and habits of some men, or the particular extemporary or  
 premeditated Resolutions of others, such restraints visible and emanant, as make the  
 opportunities they have to the contrary, frustrate to all ends but  
 those of virtue and power, as in contradiction to turpitude. Thus  
 though *Tarquin's* weaknes may force *Lucrece*; \* yet, *Alexan-*  
*der* his power over his passion may preserve *Darius* his Wife, and  
 Mother, and Brother, though under his Martial power. And though  
*Attila* may come with fire and sword, and salvage-like devour  
 Countreys; yet an *Antoninus* may preserve his Conquests, and do the conquered no  
 harm but good. While a *Beltshazzar* may riotously drink in the bowls of the San-  
 ctuary, a *Cyrus* may preserve God's interest intemperate: Μεγαλοφυχίας δὲ ἐστίν, &c.  
 \* *Tis* (saith the Philosopher) a main evidence of Magnanimity, not onely to bear all conditi-  
 ons, but not to admire delights, applauses, power, nor victorions successes, but to look upon  
 ones self as concerned to do more noble acts, by how much the greater opportunities we have  
 to effect them. For the mastery of Nature in her unjust postulations, is the true specimen  
 and evidence of power; Vices and effeminacies are but privations in adjecto, the ab-  
 sences of impediens, and the presence onely of what is a member of the conspiracy.  
 And this is the reason why absolute power is so formidable, because it has the tempta-  
 tions of almost impossible refusal, unless there be a resolution of dethroning self in the  
 irregularity of its absoluteness. Nor will any man in power be good in his office, ex-  
 cept he resolve not to make the King of France revenge the quarrels of the Duke of Orle-  
 ans. *Cesar Borgia* that could not command his revenge, but act it must against his  
 nearest relations. And *Herod* that had no power to abstain from *Herodias*, nor to  
 deny her, though she sensually by her Daughter asked the head of the second bravest  
 man of the World *John Baptist. Alphonso* that King of *Naples*, who never made men fair  
 weather and good chear but betray'd them, murdered Ambassadors against the Laws  
 of Nations; sparing none whom to ruine was his advantage, forcing Subjects to sell  
 their commodities, and buy them again of him at his own rates; sell *Church-Patrimo-*  
*nies* to *Jews*, and count Religion a thing of nothing. Men and Princes that do thus  
 are no Princes of power, but vessels of weaknes. For let their Titles be never so abso-  
 lute, yet powerless Princes they will evidence themselves, that thus are vassals to Lusts,  
 and impotencies of soul, privationes in adjecto, such privations of true power, as no  
 privation besides it is. *Agefilant*, King of the *Lacedemonians*, being asked what were  
 the chief and most requisite qualities of a King, replied, *αρετης δὲ τῶν πολεμικῶν τῶν μῶν*,  
 &c. *Courage against Enemies, Kindness to Subjects, and Reason in Counsel to improve*  
*opportunities aright, and not to go against the intent of Providence in them.* And there-  
 fore the Chancellour's assertion, that both the Regal and Politique King are equal,  
 amounts to a truth; not onely as both of them are equally from one Fountain, *GOD*,  
 and to one end, *JUSTICE*; but also as the power of the absolute is but such,  
 while it keeps within just bounds; nor is the expressions of the Regal Politique King,  
 though never so restrain'd less then power, because it acts in conformity to the Law  
 of its institution, which is to the preservation of the Prince's own Conscience from vio-  
 lation, and his Subjects bodies and goods from oppression and injury, which the Chan-  
 cellour commends in all Princes, to love and value, considering the end of power,  
 which is as it follows.

*Ad prudentiam ;  
 femina praesari a  
 sanguine, quare  
 mulles carnes  
 aptives ad disci-  
 plinam, sane spi-  
 ritus subtiliores a-  
 giliores lucidiores-  
 & ut ita dicam  
 ἐξυβρίεσθαι.  
 Casar Scaliger  
 in lib. 1. c. 1. Ari-  
 stot. De Hist.  
 Animal. p. 37.*

\* *Ἀρχὸν ἔστι, τὸς ἄσπας νικη-  
 σαυτες ἐπὶ θυνακῶν ἠπείροδος ;  
 Diction Alexandri apud Stobazum, Seruus.  
 p. 65.  
 Plutarchus in Alexandro, p. 699.*

*Aristot. Lib. De  
 virtutibus apud  
 Stobazum. Serm.  
 106.*

*Privatio quantum  
 ad illud quod sig-  
 nificatur per no-  
 men, est non ens, &  
 praesupponit subje-  
 ctum & habilita-  
 tem subiecti ad  
 formam cuius est  
 privatio. Sanctus  
 Thom. prima  
 parte qu. 17.*

*Fitz. Herbert's  
 Religion and Po-  
 lity, p. 203.*

*Plutarchus in  
 lib. an Seni admi-  
 nistr. sic respub.*

*Quia, ut dicit Boëtius, Potentia non est nisi ad bonum,*

This Sentence out of *Manlius Severinus Boëtius* is much to be regarded as well for  
 the

Cassiodor. variat.  
lib. 1. Epist. 45.

In Prolegom. ad  
vitam Roetii p.  
305 oper  
Quod in liberta-  
tem populum Ro-  
manum videre  
intelle vincta  
re Libus Gyrat-  
dus dialog 5 De  
Poet. Historic.  
p. 219  
Impress. Basilie  
Ann. 1570.

Impress. Basilie  
Ann. 1570. Hen-  
ricpeter.

Prosa secunda lib.  
5.

the truth of it as the authority of the Authour who was a most noble *Roman* Senatour, for learning and at the glory of his age and time, which was under the Empire of *Zeno*, *Theodorick* the triumphant *Goth* had so great a value of him, that he knew not how (as he thought) to write enough of him, *Quasunque disciplinas vel artes fecunda Græcia per singulos v.ros edidit, Te uno Authore, patrio sermone Roma suscipit*, are the least of his words to him: yet even this incomparable *Patrician*, whom any man but a *Goth* would have valued as a none-such (*agnoscant per te extera Gentes, tales nos habere nobiles, quales leguntur Authores*, are the *Goths* very words;) even this man was with *Symmachus* his lawer-in-law a *Patrician* too, and many others of right virtuous parts and noble Extract banished *Rome*, and after *Put to death*, upon bare *Suspicion* of *inclinng* to *Rome's* *Enfranchisement*; or as *Murmelius* has added to it, *Be-cause he was bold against Arianism, with which the Emperour was infected and Plague-sick of*; which quarrel purposely picked, and offence unjustly taken at his learning, eloquence and integrity, endowments too many to pimp to base and illiberal Projects, robbed the world of his excellent life, and that Orb of the lustre of his transcendencies, whom *Julius Martiannus Rota* in his Prefatory Epistle to his works doth more at large set forth, and *Murmelius* also in his *Prolegomena*, this was the Authour. The sentence here out of him quoted is no less ennobled by its allyance to truth, then to him the utterer of, 'tis no doubt out of his Books *De Consolatione Philosophia*, which he wrote when in Banishment at *Ticinum*, five they are in Number, according to *Tully's* five Books *De Finibus bonorum & malorum*, and though all his large Volume, on Parts of which *Murmelius*, *Agricola* and *Porretas* have commented, are Manifesto's of his transcendent learning and most Christian Accomplishment; yet his Books *De Consolatione Philosophia* are the flower and dainty of them all, and though he was put to death about the year *Ann. 524.* after *Christ*, yet do they survive to render him remembered even to this day. I confess, yet I have not found the very words here quoted in him, but I have found what confirms them, *Extrema verò est servitus, cum vitiis dediti à rationis propria possessione ceciderint*. For he finding that power originally God's and part of his Essence is not exercised by him but to the good purposes of Creation, Conservation and Glorification, and knowing that the trusts of power, his peculiar, which he graces men with, is *in ordine ad bonum*, and is onely such while it is so, and when it is not, ceases to be power and is the privation onely of it, and as it were a *non ens*, no creature of God's, no derivative from him but an usurpation of mans upon the permission of God, as ' may so write. He I say, knowing this and that by the sad experience of his own suffering under the undeserved rage and implacable fury of *Theodorick*, who was onely powerfull in the multitude of vices concentrating in his soul, and rendring the faculties of it weak and opposite to good, gives this Monition to him and to all men in condition like him, that *there is no power but ordained for good*: And therefore that either great men must be good and use their greatness to promote goodness, and discountenance the contrary; or else they have no power in them; for that is onely to good, which vice and truculency is opposite to. And hence he infers, that to be able to do wickedness is onely the power of sensuality, which being proper to beasts is unproper to men, whose power is ordinated onely to good.

*Quo posse malè agere, ut potest Rex regaliter regnans, liberius quàm Rex politicè dominans populo suo, potius ejus potestatem minuit, quàm augmentat.*

This sentence supposes, that the more Princes are left to their wills, the more temptation have they to inordinancy; and the more invitation they have to it, the more probability have they of surprize by it; and the more surprized they are, the less will they boggle at the En and folly of the lust that victors them, which danger so really perillous to the interest of God in us, he layes down more probable to seduce and prevail upon absolute Princes then politique ones. And then next he concludes, that the prevalence of such temptation is so far from declaring the effects of it, the creature of power and expatiating the fame of him for it, that it is on the contrary an argument not to be refuted, of Impotency in the soul; wherein Vice alone has the Command, and man being under the Tyranny

Trinus homo nihil omnino brutalitatis habuit, hoc est nihil omnino brutalis desipientia aut temeritatis sive precipitationis habuit, sed rationalis & modestus erat in statu illo & creatus ad bona spiritalia, & aversus ab inferioribus suis. Gulielm. Pausientis, De universio partu prime, c. 59. p. 852.

Tyranny of the Beast, the body is made a *non ens* as it were to all impeding of this abusion of power. And hence it is, that I am so far from fearing men for their Fortunes, Armies, Titles, Favours in the World, when they are vicious, that I cannot but despise their fury as weakneses, their favour as danger, their gifts as poyson to integrity; and conclude them in the Hell of misery; while in the height of their jollity, and amidst the pomps and gaities of their Attendants. It was a brave Character *Eutropius* gave *Antoninus Pius*, *ἔργον σευ εὖδὲ μὲν ἦν, &c.* A most honest man he, while a private man was; but more, if possible, then an honest man. he was when in the Empire: then he was as good as all the opportunities to goodness could make him, and no more evil then the presence and predominance of virtue would permit him. Oh there is no virtue more Kingly, then generous greatness of mind, and Royalty of Humour. *Malcolm* the third of *Scotland*, was famous for this; so was King *James* in the Case of *Bothwell*: and so was the late King *Charles*, whose words were; *For those that repent of any defects in their duty towards me, as I freely forgive them in the word of a Christian King; so I believe you will find them truly zealous to repay with interest that loyalty and love to you, which was due to me. So again, I have offered Acts of Indemnity and Oblivion to so great a latitude, as may include all that can but suspect themselves to be any ways obnoxious to the Law, and which might serve to exclude all future jealousies and insecurities: I would have you always (meaning our now Sovereign) propense to the same way: when ever it shall be desired and accepted, let it be granted: and so blessed be God and the King it has been, not only as an Act of State-Policy, but of Christian Charity and choice.* Thus that brave Prince made good his power, in *Boëtius* his sense, *Potentia non est nisi ad bonum.* And that the greatest Monarch in the World is not great in his actions of lawless cruelty, and rigorous severity, but in his virtuous, kind, and conscionable expressions of the power God has given him, which he so far benefits himself and others by, as he makes them good and happy, by his example and exercise of it: Nor needs such a Prince to be limited by Law to do, who voluntarily limits himself by that Law which he allows in his Government, as the common direction and rule to all persons; and to the observation of which, he holds himself obliged in Justice and Prudence. And hence is it, that all the happiness that lawless and injurious Power promises it self, is but in *Parisensis* his words, *Somnialis felicitas*, the power of fancy and opinion; 'tis no real power, because it is power which leads to misery; since by the love of it as irregular; a man is made more and more unable to good, assuescency in evil making it natural to him, and impossible for him, without extraordinary power from God to be recovered from it. And hereupon it is, that all the mis-employments of God's favours to men; (and such they are, when by them disservice is done to the giver, and as far as in the receiver is, a real design against him managed) are not onely sins in God's account, but real weakneses in their own nature, because arrived to be what they are by the inactivity of the true presence and power of virtue in them. For as that of the School-man is true, that all virtues in glory will be in act: so is it in a sense true here, that all power of virtue will be active in a virtuous mind, while virtuous it is, and deserves the glory of being, and being accounted such; and where the contrary is, there how great soever the extern power is, there the actions will declare no power but weaknes, because separate from virtue, and disposed to a contradiction thereto.

*Malus autem sibi regnet servus e nec unus hominis sed quod est gravius, ut. tot dominorum quos vitiorum lib. 4. De Civit Dei. c. 3.*

*Eutropius, lib. 7.*

*Spotswood, p. 31, p. 142.*

*Eicon Basilic. c. 27 to the then Prince of Wales, our now Sovereign.*

*c. 17.*

*Non caret regia potestate qui corpori suo noterior rationabiliter imperare, vere enim dominator est terra, qui carnem suam regit legibus disciplina. Sanctus Augustin. De Offic. Magistratus, c. 1. contra Epist. Manichæi.*

*Somnialis felicitas ex necessitate maxima miseria est, quia qui magis amat luxuriam, magis captus est in ea, & magis servus ipsius magisque impotens ad alia bona acquirenda. Cap 20 De legibus, p. 52.*

*Consuetudinales habitus assuescitione operum acquiruntur, & quodam modo generantur, partus secunda De Universi. parte prima. c. 149. p. 940.*

*Omnes virtutes erunt in actu in gloria. Paris Lib. De Retributionibus Sanctorum c. 1. p. 306.*

*Potentia non conjuncta actu est imperfecta. Durandus, Quæst. 1. lib. 1. Distinct. 42. p. 253.*

*Nam sancti Spiritus jam confirmati in gloria, qui peccare nequeunt, potentiores nobis sunt qui ad omne facinus liberis gaudemus habentis.*

This is brought in to prove the Argument, that the least power to do good, is greater then the greatest to do evil; because power exercised in well doing, acts properly according to the institution of power, which is to a virtuous activity: but power expended upon evil, is not power but weaknes. The privation of power, which the Chancellour makes good, from comparing the glorious Angels with us men, which

*Potentia illa est magis libera, per quam habentis principalium dominum Durandus, lib 2. Distinct. 26. q. 3. p. 367.*

fin

*Statu gloria nihil habet imperfectio- nis aut carentia, seu desiderii cuius- cunque rei non ha- bita Parisiensis, secunda partii De Univerſo, part. 1. c. 6. p. 769.*

*Aequalis erit gloria Sanctorum Spirituum & An- gelorum, Guiliel. Paris. part. 1. De Univerſo, c. 43. p. 609.*

*Paris secunda De Univerſo, part. 1. c. 153. p. 946.*

*Quia conjunctio vel applicatio animarum hu- manarum ad Deum altissimum, Descriptio ca- rum est, quod tibi dubium esse non debet, Idem c. 152 p. 944. Parisiens. c. 153, p. 946. Tom. 1.*

*Secunda partii de Univerſo part. 1. c. 149. p. 940.*

*Duandus. lib. 3. dist. 1. p. 492. b.*

*Angeli ob perma- nentem in natura stabilitatem nomi- ne columnarum in Scripturis appel- lantur. Benzoni. in Tsal. 26. c. 3. p. 12. In Cap. 3. Sapi- entiae Tom. 1. p. 352.*

sin by reason of the converse we have with, and the addition in us to irregularity, and a latitude of choice and love (which the glorious Angels confirmed against and undesirous of, being in plenary glory and under no carency or desire of what they have not) are said to be and that most truly *potentiores nobis*.

This Clause then is thus to be considered. 1. The subjects of it are Spirits and holy Spirits, dignified from their state-Glory, from their stability in that state, confirmed, from their purity and impeccancy as a fruit of their Confirmation, *peccare nequeunt*, from their endowment or priviledge thence resulting, because they cannot sin, therefore they are more happy and valuable then we who can do nothing but sin, *potentiores no- bis sunt, qui ad omne facinus liberis gaudemus habenis*.

*Sancti Spiritus.*] These are the Angels not excluding the Spirits of just men made perfect, for they are both admitted to one and the same glory; These are the Peers of the upper house of glory, who continually behold the face of God and are ministring Spirits for the good of God's Elect; these in their nature state and condition are a-

*byssalis latitudinis & profunditatis, as Parisiensis* his words are, and therefore I shall not engage in those Inquiries which the Scholes have curiously about them, which some of them do aggrava- te almost to a blasphemy. That which is pertinent here is to to consider them as the glorious Instances of divine goodness and power, that though they are creatures, and as spirits lapsable, as appeared by the fall of some of them, *Lucifer* and his Apostate con-

federates; yet those that stand are to be admired for the illumination of their Intellects, the purgation of them from corruption, the perfection of them in their state, by the help of all which they are made fit for the Service of God, for the performance of his Com- mands, and for the expression of benevolence and charity to the Militant Heirs of glo- ry, according to that sevenfold good office which *Parisensis* says the Angels and Saints in glory do to us here. Spirits then they are by nature, holy by donation and Charter of Royal Endowment, which our Text calls *Confirmatio in gloria*; Glory as that is a state of perfection and incarency, *visio maris*, the fruition of what ever the heigh, breadth, length and depth of mercy has to give, yet is it advanced by the im- possibility of abbreviation, decay or dissolution of it. And this depends upon the secu- rity the Saints and Angels have for their indetermination, which is in the word *confir- mati*; whereby they have not onely all joyes for the kind but the ultimityes and quin- tessentialities of them according to the true and furthest notion of glory; not barely passed, as I may so say, the Sovereigns grant, but ratified irreversably, God has set to the Seal of his truth, inviolate, inviolate, that the glory they have, they shall hold so long as he himself lasts, and this is that act of goodnesse and power which the Sove- reign and Bishop of all creatures both in heaven and earth, has fixed on his Vessels of glory for their Seal of certitude and continuation, which they cannot either by their own defect, lose, or their desertion of their state deserve to have taken from them, since not onely *ex adiutorio sibi co-assistente* but *ex dono inherente*, they cannot sin *peccato com- missionis aut emissionis*, as the Scholes speak, but they being once confirmed in glory are for ever tenable of it and in no sort separable from it; their Confirmation being not *via sed patria*, not in order to completion but the very completion of their glory in the present possession of it: and because of this faith *Benzoni*s is it, that the Saints and Angels are set out in their state of stability by a pillar in Scripture, *Revel. iii. 12. To him that overcometh will I make a Pillar in the house of my God.* And hence *Bona- venture* pleases himself and me much in advancing glory by these three steps of Medi- tation. 1. *Cogitatio veritatis*, the soul shall not onely not harbour error but meditate on truth the subject of all its delight. 2. *Inhesio bonitatis*, there shall be in the glorified Saint an universality of goodness, which shall so overshadow it and adhere to it, that it shall not be separable from it, for God who is all good shall be the object of its love and admiration. 3. *Perfectio Comprehensionis*, it shall fully comprehend what God is, and what the glory in which it is, is. And all this by its confirmation in glory, which considered, the Chancellour's consequence is most direct, *peccare ne- queunt*; Sin is the desertion of God and adhesion to his Creature, a Lapse from his Constitution into somewhat of contrariety to him; but this the Saints and Angels be- ing pass'd possibility of, because they are in glory where no temptation to sin, no nature



nature serviceable to sin is, they are well said, *non posse peccare*; not as Creatures, for so they are peccable: but as confirm'd against degeneration and lapse, from whence, as God's powerful indulgence to them, arises their impossibility to sin, as also their prepotency to us: for in that they are sinless, their created power is in its pristine vigour and orieny, immaculate without spot, regular without any inordinateness, plenary without any abatement; so that as they have glorious states, so proportionable natures, delights, activities, and operations, and transcend us as well in what they can do, as in what they are. For where as we men can do nothing, but by assistance of things, without our selves, and to such proportions as are suitable to finite beings, and under such restraints as may interpose, and if they do, will defeat us. The glorious Angels, as Spirits of power, activity, and purity of essence, can from the energy of their essence, as it is indulged by God, and priviledged to purposes of ministration to his glory, and his Saints good, effect stupendous things, and by hidden and secret methods, which the wit and enquiry of man by not discerning is so far from ability to prevent, that he cannot penetrate the intent and purpose of them, till they discover themselves in their effects. Hereupon our Lord Jesus is set forth in the Old Testament, under the name of the Angel, *Exod. 14.*

19. and much of the expressions of Divine Power over the World, either for tuition or destruction, is from God manifested by Angels: As his Angels are ministring Spirits, and gather his Elect from the four corners of the Earth; so are they the Dissipaters and Ruiners of all pernicious persons and practices, which are antipodique to God, and enervative of his Glories progress and augmentation. 'Twas an Angel that destroyed *Sodom* and *Gomorrab*. 'Twas an Angel that destroyed *Senacherib's* Host in one night; 'Twas an Angel that comforted *Jacob*; and an Angel that went before *Israel*; And an Angel that was to destroy *Jernsalem*, *2 Samuel xxiv. 16.* And thus they are *potentiores nobis*; they are indeed more excellent then we, as they cannot sin corporally, because they are spirits, as they cannot sin voluntarily, because they are *sancti spiritus*, and their Will is wholly conform to Gods, in the parity of it, as well as in the glory they partake of by it; and then by sin they cannot demerit of God, and so be deprived of the glory they are invested with, because they are confirm'd never to be other then they are; and because they are inflexible to sin, and desie that which we call desire and delight, being wholly taken up with the Vision of God, and dis-ingaged from this World's *Enthusiasms*, and the captivations of sense, they are well said to be *potentiores nobis*.

Indeed the power of man is little but vanity and vacuity; as this life, the time of power, is but a span in length, so but a flower in duration; and all the sphere wherein mortal power acts, is but this vain and vild World, and no further is it capable of Regency, then by, and under God, and according to the Commissions of his permission. And when in the exercise of it we consider it, there is more cause to weep then rejoyce, that so fair a beauty should be courtezand'd to pleasure sin, and by it to work iniquity with greediness, which is that the Chancellour means by *liberis gaudere habemus*, a phrase purposely used, to express the licentiaity and excess of mens use of power. *Adam* used the power of his *free-will*, to disobey God in eating the fruit he was forbidden; and *Cain*, the natural power of an advantage credulously given him to murder *Abel*; *Noah* had a power of sense, and he abused it by the intoxicating delight of the grape; *David* had a masculineness, which he deturpated, by impregnating *Uriah's Bathsheba*; *Herod* had a power of tongue, even to the stupesaction of his Auditors, and he listned too much to vain-glory, and thereby abused his power; *Nimrod* had a power in his Arm, and art of cajouling men into his politique Net, but he abused it by cruelty. These, and thousand of examples of the incircumscription of power, and the vanity of its excess and eccentricity, every Story, every Age, every Man almost confirms: And all this proceeds from this of our Text, *liberis gaudere habemus*. We would all be *Originals* and *Independent*, loath we are to be under the *yoak* of restraint, though it be lined with the velvet and shag of *Ease* and *Innocence*. We would *Phaetonize*, till we hurried *GOD* out of the *Throne* of *Rule*, and brought *Heaven* and *Earth* into a

*Omnis virtus generaliter, & omnis potestas expeditior & potentior & efficacior ad id, quod potest per semetipsam, quam ad id quod non potest nisi per aliud; similiter omnis virtus, & omnis potentia potens per se, hoc est, essentiam suam, vel per id quod est, apud eam & in essentia sua, quam quavis alia, qua non potest nisi per id quod extra ipsam est. Guiliel. Parisien's, secunda pars, parte secunda, c. 152. p. 944. De Universo.*

*Angelus perfecte cognoscit perfecte omnes causas naturales necessarias, & contingentes, ac per hoc sciat, qua causa aliam impedit vel non. Durandus, qu. 7. lib. 2. Dist. 3. p. 315.*

*Sanctus Hieronim, lib. 2. in c. 3. ad Galat, Tom 19.*

*Gen. 19.*

*Gen. 31. 11.*

*Exod. 14. 19.*

*Angelus non potest demereri, quia peccatum seu demeritum non potest esse in voluntate nisi procedente aliquo defectu in cognitione. Durandus qu. 2. lib. 3. dist. 18. p. 546.*

*Gen. 4. 8. c. 9. v. 21.*

*Gallemaufre*; and this comes from our *Pride* and *Presumption*: our *Tongues* are our own, they said it; who told no truth with them; and to bind the hands of men to the peace, makes them stark mad of revenge. The sturdy *Stallion* does not more fret when he is curb'd up, nor more riot, to the danger of his *Rider*, when let loose, and the rein given him: then men do rise in spirit till they have power, and rage with madness when they have it. Therefore the Chancellour understanding *Habena*, as *Servius* does, *Pro potestate & facultate*, intends, that men by being glad of a free reign, hold themselves priviledg'd and at liberty to do what they list, which the Scripture calls, *to work iniquity with greediness, and to do what is right in their own eyes, which is impotency* in the *animu*, and *non ultirality* of it. For then all fear of God and Man being rejected, the brutality of sense evicting the ingenuity and sovereignty of Reason, man becomes beneath the Beast that perisheth; that like as that *Fornax & caminus charitatis*, as *Parisensis* phrases it, *That love of good men to God, swallows and drowns all self*: so that nothing is now Competitor with it, but it acts in *ultimo fortitudinis*. So in the error and misplace of love on our selves and on the practices we are in our opinion aggrandiz'd by; the swallow and gulph of the whole man is to gratifie his sensual project and libidinous apprehension; and this is *libere gaudere habenis*.

In 12. Æneid. 107

Lib. De Reatrib.  
Sanctorum,  
p. 316.

*Solum igitur mihi jam superest à te sciscitandum, si lex Angliæ ad cuius disciplinam me provocas, bona & efficax est ad regimen regni illius: ut lex civilis, qua sacrum regulatur imperium, sufficiens arbitratur, ad orbis regimen universi. Si me in hoc demonstrationibus congruis indubium reddideris, ad studium legis illius illico me conferam, nec te postulationibus meis super his, amplius fatigabo.*

This conclusion of the Chapter presents the Prince both rational and tractable; and as in the one an acknowledger of the Chancellour's learned assistance: so in the other an expecter of his further satisfaction, in what he yet rests uninformed in: having therefore from the prealleged Arguments found relief, he subjoyns an insinuation of a restant scruple, which his oracular Head is to solve, *Solum igitur mihi superest*.

This *solum igitur mihi jam superest*] tells us the Prince's ingenuity, that though he was of perspicacious wit, and knew all that his years and education could advantage him to; yet he is free and noble to confess, that something is wanting, which he requests his Chancellor to supply to him. For notwithstanding it cannot be denied, but that God does give often those that are born to greatness, wits and minds suitable thereto, and paramounting the ordinary indulgency to other men, as far as their hopes and fortunes are beyond them, as *Salmuth* makes good in many notable examples: yet are the highest accomplishments in them but rude and dangerous, if not polish'd, prun'd, and regulated by grave and virtuous tuition: nor is all the knowledge Youth has, any true ornament, if it reduce not the mind under the Empire of virtue, and settle it not on the appetite of useful knowledg; for as the body may be without delicate food, and thrive well, yet will have no grand strength without bread, which is the staff of life: so the mind may be variously adorned with studds, and embroideries of art; and yet being void of true applicative Wisdom, need its *Habeas Corpus* to remove it from imprisonment of error and ignorance, to have benefit of the *solum superest*, that necessary, proper, and prudent knowledge, which it is losingly wanting in. And this is that, which because the Prince is in his own opinion without, he endeavors from his learned Chancellor to be supplied with, *à te sciscitandū*.

*À te sciscitandum*] The supplement of this knowledge he'll have, *à digno*, not from any that obtrudes himself upon him, nor from any that on other accounts come not before welcome to him; but *à te sciscitandum*, as the properest and pregnant'st Resolver of them, and one who having faithfully attended the misfortunes of my Father and my self, and thoroughly digested the Providences of God, the provisions of the Law, and the intrigo's of Government, art able to reconcile my prejudice to their prescript, and settle my wavering by their stability. From thee, O good man, and grave Chantellour, do I alone desire direction and resolution of my doubtings. This is the sense of *à te sciscitandum*; which being the voice of a great mind, lessons us to conclude the fixation of brave

Singulariter vero notandum est non infrequens esse, ut heroum & principum liberi, etiamnum adolescentuli, ardua & consulta negotia scilicet expleuisse leguntur, sunt quippe occulta quedam virtutum semina regibus ingenua qua si adolescere sinantur, repente fructum ferunt industria & gloria supra aliorum mortalium facultatem, & ante tempus natura legibus prestatum, quasi præcoci frange. In Panctiol. Tit. 43. part. prima p. 154.

The Chan-  
cellour's  
Character.

brave and Princely Spirits, who as they never fettle but upon premeditation, so alter and remove not their favours, but upon great and apparent provocation; and that not onely for fear of the detection of their secrets, which being under the covert of their Confidants, may by the spleen and choler of their discontents, take air and be vented to their Principals dishonour; but also because levity and futility thence chargeable on greatness, indisposes it for the future, to be relyed on by those *Ministers of State*, who are unquestionably necessary to carry on publique and sovereign Designs; which the Prince considering and judging, to avoid the suspicion of such Princeless verfatility, points to our Chancellour as the very very person of whom he onely would enquire, and from whom alone expect an account of what he was in suspence and doubt of. This for what in the clause is prefational, the singularity of the thing, and the person whom he singles out to be enquired of in those words, *Solum igitur mihi jam superest à te fisci-tandum.* Now for the matter and substance of the *Quare*, that's *Lex Anglia*, no trite or vulgar subject, but a Princely and noble one; a Law, the fruit of justice collected from the Divine and Natural Law, and digested into useful forms and methods, fit for this Nation, the Queen of Islands, and the lustre of *Europe*, *Lex Anglia.*] Then, why this Law is so searched into, that's by reason of the Chancellour's solicitation of the Prince to love, embrace, and study it, [*ad cuius disciplinatum me invitat,*] saith he; since Sir Chancellour, your gravity directs me to it, as the subject of my minds love and engagement; that mind of mine requires me rationally to search, whether the choice be worthy it, before I own my self a Disciple to, and put my self under the Discipline of it. For as I would not refuse your provocation with rudeness, so neither would I embrace it without satisfaction, that fit it is I should. This makes me enquire for satisfaction, that having found it, I may submit my self to the learning of it. Then thirdly, what of the Law of *England* it is, that the Prince would know, that's contain'd in those words, *bona & efficax est ad regimen regni illius*, a shrewd question worthy the Prince to ask, and the Chancellour to answer. For *England* being a Kingdom of consequence, and governed by a Law, 'tis fit it should be a good Law, *respectu justitiae*, and an effectual Law; *respectu prudentiae*, every way commensurate to the superstructure that should be laid upon the foundation of Law. For *bona* here is not onely taken for *propitia*, as *Servius* takes it; *Adsit letitia Bacchus dator & bona Juno*; but *pro existimata & virtute pradita*, and *efficax* is that which *ad aliquid agendum maximè conducit, efficax adversus serpentes, efficacissima auxilia*, used by *Pliny*, *Tully*, and others, to express energie and fitness, throughly to perform any thing. By which two words as referring to the Law, the Prince intends the interrogation of his Chancellour, whether the Law was such for the justice and wisdom of it, as would answer the end of Government over the people, and make the people happy and contented with it: Whether the Concerns of the Crown and Subject in Peace and War, in Civil and Ecclesiastical Matters, was duly provided for by it: this is the sum of *bona & efficax*, that not onely the Plaster should be broad enough for the sore, but the matter of it be well composed, to the end of its application, to asswage tumours, and congregation of ill humours, and to keep the parts of the politique body hail and thriving. For as undoubtedly, that is the best diet that enables the body to be vigorous, and keeps the colour from decaying; so is that the best Law that is proper to keep Government in a prudent mediocrity, because it takes away all the occasions of misunderstanding and disaffection. And this the Prince would know, whether the Common-Law does or no; Why? Because he is now in debate, whether Law to adhere to and study; and resolved he is to choose the best, that is the most proper and suitable to the people of *England*: that ever being the best Law to rule by, that is most adapted to the nature of the Subjects it is to rule: which because the Law of *England* is to the people of *England*, is to be therefore allowed the best Law for *England*: so the Law thinks, and has published of it self, and its testimony all wise men are to believe and take, according to the Maxime of Law, *Neminem oportet legibus sapientiore.*

<sup>r</sup> *Aeneid.*  
Flin. lib. 245.

\* *At τε ὁ ἀρε-  
στασία ἐστὶν τε-  
ρῆ τῶν ἀσσο-  
μένων σωματῶν  
καὶ δὲ τῶν  
Livia ad Augu-  
stum, apud Xi-  
hil in Epitom.  
Dionis, p. 212.  
edit. Sylburg.*

The like may be said of the *Roman Civil Law*; which I account with that very learned Civilian and prudent Gentleman, *Lex Legum*, above all humane Laws whatsoever. (For the sacred Empire, allowing it the particular *Salvo's* from the common rule of it, which all Nations allow with the use of it,) it being not onely for the most part the Law of it, but that which is suitable in its capacity and concern, to the vast requiries of the

Dr. Wiseman in  
his Book, *Lex  
legum*, printed  
1657.

Empire and Continent; and that by the Justice and Wisdom whereof, no doubt but great expatiation and lustre has been given to it. For since the *Roman Civil Laws* were the quintessences of the *Greek Laws*, and improvements of those of the twelve *Tables*,

*Fremant omnes licet, dicam quod sentio; Bibliothecas me hercule omnium Philosophorum, vides mihi videtur duodecim tabularum libellus, si quis legum fontes & capita videtur, & auctoritatis pondere, & utilitatis uberitate superare. Patricius Senent. lib. 1. Instit. Reipub. Tit. quinto, p. 21. b.*

which a learned man says thus of, *Let men rave and rage as they list, the Book of the Laws of the twelve Tables, are in my opinion not onely as the Fountain Laws, and heads of inchoat order, to be preferred before all the Libraries of Philosophers; but also for the weight of authority, and abundance of profit, to the wisdom of life that thence resulteth.* And daily supplies have been made to them as emergencies require, and the prudence of experience has solicited, and accordingly has effected. Even our Chancellour, though he were by

profession a Common-Lawyer, and by choice a Champion of it against the introduction of the Civil-Law, in competition with, (or what he thought rather) in subversion of the *Municipe Law*; which time beyond Record, and success beyond parallel, has radicated here; yet is even in this designed *remora* to that projection, a Confessour by the mouth of the Prince, that the Civil-Law (with the reserves of particular Customs, which in every Countrey is used, besides the Texts of the Law,) is the Law that governs the *Roman Empire*, and is sufficient to distribute Justice by it to the Continent. So true is that of *Patricius Senentis*, *Ex illis namque dignitas omnis expetitur, &c.* For from them every Dignity is derived, since all industry and honest labour is by rewards, splendour, and glory herein encouraged, and all the vices and frauds of men punished with fines, disgraces, bonds, stripes, banishments; yea, even death. Thus he. And this does not onely merit for it the honour of good words, from men of learning civility and gratitude, who must and ever will (passions and private concerns laid aside) express it to her, as the Mistress and Magazine of Learning, Wisdom, and Order, suitable to the Universal Nations she is oracular in, and accordingly furnished for; but also apologize for, and obtain from this Nation of *England*, a high respect to her learned Sons the *Civilians*, whom I shall delight to see encouraged according to their merits, and that modesty, which their Prudence will dispose them (I know) to express to the *Municipe Laws* of this Nation, which in the allowance of the *Civil Law*, in the Cases usual and as wonted, before the late distractions, will so I trust satisfie the Professours of that Law, that as thereby they shall see a fair field for their display, & a plenteous harvest for their encouragement, so they will in no sort hold themselves neglected. And this will (I think) content the wise men on both sides; the learned *Civilians* being restored to what they were forcibly put from, and the learned Common-Lawyers confirmed in the enjoyment of what they now and ever had. For that both Laws are necessary in their respective allowed Spheres and proportions here in *England*, no man of learning can deny, no more can any man of worth deny to the *Civilians* of this Nation the praise of their great Learning, and deservedly to be encouraged usefulness. Which considered, the Prince here is personated as resolving a conformity to his Chancellours Prescript, which he judges will be closely rational, such as shall satisfie his perspicacity and Princely judgment, and take him off from all uncertainty and doubt of distraction. This he intends by (*se me in hoc demonstrationibus congruis indubium reddideris.*) And to this he assures an hoped for reward, in a resignation of his Princely self to that study, which has the most of rational swasion, and ought most to lead him; and this he tells the Chancellour he will (*ilico*) instantly do, all delays and further debates laid aside, and all further troubles by his enquiry and irresolution being abandoned.

*Lib. 1. Instit. Reipub. Tit. 5. p. 22.*

Observe well this.

## CHAP. XV.

*Cancellarius. Memoria tua Princeps optime commendaſti, qua huc usque ſuggeſſi, quare & qua jam interrogas, meritis es ut pandam.*

**H**ere the Chancellour gives the Prince the just acknowledgment of his pupillike ingenuity: to remember what Youth is told, and to observe the Precepts of communicated Wisdom, is a virtue amiable in all; but in Princes prodigiously commendable and obliging. And this the Chancellour finding the Prince profitably to do; not onely by

by the Commemoration of it, encourages the Prince: but by the Civility and good consequence of it whets himself to add all the helps his experience and love can to his improvement, not thinking any thing too much to bestow upon a just Valuer and a gratefull Acknowledger. For since the high conceits of men of *Dion Tarentinus* his minde, carries them to ascribe more to their single selves, then to all o her besides them. And they cry out, *αὐτὴν ἡ κρίσις*, that their opinion is more weighty then thousands of other mens; and with *Francis* the first King of France, make nothing of their words but content themselves with *Je suis Roy*, let *Charles the fifth* say what he can of a violated promise; the gentleness and gratitude of those that are more modest and memorative of their duty, carrying them to the virtue of acknowledgment to those they are obliged to; cannot but be kindly expounded a merit, as the oblivion of it would be branded, a disobliment. And therefore the Prince so frankly reciting the Chancellour's impartment, is well said to by our Chancellour, *Meritus es ut pandam.*

Adag. 22. Chil. 13  
Cent. 6.  
Heibert. Hist. 8.  
p. 192. 194.

*Scire te igitur volo, quod omnia jura humana, aut sunt Lex natura, consuetudines, vel statuta, qua & constitutiones appellantur.*

Here the Text describes the kinds of humane Lawes to be three, such as are effects of God's Implantation on all men and things. This Law of Nature is the

Law of all places, all persons, all times, altering not, but is one and the same Inscription of God's power and goodnesse, wherein he makes manifest, himself to be the fountain of being and to preserve his Creatures in the Law and rule of it. This Law I have in some kinde treated on in the Notes on the first Chapter; that which I shall here add is but onely to shew the obligation of it. For though *Moses* the most ancient of Writers and Law-givers doth not write of it, yet undoubtedly it was the Directory of Man-kind and Nature in all the Forms of Creatures long time before him, and was contained in the seven Precepts of the Sons of *Noah*; and the learned say, *God commanded the Israelites to kill all those they overcame in Battail, that were ignorant of them.* This *Tully* suffragates to; for having said much of the obligation and extent of it, he concludes, *Cui qui non parebit, ipse se fugiet, &c. To which Law whoever obeys not, avoids himself and becomes not man, but as a Runaway from his Station deserves utmost punishment.* Hence is it that all Lawes of men are deduced from this, and so far onely are just, as they are conform to this, and in what they contradict it, are no Lawes of justice; and hence as the Law of Nature is the Law of God, so an obligation lyes on the Creature to observe it. Concerning these Lawes of Nature, our most learned late deceased Country-man *Mr. Selden* has most incomparably treated; so has \* *Gratian*; and *Carraria* who sayes, *Juris natura violator est, qui Legem justam non observat*; the summe of all, grave *Hopper* expresses pithily, *Prima vera Lex ab uno Deo, a quo deinde ad mundum profluit, & post deinceps ad hominem, ubi Lex humana a Lege divina & naturali deducta;* and this suffices for the first sort of humane Lawes, those of Nature, Catholique for both time and Persons.

*Jus naturale esse, quod natura omnia animalia docuit; atque jus istud non humani generis esse proprium, sed omnium animalium qua in terra, qua in mari nascuntur, avium quoque commune esse.* Seldenus *De Jure Natura & Gentium*, lib. 1. c. 4.

Calvin's Case 7 Rep.

Doctor & Student. c. 5.

*Vis illarum tam late ad omnes pertinet, ut qui nesciens ea, interficere in bello atque ex hominum communione tollere justis sunt Israelitæ.* *Cunæus De Rep. Hebræorum* lib. 1. c. 1.

Lib. 3. De Republ.

*Fornerius ad legem 42. p. 122. De Verb; signific.*

*Obligatio juris vinculum est quo necessitate astringimur.* *Instit. D. tit. De obligationibus* l. 3. &c.

\* Decretal. Dist. 1. 5. & 8.

The next are *Consuetudines*, These have been (saith *Doctor and Student*) of old time used throughout all the Realm, which have been accepted and approved by our Sovereign Lord the King and his Progenitors and all his Subjects, because the said Customs be neither against the Lawes of God, nor the Law of reason, and have been alwayes taken to be good and necessary for the Common-wealth of all the Realm. Hence these are (secondly and in a kinde) soveraign Lawes; for they do rule men and things: *Consuetudo prescripta & legitima vincit Legem*, saith the Rule of Law; and not onely in the Lawes common, Customs are the Lawes of places and things, as in Mannors and Tenures, in which there is no Law without them, lyes; but in the civil Lawes, *Mores recepti sunt Legum nervi, and consuetudo dat Jurisdictionem, etiamsi agatur de causis meri Imperii, and consuetudo observata Legis instar est; In Antiquitatis causa, & prescriptiones, longus-*

Lib. de literali & mystic Juris Interpret. quest. 4. art. 3. p. 311.

Dr. & Student. c. 7.

Instit. p. 113; p. 110, 111, 120, 69, 140.

*Tholos. Syntagm. Juris. lib. 26. c. 25. 27. p. 532. lib. 47. c. 21. ff. 20. lib. 4. c. 21. ff. 6. Pandect. Jur. Civil.*

que

*Sive lex jubeat sive consuetudo dum vetustissima, & post hominum memoriam sit, ea enim privilegium habet & qualis nunc est, presumitur semper retro fuisse.* Alciat. ad legem 214. lib. De significatione Verborum. p. 465.

*Consuetudo autem, etiam in civilibus rebus pro lege suscipitur cum deficit lex, nec differtur Scriptura an ratione conficitur quando & legitimitas commendat.* c. 4. lib. De Corona Militis.

Reg. Juris.

Choppinus lib. 2. De Dominio Francie. p. 205.

Lib. 47. c. 27. ff. 1.

Synagmat. Juris universi. lib. 47. c. 29. p. 1016.

*Jus naturale per positivum quandoque specificatur, quandoque determinatur.* Cetraria de literalibus & mysticis. Jur. Interpret. partis secundae. Reg. 1. artic. 43.

*Antiquitas leges Solonis acibus lignis inscripta & Romanorum in 12 Tabulis. Tholof. Syntag. lib. 48. c. 10. art. 1.*

*que usus & consuetudo considerantur*: these and such like Rules are in the civil Law, Texts: yea *Tertullian* avers the prevalence of Custom, making it a Law upon rational and religious Grounds; which *Saint Augustin* confirms in his Epistle to *Januarius*; of which I shall have occasion to write in its due place. All that I shall add is, that Custom so prevalent, ought to be reasonable or else it cannot be good, the Rule of Law being, *Consuetudo contra rationem potius usurpatio quam consuetudo appellari debet*. Let this be enough here for the second kind of humane Lawes, Customs.

The last is *Constitutiones*, the same in the civil Law that Acts of Parliament under the name of *Charta Regis*, 9 H. 3. *Ordinationes* 27 E. 1. & 31 E. 1. 33 E. 1. 17 E. 1. 34 E. 1. articuli, 9 E. 2. 35 E. 3. these under what Titles they of old variously went, yet being made in Parliament according to the Constitution of our Government, are that which is here called Constitutions, because being made by the King, not as in *France*, where *Tholoffanus* says, *Princeps noster Monarcha solus, nullius addictus Principis vel Legum Imperio, jura subditis, & Magistratus ipsos prescribit, jurisdictionisque cujusque modum ex sententia distribuit*; but with the assent of the Lords and Commons, they are to be obeyed as wise and worthy Acts of Government: for in that the King corroborated with the counsell of so many brave Lords Spirituall and Lay, and Commoners as a Parliament of *England* affords, makes Lawes, they must needs being so pondered upon and passed, carry the presumption of convenient and suitable to the nature of affairs. And *Tholoffanus* so far approves of this, that like a wise man as he was, he, after he has discoursed of the *French Kings* absoluteness in making Lawes, concludes, *Melius tamen non dissiteor Rempublicam se habituram, &c.* I do not doubt to say, 'T would be better for the Common-wealth, if our most Christian King would take the Counsell of his Senate in making Lawes, by which means they would be more mature and advised, then by the Counsell of few they can be hoped to be, for men of parts and loyalty to the stability of his Throne, would sooner quit their places and preferments under him, then sin against God and him by Counsells of flattery. Thus he.

*Sed consuetudines, & legis natura sententia, postquam in Scripturam redacta & sufficienti auctoritate Principis promulgata fuerint ac custodiri jubeantur, in constitutionum sive statutorum naturam mutantur.*

Here our Text-Master shews how the ternary of Lawes pre-mentioned, become regularly and effectually Statutes, which all persons are to take notice of; as that which has an obligation on them, & they are to expresse a duty to: For though Customs do bind, & the Lawes of Nature do bind men, *in foro Dei*, and *in foro civilitatis & decoris*, as they evidence men intelligent of their duty, and obsequious to that w<sup>ch</sup> has upon so just grounds a regency over them; yet they seem not in the sense of our Chancellour (as I conceive) *in foro pœna externa*, and by an intitling of the *Civil Magistrate* to punish the non-ob-servance of them, become obliging; till they are transfer'd into a positive Law. For as where there is no Law, there is no transgression; so where the transgression is not breach of a publish'd Law, there ought to be no punishment; for punishment is the effect of a sin committed, and by a known Law violated, the Magistrate provoked and despised; which in this Case not always being, since there are many offences against these Lawes, which men may not know. Our Text says, that whatever the offence of not observing Customs, and the Lawes of nature, be in themselves; yet as *Humane Lawes*, they are not in *Magistratique Construction*, till magistratically they be made such; and that they can onely be made, by being form'd into the method of Statutes, and passed as such by the *Royal Assent*, which chiefly gives the life and noble energy to them. And this the Chancellour sets down pithily and orderly; they must be *in Scripturam redacta*, that they may be not onely durable, but also certain, and entred on the *Parliament Roll*; for the Law being the Extract of Justice, leaves nothing to discretion and uncertainty, because it knows danger and inconvenience may come in at that door; but as it requires that Lawes be had in honour when made, so does it deserve such honour from men, by being

being no snare, but a security to them, leaving nothing arbitrary, or under the exposition of any man's will or pleasure; but as declaring the penalty, so appointing of old before Printing came in date, and men might have the Laws of them printed) that they should be proclaimed by the Sheriff in his County, and the Acts were often enrolled in other the King's Courts, that the Judges might take knowledge of them, accordingly to administer justice to the people: all which argue the care of the Law. For when Laws are once, in *Scripturam redacta*, then they are by the Rule of Reason, and by the Judges men of reason and conscience, to be interpreted; and this is no small privilege that Laws which reach all men, are reduced to writing, that all may read and consider them, and plead them for their defence and indemnity. And surely the writing of Laws the Holy Ghost mentions as a blessing in this regard, when he commanded Moses to write the Law, and the Kings of Israel to write the Law; yea, when God wrote the Law (which omnipotently and primarily he had written on the Tables of man's heart) in Tables of Stone, to be a Monument of the perpetuity of its obligation, and the inexcusable bleness of his breach, who knowing the will of God, and Law of his duty, yet does it not, but is rebellious against it; He exemplified to man the greatness of the blessing, to have not onely a Law, according to which he was to live, but a Law written; the sanction and imperation of which he might certainly know, by having it penned under his eye, and within the reach and capacity of his reason. And therefore, though as I have before noted, Laws there were probably before Moses; yet none of those Laws were published in the form of them to the people, that were to live by, and be judged according to Law by way of writing. From the mouths of the Dictators of them, did Nations of old receive their Laws. In allusion whereunto 'tis said in Scripture, *That the Priests lips shall preserve knowledge, and the Law be enquired at his mouth.* From Moses his lenity and tenderness onely, was the first reduction of Laws to writing. And being so, they must further before they can be Laws, be *sufficienti autoritate principis promulgata*. For as no Laws can be such in the sacredness of them without Authority, so no Authority can make them Laws, but that which is sufficient to that end; and because none is so sufficient to that end but that of the Prince, the Text says, *sufficienti autoritate principis promulgata*; for Legislation being the act of Majesty, excludes all exercise of it besides, or without it, and so not onely says the Civil Law, as Tholoſſanus quotes Authorities for it; but also the Common and Statute Laws, as I have abundantly heretofore proved: contrary to which there is no one good Authority rightly understood in all the Law-Books that I have met with; yea, because the first Statute of 15 E. 3. was made without the King's consent, the Statute of the same year did repeal it, and the Title of it says, *The last mentioned Statute was repealed, because it was made without the Kings consent.* For though Subjects in Parliament may prepare and humbly offer to the King their requests, and assent as much as in them lies to the passing of Laws; yet he gives by his pleasure of passing them, the quickning word to them; and therefore they are said to be *sufficienti autoritate principis promulgata*.

Cook 4 Instit. c. 1. p. 41. & p. 26.

Doct. & Student. c. 3.

*Ante Moſis tempeſtatem Scripta jura non agnovit orbis, eſt enim antea profecto haud ſane ſine legibus gens hominum agitaverat, tamen neque publicis tabulis ea, neque ullis monumentis erant conſecrata. Cynæus, De Republica, lib. 1. c. 1.*

*Sicuti & leges quidem ratione jurisdictionis in ſuo territorio Parliamentum facere poſſunt, & de quibus conſtitutio regia diverſum non inhibet; at ſine conſenſu Principis leges ſtatere non poſſunt. Tholoſſ. Synag. Juris, lib. 47. c. 27. 21.*

Poulton's Stat. p. 141.

*Ac cuſtodiri jubeantur, in conſtitutionum ſive Statutorum naturam mutantur, & deinde penalius quam antea ſubditos principis ad earum cuſtodiam conſtringunt, ſeveritate mandati illius.*

This our Chancellour adds, to ſhew that Laws (like Phyſick) muſt have ſome potent ingredient, to carry them to a right working on the part affected; and this he calls, *Fear and dread of diſpleaſed greatneſs*; and the conſequence of it, *Fine, Impriſonment*, and as the cauſe may be, *Death*: For as God himſelf is not known, but by the Judgments he executeth; nor feared, but for the command he hath over the bodies and goods of men, which he can blaſt and ruine in a moment, and for the Hell that he has in the other life, to caſt the body and ſoul of implacable and impenitent men into: So Kings are not obſerved in the Laws of their declared Authority, further then they do *Jubere cuſtodiri leges*, and that *penalius quam antea ſubditos conſtringunt*. For in Eng-  
land

See Sir Ed. Cook,  
c. 26. of penal  
Laws, 3 Infit.

land I suppose every Law, either common or Statute, has a certain duty and penalty, and as the duty is rewarded with the favour of protection, for so signifies the words of King Ed. 1. in the Stat. 15. regni Stat. 2. where speaking of the *Laws and Customs of the Realm of England, and his Prerogatives and Rights Royal*, he adds, *We considering how that by the bond of our Oath, we be tyed to the observance and defence of such Laws, Customs, Rights, and Prerogatives:*) So is the violation of it with the proper penalties, therein expressed, accustomed to follow such transgressions, and no other, the Law of Engl. leaving little to discretion or pleasure, especially in the penalty of Statutes, wherein nothing being expressed penal, the Subject that will be refractory thinks himself more safe. For the Laws of England, by the Kings in their Parliaments made; were ever intended to be mercifully medicinal, *Physick* of evacuation, not excoiation. Hence tart Laws have been observed ever short-lived, as was that of boiling men to death for Treason, 32 H. 8. c. 9. which was repealed by 1 E. 6. c. 12. (which Statute of repeal says, *Nothing being more godly, more sure, more to be wished and desired betwixt a Prince the supreme Head and Ruler, and the Subjects whose Governour and Head he is, then on the Prince's part great clemency and indulgency, and rather too much forgiveness and remission of his Royal Power and just punishment, then exact Severity and Justice to be shewed; and on the Subjects behalf, that they should obey rather for love, and for the necessity and love of a King and Prince, then for fear of his straight and severe Lawes.* Every good and loyal Subject will hold himself obliged to conform to his Prince's pleasure in things not *mala per se*, and not fear a penalty more rather then love a duty; but where the contrary is, Princes are furnished with power to order Contumacy, and their *Proclamations* commanding the observance of Lawes, are very strong to not onely invite good, but terrifie evil Subjects to Conformity; and this the forementioned Statute also hunts in these words, *Yet such times at some time come in the Common-wealth, that it is necessary and expedient for the representing of the insolency and unrulyness of men, and for those foreseeing and providing of Remedies against Rebellion, Insurrection, and such Mischiefs, that sharper Lawes as a harder bridle should be made to stay those men and facts, that might else be occasion, cause, and Authors of further Inconvenience.*) so he: and that of 37 E. 2. c. 5, & 6. which was repealed by 38 E. 3. c. 2. the very next year; these and others might be instanced in, which confirm what is the all, I conceive, our Text intends in these words. It followes.

*Qualis est Legum Civilium pars non modica, qua à Romanorum Principibus in magnis voluminibus redigitur, & eorum auctoritate observari mandatur. Unde Legis Civilis, ut cetera Imperatorum statuta, jam pars illa nomen sortita est.*

Lib. 1. Tit. 4. De Constitutionibus Principum.

Ex Ulpiano Infit. 1. p. 34. 35.

Cum Principis Interlocutio redacta est in corpore juris. Glos. p. 35. interlocutus est.

Omne jus, aut consensus fecit, aut necessitas constituit, aut consuetudo firmavit Modestinus. lib. 1. regularum. Digest. lib. 1. Tit. 3 p. 34. Lib. 2 Excusationum.

This is made good from the Digest, which is authenticated in all parts of it by the Emperours, who set it out as the body of Lawes Civil; and in that *Ulpian* is quoted, thus saying, *Quodcumque igitur Imperator per Epistolam & subscriptionem statuit, &c. whatsoever the Emperour by his Letter or Subscription appoints, or knowing decrees, or advisedly and Thronally utters, or commands by his*

*Proclamation, that ought to be a Law.* That these Constitutions of the Emperours of Rome in their successive Ages, and the sayings of famous Lawyers book'd into the bodies of *Civil Lawes*, make up as really the *Civil Lawes* as the *Original Lawes* do, is as plain to all knowing men, as that the *Statutes* are part of the *Lawes* of England; and so ought to be accounted, as well as the Customs and Records of Courts, and the Entries of Law-Judgements in the year-Books. For since all Lawes are gradually made, being by one and the same power, they are owned with equal Reverence as well the late as the elder; yea, *Modestinus* considering that all Law is either such as *Consent* made, or *Necessity* introduced, or *Custom* has settled, sayes plainly, *ut patet in segeti dicatae, &c. later Constitutions are more prevalent then former.*

*Si igitur in his tribus quasi omnis Juris fontibus, Legis Angliæ præstantiam præbuerim præfulgere, Legem illam bonam esse & efficacem ad regni illius regimen etiam comprobavi. Deinde si eam ad eundem Regni utilitatem, ut Leges Civiles ad Imperii bonum, accommodatam esse lucidè ostenderit, nedum tunc Legem illam*



*lam prastantem, sed & ut Leges Civiles electam ( ut tu optas ) etiam perfecti.*

This is the Method which the Chancellour proposes to the Prince's Solution, he being in suspense ; whether of the Lawes he should study, as in the fore-mentioned part of the Comment on this Chapter I have further signified. And the Chancellour being, as an *English-man*, zealous for the Law of his freedom ; and as a Master in that Science, concerned to promote the honour of his study and delight, finding *the Duke of Exeter's Daughter, the Rack*, brought in to the *Tower John Holland* then newly created *Duke of Exeter*, being made Constable of it, and intending it as a Preface to that Law which allows the use of it, which the Common Law does not. I say, the Chancellour advertised of this, applies himself to the Prince to prevent any rivall Law ; shewing, that not only the *Rachel of England* was beautifull and well-shaped, but fruitfull of all that amounts to Order and Ornament ; and that as the civil Lawes are very fit for the Empire, and every way correspondent to the Magnitude of that vast and Gyant-like body ; so are the Lawes Common and Munic. pe such, as set out livelyly and preserve healthfully the beauteous and lovely Constitution of this *British Empire* : which though the truth of it be evicted by the Judgement of the Law in all Ages, and the experience of the order and renown of the Nation by reason of it, the violation whereof, in the Lawes undervaluation, has ever been the Nations hatred and vehement Prosecution ; yet the good Chancellour not contented to pack upon the Prince heaps of Presidents and infinities of Quotations, ( which are most Historique, that such the temper of the Nation has been, then rational that so it judiciously ought to have been ) here proceeds to satisfie him argumentatively ; that there is no favour shewed therein to the Lawes, but that which her deserts have made the Subjects her Debtors by, and that the Sun is no more usefull in the firmament for the invigoration of vegetables, then the Commonlaw, as it was in his time used, is for the well-being of this Nation to which it is every way helpfull, both as food, exercise, and physick. And so concludes the fiteenth Chapter.

Rot. Parliamenti 23. H. 6. Num. 30. 2. Instit. Cap. Petit Treason. p. 35

3 Instit. p. 111. 112.

CHAP. XVI.

*Leges-Anglix in his que ipse sanciuunt Legis Natura ratione, non meliores peioresve sunt in iudiciis suis, quam in consimilibus sunt omnes Leges ceterarum Nationum, &c.*

THIS whole Chapter is but a Transition to what he had preasserted as his Proof in behalf of the *English Lawes*, as flowing from that Trinal Fountain of Law, Nature, Customs, Constitutions, the first whereof being the *Law of Nature*, and the same with all Lawes, he passes over without any stay upon it, as conceiving no necessity to inforce that by argument, which already is in grant ; and so do I, after the example of my Text-Master, pass over it with a Testimony of *Sir Edward Cook's* pertinent hereto. *Our Common Lawes* ( saith he ) *are properly and aptly called the Lawes of England, because they are appropriated to this Kingdom of England, as most apt and fit for the Government thereof, and have no dependence upon any forein Law whatsoever, no, not on the Civil or Canon Law, other then in Cases allowed by the Lawes of England ; and therefore the Poët spake truly hereof, Et penitus toto divisos orbe Britannos : So, as the Law of England is proprium quarto to the Kingdom of England, therefore forein Presidents are not to be objected against us, because we are not Subjects to forein Lawes, thus that Sage : And with his Justification of our Lawes as good and effectual to the Governmant of England, I end my Notes on this Chapter.*

In Stat. Merton. c. 9. p. 98. 2. Instit.

## CHAP. XVII,

Regnum Angliæ primo per Britones inhabitatum est.

HERE our Chancellour enters on the second head of his Argument on behalf of the Laws of *England*, *Customes*, and those he not onely proves to be most antient, but used and accepted as good by five severall Nations, all which ruled successively in *Britain*. The first whereof were the *Britons*, a people whose name and origin many have diversly descanted upon. Mr. *Cambden* knows not what to say, but concludes, that in these cases 'tis an easier matter to impeach the false, then to teach and maintain a truth. Many count them *Aborigines*: Mr. *Cambden* thinks *Gomers* Posterity to be the *Cimbri* which might come to this Island, as the uttermost Quarters of the World; *Gomer* signifying utmost bordering. But this, as all other such like opinion, I take with respect to his great name, to be but conjecture. Time having lost us so irrecoverably in the dark of its not to be regained discovery, that to be positive in any thing is not onely fond, but a phanisful madness. That *Britains* were very antient Inhabitants here, and primo, as our Text has it, that we can read of, Stories confirm, and that their *Druids* and *Priests* were the great men of Learning and Law, is also known of old. Of these many Authours are quoted by the learned fore-cited Authour, which I will not enlarge upon: these *Britains* were also the same with the *Gauls* of old; and had one Language and Custome, which the *Welch*, the remaining *Britains*, hold to this day, as they do their Christianity; for to their eternal honour 'tis recorded, that from the time of their first Conversion, which is said to be 1500 years ago, in Anno 162. after Christ, they never after wholly deserted from Christianity, but as they held their little spot of Land, (if their own Authours do not deceive me) from *Brute* to *Cadwalladar*, which they compute about 1820 years under 102 Kings; so do they continue also very resolute in retention of their Language and Customs. And as *British* Language they at this day speak; so do they please to be called by the name of *Britains*, which name of old was the general name of the people of all these Islands, wherein as the King of it was stiled, *Insularum Britannicarum Monarcha*, and did in right of his Imperial Crown, *Quatuor maria sibi vendicare*: so the Laws of it were called the *British* Laws. But about the year 600. the *Angles*, a people of *Germany* came upon us; and about Anno 827. *Egbert* being crowned King of all Britain at Winchester, made an Edit, that all Saxons should be called English-men, and Britain, England; and *Dicet* confirms it, that about the year 829. that those that were heretofore called Kings of the West-Saxons, were for the future to be called Kings of English-men. So famous ever since has *England* been accounted of, that not onely Pope *Gregory* call'd its Monarchis, *Domini liberorum*, Lords of free Subjects; but the Kingdom it self, *Regnum Dei*, the Kingdom of God. But concerning

*England's* Kingdom, I have in part written heretofore, and shall hereafter in another place: therefore that which I shall add, shall be an accusation of my own Nation, as at this day, so of old, as ingrate to God for his mercies; not onely in a good Land, every way a *Canaan* of plenty, and to all intents of Peace and War accommodated; but in the discovery of his glorious Gospel to us, in the power & purity of it, though the fruits whereof is little seen in our lives For as it was in the days of old, they were eating and drinking, and taking and giving in Marriage till the Flood came, and swept those secure merry madmen away; and as before the *Norman* Conquest, there was a man of God (they are *Jornalensis* his words) fore-told, that God would send a scourge on the English for their beastly and cruel vices; not onely Murther and Treason, but Drunkenness, and despight of the house and service of God; but also for their antique fashions, which shewed the instability of their minds. I say as these Omens were then on the Nation; so truly 'tis to be feared, that some heavy misery impends us, who have not learned obedience by the things that we have suffered, who abound in secret hatred, each to other; who are proud beyond our fortunes, prodigal above our proportions, sloathful beneath ingenuity, envious to great merits, censurers of grave manners, contemners of Native Customs,

Britannia, p. 5.  
Britanniam circumfluam Oceanum.  
Aborigines tenuere. Pomponius Letus, p. 526. edit. Sylb. p. 10.

pag. 14. 15.  
Holinshed's Description of Britain, p. 4, 5, 6, &c.

5 Book Hist. Britain, Holinshed, p. 126.

Vide Chronic. August. Cantuariensis, pag. 223. Qui prius vocati sunt reges West-Saxonum, abhinc vocandi sunt reges Anglorum. Dicet, p. 449.

Jornalensis p. 909. edit. Lond.

pag. 909.

Note this.

Customs, Affectors of vicious pleasures, intollerably peevish, mercilessly savage, brutishly voluptuous, zealously prophane, and frigidly religious, amongst whom, the Son of man when he comes on the earth, will not finde so much faith as a grain of Mustard seed in bulk, nor as a bubble of air in solidity, all complement, all boast, no truth in word or deed. *Sed auferat oblivio, avertat Deus malum Omen, Let peace and truth, O Lord, be in our Hezechiah's dayes*; for he hath by his Proclamations forbidden p. ophanenels: and whatever befall us, let us say, *The Lord is just, and we have reaped but the fruit of our own Deservings*. I or never was there a Nation more beloved of God, and saved from the hands of our Enemyes then we have been; and never was there more turning of the grace of God into wantonness, then has been amongst us, who yet do not know the things that belong to our peace.

*Sunt enim infirmi & tepidi amatores justitia quibus aut vigor, aut fervor desit, aut fortitudo uterque, cum uterque sit, summopere necessarius. Sanct. Bernardus in Declam. in verb. dixit Simon Petrus ad Iesum.*

*Deinde per Romanos regulatum.*

This is added not onely to shew the succession of Conquests, but the accidentall Benefit of them; for the *Romans* being a people of universall Empire and Civility with their power, brought learning and manners hither, which is part of the notion of *regulatum*. Under whom the *Romans* came (for without a head and order they did nothing) is evident in Story; *Suetonius* tells us *Julius Caesar* did visit *Britain* to their cost, the pearles, as some say here, indrawing him hither, and the money here given him appeasing him, and keeping Natives in the possession of their Estates and Lawes: *Augustus* would no Voyage to *Britain*, thinking the Empire would be neglected at home, when it had such affairs to do as far off; but *Claudius* was of another opinion, and therefore he sent *Plautius* hither, who did many great matters tending to the *Romans* advantage; which *Domitian* seconding, setled to the *Romans* a great part of this Land, placing Garrisons in the most proper and tenable places, and by them awing the subdued Natives: *Adrian* built a Wall to keep the *Roman* Conquest from inroads, so did *Severus* and *M. Antoninus* make high Walls, and Wayes, together with other laborious Monuments of order, not purposing ever that the *Roman* power should ravall off in *Britain*. But as low and victored as the Natives seem to be, their stomachs were not lessened, nor did they so much submit to, as repine under the insolence of their *Roman* Riflers; as design made them watchfull, so resolution bold, to take the first occasion they saw to their own restitution, and the interition of their Usurpers: In *Severus* his time, they flew into Arms and so incensed him, that he ordered Execution of the *Britains* they took Rebels; but Death determined his tragick Edict, and his Successors vice made the hopes of a better time more probable and neer. In this juncture *Constantine*, a *Britain* by the Mother, becomes Emperour; then *Britain* had ease, but his Reign expiring, with *Valentinian* his Successour new troubles arose; till the Natives, resolving the last and most desperate thoughts in *Theodosius* his time, acted them and were emancipated by them; which though then they little knew how to manage moderately, yet happened to be the abolition of the *Roman* power after a 476. years Continuance in a great and heavy measure here. Yet as bad as the *Romans* were, they never afflicted the Nation like the *Northern Cormorants*, which followed them, *nam finis unius mali, gradus est futuri*. So it follows.

*Aggressus est & Britannos ignotos antea, superditisque pecunias & obsides imperavit. In Jul. Czarice, c. 22. p. 50*

*Cambden. p. 62. Aelius Spartianus in Adriano p. 129. in Severo 175. Jul. Capitol. in Antonino. p. 132.*

*Iterumque per Britones & Saxones.*

The *Romans* being disseised of the most of their power here, the *Britons* think themselves in a good degree possible to become free; but alas, the *Romans* strongly planted and Garrisoned, having Wives, Children, and improvements in the Nation, would not easily quit them, nor be driven out from them: yea, so did they adhere to their acquisitions, that for forty years after the Resurrection of the Natives, these dominated, and held their own making excursions and inroads; yea, endangering a rally again of their dispersion, and that to the *Britains* re-Eclipse if not extirpation. In this straight, the Natives call in *Auxiliaries*, and those the *Saxons*, a poor, hardy and Pyraique people, who were modest at first, and came in such numbers onely, as the Natives suspected not, but after drew by degrees more and more out of their Country, till at last they tyrannized ten thousand times worse then the *Romans* did; the particular

Britannia, p. 110.  
& seq.

Britannia, p. 113.

About the year,  
800.  
Britannia, p. 142.

Brompton in  
Will. 1. p. 260.  
Vix aliquis Prin-  
ceps de Anglorum  
progenie esset. p.  
280. 281.

Britannia p. 141.  
& seq.

Page. 152.

cular whereof, and the misery of the Nation under it, our *Cambden* has most fully set forth. These subdued the *Britains* and made themselves Lords of this Land; the *Angles*, a people between *Frit-land* and *Holsatia* joining with them, and being powerfull amongst them, by reason of which the Nation was termed *England*, quasi *Angles-land*; according to which venerable *Bede* styles his *Saxon History*, *Historia Gentis Anglorum*: during all whose times, in a Hierarchy of Government, which lasted for a long time, there was nothing but civil War and blood-shed; till *Egbert*, King of the *West-Saxons*, prevailed over the other Kings of the *Saxons*, and so had for a time the whole Government to himself.

But not long was it before the *Danes*, who many years by Piracy had infested the Coast, now enter the last by force of Arms. So it follows.

*Et tunc per Danos idem Regnum parumper dominatum est, & iterum per Saxones.*

This is the fourth variation of the Lords of this Nation, as it was conquered by the *Dane* a pitifull debaish Nation, bordering upon the *Baltique-Sea*, wholly living on Piracy, and by reason of lust and promiscuous use of women, multiplied so numerously, that their own Country not being able to contain them, they were forced to seek abroad for habitations where they could finde them out, and force themselves into them. Hither they came, and here they made such *hurly burlyes*, that it surpasses the Pen almost of all Historians to aptly expresse them; so that one that considers them well, would conclude them to have been of the Race of those Devils, that entred into the *Saxon* swine, and run headlong into the Sea, and were overwhelmed and drowned in Lubricity and Effeminateness: *Afred* and his Son overcame them, and restored the Nation to a fifty years freedom from their Tyranny; till *Sweno* the *Dane*, taking advantage of *Ethelred's* softness and invigilancy, entred *England* with a mighty Army, and over threw the *English*; but they re-enforcing their right, carryed it and lodged happily in *Edward the Confessor*, who was the Son of *Ethelred* by his second Wife: thus was the Crown again in the *Saxon* Race, till the *Confessor* dyed issueless, which being by the wise disposition of God, made way for the *Norman* Conquest, which was the last and durable one. As it follows in our Text.

*Sed finaliter per Normannos, quorum propago, Regnum illud obtinet in presenti.*

This was a Conquest with a witness, not onely of plenary prevalence, but also of duration and successional Continuance; for it was not over a part, the rest unsubacted, nor yet for the life of the Conquerour, or the fame and terrour of him continued in his Son, or to the proportion of that Vision, which is reported to be seen by the Conquerour, telling him, *That his Posterity should enjoy his obtainments 150 years*; but it was such a thorow one, that it rooted out all the *English* Nobility and Gentry; yea it carryed all so torrent-like before it into the black Sea of dismallness, that all kind and shew of justice, was for a time perverted. Concerning therefore this, as amply and ingeniously discoursed upon, I refer the Reader to that particular discourse, which Mr. *Cambden* has written of it, whereby it appears that the *Saxon* Empire, which had continued about 600 years, determined; which though some take upon them to say, was for a judgement of God on the base avarice of the *Magistrates*, and *superstitious lazyness* of the *Prelates*, as Mr. *Cambden's* words are; yet was not onely for the past and then present sin of the whole people: but to induce the purpose of God in the after felicity of our Nation, which we have long enjoyed, upon the account of what follows in the Text.

*Quorum propago, regnum illud huc usque obtinet.*

This our Chancellour annexes, to shew the secret pleasure of God; who though he be altogether goodness, yet for a punishment of Nations sins, suffers evils to come on them; and when his glory is thereby righted, converts the ill designs of men to the good of those, to whom the Actors therein least intended it. The *Norman Conqueror* he came into *England* fiercely, and changed the *British* Government, and in a great measure their

their Laws, extruded the *English* out of their Possessions, and placed *Normans* in them; yet in few years his Successours restored much again, the *English* revived, and his Successours, saith King *James*, have with great happiness enjoyed the Crown to this day. So that *Quorum* relates not to the *Britains*, *Romans*, *Saxons*, or *Danes*, but to the *Normans* onely, because their Issue onely had the Crown, and so were the *Quorum propago* within the words.

Law of Free Monarchies. P 202.

*Quorum propago*] Not *quorum filii*, or *Successores*: but *propago* a word adapted to the intent of continuance, *dicta quod porro pangatur, id est, longe figatur*; and the Chancellour intends the Conquerour to be a Vine, which planted in this fruitful Soil, would shoot out many branches of regality to not onely an illustrious, but a durable purpose; and as they should influence (*regnum illud*) this *English* Kingdom, so should they do it *huc usque*, not onely historique, from the first prevailing to the time of the Text, but Prophetical, of a longer continuance, even to the times, when time shall be no more: which later *huc usque* reaches onely to in the exposition of good-will, the Text chiefly limited the *huc usque* to its own time, which was about 356 years thus calculated; *William* the Conquerour came in about the year 1066. from thence to *Henry* the sixth coming to the Crown, which was in *Anno* 1422. in the succession of 13 Kings, there was 356 years; and if we add thereto 30 years at least, that he reigned, before perhaps our Text was published, it makes the *huc usque* to be 386 years, which was a long time. For thus it pleased God to fortunate not onely the first attempt, but to continue the Majesty and memory of it, even to so many Successions, notwithstanding the sundry intercurring varieties. So true is that of the Wiseman, *No man knows good or evil by what he sees under the Sun*. For though *Hannibal* lost the day, and was overthrown at home by a *Roman*, a young man inferiour to him in reputation, experience, and forces; and that when he and his affairs were most important, and he endeavoured most to shew himself a *Carthaginian veterane*: yet *Charles* the eighth of *France*, though a young man, destitute of money and counsel, came to invade *Naples*, strongly guarded, and amply furnished; yet obtained all his desires with ease, and became Master of them, which made *Pope Alexander* say, *The French-men came as Harbingers into Italy with chalk in their hands, to make and take up their Lodgings where they listed, not having occasion so much as to put on their Armour in all their Voyage*. So true is that of the Wiseman, *The Lot is cast into the Lap, but the disposition thereof is of the Lord*.

See vet. M. Charta. p. 143. sub titulo, nomina Regum.

Fitz. Herbert, Religion and Policy, p. 204. Prov. 16. 33.

*Et in omnibus nationum harum & regum eorum temporibus, regnum illud eisdem, quibus jam regitur, consuetudinibus continue regulatum est.*

Here our Chancellour uses a *pleonasm*; and to shew his love to the Law, and his constancy in asserting the credit of it, tells us, that whatever the alterations of the Matters of it Kings, and their people of several Nations, were, yet the Customs of *England* stood firm under them; by reason whereof those words, *consuetudines*, and *continue regulatum est*, are to be qualifiedly understood. For if *consuetudines* be taken complexly, either for the Laws, or for all those usages that were topique, then undoubtedly there will not be (as I humbly conceive) a precise historique truth in *consuetudines*, no more then in *continue regulatum*. For as the learned *Selden* observes on these words, *The Saxons made a mixture of the British Customs with their own; the Danes with the old British, the Saxon and their own, and the Normans the like, the old Laws of the Saxons mention the Danish Law (Danelage) the Mercian Law (Mercenlage) and the West-Saxon Law (West-Saxonlage) of which also some Countreys were governed by one, some by another*. Yea, the Common-Law, which is the general custome of the Nation, when it is attributed to *Saint Edward* as the Compiler of it, yet is so to be understood, as by his command it was framed out of the three pre-mentioned Laws. So says *Brompton* positively; Furthermore, when the *Romans* had their Colonies here, they govern'd them by the Civil Laws, as well as they governed other parts by *British* Laws, dispensed by *Romans*, and when the *Normans* prevailed; though the Conquerour is said to call *Anglos nobiles, sapientes, & in sua lege eruditos, &c.* The noble, wise, and learned *English* Lawyers, that of them he might have an account of the Laws and Customs of *England*, according to which there were chosen twelve men out of every County, who were sworn before the Conquerour, that to the best of their power, they should justly and indifferently make known the truth of their

Ad caput 17. p. 7.

Brompton, p. 956. 957.

In Prefat. ad leges W. 1. edit. Twiss. p. 138.

Speiman in  
Glofs. p. 417.

Jornalenfis  
p. 818.

Bochatt. Geogr.  
fact. lib. I. c. 15.  
p. 65.

Hic denique populus Colonias in omnibus Pro-  
vinciis misit, ubiqueque vocit Romanus habitus.  
Senec. ad Albiuum. c. 7.

Inde habitus nostri honor & frequens toga,  
paulatimque decessum est ad delinimenta vi-  
torum, porticus, & balnea, & conviviorum  
elegantiam, idque apud imperitos humanitas  
vocabatur, cuius pars servituti esset. Tacitus  
in Agricola.

Cæsar Com. lib. 5. & 6. Bell. Gallic.

In Claudio. c. 25.

Lib. 15. in vita

Constantii Tom. 2.

August. Scriptur.

p. 327. Edit. Syib.

Morum & linguæ gaudentes similitudine Le-  
ges passim triumphatis populis inferebant, pa-  
triarum suarum ritus, & vocalula plurima  
retinentes. Speiman in Glofs. p. 435. De  
Gothis. Saxonibus. Longobard. &c.

Preface to the 8 Rep.

Est enim sciendum, quod consuetudo Regni  
Norwegiæ est usque in hodiernum diem,  
quod omnis qui alienius regis Norwegiæ dig-  
noscitur esse filius, licet sit spurius, & de an-  
cilla genitus, tantum jus sibi vendicat in Reg-  
num Norwegiæ, quantum filius Regis con-  
jugati, & de libera genitus. R. Hoveder.  
partio poster. p. 425.

their respective Lawes and Customs, passing by none of them, neither adding to or diminish-  
ing from any of them; I say though this was done, yet who knows not for all this, he  
chopped and changed them as he pleased; such as served his turn, he confirmed, others  
he rejected: and though he retained the figure and Mould of the Nation, Rapes,  
Wapentaks, Hundreds, Countyes, with the little Jurisdictions and Mannors in them,  
also the Councils, Wittenagemots, Shiremotes, Wardmotes, though mostly under  
Norman names; yet did he either put Normans into place and possession of them, or  
else made such additions to or subtractions from them, as Conquerours use to do,  
whose will is the Law: nor can it be expected it should be otherwise, so long as God  
has appointed time to ebb and flow with uncertain vicissitudes, to bring in and carry off  
the temporary Inhabitants of the world, and with them their language and manners;  
which is the reason, that at this day language is so confused and mingled; as that nothing  
of the primæve idiom almost subsists, and Nations, yea even our Nation has been so *party*  
*per pale*, as that the people of it have been at one time one, and another time another:

when the Romans were in power, they were Roman in Lawes and Mannors;  
(yea, though they did at first Romanam linguam abnuere, could  
not endure the Roman speech) yet by the Roman's civility of na-  
ture and conversation, they did not onely Romanam eloquentiam  
concupiscere, but grew to be Romanly vain and vicious, not onely in  
habits, but in perfumes and bathings, in lawlessness of ayet and lux-  
ury of entertainments, which even the weaker sort of men called ci-  
vility and kindness of hospitality, when 'twas part of their Slavery.  
so Tacitus: to which Gildas assents, when he sayes, England was  
called by the prevalence of the Roman power, and Customs in  
it, non Britannia, sed Romania, which prevalence was not onely

over the Lawes and Language, but Religion also, which the Romans changed by abo-  
lishing the Druids, whose nefarious carriages Suetonius tell us, the Romans would  
not endure; though I know, they long after were here: yet, as Mr. Selden sayes, not  
as the potent Inspirers of the Nation, but as Students of Mysteries; to which, Am-  
Marcellinus gives Authority. The like also was the issue of the prevalencies of the

Saxon, Danes, and Normans, to which as Conquerours, the  
same Methods are ascribable; it being the inseparable companion  
of Conquest to be altered in language and in Lawes, if not wholly,  
which seldom is: yet in a good measure which never is otherwise.  
And therefore though it may be true, that the Conquerour did  
confirm the good Lawes of the Confessor; because they were just  
and honest, and extracted out of the very bowels of natural justice,  
*præ cæteris patriæ Legibus, before any other Lawes, because he*  
*thought it hard to judge by Lawes he knew not, those of the Con-*  
*fessor probably being onely the written ones; yet did he also al-*  
*low, out of a private respect to the ingloriousness of his birth, the*  
*Norway Lawes, they allowing the base Son of any King of that King-*  
*dom, equal priviledge, though he be born of a Bond-Mother, with*  
*the Son and Heir born in lawfull wedlock and of a free Woman; and*  
*that being his Case, he did the honour to those Lawes to intro-*

duce them, though as to that end they never had any credit here; all which Premises  
considered, the Text's universality of Language in the behalf of the Law, is (as I said  
before) to be understood with limitation; for neither were all the Customs or Lawes of  
England by them reatined, nor were they constantly used to govern by them: but every  
one of them as they saw most advantageous to them, took and left the British Lawes and  
Customs or some of them, and in so doing were but wise in their Generation, and  
both served themselves of, and secure themselves by, the Providences God gave them  
auxiliaryly to them, which if they had not done, (justice and honesty thereby being  
promoted) they had done weakly and (as their omission might have been causal of  
blood and cruelty) wickedly.

*Quæ si optima non existissent, aliqui Regnum illorum justitia, ratione vel affectione concit-  
tati, eas mutassent vel omnino delevisent.*

This

This, flowing from the precedent Clause, will also be dubious; as it Historically was: For though our Text-Master, and Sir *Ed. Cook* after him, make this an Argument for the Paramountship of the Common-law; yet as it here stands, it makes little for it, since that which is urged for the stability of it under all Powers, is rather a flower and fruit of the Chancellor's love, than that which I can warrant from History. For although I cannot say any of the Kings here mentioned, *Britains, Romans, Saxons, Danes*, did change the Laws universally; or that those parts that they changed, were by them so changed upon reason of Justice (which is a rare Jewel in a Conquering Ear, and not often the Companion of Prosperity: especially in Assaults and Successes of Foraigners, whose access being onely to gain their success, is mainly seen in luxury and voluptuousness, associated with cruelty and oppression) yet that some of them were changed by the affection of the changers to their own stability, better forwarded by foraign Laws then these, is as true even as Gospel: yea, and that those Changers were over-ruled by God for the Natives betterance, is also most plain. For since we cannot but believe, that the Prudence of all Governments tended to honour and order, which were probablest soonest arrived at, and saddest maintained in, by the reason and justice of Laws, made up of the quintessences of all collections and bodies of Laws. It is most likely, that the Laws in use amongst our Ancestours, which are in the fore-mentioned sense to be understood, were the Laws which for the most part and longest time were the Laws here under all Governments. For though Saint *Edward's* Laws, which were but the Laws of *Edgar* reviled, were here; and the Conquerour set (as I wrote before) a seeming value on them, and braved as if he should have them the standing Rule: yet when he found they would not fit *Norman Interests*, he either so wholly suppressed, or else so gelded them, that *Norman* they seemed rather to be, then *British*, or *English*; and divers *Norman Customs* were in practice first mix'd with them, and to these times continue; as succeeding Ages, so new Nations (coming in by a Conquest, although mix'd with a title, as that of a *Norman Conquerour* is to be affirmed) bring always some alteration. By this well considered, that the Laws of this Realm being never changed, will be better understood: thus Mr. *Selden*.

Preface to 2. Rep.

*Iste Edwardus postquam Rex coronatus fuit cum concilio Baronum & ceterorum regni. fecit renovare & stabilire, & confirmare bonas leges, quae fuerunt per 68 annos inter dormientes soporatae, & quasi oblivioni traditae. leges istae vocatae sunt leges Sancti Edwardi non quia ipsas primo invenerat, sed quia quae si sub modico sopore, & in oblivione derelictae, a tempore regis Edgar avi sui qui primo manum suam misit, ad ipsas invenendas & firmendas. Knighton, De Eventibus Angliz, lib. 1. cap. 15. pag. 2338, 2339. edit. Lond.*

Notes on this Chapter, p. 9.

*Et maxime Romani, qui legibus suis quasi totum orbis reliquum iudicabant.*

This Note on the *Romans* chiefly is, not from any secret antipathy they had to the *British* Laws, quae such; but refers to the method that scientifically they as the best bred and politiquest Nation under Heaven, exerted themselves and their dexterity by. *Livy* terms them a Nation, *Natam instaurandis reparandisque bellis*, and being such in a height beyond others, 'tis likely they would introduce all the instances of Conquest for their own aggrandization, and the suppression of all hopes of reverter to the Conquered; which Conquerors cannot more signally do, then by change of Laws and Language: both which were done, and from the *Romans* possibly is it, that our old Laws, and Records of Courts yet are in *Latine*; as from the *Normans*; that our Pleadings and Books of Law were, and are yet in *French*.

*Domini nolentes, & invito vasallos iure communi feudorum, & exceptis consuetudinibus privatis, non possit in alium alienare, nisi necessitate adigatur ad venditionem, Tholosan. Syar. Juis, lib. 6 c. 19. ff. 24 p. 138.*

The *Romans* then, who first by the Law of the *Twelve Tables*, made the *Civil Laws*, and by their Emperours added daily to them, as they expatiated their Empire, cannot be thought to give way, when Conquerours, to our *British* Laws; so as to cause the *Civil Law* to cease exercise here, because it was their own Law; and therefore did they carry on their Martial and Civil Government every where, as well as in the Mother City by it. This must be granted, though it somewhat impair the drift of our Text, because *amicus* Socrates, *amicus* Plato, *sed magis amica veritas*. And therefore Mr. *Selden* yields it; and the sense of the Text-Master here is onely to be understood with ingenious allowances.

*Subsidium adversus rebelles & imbuendis sociis, ad officia legum. Tacit. Annal. lib. 12. De Coloniais Rom.*

See the Notes on this Chapter, and also on *Fleta*, p. 511. 532. & Seq.

*Neque vero tantorum temporum curriculis leges civiles in quantum Romanorum inventatae sunt neque veterum leges, quae super alias antiquitate divulgantur, &c.*

As

Preface to the  
5. Report.

Preface to the  
10. Report.  
Spelman is  
Prot. Glossary.

Observe this  
well.

The Au-  
thour's Im-  
partiality.

Speech Anno  
1609. p. 52. of  
his Works.

Selden on Electa.  
4.

Preface to the  
2. Report.

Note well  
the excellen-  
cy of the  
Common-  
Laws.

As the former, so this is a kind of seraphique instance and argument, not exactly accountable to the plain tenour of History. For though our Chancellour were a most honest and exact man, well versed in all Learning; yet dare I not assert, or make a defensive Comment on this his Chapter barely upon his Authority. And though Sir *Edm. Cook* is, and shall be much my Oracle in other matters; yet in asserting the Common-Laws antiquity from *Brute*, and know not what antique Ancestry, for which he says he has onely our Chancellour, whom he rightly terms of profound knowledge in the Laws, and an excellent Antiquary: yet in this I shall not (under favour) subscribe to him, because not onely 'tis impossible almost if not altogether, to find truth at that distance; but because the consequence of that uncertainty, will be certain blemish to mine own Judgment, and import a kind of arrogant vapour over that which my duty and ingenuity rather bows down to and venerates, then in any thought or word will or dare disesteem; nor is there any fruit from such vain and profitless digladiation, as the heightning of one, and depreciating the other Law, occasions; but the forfeiture of the adventurers credits, and the display of their choleric passions. Let these heats then die with *Hottoman*, and *Cook* the first and fierce Combatants. Comparisons between the Laws are as odious now to revive, as are the Precedencies and Antiquities of the two Universities; which though some think they do well vindictively to renew, is no true part of gallantry. For my part I do own equal honour to, and so I hope do all *Cambridge* men to *Oxford*, as to my Mother University; and I would have all *Oxfords* worthy Sons so to profess and evidence to *Cambridge* my Mother; and that considering them as the two onely Nurses of good Learning in this Realm. They are the words of the 2 and 3. *Phil.* and *Mary*, c. 15. And as these are the common Breasts that nourish the men of both Laws; so would I have the nutriment they therefrom receive; evidence it self in all the fruits of common kindness, which their growth gives them opportunity to shew each to other: To promote which, as I a person equally obliged to the merits of the Professours of both Laws; and in neither my self a Professour, shall Christianly pray for their accord; so shall I in this Discourse willingly write nothing that may offend either, or both of them, but keep my Pen steady, as near as I can, to truth, and to that sober peremptoriness in it, which becomes humility, and the conscioufness I have of mine own weakness: Which digression I think hitherto necessary; yet not further to be prosecuted: I return therefore to the Text, declining all comparisons between the two Laws, and resting in the grave Judgment of King *James*, concerning both their use, here. For a King of England to despise the Common-Law, it is to neglect his own Crown; and I think if the Civil-Law should be taken away, it would make an entry to Barbarism in this Kingdom, and would blemish the honour of England. And alter the King enlarges; My meaning therefore is not to prefer the Civil-Law before the Common-Law, but onely that it should not be extinguish'd, and yet so bounded, I mean to such Courts and Causes, as have been in antient use; as the Ecclesiastical Courts, Courts of Admiralty, Court of Requests, and such like, reserving ever to the Common-Law, to meddle with the Fundamental Laws of this Kingdom, either concerning the King's Prerogative, or the Possessions of Subjects, or any questions either between the King, and any of them, or amongst themselves, in the points of meum and tuum: So that King. From all which I conclude, that though it cannot, nor shall not need to be averred, that the Common-Laws and Customs of England, have been the onely Laws and Methods of Government, which all the several Lords of this Nation, have constantly and precisely kept themselves to (the *Romans* using the Civil-Laws here above 350 years, and the *Saxens*, *Danes*, and *Normans*, abolishing and introducing what of their Countrey Laws they pleased) yet may it very confidently be said, that the Common-Laws and Usages of England, have not onely been very antient before the Conquest, and very much approved by the several Lords of this Land; but are such for the nature of them, That there is no humane Law within the Circuit of the whole World by infinite degrees, so apt and profitable, for the honourable, peaceable, and prosperous Government of this Kingdom, as these antient and excellent Laws of England be. And hereupon, since the Kings and Parliaments of England from the Conquest, have given reverence to the Common-Laws, and by their additions of Statutes strengthened and beautified it, making the wilful and obstinate violation and subversion of it, not onely penal pecuniarily and by imprisonment, but also as the Case may be, capitally. It doth (I say)



(I say) from hence appear, that the Wisdom of the Kings and Parliaments of England, and of the Reverend Judges, who according to their declared Judgments have judged, did concur in Judgment with them, and with our Chancellour here, when he calls them *bona & optima Anglorum consuetudines*. And so I conclude the Notes on this Chapter, being in no sort desirous to enter upon comparisons between the Laws: but as I said before, to acquiesce in the pre-mentioned modest explication of the Text, and to avoid all *dictatorian confidence*, which in no sort becomes any man, least of all my self, who do write, *non ut instruam eruditos, sed ut excitem paratos*. And who, if I offend in any thing, shall not be ashamed, but be most ready to acknowledge it, crave pardon for it, and in the next Edition, if God shall let me live to it, and it be worthy of it, make amends for it. This be enough for the Notes on this Chapter.

CHAP. XVIII.

*Statuta tunc Anglorum bona sunt necne, solum restat explorandum. Non enim emanant illa à Principis solum voluntate ut leges in regnis qua tantum regaliter gubernantur, ubi quandoque statuta ita constituentis procurant commodum singulare, quod in ejus subditorum ipsa redundant dispendium & jacluram. Quandoque etiam inadvertentia principum hujusmodi, & sibi consulentiæ inertia, ipsa tam inconsulte eduntur, quod corruptelarum nomina potius quam legum, illa merentur,*

IN this Chapter the Chancellour comes to the third part and proof of the goodness of the Laws of England, as the Statutes of them are enacted by the Sageness, Wisdom, and Justice of the Government of England; and to make his foundation more solid, he first proposes what the Statutes in their origin are not, and then proceeds to shew what in their rise, progress, and nature they are; by both which he aims to make the Nation of England more splendid, then Rome ever was: for though it had many Temples to Fortune, yet to Wisdom, Temperance, Justice, or any of the Virtues, it had none: Whereas England in the Wisdom, Temperance, and Justice of her Laws, devotes magnificent piles of praise and power to her Princes, whose Attendance, with their Prelates, Peers, and Commoners, as assenters to their Piety and Paternity therein, raise an immortal Pyramid of regular liberty, just subjection, and symmetrical order. To the explication whereof, our Chancellour advances, 1. *Negative*, that they do not emanare à Principis solum voluntate. In which words, the Chancellour implies, that Statutes do emanare à Principis voluntate, for he is the Fountain of Statutes; and as Water flows from the Fountain, *ex impetu natura*, so Statutes flow from the satisfied judgment, and prudent omniscience of the King, *ex impetu gratia & regalis providentia*: nor can there, or ever has there been any Law made, but by the King willing thereto, which we usually call his passing the Bills, or giving his Royal Assent. Whence is the life of the Law; yea, and the duration of it too. For since Princes may exceed in wisdom, as much as in place and power they do any of their Subjects, no man can seek to limit and confine his King in reason, who hath not a secret aim to share with him, or usurp upon him in power and dominion. Thus said the good King when he was hardly pressed. The Chancellour then in this Clause, acknowledging the Prince to have a freedom and power of Reason to consent, or dissent: As he advises him not to deny Laws that are pro bono publico, for the joynt good of King and People; so advises the People to be quieted with such an answer, as the Will and reason of their Superiour thinks fit to give. And in thus doing, the Laws that are statuted, will emanare a voluntate Principis, which saves the King's Honour and Right, Giving unto Cæsar that which is Cæsar's, and unto the power of God in him that which is God's, Reverence and obedience. Whereas then our Text says, *Non enim emanant illa à Principis solum voluntate*; as it does not suppose the Lords and Commons excluded Assent, so not the King denied his Royal Assent, and Consent; but shews that (as before I have said) the King is pleased to have, and have the Laws to be remembered to be such, that the endearment of Father and Child, Husband and Wife, being insinuated in them, there may reciprocations of love and

*Σοφίας δὲ  
μύχης ἡ φύσις  
ἰσχυρὴ ἢ ἰσχυρῆ.  
Plutarchus, lib.  
De Fortuna Romanorum, p. 319.*

*Fons emanat. Cic.  
2. Divin. lib. 2. De  
Joven. t. 621.*

*Eicon Basilic.  
c. 41.*

*Eicon Basilic.  
c. 11.*

Eicon. Basilic.  
c. 11.

duty be enterchanged between them; the King's Will may be the Law, because the Law is the King's Will, and the Peoples Rogation be his Concession, because they ask nothing amiss, nor would have it, but with submission to their Princes freedom; Remembering that at best they sit in Parliament as my Subjects (said the King) not my Superiours; called to be my Counsellours, not Dictators; their Summons extends to recommend their advice, not to command my duty. Thus wisely he.

*Ut leges in regnis qua tantum regaliter gubernantur.*

This is added, to shew the priviledge that Kings and People have, and the obligation they owe to God, and their Ancestry: Kings and People thereupon; because by it as Kings are delivered from the temptations of lawless Will, concerning which, King David cryed out to God, *Who doth know his own errors, keep me from presumptuous sins.* So are people kept (unless they will be mad to provoke God, and mischief themselves) from all temptation to disobedience: (No subject of Eng<sup>l</sup>and being possible, under the legal government of his Prince, to become a Traytor, but by the instigation of the Devil, and premeditated malice.) I confess, in the most absolute Governments, when such as Augustus and Theodosius are in power, who were by their natural piety so restrained, that they did not onely not put men to death for their pleasure sake, but cry out, *Vitam mortis vitam dicere possumus*, when they do use their power, as Sextilia the Mother of Vitellius is said to use her interest in her Sons power, onely to gain her love while she lives, and tears when she dies. When I say such as these spirits are in rule, there is no fear of truculent Laws and Administrations, be the absoluteness of what they may do what it will, they will do but what is fit and gentle; but when the licentiousness of the Will is in full career, when they may make what they will, Law, then there is danger of what follows that, *Statuta ita constituentis procurant commodum singulare, quod in ejus subditorum ipsa redundant dispendium & jacturam.* For therefore is Conquest endeavoured, and absolute Dominion arrogated, because there is in the obtainers of them an aim to confound and lodge all their Subjects have in their own despotique-ness; the severity and partiality of which endeavour, contrary to the Laws of Nature, and the Rules of Equity, is that which the Chancellour calls here *singulare commodum in subditorum dispendium & jacturam*; which our good Monarchs hating to once look towards, or be in any degree deservedly suspected for, thereupon are justly accounted Fathers to their Subjects, as well as friends to their own peace both of mind and State. I will onely here add the words of one of our Chroniclers; *Divers other Conquests*, saith he, *also have been pretended by sundry Princes since the Conquest, onely to the end that all primitive Laws, and tenures of Possession might cease, and they make a new disposition of all things at their own pleasure; as one by King Ed. the third, but it took none effect; another by Hen. the fourth, who nevertheless was at the last, though hardly, drawn from the Challenge by William Thorington, then Chief Justice of England: the third by Hen. the seventh, who had some better show of right, but yet without effect. And the last of all by Queen Mary, as some of the Papists gave out; and also would have had her to have obtained, but God also staid their malices, and her challenge.* Thus that Author. By which appears, that though some of our Princes have been solicited possibly by ill-disposed Favourites, or mistake of the Laws matchlesness, to all intents of governing this Nation: yet none of them have been resolute, in following such dangerous solicitations and prejudices; but having looked upon their duties to God, themselves, and their Subjects, avoided those Rocks of danger, which by embracing them they had fell upon. For the Oracle of Kingship said it, everlastingly to be in the memory and mouthes of his successours, Kings: *If the divinest liberty be to will what men should, and do what they so will, according to Reason, Laws, and Religion; I envy not my Subjects that Liberty, which is all I desire to enjoy my self: so far am I from the desire of oppressing theirs; nor were those Lords and Gentlemen which assisted me, so prodigal of their Liberties, as w<sup>th</sup> their lives and fortunes, to help on the enslaving of themselves and their Posterities.* Thus he. Which amply sets forth the truth of our Chancellours Character of Conquerours who do aim in their absoluteness to effect *dispendium & jacturam*, the not onely immoderate and unadvised loss of their Subjects, but even to cast them and theirs over-board, in the storm of their passions, to an irrecoverable submer- sion;

Cuspinianus in Theodol. Regne aliud ex imperio filii conse- quuta est, quam in illis bonumque nomen apud omnes. Tacitus, lib. 13.

Hooks and Votell in I Volum. of Description of Britain, p. 8.

Eicon Basilic. c. 15.

Jactura, proprie damnum, dicitur quod fit praeipue in rebus quibus est magna res.

version; for at least do, by making Laws in a huff and height of humour, without and against counsel of any but themselves; which our Text calls, *Principum inadvertentia*, and *sibi consulentium inertia*] and make Laws, which in regard of the novelty and incongruity of them, to the Reason of Government, and Justice of Law, deserve rather to be blushed at, then promulged; which is also the sense of *corruptelarum nomina potius quam legum illa merentur*. 'T would be infinite to particularize the instances of those Stories abound with them: But this shall suffice for our Chancellour's sense, what Statutes are not: come we to discuss his positive assertion what they are, and how they come to be what they are, in the following words.

*Sed non sic Angliæ statuta oriri possunt, dum nudum Principis voluntate, sed & totius regni assensu ipsa cendantur.*

Herein our Text obstrucates to the *Statute-Laws*, and shews them to have a celebrated origin, *Oriri est nasci vel surgere*, saith *Festus*; and therefore, as *Pliny* says, *Oritur fons in monte*; and *Virgil*, *Monstrum mirabile oritur*, and *Tully* *Oritur ab his sermo*; and nothing is more frequent then *dies oriens*, *lux oriens*, *stella oriens*, and the like: so is it a propriety of speech that our Chancellour uses, when he says *statuta oriri*, intimating, that they rise up from the people, and being exhaled thence by the influence of the King, who is the Sun in the Firmament of Rule, do, from his consent to, and approbation of them, appear orient and replete with vigour and authority; and this concurrence makes the legal, as well as rational harmony in Laws passed, according to the *English* Constitution: the contrary to which, (onely practised in heat and hast, but repented of at leisure) makes work for the emendation of them by calmer tempers. For God has so joynd King and people in their concurrence to the passing of Laws, that where any seemingly publique Act is otherwise then *more majorum* passed, there it not onely wants its weight and esteem, but is also soon recalled and accused to boot, of defectuousness. For there are three that bear record to the legality of passing Acts of Parliament in *England*, the *Lords Spiritual, Lay, and Commons*; and these three are one in Assent under one Head, where the life of all the excellency of Power resides, and that's the *King*; *Whom God long defend, the Defender of the Faith and the Laws.*

Epist. 95.  
2. Rancid. 117.  
Cic. De Amicit. 5.

*Quo populi lasuram ipsa efficere nequeunt, vel non eorum commodum procurare. Prudentia & sapientia, necessario ipsa esse reserta putandum est, dum non unius aut centum solum consultorum virorum prudentia, sed plusquam trecentorum electorum hominum, quali numero olim Senatus Romanorum regebatur, ipsa edita sunt, &c.*

This Clause enters us upon the very weighty consideration of Statutes, as they are passed by the Wisdom and Council of the Nation. And the word *quo*, relating to the Assent of the whole Realm, that is, *King, Peers, & People*, makes the consequent words true, that they cannot be reasonably presumed to be grievous to either, but advantageous to all; since all have made them what they are, and what without them jointly, they could not have been. And this the Chancellour mentions, not more to bedignifie the Parliaments, that are consistant of so many, and so rarely accomplish'd Members, then to illustrate the augustness of the Crown, to which all these are sworn, whose Lieges these are, and to whose Sovereignty they do not onely bend the knee, but the heart, and ought to venture all they have and are for it; and so declared the Parliament of the 42 E. 3. *That they could not assent to any thing in Parliament, that tended to the disherisen of the King and his Crown whereunto they were sworn.* Yea, when the Nation owned his Holiness of Rome, (as they then called the Bishop of Rome) for their sacred Spiritual Father; yet even then did the Lords and Commons in Parliament, by consent of the King, declare a denial of what the Pope demanded, *because it tended to the detriment of the Crown and Dignity of the King, and to the liberty of the People.* Which wisdom and zeal of Parliaments, is by our Text-Master therefore said to amount to a *earnst* of injury to the People, and to a *can* and *will* of their emolument. And hence has it ever been, that the opinion amongst us holds good, that *Nul chose dishonourable, &c.* *No mean thought is to be had of Parliaments.* For of it is that famous Rule uttered, *Si*

5 Eliz. 1.  
and by Oath c.  
Allegiance.

4 Instit. p. 14.  
Chap. Parliaments.  
Temp. E. 1. & 46.  
E 3.

4 Infit. p. 36.

*antiquitatem spectes, est vetustissima, &c.* If you regard the Antiquity of Parliaments, 'tis most aged; if the Dignity, 'tis most honourable; if the Jurisdiction, 'tis most capacious. For there is no cause so abstruse, but it can dive into; so litigious, but it can period and judge; so important, but it can state and regulate. And hence is it, that Parliaments consisting of the King, and his Subjects environing him, are by the Chancellour said to do such notable Beneficencies to this Nation, because they are not

Messala Corvinus, Lib. De Augusti Progenie. p. 376, 377.

Theatrum Vitæ Ham. p. 676.

*Senatorum affluentem numerum deformi & inordinata turba, erant enim super mille, & quidem indignissimi, &c.* Suetonius, in August. c. 35. 4 Infit. p. 1.

only many, above thrice as many as *Romulus* instituted; his number being but 100, which after, in the declensions of the honour of the Senate, was multiplied into a thousand. So that the *Historian* says, the *Senate* so over-grown in number, and so mean in accomplishments, needed an *Augustus* to restore it by a moderate number to its wonted veneration; and so *Augustus* did reduce them to 600. which Sir *Ed. Cook* computes our Parliaments, not much to exceed calculating them thus:

}	Of the Lords Spiritual	24.
}	Of the Lords Temporal, about	106.
}	Of the Commons,	493.
		623.

*Seminarium Senatorum equestrum locum esse.* Sueton. in Augusto. c. 39, 40. *Magnam viram esse oportere, quem saceret Senatorem.* *Elius Lamprid.* in Severo. p. 211.

*In Senatum legit sine discrimine atatis, census, generis, pecunia merito.*

And made the Members of the *Roman Senate* to be men of worth and worship, worthy the trust they judicially had, and were expected judiciously to discharge: Which as for the number, so for the nature of the persons, members of it, our Laws do follow this *Roman* President; for though Cyclopique times may, to make up a Faction, as *Heliogabalus* did, admit any person that was but a Confider, though he were of no fortune, faith, blood, nor, of orderly Principles: yet as by the Decrees of that wise State, no man

was to be a Senator, but a rare person, wise, noble, and able to live to the height of the state of it: So in our Parliaments, there are Statutes of Regulation to Election of persons, both in Counties, Cities, and Boroughs: No Yeoman be he never so wealthy, is capable to sit in Parliament. By the 1 H. 5. c. 1. he must be some Knight or Esquire, resident, dwelling, and abiding in the Shire; and Cities, and Boroughs: so 8 H. 6. c. 7. the reason whereof is, for that it was presumed, that men of blood, fortune, and breeding, will have more knowledge in, conscience to, and honour by, which they will faithfully do their duty, and hold themselves concern'd therein, by the great pledges they have at stake; and will be most probable to secure by good Laws, the publique Interest, then those that have none of those obligations and ties. And this the Chancellour specially points out in those words, *Prudentia & sapientia ipsa esse referta*, because as multitudes of Councillors promise safety, so chiefly when those many are of such as are *Spiritual Lords*, men of all Arts and hours, *Lords of the Laity*, who are versed in secular Affairs, and accomplish'd with travails, and *Knights and Esquires* out of the best Gentile Families of *England*. All these, together with the most intelligent and wealthy men of Trade, sent to Parliament from Cities and Corporations, and in Parliament consulting, may well be presumed to pass Acts, *Sapientia & prudentia consultata*; especially when consideration is had, that these Gentlemen and others, ought to be *plena atatis*: no young men, whom pleasures or vanities will avocate, whom passions and emulations do incline from the *via lactea* of Counsel; but grave, staid, and well-adviced sad men, *Virorum consultorum prudentia*, says our Text, where *prudentia virorum bene consultorum*, is opposed to levity and versatility, prudence being that *pondus* that settles the mind in all worthy persistencies, against that rashness which precipitates all good intendments. Thus *Lupercinus* in *Marcellinus* is said, *Properatione tumultuaria coactis militibus temere magis, quam consulte progressus*; and the same Author writing of men of approved worth, calls them *consulto consilio cognitos*; and *Trebellius Pollio* puts *consulto* for *consilio*; For in any great Affair the *Heathens* had their *consulta numinum*: and therefore Members of Councils, whatever they want (as no men have all blessings aboard their Vessels) they should not want Counsel, for that is of the very essence of their trust: which because sometimes men chosen to Parliaments have wanted; or if they have not, have wanted courage and integrity to shew themselves; Acts of Parliament have sometimes passed, which have not been as wise *E. 1.*

Lib. 35. p. 507. Lib. 14. p. 315. *Consulto valeriani fratris sui in Galieno.* p. 252. *Aliud in imperatore quaritur, aliud in Oratore, vel poeta flaguatur.* Idem eodem loco.

says

says he intended his *Confirmaciones Chartarum Anno Regni 25.* to be, *al honneur de Dieu, & des seigns Esglise, & au profit de nostre Realm*: which Sir Edw. Cook says, is, or should be the true end of all Parliaments. And by how much short of this end Parliaments fall, by so much are they less than they truly ought to be: To prevent which miscarriage which tends in *dispendium & jacturam subditorum*, it is good that the Rocks and shelves, upon which of old shipwracks of Parliament-honour have been made, be modestly remembered. For as the note of a wise Father is, that in five cases Parliaments succeed not well: so is it observable, that in sundry cases the Statutes of Parliaments succeed not long in credit or duration, as when they are effects of meer power and advantage, separate from legal Reason and Justice. By the 11 R. 2. c. 3. and 4. no person was to attempt revocation of any Ordinance made in that Parliament; but that Clause was repealed, 1 H. 4. c. 3. *as against the Jurisdiction and power of a Parliament, the liberty of the Subject, and unreasonable.* By the 21 R. 2. c. 16. the power of a Parliament is committed to a few. By the 1 H. 4. c. 3. *this is declared against the dignity of a Parliament.* So by 11 R. 2. c. 3. *No man against whom Judgment or Forfeiture was given, should sue for pardon or grace. This was repealed by the 2 H. 4. and judged unreasonable, and without example, and against the Law and Custom of Parliament.* Thus were many Acts passed in Henry the 8<sup>th</sup> time, which were hard; as that 33 c. 21. 31 c. 8. Which Acts, together with others of like nature, were repealed by the 1 E. 6. c. 12. And also when they are huddled up in haste, without due rumination of what they intend a remedy of, and rightly penning the Acts to that purpose. For Laws are like all things that have not due concoction and proper maturation, indurable, and not beauteous in their figure and acceptation. Which evil to avoid, it was wont to be the Wisdom of our Fathers, to premeditate Acts before they were preferred, scan them well when they were preferred, and pass them onely for a candidateship, to see how they will approve themselves in experience; yea, and to be sure to make them as short, and as little dure as might be: & when in these things failer has been, the Acts made were either inconvenient, or but short-liv'd; witness the Act 11 H. 7. c. 3. which is called by a man that knew what he said, *A most unjust and strange Act*; and therefore was repealed 1 H. 8. c. 6. which that brave Chief-Justice said, *he recited and shewed the just inconveniences thereof, to the end, that the like should never hereafter be attempted in any Court of Parliament.* And therefore if Statutes be made according to our Chancellour's Legal Standard, they must answer precisely their Prescript, and not want their plenary counsel, as did that Parliament 7 H. 5. held before the Duke of Bedford, Guardian of England, wherein of the Lords Spiritual and Temporal, there appeared but 30 in all, who passed but one Act of Parl. & that of no great weight. But those that appear in full number be rightly poised, to perform unto King and People due benevolence, that is, to evidence conjugal designs of advantage to conjunct felicity. If the men which make the Court, what it in our Text is asserted to be, a seminary and repertory of wisdom in mind, and prudence of action, conform to which the expressions of them in the Statutes of their enaction will be. If the Members, I say, be men of honour, experience, integrity, fortune, and do propose no private emolument, but as they are freely chosen, and thought free from all pre-engagement of ambition, popularity, or perfidiousness, and bound in fidelity to the King, zeal to the Religion, honour to the Laws, reverence to Parliaments, and integrity to the people; so will they be very loath to do any thing for fear or favour, which may either prejudice their trusts, or engage their credits in after-times censure; but having the fear of God and the King, and the love of themselves, their Posterities and the people, before their eyes, will take heed of new ways, and enquire for, and keep in the old way, the good way. The declension from which has ever cost the Nation dear; and when it has been unhappily misteered that way, given the Nation just cause to say to their treacherous Pilots, as Fulvius did to his Son, whom he took in the Conspiracy with *Catiline*, *Non Catilinae te genti sed Reipublica*; for sure the Laws of England, and the people, intend and expect Parliaments to be Oracles of Order, Repairers of Breaches, and Sanctuaries to Oppression; which because they have mostly been, as institutionally they were designed; not onely People have doted on them, but even Princes, and by that occult prudence engin'd

2 Instit. p. 526.

4 Instit. p. 35.

Rassal. p. 150.

4 Instit. p. 42.

See Rassal ac large. p. 752.

*Deliberatio omnibus rebus necessaria, quae hominum indiffusus colores possit refranare: Temporeque indignus, ut aliqui manius agamus.* Tholosi. Syntag. Juris, lib. 46. c. 2. III. 28.

4 Instit. p. 41.

5 R. 2. Stat. 2. c. 4.

4 Instit. p. 42.

¶ 7 H. 4. c. 15.  
*Neque sunt praecipienda opera nostra, ante consilia, nec ordo corrupendum. Cautela & illa laudabilis in qua totum agit ratio. & furor nihil sibi vendicat, agendumque nihil prius, quam concitata mens ad tranquillitatem redeat.* Tholosi. Syntag. Juris, lib. 46. c. 2. III. 28.  
 5 Eliz. c. 1.

those

those affairs with a successful popularity, which otherwise would have stuck in the Birth, and not found a safe exition from the Womb of their Conception and Nutriti-

*In Senatu etiam excusatis, quia facta erant. Juravit se nunquam Senatores nisi Senatus potentia puniturum. Spartianus in Adriano, p. 128. August. Script.*

Heibert in H. 8. p. 475.

4 Instit. p. 36.

The very words of the *Treattle* of the Statute, 1 *Westm.* 3 E. 1.

on. Thus *Adrian* courted the *Roman Senators*, by being present constantly at it, and excusing to them all irregularities; yea, complementing them so highly, *That he assured and swore to them, that he would never punish an offending Senator, but with their consent and approbation.* And this *Henry* the eighth did so practise, that he made them so supple to him, that what almost he pleased was a Law, and so did *Queen Elizabeth*: For if the Power and Jurisdiction of Parliament for making of Laws, in proceeding by Bill, is so transcendent and absolute, as it cannot be confined, either for causes or persons, within any bounds;

Which *Sir Ed. Cock* makes good, as far as it is maintainable from many notable Presidents how much are we the people of this Land to pray to God for good Parliaments, and to praise God when we have them; when Parliaments are not black with fury, and desire of change; but when they are like that of 3 E. 1. For the common profit of Holy Church, and of the Realm; and because the state of Holy Church hath been evil kept, and the Prelates and Religious persons of the Land grieved many ways, and the people otherwise entreated then they ought to be, and the peace less kept, and the Laws less used, and the offenders less punished, then they ought to be, the King hath ordained and established those Acts, which he intendeth to be necessary and profitable unto the whole Realm. Then is there cause to bless God for Parliaments, wherein gracious Princes make happy noble Peers, prudent Gentlemen, and obsequious Commons, by the good Statutes of Religion, Peace, and Prudence, that emanates from them. And when ever the contrary has been, wise and pious men ought to be humble under God's corrections by them; for it is for the sins of the Nation that many are the Princes of it, and that he makes Oracles err: Witness the Parliament of 21 R. 2. which though it have as glorious a Prologue to its Statutes as words can make, To the honour of God and Holy Church, and for the preservation, salvation, and surety of this Realm, and good governance of his people, of the assent and accord of the Prelates, Dukes, Earles, Barons, and Commons of his Realm there assembled, &c. Yet this whole Parliament was by 1 H. 4. c. 3. repealed. So says *Sir Edw. Cock*, a Parliament holden at *Coventry*, in 38 H. 6. is wholly repealed by 39 H. 6. c. 1. and the whole Parliament of 49.

4 Instit. p. 52.

*Gracchus legem tulerat, ut equites Romani judicarent; judicaverunt per annos 30 sine infamia: post eum Sylla legem tulerat, ut Senatorius ordo judicaret, & judicavit per annos decem impiter; Nunc Aurelius Cotta legem fert, ut Senatores, & equites Rom: & tribuni eorum simul judicarent. Budzus in Annot. reliquas, in Pandect. reliquas p. 140. edit. Basil.*

2 Instit. p. 156. 157.

of the same King, is said also to be repealed: but I confess, I find not these in the printed Statutes. These, and the like, which may further be produced, shew us, that Councils and Senates of men, though never so wise, yet may at some times, and in some cases err, and ebb and flow with partialities, the avoidance whereof is a great blessing; for when no extream frustrates counsel, and no private concern supersedes Justice, then are the Statutes of Parliaments, constant, standing, and durable Laws, Establishments: as were those of the Parliament of E. 1. whom *Sir William Herle* Chief-Justice, called, *Le plus sage roy que unque fait.* All which

considered, the Chancellour did not without cause write, that Statutes in England, *Populi lesuram efficere nequeunt*; because Parliamentarily no injury can therein be done: not onely because what is therein done is *juridice factum*, and so not *lesura populi* (the Law being the Arbitr of right and wrong) but also because the wisdom of apprehension and action is such in the severals there conjoynd, that they cannot reasonably (unless God causes Wisdom to cease from the Wise) be suspected, either to be deceived, or willingly to deceive the peoples expectation; and so the *nequeunt* refers to their politique, as well as natural capacity. The like sense is to be given to *non eorum commodum procurare*; which if literally understood, would be confuted in the pre-mentioned Authorities. But with allowance of humane infirmities, and politique encumbrances is mostly true, as is the rest of the Clause, which makes them *prudencia & sapientia necessario referta*: but enough of this; they, that concerning the method, manner, and form of Parliaments, and their passing Acts; would know

*Cock* 4 Instit. Chap. Parliaments, K *James's* Speech 1605. & 1609. p. 506. & p. 538. *Cambd. Britannia* p. 177. *Sir Tho. Smith*, De *Repub. Anglorum*, lib. 2. c. 2. Description of *England*, c. 8. *Hooker & Vowel*, p. 173.

more, may turn to the Authours quoted in the *Margent*; which amply can satisfie (search being also made into Rolls of *Parliament*) in what the useful curiosity of men can with advantage direct them to enquire after. I will conclude this with a rare expres-

sion

tion of King James, who treating of the Members of Parliament, says thus to those of the Commons House; *What you give, saith he, you give it as well for others, as for your selves, and therefore you have the more reason to eschew both the extremes; on the one part ye may the more easily be liberal, since it cometh not all from your selves; and yet upon the other part, if you give more then is fit for good and loving Subjects, to yield upon such necessary occasions, ye abuse the King, and hurt the People, and such a gift I will never accept; for in such a case you might deceive a King, in giving your flattering consent to that which you might move the People generally to grudge and murmur at it, and so should the King find himself deceived in his Calculle, and the People likewise grieved in their hearts: the love and possession of which, I protest I did, and ever will account the greatest earthly security (next the favour of God) to any wise and just King.*

Speech 1609. fol. 539. of his Works.

A good Kings value of Subjects love.

*Et si statuta hac tanta solemnitate, & prudentia edita, efficacia tanta quanta conditorum cupiebat intentio, non esse contingant, concito reformari possunt, & non sine communitatis, & procerum regni assensu, quali ipsa primitus emanarunt.*

This Clause is as a reserve to the inefficacy and inconvenience of some Statutes: For as it is in all actions, the success crowns and commends them; so is it in Legislation, that is accounted wisdom of Government, and those Laws most prudentially compiled, which are most generally accepted, and by reason thereof longest last in their vigour; which because all Laws are not thus befriended by God's blessing on them, and peoples resentment of them: therefore is this remedy here as the help at a dead list, by the Law of our Government settled, and by the Discourser upon it introduced. And the Chancellour, that he may make this Clause appear suitably considerable to the real nature of it, sets it forth by these gradations; 1. It sets forth the equipage and concomitants of Statutes, which are commenced by prudence in the intent, and associated with solemnity in the method of their procedure to accomplishment; and is expressed in those words, *tanta solemnitate & prudentia edita*. 2. It rehearsethe defeat that all humane things, and so Statutes are subject to; while as they possibly may, so they as possibly may not answer their makers intent, *si efficacia tante quanta conditorum cupiebat intentio, non esse contingant*. 3. The remedy and cure for this anticipation, and as it may prove, state and statute-evil, *concito reformari possunt*. 4. By what means this mischief is expelled, and cure effected; even *analogous* to the origin of it, *una eademque manus, vulnus operumque tulit*. That our Text sets forth in the last words, *& non sine communitatis, & procerum regni assensu, quali ipsa primitus emanarunt*.

*Si statuta hac tanta solemnitate & prudentia edita.*

This has reference to the nature of the Editors, and the Court of their Convention, or the Mint whence they have their Statute-stamp; which being the head and vital spirits of the Nation, endowed with a kind of *Omniscience and Omnipotence*, are in a legal sense understood to do all things like themselves providently and with an *Argo's* eye'd circumspection, as not onely intending that for good, but as so ordering them by a divinely-sovereign *genius* inspiring them, that nothing almost shall appear enormous or improlifique in them to those ends, for which they are contrived and published. For prudence being a virtue of fore-sight, as *Solomon* specifies it, *Prov. 2. 2. 3. A prudent man fore-seeth the evil, and hideth himself*, does not onely in our Chancellour's sense, direct the Co-operators in edition of Statutes, to be so subtle, as to hide themselves from the evil of detraction, in the wisdom of their enactions, from the devices of the crafty; as the phrase is, *Job 5. 11.* where *חַיִּימוּ*, the crafty is rendred by Saint *Jerom*, *Malignorum*, of those that watch and look for their haltings, and would be glad to find and blaze abroad their mistakes: but it tells them also, how they shall evict their malignity, and defeat it, by a rectitude of aim both at God's glory, their own discharge, and their peoples emolument; and this *sapience* therefore is called *prudence*, because it flows from a principle, *& imperat de ordinatis ad sapientiam*, as the Schools say. And hence is it,

4 Instit. pag. 16. Chapt. Parliamentis. Satis est in tempore occurrere, quam post vulnervatam causam remedium quarere. Tholoss. Syntag. lib. 47. c. 7. tit. 9.

Prudentia non est tantum in intellectu sicut scientia & ars, sed habet aliquid in appetitu sicut rectitudinem. Sanctus Thom. partis prima qu. 22.

Prima secunda q. 65. art. 1.

that

that *wisdom* and *prudence* expresses it self in a vigilancy and parateness, to not onely expect, but to provide against, and to encounter with whatever is insidiary to it; which, so necessary to greatness in every motion of it, as well as in relation to Laws, seems to me some reason why *Tully* calls it a kind of *Divination*, the wisdom of experience leading men that are obsequious to it, to an introspection into not only the nature, but the probable, and almost infallible operation of things. By this did *Achitophel* get the reputation to be accounted an Oracle; and the Holy Ghost says, *So was all the counsel of Achitophel both with David, and with Absalom*, that is, he was so ponderous and considerate, weighing every circumstance, that he hit every thing in the white which he aimed at, and pierced into the bowels of every thing he designed to know. This was wisdom and prudence rightly ordained not onely *Solomon's* חכמה wisdom of understanding, and חסד his superexcellent wisdom, but his דבורה prudence of action 14 *Pro* 15. And this Wisdom Statute-Makers abounding in, will not onely shine in the face of their Laws, as the Scripture says, Wisdom makes a man in the face of his fame as body to do, but render them secure and serene in their consciences, whatever the sequel of things be; for as their integrity will endure tryal, so their wisdom will fore-see and prevent what's harmful in it. Thus did *Publicola* his eclipse, by the envy that attended his credit with the Souldiery and people of *Rome*; for he having built a stately Palace, which the *Romans* looked upon as too august for a Citizen, and thereupon had some jealousy whispered into them, as if he intended to improve his influence on them to a contentment of admitting his (bruided to be) affected Tyranny. He, I say, fearing the City would rise upon him, *Nocte intempeſtiva*, &c. One night when all the City was quiet, and not aware of it, pulled down his building to the very foundation, which when the City, in the morning, perceived, they both admired his prudence, and bemoaned their own groundless jealousy. And thus did the great Law-givers of the World not onely bring, but continue their Laws in credit, by the real, or at least opinionated wisdom of their rise and design; which not being questioned, but made good by the conformity of their enactments to Justice and Equity, made them obeyed and not disputed, adhered to and not exclaimed against. Which considered, our Text having an eye to the wisdom, honour, power, and state of our Nation, concentrated in that Court, wherein enactments of Statutes is, tells us, that they are *prudentiâ editâ*, and that not onely as they respect the Editors of them, who are ever constitutionally and cathedrally wise, and also mostly personally such; but as they do evidence & exert this internal excellency in a method proper to it, expressed by *tanta solemnitas*, w<sup>ch</sup> relates to the care that our great Council takes, in formation of a Statute. when either upon petition to, or motion in either of the Houses of *Parl.* a Bill prepared is proposed to be read; the *Speaker* of either House signifies the nature of the Bill, and it is thrice distinctly read three several days; Every Member of the Houses speaking upon any reading what he judges fit, for, or against it; If when after the third reading it be carried by the *Major vote* to be an enactment, then it passes in the respective Houses, and after all comes to the King who has the creative power, and either assents to its being a law, or denies its passage, by all which as there is time to consider, and digest the consequence of it, so is the deliberation called by the Text a *solemnity*, *tanta solemnitate*. says he. And that to denote the consequence of Statutes which are set for the fall and rise of many; And here upon have their *solemnities* in the passing of them, as all things of extraordinary nature in all times had, The *Jews* had their *solemnitates*, their ארבע עשר 10. *Exod.* 9 their ארבע עשר 81. *Psal.* 4. where the word signifies a Throne wherein Monarchs do use to sit: In robes when they pass Statutes, so are the words verse the fifth. For this was a *Statute* in *Israel*; And they had their ארבע עשר which signifies not onely *Solennes conventus*, *Jerem.* 9. 2. *Jerem.* 2. 2. but also a *solemnity of time*, in which no common work was to be done 23. *Levit.* 16. All these kind of *solemnities* they had upon fundry unordinary occasions; so had the Heathens their *Solennia*, and their *Festivities*, which were *Stativa feria*, *Conceptiva*, *Imperativa*, & *Nundina*: of which *Lilius Gyraldus* gives us an account; so does *Suetonius*, *Ammianus Marcellinus*, *Flavius Vopiscus*, and multitudes of others; yea, our Law allows many *solemnities*, and performs them to non-juridique days, and on Festivals, the Judges when they sit, sit in their Robes of State: so does, I suppose, our Lord the King and his Peers sit robed, when they consent to enactment of Laws. Thus we see the Chancellor's pregnant

2 Sam 16. last.

Prov. 7. 13.  
Prov 2. 6.  
1 King. 7. 14.

Florus, lib. 1. c. 9.

Sir Tho. Smith,  
De Repub  
Angl. c. 3.Lib. De Annis & mensibus, partis secundæ,  
p. 593.  
In Vespasiano, p. 111. in Nerone, p. 24.  
In Juliano, lib. 22. p. 407. & lib. 14. p. 320.  
In Aurel. p. 271.  
¶ 2 Instit. p. 264.



pregnant use of *tanta solemnitate*, as well as *prudencia*, and this argues the dignity of Statutes.

*Si efficacia tanta, quanta conditorum cupiebat intentio, non esse contingunt.*

This is the second gradation or rather degradation, the possibility of abatement; for as all Sublunaries known but in part by us, and in but some remote and partial degrees subject to us; are miscarriable; so are Statutes. Men that are Earth, and have their own foundation in the dust, cannot fix pillars of perpetuity here. The World is materially mutable; and God has made it Globular, that it may be more apt to not onely motion, but monition to us, to fancy no *Abalom's Pillar* here. And if the World it self be thus, what can be better expected from the Men and Laws, the Politicks and Governments in it; but that they should alter, and often do not if at all, answer their first Constitution: *Romulus* nobled *Rome*, and made a Senate in it, assistant in Council to his Kinglyness in Succession; but that very Senate that he established to Kingly honour and aid, was the bane and *boutefeu* of Regality. *Julius Cesar* thought himself secure in the Senate, and thence he had his death wound, and that first from his Son *Brutus*. *Scipio* brought the *Roman* power triumphantly into *Africk*; yet was so mistaken in the *Romans* gratitude, that he denied them his bones when dead, who had dealt by him living, no better then they do by dead bones, which they cast out. *Charles* the fifth of *France* was very wise in the greatest part of his actions; yet he mistook policy, in passing by *Margaret* the Earl of *Flanders* onely Daughter, whom he might have had, and with her the *Netherlands* and *Burgundy*; and in the Act he made, that the Kings of *France* (though Children) should be crowned, and be under *Protectours*, which became the misfortune of his own Son; and (a) *Amilius* says, filled *France* with infinite troubles. *Columbus* that discovered the unknown part of the World, instead of being rewarded with the government of his discovery, was made nothing of by the *Don's* of *Spain*. Thousands of instances are producible to this purpose. The same defeats have Law-makers had in Laws; people are of *Claudius* his humour, as by vice or virtue agitated, so are they in or out of love with Laws; yea, as in some junctures reasonfull Laws may hear ill, so in others reasonless ones may be declared and approved good. Though therefore Law-makers are to wish the blessing of God, and the popular approbation of, and benevolence to their enactions; yet are they ever as to eye, that by the justice and piety of their administrations they may deserve it, so to comfort themselves, that if they be not valued by the obedience given to them, they have but that measure meeted to their Laws, that they themselves meet to God's Laws. He gives them Laws and Statutes that are good, and they break them, and put his Law behind their backs, which they should set before their face to observe and do; and God suffers his quarrel to be revenged by their peoples disobedience to, and non-approbation of their Laws. And God that accepts their virtuous intentions, the integrity of their wills, instead of the virtue of their actions, and upon their repentance turns an eye to mercy to them, will also turn their good intentions to the people, which they desired to testify in wholesome Laws for the government of them will in due time make acceptable with the people, which ought to encourage Princes to be gracious and worthy, as *Theodosius* was; of whom when some asked, why he did not put some of those that were declared Enemies to him to death, replied, *Would to God I could give life to those that are dead*, meaning those that were dead with ingenuous grief for their Rebellion and contumacy against so good a Man & Prince, who so only used his power, as to make him beloved while living, and lamented when dead: Which is the Character *Tacitus* gives of *Vitellius* his Mother *Sextilia*, which those that follow, will be sure to be happy, whatever the success of their endeavor in government be. For to desire to rule well, and to make Laws providently, for the matter, manner, and season of them, is all that Princes and Parliaments can be expected to propose, and as far as they may, effect: God, whose the

<sup>2</sup> Sam 18. 18.

*Urbs Romæ parentem Romulum Senatibus in amplissimo dignitatis gradu ab eo collocatus, in curia laceravit; nec duxit nefas ei vitam adimere, qui alterius Romano Imperio spiritum ingenerat, rude nimirum illud & ferox saculum, quod conditoris sui vitæ maculatam ne summa quidem posteritatis dissimulare pietas potest. Valer. Max. lib. 5. c. 3.*

(a) *Lib. 9. & 10* Immortalitate dignus Scalliger, in Epist. ad Manilium Citiensem arcus cælestis variis coloribus sine nube apparebit, quam multiplex virtus sine invidia. Forcatulus, De Gallor. Imp. & Philosoph. lib. 4 p. 497. In cognoscendo ac decernendo magna animi varietate fuit modo circumspectus & sagax, modo inconsultus & præceps, nonnunquam Eriovulus amensique similis. Sueton. in Claudio.

*Nota bene.*

*Utinam mortuis vitam dare possent. Culpinianus in Theodos. Neque aliud ex imperio filii consecuta est quam Tacit. lib. 13.*

event of them is to know and rule, can onely and alone do more, and do better then this: but under men there is one onely remedy for what is in the proof of Laws amiss in them, that is, *concord reformari possunt* ] Statutes or Common-Laws are not then irremediable evils, but accidental and curable ones; not by amputation onely, as in *Gangrenes*, but by *attenuations*, as in *Diseases* of less danger. There is a power by the Law in our *State-Physitian*, and his *Colledge*, not onely *plastique*, but in a sort *creative*, whereby not onely form and being is given by making that Law which was not Law, but alteration of that from what it is, to what it better ought and may be. This *reformari* is that not of Root and Branch, but of such Wens, Monstrosities and Excrescencies, as may be abated and taken off without danger to the peace or disfigure of the beauty of that they adhere to. Thus *reformatio* and *reformari* are honest, loyal, and useful words, leading to necessary works, if they be rightly bounded. So the

Tholoff Syntagm. Juris univ. lib. 21.  
c. 7. art. 4.

Lib. 15. c. 15. tit. 17.

Hermogenes, De Public. & Vectigalibus,

Ut ostendam quam longa consuetudine corruptos depravatosque mores principatus parens non solum reformet, & corrigat, in Panegy. 85.  
¶ 165 Epist. Lib. 8. ad Minucianum.

Rhodi rursus reformandum ac velut recoquendum se dedit, De Cicerone, Quintil. lib. 12.  
c. 6.

Statute Marlborough, 52 H. 3. Anno  
1267.

Nemo prudens sine justitia, sine temperantia, sine fortitudine, nec prudentia ignava esse potest, aut injusta, aut intemperans; quia si aliquid eorum in se admitteret, prudentia non esset. Jacob. Maulacus in judicio, De Plutarchi Scriptis, p. 27. edit. Patif.

*Civilians* use *reformat*, id est, qui formam aliam conventioni dant; vel eandem substantiam conventionis alia forma retractant. Thus they also intend by their *reformatio monasteriorum*, *subrogatio in locum eorum*, qui eo titulo indigni sunt; and so *vectigalia sine imperatorum precepto*, neque *praefidi*, neque *curatori*, neque *curia constituere*, neque *praesidentia reformare*, & his vel addere, vel diminueri licet. And so the best Authours take Reformation to be the reduction of a thing into its old or a better form. Thus *Pliny* uses it, when he calls the Prince, *He that like a good Father reforms and corrects the ill manners of his Children, and brings them back by the steps they have gone astray*, So ¶ he terms him he admires, the very reducer and reformer of expiring and even dying art. Nor does *Quintilian* intend less, when he makes *reformare* to be *velut recoquere*. For as boiling and burnishing Plate, renews it; so doth Reformation of Laws recuperate their respect, and re-ingratiates them. Thus the Statute of *Marlbridge* mentions Reformation, *It was provided* (saith the Preamble) *agreed, and ordained, that where as the Realm of England of late had been disquieted with manifold troubles and dissensions; for Reformation whereof, Statutes & Laws be right necessary, &c.* Thus, in sense, is the meaning of the Preface to the Stat. 2 *West.* and in other Statutes, where the words *redress*, *amendment*, and the like are, which do shew that Reformation is always intended for the better; though not alike in the extent of it; for that it sometimes wholly repeats, and at other times but in part, as according to the wisdom of the King and his Parliament seems meet; which because it is *festinum & certum remedium*, the Text says *concord reformari possunt*,

intimating; that these *politique* Posters have power of the *Clay-Laws*, and can make them with their breaths *vessels of honour*, or of *dishonour*. For 'tis not *concord reformari debent*, but *possunt*; because there is not so much necessity of state, as conscience of duty to God and Men, which makes them to do what therein they can, and with all the speed and convenience they can, in this Reformation, which is to be onely by them. So is the last part of the Clause,

*Et non sine communitatis & procerum regni assensu, quali ipsa primitus emanarunt.*

This is the unalterable method of enacting and repealing Laws by the King, as Head of the three Estates, the Lords of the Spirituality and Temporality, with the Knights, Citizens, and Burgeses, all assembled in the two Houses of Parliament. Now because enaction is onely in strictness of Law and Policy, the Act of Majesty, 'tis onely said here *assensu communitatis & procerum regni*, since to them Assent and Consent is ordinarily ascribed. And though the word *communitas* is as much as needed to be said to include a Parliament, (which is the common Assent of the Realm, and signifieth an Act of Parliament, for it cannot be per communitatem Angliæ, but by Parliament.) Yet our Text, to shew how great honour the Law does the noble Peerage, and he, as a worthy English-man would do to that Honourable Order, mentions them particularly as the great props and instances of every dignified excellency. *Which Peers are either temporal men, who are hereditary Counsellours to the High Court of Parliament, by the honour of their Creation and Lands; or Bishops, Spiritual men, who are likely by the virtue of their*

2 Instit. p. 526.

King James's  
Speech, 1605.  
p. 506.

their place and dignity, Counsellours, Life-Renters, or ad vitam, of this Court. Concerning these, many have so copiously written, that I forbear to ad any thing, because all men that know any thing, know these are so essential to a Parl. & so estated in it by all Laws, Customs, & constitutions of this Nation, & their places settled by 31 H.8.c.10. that notwithstanding we have heard voted these late unhappy times the contrary; yet as true as truth it self it is, that no true English legal Parl. can be without them; and therefore the Text puts the *non sine communitatis & procerum assensu*; for the rule is *quorum est institere eorum est etiam destruere*, as without the Lords and Commons both, and each of them, no enaction can be made; so without them can no enaction be discharg'd. But of this enough, because I have every where in this Comment, asserted their necessary co-operation to enaction of Laws, according to what the Books of Law, and the Law of use and practice warrants me; passing by the rest of the Chapter, as only matter of recapitulation and abridgment, together with application to the Prince by way of complement, & prayer, that having in the Scale of Justice weighed the Arguments, and being thoroughly satisfied, that what the Chancellour had undertaken in behalf of the Laws of England, he had conveniently, and to his expectation satisfied him in, he would conclude, that the Laws that have so just, pious, and well-setled a Foundation, may be accounted of him not onely effectual and good to promote Order, Piety, and Wealth in England, but also the best and most commodious to those, and such like ends, for this Nation, of any Laws in the World; and so I end this Chapter.

Spelman in  
Gloss. p. 10. 11,  
22.

## CHAP. XIX.

*Solum igitur unum de his quibus agitur animus tuus, restat explanandum, &c.*

THIS Chapter brings in the Chancellour proposing the method of his Discovery to the Prince, how Judgment is inoffensively to be made of the two Laws; and thereupon how his promise to satisfy the Prince's mind in the scruples it has about them, will be accomplished. Now because the question was, Whether the Common-Laws were as good and effectual to the wise and orderly Government of England, as the Laws Civil were to the Empire, he seems in this Chapter to premise something antecedent to the main of the Arguments; as first that it is *digna & nobilis questio*, and such as will deserve his diligence to be informed of, and concerning it Princelyly to judge. For that I take to be insinuated in those words, *etiam & accommode judicari mereantur*: then secondly, that in disquisition and dijudication of them, there ought to be solid judgment, and modest delivery, because *comparationes odiosa sunt*, that is, Comparisons are as they are mostly managed, make baits and ventings of partiality, rather then inductions of reason into a method of proof and trial of things, upon the good and evil of them perpended. And this the Text-Master the rather mentions, because he would not onely shew, that he does not enter on this Argument upon choice, but necessity, *has aggredi non delector*; but also to shew, that there may be a profitable use of comparisons, and that in the sense they might and ought to be used, they are amiable, useful, and not odious. For besides, that comparisons are to the judgment, as light is to the eye, the *medium* of discerning; and that by them, under the rational sense, appeal is made to the gravity of that Tribunal for judgment: even God, after the manner of men, uses comparisons, to reproach the stupidity of mortal madnes, when he compared, as a fountain of living water saith, he is deserted by his ingrate Creature, for broken Cisterns that will hold no water. And thus he proposes his Controversie; God had delivered Israel from many evils, and many times interposed his power and goodness to their danger, upon which he expected duty from them in some proportion to his indulgence to them; which they not affording but the treasures of wickedness, being in the house of the Wicked, ver. 10. and violence being in the rich men thereof, ver. 11. from the in-correspondence between the venture of God with Man, in his voyage of life, and man's

*Accusationem alicui comparare. Cic. pro Cluentio.*

*Comparare canem ad rixam, ad pugnam, ad cursum. Columella, lib. 7. c. 12.*

*In ostentationem comparare declamationem. Quintil. lib. 2. c. 10.*

*Tarium comparatio nec elationem habet, nec submissionem, est enim equalis. Cic. Topic. 37.*

*In comparatione vis rerum cernitur. Idem.*

Mic. 6. 2.

*Sed cum lego, ex  
comparatione sen-  
tentiæ, quam malè  
scribam, Plin. Ep.  
130.*

*Lib. 1, Offic. 33.*

*Alterum severum clementemque, bonum il-  
lum, ipsum constantem, illum nihil largientem  
huic affluentem copis omnibus dicerent. Julius  
Capitolinus, p. 245. August. Scriptor.*

*Vir summa sanctitatis & temporibus suis  
frugi dicitur Trebel. Pollio. p. 261.*

*Signonius Triumph. Rom. p. 204.*

*Nemo nostrum frugi esto. Strabo. lib. 14.*

*Qui luxu & flagitiis alter fuit Nero, Foris  
Ca. o. tenui ambiguus, ut ex contrariis diver-  
sisque naturis unum monstrum novamque be-  
stiam diceret compall. a. m. Sanctus Hiero-  
nym. Ep.*

return to him for his talents credited to him, he deduces this resolution to *make them sick in smiting them*; as directing in his method the true use of Comparisons, to learn by the result of them, after consideration of their circumstances, what is good or evil, best and worst of them compared, and to chuse the best, and refuse the worst, *non ex meo iudicio*, saith our Text, *sed ex his in quibus earum differunt sententia, efficacius capere poteris argumentum*. 3. That there ought to be a due understanding expressed in the preponderation, and delivery over of a man's practice and choice to one and not the other: for comparisons being to an end of equality, the true nature of rational comparison is not attained; if wherein things are what they are, be not thoroughly considered, *Ubi conveniunt leges, and in casibus ubi dissentiunt*, saith the Text: thus is necessary to the proper apprehension of the Laws, as they are the subjects of choice, and as choice is made upon that *digna pensatio*, which is the refulgency of well-applied reason. The drift of the Chancellour in this Chapter then is not to make, as *Tully's* words are, *contentionem & comparationem de duobus honestis*, to contentiously compare the two Laws; but to compare them so, as to understand whether of them is upon tryal fit or unfit here for this publique use Laws are designed for. Thus did *Salust* compare *Cæsar* and *Cato*, and *Julius Capitolinus Balbinus* with *Maximus*; yea,

thus did *Plutarch* the noble Romans with the Greeks, and with others of their own Nation. And thus does Wisdom instruct to do, to make the choice of what men like and adhere to, more rational; for were it not for comparison, and the view Wisdom takes of things and men in the glass thereof, how would *Polidorus*, the Son of *Alcemenes*, whom *Pausanias* reports to be one, who neither said, or did anything, to the injury or reproach of any man, but joyned humanity with justice; and *Piso*, the onely and humble moderate man of his time; and *Hermodorus*, whom the gaddy Ephesians banished, for that he was a grave and well-pois'd man; and such as *Trajan*, *Antoninus*, and others, be discovered from *Nero's*, *Plautianus's*, and *Corocotta's*, who were Beasts in mens bodies, and who make all where they come, worse for them and weary of them. This good then comparisons occasioning, when they are used soberly, and according to the intent of our Chancellour, they are of excellent use;

and will, (as our Chancellour hopes,) make good to the Prince, that the Laws of *England* are not onely *bona & efficaces*, as he in the former Chapter calls them; but *frugi & efficaces*, that is, effectual not onely to punishment of evil, but benign in the frugal and moderate expression of themselves, to encourage goodness; and thence deserve *melius praconium*, then by their rigour they otherwise would: And so ends the 19<sup>th</sup> Chapter.

## CHAP. XX.

*Si coram iudice contententes, ad litem perveniunt contestationem super materia facti, quam legis Angliæ periti exitum placiti appellant.*

**T**His is the first instance of the dissimilitude of the proceedings of the two Laws, and 'tis in the enquiry of the truth of the matter of fact which is in controversy, upon which duly cleared, the Sentence of the Laws is given: for though both Laws aim at the discovery of truth, and in both Laws the Judges are to proceed; *secundum allegata & probata*, and to deliver righteous judgment according thereunto; yet in the manner of the proof, not in the end whereto it tends, arises the discrepacy.

*Si coram iudice contententes*] Here is set forth the parties *pro* and *con* called *contententes*; not that always there actually is, or religiously ought to be enmity of mind, where there is legal difference: for then the power of God in the Magistrates hand, would support a breach of that Commandement, which says, *Love one another*, and thou shalt not hate thy Brother in thy heart; because where ever there were rancour of mind, there would be a subterfuge to that distemper, in the pretence of legal justice; which

which though it too often be, yet is it not always, nor necessary to be so charged on all Contenders at Law; since sometimes that course is unavoidable, and may consist as well with habitual Charity, and amicitia integrity and fervour, as did *Lots* and *Abraham's* parting upon the contention of their servants; notwithstanding which, their friendliness was full and cordial: but they are called *contendentes*, because the parties in course of Law are in a politique battail, wherein juridiquely they draw forth their Forces each against other; the Plaintiff affirming, and the Defendant denying the matter he is accused guilty of; and because what men either love or hate, desire to have, or are loath to lose, that according to the impetuosity of their passion they apply themselves to the obtainment of. Therefore all Authours, to express eagerness and intentness of mind on any thing, render it by *contendere*. Thus *contendere cursum ad aliquem*, is to set with a good will to any one; *contendere agmen*, to lead a force of men to the relief of a party, or to gain a pass. So *Tully*, *contra vim gravitatemque morbi contendere*, and *omnibus nervis contendere*, and *plurimis verbis aliquid ab aliquo contendere*. This and the like shew, that the parties that would legally evict one another, are therefore thus called, because they do manage a civil Combat, and try a juridique mastery, upon which they are said, *coram iudice contendentes*.

*Contendere pro defendere & affirmare. Celsus, in Tractat. lib. 1.*

*Grave agmen ad Euphratem contendit Curtius, lib. 3. Cic. 9. Philip. 5. verrem 10.*

*Coram iudice*] This makes contention lawful, *in foro seculi*, because it is an appeal to the Civil Magistrate, as the Oracle and Judge; and it supposes him to have power, because it appeals to him for tryal and sentence, which it could not reasonably do, if it did not allow him cognizance of the Cause, which it doing, takes off all private revenge, and all contumacy against the Ordinance of God: for the Magistrate is set by God to settle debates, and thereby to prevent disorder, injustice, and confusion. Hence is it, that by the Law of Nature and Nations Judges are every where, and in all times, set up and repaired to, and all Contentions settled by them. And that this Office was Patriarchally in the Heads of Families, after in the Priests, after in Judges, civil Magistrates, and so is to this day, no Nation affords not testimony to it, no man can be ignorant of it.

*Ad litem perveniunt contestationem super materia facti*] That which the Common-Lawyers call (after the Arrest or Appearance, and Declaration upon it, to which the Defendant pleads) *the issue of the Plea* is by the Civilians termed *litis contestatio*; because the Citation summoning the parties to appear, their appearance, and the legal testifications of their minds is termed *litis contestatio*; and *lis* we know is so called, *a limite*, because the first quarrels that were, are thought to be about bounds: and hence because the grounds of this variance were things solid; *Lites* were accounted other gates matter than *furgia*, those we call *Brawls*; for they may be among Neighbours, without breach of friendship; but these *Contentions* are things of Hostility: and therefore though they may be lawful, and are so; yet because they are perillous to, and minacious of the extirpation of Charity, not onely does ingenuity decline, but Christianity reproach it, as a spot that is none of the spot of God's people, but a smack of the old Serpent in the leaven of his imparted enmity, and disaffection to man, whom he would make as unlike God, in good, as his malice can plot and effect: yet so far is the prudence of government necessitated to give way to it; that to prevent the ferity of humane nature; which if it could not this way vent it self, would do it more butcherly: it allows Suits at Law to determine what other ways cannot be determined, the partialities of the respective *contrarients*, rendring them incompetent Judges. And thus the Law Civil calls *litis contestatio*. *Quintilian* names it *litis productionem*, the *Libel* or *Roll* in which the grievance we have from any one, or more, is at large specified. And the Lawyers makes *contestation* to differ from *protestation*, *attestation*, *detestation*, as *Alciat* has at large quoted *Authorities*; by which it appears, that this *contestatio litem* is the solemn production of the matter in contest before the Judge, with intent of affirming or denying the truth of the fact. For the fact being that, upon which the Law arises, the proof of that is the carriage, and the disproof of it the defeat of the

*Leges Digest. lib. 22. tit. 4. p. 2085. in Glofs.*

*Si jurgant benevolentium concertatio, non lit inimicorum. Tullius, De Rep. lib. 4.*

*Jurgare igitur lex putat inter se vicinos, non litigare. Nonius.*

*Non differendum litium causa, sed tollendum, ad arbitros iur. Celsus, Digest. lib. 4. tit. 2. p. 655.*

*Litis contestatio est hinc inde, apud iudicem negotii principalis facti narratio una cum petitione ab auctore facta & rei contradictione. Corvinus in Enchiridio, Tit. De Litis Contest. p. 682.*

*Quintil. Lib. 12. c. 3.*

*Alciat. in legem 40. Lib. De Verbor. Signific. p. 109, 110. Litem in iudicium deducere est litem contestari Lib. 2. tit. 5. p. 443. Lib. 3. Tit. 3. De procuratoribus Contestatum, in Glofs. p. 367.*

cause,

In Leg. 238. tit. 1. De Verb. signific.

Digest. lib. 22. tit. 5. De Testibus. p. 2084. c. Seq.

Digest. lib. 22. tit. 5. Dignitas H. p. 2087. Digest. lib. 2. tit. 11. p. 225. Domestici Mag.

Tholosan. Syntag. Juris, lib. 48. c. 13. tit. De Testibus.

Fornerius in legem 99. ff. 2. De Verb. signific. p. 233.

cause or contention, *Testes dicuntur quasi superstites & antistetes, qui stant dictis, vel factis*: so *Alciat*. So that Witnesses being necessary to prove matter of fact, the Law requires that they be *legitimi & idonei*, those which in some sense were present, either by sight, hearing, or some other lawful way, by which they are enabled to give positive and indubitate testimony; which they, the more unquestionably do, when they are *assidui*, as the Law of the *Twelve Tables* is: that is, saith a gloss, *Locupletes*, men of worth, who do not testify by their testimony to make a gain, but are *omni exceptione majores*, which some are not, whom the Civil-Law therefore excludes. For matter of Fact being the ground of Contention, the Judge is to see the proof correspondent to the averment, or else the *litis contestatio* will fail in the proof, and appear rather matter of malice, then zeal for justice.

*Exitus hujusmodi veritas, per leges civiles testium depositione probari debet, in qua duo testes idonei sufficiunt.*

*Duo ad minus requiruntur testes in plena probatione.* Tholosan. Syntagm. Juris, lib. 48. c. 13. ff. 9.

Corvinus Enchirid. Tit. De Testibus.

Grotius, in Johan. 8. v. 17.

*Ubi numerus testium non adjicitur, etiam duo sufficientes; pluralis enim electio duorum numero contenta est.* Ulpianus, lib. 31. ad edict.

Digest. lib. 22. tit. 5. p. 2091.

*Sapienter lex divina exigit testes in quaque causa binos aut ternos, primum rejiciens singularia testimonia, deinde ostendens eam posse esse viri alicujus famam, ut facile non uni tantum, sed & duobus testibus sit; וְרָאָהוּ אֶת הַיָּדָיִם. Tunc igitur tertius non exigitur testis; nam probationum pondus, angustiis finibus circumscribi non possunt, sed pro personarum rerumque circumstantia boni viri arbitrio aestimanda veniunt.* Grot. in Matth. 19. 16. Barcolus, Digest. lib. 2. tit. 13 p 143.

*Si lis aut accusatio confirmata fuerit, duorum aut trium testimonio rata erit.* Vt tabl. in Deut. 19. 15.

In Cap. 10. ad Hebrizos. v. 28.

of man: yet even he our Lord Jesus in the 18. of *Math. 16.* confirms this: so *Job. 8. 17.* and the Apostle, *2 Cor. 13. 1.* and *Heb. 10. 28.* These Authorities shew the descent of two Witnesses for proof; and therefore *Ludovicus Capellus*, a learned man, doth not without good ground reproach that Papal Sanction, *juri tam divino, quam humano contrarium*; which for proof against a great Church-man, will have 72. Witnesses, against whom no exception can be: for since, says he, God says, every word shall be confirmed in the mouth of two or three: so much superaddition is to make the proof impossible almost, and so to continue the sinner unpunished. Onely the Text here puts in a word, which well explains the sufficiency of this number, when they are *idonei*; which what that is, the Laws mention, as I have quoted heretofore in this Chapter: yet 'tis worthy addition, that as the rule is *presumitur quis non idoneus nisi probetur idoneus*; so by contraries, *presumitur quis idoneus nisi probetur non idoneus*; for there is a good gloss to this purpose, *Approbatnr quis eo ipso quod non reprobatur.* And surely, where no just attain can be made of a persons understanding, fidelity and privity to that he swears; his testimony ought

Digest. lib. 22. tit. 3. p. 2072. De Probationibus. Digest. lib. 2. tit. 8. p. 209, in Marg. gloss.

ought to be taken as from a fit Witness; since no honest man will put himself upon the attestation of any cause, which he is not, by knowledge of, a fit Witness in.

DigeR. lib. 4. tit. 2. p. 513.

*Sed per leges Angliæ veritas ista non nisi 12. hominum de vicineto, ubi factum hujusmodi supponitur, Sacramento judici constare poterit.*

This is brought in, not to prove that the Law of England does not allow proof by witnesses, one in some cases (a) *unus testis sufficit non ad damnandum, sed ad inquirendum & in pecuniariis ad deferendum reo iurandum purgatorium*, but not in Treason, (b) here two must be; and so in other cases, the more Witnesses are, the clearer probably is the cause to go; but to shew, that over and besides the two Witnesses, the Law appoints the Sheriff to summon a Jury of twelve men in number, and those *liberi & legales homines*, and those *de vicineto*, dwelling about the place where the fact in controversy is, who being presumed to know best the truth, are to pass upon their Oaths their Verdicts, upon hearing of the Evidence or Witnesses deposing, what upon their Oaths they believe to be the truth, &c. In all which Cases within the trial of Juries, there are special qualities of Jury-men limited by Statute, according to the nature of their enquiry. Thus Jurors in Indictments are by 11 H. 4. c. 9. Jurors within the County or without, 21 E. 1. upon life and death, 2 H. 5. c. 3. 8 H. 6. c. 29. upon forcible Entries, 8 H. 6. c. 9. before Escheators, 1 H. 8. c. 8. before the Sheriff in his turn, 1 R. 3. c. 4. to enquire of Felonies in Corporate Towns, 23 H. 8. c. 13. on Attaints in London, 11 H. 7. c. 21. 4 H. 8. c. 3. 5 H. 8. c. 5. These; and the like, the Statute-Law provides for Juries, without which no trial of fact can be. Which use of Juries, however some have been pleased to affirm, that they were introduced by the Conquerour, mistaking (I presume) his taking of twelve men, who out of every County were chosen Reporters of the Countrey Customs for these Jurors in matter of fact between man and man. I say, however mistakes may herein be; yet sure it seems to me, and to others more wise, than I dare presume to think myself, that Jurors are very antient here even from the Saxons times. For in the Saxon Laws mention is made of them, and that as a peculiar set of men, that were in matter of fact to judge the truth, as in matter of Law the Judges are. And by *Glanvil* it appears, that when *Duel* was banished, *Clementis principis de consilio procerum populis indultum*, then the more frequent use of Juries begun for trial of Causes; which H. 2. did, to discard the uncertainty of that tryal, *Cum enim ex unius Jurati testimonio procedat Duellum, duodecim ad minus legalium hominum exigit ista constitutio Juramenta*. For the number twelve, it should seem to be one of those *Scripture sacred ones*, which the Law delighted in. The Tribes of Israel were twelve, and the stones and the names written on them on the Breast of the High Priest were twelve; our Lord chose his Apostles twelve, and their glory in Heaven is denominated by twelve Thrones; yea, the Heavenly Jerusalem is said to have twelve Gates, and twelve Angels to guard it; so the Patriarchs were twelve, *Acts* 7. 8. and Solomon's Officers were twelve, 1 King. 4. 7. So 2 Sam. 17. 1. The thousands of chosen men were twelve, and the sealed thousands in the 7 Rev. were twelve; twelve Bullocks, and twelve He-Goats were an offering for all Israel, *Ezra* 8. 35. So with us here the Judges of old were 12, the Counsellours of State of old twelve; and he that wagemeth Law must have twelve, that is, eleven besides himself to be his Compurgators; yea, it should seem that twelve was very much a valued number, especially in great matters; for *Seneca* tells us, that *Jupiter sends his lightnings by advice, for he calls twelve Gods to Council about it*; and *Tully* sure intends something by it, when he writes; *Discebamur enim pueri duodecim & carmen necessarium*; and the famous Greek Laws, after the Parent of the Roman Laws, was called the Law of the Twelve Tables; the number 12. is famous in France, which hath 12 Peers. These, and such like things may prevail with us to believe, that something our Ancestors held fortunate in the number twelve.

(a) *Crotius in Deut. 19. v. 16.*  
 (b) 5 and 6 E. 6. c. 11.  
 3 Instit. c. 2. Petit Treason, p. 25. E. Lumley's Case.  
*Probationes oportet esse luce clariores. Reg. Juris.*  
 1 Instit. p. 155.  
 28 E. 1. c. 9. 34 E. 3. c. 4. 42 E. 3. c. 11.  
 11 H. 4. c. 9. 2 H. 5. c. 3. Stat. 2.  
*Regist. fol. 178.*  
*Vicinus facta vicini presumitur scire Reg. Jur.*

*Polydor. Virgil.*

*Cook Preface to the 8. Rep.*  
*Duodecimvirale istud iudicium altissimi est originis, & ab ipse Anglo-Saxonibus.*  
*Spelman in Gloss. p. 398.*  
*Inter LL. Ethelredi, c. 3. & 4.*  
*Lib. 2. c. 7.*

*Carrbden Britania, p. 153.*

*Rev. 21. 12.*

*1 Instit. p. 155.*

*Secundum mittit quidem Jupiter, sed ex oculis sententia; duodecim enim Deos advocat.*  
*Natural Quæst. lib. secundo, c. 41.*

*Cicero, secunda legibus 93.*

*Choppinus. De Domaniis Franciæ, p. 331.*

Reg. Juris.

*De vicineto*] This is a word from *vicinus*, signifying the Neighborhood, any place within the County or Hundred, which is in a large sense the Neighbourhood, the Stat. 17 Eliz. c. 6. enacts a Writ to the Sheriff, *Quod venire facias duodecim liberos, & legales homines de vicineto*; and I suppose the reason is, *Quia vicinus facta vicini presumitur scire*; which the Statute words in the Preamble somewhat otherways, as the reason of the Writ, *For the returning of more able and sufficient Jurors for Tryals, and for reformation of abuses by Sheriffs and other Ministers, who for reward oftentimes, do spare at home the most able and sufficient Free-holders, &c.* And because Jurors by the Law have great trust, they ought to be *liberi & legales homines*; for that's included in *hominum de vicineto*, that's *virorum fide dignorum*, nere locally, sufficient intellectually and fortunately, sincere unsuspectedly.

1 Instit. p. 155. b.

*Sacramento*] This word the Law uses to put a dread on men that are under the obligation of it, because it is not onely an Obligation as an Oath, but as called a *Sacrament* *memorative* of us, with what integrity men ought to enter into it. They are understandingly, conscienciously, and resolutely to give Verdict according to their Consciences, and that not onely because the Oath of God is upon them; and if they do otherwise then justly, God's vengeance impends them: but also because the Law has put her power into them in point of Fact. And if they have not the greater fear of God, reverence to the Law, and charity to their Neighbours, as well as to themselves, they *may turn judgment into gall*, and righteousness into wormwood. And if they do not perversly, but keep themselves within the limits of their Oaths and Verdict according to Evidence, neither for favour or affection: so help them God, and the Contents of the Testament; I say, if according to this they do, undoubtedly they will quit themselves like men, *sacramento astricti*; and do in their demeanours clear to the World the wisdom and care of our Ancestors, to provide such a remedy against falshood and partiality. The truth of this I know by what I have seen, and found by mine own personal service in Juries with persons of quality, Knights and Gentlemen of the County of *Middlesex*, my worthy Neighbours, and that in causes of very great moment, and on grand Enquests; for onely with such, and in such causes, have I been engaged: and I am further humbly boldly to say, that if Juries be kept up in their credit, and Gentlemen of the best quality be by no means excused, except where Law and necessity excuses them, there is no such way of tryal for the justice and integrity of it in the World. For who that is by birth a Gentleman, and by breeding and fortune kept up worthy that degree, will charge his soul with the guilt of perjury, for the pleasure or fear of any man? Nay, I further will, under the favour of my betters presume, to add, these great Free-holders being thus in service, will do the Crown all right, in presenting encroachment upon it, and the people in presenting all common nufances or entrenchments upon them. And this the Sheriffs shall do well to take notice of, that the King's Courts of Justice are never (to my observation) better pleased, then when they see Pannels and returns of Knights, Esquires, and Gentlemen, of rank and quality before them. And our Text gives the reason, because in matters of fact, *Non nisi 12. hominum de vicineto, ubi factum hujusmodi supponitur, Sacramento judicis constare poterit*. No Jury returned, and appearing, no tryal can be, so no Sentence; for matter of fact must be tryed by Juries, *ad questionem facti non respondent Judices, ad questionem Juris non respondent Juratores*.

Amos 6. 12.

The credit of  
Juries how  
preserved.

Reg. Juris.  
1 Instit. p. 155. b.

*Quaritur igitur, &c.*] The difference of Tryals by the two Laws being patedied, this is the reddition and application, as it were, to its close order, that the Prince may see how the Chancellour's Arguments answer the end of their Production. The thing he was enquired about, and undertook to satisfie was, that the Common-Laws of England were *bona & efficaces* for England, as the Civil Laws were for the Empire. Now this he supposes he has done in part, by shewing that the proof of matters of fact, is by the *English* Law to be by the Oath of two or three Witnesses, as the Civil Laws require; and because he supposes in the *English* Law there is a super-addition of strength to the validity of proof, and the prevention of falshood by the Juries, which are on their Consciences to judge whether they think the matter of fact is deposed to and in its evidence clear, he thinks this the *rationabilior & efficacior (via) ad veritatem*, then otherwise. But of this enough; and if by any thought too much, which (under favour) I think has all imaginable modesty in its assertion. Let that excuse the Chancellour; and his humble *Eccho* my self, the Law of England has thought so, & *neminem oportet esse legibus sapienterem*.

Reg. Juris.

CHAP.



CHAP. XXI.

*Per leges civiles pars que in litis contestationem affirmativam dicit, testes producere debet.*

This is suitable to reason, and the method of all Laws, for those that commence a Suit to make good their Action by proof. For besides that, the Lawyers say, in *his qua pertinent ad litem ordinationem, favemus actori potius, quam reo*, which makes the Plaintiff have the advantage, as he is the occasion, and so may move fast or slow as he sees his advantage: there is reason so it should be, because the Action or Contention either justifies or abates, according to the Actors testimony valid or not. For though the Law Civil do require of an Actor oath, that he has not begun his Suit injuriously, or on purpose to disquiet his Neighbour, but upon assurance that he has a good cause, and the reus or Defendant do likewise swear, that he shall make a just defence; yet does the Law require testimony be given by such persons, quos ipsemet ad libitum suam nominabit, that is, by such idoneous persons as he shall produce, and shall be allowed, and not excepted against. This is the tenour of the Law's direction in affirmative Contests, wherein the opinion is, *Duobus adserentibus affirmativam magis creditur, quam etiam decem negativam proponentibus*; and therefore our Chancellour has rightly said, that *pars que in litis contestatione affirmativam dicit, testes producere debet*. For so, besides the other Authorities, *Paulus* adds, *incumbit probatio, ei qui dicit non qui negat*; on which the gloss says, *Duas ponit regulas hac lex prima, qua dicitur affirmantem probare, &c.* From all which appears, that the proof lies upon the affirmative party, for the reason that follows.

*Negativa autem probari non potest directe, licet possit per obliquam.* All affirmations are opposed or weakened by negations, and negatives are either *facti, juris, or qualitatibus*; of all which negatives, the hardest to prove is that of fact, which our Text intending, therefore says, it cannot be directly proved, though indirectly, or obliquely it may, that is, *negativa coarctata loco & tempore potest probari*; otherways the proof of it must be indirect: as for example, *A. accusat B. to have been at York*, and there to have committed such a *facinus*, in proof of which he produces *C. D. E. B. cannot proye that he was not at York*, against the positive testimony that he was; but he can prove the negative by collateral testimony, to wit, that at that very same time, *B. was at Excester*, in such a house, and with such company; which admitted true, proves the negative obliquely, to the improbation of the affirmative peremptory; for the rule is, *omnis enim res sit dubia negatione*; which I understand in a good sense applicable to affirmative testimonies, which are so far weakened in their credit, as the negative of them seems, and is most strongly supported by circumstances, introducing belief, that the affirmative is not true, *modo & forma*.

*Exilis quippe creditur esse potentia, minoris quoque industrie, qui de omnibus quos no- scit hominibus, duos reperire nequit ita conscientia & veritate vacuos, ut timore, amore vel commodo, omni velint contraire veritati.*

This is written, to shew the danger that the positivity of two Witnesses that do affirm, may do to the right of a cause; for if two in number assert upon oath what must stand, and the Judge must accordingly judge upon; then industry to seek out, and influence to persuade for love, compel by fear, or bribe by reward, may do what it pleases with two, that it may find out for its purpose: Which done, be the Judge never so learned & just, yet by the Civil-Law, he is supposed by our text to give Sentence according to the fulness and positiveness of the Evidence, which though it be a reason urgable against any thing, which is mortal and mutable; yet is thought by our Chancellour and

*Actor est qui alium prius, ad iudicium evocavit* Digest. lib. 5. tit. 1. Gloss. in Tribus, p. 660.

Tholoff. Syntagm. Jutis. lib. 43. c. 6. tit. 8.

*Datur actori Sacramentum propter enormitatem criminis.* Digest. lib. 12. Tit. 1. p. 1294; Gloss. A.

Digest. lib. 4. tit. 8. Gloss. K. consensuerunt. p. 644.

Lib. 79. Ad edictum. Digest. lib. 21. Tit. 8. De Probationibus, p. 2069.

Baldus in Margl. Gloss. Titul. De Probationibus, & Presumpt. p. 1069. Digest. lib. 22. tit. 3.

Digestorum, Lib. 3. Tit. 4. in Gloss. B. De lit. p. 177.

Argument of strength here, when the *Text* says, *testes producere debet quos ipsemet ad libitum suum nominabit*; which advantage given to the Actor in a Cause, is so great a favour to him, that if he be not *felo de se*, and desert himself, he cannot but succeed in his cause. Now this wanting to ones-self, as here 'tis brought in, is said to be *ob exilitatem potentia*, that is, 'by want of wit, and inaptness to business; which is a sense *Pliny*

Epist. 114.  
Cic. 2. De Divinat. 46.  
1 Dere Rustic. c. 2. 9.  
Cic. 4. De Finibus.  
2 De Orator. 87.  
Cic. 2. De lege Agrar.

Ac si unum aliquem hominem, ac non rem  
incorporam peterent.  
Sabellicus, lib. 4. c. 9.  
A. Gellius, lib. 6. c. 11.

Theatrum v. Humanz.  
Volum. 5. lib. 1. p. 668.

puts on *exilis*, when he opposes *plenus* to it, making it the absence of what is vivid, vigorous, and masculine: so *exilis aper gracilis & male saginatus* in *Varro*; *exilis copia*; and *genus sermonis exile, aridum, siccum, cui opponitur liquidum, fufum, profuens*; and *exile solium & exilia dicere de virtute*, which arises from either a natural defect, or a desuetude and stupor of nature that makes men impatient to be troubled with business, and unhappy in it. They being as much to seek of wisdom to manage it, as the *Psylli*, a people of *India*, are mofish and superstitiously ignorant, who because the South-wind is harmful to them, go to war with the South wind: or the *Thracians*, who when they see their Governour make many high Ladders, pretending to mount up by them to *Juno*, and before her to accuse them of contumacy and stubbornness, hereupon they are so terrified, that presently they do whatsoever they are commanded to do. This easi-

ness of reach, and softness and indigestion of reason in the mind, will make a man key-cold to action. And so may *Minoritas Industria*, (as I may so turn the Chancelour's words) make a man not improve what he may to the uttermost; whereas *industry* has a notable effect, and almost an omnipotentiality attending it, which I have in part heretofore shewed in the Notes on the eighth Chapter, p. 144, 145. and will further in sundry Presidents, wherein *Industry* has served men to high and fortunate purposes, not only as it is  $\text{ἰσχυρὸς}$ , that which makes men crafty to lye in wait, but bold as hunters, are, to venture on the greatest design they have a mind to; which *Rabbi David* glosses on the words of *David*, *Psal. 19. 14. Prohibueris ne de industria peccem*; but as it is  $\text{רֶשֶׁת}$ , that which is the Net that encompasses whatever we have a mind to, and the girdle under which we bring all our aims; yea, that  $\text{שִׂמְחָה}$ , which makes us enjoy what we obtain with the good-will of all men, who account it rightly placed, and us not unworthy of it. This is the *industry* of *Providence*, that strikes while the iron is hot, and the spirits warm; and that by providing for a fore-seen evil day, makes the evil of it abortive, and conducts the havers of it into their Meridian. *Falgosus* tells us of a notable young *Don* that was a pregnant spirit, and thought nothing too good for himself; who one day came to *Alphensus* the eighth of *Castile*, to ask of him the government of *Toledo*; the King looking upon this Youth, as unmeet for such a charge and trust, refused his request: But the young Gallant would have no denial, but persisted in assertion of himself to a kind of courtleis impertinency, telling the King, *That he saw many young Nobles about him, who because they were his Companions in play, were also made happy by him when he was in earnest in a Throne; and that he found in himself great excitations to brave actions, which he desired to express in his service, if he might be honoured by a trust and command therein.* Which *Alphensus* hearing so boldly and so bravely uttered, granted his request, and a brave man he proved, fellow to any his Contemporaries. The like is reported of *Hannibal*, whose *industry* was such, that though he were many years in an Enemies Countrey with an Army of men of different Nations, Language, Habit, Manners, who were differently religion'd, arm'd, addit'd; yet so did he unite them to him, and to one another, by the justice and strictness of his Discipline, and the *industry* he expressed in circumspection, that in the utmost straits of War, he never was disquieted with Sediton. So that by this it appears, that *industry* and diligence in business, has so much of the plenarity of worldly felicity entailed to it, as God permitteth; and that nothing in ordinary to the effecton of extern means, is restrained from being the Trophy of its Conquest, and the sacrifice of its vigilance. Which emphatizes the Chancelour's Argument to the end he prolated it; for since *industry* is thus prevalent to good and to evil, as is evident in the examples of both, in which, especially the latter and worst of them it is more frequently and indefatigably expressed; witness *Satan*, who is said to go about like a roaring Lion, seeking whom he may devour; and wicked men his *Emissaries*, who work iniquity with both hands, whose feet are swift to shed blood,

Eth. 3. 5.

Lib. 6. c. 2.

Sabellicus,  
Aenead. lib. 5.

1 Pet. 5. 8.  
Micah 7. 3.

and

and who design mischief on their beds, to whom wickedness is pleasure. I say, since thus it is; who that is industriously wicked, and wittily industrious, can mis of what he aims at, as it falls under an Earthly notion, and is the confectary of prudent endeavour. For as by this in good things, Augustus evicted Salvidenus, Lepidus, Murana, Capio, Ignatius, and even Cinna himself, whom when he had in his power, he so reason'd out of his enmity, and laid his offence so home to him, that Cinna was ashamed of his insolence; and having all his Lands and Honours confirmed on him, ever after lived a most loyal Subject to his Prince: Nor did Augustus repent the prudence he thus fruitfully expressed, because never after he had any trouble from any he had condoned. That look as Mentor Rhodius Admiral of Asia (by sending Hermias the Aternensian Tyrant a subtil Message, by the belief of which he was cogg'd into his power; whom Mentor being once possessed of, so prevailed upon by fear & fallacie industriously applyed to him, that he got his Signet, and then wrote Letters to the several Towns, that Hermias had entred upon, and for him were held, signing them with his Seal; whereby he (without blood) gained delivery of all his Masters losses, with his Enemy also: and all this Diodorus says he did, by the prudence and industry of a Warlike Soul, which preferred secure Policy, before dubious War, and subdalous stratagem to manly encounter. As he, I say, did do this great service to his Master, by industry, in knowledge of Hermias his humour and weakness, and accordingly thereto framed his applications: so may any man of power and diligence, wind himself into either an admirer of his parts, or a searer of his power, or a flatterer to his favour, or a vassal to his purse, and them makes his servants to any pleasure he will command them. For men are to the sovereignties of love fear and advantage, such Vassals; that they make rendition of their integrity to them, as readily as the World did to Alexander, Whom no Enemy encountered with (saith Diodorus) whom he overcame not; no City besieged he, which he carried not; no Nation came he near, which he victor'd not: Which I do not mention, as onely the extraordinary pleasure of God to have it so, as it is evincible in sundry cases: but as it seems to be the confectary of Martial Prudence, and active wisdom; which Probus methinks puts out in a notable example of one who was ever in the head of his armed men; and as he attempted no great thing without them: so did he no grievous thing by them. All his enterprises had the ballast of counsel; and because they were once well done, as they needed not to be repented of; so did they not miss of his end, which was either to reform what was amiss, or to introduce what was expedient. In consideration of all which, supposing men be knowing, and will be active, what may they not accomplish; and especially in testimonies, where if they go by number, they may be so contrary to truth, as nothing more can be. For Witnesses a man may find enough; and if they be conscientia & virtute vacuus, they will depose any thing they are cajoled to depose. For Conscience is that sweet noted Syren; that makes a man have all delight, while it witnesses integrity and cleanness; 'tis that which is *ἡγία τῶ βίου ἀποδοῦν*, which will render a man bold and fearless; free in captivity, joyful in sorrow, abundant in want, glorious in rags; 'tis that, which when good, is a continual feast, which holy men have rejoiced in, and evil men onely made shipwrack of. The excellency of a good Conscience is known by its companions, Faith and Charity, 1 Tim. 1. v. 5. and 19. and c. 2. v. 9. by the study St. Paul expressed to keep it, Act. 24. 16. and the use he made of it, and the defence he had by it, 1 Pet. c. 3. v. 16. & 21. Indeed, what a good Conscience is, the contrary can tell; for a bad Conscience is, *ἀναίτητον πονηρόν*, as Gregory Nissen expresses it; and Philo, that every evil man is condemned by his evil Conscience. And when truth is not regarded, which God so highly values; that he calls himself a God of truth: and his Son calls himself the truth, and says of truth, that it shall make his free; that it is the means of their sanctification; That it is a fruit of the Holy Spirit. If truth be a Denizen of Heaven, and a Fellow-Commoner with God at the Mese of Eternity; and if the reward of it be *ἀδύνατον χερσὶν καὶ ἄιδιον*, as Epictetus says, If God loves truth in the inward parts, and will be served of those that draw near unto him in spirit and in truth: Then, Then, to be void of truth,

Vives, lib 3. De Concordia, & Discordia.

Lib. 16. Bibliothec.

D. Siculus Bibliothec. lib. 17.

In Vita Iphicratis.

Τὸ μὲν εἶναι γὰρ αὐτῷ τῷ βίῳ ἀδικημα μὴ δὲν, ἰδούτω πάλω ἔχει. Antiphon apud Stobæum, Serm. 106. p. 350.

and the use he made of it, and the defence he had by it, 1 Pet. c. 3. v. 16. & 21. Indeed, what a good Conscience is, the contrary can tell; for a bad Conscience is, ἀναίτητον πονηρόν, as Gregory Nissen expresses it; and Philo, that every evil man is condemned by his evil Conscience. And when truth is not regarded, which God so highly values; that he calls himself a God of truth: and his Son calls himself the truth, and says of truth, that it shall make his free; that it is the means of their sanctification; That it is a fruit of the Holy Spirit. If truth be a Denizen of Heaven, and a Fellow-Commoner with God at the Mese of Eternity; and if the reward of it be ἀδύνατον χερσὶν καὶ ἄιδιον, as Epictetus says, If God loves truth in the inward parts, and will be served of those that draw near unto him in spirit and in truth: Then, Then, to be void of truth,

Τὸ ἔγδον οὐκ εἶναι διαστροφῆς πῦς ἀρετῶν ἀλίσταται. Stob. loc. præcit. Psal. 117. 1. Philo lib. De confus. John 14. 6. Linguarum, p. 337: John 8. 32. John 17. 17. Ἀληθεῖα δὲ τῶν ἑμῶν πόλις ἐὼν θεοῦ εἶναι διαστροφῆς. Olympias apud Stobæum, Serm. 59.

to have that kept from its office in informing Conscience, and so keeping a man free from the great offence, is to lye open to all mischief; 'tis to be beautiful, and without all form of virtue. Thus the Earth is said to be without form, and void, *Gen. 1.* Thus the wanton young man is said to be *deficiens corde* לֵב רָקִי, which our Translators render *void of understanding*; yea, and void has a sense of *perishing* and *annulling*, *Deut. 32. 28.* It is a Nation void of counsel; the word is רָקִי, *periens consiliis*; and thus the Lawyers use the word, making void, for nulling, cancelling, unsaying, undoing.

So that when our Text says, *conscientiâ & veritate vacuos*, it intends such profligateness and debauchery of soul, as has no tincture of God, no grain of restraint to the utmost degree of vildness; no not to such a measure of impiety, as the Apostle calls *working iniquity with greediness*; insomuch, as what God says of *Israel turned into the degenerate Plant of a strange Vine unto him*, *Jer. 2. 2.* and is expounded by the Prophet *Hosea* in the 10. of his Prophecie and the first, *to be an empty vine*, is but what this passage imports, in those phrases of detraction and abasement, *conscientiâ & veritate omni vacuos*, & is what the Wise-man says of the lewd Woman, *She forsakes the guide of her youth, and forgets the Covenant of her God*, that is, she is as vild, as voidness of truth and conscience to God and man can render her.

*Ut timore, amore, vel commodo, omni velint contraire veritati.*

This follows upon the former *vanity*, when God is not in the terrours of Conscience, and in the conviction and light of truth in all a man's thoughts, then he lies fit for all occupants, and hangs out a bush, to coal in all comers; vice as well as nature, in a sense, endures no vacuity Hence is it, that it says to God, *Depart from us, we desire not the knowledge of thy Law*; but it complements *Satan* and his Creatures in, and bids them welcome. Those Lovers, it has strewed its bed with Roses to entertain; and all this is done, to gratifie the combination he is head of against truth: Truth is the Queens Daughter, all glorious within; and he onely delights in her whose she is, and who onely knows throughly what she is. And so far are onely men aimers at, and prosecutors of her, as they are partakers of defecated reason. The Soul while it sits at home contemplating truth, it feeds on *Mannah* Cœlestial Viands; but when once it wanders abroad, and will find truth, where God hath not bid man to seek it, nor promised he shall find it; then there is danger of *Dinah's* misfortune amongst the Daughters of the Land, Innocence and Integrity have no Mines and Snares so corruptive and ruinous to it; as fear of power, love of favour, hope and desire of profit: these are in most the price of conscience, and truth with them.

*Fear*, 'tis a fruit of sin; and therefore the fear of man is a snare, because the fear of God is not made the guard: he that has commanded not to *fear man, whose breath is in his nostrils*, has dictated, why he deborts there-from, because such fear hath a snare, and a pit attending it; 'tis *timor absorptionis non cautionis*; 'tis a fear that disables to opposition, and leads man a captive to all mischief, *Jer. 48. 43.* This was *Moab's* fear, *timor exanilationis*; 'tis a fear that makes men desperate to venture, and helpless in miscarriage: *No, save us Master we perish*, when the storms and winds engage these our imbarquings, Christ is not a friend at hand in this trouble. And therefore no wonder this base fear wrought so on the Cardinals, when Pope *Julius secundus* stood to be Pope, that they knowing him to be a bold and daring spirited man, and impatient to be crossed, were so awed by him, that they durst not but choose him Pope, because they consulted more how to wave his displeasure and purchase his favour, then discharge a good conscience.

*Amore*] Love that's the next *fury*, a passion, like the Apples of *Sodom*; if good, very good; if bad, very bad. When its by a kind of Miracle from Water become Wine; by a prepotency of Reason and Religion, reduced and bounded: then 'tis like the precious Spicknard, which *Mary Magdalen* anointed our Lord's head with, odoriferous, very costly and amiable: no ingenuity and *ἀρχή* of Art or Nature, but superlatizeth it self by the touch and tincture of this; it is the rapsody of all transports; and if the magnetic and cabalistic Charms of Nature be any where, 'tis here in love. The love of every man is his weight, that he is that he loves: there is a fixed truth in the Poets fiction, the Moon will forsake her Orb to kiss her *Endymion*. Thus *Circean* is love, that it leads Creatures madding, without Reason or Religion; which causes the

Prov. 7. 7.

So Psal. 10. 16.  
Jer. 48. 16.

Job 21. 24.

Dulcis veritas in  
interiorem melodi-  
am. Sanctus Ber-  
nardus. in Cont.

Matth 8. 25.

In Platina in vi-  
ta Julii 2. Papa.

Platina in vita  
Julii 3.

O amor, qui te ap-  
pelles bonum an  
malum, dulcem an  
amarum; ita enim  
utroque plenus es,  
ut utrumque esse  
videaris. Salvia-  
nus. Lib.

Tō μαρτυρῶς  
δ' ἀπ' ἑνὸς ἑσῶς  
ἕξοῦς. Eu-  
rypid. in  
Antigone.

the Holy Ghost to cry to us by the Wise-man, *Omni custodia, Keep thy heart* (the fountain of love) *with all diligence; for out of it are the issues of life and death.* And because love, which way soever it byasses, is so potent; therefore St. Paul when he recounts what a Christian should do for Christ, who has done so much for him, mentions this as the motive, *The love of Christ constraineth*: no influence of the *Pleyades* is so sweet and so effectual as love; it has a magnetism, that when it relates to art, will persuade an *Endoxus* to be a *Mathematicque Martyr*, and pass his life away to the Sun's flames; so he may purchase the dimensions of that fiery body for the benefit of Posterity; and when it is set on worse objects, 'tis as heroic and impetuous. For which cause our Lord leaves no Antidote more commended to his followers, than that *Amulet* against love of the World; because there is danger any love rival with Christ, will be prevalent against the love of Christ in us: Christ is spiritual, and we are carnal; Christ is holy, and we are wholly averse to it: and because *Amor est inter pares, & quicquid impar dissidet*; therefore Christ, and the World, and our selves, cannot be Coparceners in love: Love, like the Rainbow in the storm, is nothing but every thing, save what it should be: 'tis *David*, white and ruddy, the Victor of *Goliath*: But the Victory of *Bathsheba*, which I note, to usher in the specific Worm, that corrodes and eats out the vitals of pure love; this World and the lusts of it. This then stronger than death, because it carries men beyond the fears of death, to gratify the pleasures of sense, being the mist before *Solomon's* eyes, that he could not see what his amorous wander after knowledge would penitentially cost him, is that in which every man almost miscarries: as 'tis that Fog and Gloom, in which neither Sun or Moon, or Star of Religion or Reason is visible.

*Vel commodo*] This is the third *Traitor* to Integrity, and a terrible one 'tis too; the Poet could tell us so, *Munera, crede mihi, capiunt hominesque deosque*; the prevalence of this with most men, made *Satan* apply it to our *LORD*; though as subtil as he was, he missed his aim: For the Prince of the World had nothing in him; there was no soul or faculty in him seducible; no lust of the flesh, no lust of the eye, no pride of life to gratify: he was all pure, he was altogether sinless; which if he had not been, *Satan* would have tryed him with an *Omnia hæc tibi dabo*. This, this advantage is the bait to every sin; it seduces the Priest from his zeal, the States-man from his integrity, the Souldier from his honour, the Lady from her modesty, the Servant from his fidelity: 'tis the great *Apollyon* of Souls: this made *Banister* betray his Master the Duke of *Buckingham*, in *R.3.* his time. This made the *Wise-man* call the love of money, the root of all evil. Oh! the treachery of rewards! it has blinded the eyes of the Judge, and hardened the heart of the Father, and rebelliously lifted up the horn of the Son, and heightened the ambition of the Servant: yea, it hath made the *Philosopher* a mercenary, and the *Treasurer* an *Apostle* a *Traitor*: and therefore *Severus* that loved money so well, that the *Historian* says, *χρηματισὴς ἐξ ἅπαντος τρέβασε, &c.* - Though he gathered money from every Project, and loved to have a full Chequer; yet he never spilt blood, or put any man to death to get money by it. Which considered, our Chancellour has well accented the contraction to truth, to depend on the seduction of these, or some of them. And the rather, because not onely the seduced's own soul may be endangered by it, but even the souls of others, who by the oppression of this may become desperate; for the Law being, that the testimony of two must stand, *Hos potest tunc ipse producere in testimonio in causa sua*, says the Text.

*Hos potest tunc ipse in testimonio producere in causa sua.*

'Tis not said *hos debet*, but *potest*; because that he does discredit his cause; by such inidoneous Witnesses is his own folly, and his causes loss: the Law-Civil is not hereby chargeable with neglect of justice; for as by that, they that are blemished, are incapable to give testimony; so by that the Judge is allowed to refuse it: that testimonies are

*Prov. 4. 23.*

*Ἦως δὲ ἐστὶν ἀλογίσα πνὸς ἐπι-  
δομίας ἰππεβολῆ. Theophrastus  
apud Stobæum, Ser. 185. p. 626.*

*2 Cor. 5. 14.*

*Joh. 2. 13.*

*Platina in A. 6.*

*Guallio, Legat. temp. King John.  
Holinghed. p. 193. p. 120, 143, 1287.*

*Holinghed. p. 744.*

*Xiphil. in Epi-  
tom. Dionis.  
p. 404. edit.  
Sylb.*

Lib. 3. Regularum.

Digest. Lib. 22. Tit. 5. pag. 2035.  
2038.

Lib. 4. De Cognitionibus.  
Digest. *Loco Præcitato.*

Tholosanus. Lib. 42. c. 13. tit. 4. s. 6.  
p. 1052. De Testibus.

Digest. Lib. 22. Tit. 5. p. 2035. B. Rubr.

Digest. Lib. 3. Tit. 3. A. B. in Marg. p. 375.

Digest. Lib. 22. Tit. 5. p. 2036. *glossi inimi-*  
*cus.*

¶ Lib. 12. Tit. 2. p. 1281. C. B.

Holingshed,  
p. 1105. & Seq.

Note this.

are accounted, as their persons are that give them, is plain by that of *Modestinus*: *In testimoniiis autem dignitas, fides, mores, gravitas, examinanda est; & ideo testes, qui adversus fidem suam testationis vacillant, audiendi non sunt.* And *Calistratus*, after he has notably told the qualifications of apt Witnesses, concludes, *Nam si careat suspitione testimonium; vel propter personam à quâ fertur, quod honesta sit; vel propter causam, quod neque lucri neque gratia neque inimicitia causa sit, admittendum est.* And that there are many Causes that do invalidate testimonies, *Tholosanus* has to my hand collected. To whom I refer the Reader; which clears the Civil-Law from admitting testimonies, *quâ* such, without consideration of the persons, and

circumstances of the Deposers of them: yet further, as the Text is thus clear; so the Judges of that Law are required to see to Witnesses, that they be plain, and their testimonies clear and pregnant. For *Bartolus* writes on the Texts pre-mentioned this, *Nota quod potestate judicis conceditur utrum debeat adhiberi fides testi vel non; and Judex potest refranare numerum testium;* for though the Judge cannot *arbitrari in determinatis à lege*, yet can he by the Law judge of testimonies; *an fides ei sit adhibenda, judicis mandatur officio*, saith the gloss: and in matters of Fact, the Judge may not admit impertinent Articles. So that all things considered, I do not understand our Chancellour's meaning, to impeach the Civil-Law of any defect; but to commend the Common-Law, which to that way of proof by Witnesses which it allows also, superadds the tryal of Juries as a remedy, if any subornation of Witnesses should be; which because 'tis easier done with two Witnesses alone, then with them and 12 Jury-men, which are, and ought to be men of fortunes and integrity, when Witnesses are not required to be so strictly such. The Chancellour applauds the way of tryal in *England*, upon this consideration, that it is less probable to be tortuous, then that of bare Witnesses is. Concerning the stoutness of Juries, in keeping close to their Evidence in point of Fact, and not to be tempted or threatned there-from, see the carriage of *Sir Nicholas Throgmorton's Jury, primo Queen Mary*: And by reason of the sufficiency of the Jurors returned, and the penalty in their corruption, there is (I dare say) less error in Justice with us in *England*, then in any part of the World: yea, our Justices being such learned and grave Gentlemen, as they ever have been, and are, do so rightly inform Juries, in the right method of digesting their Evidence, that a nobler and braver tryal can no man desire, then by a Jury of twelve men, *Good men and true.*

*Et si contra eos pars altera dicere velit, vel contra eorum dicta, &c.*

This is added, to shew that every Action consists of two Parties; and as it is the Affirmants, or Libellers part, to impeach; so the Libelleds, or Defendants, to justify themselves against it. This the Text calls in the Defendant, or Opponent, *contra eos dicere*, a crimination of their persons; or *contra eorum dicta*, an impeachment of their Evidence. For as the Law does not allow an infamous person to bear witness; so not his witness to be believed, but excepted against, if he be rationally presumed not to be upright in it: onely that which seems hard, is, *Non semper continget eos eorum mores, aut facta apud contradicere volentem agnosci, ut ex eorum faditate, & vitis testes illi possunt reprobantur.* 'Tis true indeed, it were to be wished, that Witnesses might be enquired into, what fashion they are of, and where they live, and how they behave themselves, before their testimony pass in a Court of Law. It were also to be wished, that mens hearts were so far knowable; that the fruits of them, in the fadity of their actions, and the contagion of their practice, might be publique and they not pass for *Cato's*, who are *Nero's*; nor for Saints, who are Devils: but that not being possible, nor any humane Law usurping cognizance of the good or evil intent of men, but as they are manifested and visibilized in the practice. How are the Civil-Laws to be blam'd, which when it appears, do provide against it, and by reason thereof, account the testimony weakned in a great measure. For though the Judge cannot arbitrate in the positive Rule of Law; nor in a civil Cause, deny the affirmatives of two Witnesses that

that plenary swear: yet may he defer Sentence, till the party oppressed by false Witnesses, may find some expedient, either to disable the testimony; or the Judge seeing the perverseness of the Prosecutor's end, persuade them to agreement; which is somewhat of probability to the effect of reparation to the injured, and disappointment to the injurer, though it be not such a curb, as that in tryal by Juries is. For there, though positive Evidence is the *trump* that ruffs all before it; yet that positive testimony is scan- nable, and having so many eyes upon it, may have a hole picked in the coat of it; and though the Jury cannot take notice of a negative oath, to ballance an affirmative, yet they may see such cause of doubting the clearness and veracity of such affirmatives, and they may hear truth, denying the charge against it by such circumstances, as if true, are inconsistent with the affirmative Depositions. And frequent it is with Juries to ver- dict, as they think in their Conscience, the truth of the Fact is, upon consideration of the Evidence on both parts; and if so they do, they do (as I humbly conceive) what they ought. For they being Judges of the Fact, are to determine, what their Con- sciences judges clearly proved concerning the Fact, and no more: and the Fact once stated and fixed, the Sentence of Law is pronounced by the Judge. So that all that hence can be argued, is, that still falshood seems to be put upon a harder task, and amore inex- tricable labour, and to grapple with (as it were) an impossibility, which it cannot so eas- ily overcome or evade, in the evidencing before Justices and Juries, as before Judges alone; where they do but deal with two Witnesses, and one Judge, (who are a less number then the Electors of the Empire were, who yet by *Richard Duke of Cornwall*, were so made pleyable, that they chose him King of the *Romans*, who was no *German*, and who was onely Brother to our *Henry the 3<sup>d</sup>*; which occasioned a Poet of that time to say, *Nannus ait pro me, nubit Cornubia Roma*;) and the work is done, and the cause carryed: Whereas in our Courts of Justice, where there are 3 or 4 Judges, and twelve Jury-men, of fortune, bloud, breeding, and conscience, (for such the Law requires they should be, & so often I am sure they are) 'tis a *Hercules* labour to attempt this; yea, and 'twil be that, by which the attemptor is sure to be deceived: for if but one honest un- engaged person be in the Pannel, no Verdict can be, and so no judgment; which is the rea- son that the Chancellour here reasons so titely for Juries, and against the solè Evidence of two Witnesses; for though a *Conclave* of *Cardinals* may be bribed, as *Platina* con- fesses, in the choice of Pope *Alexander* the sixth they were, and names *Cardinal S. For- tia* for the Merchant; who drove the bargain *emptus proculdubio profusissima largitione*; yet Juries are not so to be dealt with, which makes the credit of them so much in *Eng- land*.

*Cur enim ad arma & rixam procedere patia- tur Prator, quos potest jurisdictione sua com- ponere. Julianus. Digest. lib. 7. Tit. 1. p. 889. in Textu. C.*

*Opprimi aliquem per adversarii sui potentiam non oportet. Digest. Lib. 1. Tit. 16. B. in Textu.*

*Tum propter ejus fidelitatem & sa- pientiam, tum pro- pter sui thesauri abundantiam. M. Paris. in H. 3. ad annum 1257. p. 940.*

*In vita Alexan- dri 6.*

*Quis tunc poterit suorum aut sui ipsius, sub lege tali vivere securus; dum cuilibet sibi inimicari volenti, lex tali præstat subsidium.*

This is to be understood moderately; not as if our Text did make the Civil Laws subsidiary to injury; for that were to cast an odium upon the sacred Law of the Empire, which so great and so many Nations have in all Ages been governed by, and as strenuous *Patrons* as himself, do defend to be a very noble and learned Law, and conform in the greatest part of it to natural equity. But in that the Chancellour says, *Quis tunc poterit esse securus*, &c. both in body and fortune, when such may be evi- cted by two Witnesses of dissolute condition, who may be Sons of *Belial*, and forswear themselves, to act a malice against him. His sense is, that to him it seems a greater latitude is left thereby to such sinister courses, then in *England* by the Common-Law tryals are. For I take the words not to be *verba approbatoria*, but *oratoria*, and to have no further intent, then to make the Common-Law more popular, and applicable to general security, then he would have the Civil-Law accounted. Nor is this thus inter- preted piaculary in our Chancellour; considering, that the Muncipe Law of *England*, is the Darling of the Nation, and to speak well of what's Native, is much the honour of an *English*-man; though always it be a generous man's quality, to praise what he loves, with no reproach to what is rival with it, at least with as little reflexion, as his fide- lity to what he prefers, permits him. To sweeten then what has been charged, as some-

*Par est probationi presumptio, quod quidem ad effectum atinet, quia probatione habetur.* Wetsenbechius.

Digest. Lib. 21. Tit. 1. in Marg. p. 1980;

Lib. 4. Tit. 2. p. 501. F. Presumptio. gloss. Lib. 23. Tit. 3. p. 2146. X. contrarium in gloss.

Digest. Lib. 4. Tit. 4. p. 533. in marg gloss.

C. 11. Lex legum.

somewhat too slower in my *Great Master*, I humbly premise this, That though the Civil Law requires direct and positive proofs; yet does it not reprobate presumptions wholly; but if they be strong and forcible, whereby the certainty of the cause may be illustrated, admits them; it being a rule amongst *Civilians*, *Argumentum sumptum à presumptione valet*; and *presumptioni statur donec probetur in contrarium*; which the gloss thus explains, That though these presumptions do not *transferre probationem*, yet they do *durius onerare actorem probatione tam alias apertiore, quam in civilibus*, &c. For though *presumptioni levi non est standum*, is a rule with them: yet where presumptions are firm and violent, where they have poize and conviction of reason, there they are leading; as *Tholosanus* has in his 48. *Chapter* at large made good; and as *Dr. Wiseman* has very soberly and solidly on this matter defended his *Laws*.

Onely let me be excused, if I (notwithstanding all) do in my apprehension conclude the tryal in a Court of Justice, by twelve men indifferently chosen, and to be excepted against, if there be legal cause, who after hearing Evidence, and considering the nature of it, give their Verdict upon Oath, according to what they hear really proved before them, as by the Common-Law is used, to be the best and most probable tryal to be equitable, of any in the World. And though men may possibly be secure in body and goods under tryals by Witnesses, according to the Civil-Law, as we suppose men are abroad: yet do I not question, but that the security of an *English-man*, under the Common-Laws defence and administration, is equivalent to any, if not paramount to all. And I pray God, as born I was, and have ever lived under the good government of it; so I and mine may live and die by the direction, and under the favour of it.

*Et qui iniqui duo tam incanti sunt, quod facti de quo ipsi examinabuntur in initio non antequam in testes producantur, occulti fingant imaginem & figuram, componant quoque eidem omnes circumstantias, quales sibi fuissent, si illud in veritate constisset.*

In Trol. Adelp.  
2 Serm. Satyr. 7.  
Ovid Epist. 14.  
21 Buead.  
Plin. lib. 12. c. 19.  
Cic. Tro Rescio  
Amer.

*Et qui iniqui duo* ] This sets out the number two, and the nature, *iniqui*. Now *iniquus*, the Learned know is one that does any thing, *contra equitatem*, against right: *Terence* couples *iniquus* with *inimicus*; and *Horace* with *iratas*. And hence every thing of displeasure, we are said *iniquè ferre*. Thus *iniqua conditio* in *Tully*; *Precium pietatis iniquum* in *Ovid*; *Pugna iniqua* in *Virgil*; and *Iniquitas loci, iniquitas hominum, iniquitas temporis*, is frequent, to express the straights, difficulties, and miseries, men suffer in them. So that *iniqui* here, are such as are made instruments, to make an innocent cause suffer by their villany.

*Tam incanti sunt* ] The Text in this interrogation, strongly affirms the temper of men set on mischief; not to do what they do rashly, but with advice, that it may succeed; or in the Scripture phrase, *appear done with both hands, with all their might*; which they seldom do, who run hand over head, and incautiously about it. Nature has taught us this even in her instinct in Beasts; the most harmful and spiteful of which, are the subtlest and least-nois'd Creatures; who by project as it were, and insidiously steal upon their prey; and as they design their rove and rapacity in the night, so they come gingerly and softly to it. This our Text calls in the contrary of it, *incantion*, a frailty that *innocence* is often guilty of, and as often smarts for this its Dove-like credulity: But that which men of the World think in themselves inexpiable, because its the loss of their design, & of that opportunity, which as it may happen, they may never have again.

*Collatis signis exercitu amisso excisus est.* Siganonius in Fast & Triumph. Roma p. 136. 137.

*Neque imperatori bono quicquam minus, quam temeritatem congruè sari celeriter fieri quicquid commode geratur.* Autellius victor in Augusto.

Thus did *Flaminius* lose himself by engaging with *Hannibal*, *neglectis comitiis* as it were before his Commissions were dispatched into all parts of his Quarters, who for want of Conduct, *Hannibal* every where circumvented; which was so great an error in a Commander; as nothing can by him be acted more nefarious to his cause, more proditorious to his Souldiers lives, then so to do. And thus do all men of passion, who are, as *Varro* terms *Paulus*, *temerario & præ-*



*præpropero ingenio*, lose themselves. And therefore *Satan* chooses no feathers for his Cap of Seduction, no men *levis armatura* for his *Triarii*; he carries on his Designs by the *Achitophels*, the *Goliaths*, the *Sauls*, the *Julians*; that are men of might, that bark not before they bite; that roar not, before they have their prey in their clutches; as he himself comes crawling on his belly into our paradise our souls by ill thoughts, sins of pleasure, fanciful dalliances, and pleasing dandlings, till he has engaged us to a non-retreat; so does he institute his Instruments by sophistry and subtlety, by pretensions and fictions of seeming good to the most portentuous evils. And all the prevalence he has (next the permission of God) he owes to the liquor he pickles his projects in; he steeps them in high-seasoned counsel, and the darkness and indiscernable night (as it were) of death. No eye he suffers to peep into his projects, but that which is sworn to secrecy: no Emissary he sends forth to act it, but such as has drunk down greedily the potion of his intoxication, by which he being lessened to, and confirmed in sin, works it with greediness: not onely is pleased so himself to be, but zealous to proselyte others, and make them as bad as himself. And all this *Satan* effects by counsel and deliberation, by advice and pre-appointment. The *Pharisees* had a mind to destroy our *LORD*; they would not rudely and unthoughtly enter upon him, and then consider what to do with him: but they took counsel against *Jesus*; and because they found his words might soonest be carped at, they sought to entangle him in his words. So in the other Gospels, The chief Priests and the Scribes watched him, and sent forth Spyes, which should feign themselves just men. This was the wile and forlorn of these *Caitiffs*, by which they sought to express the malice of their hearts, by bringing him into trouble: which shews, that *Satan* arms his with caution; they seldom do *exire incauti*: he lessons them too well to be surprized; they have all the stratagems implanted on their mind, that may both enable them to supplant others, and keep themselves free from apprehension and suspicion. These *Faux's* and *Catesby's* have the Cellar and the Night; yea, and the dark Lanthorn, whereby they can see, and not be seen. And hence is it, that they being not *incauti*, are uncaught, till God bring the fear, the snare, and the pit on them, when in his good time he does: but till then, they do not forfeit their prudences by rashness, but do not only lay low in counsel, what they are to act, but do fix on their minds the manner and circumstances of their action, with the Text here terms *occulte fingere imaginem & figuram*, &c. they do act what they are to execute. Thus did the execrable Murderer of *H. 4.* of *Fran.* by reading *Mariana's* damnable tract, act in his mind the form, and inure his hand to use that Instrument, that he sacrilegiously murdered that brave Prince by. And thus undoubtedly did *Faux*, by being in the Cellar, in sight of the Match, Powder, and combustible Materials, with which he was to do that execrable villany, meditate in his mind, and in the externity and figure of the action, embolden himself to the real acting of it: that look as a Painter does, *fingere figuram & imaginem* of the picture he intends to draw; and an Oratour does contrive in his mind the speech he will utter, and a Souldier does design the method he will fight in, and a Lover does fancy the beauty he could love, which seeing he loves for nothing, is in the intellect embraced for good, but such as the sense admits such: so when an evil Witness is resolved on an Evidence, and will desperately depose in a Cause against any one whom thereby he would overthrow, he does premeditate what to do, and provides what to say in all parts of his Deposition, which may more then ordinarily conduce to his end. Thus wise are the Creatures of this World to carry on their Work, though they have Hell for their wages: whereas the onely way to express honest wisdom, is to engage in no fordid action; but to make the answer of a good Conscience, which will comfort in all conditions. This our King *Richard* the first found relief in, when in the Emperours hands he was charged with injuries done to the *Sicilians*, He made so pithy and direct answers to them, and excused himself in every point so thoroughly, that the Emperour much marvelled at his high wisdom and prudence, and not onely great-

Matth. 12. 14. Chap. 22. 15.  
 & Mark 12. 13.  
 & Luke 20. 20.

Quoniamque ut bona natura appetimus, sic à malis natura declinamus, qua declinatio solum ratione fiet, cautio appetitur eaque intelligatur in solo esse sapiente. Cic. 4. Tulcul. 2 De Oratore 166.

Prudens est qui sibi probus, & negotiis suis suis cavere. Ferenc. in Phorm. 4. 5.

De Regis & Regni institutione.

See Stat. 3 Jacob; c. 2.

Qui testibus pecuniam dederit, ut falsum testimonium dicent, vel certe, quod sciunt taceant, aut non expriment veritatem, vel iudicii premium dederint, ut sententia contra justitiam dicat vel non iudicet; humiliores causæ puniantur, honestiores remissionem suorum amissione rulantur. Euseb. Theodorit. Regis, c. 91. Anonym. Caesiodor. p. 166.

Contra singulas obviaciones ita luculenter, & argumentose respondens peroravit, ut omnibus admirationi & venerationi haberetur, ita ut nulla suspicio de his in quibus accusabatur in cordibus audientium ulterius remaneret. Math. Paris. in R. 1. p. 173.

Trudentis viri intellectus quorundam generosum animalium assimilatur, qui die tanquam caliginosi ac somnolenti dormiant, sed noctis acutissimi vident, hosti aggrediendo pradaque intenti. Inter instructiones Cardinal. Montalti, p. 429. Thefauri Politici.

ly commended him for the same, but from thenceforth used him more courteously. And indeed, difficulties are the proper touch of prudence; for as every man can sail in a calm, when in a storm he must be a good Pilot, that can keep by steerage his Vessel from danger; so every man that is not a Drone, can give answers in easie and ordinary matters; but to give them ripely and readily in difficult Cases, that's the trial of prudence. Upon which confide-

ration, *va solis* is a truth in this sense, which is one of the *Wise-man's sense*. For be one never so wise and dexterous; yet he is but a semiplene Witness, and nothing will be carryed by him; but when two are in joint testimony, and the Devil to back and breast them, with steels that are of proof, when he has obdurate them, and turn'd them loose as sinners that will not shrink or give back, then his work goes on with all possible caution. Thus warily did he steer *Charles* the Ninth of *France*, to set *Vilkoquer* to murder *Lignerols*, who from the Duke of *Anjou* knew of the Massacre; and yet though he had set the assassin about it, yet when he heard it was done, shewed great trouble for it, and committed *Vilkoquer* and *Mansfield*, that jointly did it by his command, to Prison. Thus did he further lead the same Prince to some seeming favour to those of the Religion, till his designs were brought about, and they were mastered; which while he was effecting, as he endeavoured by corrupting Cardinal *Messandino* to misrepresent better then it was, and to put a fair gloss upon it to Pope *Pius* the Fifth; which he honestly would not do, telling him plainly, *That by his Majestic's unexpected falling from the zeal of the Catholique Religion, all his most valued and precious Jewels, were no more then dirt in his estimation.* But also when he had effected them, then he sets on the King of *Navarre*, and terrifies him from his Religion, and then tells the Prince of *Conde*, that there was no more ado, but he must turn from *Calvinism*, or else expect *Mafs*, *Death*, or *Basile*: which three words so wrought on him, that to *Mafs* he came publicly. Nor much of a better nature, but sure a like work of darkness, was that of the persuasion of *Poltrou* to murder the Duke of *Guise*; if a truth it be that is reported, that *Coligni* the Admiral proposed him infinite rewards. And another told him, (which I believe to be but a meer fiction, and malevolent calumny) *that he should merit of God, by taking out of the world so great a persecuter of the Faith.* Lord! what Hellish advisedness is this, to make darkness a withdrawing room to such villany of plot and contrivance; which makes me often think of *St. Paul's* Aphorism, as of that truth, which will one day be visible in the punishment of it; when the Judge of quick and dead shall come, *The wisdom of the World is enmity with God.* For as that *Spanish* Proverb is, *He is a King that never saw a King*, that is, he is the happy man that contents himself with moderate things, and can sit at home with short commons. So is he the wise and wary man, that is aware of these wary men of the World, whose unhappiness it is, more often then they think, to have their Religion counted *Hypocrisie*, their prudence a *wicked craftiness*, their policy *meanness of spirit*, their liberality *licentiousness*, their affability *contemned*, their gravity *suspected*, their name *detested*, their private conversation *imputed to enormous vices*, and their deaths *extreamly rejoiced at.* 'Tis a good account of the use of power indulged to great men, that *Theodorick* gives, not by it to accomplish *wicked*, but *worthy things*, and instead of making their will the reason their subjects should walk by, bring their wills to the reason God will judge them by. To apply this then to our Text, the Chancellor by these words, *Qui iniqui duo tam incauti*, &c. means that wickedness in Witnesses, two or more having designed what they

D'Avila,  
Lib. 10. pag.  
820. of H.  
France.

Quaquam potestati nostra Deo favente subjacet omne quod volumus, voluntatem rationem nostram de ratione memur, ut illud majus existimemus elegisse, quod censor dignum est approbare. Theodor. c. Epist. 12. ad Eugenium Cassiodor. variat. lib. 1. p. 7.

will act, and prepared for whatever can come upon it, are but in so doing true descendants from Satan their Ancestor, who from the beginning was a liar, and who principles his to carry on his design by any means: which two thousand thousand that are, *iniqui*, shall not prevail to effect further then God pleases to permit them; for *he taketh the wise in their own craft, and the counsel of the froward is carryed headlong*, as *Job's* phrase is, *Chap. 5. 13.* maugre the prudence they think to express in it, who are as it follows.

*Prudentiores namque, ut dicit Dominus, sunt filii hujus mundi quam filii lucis.*

This scripture is in the 16 *Luke* 8. uttered upon occasion of the parable of the unjust Steward, which while he had opportunity feathered as we say *his nest*, and in the *Halcion* of his gainful Stewardship, provided against the winter and storm of his Eclipse and disfavour, the wariness and sovereignty of which providence benign to the futurity of his condition, and preventive of the disfavour of his indignant Lord, Our Saviour not onely commends, but transmits it as a rule for his to practise spiritually, so to use the day of grace and life that the day of desertion and death may be sweetned by the provision laid in, for and against it, For the children of this world so do, *And therein are more wise in their Generation then the children of light.* Which scripture because it has much of concern in it to a *Christians* erudition, in the wisdom which concerns both direction of himself, and detection of his rival, the worldling. I shall humbly and shortly write a little of *Beseeching God that he would assist me as a child of light, to understand the wisdom that is from above, which is pure in principle, and peaceable in practice, and that he would by his Grace keep me, in that happy ignorance of the children of this world, whose wisdom though it be notable in its Generation, yet in God's account, is earthly, sensual, and Devilish.*

The Authors  
humble  
Prayer to  
God.

*יְהוָה אֱלֹהֵינוּ וְרַבּוֹתָנוּ* ] These are one of the parties in comparison so called, not onely because they in *בְּנֵי עוֹלָם* those of which the world is built and inhabited, Or, *בְּנֵי יָדָיִם* darlings and infants which the world suckles, but as they are *בְּנֵי עוֹלָם* unhappily so the worlds as the world is theirs, by a complacency and inseparableness, or dearness of love, *qui volunt esse filii mundi, aut quorum desiderium est in mundo*, saith *R. David*. The Holy Language expresses every thing that is more then ordinary, by the name of son, he that is condemned to dy, they call a son of death, a lost man, a son of perdition, those that are married sons of marriage, and so the sons of this world, worldly men, because they are conformed to the fashion of it, and not transformed in the spirit of their minds, as children of light are, but do *Mundana sapere*; relish onely the cookery of this world, and not favour the things of God; They do *mundana querere*, all their love is so to, and their labour after the world, that they think no toyle too hard, no self-denial too great, so they may grasp the world, and *foyn land to land, and house to house, till they be alone in the earth*, and then they do *gaudere mundanis*, having acquired the world, they acquiesce in it as their portion, and sing that *requiem* to their souls that they have enough, when as they are in Gods account miserable, and poor and blind and naked. These Saint *Bernard* compares to Oakes and Elms, which are *Great in bulk and of a procerous growth, but they are not planted in the noble Garden, wherein the Master of them delights to walk, because they yeild no fruit, or if that they do, tis fruit for swine, not men, Tales sunt filii hujus seculi agentes se commensationibus*, saith the Father, And hence it is that because they bring fruit onely to themselves; and none to God, they are called not onely by *John the Baptist* a *Generation of Vipers*, but by God in a vehemency of indignation *rebellious children*, 30 *Esay* 1. *lying children* verse the ninth, *children of transgression*, *Matth.* 7. chapter the fifty seventh verse the fourth, *backsliding children* 3 *Jer.* 14. and chapter the fourth verse 22. *children of whoredoms*; 1 *Hoseah* 2. *children of Iniquity* 10 *Hosea* 9. *children of the flesh* 9 *Rom.* 8. *children of disobedience* 2 *Ephes.* 2. and of *wrath* verse 3. *children of the devil* 1 *John* 3 chap. 10. These are the men denominated heer, the children of this world. The *Nimrods*, and mighty hunters of the world, who sayl in seas of blood; to ports of power, who waste Countreys, deflower virgins, violate matrons, dissolve polities, and turn the world topsyturvy, that they may be known to be powerful, The *Achitophels* of this world, who poyson ages and persons with fraud and falsehood, being *Protens's* and *Polypus's*, and to save themselves cannot onely be willows, and not Oakes, bend rather then break, but become Malls, and Axes to dig up their own foundations, and to ruine others body and soul, to secure themselves; who can curse with *Balaam*; for a reward those whom God has blest; and are so pertinacious in their wickedness, that they neither fear Gods Angels of terror, nor regard the miracles that he admonishes them by. These are the *Herods* of this world,

Pagnin. in ver:  
bo.

Qui nihil aliud  
curant, quam vita  
hujus commoda,  
filii mundi appel-  
lantur. Grotius  
in loc.

*Sint arbores infructuose, ut quercus & ulmus & arbores silvestres alie; sed huiusmodi nemo plantat in hortu suo, quia non faciunt fructum & si quem faciunt, non humano sed Porcino usus aptus est. Sanctus Bernardus, Serm. 1, De Sancto Benedicto.*

Y y 2 who

who are so in love with what they should not be, themselves, that they study to be applauded vainly, and in the elevation of it forget God impiouſly: the *Judas's* of this World, whoſe kiſſes have more harm in them, then the ſtaves of *Caitiff Jews*, or the ſwords of *Butcherly Aſſaſſines*; the *Simen Magus's* of this World, who will be trucking for every ſpiritual thing, and will, with our Cardinal *Wolſey*, let nothing paſs, unleſs it pays tribute to them. Theſe are they that our Lord calls the Children of this World; and whom the Prophet *David* calls the *ungodly who proſper in the world, they encrease in riches, and from whom he prays deliverance*: and why? *becauſe they imagine miſchief in their heart, continually are they gathered together for war.* And who by reaſon of this, are not onely a grief to, but the terrour of God's little flock, which made the Father cry out to God, *Heu, heu, mihi domine Deus, quoniam undique mihi bella, &c.* *Oh miſerable man that, I am, O Lord, who am every way beſet, and have ſnares on all hands of me, whom the darts of envy, and the open war of fury threatens; Woe is me, who am inſecure in my pleaſures, in my delights, in my ſleep, in my ſuſtenance; againſt whom, both labour and reſt are combined*: thus that Father: This is the notion of the Children of the World, whoſe malice, power, and policy, would diſhearten the Children of Light, Were it not that they were but Children of this World, ſinful in what they do, changeable notwithstanding what they do, miſerable after what they do: for all that they do, God either undoes, or undoes them, that they ſhall not ſee their projects in the plumes of their pride, and in the ſpread ſails of their ſucceſs. Theſe *Achans* get the Wedge of Gold, and the garments of gaudery, but they have God's curſe with it. They get Children, and name Lands by their own names, but God condemns their Children to obſcurity; ſo that they are *ingenitorum vituperium & leſuram*, or elſe die, and they leave no name on the Earth, no heir to inherit their acquisitions. They think themſelves admirable *Architects*, that can pyramidize their names and governments, in ſome durable Monument of ſtrength, and admiration; but God tumbles down in his fury theſe miſ-inſtructed Structures, and makes his counſel ſtand. And therefore the power and policy of the World had need to look to its foundation, that it be upon the Rock againſt which no winds or waves ſhall prevail, and into which no moth of God's curſe, or canker of times injury, will work it ſelf, were it not for this damp, and this hand-writing to the World's *Nebuchadnezzar's*, What a *Bochim*, what a *Golgotha*, would this World be to God's hidden ones, to his Jewels whom he tenders as the apple of his eye, there would be no lighting on the Earth for theſe Doves, though it were to but pick up the Crums that are the offals *worldlings* live upon, but God has in wiſdom made the world, and all in it verſatile, that there may be ſome *ſerenato* and brize under its ſolſtice, and that the greateſt felicity of man might be even by its own ſentence imperfect, *Galicus* the Emperour came a youth to the Empire *τὸν μὲν ἀρχὸν χρόνον, &c.* *His firſt years were prudently and quietly reigned, after, he ſlackned in his Gubernative happineſs, and at laſt he was wholly a bad man and a bad King, Severus* was a victorious Emperour, and of auſtere diſcipline in his Army, military rudeneſs he endured not even in *Britain*, though here he had many intollerable provocations; yet as ſucceſſful as he was, who was the glorious *Phoenix* of his time, He did not onely ſay when he lived and looked upon his life and actions *Omnia ſui & nihil ſum*, but he cauſed his urne to be inſcribed with this, *Thou ſhalt contain the man whom the whole world could not, thy narrow bounds ſhall conclude his body, whoſe ambition the world was too ſtraight for.* Thus does God furl up the flying Colours of the Sons of this World, and put them into a ſtorm, in which they are forced to ſtrike their Sails, and level their Maſt, that they may live and ride out his fury; which if they do in this World to ſuch a degree, as *Portius Cato* did, in ſpight of all the envy that attended him, which enely injured him to his aggrandiſation, poliſhing his prudence, and making his tryed virtue more truly ſtandard and deſecate, then otherwiſe it would have been: which is not often, yet their Death-bed terrours and their after-torments, declare them children of the world, who are onely more wiſe in their Generation, then the children of light, who are the other part of the Subjects oppoſed to Children of this World.

Pſal. 73. 3.

Pſal. 140. 3.  
Sanctus Bernar-  
dus. Serm. 6. in  
quadraſeſ.Eutropius in Be-  
vuario, lib. 9. edit.  
Sylb. p. 121.Χερσὸς ἐν-  
δράσῃς ἢ δὲ κα-  
μυρὸν ἰχθυοῦ-  
σεν. Xiphili-  
nus in Epi-  
tom. Dionis,  
p. 424. edit.  
Sylburg.

[τὸν οὐρανόν] Here light is oppoſed to the World, as it is the region of darkneſs, not in the natural and mathematique notion of it; for that is illuſtrated by the light of that great Taper the Sun and its Cœleſtial Peers, that do beday and beluſtre it, but

in the sinful & penal notion of it. Thus as the world lyes in sin, so the state of sin is term'd *darkness*, thus S. Peter uses it, who has called us out of darkness into his marvellous light; *ye were sometimes darkness, but now ye are light in the Lord.* So that look as Children of the World, suck the milk of the World, sin and pleasures, and cry after the World as their Parents, and play with the toys of the World, as their senses and labours are gratified and expended about worldly things, so are the children of light, intent on light; they love God as light of perfection in himself, and communication to them; they love Christ as the light of matchless Charity to die for Enemies, and to example his to a suitable goodness; they love holiness, as the light of irradiation, kindled in the heart of God's Elect, by a spark from his essential holiness; they love heaven, as light of clarification, wherein their vile bodies shall be made glorious, and they shall see God face to face; *in his light they shall see light.* These are children of the light, that *lucem amant* are not delighters in *surfeiting and drunkenness, in chambring and wantonness, but put on the Lord Jesus*; and in his robe appear to men in the light of shining, and reformed works, works fruits of repentance, worthy of the light of God's countenance, manifestation of the Gospel's prevalence and prescription, and of holy mens practice and approbation. These are children of light, *qui lucem quarunt*, they seek whom their soul loveth; light is their joy, and they search after light, to know and prize it, that their joy may be full, *in plenitudine lucis interne, qua luci eterne est praefatoria.* And this is much of their happiness, that God in this instinct of theirs to seek light, does not let them seek in vain; they seek not the living among the dead, light in the darkness of this world, which is wholly obscured by the incredulity of Jews, the ignorance of Heathens, the obstinacy of Heretiques, the carnal and sensual sinful lives of Catholiques; may I not (saith the Father) call that night, *ubi non percipiuntur, quae sunt spiritus Dei*, where there is a clear sight into all policy of project, all mystery of mechanics, but a darkness to the simplicity that is in Christ, where men see not the holy spirit in his addresses, nor feel him in his operations on them. No these Seekers, (far from the Phanatiques, and Enthusiastiques of our age,) do not seek light out of levity and sceptical unsatisfiedness, which keeps them lax and unfixed in every principle of truth; but they seek light as it is *calidus data*, as it comes from the Father of light, to direct his Children to walk in the light; and they seek it as it is *res simplex & aperta*, as it is that which will make them walk honestly as in the day, and let every eye into their Cell and Closet. These illuminates no Heretiques, are Heavenly Daniels, that will have their Conversations open, that they being transparent all may see them. And this they do, *quia luce gaudent*, the more light they have, the more are they justified; for as they pray, that God would make them lights in a crooked generation: so when they are heard in this, that according to the will of God they have requested, they acclaim the light by which they are illustrated to be what grace has made them, *burning and shining lights*; and they assault their Lord with many grateful tears, *O blessed Jesus, (say they) how many sorrows and sighs has thy presence in my soul rescued and resolved into comforts? How many mists and fogs, in which all sense of thy blood my ransom, thy spirit my guide, thy advocacy my security, has thy manifestation to me dispelled, and thy balm anointing my galled and oppressed Conscience, asswaged and calmed? How hast thou caught and loved me sinking, comforted and satisfied me despairing: How, O Light of Lights, hast thou lightened my heart, when it saw thee in it the hope of glory.* Thus that Father. These are the Children of light, who have all the properties of light; Light is *res pura*, so are these *pure in heart*; Light is *res commoda*, so are these *useful to the age, and time, and place they are in*; Light is *res decorata*, so are these *the beauty and glory of their dwelling*; Light is *res placida*, so are these. And hence they are said to *walk circumspectly, not as fools, but as wise, giving no offence, neither to the Jew, nor to the Gentile, nor to the Church of GOD.* And are not these thus qualified rare Jewels? Do not these whom God accounts his jewels, and over whom he extends his everlasting arms? whom he hides in the evil day, and whom he hears for thousands of sinners, that reproach the holiness of their lives, and would but for them have Hell out of Heaven soon poured on them. I say, do not such, *rara aves in terris*, deserve to be favourites? And ought they not to be prayed for, that they may *fructuose uti luce*, that they may, while they have light about them,

1 Pet. 2. 9.

1 John 1. 5.

John 3. 12.

Ephes. 5. 8.

Colos. 1. 12.

*Cum pene totus ipse mundus nox sit & totus semper versatur in tenebris, nox est iudicia perfidia, nox ignorantia Paganorum, nox Haeretica pravitas, nox Catholicorum carnalis animalisve conversatio. Sanctus Bernardus, Sermon. 15. in Cantic. Cantic.*

Dan. 1. 10.

*O quanta amaritudine adveniens, liberasti adveniens bone Jesu, &c. Sanctus Bernardus, Sermon. 32. in Cantic.*

Matth. 5. 8.

Gen. 12. 2.

Prov. 12. 26.

Ephes. 5. 15.

1 Cor. 10. 32.

not

The Church  
of England.

not be in darknes, and complain of want of light, running into Faction and Pharisaical follies, by which the true light of Religion is blemished, and for which blasphemed, but that they keep themselves free from Faction, Schism, Heresie, Separation, and walk by *God's* light in his Scripture-Candlestick, which the Catholique Church faithfully sets forth in its useful posture. And I pray *God* my soul may have the light of its conduct to Heaven, by the Ministry of our holy Mother the Church of *England*, whose humble Son, I ever (I bless *God*) in the worst of times, have conscientiously and convictedly been, and hope ever to continue, beseeching *God* to visit with his light and truth her many seduced ones, and to make her Doctrine and Discipline sweetly effectual to their reduction; whose wander is not more her blemish, then their own danger. This shall suffice for my observation on our *Lord's Description* of the Subjects he speaks of, *Children of the World, Children of Light*.

6. Ethicor.

Now of the *Pradicate*, or our *Lord's Sentence*, *Prudentiores sunt, φρονιμότεροι*; this is a word which *Criticks* make to import not barely a wisdom of mind and speculation, but chiefly of action and dispatch; not onely a knowledge how matters are to be done, and to give the rule of them, but an exercitial and effective knowledge of them. And thus *Aristotle* uses the word, and thereupon says, that *Anaxagoras Thales* and others, were called *σοφῆς*, who were not *φρονιμῶς, νεότε ἀγνοῦσας τὰ σμμέροντα αὐτοῖς*; and therefore to the compleat knowledge of this word, we must take in that sense that not onely *Xenophon* does, when he terms one *φρονιμῶς πει τῶν πολεμικῶν*, that is, a *dexterious Warriour*: but that in which even our *Lord* uses it, in *Mat. 25. 7, 8.* where he calls the Virgins that had their oyl in their lamps, and their lamps ready trimmed, *φρονιμῶς*, and those that had their oyl to seek, when their lamps should have been lighted, and they ready for their *Lord*, *μωροῖς*, because they wanted expression of more wisdom to make them acceptable, as the other that were punctual in their duty arrived at.

*Nervus prudentia est conjectura, qua futurum quod obscurum est prospiciens, assimilatur itineri, quod noctu aggredimur. Instructio ad Cardinal. Montaltum. Theol. Politic. p. 427.*

*Διδάχνησι τῶν ποιητέων, ἢ ἰ ποιητέων. Sanctus Basilius, Homil. 12. in princip. Prov. Tom. I. p. 461.*

*Commentar Gr. Lingua. p. 391.*

*In rebus suis agendis, nam actiones Hebraei vocent γινώσκεις. Grot. in locum. Sanctus Bonaventura in locum.*

This *prudence* then is of three sorts; the *prudence* of the *Serpent*, which when he supposes any danger, will secure his head, and observing where he may mostly be injured. Secondly, the *prudence* of circumvention, and a wittiness of *defraudation*. And lastly, the true wisdom, which *Saint Basil* calls the *knowledge, what is fit to be done, and not to be done*. The two former were the wisdom of this unjust Steward, he would be sure to keep himself from want; and that to do, he thinking nothing more expedient, then to make him friends of unrighteous *Mammon*, his Master's goods under his power, (he having a value of his corporal worth, and the security thereof from disesteem for *φρονιμῶς ἵζουαι Budeus* makes to have a sense of

*efferrī, and animo tolli*) he gives occasion thereby to our *Lord* to say, *The Children of this world are more wise, &c.* Which words are not to be understood absolutely, but *secundum quid*; not as if there were a more real wisdom in the worlds choice and practise then in holyness and her wayes; for then the wisdom of the world would not be enmity with *God* as it is, nor then would *the fear of God be the beginning of wisdom, as it is, and a good understanding have they that do it*: but it is meant to those ends that their worldly & sinful actions conduce, as they are children of the world, & onely desire to approve themselves to the world; *τῶ γενῶν αὐτῶν, As Owls and Cats can see better then men in the night to catch mice, and vermine, but not to read books, that is in their kind and according to the actions that are proper for them*; so are and no otherwise the children of this World, wiser in their spheres, to gain their temporal ends, then the children of heaven are to eternal & spiritual ones. This then, I humbly conceive, our *Lord* uttered, not to approve sensual and sinful diligence, but to exprobrate spiritual sloth, and by this Cock of Worldlings vigilance, to awake his drowsie *Peters*. And methinks our *Lord* in saying they are *wiser in their Generation, then the children of light*, provokes his to rouse themselves to holy activity, from this that worldly men shew *Prudence*. And in three things manifest their *Prudence*, *Probitate electionis, ardore prosecutionis, constantia adhaesionis*: The first evidences the legitimation of *Prudence*, as no hand over-head, and extemporary suddain thing; but that which is *cum avisamento consilii & rationis*, a fruit of tryal and experience; *Wisdom* dwells with *Prudence*, dictating to it, right time, right method, right instruments of actions. The second propalates the activity of *Prudence*; 'tis no *Dormouse* that lyes snudging, and creeps softly, or appears cooly: no, when it has well chosen, what, when, and by what means, and to what

what end it is to act; it vigorously, and with a masculine fortitude executes them, *aut vincere, aut mori*, is the Motto of *Prudence*. The third discovers the fortitude of *Prudence*, 'tis big of a generous indefession, and a noble heroiqueness; what it has chosen it prosecutes, and in the prosecution is weariless and undiscouraged: these are the gradations of *Prudence*. Our *Lord* then does not in the first sense strictly predicate this (*wiser*) of the children of the world, in this place. For according to the *examen* of defecated and primitive reason, as the World is under sin, and the wisdom and tendency of it folly of sin; so the wisdom of the World is *ἀνοσιβήτη*, a very senseless choice; 'tis the choice of *Leah* before *Rachel*, *darkness* rather than *light*, *Belial* with refusal of *Christ*: but our *Lord* says they are *wiser in their Generation*, because in the choice of the world, they do choose what's more quadrate to their sensual selves, a sensual world will best please a sensual heart, and sensual affections; and because the world is so consanguineous and proportionate to corrupt reason, will, and affection, therefore all the sails and streamers of endeavour are flying, to take the Worlds full wind in them; they make the World onely their choice, and admit nothing in competition with it; they have no other *Diana Valentina*, no other *Mistress* they value and apply to; they rise up early, go to bed late, and eat the bread of sorrow, that they may obtain the world, and that had care not what they miss: and herein they out-strip in generation the children of light. For though they have a more transcendent object, in whom are concentrated all the treasures of wisdom and knowledge, and though the Kingdom of Heaven, and the righteousness of it draw with it all superadditions; yet the whole thoughts of the devout soul fix not upon God, but scatter and remit their intention to couple with other objects, which makes them miss the mark of having God always ready to be their help in trouble, because they tempt him to punish their frail inconstancy with some temporary withdrawals. O how rare is it for a soul to be of *David's* temper, *My heart is fixed, O God, my heart is fixed: the desire of my soul is to thee, and to the remembrance of thy name*. Where are the Saintly Merchants, that sell all they have to purchase *God's* pearl? and the *Mary's* that forsake all the trash of the World to sit at their *Lord's* feet? where are the *Mary Magdalens* that prefer to be mourners in the Sepulchre of a crucified Saviour to the theatres of mirth and the rooms of state and pleasure. The world, alas! has these *Mimions* and *Zealots* for it, that will adieu *God*, a good *Conscience*, *Relations*, yea, even life for it; and all this with an heroiqueness and chearful gallantry, as they say, when *God's* Clyents come to him with cold zeal, and serve him with refracted and divided affections, looking aside upon the world, when they seem to look direct upon *God*; like those of old, whom *God* reproaches for their prevarication with him, and requires them to cast away their abominations, and not to defile themselves with the Idols of *Egypt*; and those whom he detects for worshipping and swearing by the *Lord*, and by *Malchom*. Such parcel guilt Christians, his Holiness cannot endure; because their project is to serve themselves of him, not to serve him with all their might: when a storm they see, they consult evasion of it, though it be with abnegation of the truth of *God* deposited with them, and professed by them. Let holiness shift for it self, they are of *Judas* his company, when they are most and successfulest: so much do good men often give way to corruption, that, with *Peter*, they dare not venture the least tryal; whereas the World's Creatures, as they mind earthly things, so they exert their additions with vehemence and indefession, as if they meditated the success of it. As *God* does every thing in weight and measure, that is, to the perfection of its kind, and as comports with so matchless a Master; so do these comply with whatever may be auxiliary to them. Fit objects to work on, fit subjects to work by, fit methods to work in, fit time of production, fit rewards to instruments, fit menace to opposites: so great masters of diligence, and so cunning enquirers are they, that they serve times and men, till their Mine be ready, and then their arrows are at the mark before the blow is prevented: what postings for intelligence, what pensions to false servants, what subornation of Cabinet-counsel, what prostitution of confessions, what depredations of territories, what, in fine, satanique subtilty does the men of this World act, to bring to pass their desires? Let the facts of *Caesar Borgia*, *Richelieu*, and other the great *Cormorants* of *Christendom's* policy discover; yea, surely the carriage of that terrible Duke of *Burgundy*, who collected all the

Ezek. 20. 30

Zeph. 1. 5.

See my Discourse of the Piety,  
Policy, and Charity, of elder  
times, and elder Christians,  
Printed Anno 1653.

Hypodigm Neustria, p. 175.  
Hollingshed, in tl. 4 p. 536.

venom

venom and poyson, that was in the filthy matter of dead Serpents, Scorpions, Adders, and other mischievous Creatures, and threw them in barrels into Calice, on purpose to poyson the souldiers that held it against the French, and by poysoning the inhabitants render it intenable. I say, let the prudent love of children of the world to the world, be calculated by this, and 'twill appear to be prudence with a vengeance, though it be but that of their generation, in which they onely are wiser; *O my soul enter not thou into their secrets; O my God give me not a portion with these men in their delicates; let me be none of those wise-men, who do go down into Hell, because they forget thee; but vouchsafe me that prudence of the Serpent, that may protect me from being harmed, and that innocence of the Dove, that may keep me from harming others; and let my soul ever prefer honesty to policy, and to save my self with thy fools, rather then to perish with the Worlds wise-men; whose Death-beds have no comfortabler notes then those of Despair, which Wolsey uttered, O that I had served my God, as faithfully as I have done my King, then he would not have forsaken me in my distress as the King doth: or as those in Wisdom are brought in groaning for anguish of spirit, and saying, This is he whom we had sometime in derision, and a proverb of reproach. We fools accounted his life madness, and his end to be without honour. How is he numbred among the children of God, and his lit is among the Saints? This I no further prosecute, though it were worthy some further Discourse, because it is the Gangrene of the Age, which has so prevailed against the severity of piety, that there is nothing seems more to be a man's reproach, then to be of pristine simplicity; so far are men declined from that Christian candor, and plainness of meaning, that they seem to say that to Religion and honesty, which Popilius did to his friend King Antiochus, when by the Romans he was sent Ambassadour to him. While we have to do in business, let's do that without either thought of God seeing or hearing us in our Counsels, and lay Conscience behind our backs, while this that so highly concerns us to effect, be continually before our faces. But God undoubtedly will meet with this, when he besieges with his terrours these Worldlings, and reduces them to such straights, that they shall be glad to release all their confidences, to obtain a minutes ease; and when it is too late, cry out despairingly, as Lysimachus did; *O for how small and short a pleasure have I lost a Kingdom, for how vain an humour have I passed away Heaven.* This shall be the portion of these Politicos, if they miss temporary disgrace; which some of them have not done, as in the following words appears, which returns me to the Text.*

The Authors  
Prayer.

D'Avila, p. 365.

Wild. 5. 3. 4. 5.

Facessat privata  
amicitia dum pub-  
lica aguntur ne-  
cessaria.

*Sic Jezabel sceleratissima testes duos filios belial, contra Naboth in judicio produxit, quo ipse vitam perdidit, & Ahab Rex ejus vineam possidebat.*

This Clause is quoted out of 1 Kings 21. and it hath a notable Narrative of an innocent Subject oppressed and murdered; and that not by assassination, but judicially, and according to the preciseness of the appearance of Justice; and three things are narrated in it; Who was the prosecutour, That the Text says was Jezabel, a Woman by Sex, and a Queen by Dignity, but no honour to either: for it adds, she was sceleratissima: Then quomodo, how she brought this artifice about to reach Naboth's life, duos filios belial, contra Naboth in judicio produxit: thirdly, in quem finem, she did this; that's double, first that Naboth might die a Malefactor, and then that Ahab might have his Vineyard, as his Escheat.

1 Kings 16. 31.

Instrumentum erat diaboli accommodatissimum, & plus quam duci possit maliciosum, P. Martyr. in Reg. c. 21.

Rev. 2. 20.

Hic impia mulier prius vitia vitii Dei cultum introducendo Baal: Idolatriam nunc, e nam leges politicas contaminat in republica, his duobus partibus corruptis, sani quid potest suscipere. Pct. Martyr. in 1 Reg. c. 21.

*Jezabel sceleratissima*] This Lady was Wife to King Ahab, a Woman of a busie humour, and masculine spirit, as appears in the impiety of her life, and the tragickness of her Counsel, whom Satan (of all her Sex) culled out, as the most accomodate Engine for seduction and cruelty, that the World in her time, or in any time after incarnate had. In allusion to which, the Holy Ghost charges upon the Church of Thyatira, that she suffered the Woman Jezabel to teach, and to seduce his Servants to commit fornication: the allusion being to this very woman, who because she was a Sidonian, and a worshipper of Baal, brought in the worship of Baal into Israel, and stirred up her husband to prosecute the Prophets of God, whom by his authority she is said to cut off. Now this



this woman being so tart and subtle, whom nothing would content, but Tyranny in the State, as well as Idolatry in the Church, having always in her mouth that of *Caracallas* Mother-in-Law, *Imperatores dare leges non accipere*, and willing her husband should rule over, rather then rule by the Law, is here termed by the Text *sceleratissima*.

*Sceleratissima* ] Not as an Epethite of dedecoration to Women, the most tender, delicate, delectable, obliging; yea, the onely *Phoenix*-part of the Creation; that which the Father of men, innocent *Adam*, upon *God's* first presentation of *Eve*; termed *bone of his bone, and flesh of his flesh*, himself in another, and I had almost said better Sex; and ever since his Sons and Male-Posterity have, when they have done manly, and virtuously, doted on. No such opprobry then is our Text-Master guilty of: nor were he would his Commentator suffer such his mistake, if he could be guilty of it, to go uncorrected. So much a valuer am I of that incomparable Sex, in gratitude to those excellent Pair of Virtues, which once in that Sex I successively could have called mine own. And the memory of the last of which, I shall mournfully carry to my grave, as the *SHE*, whose person alive was my delight; and her memory, now dead, my joy to have had, and my grief to have lost. I say no such Epethite has the Woman here in the Text for her Sex sake, for that has produced *matchless Heroicks, divine Prophetesses, seraphique Illuminates, perspicacious Oracles, harmonious Syrens*, what not, that has been *Heaven on Earth, Spirit in Flesh, Merit in Mortality*, as the Authours that have honoured themselves with treating on them, have abundantly evinced. But she is by our Chancellour called so, as she is degenerated; of sweet become sour, and of gentle and soft, perverted by *Satan* into a turbulency and bloudiness of nature. As she is another *Tullia, Messalina*, and another (a) *Constantia*, whose influences are to confirm in evil, not withdraw from it. This Lady so ingeniously savage, and zealously terrible in the designs of her mind, and execution of her Ministers, is by our Text called *Sceleratissima*. *Sceleratus in quo scelus sit constitutum, sed commissum*, saith *Deatus*. *Talky* couples *Impure* with *Sceleratus*; and if in the positive the word be so significant, what degree doth the superlative import? Surely no less, then that she was *nequitie antesignanus*; or as the *Holy Ghost* brands her, when he says, *Ahab sold himself to do wickedness*. He adds, *whom Jezabel his wife stirred up*, and made the cause of multiplied mischiefs. For this Sex, as in its integrity, 'tis the Womb of all sweetness and tractability; and not onely civility, but also Christianity, has been ushered in to Nations by their fair hands, and at their influential intreaty: so in the degeneration of these, are the darkest nights of turpitude, and the deepest Woods of malice tintured. We say there is no murder, but a Woman is in the company of it; and when all the instances of a cruel she were lost, one might draw the portraiture of it most livelily from this *sceleratissima* here, who like that *Ætolique* Woman in *Plutarch*, was as cruel as if she had accompanied with a Dragon, from whom she learned all truculency. For she was not onely an active and busie-spirited Lady in discourse and influence on every person, and every thing, but she was one that thought her wit more regal, then that of her husband-soveraign; whom when she sees dejected, because modestly denied, what earnestly he desired, she caresses increpatorily, *Art thou my Lord Ahab, quoth she, a King, and wilt thou be denied?* is there any thing that *Israel* has, which *Israel's* Monarch shall not command. Let me but use thy name, and thou shalt have thy pleasure, and make the *Contrarients* to thee pay dear for their insolence. Do but now, my Dear, own me, and I'll fetch the vineyard and his life with a vengeance that holds it against thee. Hast thou his Lord and Master asked it on exchange or purchase? and gives he thee no better

Ἐθερτι σὺν ἀδελφῶν καὶ παιδὶ-  
χραεῖς τετραμίσθωδων. *Diogenes*  
*Athleta apud Plutarchum, Lib.*  
*De Curiositate, p. 21.*

*My two dear Wives, Mary and Elizabeth, buried and lying in St. M. Magd. Milkstreet, London; to whose memory, I intend this a second and more durable Monument.*

*Ravinius, De claris mulieribus.*  
*Richardus Dinothus, De rebus & factis mirabilibus, lib 7. c. 23. 4.*  
*Fabianus Justinianus, in indice universali.*  
*Plutarchus, in Lib. De mulierum virtutibus. p. 242.*

¶ *Tarquinius superbus à Tullia incitatus, advocato Senatū regnum paternum repetere cepit.* *Aurel. Victor. De Vir. Illustri. p. 491. Aug. Script.*

(a) *Maritima suapte natura crudelem ad omne facinus proclivisorem reddidit.* *Culpinianus.*

*Ea erat ferocis admodum asperisque moribus.*

*Jovius, De Elifa matre.*  
*M. Sfortia, in vita Sfortia.*  
*Scelerata castra.* *Sueton in Claudio. c. 1.*  
*Vicus sceleratus Aurel. Victor. in Tullia, p. 491. Aug. Script.*  
*Et scelerato signatur nomine, qua proficiscenti in prælium pora dimisit.* *Florus, lib. 1. c. 12.*

*Messalina quoque amorem flagrantissimum non tam indignitate contumeliarum, quam periculis metu abiecit.* *Cum adultero Silio acquis imperium credidisset.* *Sueton. in Claudio. c. 36.*

*Plutarchus, Lib. De solertia animalium p. 972.*

*Grotius in leg.*

Lev. 25. 15.

better answer, then a *God forbid, that I should seek the inheritance of my Fathers*; a Law indeed good against private persons, but not against the *King*, whom, because he knew not how to obey, he shall ere long be ruin'd by. This is the sum of her speech and design. But this is but the *apertura* to her wickedness: that which confirms all she does, is the *King's Seal*, with which she seals Letters to the Elders or Heads of *Jezebel* יְרֵבֶל, the *Candidates* or *Nobles* that were clad in white. For so of old they were (white being a token of Dignity.) To whom, so soon as the *Regal Mandate* comes, all obedience is given. And so *Naboth* enters on danger by a wicked Woman, wickedly designing her revenge in his ruine. So are the words,

*Testes duo filios Belial contra Naboth in judicio produxit.*

*Non adversus insignis fame virum tres requiruntur. Glorius in loc.*

A formal trial it must be, and but formal; for *Naboth's* vineyard had made him criminal before accused, and *Jezebel's* malice condemned him before found guilty; Witnesses there must be, and two; three *Josephus* will have, which *Grotius* says was usual upon a person of note, as *Naboth* was: but alas, they are loose profligate men, that know not what they ought, nor care not what they do swear; something they must depose to convict him, and they boggle at nothing *Jezebel* will put them upon. These *Ruffians* and *Monsters* that defie all Conscience, *Seducers*, *Deut. 13. 13.* *2 Sam. 21. 1.* *men of violence and hubbub*, *Judg. 19. 22.* *Chap 20. 13.* *of uncleannets and beastly ignorance*, *1 Sam. 2. 12.* *despisers of God and his appointments*, *1 Sam. 10. 27.* *churlish and rude Monsters*, *1 Sam. 25. 17.* *2 Sam. 16. 17.* These are the עֵרֵי בְרָעִים, the men at large, that say their tongues are their own; these are the Witnesses. And they are said, *in judicio produci*; because they, in due form of Laws, as the pretence was, do accuse and evidence against *Naboth*. The word Witness, comes from עָד *depredari & expoliari*; not to right him, if Justice he had on his side; but to spoil him of his life and fortune. 'Twas before such a High-Court of Justice, as *David* the King complained of, *Psal. 119. 61.* *the Bands of the wicked עָדוּי have robbed me.* But *Rabbi Himmans* reads it, *dolores impiorum, id est, quibus me officiant impii, expoliaverunt me bonis mundi.* For what *Jezebel* had contrived, these were to make oath of, and that with boldness, and in affront of *Naboth's* innocence; for so our Text says, they were produced, *contra Naboth in judicio.* And that not to fine and imprison him, as a man disaffected to *Ahab*, and as one who was rustiquely stubborn, and contumacious to Majesty; but as a Miscreant, neither fearing *God*, nor regarding the *King*. For of blasphemy against both they do accuse him, and such by oath make good against him; and thereby that of our Text is confirmed.

*Quo ipse vitam perdidit & Achab Rex ejus vineam possidebat.*

*Jezebel* gave the counsel, to falsly impeach him, and by Witnesses of ratification to sentence him; so is the Holy Text, *ver. 10.* And therefore the murder of *Naboth's* attributed to *Jezebel*; God saw she made use of her husbands name to colour her violence and oppression. And he that hates wickedness, though he suffered it for a while to prevail; yet punished it throughly on the injurer. It's true *Naboth* lost his life, for Blasphemy was ever capital, *Lev. 24. 14, 16.* and that the Sons of *Belial* witnessed against him, and to entitle the *King* to the vineyard of him, when in law defunct they depose also his Blasphemy against the *King*, which being made good, for the blasphemy against the

*Posside vineam ] Titulo confiscationis, qua apud Hebræos locum habebat in omnibus delictis adversus Regiam Majestatem. Grot. in locum.*

Luke 7.

*In Greg. Nazian. Orat. 42. H.*

*Nazianzen* comments on that of the Gospel; a Woman who had no temper, no compassion in her, but was made up of fulminating and fiery principles, thinking power not worth the having, if it might be in any thing capitulated with or denied; wherein by

by the Law of its own constitution it denies it self; and those not worthy to live, who would live happier then tyranny would allow them to do. So true is that of Tacitus, *Trucidare, apere, falsis nominibus imperium appellant.* But alas! fond Lady that she was; who spur'd *Ahab* to such cruelty: Better be no King; then a King of terrour and trucidation, better have no desire gratified, then to have it by the spoils of innocence, and the preys of cruelty, as *Domitian* had, and as *Ahab* here had, for which God fore-told a plague on him, her, and their Family, and that of extirpation and death, even in this very portion, that thus injuriously was evicted from *Naboth*, v. 19, & 23. of the 1 Kings 21. and fulfilled by *Jehu* God's Executor, 2 Kings 9. So true is that of the poet,

*Ararium sub Domitiano spoliarium ce-  
vina cruentarumque pradarum secum re-  
ceptaculum. Plin. apud Grotium, in c. 21.  
v 19. 1 Reg.*

*De malè quaesitis vix gaudet tertius heres.*

*Sic duorum etiam Judicum testimonio, mortua fuisset pro adulterio uxor castissima Susanna, si non eam miraculose liberasset dominus inexcogitabili prudentia quam à natura non habuit pater junior non dum atate provectus.*

This instance is out of that part of *Apocrypha*, entituled *Susanna*; which though some prefix to *Daniel's* Prophecy, upon design probably to impair the credit of the Canon, by adjunction of somewhat to it, dubious: yet others, as our late Reverend Translators also, set this History apart, from the beginning of *Daniel*, because it is not in the Hebrew. Our Chancellour here uses it, to make good this charge against two Witnesses, where no other circumstances or presumptions are admitted, to invalidate the testimony of that number, and where it is maliciously contrived, and as in the former quotation he discovered two Witnesses, suborned by a leud Woman, against an innocent man; so here he alleadges one chaste Woman, accused by two leud men, and like to die upon their false testimony. The Story has many passages in it, opprobrious to vicious and caytiff old age, laudative of chait and innocent youth; attributive of the miraculous detection of both, by God, who onely judgeth righteously. The persons concerned in this story, are of three sorts; the contrivers of the Plot, those are ver. 8 said to be the two Elders: the person against whom the Plot is contrived, that is against *Susanna*: the conviction of the false Evidence, and accusation of the Elders, by the wisdom and integrity of one more righteous then those, whose spirit, though a youth, God stirred up to discover the impostry, v. 45.

*Hunc Historiam Judæi non plane negunt.  
Grot. in loc.*

*See the Title of this Book in our  
Bibles.*

*Hi duo Senatores multas mulieres Hebræas  
adulterassent Susannæ, etiam pudicitiam sen-  
tassent. Grot. in v. 1.*

*Duorum senum etiam Judicum testimonio* ] Two for number to make the testimony legal, Elders by quality to make it credible, and pass unsuspected: Of the number two, I have written heretofore, and now shall onely touch their quality *Senum etiam Judicium*) In the fifth verse 'tis said, *There were appointed two of the ancients of the people to be Judges*, where ancients or elders do not alwayes signifie such in years, but mostly men of dignity, place, power, worship and wisdom who are said to be *seniores, quia presumuntur esse saniores*: Thus the word *זקני* coming from *זקן* *barba*, signifies a man of years; because such usually are bearded, and wore it very long, as yet persons of degree do in the Eastern Countreys, and anciently did with us here; yet it also, and ordinarily denotes place and respect, so *Gen. 50.* verse the seventh *Joseph* went up to bury his father, and with him went up *זקני ביתו* *זקני ארץ* The Elders of his house and the Elders of the Land. The Elders were the Peers, heads of Tribes and leading men of the land, by reason whereof in all great affairs they were consulted with, hence those scriptures *Joel 1. 14. Ruth 4. 9. Exod. 3. 16, 17 c. v. 5. Lam. 1. 19.* and others in all which the Elders were *sine qua non's* to all affairs of import.

*Hebræi nunquam  
judicis brevis an-  
nales, aut virios,  
sed poterant hi esse  
astiores ejus,  
qui erat  
αἰχμαλώτων  
χρησ. Grot. in  
loc.*

The Greeks called these *πρεσβύτεροι*, which is the cause the 70 read *זקני* by it and *Suidas* terms *πρεσβύτεροι* *τιμιώτεροι* *μείζων*, and hence was it, that when the expressed any one of ancient extract and noble quality, they termed him by this word. Thus *πρεσβύτερος* *κόρη*, one that was so disposed to publick spiritedness, that he with *Cordus* spend and be spent for it, thus *Xerophon* takes the word, and thus the term *Presbyter* is attributed to the consummate order of Ministry called Priesthood, which we know

*ἡρώτητο λόγῳ  
ὁ σοφιστὴς ἄλλος,  
ὃς γὰρ ἦν  
πρεσβύτερος;  
Hellen 4.*

Spel. Concil. anno 750. Christi. p. 266 know is conferrable on men of thirty years old or under, which is no old age, though I confess, more usually 'tis taken for men of good and great years, and as a notation of

In Symphac.  
Philo, Lib. 3. De Vita Moysi.

Temporibus Saxonum vocabantur Aldermanni, non propter aetatem, sed propter sapientiam & dignitatem. Inter LL. Edvardi Confels. c. 35.

Eccles. 7. 12.

Apud Stobzum, Serm. 270.

Sanctus Basilii, apud Eundem.

\* Ανδρῶν πρὸς ἐπισημῶν ψυχῆ ὁπότι αἰ τῷ σώματι ἀκμαίχουσι μήκει μαρῶν οἶα. Evagrius apud Stobzum, Serm. 163.

\* Οὐκ ἔστιν ἐπισημῶν τῶν νέων καταλασόμενα ἕσται. Sanctus Chrysof. apud Stobzum, 165.

In Libello, De Moribus. Adag. Cent. 4. Chil. 3. Adag. 45. p. 816.

Tullius in Caton. Major.

Elders, who plotted the execution of their villany on a chaste Woman, and worthy Wife *Susanna*, who is the second person in this story.

*Uxor castissima Susanna* ] Three words of our Text pointing out her persons name, her minds virtne, her relation and state of life. Concerning names, to write at large, would be endless; divers Authours have purposely done it, and somewhat I have touch'd of it in the *Introduction* to this *Comment*; That names were used ever, and are at this day every where, is plain; and that by the wisdom of the humane nature, to distinguish persons and things, and to nourish order, converse, and society, is plain also. And I suppose, as plain it is, that *Susanna* is not an *Heb.* but a *Greek*, or exotique name. There is in all Scripture but once besides here mention of it, and that is *Luke* 8. 3. where amongst those Women, that had been healed of evil spirits and infirmities, *Susanna* is one; by which I may conjecture, that as probably the name was given to persons of excellency, and bodily beauty; so were such named persons, troubled with impure solicitations, the usual temptation and attendant of rarity and transcendency. And if they are not injured by, and prevailed on from those subdulous and captivating insinuations, 'tis by miracle of mercy, that reserves them to their future conspicuity, as in the case of the two *Susanna's*; the first whereof is the *she* of our Text, who is set forth in the story of her to be fair, καλῶ σφόδρα, a beauty, καὶ τὸ τέλος συμμετερον, saith *Suidas*, to have no disproportion in her. Hence the Septuagint render that place, (God saw every thing that he had made, and behold it was good,) by καλὰ λίαν, that is, it was such

Gen. 1. last.

such as answered the perfection of its kind! That then in *Susannah*, here termed *good or fair*, is a beauty of body and gate, of speech and utterance; a Jewel she was in flesh, and one that feared God, and as a chaste Wife, made her husband the covering of her eyes.

καλον δε εστιν  
η το δει  
οφθαλμοι η δει  
αιωνος ηδου.  
Suidas in  
Καλδρ.

*Uxor castissima;*] As she was honestly born, the Daughter of *Chilchias*, and virtuously bred, *ver. 3.* taught according to the Law of *Moses*: So was she wealthy married to *Joachim*, a very rich and hospitable man in *Babylon*. And as to him, she was obliged by vow; so to him did she keep by resolution, and from him could she not turn, without blemish to her virtue, and loss to her happiness, for he was more honourable than all others, *v. 4.* These Charms notwithstanding on her, their lust endeavours to entice her to avoid; and that by such occult & dexterous methods of design, as were propitious to their end, and but for the impediment of a miracle could not but succeed. First, they consider what she takes pleasure in, and mostly frequents as her retreat of safety and pleasure, her husband's garden; and there, *Jews* as they were, they would have made the sepulchre of her modesty. There where the senses are most pleased and fatiated with the savour of scents, and the sight of colours, the melody of birds, the taste of fruits; there, where are shades against heat, and springs to relieve thirst, and retreats for contemplation; there, are the lyes in wait to work mischief; as our *Lord* had the bloody Agony in the Garden: so had *Susanna* her tryal in the garden. And secondly so impudent are these *Varlets*, that though the garden were near the house, and in the close view of her husband; yet here would they have rap'd the onely lovely flower of his garden, his *Susanna*. As no fear of God, or love of the husband; so no prudence periwades them to choose another place, then that, which they thought least suspected, because adjoining to the house. Oh the impudence of vain desire! it hurries men of age and wisdom into actions of folly and madness: no *Sampsons* of fortitude, no *David* of piety, no *Solomon* of wisdom, but lyes open to the temptation of his flesh. If he give way to its wander, and foster its suggestion. Oh danger! thou attempt us from all quarters; from men of high and low degree; from things lawful, abus'd; unlawful, used. Thou art on the earth of covetousness, in the air of ambition, upon the waters of tumult, with the fire of lust, in our beds of pleasure, in our shops of profit, in our studies of Learning, on our Benches of Justice, in our fields of labour, in our journeys of business, in our pleasures of retreat, in our Assemblies of Devotion. Thirdly, this fact was aggravated, by the advantage they took of her constant hours, as well as place to walk in, *ver. 8.* they saw her go in every day. Because use creates delight, *Satan* watches to take us napping where our delights are, and if he cannot one day, hopes another to prevail: so did he use *Potiphar's* Wife, to subvert *Joseph's* continence, *Gen. 39. 10.* she spake to him day by day, *דל דל*, *dietim*, καὶ ημεραν, the word here. Poor soul! she took the garden to prevent temptation, and there she finds it; she walked there to see no body with desire inconsistent with chastity, and a wively fidelity, and there she is lustfully looked upon, and tempted to be made unchast. Oh! how studious ought we to be to please God, that being at peace with him, he may direct our paths, and keep evil from us, since our ruines are so often involved in our contents. How careful ought we to be to prevent evil, by denying the occasions of it, who are so watched by, and so stolen upon, by the many disguises of its Avenue. If a light dress, and a loose gate, and a bright active eye; let *Hamor* lose upon *Dinah*, and the harmless disports of marriage seen by others, then the married enjoyers of them provoke *Abimelech* to attempt *Sarah*, whom thence he thought provable the same to any Courtier as to her *Abraham's* Wife prostituted her name by intuition of onely pictur'd naked men; and if *David's* eye lost him body and soul in the lust of *Bathsheba*, and the murther of *Uriah*, how much care ought to associate our repalls, and the least appearances of us; considering, that the frequency of *Susannah's* repair to her husband's garden to walk, prov'd an occasion of their design on her there. Fourthly, their lust was aggravated in the combination and unity of it, *v. 14.* they made one joynt stock of counsel, and to one purpose of action. Wickedness knows union carries on all enterprises, and therefore it's ever for agreement and conjunction. The Kings of the Earth are said to set themselves and the rulers to take counsel together against the Lord, and against his anointed, *Psal. 2.* And by this that of *Job* is true of these *Leviathans*; One is so near to another, that no air can come between them. They are joyned one

Qui suasionē ple-  
tenda matrimon-  
ia dividere niti-  
tur aliena, ipsius  
conjugium habeat  
tur illicitum Edi-  
ctum Alathar.  
Regis, lib. 9. c. 49.

Job 41. 16, 17.

to

to another, they stick together that they cannot be sandered. Thus they conduct their designs to their issue, fortiter & suaviter. No eye, as they think, seeing; no tongue censuring them. And if they fail of that, and discerned they be; then by their union are they more plausible in their defence, more pardonable they think in their guilt: as many hands make quit riddance, so many heads form deep counsel: then they machinate how to put a creditable gloss on their putidness. O how glad are these Miscreants of a *Z'ar*, though it be but a fig-leav'd Palliado. Thus *Hectorian madnes*, they call generous valour; *Abfalomish Treason*, high-metled discontent; *Tarquinian lust*, kindness of nature; and high-bred civility, *Solomonique lubricity*. A Spring-tide of reason, covetous to know infinity of objects: And to this the unity of sinners inclining them, makes their union destructive to God and a good Consciences interest in us.

Fifthly, their lust was aggravated by the effrontery of it; they come upon her not with Pyrates colours, not with the soft and modest pretensions that win on credulity, and steal under the vizards of kindness, the monsters of lust; but rush open-mouth'd, like Beasts of prey that are in hast, and must do what they do on the suddain, *v. 20. We are in love with thee, lye with us.* O courtless rudeness! O merciful mistake! by which they were prevented to win, whom they were resolved to ruine. O the mercy of God, that guards innocence! by its assault reversed, and its temptation disarm'd; because they were not ashamed, when they endeavoured these abominations, therefore God counter-courted them, and undermin'd their machination. If the Lord be on his *Sanna's* side, she need not fear what men, old in sin and counsel, can plot, to act against her.

JER. 6. 1. 12.

Sixthly, their sin was aggravated, by the reserve of their malicious revenge, in case of her consent denied, and their plot defeated, *v. 21. If thou wilt not, we will bear witness*

*Deprehendimus ipsam in adulterio, ut est, Joh. 8. 4. Draco dixit, in epulo, Solon, ap. Spa. in ap. deis. Pomponius, in ipsis rebus veneris. Ulpianus in ipsa turpitudine. Grot. in loc. v. 38.*

† Hist. H. 4. of France, Grimston, 1132.

against thee, that a young man was with thee, *v. 30. And therefore thou didst send away thy Maids from thee.* I. O the true character of lust, mischief in the act, & no less in the defeat. The most deplorable confirmation of this is from the horrid project of one *La-Mot*, who being an Ensign, pretended love to a Virgin in Metz in France, entices her by an old Woman he employed, to frequent his company, he gets her into a prison, and there ravishes her, her Parents running up and down bewailing themselves for her: the Governours finding her not by search, sent for the Captain of the Souldiery, thinking some of them might have got her, and commanded them to deliver her untouched. When thus they were charged, *Mot*

the Ravisher stood by trembling, but not discovered. When he saw, if he should restore her, she would appear ravished, he meditated, to hinder the discovery by murdering her, and that he does; and that done, cuts the body in pieces, puts it in a sack, and casts it into the next River. Behold! the bloody event of lust! Nor much unlike was that intended by the *Elders*. What defence has innocence against calumny: poor soul! she innocently went to cool her self in the Water of her Husbands garden; out she sends her Maids, probably not having confidence enough to be seen naked by her own Sex, whom she seen, could have been but the reflex of their own bodies, shut they must after them the doors, that no one may enter, but she alone may be private; this was her chaste care, this her innocuous modesty, and sincere zeal to her *Joachim*. But see how all this is by malice and intended rape frustrated of its purpose on her, turned as they think to her disadvantage. They misrepresent her sending away the Maids, and shutting the doors, to be in favour to the Courtship of a young man appointed by her, and concealed there, to enjoy her by their furtherance, and under the umbrage of those contrivances; and they not onely vow to detect, but to depose it in all the circumstances. This is the carriage of the *Elders*, to subvert her chastity, and loosen her confidence to, and interest in her husband.

True Chastity.

But honest soul and wise as she was, she trusted in God for the right of her wrong, and the asserter of her innocence; no *Amazonian* raving, or masculine indignation, shews she to them; no *Lucretian* violence to her self; no forcible entry makes she on her tender skin, through her veins to her blood; nor did she with a *Jael*-like fortitude dissemble her anger, till she had them under the perpendicular of her fatal revenge; she did not endeavour her defence by arguments impotent to it, weeping without calling

ling out, and wailing with out resolving their defiance, like that great person the story tells us of, who pretended a surprize; but when she was taken away, and the Lords of the Nation sent her word, *that if she were surprized, they would come with an Army and set her free.* She answered, *That it was against her Will that she was brought thither; but that since her coming, she had been used so courtously, as she would not remember any more that injury.* No such actor of a part was *Susanna*; too modest and well-meaning was she to express these *fasts and looses*, which are rarely the figures of any thing better than falshood and wantonness; but she trusts to the alarm of her innocence, which she knew God would take, who was all *ear and eye*; though her husband at that distance could be neither to her rescue, and aloud she cries, and so do the *Elders* to drown'd her Poor soul! what a strait was she in, whose modesty in assenting, or life in denial, were at stake, or at least must be candidates to the judgment of the Law and the charity of her Neighbours. But God gave her as well the wisdom to choose to suffer innocently, as the courage to defie the temptation to sin bravely; consent she will not, but put the issue on God she will, and does; and the guilty *Elders* amazed and discouraged, recede from tempting, and apply themselves to defamation of her, as their Inchantress and the contriver of their seduction; *Elders* they were in years, Judges by place; and to be accused by such persons, was too much for ought to contest with, that had not liv'd unsuspected; but *Susanna* being such, as no report of ill had passed upon, was the more comforted under her impeachment: yet as guiltless as she was, the Law must pass on her, the two *Elders* depose *stoutly and falsely* against her, and Sentence passed on her as guilty, and to execution she was leading.

God who had all this while permitted the progress of this mischief, for the greater defeat of it when it was discovered miraculously (as says the story) raised up the spirit of a young man called *Daniel*, to improbate this testimony, and by cross interrogation to denude the impostery of it, *ver. 45.* and so forward. And then *Susanna*, and the *Elders* change turns in the *Bail-dock*, and that divine endowment that was by miracle fermented in him, takes to task those *Hellish Sophisters*, whose artifice it was, both to be tempters to sin, and accusers for sin. Thus much of the *Elders*, and their false testimony, which had took effect, if somewhat had not interposed; which the Text thus phrases, *viz.*

*Si non eam miraculose liberasset Dominus inexcogitabile prudentiâ, quam à natura non habuit puer junior.*

Here our Chancellour ascribes the patronage of innocence to God alone, whose the peculiar care and love of truth is, and who by a wonder of mercy and power does dissipate the contrivances of wickedness, and provide salvation for *Walls and Bulwarks*. For though our Master well knew, that *Daniel*, whom tradition and general consent makes the young man here, was Magically and Astrologically instituted. I hope I may use those phrases without offence; because I suppose those words, *skillful in all wisdom, and cunning in knowledge, and understanding science, whom they might teach the learning and tongue of the Chaldeans, Dan. i. 4.* import so much. Though I say he knew *Daniel ten times better than all the Magicians and Astrologers*, even in their own art; yet does he piously ascribe this heroiqueness and divine spirit in him, to the special efflux of God's spirit on him, who had qualified him signally for this service above, and beyond the possible attainment of his years, or the extent and energy of his breeding; which I the rather note, because many atheisticque minds, and bold asserters of natural causes and the influences of them, are not content to publish the great and mysterious operations of nature, and to reduce every thing to her norm; but to detract from the extraordinary instigation and assistance of God. Which though I believe not to be in the bravado's and mad frenzies of *giddy Enthusiasts*, and *sanguine Phanatiques*; yet I doubt not but to be in very notable degrees on the spirits of all great and good actors, and to appear in their grave and orderly actings; yea, and as God does sometimes permit an evil spirit from him to kindle great and grievous flames, as his execution on

Spottwood Hist. of Scull. p. 202.

Ver. 43. *Non dicitur, Dicitur falsus & iniquus testis, qui crimen fingit ad opprimendum alterum. Grot. in loc. Badwellus in loc. To. 5. Crit. Sacr.*

*Et Deus quidem hanc sua legis observationem ministris suis rependere volens, locupletavit hos quatuor adulescentes multa verum prudentia, atque intelligentia. Ita, ut quosvis Libros intelligenens, multaque sapientis praeferent ceterum Daniel is praeceteris hac prerogativa claruit, atque insignis fuerit, quod dominum visionum ac sanctorum intelligentiss. fuerit. Tostatus, in c. 1. Danielis.*

sinful

sinful Nations: so does he by a mercy of miracle, rouse up the souls and senses of Instruments proper for him, to assist and effect his purpose, in his time, according to his instinct on them. And therefore, though some holy, or rather some unholy Pyrats, when they would subvert the faith of God's Elect, hang out false Colours, pretend Scripture, Revelation, Spirit, impulse from God to do deeds of darkness, derogatory to the pure God, and to the peaceable Gospel; yet are there holy and serious impulsions on men, which I doubt not to aver, to have the image and superscription of God on them. And that because nothing but the finger of God can inscribe them with the perfection and to the prevalence they arrive at. This was in Joseph, when he was presented to Pharaoh's favour, which he so merited by his discretion and wisdom of carriage, that Pharaoh calls the spirit of GOD in him, *רוח אלהים* not onely one in whom the spirit of God, but (with reverence be it written) the will, and as it were a part or angle of God, is; that is, in whom is an excellency of spirit to discern, and of will to discover what he knows, good for men to do, or evil for them to avoid: so is to be understood those passages in Scripture, which entitle God to mens extraordinary endowments, and make them that have them, eminent in their times. So its applied to Bezaleel, *Exod. 31. 3. Chap. 35. 31.* so to Moses, *Numb. 11. 25.* and to Caleb, *Numb. 14. 24.* to Joshua, *Chap. 27. 14.* so to our Lord Christ, *Isa. 42. 1.* By this Spirit God came on Balaam, and made him prophecy, *Numb. 24. 2, 5.* By this made Othniel deliver Israel, *Judg. 3. 10.* Jephtha, *Chap. 11. v. 29.* Sampson, *Chap. 13. ver. last.* By this David was enabled to his Royal Office, *1 Sam. 16. 13.* yea, by this (I believe) is God with his Hereditary Apostles in the order of Ministry, whereby he casts down the strong holds of Satan, and notwithstanding the mighty oppositions of the World, accomplishes the number of his Elect. To which, alas the foolishness of Preaching, and the frailty of those Earthen Vessels, in which the treasures of wisdom and knowledge are conveyed, would be but despicable means, if they were not made mighty by God, and by his spirit and co-operation pointed for, and prevalent to those ends. Nor do I think they are ceased wholly in the last Ages of the World; but that God upon sundry occasions, stirs up the spirits of men to great works, and makes them fortunate and prophetic in them. And that not onely as they may by the divination of experience, fore-see and fore-warn danger, and be directed in the seasonable preparation for it; but as they may be awakened by God to know and fore-see; and by being armed and fronted with courage, to despise discouragements, and encounter with seeming impossibilities. Thus God stirred up the spirit of Athanasius, and St. Augustine, against the Arians, Donatists, and Novatians, who had prevailed over Catholicism. Thus God raised the spirit of our Bradwardine against the Pelagians; of Wickliff and Luther against Popery; and thus he stirred up the spirit of our Reformers, not onely the Kings, the Nobles, and the Commons in Parliament, to reform Religion, but to inable the Father-Bishops, & Presbyters of our Mother-Church, and other learned men of this Realm, to contrive a form of service for the Church: concerning which the words of the Statute are, *The which at this time, by the aid of the Holy Ghost, with one uniform agreement is of them concluded, set forth, &c. a very godly order, agreeable to the word of God, and the primitive Church, very comfortable to all good people, desiring to live in Christian conversation, and most profitable to the affairs of this Realm;* as the judgment of Parliament is in the fifth and sixth of the same King, c. 1. I say this Book so framed and owned, by so wise and religious Parliaments, yet God stirred up a contrary spirit to defame and extrude; which spirit, notwithstanding its fierceness long continued not, but another spirit came on the Nation stirred up by God, and cast out that spirit, and censured the rejection of that Book, as a great decay of the due honour of God; and discomfort to the Professour's of the truth of Christ's Religion; the first *Eliz. c. 2.* says so expressly; and the *8. Eliz. c. 1.* calls it, *a godly and virtuous booke.* And as God raised up the spirit of the Builders of Jerusalem in Ezra's time, and the spirit of the King of the Medes against Babylon; so God raised up the spirit of Queen Elizabeth, and all our Monarchs since her, to deliver the people of England from danger of war and oppression both of bodies by tyrannie, and of conscience by superstition, with liberty both of bodies and minds. They are the words of Authority; yea, and when an evil spirit came from the Lord upon this Nation, to divide and scatter it; and we were all like water cast upon the ground, that could not (without a miracle) be gathered up again: even then when

Note this.

Gen. 41 35, 39.

Bradward in  
Præfat. lib. De  
causa Dei.

2 & 3 E. 6. c. 1.

1 & 2 P. M. c. 8.

Ezra 1. 5.  
Jer. 51. 11.

In the Office for  
the 17 Nov. Qu.  
Elizabeth's day.  
The 3d Prayer.



the fury of war fanned us, and the wind of animosity, rage, and unfix'dness, was carrying us away. Then the Lord opened rivers in high places, & fountains in the midst of the vallies; then he gave the Nation his eye-salve, that they should look upon him whom they had pierc'd; then he put courage into the matchless memorable General and Parliament then sitting, to beseech our absent Pylot to commiserate our Naufrage; then he by a Miracle, second to none in any time or story, planted in our wildernesse the Cedar, the Shittah-tree, and the Myrtle-tree, and the Oyl-tree; that is, the King (not onely the highest Cedar for altitude, but  $\text{קדש}$  the Cedar for excellency. For so that Shittah signifies, for its wood is *lignum impubescens nitore & pulchritudine facile cetera superans*; of which the Ark of the Covenant, the Tabernacle, and all the Vessels of them were made.) This Cedar of Affliction and Circuit, who was expos'd to prey and contempt, when he was off his Majestique Mountain, did God, notwithstanding the \* Ordinance to the contrary, which God concurred not in, refix, and with him  $\text{אדירים}$  the Lords, whose reduction into their Orb, wherein they with the Myrtle, do strengthen and assist the Crown, and keep evil from it, makes good that Prophecy of Gods to his Church, *Esay 55. last*; *Instead of the Thorn shall come up the Fir-tree; and instead of the Bryar shall come up the Myrtle-tree*; yea, and with them the  $\text{אילן זית}$ , the wood of the Olive; that which not onely flourish'd, but that which is arid and cut off: so  $\text{זית}$  signifies; and it admirably answers the expansion of the mercy. God brought to life not onely the Lords, whose House was wholly voted down; but even those Commoners, Members of the then Voters, who were secluded, and by their prevailing fellows cut off and cast out. And by this mercy to the *Pia Mater* of our Order, Lustre, and Grandeur, has deserved of us everlasting Eulogies; and what exceeds Vocal, Vital Doxologies. And oh that God would once more stir up the spirit of this Nation, not to animosity, dissention, disloyalty: No (God forbid that evil spirit from the Lord should penally burry England any more; we have too fatally felt the fruits of intestine War, to return (I hope) again to that folly and ferocity;) but the spirit of humility, moderation, charity, this spirit stirr'd up by God, would sedate our spirits in our own, and inflame them onely in God's quarrel, with those regnant sins that are in their tendency and pride Deicidiall: Such *Adders* are we to the loud voice of that never to be forgotten Miracle and Mercy, of the 29 of May, 1660. That nothing seems less to be heeded, then the stupendiousness, and almost incredible transcendency of it. But Lord lay not this sinne to our charge, our deliverance is as it were dead and buried; and since no man regardeth the work of the Lord, nor the operation of his hands; how just may it be, that God's Whirlwind should go forth with fury, continuing whirlwind, and should fall with pain upon the head of us wicked ones. Like as his judgement did in a good measure on the wicked Elders here in the Text, who maliciously combining against innocent *Susanna*, were by the spirit of *Daniel* excited by God to discover their impostry, denuded; and as false Witnesses, and perjurious Villains put to death, & that *Lex Talionis*. For as they would have brought *Susanna* to the flames, which amongst the *Chaldees* was the punishment of Adultery, (for *Græcius* says the *Jews* had there no exercise of their National Civil Polity, but were adjudg'd by the *Topique Laws* of *Babylon*) though the 62 verse of the story sayes, they put them to death, according to the Law of *Moses*; which is most probable, and so understood by our Text-Master, who thereupon brings in the *lex talionis*, according to the Prescript of God by *Moses*, *Deut. 19. v. 19*. So did they by that machination ensnare themselves, and remain an eternal shame to lewd and treacherous Elders. But enough of them, I return to the Text.

*Nasti & tu Princeps divine qualiter jam tarde, Magister Johannes Fringe, postquam annis tribus sacerdotali functus est officio, duorum iniquorum depositione, qui cum antea juvenulam quandam affidasse testati sunt, sacrum presbyteratus ordinem relinquere compulsus est, & matrimonium cum famina illa consummare.*

In this Clause he does not onely bespeak the Prince's attention, by a compellation of highness that he owes in him, and a duty thereupon, that he knows he and all men ought to testify in word and deed towards him; but to this Divine Prince, produces a ternary of instances, wherein the mouches of two Witnesses have been wickedly produced, and made use of to matchless and monstrous villanies. This then is the third instance; and the person mentioned to be the ingenious Contriver of this Delinquency is one *John Fringe*,

*Isa. 41. 18.*

*The Duke of Albemarle.*

*Verf. 19.*

*See the Common's Letter to the King. 2 May 1660.*

*Pagnin. in verbo.*

*\* Ord. Feb. 1648. c. 16. & 17.*

*O stupendious Providence!*

*Myrica virtus est ne corpora imputribilia reddat. Plin. lib. 12. c. 15. 16.*

*No Holy, humble, penitent Spirit in the Nation but from God.*

*Psal. 29. 5. Jer. 39. 23.*

of whom, as he is here charactred, no either English or Latine Story, that has come to my view, makes mention; probably either because what he did was in the time of Combustion in *England*, when many things passed in the crowd unnoticed; or else because it was done in *France* (especially the Treason) where the Prince then lay an exile hence. That there was a truth in it is not to be questioned, but the Circumstances I cannot supply, nor cloath this naked Narrative with such varieties of art and ornament as would make it symmetrical to the other parts of the Comment, that which is notizable in it, is first the quality of the person, a Priest, and such not onely by the Confirmation of his Order, but the continuation of him in that Confirmation, three years. Secondly the degeneration of him from what he ought to have been, but was not, to what he ought not to have been, but was; *Gladium perimentis sub Pallio consulentis gestabat*, He had Judas his heart with Judas his kiss; he did *currere ad sacros Ordines sine reverentia, sine consideratione, &c.* By all means he would have holy Orders (those Entrusts that even Angels do admire and adore) without consideration of that humility and divine zeal that ought to reside in the minde of him that has them and the honour he should pay that honour done him, by a holy life suitable to them; whereas no man ought to offer himself to those Mysteries in whom covetousness reigns, ambition rules, pride rages, iniquity sits, and luxury commands, as Saint Bernard sayes to the Clergy of his time. From this our Fringe should have been free, but he was not it seems, but though by order he was sacred to God, yet by devotion of soul he was nothing lesse but like *Paulus Cremenfis* the Pope's Legate here, while he was inveighing against the Clergy's Leachery, himself was taken abed with a common Strumpet; so did our mentioned Presbyter, while in his Orders he pretended a Dedication to God, he in the profusion of his vicious life devoted himself to his Mistris, which was his shame and his sin. For though I would be a *Constantine* to him, and refer his Case to his last Judge, with silence of whatever may be written against him, as reflecting on his Order; yet in as much as the vices of him were flagitious and to the vituperation of him and his Profession, to both which they were scandalous; 'tis no breach of Charity to follow the Text with a Commentary as well here as in other parts of it.

Lib. De Conversione ad Clericos. c. 29.

De Sacerdote nihil mala aut feda natura est temere presumendum. Reg. Can.

That then which he is in our Text detractingly charged with, is first, that he was libidinous; and notwithstanding the restraint of Orders, and the assiduous seeming continence in them, he did meditate effeminacy; and to make way to his freedom, contrived the annihilation of his Orders. Secondly, That to effect it, he plotted to procure and confirmed two in their perjurious resolution, who should depose that which *ipso facto* if true, as it was not, should dissolve his Orders. Thirdly, That the sacrilegious Combination between him and the Witnesses to so execrable an end should not be confessed by him till he came to dye. Fourthly, The Justice of God in punishing one sin with another, sacrilege with treason, and perjury with perdition.

*Postquam annis tribus sacerdotali functus est officio.*] As three years were according to some Canon, though five as other Canons appointed to intercurr between Deaconry and Priesthood; so this Priest is deposed to consist undetected three years after his Presbyterating, not that he was not probably under a hot lubricity before, but because the depositions instructed by him were to commence date thence: Sin has gradations, no man is at first bad to the baddest degree; but first there is *levis & pudicus tactus*, a Virgin blushingness as it were, and after more confidence, till at last a confirmed effrontery. No man knows where to stay, that stops not at the first appearances of evil, and does not obviate the pullulations and first glimmerings of them; Let *Hazael* be a warning to all confident Presumers, who think themselves not so bad as mercy foretells them to prove, time discovers them to accordingly be; and *Peter* who when the Lord told him he would be the signallest starter from him, made a bold bravado of holy valour; but by peeping into the high Priest's Hall, in curiosity to see what became of his Lord, was so overtaken with pusillanimity, that he not onely denied in the Palace to the Maid that taunted him as a follower of *Jesus*, that he understood not her language, but called them all to witnesse that she mistook him; v. 70. but even in the Porch when accused by a second Maid, he denied not onely that he was his follower but that he knew him, and forswore both with an Oath, v. 72. yet again when a hotter huy and cry came after him, and more and confidenter suspicions came upon him, to evade them and extricate himself he falls afresh to curse and to swear that so far was he from

Spelman Concil. p. 266.

2 Kings. 8. 12.  
2 Kings. 13. 23.

Math. 26.

from owning his person and cause, that he knew neither, or would justify either of them. *Ver. 74.* Here was a *parum absuit*, to utter abnegation: so probably was it with our Priest *Fringe*; at first may be thought to dabble with this *Juvenela*, by a kindness of Courtship; after by the engagement of speculative turpitude, pressed her to more familiarity; thence was provoked to that desire, which to accomplish, neither his orders, or her condition would permit. At last he resolved, being hurried headlong into the torment of lubricity, to quit his Orders, rather than to desist his Courtship; and he contrives to do it by subornation of Witnesses: and thus, as much as in him lay, damned their souls, to bepleasure his own and his Paramours body.

*Qui cum antea juvenelam quandam affidasse testati sunt.* ] The Witnesses were two, and those to give legally a testimony of an untruth. He knew there was no discharge of his Orders, but *causa professionis*; for the Councils of the Church were much against Marriage of Priests, as that which they accounted *dangerous*, full of *incumbrance*, *derogative* from the zeal of men, *temptative* of them from their studies; and the like. This *Fringe* wickedly takes hold of; not as he found Women, stealers away of the heart and their society scandalous to Priesthood, especially those that do blazon their wonts with them, *notorie & publice*, as the words of the Council of *Saltzburg* are; for this had been venial, nay heroique in *Fringe*: but no such motion had he, Orders he had taken, and in them long and loosely continued; and to be quit of them, as too severe Reins for his base mind to be restrained by, he contrives a false accusation against himself, and raises up an evil testimony to confirm it, and thereby to occasion his Ecclesiastical: Censure and Deprivation. Which was, that before he took Orders, he was betrothed to a young Woman.

And herein he makes himself censurable; first, of levity, that he took Holy Orders before he had a settled mind, and had some assurance of that self-denial and humility, that becomes that Calling. No man is to rush on that, chiefly as a lift to preferment, or a relief to necessity of life, or as an occasion to a popular appearance; the parts and pomps of men are not to be consulted with in this undertaking. The design men have to glorify God, and the enablement from him to deny themselves, to please him, in a serious, zealous, and painful course of Ministry, is the best evidence of fitness, & call, and the hope-fullest title to success in it: this had *Fringe* attained to, he would either not have entred into Orders; or when he was in them so long, not so have prophaned them. But if corruption had so prevailed on him, he were better have directly married, as Saint *Bernard's* counsel was; and as *Aneas Sylvius*, after Pope *Pius* the second counselled *John Freund*, a Roman Priest, to do; then thus to contrive a remedy of sin and shame to himself and others. But, poor man! in a sinful storm he was, and he took the next course his corrupt nature presented him, and that was but a tortuous and tortious one, not onely accusing himself of levity; but also, secondly, of lubricity, by a predominancy of sinful passion, which made him *non apte nubere*, that is, not marry (a) a grave and decent person, that might keep his piety steady, and dispose him the more to the sober prosecution of the things of God; as I am sure fit Marriage does beyond all singleness, that has not a very strict gift, and does not abate the edge of Nature by low and moderate Diet, devout and religious severities, laborious and incessant studies, frequent and intent devotions of soul, evidenced in resolved avoidances of all opportunities of averstation; I say, and that knowingly, let who of the *Bateleur-Pretenders* to *seraphiqueness* be offended that will, there is no such ordinary help to piety and sanctity in the World, (the gift of perfect chastity onely excepted,) as fit Marriage is. But this our *Fringe* is willing to be thought not to choose; for the accusation is, that he did onely *affidasse*, which is as much, as contract himself in order to Marriage, *Fidem dare, fidei vinculo se connectere*, as the *Canonists* say, that is, he fairly promised, that marry her he would; which *affidavit* he confirmed

Ο Πρεσβυτερος εν γαμήτις τῆς εως αὐτὸν μετὰ σιδάου. *Concil. Næo Cesar. Sub Sylva. Tom. 1. c. 1. p. 234. Synod 2. Rom. Tom. 1. parte 1. p. 260. Tom. 3. par. secunda, p. 414. Tom. 1. par p. 195. 612. 642. & Tom. 4. par. 2. fol. 232. Concil. Rom. 1. Sub Greg. 7.*

Temp. Mattini 5. Papæ. Tom. 3. *Concil. p. 996.*

he contrives a false accusation against himself, and raises up an evil testimony to confirm it, and thereby to occasion his Ecclesiastical: Censure and Deprivation. Which was, that before he took Orders, he was betrothed to a young Woman.

A good Memento to those that take Orders in the Ministry.

Esset autem sine dubio melius nubere, quam viri; & salvari in numero fidelis populi, quam in clerici sublimitate & deterius vivere & destitutus judicari. Cap. 29. De Convers. ad Clericos.

¶ *Epist. 107.*

(a) See a rare wife Arch. Bishop Parkers Fuller Church History, p. 101.

Luxuosa descriptio carnaliter viventium Sacerdotum E. Prospero, apud Concil. General. Tom. 6 c. 12. p. 257.

Marriage upheld commendable in Church-men.

Bract lib. 2. c. 111; *Constit. Siculæ. lib. 2. tit. 37. Specim. Glor. p. 25*

*Episcopus Wintonienſis in manu Archiepiſc. Cantuarienſis coram Episcopis affidavit tempore Stephani Regis, Brompton. p. 1039.*

Brompton. p. 1132.

*An vero gravior ulla phrenesis, quam impaſſionem cordis & peccandi obſtinata voluntas; ſiquidem manus nepharias injicit ſibi ipſi. nec carnem, ſed mentem lacerat, & corrodit. Sanctus Bernardus Capitulum 4. De Conversione ad Clericos.*

עלמה Quod eſſet privata & occulta viro, Hebræi.

Tom. 1. p. 642.

Tom. 4. parte ſecunda fol. 232.

Tom. 1. parte prima fol. 195, 612.

Concil. Roman. 1 ſub Greg. 7. Anno 1074.

Anno 1058. Inter Canones Elfrici. Canon. 5. Spelman in Conciliis: p. 573.

Synod. St. Patricii, Spelm. Concil. p. 52.

Nota ad Trov. Aſtic. Spelman, p. 43. p. 59.

P. 434. p. 443.

Spelm. Conc. 514. Pag. 580, 574.

Spelman Concil. f. 592.

Co. Inſtit. f. 687. Fox Martyrol. p. 1138, 1140.

by oath (in which ſenſe, our Lawyers call a *Depoſition* an *Affidavit*) that thereby he might not ſo much aſſure her of his fidelity, as entitle himſelf to the command of her upon the preſumption and aſſurance of her, that the marriage was good, *in foro Dei*, and legitimated them to the conſent, which they had affidavited between them. This he onely is repreſented to do, which was no more but the ſecurity that men do give each to other for performance of pacts, as *Richard* the firſt, and the *French King*, are ſaid, *in propriis perſonis affidaverunt firmiter & fideliter*.

*Juvenulam quandam*] Wiſdom, as it is ſeen in the actions of life, ſo chiefly in promiſing what we can and will perform. No man ought to ſay, what he will not ſwear, nor ſwear what is not true; yet the Prieſt is contented to not onely own himſelf guilty of Affidation to a Virgin, (and probably no pure one,) according to the Depoſition of his Accuſers; not as a teſtimony of his ſorrow, for his unworthy mind in that holy function, and for his prophane life, notwithstanding his holy vow; but purely he prostitutes his name and calling, to bring about a Diſfranchiſement, and to procure his Vows unſwearing. For though Charity conjure me to believe, that he confeſſes that this ſubornation of Witneſſes to accuſe him, was onely to make way to his Marriage; yet I do verily believe, and I hope not in any degree uncharitably, the ſparks that kindled this combuſtible matter in him, was too intimate converſation with this young Woman, whom here our Text calls *juvenula*, a tender and taking Creature, *ſtudenti aetate*, not yet *ſub maritali caſtore*; for to ſuch as are freſh and excellent in their kind is this word given. And ſuch he concluding her, Meditates the Marriage enjoyment of her, though with the violation of his vow, and the abjuration of his profeſſion; for upon the oath of the Witneſſes it followed.

*Sacrum Presbyteratus ordinem relinquere compulſus eſt*] That is, the Canons of the Church being tranſgreſſed, as by concubinary or marriage they are, (as by the pre-mentioned Authorities, with ſundry others every where in the Tomes of the Councils appears) under the grievous pains of Excommunication, and Censure of Schiſm and Sacrilege, he is to deſiſt not onely from the exerciſe and benefit as a Church-man; but even *ab honore clericuli*. Which reſolution of *Gregory* the ſeventh, as I take it, being made known by the *German* Biſhops, to their Clergy, upon their return from the Council at *Rome*, ſo offended them, that they reſolved rather to relinquish their Benefices, than their Wives. So did alſo the *French* Clergy in *Pope Hildebrand's* time; nor before I think *Elfrick's* time was it ever enjoyed our Clergy in *England*, but long before the contrary practice was legitimated by our Councils. In *Anno 456*. ordained it was, that *the Wife of a Clergy-man ſhould be veiled; and if they were not, they were without honour from the Laity, and to be removed from the Church*; and before that *Anno 314*. Deacons were allowed Marriage upon their craving it, and yet to continue their Miniſtry; and ſo *Gregory's* reſolution is to *Auguſtine the Monk's Interrogatory*. See more in the Marginal Quotations. I know in

the General Council of *Enbam*, *Anno 1009*. *Calibat* is commended to the Clergy, and they reprov'd, for having two or three Wives, which leaſt they ſhould prefer to hold before their Orders, the Council concludes, *Qui autem ordinis ſui regulam abdicaverit, omni cum apud Deum tum apud homines gratia exuatur*; notwithstanding all which the *Seculars* had their Wives, which the ſtricter or looſer Clergy called their *Mynecene*; probably thoſe we call to this day *mincing Dames*; ſo: when any one goes lightly, we ſay, *ſhe minces* as ſhe goes. But Prieſts had not, nor were permitted to have any Women in the houſe with them, *ne eos ad peccandum illiciant*; notwithstanding all, which, the Clergy that were not *Votaries* in *England* did marry, and their iſſue was legitimate and enjoyed Lands; and this probably was that which moved *Fringe* to be the more eager to marry, becauſe as he knew by diſcharge of his Orders, he might enjoy his *Juvenula*, his young Wife; ſo by the Marriage his iſſue ſhould be legitimate.

And

And this was that which made him will the severity of the Law upon himself, as it follows.

*Et Matrimonium cum femina illa consummare.]* Here is a change, his *Affidatio* being consummated, becomes Matrimony, and his *Juvenula* in years, is become *femina* in state of life; Matrimony is a state of life, which the *Heathen* calls *the safest boundary of Youth*; and though it be not inhibited Priests, neither by the old Law, or the Gospels Sanction, or Apostolique Authority, but meerly *ex statuto Ecclesie*, as *Durand* determines, to which agree *St. Thomas*, and others; yea, though *Cardinal Cajetan* confesses, that Marriage entred into by a Priest is good, and the Children legitimate; and though true it be, that it is *the Seminary of Immortality to Mankind*, not onely in *Plutarch's* sense, as it peoples the World, and makes a kind of eternity in it, but also as it delivers men from sin, and keeps them by the remedy of it, in the love of God, and practice of virtue; which tends to a Heavenly Immortality. Yet for all this, marriage in Priests, is the mark that many (who may themselves doubt, as well as doubtlesly others do, whether they have any continence above that which is the lowest step to it) level at, and discharge much more of their malignity and defamation upon it, then becomes sober or religious men to do. But these being answered by a most holy and learned deceased Father of our Church, much to the honour of the undertaking, and the shame of the opposite Tenent, I content my self to forbear; onely let me ingenuously profess, as I honour highly those Seraphique Virgin. persons, who in the office of Ministry keep single, and notwithstanding it do enjoy that calmness and content in their single life, which is the gift of God, the blessing of continence, & the absence of those provocations that are in virtuous persons troublefome, and in loose scandalous, the probable avoidance of which, being (in the Martyr's words) honest Marriage, I am bold to judge as meet for Clergy-men, as for any: And more, for as I perswade my self, the Devil more designs to undermine these the eminency of whose calling casts the blacker shade on the conversation unsuitable thereto, and the World greedily appetiting the denigration of their reputation, who are most signal in the fruits of Learning and most sacred in the opinion for religions: so do I believe, if there be any help to heaven, next to divine mercy and power, 'tis this of Marriage, which is the *Manifesto* of them both; w<sup>ch</sup> our Mother the Church of *England*, according to the old Doctours & Authors, says, was instituted of God in *Paradise*, in the time of man's innocency, for a remedy against sin, and to avoid fornication, that such persons that have not the gift of Continence might marry, and keep themselves undefiled members of Christ's body; and for the mutual society, help, and comfort, that the one ought to have of the other, both in prosperity, and in adversity. So our Church; whose judgment and favour to the Clergy's Marriage, I prefer, before the humours of any private Opinionists, especially since it is not with any diminution of the just honour and praise of devout chastity and singleness, but in supplement to it, as a refuge to the non-attainers of it, and an honest help to a sacerdotal blamelesness. Hear the Judgment of the King, Nobility, Clergy, Commonalty in Parliament, 2 & 3. E. 6. *Although it were not onely better, for the estimation of Priests, and other Ministers in the Church of God, to live chaste, sole and separate from the company of Women and the bond of Marriage, &c. yet for as much as the contrary hath rather been seen, and such uncleanness of living, and other great inconveniences, not meet to be rehearsed, have followed of compelled Chastity, and of such Laws as have prohibited those (such persons) the godly use of Marriage, it were better and rather to be suffered in the Common-wealth, that those which could not contain, should, after the counsel of Scripture, live in holy Marriage, then feignedly abuse with worse enormity outward chastity, or single life.* These are the words of the Preamble to that Statute, which makes void all Laws, prohibiting spiritual persons to marry, who by God's Law may marry; which Statute mistaken by some stubborn Votaries, who stood more upon blind obedience to the Pope, then to the liberty Christ had endowed them with; and choosing rather to truckle to turpitudes, (I am modest) *Quam contra Papa mandatum inire Matrimonium.* I say, some mistaking our Church and State's meaning therein, were so bold, to the high dishonour of Almighty God,

*Plutarchus in conjugialibus precibus.*

*Lib. 4. Distinct. 37. quast. 1. De Conjugio Cleric. capite cum olim.*

*Συεργὸν ἀδυνασίας τῷ εὐντῷ γῆραι. Plutarchus in Amator. p. 752. edit. Paris.*

*The late renowned Bishop Hall.*

*Dr. Taylor Temp. Q. Mary.*

*Tholosanus, Syntag. Juris, lib. 9. c. 19.*

*Exhortation to the Solemnization of Matrimony.*

God, the dishonour of the King's Majesty, and his High Court of Parliament, and the learned Clergy of this Realm, who have determined the same (Marriage of Priests) to be most lawful by the Law of God, in their Convocation, as well by the common assent, as by the subscription of their hands, as the Statute words are; That the State law great need to make a further Act of corroboration and vindication of their meanings, from their injurious glosses; and thereupon passed the Statute 5 and 6. c. 12. which though by the first of Mary 2. it was repealed, yet that Repeal was repealed by 1 Jacob. 21. and so by that the Statute of E. 6. being in force, the judgment of Parliament is for the Clergymans, continence and singleness, if it may be; but to avoid inconvenience for his lawful Marriage:

*In Matrimonio annulus artha loco saepe datur, ut vir atque uxor invicem se caecerunt. Salmuth in Pancirol. lib. 1. p. 294.*

Our Fringe then did not amiss to marry, he not having the gift of singleness, and having betrothed himself to a Woman, in order to Marriage; for fit it was, that he should perform it; but that which was faulty in him, was, his dissimulation and sacrilegious contrivance of falshood, with a subornation of Witnesses to depose it; in the complication of which, all the fruits of the flesh, which make up the deadly sins, and oppose themselves to the Cardinal virtues are visible. But I pass to what succeeds.

*Cum qua postquam annos 14. Moratus, sobolem septimam suscitaverat demum de crimine laesa Majestatis in tuam celsitudinem conjurato convictus subornatos fuisse testes illos, et falsum dixisse testimonium in mortis sua articulo coram omni populo fassus est.*

This clause declares Gods vengeance on the first sin by the second, and the consequence of it; The patience of God had long been provoked, and the mistaken pleasure of his (as some think) Apostasie as well as Leachery, were for a long time permitted him, not for an earnest of Impunity, but to shew him the obduration of his heart, and to tell the world that there is no man so perfect but may slip, none so peccant but ought to amend and return to his Loyalty by prayer and penance, to pardon and acceptation. Yet for all this Fringe recollects not, but as one swallowed up in the pleasures of his wife, and the prebends of his marriage, persists in Impenitence not onely one year as did David, but fourteen years, and all perhaps to maintain his young wife. Thus did Fava, who having a wife, children, and family, and being unable to subsist by honest means, entred upon the most notable cheats that ever was; and when he was detected, and Judgment passed on him, poysoned himself to avoid the shame. So did Mussardus, a valiant man in Picardy, during the combustions in France, who because in peace he could not live so high, as he was wont, falls to ill courses to maintain himself. First, he kills a Gentleman his Neighbour; then despises the King's mercy, takes a Castle; and when he and his Partizans could defend it no longer, they shot one another, and were burned in the straw they had environed themselves with to that desperate purpose. So also our Fringe was so far from being mindfull of his misacquirement of his wife, that he more doted on her, and on his issue by her, then divined the abbreviation of his life and happiness, by a Treason which should determine both, and leave them corrupt in blood, and poor in condition. So just is God, that though he seemes to permit the inordinacy of men's desires in the manner and measure they propose them to take effect, though their projects be what they would have them, and their prosperity what they can most secondarily wish, yet at last they determine, One Corellius Rufus who had a good Conscience, a good fame Great authority, a wife, daughters, nephews, sisters, all good and with them good Friends is enough for an Age, most men have the contrary, or at best but vicissitudes, yet God has left some Instances of it, that men might seek to, and serve him who can curse and blefs whom he pleaseth, and not alwayes suffers it to succeed virtue and industry least it should be ascribed as a fruit and confectary of them, and not a blessing of his He it is that fortunates some families and Eclipses others, that makes some worthy men obscure, and other worthless once eminent, he it is that inclines the hearts of Queen Elizabeth's, to stoop for her Cecil's sake, that would not stoop for the King of Spaine's sake. The onely way then to prosper, is to procure god our aide, and to preserve him our orction, which they will never do that make lyes their Refuge, and that work by ill and mischievous Engines. If men would be rid of their Faustina's as Antoninus could have been contented to be, they must reddere detem, vomit up all their ill gettings by them,

Grimston Hist. H. 4. p. 1134. 1135 & Seq.

Tag. 1138.

*Benam conscientiam, optimam famam, maximam auctoritatem, praterea familiam, uxorem, nepotes, sorores, interque tot pignora veros amicos. Plin. Ep. De Corellio Rufo.*

Fuller Worthies of England p. 160

them; God will not clear the soul of guilt, that does not part with all that is sacrilegious, a depredation on his son's purchase, which if *Fringe* here had done, he might have been a longer liver with his wife and Children, For some blessings his marriage had, which no wife and worthy man can chuse but value, as First a larg time of continuance 14 years, Time enough to make a man *comptus & moratus*, well trained and throughly polished, and assueted to the nature and temper of marriage, that's the Oratours sense of *moratus*, though our *Chancellor* use it as a term of duration for *commoratus* (the noun being mostly taken in the former sense, and the verb *morari* denoting stay; So *Virgil* *longa ambage aliquem morari*; and *Pliny* *ne pluribus moramur in re confessâ* and *Pomponius* uses *morari apud aliquem, vel cum aliquo*, to stay with any one, *morari solutionem*, or *presidium*, to defer payment or aid.) In this sense *Fringe* had more happinefs then many most excellent husbands, and high valuers of their wives have had. Who though they both prayed for, and delighted in the enjoyment of them, yet had them taken from them, in much shorter time then our *Priest* held his. Besides, secondly, He had Children, which the *Wife man* calls the gift of the Lord, and the fruit of the womb, his delight, and these he had not sparingly, but in number, and in that sacred Number seven, which of all numbers the Ancients thought most divine; For though all numbers being adjutants to memory, are ascribed to the invention of *Minerva*, (*quasi quaedam Meminerva*, which *Minerva*, they say was *de capite Jovis nata*, and therefore they ascribe all parts of Ingeny to it; <sup>¶</sup> As to counsel well, to judge rightly, and to do justly,) I say, though all numbers thus devised, and for this purpose intended are useful; yet some certain ones were more *Cabalistique*, and esteemed *Chyrrick* then others were. *Pythagoras* valued the number Three, because sacrated to *Hecate*, who was called *τρίγλυνθ*. Others think he did it upon other grounds, Also to *Apollo* the number three was devoted, as 6 to *Venus*, and 12. in scripture as I have heretofore noted; but this 7. is the onely number conducing to the life and body of man, Hence probably is that of the *Civilians* from the *Phisicians*, *septimo mense nasci perfectum partum jam receptum est*, and of the seventh son's fortunatenefs; But greater honour is yet done this number, God himself rested from Creation on the seventh day, and sanctified it, and the *Jews* counted it *numerus quietis & felicitatis*, In allusion to which, King *David* may be thought to mention often praying, by seven times a day do I praise thee, because of thy righteous judgments, and how oft shall I forgive my brother, unto seven times, so we read of seven Churches, seven Candlesticks, seven Stars, seven Lamps, burning before the Throne of God, which are the seven Spirits of God, seven Scales, and seven Angels with Trumpets, seven Angels having the seven last great plagues, These do set out the number seven, which applyed to our Text's purpose, declares *Fringe* happy as well in the number, as in the children; God had not onely more blessings then one but even seven in store for him, and those he had by his wife in a fourteen years marriage, Now see the danger involved in this pleasure, the *Priest* had lost his Church income, and had contracted a charge which he probably knew not how to maintain: And that evil heart of his that made him to desert his Orders, and that by an imposition upon the Law as well as upon his own name and his seduced Witnesses Conscience, now tempts him to seek to support his pleasant life by Perfidie and Treason by which no man long advances himself. For though God often blesses sincerity with the gain of greater blessings then men lose, to preserve it, as he did *Valentinian*, who hated by *Julian* and discharged his trust in the Army because he was a Christian and retired to a private life, was upon *Julian's* death in the *Persian Warr* chosen to be Emperour; yet he mostly recompenseth one successfull sin with a sin of ruine: thus did he, the *Priest* here, after a fourteen years prosperity.

Lilius Gyraldus lib. De Annis & Mensibus, p. 595. parte secunda.

Parte prima Syntag. 11. De Nat. Deorum.

¶ Βαλδεν κελως κρινεν δεσπης κη περπειν δικιωσ, Idem eodem loco. p. 530.

Quod per eam Ternionis numeri mysterium coleret, cum quando numerum in sacris adhibendum putavit L. Gyraldus in Enigm. parte secunda p. 479.

1 Revel. 11. 13. 16. c. 4. v. 5.

c. 8. v. 2. c. 15. v. 1.

Guesvara Horol. Princ. p. 94. Censuit justias fieri si inter perfectos Christi quam si inter perfectos Casatis constitueretur. Sidonius lib. 7. c. 12.

*Demum de crimine lese Majestatis in tuam celsitudinem.*

This Clause shews the just return of God on *Fringe* his falshood; Mercy had a long time waited for Repentance, but because Judgement was not suddenly executed on this Sinner, therefore his heart was fully set to doe evil; and that no ordinary one, but such

Ecles. 8. 11.

D. Avila p. 466.

Pag. 818.

Pag. 753.

Note this.

Plutarchus lib.  
De animi Train-  
quil. p. 469.Crimen in hos (Vicarios Christi Reges)  
commisissum proximum sacerlegio est. Ulpian.  
ad legem Jul. Majest.

(4) Tholoffanus lib. 35. c. 1. &amp; 22.

Non tantum actor sed & conscius adjutor,  
Minister gladio puniatur. Corvinus, En-  
chyrid. Juris. p. 679.Tholoff. lib. 35. Syntagm. Juris universi.  
Geiriston in H. 4.  
Decianus Consult. 18. num. 315.  
Corvinus Instit. lib. 4. p. 678.

Inter leges Canuti c. 61.

Si quis saluti Regis aut Domini sui insi-  
dias tetenderit, vita & rebus suis omnibus  
plectetur. Inter L. Canuti cap. 54. Edit.  
Twiss.

Brafton. lib. 3. fol. 118.

Britton. fol. 16.

Fleta lib. 1. c. 21.

4 Instit. p. 5. c. 1.

Glanvil. lib. 1. c. 2. l. 14. c. 1.

\* Sir Edward Cook pleas Crown, c. Treason p. 2.

such an one as shall pay all the Arrears of his own and his other men's sins: That look as *Montgomery* (by being casually the cause of all the troubles in *France* which followed upon the death of *Henry the Second* of *France*, whom he unhappily killed running at Tournament with him) I say, as he was thought many years after punished therefore by being taken in Rebellion in *Danfront*, and by judgement of the Parliament of *Paris* executed as a Traytour: And as *Henry the Third* of *France*, who caused the Duke of *Guise* to be murdered, was himself after murdered by *Clement*: And as *Henry* the Duke of *Guise* proud in the Excellency of his minde and body, so that he boastingly would swim in a strong currented River against the stream in his compleat Armour, and all this to tell the World his strength, whose pride God punished his by permitting him to side with a Faction against the Crown, which brought him to shame and to ruine: I say, as God was revenged of these mens former sins, by the latter punished, so was he with *Fringe*. Into a Treason he is led, and probably leads others, and by it is brought to a shameful End, and worthily and without pity; for Treason is as the sin of Witchcraft against the Law of Nature and Nations, a falshood to the *Pater Patrie*, who ought to be adored and defended. Treason, God himself very early punished in *Lucifer* and his Comrades, in *Corah* and his Company; neither did Heaven bear the one, or earth brook the other. And hence was it that of so much *Tribuni Sacrosanctum corpus attingere capitale fuit*, for Treason is that which has so much horror involved in it, that it denudes a man of all Comforts, *ὁ μὲν δέξαι ὁ μὲν δίκον, ὁ δὲ γάμον, &c.* When one man rejoices in his family, another in his house, a third in his Wife, in his friends. This Treason rescinds all those, and dismantles him of all but sad thoughts and deep de-

spairs, which makes all Nations to abhor it, that they think no punishments too dreadfull for it; For it being a diminution of Majesty, for which cause (a) Civilizans call it *Imminata seu lesa Majestatis crimen*, there is as much done by it as Malice can do to disparay the glorious Majesty of God, of that resemblance, of his sovereign power, which he hath cloathed his Deputies Supreme Magistrates with, in all the Counsellors, Abettors, or Concealors; and not onely against them but against their Posterities, Families and Allies, all which for Treasons have been unfortunated, banished, yea put to death, and that with all the exquisite torments imaginable; not onely to tell men the horridnesse of the fact but to deter them from acting the like wickedness. Amongst us the Laws have ever been most

severe against Treason, as that which is *contra celsitudinem tuam*, as the Text saith, against the life, Government and being of the sacred person of the King in the fixation of his Throne; and therefore accounted *inter scelera jure humano inexpiablelia*.

Hence the Law of *Canutus* made it death and losse of all; so King *Alfred* confirmed the Law with many Additions c. 4. and so the common Law punished it with death, losse of all both fortune and family. And because the crime was so deep dyed and contracted such a penalty of non-ultrality in this World, the Parliaments of all times have not onely ascertained Treasons and given men definitions and characters of their consistencies, (preventive of expositions that power may be tempted to make, and mischief in the committers pretended ignorance of;) so that those consulted with, cannot but let men see their duty, and their danger, and leave them wholly causal of their dishonour and ruine if they observe them not: thus did the Parliament of 25 E. 3. in the Statute of *Treasons*, which Act made by that blessed Parliament, \* for so 'tis called as it well de-

served; not onely for the many good Acts, but for this Law, *For except it be Magna Charta, no other Act of Parliament hath had more honour given unto it by the King, Lords Spiritual and Temporal, and the Commons of the Realm. for the time being in full Parliament, then this Act concerning Treason hath had.* For whereas in the Statute



21 R. 2. the twelve first Chapters of the Statutes of that Parliament were spent upon Inquiries and Treasons, according to various Opinions and Successes; by which, the 1 H. 4. c. 10. says, *No man knew how to behave himself to do, speak or say, for doubt of such pains.* Those Statutes of 21 R. 2. were repealed, and Treason onely stated according to the 25 E. 3. confirmed by 1 E. 6. c. 12. and 1 Mar. c. 1. which grave and gracious Statute of the 25 E. 3. was promoted by the renowned Judges then living; as were the Statutes of Confirmation, which Sir Edward Cook mentions, and I here from him, *To the Honour of them, and of their Families and Posterities, who were not by those expressions of publick spiritedness, more just to own their profound knowledge in the Laws, and mercifull to their own Nation and Posterities, then to their Sovereign's Honour and his Crowns stability, in promoting the fair Lillies and Roses of the Crown to flourish, and not be stained by severe and sanguinary Statutes; For as much as the State of every King, Ruler, and Governour of any Realm, Dominion, or Comminality, standeth and consisteth more assured by the love and favour of the Subject towards their Sovereign Ruler and Governour, then in the dread and fear of Lawes made with rigorous pains and extreme punishment for not obeying of their Sovereign Ruler and Governour: these are the words of the Stat. 1 Mariae sess. 1.*

The consideration of which, as it induced our Kings in their Parliaments to make no more things Treason, then necessarily were such to be, and as such to be punished; the particulars whereof are in a great measure specified in the Statute of the 25 E. 3. which Statute is so commentaryed upon by Sir Edw. Cook, that I refer the Reader to him, who as to those things doth give abundant light to the understanding of the Statute; the particulars of which are for a great part Treason by the Law Civil: yet have there been additional Lawes to make offences Treasons, which by that Statute I think would not have been, for that did but declare what the common Law was, and what they discovered then necessary to be made Treason; but it was never intended to be the universal Standard of Treason, since that Parliament which made it, knew well there would be the same power in subsequent Parliaments that was in the present one, and they reasonably might, and prudently ought to employ that power of theirs to the provision for all emergency, as well of Treason as misprision of Treason, as in 1 and 2 Phil. and Mary c. 9, 10. 5 Eliz. 11. 24 Eliz. c. 3. 18 Eliz. c. 1. 13 Eliz. c. 1. 5 Eliz. c. 1. 23 Eliz. c. 1. 27 Eliz. c. 1. these and other like Acts declare Treasons as occasion shall be; which makes good, that Treasons being high offences are not left at large to be vaguely expounded, but when any Treason is not within the 25 E. 3. or subsequent Acts unrepealed (unless by common Law it be) no Treason I think ought it to be accounted, although I know sometimes power (though *Quo warrantio* God onely can question, who is paramount power) makes that called Treason, which is not so really; but as the King of Navarre told Henry the Third of France when the Pope had excommunicated him (about the Duke of Guise, and the Catholiques cause, as they were called) and complained of the Pope's violence against him; *O Sir, said he, let your Majesty endeavour to conquer, and be assured the Censures shall be revoked; but if we be overcome, we shall all dye condemned Heretiques.* According to this calculate, I say, power has ever in the world made strange Treasons, witness the late Declarations of that Nature, which England these 700. years never heard or read the like of, that by name of *January, black and blew, fatal January* 1648. c. 4. 16. that of *July*, 1649. c. 44. that of *August*, 1651. c. 14. that of *September*, 1656. c. 3. these were Declarations of Treasons, not known in Books before, nor according to the Books I read in *more majus* authorized: but to this our Text has no respect, for the *lesa Majestatis* in it was in *tuam celsitudinem*, not onely against a single person, but the best, or at least second best of persons in England; if not against the King himself, yet against him, whom our Chancellour thought the Heir-apparent to the Crown. For truly when, or where this Treason was committed, or in what manner, I am altogether ignorant; though the word *conjuratio* makes me believe it to be by treachery and secret practice, either to betray his Prince or reveal his Counsels; it probably being not recorded, at least in History, as I before wrote: but sure that it was our Chancellour's Authority gives me undoubtingly to believe, and that the judgement was according to Law, upon either his Con-

sess. prima.

3. Instit. Chap. Treasons p. 3.

Observe this well.

In the Preamble

3 Instit. pleas of the Crown, chap. Treason. Theostoffanus Syntagm. Juris lib. 35.

3 Instit. chap. Treasons c. 1.

Dion. Cass. lib. 67. p. 765. De Mefio Pompuhano.

Ecce serenissimus Dominus Imperator serissimi Leonem iussit; et quidem provisione illius vocari potest, fieri autem Leo non potest. Sanctus Gregor. in Regest. lib. 1. Ep. 5.

D. Avila. p. 211.

Scobel's Collecti- ons. 2 part. fol. 3. 7. 15. 175. 372.

Reg. Juris.

Eicon Basilic.  
ca 27. In his ad-  
vice to the then Pr.  
of Wales now our  
most gracious So-  
verign.

Job. 7. 19.

Seneca, Ep. 31.

Illud praeceptum sa-  
luten impedit  
quod cito nobis pla-  
cet; ideo mutari  
nolumus quia nos  
optimos esse credi-  
mus. Senec. ep. 69.  
M. Antoninus  
Edit. Gatakeri,  
p. 378.  
Τὰ καλὰ τοῖς  
παισιν ἴδεν  
ποῖ. loco  
praeceps.  
Lib. 6. Ep. 13.

fession or proof by Witnesses; for the Text says, he was *conjurato convictus*, which I conceive he could not have been but by tryal and judgement upon it: since (the rule of Law says *Res non ideo vera est, quia asseritur, sed quia probatur*.) which being done *modo & forma*, he remains an infamous Traytor, and so adjudged to shame and death, yea to shame after death; the Quarters of whom are Monuments of terrour to all such Successours in Treachery: For surely he must be seduced by Satan and his own evil heart, who can be treacherous to a King of England, who governs by the settled Lawes of his Kingdoms, which are (said the wisest and worthiest of Kings and Men of his time) the most Excellent Rules you can govern by, which by an admirable temperament give very much to Subject's Industry, Liberty, and Happynesse; and yet reserve enough to the Majesty and Prerogative of any King who owns his people as Subjects, not as Slaves; whose Subjection as it preserves their property, peace, and safety: so it will never diminish your Rights nor their ingenuous Liberty, which consists in the enjoyment of the fruits of their industry and the benefit of those Laws, to which themselves have consented. I say, who dare be treacherous to such a King, deserves the severity of the Law as Fringe here had; who Fox-like dealt under ground, and, privily conspiring against his Sovereign, was *conjurato convictus*, and put to death therefore. And now it behoves his disguise to be taken off, and him nakedly to appear what indeed he was, who had masked so many vices hitherto under the covert of Religion and the gravity of his profession; and he having but a Moment (as it were) to live, in *ipso mortis articulo*, when the abjuments to his dispatch were fitting, then he follows the Prophet's counsel to *Achan*, Confesses his sin and gives glory to God; in not biting in the lip, but openly publishing, that not onely as a Traytor he now dyed: but that God had brought this guilt on him to shame his former prevarications, and to display his occult desultoryness and theatricque personation of what he was not: And he that should have followed the Moralists Advice, *subsilire ad caelum ex angulo*; though he failed in that, yet did *exsurgere modo, & se Deo dignum fingere*. Now outcomes Confession, the second best thing to innocence, and he penitently acknowledges that he did suborn Witness to depose his Contract with the woman he married; whereas there was no such thing in truth, but that he did it to procure his legal release from his religious Calling and severe single lite. O how happy are afflictions and deaths to those who by them are made penitent sinners! how great cause have God's *Jonahs* to blesse God for a storm, and a Sea, and a Whale to swallow them, to prevent the swallow of the bottomless pit? How mercifull is God to men in love with themselves when prosperous, bringing them to see themselves miserable and to look for a better State above themselves. O 'tis happy when afflictions are ἀρετῆς καὶ λόγου γυμνάσματα, the discipline and exercises of virtue and goodness; when men by them are, as that *Laconian* said Children were by teacking them, made more accustomed to and more delighted with virtue; when God by them brings our sins to remembrance which we had forgotten, and which we would have stifled and buried till we had for them been buried in the pit out of which there is no redemption; thus benign was God to our Priest here, who was *sub temporaria gravitate, vel potius sub gravitatis imitatione*, as *Pliny's* words are, and seemed to deserve some praise for his faithfullness in performing his troth to his Mistress, which is the part of an honest man; nor is any man just or worthy that does it not (I mean not to a Mistress of pleasure as Gallants call them (for they neither keep nor deserve to have faith kept to them (but of virtue in order to a Wife) who so, I say, to these keeps not faith, will have it one way or other punished notably; as *Fringe* had for those sins which were as bad as bad could be, contriving a lye, suborning Witnesses to depose it, Apostacy (as it were) from his order and habit (for God accounts *Fringe* a voluntary defertor, not under compulsion of Canon because he contrived his own degradation, and the Law was as to that blamelesse) and what makes all the rest appear? Treason: which had it not been, and by it death, the Priest would probably have not at all confessed this his sin, or not so publicly and so amply as he did; but God that saw in secret did reward him openly, not in the sense those words were uttered but in the sense they were threatned against *David's* sin, *2 Sam. 12. 12. Thou didst it secretly, but I will do this thing before all Israel and before the Sun.* By which God made *Fringe* conspicuous in the penance of his death, who was not so in the innocence of his life; so true is that of the Emperour *Antoninus*,

Antoninus,

ninas, Though the Cedar be lofty and beautifull to behold, yet the coal thereof is nothing the whiter for it; and though the flint be vile and under-foot, yet the dust of it is nothing the blacker for it; often God makes the dissolution of mean men, who are bred hard and live nearly, more signal and remarkable then that of Princes, who feed high, lye soft, and are full of pleasures, thus that Emperour.

From which notable example of Fringe, we should all learn to make our lives referential to our ends, and to do nothing in health, prosperity and life, which shall upbraid us in sickness, distress, or death. For as dying *Bruxillus* comforted himself, *Sure I am, saich he, to him, that in life has done no injury to men, the Gods will not be unkind at his death,* that is in Scripture-phrase, *He that has made God his song, his portion, and his delight, in this house of his Pilgrimage, wil sinæ him not far off when trouble is near and there is none to help him.* And so I leave the consideration of Fringe.

*Licet Cedrus alta & pulchra sit, nihil præterea candidior est illius carto; & licet silex humilis deformisque sit, nihil propterea nigrior est illius cinis: sape Deorum permixta honoratiora sint ossa pauperis Philosophi, qui vitam duriter egit quam Principum qui delicatissime vixere.* Marc. Anton. in Epistola ad Egeſippum Nepotem.

*Certus sum, ei quæ in vita nulli hominum male fecit in morte Deos nequaquam maleſacturos.* Cuv. in Horol. Pinc.

*Psal. 118. 14.*

*Psal. 16. 5.*

*Psal. 37. 4.*

*Psal. 22. 11.*

*Qualiter & sape perverti iudicia, falsorum testium medio, etiam sub optimis iudicibus, non est tibi inauditum nec incognitum mundo, dum scelus illud (proh dolor) creberrime committatur.*

These words are the conclusive deduction from the Premises by which the Chancelour is not to be understood to lay blame on the Law-Civil, which allows deposition of Witnesses, to cast causes, and rules Judges to sentence according to them; though they be, as in the prealleged Cases, never so unjust and perjurious: but serves onely to commend those Lawes most, where the greatest care is expressed to prevent them; which though the wit of man cannot do, without the Grace of God restrain; yet there is most probability of obviating it, where the severest scrutiny is of the Witnesses, and the most materiall Exceptions to invalidate them allowed: which for as much as the Civil Lawes do their part in the Empire, and the Common and Statute Law performs its part here; there is no cause to charge either of them for the Mischief of ill Accidents in their respective Orbs. God has condemned all under Sin, and under the fatal effects of it; and Errours will fall out *sub optimis iudicibus.* No Magistrate so holy and wise, no Law so severe and punctual, but may be deflowred with evil men and evil practices under them; *Non est tibi incognitum, nec incognitum mundo,* sayes the Text, with regard to the Community, and so not to be wondred at appearance of such Monsters. All that rests to good men is, *to take heed of their Wayes, that they offend not with their Tongues, and to hate every evil way and work;* which is the sense of *proh dolor:* ] and to have the Motto of the Family of *Momerancy* fiducially in their eyes, *Deus primum Christianum servet,* which the Wise-man translates into other words to the same sense, *Acquaint now thy self with God, and be at peace, so shall God come unto thee;* and thus if they be guarded, *They shall not need to fear in the evil day: Nor shall the Sons of Violence do them harm:* but that God, whom they serve, will not reward them with disfavour, as *Henry the Third of France* did his old, noble, and wise Marshal *Momerancy*, whom he removed from Court, because he pretended he knew not how better to reward for his great Merits, then with easing him of the trouble and toyl of Affairs; but *he will keep him in all his wayes, in perfect peace;* which is the portion only of those, *whose hearts are stayed on God;* who, to his, is the onely continual Feast in life, and after, receives his to Glory: where, to praise him shall be their *Delight,* and to enjoy him their *Eternity.* And so we conclude this Chapter.

*D. Avila p. 12.*

*Psal. 91. 11.*  
*Esay. 26. 3.*  
*Prov. 15. 15.*

## CHAP. XXII

*Non igitur contenta est Lex Franciæ in criminalibus, ubi mors imminet, reum testibus convincere, ne falsidicorum testimonio sanguis innocens condemnetur. Sed manent Lex ista reos tales torturis cruciari, &c.*

HERE the Chancellour takes off the asperity of some Civilians against the proceedings of the Common-Law by Juryes as well as Witnesses, upon consideration that even *France*, where the Civil-Law is the National Law; yet does allow the Rack to prevent false witness in criminal Causes, which is besides the ordinary Prescript of the Civil Law; whereby deposition of Witnesses is onely allowed to Conviction. Nor surely is it amiss that Lawes should be framed according to the Natures of the people over which they have influence, but very prudent and just it should be so; yea inconsistent it would be if it were otherwise. For as all people have cloaths, dyet, pleasures, company, and all enterprises, means, and instruments peculiar to them; so have Kingdoms exercise of Legislation according to the Vices and Virtues regnant in them. And as there was reason that led our Ancestors to try matters of Fact by Juryes; so was there no doubt like reason in *France* for the use of the Rack, not onely the Purgatory, but the Hell to torture falsehood, and by confession of latent mischiefs to prevent innocent blood-shedding. For though we in *England* have a Rule *Nemo tenetur seipsum accusare*, and in Judgement of Law he is no offender that is not proved such; yet in *France*, because perjury hath brought many to death that have not deserved it, but onely had a charge from malevolence, and the effect of it, subornation of Witnesses: Therefore the Law is there, that if a man be criminally accused, the bare depositions against him shall not condemn him, unless he himself confess the fact either voluntarily without compulsion or terrour; or upon the Rack applyed to him. *Imbertus*, and *Tholosanus* after him allow this the Law in *France*, and without this, *Non contenta est Lex Franciæ*, sayes the Text. For since the end of torture is punishment for indagation of the truth, it is thought fit there to do it by this means, which is *Quinqpartite*, and consists 1. of threats of Racking. 2. In leading to the place of Torment. 3. Uncloathing and binding the Party. 4. Lifting him up upon the Rack. Lastly, Adding weights to his feet, &c. These and Circumstances of them, the *French* Civilians abound with; and this the Law of *France* does, as not finding the proof by Witnesses (who may be suborned or maliciously acted) the very infallible way to discover truth and prevent innocent blood-shedding; and though by the common Rules of Law even Racks and Torments are not allowed in certain Cases, yet even in them Cases the practice of *France* enfranchises it, and the reason is, *Quia interest Reipublica delicta manifesta esse, & detegi ut puniantur*; and this is no new Law; for the Authour adds, *Atque ita majorum more inductum est, ut delicta que clam committuntur semotis Testibus per tormenta appareant.*

*Reum Testibus convincere.*] Witnesses ought to be by all Laws, and without them no conviction ordinarily lyes, now the person to be convicted by them the Text terms *Reus*. The *Greeks* called this ὁ δὲ δῶν; whence our Common-Law has the practice to charge the Inquest upon criminal and capital Offenders, *Ye shall inquire whether he fled for it*, since (a) *fuga præsupponit reatum*: the Civil-Lawes by *Reus* understand the same thing in *Qui accusantur Rei criminis, qui conveniuntur Rei*, that is in *Tully's* words, *Rei sunt dicti quorum res agitur*; and so again 4. *De Orat. Reos autem appello, non eos modo qui arguuntur, sed omnes quorum de re disceptatur*; and *Tholosanus* when he makes *Reus* to be a Relative term, understands judgement at Law to consist of three parties, the Actor, the Judge, the criminal person, that is *Reus*. Thus *Ulpian*, *Enm cum quo agitur, accipere debemus ipsam Reum*; and the Gloss on (a) *Ulpian*, lib. 3. ad *L. Juliam & Pap.* makes *Reus Accusatus*.

So then the sense is, that whoever is accused of a Crime which forfeits his life and Estate, must be convicted of it by solid proofs of two Witnesses, or by confession or flight.

*Tortura quantitas & qualitas statuitur secundum morem regionum. Tholoff. Syntag. Juris universi. lib. 43. c. 12. ff. 25.*

*At in Gallia promissive omnes cuiuscunque dignitatis & nobilitatis fuerint cum luculentioribus delictis indicia torquentur si indicia duorum idoneorum restum fide constant. Imbertus lib. 3. Institit. Tholoff. lib. 43. lib. 12. ff. 24.*

*Idem eodem loco ff. 32. ad finem.*

*Fateur facinus qui iudicium fugit. Reg. Juris.*

(a) Reg. Juris.

2 De Oratore.

Syntagm Juris universi. lib. 24. c. 3. ff. 2.

Lib. 22. ad Edict. Text. Digest. lib. 12.

Tit. 2. p. 127.

(2) Lib. 23. Tit. 2. p. 2112. Reus] Gloss.

fight. So is the Law of God, so the Common-Law, and no new courses has the Government of England ever introduced; for if any one guilty of Treason, be slain in it and cannot be brought to Tryal, which is, *Testibus convicti*; ] the course is to attain him by Act of Parliament: so was it in Hen. 6. time, Stat. 29. c. 1. whereby Jack Cade was attained; and so has it been deservedly often since. So that though our Common or Statute-Law has not, thanks be to God, our Kings, and Parliaments, enfranchised and made legal the odious torture of the Rack to discover Conspiracy or secret Villany by; though perhaps in some high Cases, and upon supposition of Martial Exigencies, high punishments such as the Rack either threatned or executed has been used: yet has it a very grievous punishment for Conspiracy, and that by a Writ of Conspiracy, and an Indictment at the suit of the King; the manner, punishment, and extent of it, Sir Edward Cook sets forth. But the Law of France is not contented, saith our Text, to take this accusation of Witnesses for infallible, therefore *mauvet Lex illa tales Torturis cruciari*, which choice of France, thus to subjoin Tortures to come to the discovery of truth, yet for all them, is fallible, and the Tryals of them to be eluded. For since they are to join with presumptions and so far are onely practicable in France, severed from them tortures must not be, and the reason is, *Quia ex presumptionibus solis nemo damnandus est capitaliter*. Which considered, though the Tortures in France may be intended to search out truth and secure innocence, yet are they no otherwayes available thereto, then other milder courses are with us. Truth depends on God, and if he do not lighten men into the discoveries of it by an extraordinary sagacity, and open the dark cells and vaults of its recesses by his co-operations with mens endeavours, violence will do little. How many do we read in story whom tortures worked not upon to declare what they knew of Secrecy, by name *Leana Arisfogiton's* Mistris; *Chariton* and *Menalippus*; *Theodorus*, whom *Jerome* the Tyrant of *Syracuse* so in vain tortured; *Anaxarchus*, *Arctaphila*, *Alexander*, *Fannius* his Servant; *Philip* Servant to *Fulvius Flaccus*; the Servants of *Mark Anthony* and *Platinus Plancus*; that famous Mother *Lygus*, whom *Tacitus* mentions as despising death to conceal her Son; that woman *Hector Ephicaris*, privy to the *Pisonian* Conspiracy against *Nero*; *Quintilia*, privy to the Conspiracy against *Caligula*; that famous Servant in *Spain*, whose Master being slain by *Hadrubal* the *Carthaginian*, he on *Hadrubal* revenged by killing him, and when he was tormented, *videns, gestiënsque latitiã, in medio dolore expiravit*; add to these *Bonetus* of *Verona*, *Bardilo*, *Vincentinus*, that Servant of *Mauritius* whom *Pontanus* writes of: these and many other like Examples may be produced of the ineffectuality of torments. That cursed *Raviliack*, who had the exquisitest torments that art and severity could invent, acted on him to make him confess his Companions; yet confessed nothing, but that he was instigated to it by the Devil. For Sin is of an obdurate nature; and he that has been so wicked as to design, is not often terrified by punishment from acting it; Conscience indeed may work much towards confession, but death and tortures work often nothing, which surely is one cause (besides the Christianity that is expressed in avoiding inhumane torments) that the Law of England, though it allows Prisons *ad detinendos, non ad puniendos*, as *Bracton's* words are; yet it allows not Prisoners in them to be dually used, not to be bound in shackles, nor to be beaten: for whatsoever is of pain to prisoners, other then to keep them from escape or mutiny, is criminal in a Goaler: And therefore there is no present Law, that I know, to warrant tortures ordinarily in England, nor, saith Sir Edward Cook, can they be justified by any prescription being so lately brought in, and never heard of with us till 26 H. 6. when *John Holland* Earl of *Huntingdon*, and Duke of *Exceter*, being Constable of the *Tower*, brought it in; but to little purpose: for it never had, as by Warrant of the Common or Statute-Law, place (God be thanked) here; for it was a new punishment here, and such *Tholossanus* sayes, *Qua magis ad Carnifices immanes, quã ad Christianos Judices pertinent*; and as the Holy Martyrs found inhumanely exercised upon them in Queen *Mary's* dayes, when their hands were burned off, and their bodies abused, not by Order, nor according to Common, or Statute, but upon some pretence of Canon-Law; the which I the rather note to shew the happiness of the Reformation, which determined cruelty of persecution to death simply for opinion, (except it be for Heresie within the Statute of 1 Eliz.) and leaves men secure from

3 Infit. c. 66.  
Of Conspiracy.

Neque pertinaces,  
neque nimium timidi unquam, vel  
vix æternum fateantur. 1 holofs.  
lib. 48. c. 12. ff. 6.

Polyxenus lib. 8.  
Valer. Max. lib. 3. c. 3.  
Egnatius lib. 8. c. 4. Val. lib. 8. c. 4.

Polyxenus lib. 8.  
Valer. Max. lib. 3. c. 3.  
Fulgens lib. 3. c. 3.  
Ponranus lib. 2. c. 7. De Fortitud. Domestica.

Serres in life  
H. 4.  
Lib. 3. fol. 105.  
c. 137.

Cook pleas of the  
Crown p. 35. 97.

Syntagm. Juris  
universi lib. 43.  
c. 12. ff. 25.  
FOX Aids and  
Monuments.  
p. 1512, 1516;  
1536.

Sir Edward Cook  
3 Instit. p. 218.  
chap. 101.

3 Institutes chap.  
101. Of Executions  
and Judgments.

Tholoff. Syntag.  
Juris. lib. 42. c. 12.  
ll. 26.

from that while they are not *Traytors, Heady, high minded, Lovers of Pleasures more then Lovers of God.* And if the Statute of 1 & 2 P. & Mary, c. 3. called by a great name *A dangerous Act*, was but a probationer to the 4 & 5 of the same Reign; and then onely to continue to the end of the next Parliament: which being the 1 *Eliz.* was by that confirmed to Queen *Eliz.* and to the Heirs of her body, which failing, *This Act hath lost its force as*, saith the aforesaid Authour, *it was well-worthly.* I say, If the Nation were so sparing to endanger one Limb of a Subject, how much care did they intend to expresse to the whole body, which the Rack disjoins: but of the care of our Government, to exclude Foreigners greatness, and forein Customs hence, read Sir *Edward Cook*, and the Statute 4 *Jac.* c. 1. about Tryals of *Scotch-men* and *Englisch-men*; In all which this *maximè Lex illa reos Torturis cruciari*, is, as I humbly conceive, by the Law of *England* left out of its Allowance and remains purely *French.*

*Quousque ipsi eorum reatum confiteantur.*] This is one end of the Rack, that they, that are accused, may be brought to Confession; that is, that they may make that known which is strongly suspected and sworn against them; not that Confession in torture presently makes a proof, for that it does not, *nisi reus ratificet eandem à tortura remotus, in juris auditorio*, as the Doctours say, *idque expresse apud acta extra carceres & tormenta*; and if he shall deny what he is accused of, the first and second time, and that a day after every of their torments, when he is in cool blood; then the third time he denying is absolved, *no in infinitum procedatur ad Tormenta*; for thus suffering and denying his guilt, *videtur purgasse indicia*: so that the Law of *France*, in requiring Confession by so terrible punishments, supposes there is something to confesse; and it may be feared to pers some by terrour to confesse that against themselves, (to please the Judge or the State by whom they are prosecuted) which never was in thought or intendment. And thus that danger which tortures are intended to prevent, may be incurred, *Passiones iniquæ!* What more such then base fear, and what *subornationes ad perjurium* are there more dangerous then Revenge and Reward, to conceal others by accusing a man's self: these may be, and have been, notwithstanding Confessions on Racks, and have been as injurious as perjurious Witnesses; and therefore our Law here, though it had purgations by *Ordeal* and *Battail*; yet because they were cruel, and God did not ever, for reasons best known to himself, determine Innocence and Guilt by the Events of them; but that many innocent persons perished when nocent ones escaped by them: therefore has the Law obsoleted them now. And where Offenders are not by clear evidence cast, there they are not to be sentenced and executed; notwithstanding which favour of the Law, as few great Offenders in *England* lye hid, and avoid their deserved punishment, as in any part of the World.

*Quali cautione atque astutia, criminosi etiam & de criminibus suspecti, tot Torturarum in regno illo generibus affliguntur, quod fastidet calamus ea literis designare.*

*Quali cautione atque astutia.*] This is brought in to shew the *formale internum*, of Lawes penal and provisional, wisdoms forms them with such waryness, as that the remedy shall neither prove the disease, nor shall the Probe be too short for the bottom search of the wound; but there shall be every grain of virtue and vigour that is necessary to the effecton of its intendment. And thus composed Lawes are worthy their name, and operative to their end. Hence *cautio* is ranked with *provisio* by *Tully*; and *astutia* coming from *ἀστυ* the old word for a City, in which men are made wise and wary by experience and conversation. Our Text predicates these endowments of the Law even of *France* in the case of Racks, which no doubt but were invented by the wisdom of worldly men to carry on their Terrour over their treacherous Subjects, whom they can punish, if either they really be guilty, or be onely suspected to be guilty: for so the Text sayes.

Omnino omnium  
horum vitiorum,  
atque incommodo-  
rum una cautio  
est, atque una pro-  
visio; ut ne nimis  
cito deligere inci-  
piamus, neve non  
dignor. Ad Attic.  
lib. 1. 14. 11.

*Criminosi vel de criminibus suspecti.*] These tortures are appointed for both parties, whether they are actually or suspectedly criminous; the former of which are called

called *criminosi* euphatically; for words terminating in *osus* have an import of augmentation, *Ebriosus, gulosus, famosus, bellicosus, formosus, furiosus, imperiosus, seditiosus*, so Tully uses it: and when *Bonosus* the Emperour is defamed by the Historian, as one born *ut bibat, non ut vivat*, there is somewhat of Analogie hereto intimated; it being part of the Triumph of Wit's liberty to express the grandeur of things by words of altels, which, having a sharpness of accent and syllabique pomp, are understood either expressive of excellent virtue, or execrable vice: so that our Text by *criminosus* intends a noted Offender, *patens crimen*; and as it were *sine teste probatum*, whose guilt is not so much *necessitatis* as *voluntatis*; not such, because he cannot avoid it, as he will not, because he brings wicked delights in wickedness, to whom it is a second nature, and that which gratifies him. Such pride some men take in their combustible and finfull humours, that they cannot account themselves happy, but when they are in some criminal singularity; like our *Proto-Brownist* Master *Brown*, who made so little account of his Schism from the Church, that he would glory *He had been in 32<sup>o</sup> Prisons, in some of which he could not see his hand at Noon-day*; yea when he was above eighty years old, his obstinacy is said to be such, that for breach of the peace he was committed to *Northampton-Goal*, wherein he dyed, but this by the way: that which I mainly note is, that *criminosus* here in our Text is such an Offendor as is willingly and designedly a breaker of the Law and that with obstinacy.

*Hic Tribunus plebis, modestus, prudens, non modo non seditiosus, sed & seditiosis adversarius; ille autem acerbus, criminosus, popularis homo ac turbulentus.* Cic. pro Cluentio. 75.

¶ A. Gellius. lib. 4. c. 9. & 10.

Fuller's Church History 2 part. p. 163.

*Et de criminibus suspecti* These incurr the Rack too; for there being in the Law *vehementia indicia*, which are, though not full proofs, yet seconds to it; they are therefore said to draw a man into question, because in canvas of crimes, questions are propounded for them to answer, and just it is that before men be punished they should be examined: God presents this in his question to *Cain*, *Where saith he is thy Brother Abel?* And reason dictates this Method. For since there may be offences dangerous though indiscernable, there must not only be a study of not being openly guilty, but of avoiding whatever may justly give suspicion; for of all things suspicion is the most prying and cankerous incumbrance: 'tis a fruit of envy, tenacity, subtlety, and hatred amassed, and it has all the spawn and venome of them in it; it in *Ely* made *Hannah* a deoboist lewd woman, who was a vehement *Zelot*, and who in the bitterness of her soul begg'd of God his own Glory in a blessing to her self. Suspicion is crime enough, as good before men be guilty, as suspected so to be; onely in \* Conscience suspicion without ground findes Relief. *Much suspected may be, Nothing proved can be*, was the Motto of our *Virgin-Queen* when she was enough, and more then she deserved, suspected; but God cleared her innocence: and so will do if men walk circumspectly, keep good company and good hours, use moderate pleasures and live in moderate expences. That in fine will best secure from suspicion which comes nearest to *Albertus Scipioni* his sage Advice for Travel, *Your thoughts close and your countenance loose, will go safely over the whole World*; that is, keep a good tongue, and an unbusie spirit, and suspicion of crime will be a *non ens*.

*Tormenta sine presumptione non sunt insurgenda.* Gratian. Decret. secunda parte. Caus. 1. qu. 1. c. 10.  
*In criminibus sciendis questio adhiberi solet.* Tholoff. lib. 48. Tit. 12. De Questionibus. Art. 1.  
Gen. 4. 9.

*Crimen, falsa suspicio.* Donatus in Virgil. 11. En.

\* *Nullum tormentum conscientia majus est, illa incollum hac externa despicio, mirate est consolator tuus.* Petrarca in Dialog. 65. De Tormentis.  
*Tunc demum ad torturam deveniendum est, cum suspectus est reus, & cum multis argumentis urgetur.*

F. Pegna Schol. 118. in tertiam partem Directorii Inquisit. lib. 3. p. 225. Edit. Eimerici, Impress. Romæ 1528.

*I pensieri stretti & il viso sciolto.* Sir Henry Wotton's Elements Architecture. p. 396. Of his Works.

*Tot Torturarum in regno illo generibus affliguntur, quod fastidit calamus ea literis designare.*

This the Chancellour adds, not to raise a wonder that offences should be variouly punished in different places and Nations; for nothing is more ordinary and convenient then that it so should be: but to evidence that the *French* as they are a very ingenious and nimble fancyed Nation, so do they expresse it in all things that they do either of word or Action. And indeed, as I am not a

*Eadem scelera in diversis Provinciis gravius plectuntur, ut in Africa nefarium inceffores, in Myka vitium.* Ulpianus apud Digest. lib. 48. c. 16. Text.  
Guido De Suzaria. Tract. De Tortura cum multis Bolognini.

shamed

P. Petz De Ca-  
stro. Tract. De  
Torturis.

Fr. Pegna Schol.  
118. in tertiam  
partem Directorii,  
Inquisit. lib. 3.  
p. 225. auctore  
Eymerico. Im-  
pres Romæ An.  
1578.

Idem eodem loco.  
. 226. 229.

Gratian. Decret. parte secunda Causa  
159. c. 6. gloss. 1. p. 1079.

Pegna loco præcitato.

Dicam quod sentio, hæc tractatio de novis  
tormentis excogitandis, carnicissima est potius  
crudelium quam Jurconsultorum & Theo-  
logorum. Loco præcitato.

Selden notes on  
Hengham. p. 153.  
154.  
Hengham parva.  
c. 3. p. 37.

A me fastidit a-  
mari. Ovid.  
Invenies alium, si  
te hic fastidit  
Alexis.  
Virgil. in Bucol.

shamed to own my disaffection to their fashions, much as I humbly conceive to the dishonour of our pristine Gravity introduced amongst us, and to the waste of our wealth which was wont to be expended on hospitality, and now is lavished in toyish baubles and airy nothings; so is our Chancellour as much out of love with their Method of discovering truth in cases of great consequence and of latent nature; though it is said they are intended not to explore cruelty, but to penetrate truth and to avoid all danger by malevolence. For since reason supposes a man will not willingly, if at all, assert himself to be guilty of what he is not, the Canon Law (for I suppose it first to allow tortures) enjoins that where vehement suspicions are, & the *Indicia* are proved by two Witnesses, there, if the accused party will not confess, racked he must be, because by his obstinacy, the fact can be no other way proved; for torture is *subsidiū quoddam extremum ad inveniendam veritatem*; and where any other way can be taken to discover, torture is not to be used; and wherever the contrary is, the learned *Spaniard* says; 'tis *De consuetudine sanguinariorum hominum*. And this to prevent, I humbly conceive to be the cause why the Law of *England* is so sparing to leave any thing to discretion in punishments, because men are so apt to prefer passion before Justice; therefore are all opportunities of passion rescinded and the positive Law is prescribed, w<sup>ch</sup> the Reverend Judges do observe precisely, and were it otherwise, that inconvenience might be with us that is abroad, where much of judgement is arbitrary; for though in the Civil and Canon Law the Rules are straight enough, *That no man is to be tortured when there is other proof; onely by Report no man is to be tormented; that the Indicia ought to be proved by two Witnesses; that onely fame is not sufficient to bring a man to torture, except the man be of ill life, ill belief, and ill conversation, &c.* Yet because in these Cases the Judge is to determine, nothing is more usual then to act something like cruelty under

the pretence of Justice. And therefore though all Doctours agree, that in case of Treason, *ubi criminaliter non potest probari*, tortures are necessary, and no person is exempt and priviledged therefrom; and the like in Heresie: yet do even they who are most for it conclude, that they must be by wonted and known Tortures, which *Grillandus* and *Julius Clarus* make five in number, and *Marsilius* improves to fourteen, and boasts he had invented another *per somni subtractionem*: but *Pegna* so far abhors this wicked ingenuity; that he patly says, *That Invention of cruel Tortures to afflict men by, is rather the work of Hangmen and Cannibals, then of Lawyers and Divines*; which calls to my minde a speech of that mild *Spanish* Fa-

ther *Alfonso*, Confessor to King *Philip*; who, when he saw the Protestants so hurried to the flames for their Religion, professed, *Purpureus hic imber monstrosos producit factus*. All which considered, though *France* do abound in various Tortures, such and so many as is tedious to rehearse, and troublesome to think upon; yet blessed be God these tortures are restrained to that Country. For in *Arragon* (*Pegna's* noble Country, & *semper Catholico regno*, as his words are) torture cannot be inflicted by the Judge, but onely in Case of Heresie; nor in *England*, so far as I can finde, can any man suffer death upon religious accounts but in case of Heresie upon the Statute of *Eliz. 1.* w<sup>ch</sup> Heresie is also there limited to prevent the danger of misinterpretation. And though with us we have many different punishments for Felonies, as *Isalifstatus* a Felon was at *Dover*, *Demembratus* of his eyes and stones at *Winchester* & *Wallingford*, at *Southampton* drowned, at *Northampton*, beheaded (and so I think at *Hull* and *Halyfax*, the suddenness of which gave occasion to that speech, *From Hell, Hull, and Halyfax, Good Lord deliver us,*) and so in sundry other places; yet have we no such tortures for Malefactors as *France* has. For such the tender-hearted Chancellour, who had long attended his noble Prince and his hard misfortunes there, knew the tortures to be, so various in their number, and acute in their nature, that he says plainly, *Fastidit calamus literis designare*; that is, he thinks it pity to propagate the memory of them, and refuses to give them the honour of ought, but his abhorrence; for *fastidire* is as much as *recusare*: and the *επιφραγεια* which he uses to express his minde *δ'υλολογος*; by, tells us, that his stomach rose much against them, and his tender soul did penance, while he remembered what dreadful accounts the Engineers, that invented them were to make to God. I confess 'twas a most hellish, execrable, monstrous, unpardonable Parricide,



ricide that *Raviliack* committed on that brave and puissant King *H. 4.* and no torment was great and grievous enough for it; but yet to read the Narrative of it, is a terrible torture to a meek and mercitull spirit: and the tortures that *James* the Grand-Master of the Templers in *France* was put to, when they tormented him to death by peice-meales to make him confes such things against the Order (which they had a minde to extinguish) as they were in no fort guilty of, which he confessed he did to be rid of the pains, and in hope of life, though he craved God and his Order pardon therefore. These, I say, are great tortures; so also were those that the *Venetians* executed upon *Calerio*, assassine to the *Venetian* Gentlemen in *Candy*, who being by the *Venetians* taken, was thrown down from the top of the Palace on swords points; and *Mossolerio* his brother, being convicted for sending Letters into *Padua*, while besieged by the *Venetians*, was with two Priests confederate with him put alive into the ground between the two Columnes with their heads downwards. But yet these are such as *France* affords, for so in the particulars it followes.

Scenes in his life.

Paulus Amilius in vita Philippi Pulchri.

Shutes Hist. Venice. p. 287.

*Quidam in Equuleis extenduntur.* ] This is one of the kind of tortures *France* has, and a grievous one it is; The extenſion of the body on a wooden Horse, on which the hands and feet are so fastned and the body streſſed with weights, that as it follows, *Eorum rumpuntur nervi & vena in sanguinis fluentia prorumpunt*, this was a Heathen Roman punishment, *Tully* mentions it: Of kin also it is to the *Rota* or breaking on the Wheel, which the  *Germans*  of old used. Of these punishments that is true which the Historian sayes of the extraordinary punishment of *Metius Saffetius* drawn in pieces with wilde Horses, *Illud veluti immitte praterque Legum immanitatem, in exemplum deductum non est*, which is the reason, I suppose, I finde no mention of it in the *Digest*, either in the Title *Quaest. or panarum*. From which acuteness of the pain and rape of the violence of this torture, our Text's sayes, *Rumpuntur Nervi*, that is, it breaks in upon the main *Battalia* of the body, and that it must do by a violence of assault, and a not to be resisted force; for the Nerves which the *Greek*, call *νεῦρον*, from *νεῦν nutare vel flectere*, are the motive instruments of the body, of a spermatique and bloodless substance, endowed with sense and motion; and therefore as the Arteryes and veins, so the nerves are reckoned, *Inter prima & simplicissima elementa humani corporis*; and so available are the Nerves, that by them are expressed the most necessary furtherances to motion. Hence it is that *Galen* by *νεῦρον* understands not onely that *genus totum, quod à cerebro & spinali medulla est*, or that which arises out of the Muscles, and by *Hippocrates* is called the *Tenon*; but also that *σύνδεσμος* or Ligament which Physicians call *νεῦρον συνδετικόν*, the binding or holding together Nerve, which having according to the old Philosophy its Rise from the heart; or as the later Anatomists refer it to the brain; from either whereof, as the noblest parts of life, is argued, the Nerve to be a choice instrument: and this the learned understanding so, expresse every thing of excellency by it, as the Notes on our thirteenth Chapter do declare. So then the Text by this *rumpuntur nervi*, ] understands a total subversion of nature, such a Rout in the Microcosm as is unrallyable, and with *Sampson's* strain of strength, carries the foundation from under propping the superstructure, that which disseises life and enters death as a forcible Possesser, & *vena in sanguinis fluentia prorumpunt*, ] that is, by a breach of those *china ampuls* in which are the liquids of life reposed, not onely their wonted circulation is impeded, but all its spirits evaporated and substance lost. *Fluentum* signifying a small River, and the blood being by breaking of the veins, which are tenuous and lucid, moved, all the contents of them flow out; and that is true of *Jeb*, *We are all as water spilt upon the ground, that cannot be gathered up again.*

Hac etiam in Equuleum conjiciuntur, quo vita non aspirat beata. 5. Tuscul. 19.

Al. ab Alexand. lib. 3. c. 5.

Lib. 49. c. 18. 19.

Galen. lib. De Motu Muscularum, ad initium.

Lib. 1. De Elementis.

Lib. 15. De usu partium.

*Quorundam vero, diversorum ponderum pendulis dissolvuntur compagines & juncturae.*

This is another kinde of Torture, that of disjointing the body, and that by Weights which are too heavy for the joints to bear up, by the weight of which the body is torn apieces. This is worse then that punishment in *Aethiopia*, where those that are criminous, are forced to drink the Herb *Ophiusa*, *Ophiusta*, or *Ophinaa*, which will

Alex. ab Alex. b. 2. c. 5.

so terrifie the minde of those that take it, and present to them such terrible views of things, that they shall chuse rather to make themselves away then endure it. Or like that *Persian* torture called *Disfibdomena*, whereby men are tyed to the bodies and tops of trees deflected; which when they let loose, rends the body, with its forcible return to its natural position, into pieces; this is that, which in another sense then *S. Paul* declares *the two edged sword, the word of God to do*, divides between the Marrow and the Bones, not onely beats up but blows up natures Quarters into Nullity, *dissolutione continui*: Such a like cruelty as this was in *Richard the Seconds* time butcherly and barbarously here, by the *L. Holland* and others, acted on a *Carmelite Fryer*, who accusing the *Duke of High Treason*, which the *Duke* (great in power) excused, and his Excuse by the King being excepted, he thereupon prayed the King that the *Lord Holland*, the *King's half Brother*, might have custody of the Fryer, till the day that he should come to his full Tryal; the Night before which day, the said *Lord Holland* and *Sir Nicholas Green Knight*, came to the Fryer, and putting a Cord about his Neck, tyed the other end about his privy Members; and after, hanging him up from the ground, laid a stone upon his belly, with the weight whereof and poise of his body withall, he was strangled, and tormented so, as his very back-bone burst in sunder therewith, besides the straining of his privy Members.

Rollingshed in  
R. 2. p. 412.

*Et quorundam gaggantur ora, usque dum per illa, tet aquarum infundantur fluenta,  
ut ipsorum venter monis tumescat more, &c.*

\* *Ἐπιβόμιον*  
aramentum est  
quo ora silentium  
obturantur & la-  
xantur cum opus  
est. Budæus in  
Pandect. p. 627.  
Edit. Basil. 3.  
1534.  
\* *Tit. 1. 11.*  
*Vitruvius lib.*  
9. c. 13. De Hy-  
draulicis Orga-  
nis.

This is another Torture, to apply to the mouth the Gagg, called *Ἐπιβόμιον*, so fast clasped to the extended orifice of the mouth, that it not onely hideously pains it to be kept at the heighth of extension, but also impedes all speech or complaint; as also gives opportunity to exercise utmost fury upon the Intrals, by infusion either of scalding lead or any mettal into the body, or such vast quantities of water as the Trunk cannot contain, but must break with the burden and stowage of it. This surely was an Ethnique punishment; to which \* *S. Paul* alludes, & *Ἐπιβόμιον*, speaking of false Teachers. And the Gagg is only here used by Thieves, who to hinder out-crys, whereby they may be detected, gagg men: and so when some obstreperous Offenders have been brought to punishment, to prevent their blasphemy against God, and the Authority they dye under, some Powers have made use of this, though never that I read of in *England*, there being a better way to prevent such raving, speedy execution: for though the Law does, as I think, allow the Sheriff liberty to give the condemned and to be executed person, freedom of speech upon presumption that he will testifie some remorse, or declare somewhat of sober exhortation to the people; yet when his concession is abused to raving and vehement execrations, to insolent and high justifications, which are derogatory from the honour, authority, and justice of the Magistrate; the Sheriff is, as I think, to hinder that by executing the Law; for Reason as well as Religion directs not to abuse Liberty for a cloak of maliciousness.

*Piget (proh dolor!) jam penna exquisitorum ad hec cruciatuum enarrare immania.  
Nam eorum variatus numerus, vix notari poterit magna in membrana.*

This the Chancellour adds to shew his abhorrence of the wicked ingenuity of these torments; and his vehement abjuration in (*Proh pudor*) is first observable; for any thing that affects the heart with grief or the face with shame, Authours have expressed by *Proh dolor*, *proh pudor*: and though *pro* be used sometimes and but rarely, yet *Proh ob aspirabilem literam plus afficit*, say the Critiques, perhaps doing respect to *H* out of that Rabbinique reason, because 'twas a Letter of the name of God, and so dignifying what ever it was conjoined with. The sense is, that our Chancellour thought these practices rather matter of sorrow and shame then joy & triumph, adding, that there can be little love and pity where these tortures are insultingly practiced. Our Lord *Jesus* when he prophetically beheld the City near to those exigencies, that the *Romans* soon brought it unto, wept over it; saying, *O that thou hadst known, even thou, in this thy day, the things that belong to thy peace, &c.* And the Prophets, when they had burthens to disgorge on the people, did it, as it were, beshrewing themselves to

be

be the Messengers of it. Holy *Moses*, when God would be let alone to destroy *Israel*, and bids him desist his prayer for their salvation, interposes with God thus, *Blot my name; O Lord, out of the Book of Life rather than destroy Israel.* Passions, if ever they are religious and commendable, are, when they are exercised about grief for sin, and shame for want of sorrow. O what a disanimation and amazement was there in *Lucrece*, when *Tarquin* had raped her chastity, she wounds her self to be revenged on the insolence; yet heals her reputation of chaste, by the reason that accompanied the blow: *O Petrus*, quoth she, *the wound, thy forced wife h.ve made in my heart, does not afflict me; but the wound thy love hath made in me, who ought, and would ensly have enjoyed and been enjoyed by thee, but am violently against my soul and power made disloyal to thee:* This, This, was her *Proh Pudor.*

Dent. 32. 33.

Vulnus, Pete, non  
doler quod ego feci.  
sed quod in fecisti.

*Piget penna exquisitorum.* ] This Metonymy the Chancellour rhetoricates his preterition of these things by; not, but that he could enlarge on them, but because he would rather bury and obliterate, then brighten and perpetuate the memory of them. When a man is writing, as *David* sayes, *The things that concern the King;* Of the piety of *Constantine*; the mildeness of *Trajan*; the gentleness of *Marcus Antoninus*; the strict discipline of *Severus*; the Justice of *Aristides*; the temper of *Augustus*, who lived a renowned Lord of an Empire, and of a Lady, whom he more grieved to leave then he did his greatness: I say, when a mans pen is thus nobly employed, 'Tis the *Pen of a ready Writer, Viget tunc penna;* but when 'tis to gild over dirt, and make a *Blzckamore white*, when it must commend *Lais* for modesty, *Heliogabalus* for continence, *Pompey* for temper, *Cæsar* for self-denial, *Nero* for probity, *Julian* for piety, *Origen* for fixedness, *Severus* for lenity, when thus it is to serve sordid ends to the disservice of truth, then *piget Penna:* ] especially if it be *exquisitorum.* No figure so torvous and tragical can *Apelles* draw, his Pensil cannot artifice such foam and filth of putidness; Noble wits and pens are not parasitique, they can serve Princes and Ages in display of Virtues, and Record of Truth; but they cannot call evil good or good evil, there *piget penna exquisitorum.* For as it followes,

Noble Livia.

Dion. Cass. lib.  
56. in August.  
Cæsar.

'Tis *Cruciatuum enarrare immania.* ] God has condemned sin to shame, and the pen of exquisiteness is not to reverse the Reverse of the Escutcheon of State that wickedness hangs forth; what the great Marshal of heaven and earth has stigmatized, and charged with a Battoon of Alloy, no wit of man must plead for, no pen honourably character: Justice gives to every thing its just Essay, and art to every figure its symmetrical lineament; Devils in practice and invention must be pourtrayed savagely, and the serity of their deeds be dreadfully as they deserve, represented. This methinks was notably done by *Roger Bacon* a witty Preacher in *Henry the Third* his time; for there then being one *Petrus de Rupibus*, Bishop of *Winchester*, whom the Nation disgusted; He, the said *Roger*, told the King, that *Petra* and *Rupes* were most dangerous things at Sea, which facetious Counsel the King following, called a Parliament, took counsel of his Peers, and was ruled by them. Here was that which did answer *penna exquisitorum*; and, blessed be God, it did not spare to speak but was accepted to speed; which had it, the Nation had been under *Cruciatuum immania.*

Speed. p. 521.

*Nam eorum variatus numerus, vix notari poterit magna in membrana.*

This is added Hyperbolically to signifie, not onely the malignity, but also the multitude of them; these Devil like inventions are Legion, not terminable to those persons that invented them. For happy were it, if onely (as sometimes it is) those that were this way ingenuous, might taste first the sawce of their own cooking, and dy with *Haman*, by the Engines they had invented for others.

— nec Lex est justior ulla,  
Quam necis Artifices arte perire sua,

but extendible to others who are often taken in their snare: For many they are, so many that they cannot be crowded close, not contained *magna in membrana*, that is,

C c c 2

Lyes

Membrana clar  
la Pergamena è  
pellibus animan-  
tium concinnata.  
Pitt. lib. 13. c. 11.

Last St. John.  
last verse.

sayes *Pliny* in a sheet of Parchment: the Lawyers using to ingross all in Parchment, which they call a Membrane from *μῆλα*, whence *melbrum* or *membrum*, thence *Membrana que circa membra*; the Greeks call *membrana* by *συνάπτον*, because it cloaths (as it were) the body; for the Arteries are covered with Membranes, which (I humbly conceive, and if I err I crave pardon) is the *superior pars membri*, which we call the *pellis*: so that by this exstatiue expression, there is that intended which may make the sense of the Chancellour to be figurative, and denote largeness, and capacity, like (in a sort) that which the Evangelist uses in those words, *There are many other things which Jesus did, the which, if they should be written every one, I suppose, that not the whole world would be able to contain the Books that should be written of them*: which elegant *Clymax* and height of *Hyperbole* is to have no other construction but that very many they are for number; which also, according to its proportion, is the import of, *vix notari potuit magna in Membrana*.

*Leges Civiles deficiente testium copiâ, in criminalibus, veritatem confusilibus extorquent tormentis.*

Lib. 48. c. 12.  
Digest. lib. 19.  
De Pœnis.

Tormentum  
μαζὴ τῆ ἀβρ-  
δε, non recti,  
sen curvi &  
inflexi Ety-  
mologistæ.

M. Paris. p. 490.  
584. Gloſs. in  
verbo.

Porphyrius apud Holstenium, lib. De  
Scriptis Potph. c. 4 p. 17.

Olim Regibus pavelant, nunc per Princi-  
pes factionibus & studis trahuntur; nec  
aliud adversus validissimas gentes pro nobis  
utilius, quam quod in communi non consu-  
lant. In vita Agricola.

This Prayer becomes every  
true English Subject.

Isay I. 26.

Psal. 102. 18.

This, I suppose, cannot be denied, for *Tolossanus* quotes abundant Authorities for it; and though they have in that Law other punishments for capital Offences, either death or banishment or servitude: yet does that Law in high Cases, where it seems it is not to be avoided, (Conspiracy being heynous and secret) allow torments to detect and thereby prevent it. This leave of God's absoluteness Government takes, to try all means for preservation; and as things are hurried together, and precipitated in some places and Ages of the world, all little enough: no violence, no torment, though it be such as bends a man together, and breaks the silver Cord and golden Ball of his life asunder, will work on him; 'tis God onely must persuade to confession, his torments in the sinner's Conscience make him discover the accursed thing. Experience of this, though it has not persuaded *quamp̄lurima Regna*; yet our Nation it hath, to punish legally Treason and Conspiracy with Death, Quartering, and Corruption of bloud with Forfeiture of Estate. Indeed there was a time when poysoning was frequent with us, then the Stat. 22 H. 8. c. 9. made the punishment boyling to death; but the Nation judging it too severe and un-Christian an infliction repealed it by 1 E. 6. c. 12. Such a *Phœnix Kingdom* is *England*, so mercifull are our Kings, Parliaments, and Lawes, that all savage punishment heretofore used, either have been by Act of Parliament repealed, or obsoleted by disuse: of old, grievous Offenders were hanged in chains alive, where they, samishing, uttered dismall moans so to the terrour of passers by and of women with child, that use reduced it to hanging them in chains when dead. So in the Isle of *Scilly* there was a punishment of Felony very tragical, Felons were let down in a Basket from a steep Rock, with the Provision onely of two loaves of Barley bread and a pot of water, to expect as they hang the mercy of the Sea. Notwithstanding these terrours have been in use, and our Nation has been branded for fertility of Tyrants, though we have had high and jarring spirits which have made way for Attempts and forein Successes against us; which *Tacitus* long agoe observed to be the *Romans* Key to Conquest of us: though, I say, this was our keenness and high stomach; yet has God brought liberty to us out of the steel and flint of servitude; and we are yet free from the Rack and those torments which *quamp̄lurima Regna* have admitted. And as my continual Prayer is, that *From all Treason and Rebellion, Sedition and privy Conspiracy, from all false Doctrine and Heresie, from hardness of heart and contempt of God's Word and Commandments, We may be delivered*: So do I also pray, *From Fire and Fagot, from Rack and Torment, from new Lords and new Lawes, Good Lord deliver us, and make us thankfull that we see the King in his beauty, and that our Judges are as at the first, and our Counsellours as at the beginning; This shall be written that the Generations to come may know it, and the people that are yet unborn shall praise the Lord.* But it follows.

See

*Sed quis tam duri animi est, qui semel ab atrocissimo torculari laxatus, non potius innocens ille omnia fateretur scelerum genera, quam acerbissimam sic experti iterum subire tormenti.*

This is brought to confirm that Tortures are apt to work on some men to confesse any thing, if by such Confession they may be released; and this I take so far from being a justification of Torments, as subsidiary to truth, that as it may fall out in coping with either passil or resolute mindes, nothing may lesse by it appear then truth, weakness alledging that for truth through fear, which is nothing but fiction, and wilfulness luting up all in silence and resolute secrecy. And therefore the Chancellour's *Quis tam duri animi*, is not only a questionary speech, carrying a vehement affirmation in it; but is a flower of Oratory, which has a kinde of perswasive assertion in it; that most men are so terrified by pain and torture, that any thing they would rather do then undergoe the pain they have once acutely felt: though there have been Examples of men, who not innocent but criminous, have so resolved the contempt of tortures and toments, that they have even consolidated themselves to suffer, and by a bravery of courage to out-dare them. How resolutely did that Villain *Olgiat*, one of the Murtherers of *Galeatius Duke of Milan*, who seeing some of his Comrades in that Assassination, fear and begin to faint as they drew near to behold the Torture they were to undegoe; he, though but twenty two years old, desired the Executioners to begin with him, *ut suo Exemplo Comites patientiam discerent*; being laid upon the Rack naked, and fastned that the Torture might more work on him, he with a very audible voice and bold Countenance, even when he was half dead, was heard to say, *Confide Hieronime, &c. Be of good chear Jerom, Death is terrible but Fame is durable*; yea, and when he was just dying, *he ended his life, praying to God most devoutly*. Nor have we been at home here without instances of Malefactours, that have dyed justifying themselves, and without all shew of terrour; *Michael Joseph the Black-Smith*, taken in *Perkin Warbeck's* Insurrection, being executed, comforted himself, *That by this he hoped his Name and Memory would be everlasting*: But an honest Black-Smith, and of juster courage, because more innocent, was he of *Barnwood* in *H. 3.* time, who being sent for to make Shackles for *Hubert de Burgh*, Earl of *Kent*, then apprehended; when he heard it was the Earl of *Kent*, fetched a deep sigh, and said, *Do with me what you please, and God have mercy on my soul, but as sure as the Lord lives, I will never make Iron Shackles for him, but will rather dye the worst death that is; for is not this that worthy, loyal, and courageous Hubert, who so often hath preserved England from being destroyed by Strangers, and restored England to England*. I say, it is less wonder to see innocence courageous; but to see Guilt on the Conscience yet so steeled that it can boast of confidence in God and implore his mercy when it justifies Murther, Parricide, Sacrilege, and all upon cold blood and under pretence of Justice, this is strange; but not so strange as true: the eyes of many have seen, and the ears of more heard it to their consternation and amazement. Indeed when men have suffered for righteousness sake, nothing has been more common with God's *Hectors* then Huperhumane Fortitude: Look into the Storyes of the Martyrs in *Heb. 11.* and in Ecclesiastical Authours, and you'll find death their joy and torture their ambition, constancy their renown and charity their Coat of Mayland Armour of proof; they knew God valued more fidelity then any thing else, and therefore they persevered in it to the death; and as they suffered joyfully the spoiling of their goods and bodyes, so they would be sure that in such their suffering they had a just cause and were innocent. O they knew the spirit of glory rests on the *Innocens ille*, in our Text, who will go through much triumphingly; This has made Christians offer themselves to torments, and turn the edge of their Persecutours swords with the glut of their blood. This has made men forsake their noble Mansions, their pleasant Companions, their profitable professions, their beloved Countryes, to preserve their innocencies. Indeed this innocency will carry God's Jewell not onely to deny subscription to sin, but embrace proscripti-

*Fulgosius lib. 3. c. 3.*  
*Egnat. lib. 3. c. 3.*

*Temp. . H. 7.*  
*Speed. p. 754.*

*Speed. p. 528.*

*Index seculi plus deseret Clerico continenti quam divitiis, & magis sanctitatem suam venerabitur quam opes. Sanctus Hieronimus Epist. ad Heliodorum, De vita solitaria.*

*Nihil Christiano felicius, cui promittitur regnum celorum, nihil laboriosius qui quotidie de vita periclitatur, nihil fortius qui vincit diabolum, nihil imbecillius qui a carne superatur. Sanctus Hieronymus. Epist. ad Rusticum.*

Job. 27. 5.

on for not committing it. This Job so kept close to him, that he resolv'd *not to part with it till he dyed*. This Innocence is the best defence the soul has against all temptation to, and tribulation for sin; 'tis that which few value because few have it, and few have it because few pray for and prize it; O Innocence where art thou? Whether art thou fled? In what order or profession of men art thou resident, that we may seek after thee to finde thee out? Thou art in Angels, and thou hast been in Prophets, Apostles, and primitive Martyrs, though not in the brightness of thy divine Oriency; yet in transcendent proportions, making them burning and shining lights, spiriting them to despise tortures, resist violences, insult over conflicts, embrace poverties, deny favours, glory in sufferings: but in the world now thou art not, we are all now adayes decocted and abated in our holy fervours. No need of Racks and tortures to bring off men now from innocence; make but a motion at the Barr of Power, and threaten to enter judgement and take out Execution upon them for their singularity, and all's hush. 'Tis well with the world, as now it effeminately is modell'd, that Ethnicism is over; for if such times should have been now as was then, the Text's *innocens ille* would have been a *nemo scit*. No courage can be in any soul but in the soul that is sincere; which because men are not, therefore God gives them up to fear sordidly, and deny the truth shamefully, as those Carpet and Out-side Reverends did I *Marie*, who were zealous Protestants in King *Edward's*, and as zealous Papists in Queen *Mary's* dayes: yea in the Convocation of I *Marie*, there were of all the Clerks but six, that withstood the reduction of Popery; and the Goodly Prolocutor *Weston*, told Master *Philpot* one of them; that because he stickled so against Transubstantiation, which was against the Doctrine of the Church of *England*'s constituted in *Edward the Sixth's* time, *That he was a Mad-man, meetter to be sent to Bedlam then continue there*: Lo a taste of innocency which will never cope with flames and tortures. That which enables to endure, notwithstanding all, must be faith in God and frailty supported and sublimated by him; this will make a man not onely dye dayly by mortification, but dy strenuously and suffer patiently for a good cause: and that not from a *durities animi* the effect of sin, but from a resolution hardned by the fire of holy zeal, which none has but that *innocens ille* which our Text speaks of. Who will do by the cause of God, as *Matheo Fasceolo* did by his Country? He being a Citizen of *Chioggia*, when the *Genoesses* wann it from the *Venetians*, lost a great Estate in it; after which he repaired to *Venice*, and finding the City in a great strait, went to the Senate, and told them he was willing to serve his Country with all he could; his Estate he had lost, and had nothing left but his Wife and Children, and them he tendred to serve the State, though it were to be sold to raise money for the States use. So if God's glory be concerned, a good Christian, *Innocens ille*, will part with all that's dear to promote or rescue it.

Fuller's Church  
History, 2. part.  
p. 111.

Shutes History of  
Venice. p. 250.

*Et non semel mori mallet, dum mors sit ultimum terribilium, quam toties occidi, & totidem gehennales furias morte amariores sustinere.*

This our Tex-Master adds as the reason why an innocent man would rather chuse once to dye, then long and often to be tormented; because in death there is but one short brunt which over, all terrours are past: but in tortures and torments, as there is scarce perfect life; so neither is there compleat death, but an interpendance of the miseries of both, and the mercyes of neither. Whereupon the Chancellour concludes, 'twere more eligible to an innocent man to dye for *adoc* as we say, then to be tormented, which is protracted death: And that the Chancellour's intendment may more signally appear, 'tis fit to consider his order in that he proposes; 1. He concludes that a good man's choice is alwayes *De re licita & possibili*; if he had his choice, he would desire nothing but what ought and is to be, *semel mori mallet*. Sin requires natures punishment by death, and God has appointed that all, that do live, shall dye. The Canon is, *Dust thou art* in nature, dust thou shalt be in dissolution by death; *To dust thou shalt return*: and Saint Paul declares this the second time, *It is appointed for all men once to dye*; not for all Creatures, for good Angels live eternally, yet they are Creatures, *But for all men, once to dye*: not that all shall dye but once, for there is a second death mentioned in Scripture, which is the punishment of sin, and

Gen. 3. 19.  
Heb. 9. 27.

and which wicked and impenitent finners are condemned to ; but onte to dye as a payment to Nature, which the best of men are to make then, this the innocent man chuses, because he knows 'tis God's appointment and Nature's order ; and he yields to it, not onely as 'tis inevitable, but as certainly it is *lucrosum quiddam*. For Death to him is *ultimum terribilium*, that is, of natural terribles ; his pains, his terrours, his wants, his defects, which in life pinch him, then adieu : and therefore to be rid of those incommodations, he chuses rather to dy then live ; for as the *Poet* sayes, *Better not to live then to live wretchedly* : and *Æschilus*, *Death is preferable to a sordid life*. O but no man can call death the last terrour, but he, that has Christ, the *Victor of Death*, and him that hath the power of Death, his Portion. No man can chuse to dye, who has his Heaven here, and must have an Hell hereafter ; and therefore because no man delights in terrours ( and death affords such to all but innocent and holy men ) there can be no *mallet mori*, as death is the *ultimum terribilium* in any : but a virtuous soul, who knows, when his earthly tabernacle is dissolved, he shall have a building made of God, not made with hands but eternal in the Heavens ; this makes him chuse rather to dye then to live so incumbred, as men in nature are, and in sin more : for their life is nothing but a file of sins. And therefore no man can account death the last *Physician of diseases* ; and as he in *Æschilus* prays death not to refuse him but to ease him, as that, which alone cures incurable diseases, ἀλγῶν δὲ ἐδὲν ἀπτεται νεκρῶν, because no grief follows the dead. No man, I say, can, as the *Causians* in *Stobæus* are said to do, weep when men are born and laugh when they dye, but those that are either holy or that believe souls are mortal and leave the body without account of what in conjunction with it they were guilty of ; for if they believe that body and soul must conjoinedly stand in judgement before God, then, if they be not holy men that dye, death is not *ultimum* but *primum terribilium* : for death is then onely a victory over terrours, when, as *Tertullian's* words elegantly are, *It has the glory of pleasing God, and the prey of everlasting life*, this made *Jacob* salute his death with this fiducial calm, *O Lord I have waited for thy Salvation* ; and *Saint Paul*, *I desire to be dissolved* ; and *Hilarion* importunes his souls exition from the body ; and *Saint Bernard* to long, and to utter his longings, *Why O Lord Jesus dost thou not lead thy spouse into thy garden, and entertain her with thy delicates after life, whom thou exercisest with thy sufferings in life ?* A good man, saith *Saint Jeroma*, may be pitied in his life, *God hedges his way with thorns, he calls him to combat against Principalities and Powers ; he has a Law in his Members that rebels against the Law of his minde, he is for God's sake killed all the day long, he has a fountain of evil thoughts, and must give account to God of them*. These things make their hearts heavy, and mingle *Vinegar and Gall* with their *Nectar* ; but their *Liberata*, their emancipation and manumission by death, is their *gaude-day* : to these death is *ultimum terribilium*, God has given them a release by it, 'tis their rest from their labours, and their passe to their happyness. But death is not so to all ; not to *Herod* who lived in Adultery and dyed in Murther ; not to *Marinus*, who desired life onely to revenge himself of *Silla* his Enemy ; not to *Theophilus* the Greek Emperour, who expressed he could not depart life, till *Theophobus* his Deputy in *Persia*, whom he was displeas'd with, were murthered ; which done, he dyed, uttering this, *Neither shalt thou hereafter be Theophobus, nor I Theophilus* ; such as these that dye impenitently and are without hope in their death, do but, when they dye, begin their terrours, their great wo is to come : *For them is prepared the never-dying Worm, the inextinguishable flame, the unquenchable thirst, weeping and gnashing of teeth, utter darkness, and so forth* ; as *Saint Jerom* sadly characters it. Therefore these are not those whose to dye is choice ; but he that can do that, is alone *Innocens ille*, *God's Lazarus*, whose sores shall have balm, and whose soul shall have

Θαυῶν ἀεισον ἐσὶν ἢ ζῶν ἀ-  
θλίως. *Sophocles apud Stobæum, serm. 125.*

Βίῃ πονηρῇ θάνατον εὐκλεέστε-  
ρον, *Æschil.*

\* Ἀνθρώποι μὲν γὰρ πένθος πινυμένων  
ἐστὶ νόμιζον θάνατον ἐνδεῖ πρὸς  
θεῶν δικαιοσύνην, μῶντις ἔστιν ἔπος  
ἀεχθῆ. *Philo lib. De præmiis,*  
Ἐρῶν p. 921.

Αὐτῶν ἰατρὸς νόσων. *Sophocles.*

Τὸς μὲν γινόμενος θρήνησι, τὸς  
δὲ τελευτήσαντι μαχαίρῃσι.  
*Stobæus serm. 274. p. 883.*

*Ea victoria habet gloriam placendi Deo & prædam vivendi in æternum.* *Tertullian.* in *Apologet. c. 50. De Martyrio.*

*Cur non (bone Jesu) ducis sponsam tuam in hortum tuum.* *Serm. in Cantic. Cantic.*

*Nos dolendi magis qui quotidie stamus in prælio peccatorum; vitis sordidamur accipimus vulnera, & de oculis verbered- dituri sumus rationem.* In *Epist. ad Theodoram.*

*Joseph. lib. 17. c. 8.*  
*Sabellie. hb. 10. c. 13.*  
*Cuspinianus in vita Theophili.*

*Ya illis quibus præparatur dolor vermium, ardor flammæ, sitis sine extinctis, &c.*  
*Epist. 111. ad Julianum.*

comfort

comfort in *Abraham's* bosom. This, This, This is the *Innocens ille*, who cries to the World and the Devil as his Lord did, what ye do, do quickly; do your utmost, in spite of your rage I shall be more then a Conquerour. He can not but be victorious, whose faith, with reverence I write it, has overcome that *Jesus*, whose passion and merit overcame this, and purchased the next world. By all which it appears, that to dye once is natural to all; to dye happily, so, as to have death the last of terrors, is peculiar to innocent men, who therefore chuse death rather then miserable life, beaue they shall avoid those torments in life which our Chancellour terms *Gehennales furias*.

*Gehennales furias.* ] Tortures are well set forth by these: For as the *Furia* were *Acherontis & noctis filia*, as *Jupiter* by them turned a King into a Wolf; so do tortures act savageness upon the noble body of man, which *David* sayes is *fearfully and wonderfully made*: and because as the furies, so tortures by either,

*Tsai. 139. 14.*

*Poc'a tres furias dixerunt qua mentes hominum exagitant, ira ultionem desiderat, cupiditates opes, libido voluptates. Lactantius, De vero cultu. lib. 6. c. 19.*

*Lib. 3. De Natur. Deorum. Orat. pro Roscio.*

*Tro Sesto.*

*In Nerone.*

*Judges 15. 8.  
2 King. 23. 10.  
Jer. 19. 6.  
Jer. 7. 31.*

*¶ Resolur. of the Judges in Felton's case. Difficile immo & impossibile est, ut & praesens quis & futuris fruatur bonis, ut & hic ventrem & ibi mentem impleat, ut de deliciis transcat ad delicias, ut in utroque saeculo primus sit, ut & in caelo & in terra appareat gloriosus. Sanctus Hieron. Epist. ad Julianum.*

*Tho' off. Syn. tagm. Juris. li. 3. c. 15. 14. & seq. Idem c. 17.*

*Zachar. 12. 10.*

*wrath desiring revenge, covetousness aiming at gain, or lust gratifying pleasure in such cruelty*, are cruel to men exposed to them. *Servius* also has made three sorts of these, assigned to three severall Orbs, *Dira* to Heaven, *Enmenides* to Hell, *Furia* to Earth; *Tully*, after he has smartly treated of these, concludes, *Ha sunt impie, assidua, domesticaeque furia, qua dies noctesque Parentum pomas à consceleratissimis filiis repetant*; which considered, the Ancients did well to term every thing of dread and unacceptableness by *Furia*: thus *Tully* has his *furia ac pestis patria*: and *Claudian* his *Tristes furia*: and the Poets express the eagerness of love by it, *Malis furiis actus, furiis agitatns, concepit furias*, are Epethites, that *Virgil*, *Horace* and *Ovid* give love; and *Suetonius* tells us of *Verberibus furiarum exagitari*, and so doe other Authours of *Arma furialia, ausa furialia, cades furiales, ignes furiales, caput & virus furiale*; which warrant our Text's resembling of tortures by them: yea, in that our Text has added *Gehennales furias* to display them, it has abundantly set forth the terrour and direfull nature of them. And our Text seems to make tortures by this, a local Hell, an Engine of cruelty, and that not to be endured. *Gehenna* is a word adopted into the Greek and Latin tongues from גֵּהֶנְנִים, a Valley South of *Jernsalem*, in the possession of *Hinnom* an eminent *Jebusite*; 'tis called also the Valley of *Tophet*, because abused to Idolatry and cruelty; *For there they caused their Sons and Daughters to pass through the fire alive to Molech*; for which God cursed its fertility and changed its name: so that at last it became the lay-stall of the City, and every filthy thing was cast on it, this was *Gehenna* in the History. Now the sense of our Chancellour was, I conceive, to set forth the sanguinariness of Torments, not only by furies, but by Hellish furies; which none, but he that is the Prince of darkness, and whose *odium* is *versans circa totum genus humanum*, could invent.

And therefore I repeat my thanks to God and the Lawes of *England*, that though Offenders do deservedly dy, when guilty; yet that their bodies are not tortured, but they left to that repose that Conscience will afford them, this is Christian-like in the Law: nor shall they need to be tortured here in their death, who are to be tortured (if they dye impenitent) for ever after death. Nor surely does the God of nature design to it an Hell every where, for since the good man's Heaven is hereafter, he may bare with his Hell here; and since the evil man's Heaven is here, it seems not just to add to his affliction, to torment him before his time: this the Devils cryed out upon, *Art thou come, say they to our Lord, to torment us before our time*. And this, God, I am apt to think, did insinuate to men in the Patriarchal and pure Ages, yea and to the *Jews* his own people; for though dye Malefactours did by God's own judgement, either by stoning or by the Sword of the Magistrate, or by some immediate hand of God: yet those deaths were quick and dispatching, not protractive of time and augmenting torture. And when the *Romans* brought in the Cross, which was an Ethnick and torturous death, which the *Jews* in token of malice executed on our Saviour because of the torture of it which was inhumane, I suppose they are, in the Prophecy of their Conversion, and the sorrow that then should seise on their natural obstinacy, said *to look upon him whom they had pierced*;



ed; which is propheticall not so much of the Spear that pierced his side, as of the nails that fastened his hands and feet to the Cross: By all which I humbly conceive the deaths of Malefactours by tortures may be thought not so Christian, as dispatches of them more calmly, by a quick stroak or sudden throatle, are. But it follows.

*Et nonne Princeps tu novisti criminofum quendam, qui inter tormenta hujusmodi, militem nobilem, probum, & fidelem, de prodicione quadam, super qua, ut asseruit, ipsi duo in simul conjurarunt, accusare.*

Still the Chancellour multiplies instances of the invalidation of torments to discover truth, and the uncertainty of proceeding according to them; and as before he quoted *Fringe* for suborning Witnesses to depose falshood, so here now he produces an Example, in the Prince's own knowledge, of one that accused a man of Honour of Treachery; which he after Racking ratified to be so, and being racked again, when he found himself unable to live, confessed his Accusation false and himself only guilty. And this the Chancellour does, not more to shew the danger of relying too much on frail man, who in his best estate is altogether vanity, apt to be seduced by his corrupt heart to deal falsly, and not to be pityed in being punished therefore, as *Pipus* the *Florentine* was, who being sent by the *Hungarian* with great forces to invade *Italy*, was bought off from that Warr, and betraying his trust returned, whom, the King of *Hungary* punished by causing him to have poured down his throat Molten Gold: I say, not onely does our Chancellour produce this example to shew mortal Villany, but also to admonish all men that stand, to take heed least they fall. For if obscurity of condition is prone to Temptations, what are the Ruffles and Tryals that Mountains, Cedars, and Grandeurs of men meet with; O they have need of many prayers that are in high places. The Text here tells us of a brave person a Knight, *Miles quasi unus e millibus*, a man of a thousand, *nobilis ordine, probus mente, fidelis corpore*, who is impeached; *probus quasi probibus, qui se a delinquendo prohibet*, as *Festus* descants on it, a Gentleman spotless, so wary that he undergoes not the desert of suspicion, whose minde is so moderate and passions so calm, that he seems a pattern of all excellency; (for so *Probus* imports, and so Authours use it, witness *proba Matrona* for chaste Women, not to be drawn aside to wantonness, *probus Artifex*, *Occasio proba*, *Facinus probum*, *Ingenium probum*, *mores probi*; yea *Tully* joins *sanctus* with *probus*;) I say, though thus stanch this person accused is said to be, yet he is the man impeached, and that of Treachery, who is termed *fidelis*;] *Fidelis corde*, found at heart, all Loyalty; *Fidelis ore*, found in speech; one that regardeth his words, who will not speak evil of his Prince, no, not in his Bed-Chamber, when he is most alone; *Fidelis opere*, that does every thing that a loyal Subject ought, and nothing which a loyal Subject ought not: even this man, though thus firm and fixed as that he is notable therefore, (for *nobilis* here is *quasi notabilis*, God having given him virtue and bloud which has made him eminent;) yet this man with all these accomplishments is accused.

*Accusare*] is a forensique word well known to Lawyers; *id est aliquem ad causam discendam urgere*: and *Tully* defines the nature of accusation pithily, *Accusatio crimen desiderat, rem us definiat, hominem ut notet, argumento probet, teste confirmat*. Concerning accusations and the nature of them *Tholoffanus* treats at large. Accusers the *Bulgarians* held of old so dangerous, that their Legislator appointed no Accuser should be heard *nisi vincens & tortus*. This I suppose was the condition of the Accuser in the Text, who yet did so much the more vehemently falsly accuse *Militem nobilem, probum, fidelem*, and that onely to evade the torment; so ready often is the Devil to suggest evil to us, that to ease our selves of one evil we will bring on others greater, which is every day visible; when men to right themselves care not whom they wrong. Those two *Florentine* Families of the *Medices* and *Pazzians* are examples of this; for the *Medeccans* having surprised the *Pazzians*, they were so enraged that they vowed revenge though they seemed friends; and so it was, that the *Pazzians* had contrived Assassination of the *Medicean's* even in the presence of the elevated

Shute's Hist. of Venice. p. 292.

*Si ego latens in caverna & quasi sub modio non quidem lucens sed fumigans ventorum quidem impetus, nec sic declinare sufficio, sed continuis tentationum varisque fatigatus impulsibus instar vento agitata arundinis huc illucque circumferor; quid positus supra montem, supra candelabrum. Sanct. Bernardus, Epist. 42. Ad Archiepisc. Senonensem.*

See my Discourse of Arms and Armoury printed March. 1660.

Pro Cluentio.

*Nobilitas nihil aliud est quam cognita virtus. Cic. Epist. ad Herennium.*

Pro M. Caelio. Synrag. Juris. Lib. 32. De Accusationibus.

Speed. p. 508.

Holt. This makes me think of an holy life as the best guard, and a self visitation as the safest imployment. He that lives at home and detracts from no body, gives his life much serenity; which had the Wife of the Lord *Brnise* done, she might have had *H. the Third's* good favour, and spared her Present of 400 milch Kine and one Bull all milk-white, except onely the eares red, which her lavish tongue of the King made unacceptable to him.

*De proditiōe quadam, ut asseruit ipse, duo insimul conjurarunt.*

Lib. 35. c. 5.

Κελεύοντες τῶς ἡμετέρας  
τῶς παίδας συνναρτίδαι, &c.  
*Philo lib. De specialibus Le-  
gibus, p. 801.*

*Proditio* ] is a falsehood in friendship, as it were, *datio veritatis pro mercede*; and it consisting in betraying a trust is execrable amongst all Nations, & deserves extermination from Man-kind: *Tholosanns* has a whole Chapter about it which I referr the Reader to. That, I suppose, which this Knight is accused for, is either holding correspondence with the Prince's Enemy, or promising to deliver up some strength that by Commission from the Prince he held. This Prodition, however it was, all Lawes make capital; and therefore the Accuser, in torments, confesses it against him, that by engaging a person of more note then himself he might have the more liberty:

yea, and to possess them with a belief, that he both knew the nature and would discover the truth of his knowledge concerning it, he accuses himself Confederate with the Knight; this the Varlet did once and again in hopes to evade the torments: but when he saw the torments would end his life, and he ought to be in earnest with death that was in earnest with him; then he turns his Tale, then he begins to be reall, *Sed demum cum ex pœnis illis læsus, usque ad mortis articulum infirmaretur,* ] says the Text, then he does right to the wrongfully accused person; and his Accusation acknowledged by the very Accuser to be malicious and false, makes the Knight that was eclipsed ten thousand times more orient. So God often rewards oppressed Innocents, that he makes their Cloud their Lustre, and their misfortune their advantage. Famous is that story of *Nicholao Rusino*, who was set to Sea over many Gallies against the *Genouesses*, a Tempest arose which cast him into the Haven of *Cariste* towards the *Negropont*; there he thought his design lost, but there he unexpectedly found fourteen Gallies of the *Genouesses*, richly laden with Merchandise and provision of Warr, lying at Anchor; and knowing them to be the Enemy he was to encounter with at Sea, he set upon them and overcame them. *Pisani* was cast into Prison for his misfortune at *Pola*, but God so distressed the *Venetians* after the loss of *Chioggia*, that they were fain to court their Prisoner, and put all their strength under his Conduct. There are infinity of these examples, *Joseph*, *Jephtha*, *David*, *Daniel*, *Mordocay*, and others, who, had they not seemingly been defeated, had never arrived at those notable advantages that God designed them to be aggrandized by. *Cosmas* the incomparably learned *Italian*, when taken by the *Saracens*, and wanting any man of learning to converse with, or any lad inclined to it, bemoaned more that want then his captivity; yet God so ordered it, that he was brought from his servitude by one who set him to tutor *Johannes Damascenus*; by making whom so great a Scholar he got renown enough: whereas in wayes of wickedness God gives no opportunity to advantage, unless he intend to bring the soul off from it by his mercy to repentance; and that sometimes he does in the last gasp, *in ipso mortis articulo*, not onely when the body is brought low with torture and restlessness, but *in ipso mortis articulo*, in

Shute's History  
Venice. p. 198.

Pag. 246.

Cresolius My-  
tag. p. 201.

*Articulus pro momento & tempestiva rerum  
faciendarum hora sive puncto, seu alienius  
rei aut temporis partiaula. Etymolog.  
Cic. pro Quintio. 10.*

the very τὸ ἄρδν and the entrance of death on life's quartars, (for so *articulus* is by *Plantus* understood, *Opportunitatis omnes articulos scio*: so *Tully*, *ut cum suis conditionibus in ipso articulo temporis astringeret*.) Then, Then, does the truth finde being in the breath of our dying Varlet, *Tum demum*, &c.

*Ultimum quoque viaticum, Christi videlicet corpus, sumpserit.*

This is well added to shew the custome the Ancients had of giving the Sacramental Elements to dying persons, which they called *Viaticum*, because the manner was when Travellers were entertained in the Eastern Countreys, where vast Defarts were, and they

they were to carry their Provisions with them, there being no Inns in the way, there this Provision was called *Viaticum*. Hence *Plautus* mentions the *Viatica cena que datur abituris*, like those parting meals we call *Foyes*, as I take it, which men give their Comrades when they go to travel. Yea *Viatica* signified every thing necessary to Journey, money as well as meat and drink, so *Tully*, *Velim videas quid viatici, & quid instrumenti satis sit*; and *Horace* tells us of *collecta viatica multis arumnis*, and of *largum & liberale viaticum*. Now this Notion spiritualized, our Chancellor makes use of to shew the practice of the Church, who considering the Journey from this to the next World, required Provision for it, and that there was nothing so proper thereto as the Sacramental Elements, did minde the party dying to repent and to cast of all confidence in the World or in himself, and to rest onely on the mercy of God in Christ; and to beseech *Christ Jesus* to make him worthy of his acceptance, and to own that Sacramental body of his, which the humble and contrite sinner has taken into his body towards the preservation of his body and soul to life eternal: for sure to a worthy Receiver great is the benefit of the Sacrament of *Christ's* body and blood. Saint *Bernard* thought so when in those words he said, *Et sensum minuat in minimis, & in gravioribus peccatis tollit omnino consensum*. And hence was it that the Church, when the Minister was satisfied a sinner was penitent and had confessed ingeniously his offence, did for his comfort give him the Sacrament called here *Corpus Christi*; and a purgation of any one from suspicion by solemn taking of the Sacrament to oblige the truth of a thing was quittance enough: this was done in the case in hand, the Knight, that was by the person racked accused, is upon the Sacrament taken at his death, declared innocent and free from the crime he was accused of; *Innocentem militem illum & immunem*, that is, he is not onely not so much as not at all guilty, but as free, as we say, the unborn childe is. Every good man not onely being careful not to be guilty of evil, which *David* calls, *Keeping from the great offence*, but from the appearance of evil; for though with worldly men and loose livers, not to be grossly and actually facinorous is as much as they look to: yet a Christian should, as that Heathen did say, though in the *Corynth* of this world, to be not so bad as the worst is. an happiness, yet *ἐγὼ δὲ οὕτω πορεύομαι, I am a childe of Light, I must walk as in the day, wisely and virtuously*. This is *Innocens* worthy to be mated with *Immunis*. ] *Immunis qui nullo fungitur officio, liber ab onere publico, qui vel etate vel alio privilegio prestare omnia non tenetur*, saith *Festus*, and this admirably reaches the Purgation of the Knight to be free from all temptation to, or advantage by crimes of Treachery; he was a man of Honour and Fidelity, who had no putid Principle which would truckle under sordid profers: he was where he would be, God had bounded his minde within the verge of Providence, and content he was with his station; and thereupon though he was falsely accused, yet is now worthy to be purged, as one innocent and free from the malice of the charge.

Cic. ad Attic.  
lib. 12.  
Horat. 2. Epist. 2

Serm. In Cena  
Domini.

Magdeb. Cent. 3.  
c. 6. p. 134.

Innocens dicitur.  
non qui nocet levi-  
ter, sed qui nihil  
nocet. 5 Tusc.  
Quest.

Erasmus in Ad-  
agiis. Chil. 2.  
Cent. 5. Adag.  
57

*Tamen ait, pœnas in quibus ipse tempore delationis suæ fuerat, ita atroces existisse, quod priusquam eas iterum experiretur, etiam eundem militem ille iterum accusaret, similiter & Patrem proprium.*

This Clause notably shews the disarmament of not onely manhood, but even of integrity by fear, the terrour of which, in the penalty that the bodies of offenders feel under Racks and Tortures, is not onely probable at some times, but even apt with most to make them say or do any thing, though never so untrue and unjust, to avoid them. This, there is evidence of in this example, where not onely the fear of *Peter*, but the falshood even of *Judas* seem concentred. An innocent person he accuses, standsto his Accufation in Tortures, then having no hope to out-live them, confesses the Knight innocent and free, and seals his vindication with the Sacrament to confirm the truth of it; yet, for all this, publishes his so great dread of the Tortures, that rather then suffer them, he would accuse any innocent man, nay his own Father. O self-love, what a corrasive art thou to holy Courage and Martyr-like Constancy! How much dost thou abase the Nobility of manly minds, when thou courtest to save the shadow to lose the substance? How treacherous art thou to truth to secure the trash thou valuest above it? *Peter, Peter, Thou Pilgar of Apostles hast left a blot*

Ego te, semper Simon, plurimi feci, & tu, Simon, dormis. Ego te tot modis honestavi, & tu dormis, &c. Dissertissimus, & Sirenuissimus Morus Equ. Aurat. in Exposit. Passion. Inter opera Impress. Lovanii, Anno 1566. p. 121. B.

In Commentariis Pass. Impress. Lovanii, Anno 1566. p. 119.

Congratulor quidem tibi quid sis exoneratus, sed vereor ne Deus à te quantitas in te exoneratus sit. Epist. 86.

Spotswood History of Scotland. p. 194.

History Venice. p. 273.

Servius in voce Patris, in 2. Georgic. 2.

De poena parricidii, lege Turneb. Advert. lib. 13. c. 13. Edit. Basil.

on thee for this, never Mortal more obliged by a Master then Peter; yet never a Master more dishonoured by a Servant then Christ by him was: thanks to thy mercifull look, O blessed Saviour, for Peter's tears and his after-Constancy. 'Twas bad enough with Peter while he was Peter, and it had never been better with him while he had been Peter; but that thou, O Lord, hadst some future work for to

which thou preservest him by thy courage in him. 'Tis a rare advice that the Knight that dyed courageously according to his Prescript (for that, which charity would persuade me to judge, he believed he ought to do, though the Law & State judged otherwise) Quos in id pati vocat Deus intendant prosperè, &c. Let those sayes he, that God puts resolution into, suffer for him, buckle to their work manly; for they serve him that has times and seasons, men and means at his beck, and will rule and intend them sweetly and effectually to serve his glory. O this playing fast and loose, this being neither hot nor cold; this planetaryness is the preparatory to tergiversation, 'tis prevarication which ends in cowardise; what a wretch does our instance shew him to be; that, to avoid bodily torture, would torture his Conscience, and incur Hell by an impenitent and unnatural sin.

O, self-love is the dangerourest *Agua fortis* to penetrate, that *Satan* works by; Saint *Bernard* thought the Abbot of Saint *Theodorick* in danger by it, when to save him some trouble, or to gratifie an humour he quitted his charge: but the Father tells him, he had best look to it, that his own ease was not God's burthen. And how ill God took his carriage, who consented to the Murther of *Davye*, and under-writ the instrument of the combination; and yet had the confidence to cause it to be proclaimed at the Cross in *Edenborough*, that *He was innocent and never consented to the Murther*, let the Records of Heaven in due time tell. For though it may have warrant from reason of State for the *Venetians*, who kept *Treveso* forty years, and lost it most unwillingly to *Leopold of Austria*; yet when their Enemy had it, the *Venetians* so dissembled their regret, that they sent Embassadors to *Leopold* upon Congratulation of his welcome and entering into it: yet truly it is in the nature of the thing, but a worldly bubble, which being insolid, reaches men not to rest on the favour, or dote on the felicity it promises. Give me the stanch virtue that will not do a sordid illiberal act to better it self, but had rather have *Cato's* Chains in Prison then *Nero's* Scepter on the Throne; for when a man is more led by sense then justice, what does he not dare to do that is facinorous, so it be but accumulative to his ends: Hee'l not onely accuse innocent persons, *sed Patrem proprium*, ] the sacred Genitor, who did, to give him being, *patesfacere semen*, impart himself. His *Father*, that religious name, *unde omnes Dii Patres vocabantur*, saith *Servius*; *Father*, a name of Honour, to which is entailed every dramme of duty and respect imaginable, to the honour of which, the first Commandment of Promise is made: yet, even this *Father*, not onely for age, but even in nature, fear of the Rack, and hope of avoidance of torture, would induce to accuse.

*Nec verò ipse mortem quam tunc metuit, evasit. Sed demum suspensus, tempore mortis sua ipsam militem purgavit ab omni crimine de quo dudum defamavit.*

All that I observe from this Clause is onely, 1. Curse of God on cowardise; many think to avoid tortures and death by fallacious compliances with wickedness: and God when they have shewed their naughtiness, has indurated the bowels of those they thought thereby to oblige, so that though they have loved the Treason yet they have hated the Traytor. For though confession of guilt be a due from every Christian at all times, and at death especially, that those that hear may be warned and admonished to live better that they may dye better; yet, when a man is near death to be so yare of life, as to confess or rather fancya nothing and set it up as something, to lengthen out a few minutes of ease and life by what is indulged to it, as supposed truth, is to dishonour God and deserve no attainment of so cursed ends. 2. That though life conceal much of truth yet death often reveals it, *demum suspensus, tempore mortis sua militem purgavit*. 'Tis time to speak truth to men when men cease to a Malefactor, as they do when he is judicially dying; then cries he for his Confessor, and decryes his

his lewd Companions; then he execrates his debauchery, and exclaims on his costly idleness which made him facinorous, and for the punishment whereof he is a sufferer. 'Tis good and welcome news to charity, when a sinner converteth, and concludes well an ill life; and therefore the Angels in Heaven rejoyce for a sinner that repenteth, because not onely he by repentance puts himself into the arms of mercy, but also desists from that enormity which illaqueates and makes unhappy the life of many innocent holy ones, whom he traduces and misrepresents. There was not in all *Scotland* a more brave and pious noble man then *Archibald*, Lord of *Angus*, in his time was; yet he dyed by incantation and witchcraft: nor was there here a braver Knight then this in our Text, yet he was accused of Treachery, and not acquitted by his Accuser till at the Gallows, and then the false Accuser had his reward; not that which the Priest by order of the Star-Chamber in *Annos* 1544. had, who was set on the Pillory and burnt in both Cheeks with an hot Iron with the letters *F. A.* which the paper over his head expounded for false Accusation; or as the other in 1556. was, for accusing one of the Court of Common pleas of Treason: but by hanging at the Gallows by the head while dead, and then cut down and buried without Christian Burial.

Spotswood. p.  
371. 372.

Stow's Chronicle  
Summ. p. 257.  
312.

*Taliter proh dolor & quam plures alii miseri faciunt, non veritatis causa, sed solum urgentibus torturis arctati, quid tunc certitudinis resultat, ex confessionibus taliter compressorum.*

This Clause affirms that which is affirmable of all relating to erring man, to wit, that nothing he sayes or does, is infallibly to be concluded upon further then it is regulated by a divine Principle, which regards truth and fears falsehood as a provocation of the pure God, who is the revenger of it. Nor is the Argument here applyed more strong against tortures then any other tryal wherein men are instruments, who by being possible to be corrupted, may so be under Juryes as well as tortures; onely this it shews that then the excuse of the invention of torments is detracted from, in the ineffectuality that they prove to the discovery of truth, which, notwithstanding them, is concealed; and justifies lighter punishments (though mortal) to be both lesse barbarous, and as much, if not more effectually then those. For whereas in *France*, where torments are, trust is altogether to the acuteness of those sufferings, as if the terrour of them would work enough without any softer applications: With us in *England* because our kindes of punishments are lighter, we do apply religious Arguments to the Conscience, and lay home the terrours of God to sinners; and because the Magistrate comes not to encounter this *Goliath* of Desperation in his own strength, in which no man shall prevail, but with spiritual weapons which are mighty through God; therefore God makes them prevalent to work contrition and confession. Piety is the noblest and nearest way to politique permanent Issues and Successes, Nor are Statists ever more wanting to themselves then when they neglect the spiritual weapons of the Church to second the carnal ones of the State. The bottom of any villany will sooner be founded by an holy and serious Divine's humble Prayer, serious conviction, prudent encounter with a wicked Conspirator, then by all the terrours and allurements whatever; because *Satan* and his own corruptions incrust him against the one, but against the other which is God's Engine and Key by which he turns all the springs and wards of resolution and secrecy, they are invalid: this is evident in experience, not onely in many examples with us, but also abroad; the History of *Venice* has a notable story of *Beltrand* a popular man in that State, who was privy to the Conspiracy of *Phaleris* against the Government, whose Conscience so troubled him that he revealed it, brought the Conspirators to execution and delivered his Country. And yet how hard is it to perswade the world that Piety is the best Policy; when as, if men would observe it, there is no folly like that of the worldling, who serves a Master which cannot support him, but leaves him as Saint *Ambrose* sayes, in an helpless and hopeless misery. And yet the world is a goad in holy men's sides, and often a snare to them; nay, ever so, when they love it above their boundary, when they take it as their friend, and delight in the repasts and umbrages of it, when they suffer it to corrupt their moderation, and to tickle and

Shute, p. 209.

*Quam misera hominis conditio qua quasi mercenaria aliis laborat, siti indiget, & nisi aliena misericordia suscipiatur nequit, quotidie sub timidine sub timore gravem tolerantis servitium, &c. Sanctus Ambrosius, lib. De Interpell. c. 3.*

halluci-

Scottwood. Hist.  
Church Scotland.  
p. 215.

hallucinate their passions, and by them surpris'd, to engage them to sedity. There is a notable instance of this in Master *Montgomery* the Minister of *Striveling* in *Scotland*, who was as fierce a man against Episcopacy as any his contemporary; yet shortly after this man accepted the Bishoprick of *Glasgow*, which he sordidly came to by making over to the Duke of *Lenox* (who was his Patron thereto) the Land of the See, which the Duke had a minde to, and by taking in lieu thereof a thousand pound *Scottish*, to be paid by the Duke and his Heirs; to which, I had almost said sacrilegious, Condition, no Clergy-man in *Scotland* would yield, and by yielding have the Bishoprick, but onely he. In which frailty we are taught to mistrust our selves, and to look on men, as temptable and various; and therefore the Text's inference is good, *Quid tunc certitudinis ex confessionibus taliter compressorum.*] For men not being themselves when they are in pain and under pressure, the Oppression of it often making a wise man mad, there is little heed to be had to what is said or done under the torture of it. Nor has God given certitude to any thing that is extrinque, for every thing being subject to his interposition, there is no certainty to be concluded, but that he will rule all for the best of his glory and his Saints good; but as to outward things, alas they go cross, and are vicissitudinarians, and that by the special appointment of God; nor can any thing be depended on in them, or collected from them, but what is subject to contingency: Men intend one thing and God disposes another; States make Lawes to one end, but God nulls those Enactions by his occult pleasure, which alone must stand: yea, if Counsels and Lawes are never so well made and laid, if God do not reveal the seasons and opportunities when to set them on foot, and whereby to improve them; all the wisdom of Law-makers is defeated. *Doria* the *Genovesse* was a brave General and got a mighty victory against the *Venetians* in *Phalerio's* Dukedom, which had he prosecuted, as he might, and come directly to the City, he had utterly determined the *Venetian* Government and Power: so had the *Genoveses* after the taking of *Chioggia*, but God gave them no certain knowledge of the event; and so they missed the improvement of the victory. No more certainty is there of the truth of that which a tortured person confesses to avoid his pain, then there is of that which may, and may not be. Tortures are like Physick, on some trinit and easy natures they work fully and readily; but on others they must have notable acuteness to stir them: and when sink they do, 'tis their bodies and nature, not their malice and venom that yields; confess truth they may, but as often they confess nothing at all; or if any thing, not that they should: And therefore the Text sayes, *Quid tunc certitudinis resultat, ex confessionibus taliter compressorum.*

Shure's History.  
p. 237. 246.

*Caterum si innocens aliquis non immemor salutis aeternae, in huiusmodi Babilonis for-  
nace, cum tribus pueris benedicat Domino, nec mentiri velit in perniciem anime suae,  
quo Iudex eum pronuntiat innocentem, nonne eodem iudicio Iudex ille, seipsum reum  
iudicat, omnis savitia & pœnarum quibus innocentem afflixit?*

This Clause is brought in to shew how instrumental some Powers of the world are to torment *Christ's* Innocents, who are for the most part the onely sufferers in the world; at least in those exquisite torments which are the effects and instruments of the implacablest Malice. For as lenity in man is a ray from God's oceanal Mercy, so the contrary is a consecratory of God's absence and retraction from man; and when the spirit of man is simply natural, and has no adjunct good which sweetens and abates the tartness of its peccant rage; then is it virulent and demoniacally rapacious to make others as unhappy as its malice can, and to oppose its self to whatsoever is not as impetuously depraved as its self is. This being the Rise of Antipathy, the Road to Persecution, Tortures, the Emanation of it, fall to no Lot more directly then to God's lot, whom the world is said to hate, because it hated me. (saith *Christ*) first, and because they are not of the world; therefore they do not onely speak all manner of evil against, but act all manner of evil to them, specially that of making their lives unquiet and their deaths bitter to them. The *proto* instance of this in the latitude of its inhumaneness is here borrowed from *Daniel* 3. 13. where the three children, *Shadrach*, *Mesbath*, and *Abednego*, more timorous to sin against God then to incur the King's displeasure, refuse the adoration of the Idol, and accept the punishment that

Non exhibemus  
ultum gestam ho-  
mificum coram  
statua obstante  
Decalogi precepto  
secundo. Grot.  
2u locum,

*Nebuchadnezzar* annexed to the recusancy thereof: And that it may appear, that not humour and singularity, but zeal and conscience led them to this resolution; it is remarkable that they do not revile the Decree, nor reproach the Power under which they suffer, but as *Christ* their head is said, *like a Lamb led to the slaughter*, not to open his mouth either in complaints, or denunciations of judgement: so these Confessors, his Members, shewed no renitency, but willingly embraced the suffering, trusting in God, whose Champions they were, for the issue. Alas!

they knew the *Jews* were envied by their *Chaldean* Masters, and that they had purposely invented this trap to catch them in; whom having ruin'd, they thought the *Hebrew* Religion with the chief Assertors of it would cease and all become *Ethnique*, as *Chaldea*

was: but God's thoughts were otherwise, he suffered his to be led, not onely to, but put into, not *כור*, the *Iron furnace*, so rendred *ab excidendo, seu fodiendo*, because the *Iron Oare* is digged out of the earth; nor *תנור*, the *Baker's Oven*, wherein bread is baked; nor *כבשן*, the *Tilekil* or *Brickkil*; nor yet *שפך*, a *Founders furnace* to melt metal in; though these all are exquisite fires and intense in the torment they put those, that are cast in them, to; but 'tis *שפך*, a *Chaldee* word emphatique to express a *Chaldee* punishment, into a furnace of fire seven times hotter then ordinary fire, that is, into fire purposely hightned by the Materials of subtility that feed it, into this fire, which was the creature of ingenious cruelty and sinfull Malevolence, were the three Children cast; yet for all this, they neither prayed mitigation nor relucted the chearfull acceptance of it, but having a clear Conscience of their innocence and a just confidence in God's power, they put themselves upon the flames, and in the mercies of the Almighty they did not miscarry; but not onely had security from the flames exustion, yea or accession to them, but had also the association of *Christ Jesus* to assuage the fury of the fire, and sweeten that intended Cross into an honour by his compartization with them; as the story read at large will more accurately inform the Reader. Now this our Chancellour makes use of to shew the force of passion, however it be objected; for as love to Idolatry, and indignation not to see it propagated, moved *Nebuchadnezzar* to make the Decree, and the *Chaldeans* to inform against the three Children as Coptemners of it, and criminal for so doing; so love to God, and confidence in his mercy and power, kept the three Children from complying with the Text's terms, *mentiri in perniciem anime sue,* ] and made them chuse rather the fiery furnace then to worship the Image: Whence our Chancellour collects, that to sentence an Innocent is so great a crime that it not onely deserves from God a sentence of retaliation, according to that of our Lord, *For with the same measure ye mete to others, it shall be meted to you again*; as befell the busie Informers in *Daniel* by judgement of *Darius*; but it also makes such a torment in the Conscience of a Judge that condemns him, that he never or very hardly sedates and abates it; but in the Text's words, *Seipsum reum judicat omnis sevitia & paenarum quibus innocentem afflixit.* And how much a prudent natural man will decline the guilt of blood, innocent blood, we may see in *Pilat's* case, who though he was cunning enough to make the best of his Deputy-ship, and knew the way to cajoul the *Jews*, and to render them supple to Acclamation of him; yet, when his Wife sent to him word of her Dream; wherein she had discovery from God, that the Prisoner to be brought before him was a just man, and that the *Jews* thirsted after his blood; which judicially they could not come at, but by *Pilat's* sentence and delivery of him to them to be crucified: when, I say, in the 21, 22, and 23. verses, *Pilate* had done as much as he cunningly could, to blunt the rage of the prosecuting *Jews*, and to weaken and evituate their evidence; and yet for all this, obstinate they were, being set on by the chief Priests and Elders: when all this, I say, was done, and yet they would not be discouraged, then he took water and washed his hands before the Multitude, saying, *I am innocent of the blood of this just person, see you to it,* v. 24. which, though I take to be no absolution of him, yet declares that he thought, that to judge Innocence to death is to draw judgement on ones self, and to bring Hell into a man's own Conscience; which *David* felt so sore, that he cryed out to God, that of all Mercies he would blefs him with *Delivery from blood-guiltyness.* And therefore our Chancellour, in terming *Cruelty* *perniciem anime,* ] writes emphatiquely here, as every where; for *perniciem* comes a

AM. 8. 32.

*Viri Chaldaei accensaverunt* Jude 05 ] *invidentes* Judæis, & ad eos opprimendos aut suosores hujus edidit aut nata occasiois sedulis aucupes. Grot. in locum.

Deut. 4. 20.

Lev. 26. 26.

Jer. 43. 9.

*Terna non infrequens apud Chaldaeos.* Grot. in locum.

*Ex ipso eventu* *facim liquet, non sine arcano Dei impulsu hec totum fuisse factum.* Calvinus in locum.

Matth. 7. 2.

Dan. 6. 9. 24.

Matth. 27. 19.

Verf. 20.

Psal. 51. 13.

perne-

*pernecando*; and the Latines to shew the direfull nature of it, couple it with *pestis*: so *Lucilius*, *Hostibus contra pestem perneciemque*; and *Terence*, *Eripite hanc pestem perneciemque mihi*; and *Tully*, *Pernicies omnium adolescentum perjurus pestis*; so of *Cataline*, *Cum tua peste & pernecie*; I say, the Chancellour in this applause of honest recumbency on God, rather then to provoke him by lying in *perneciem animi*,] does commend, the not onely holy constancy, but wisdom of good men, who thereby save themselves much horrour; which, their lukewarmness would occasion in the remorse of their conscience for it. O there is no danger men run into like that which they occasion themselves by forsaking the truth, and trulling to lying vanities, 'tis the Fog in which all Confidants miscarry, and bring themselves by sin to shame & sorrow. Religion, Scripture, and the Lawes of the Land, are the onely Guides of our duty to God, men, and our selves, and he that walks according to these in the moral Duties and just Prescripts of them, shall neither err in judgement or sink in reputation; but shall dare to doe as that

Satyr 2.  
Adelp.  
1 Office.

\* *Bishop Brumrigg, late L. Bishop of Exon.*

See my venerable friend, the eminently florid, generous, painfull, and pious Doctor Gauden, late L. Bishop of Worcester, his Memorials of him. p. 187.

Speed. p. 783.

Holingshed. p. 677.

Holingshed. p. 1092.

Tu, inquit, testis Domine Jesu, cui occulta nihil est, qui scrutator renis & cordis; non ideo me negare velle, ne peream; sed ideo mentiri nolle, ne peccem. Sanctus Hieronym. Ad Innocentium.

L. Archb. Laud.  
In his Epistle to  
King James in  
answer to Fisher  
the Jesuite.

Judges s. 13.

Shute's History  
Venice. p. 278.

Views of the Civil  
and Eccles. Law.  
p. 17, 18, 19, 20.

generous, learned, pious, prudent, stout \* *Zamzummin*, as learned *D. Collyns* termed him, did, to a person, and in a time, when to counsel to give to *Cesar* the things that are *Cesars*, and to *God* the things that are *God's*, was to bid him undoe all that he had unduely done: I say, he, that is thus innocent, shall have from *God* the grace & favour thus to doe, and not himself be undone for so doing. Whereas, when men

are led by private Spirits and tickles of vain glory, vile ambition or vage covetousness they must expect *perneciem anima*: Thus a Prophecy and a Vision, which two Priests, jointly averred they saw concerning the Duke of *Buckingham* in Anno 1521. His obtaining of the Crown lost the seduced Duke, and the like lost others. And had that Reverend Chief-Justice (for so, while he was himself, he was) *Sir William Hancksford*, *Temps. E. 4.* not more feared men's wrath, then trusted *God's* power and mercy;

he would not have contrived his own murder to avoid the danger of difficult times: nor *Sir James Hales* in *Queen Mary's* time. 'Tis a good rule *Saint Jerom* practised, *Thou, O Lord, the searcher of the reins and heart, knowest, that I did not therefore deny, least I should suffer; but therefore I would not lye, least I should sin*; for if once truth grow cheap, and men learn the sinfull subtlety to own

her no further then she may serve their ends, and credit their designs and enterprizes; then they care not to make lyes their refuge, and to blemish innocency rather then suffer the abortion of their Project. 'Tis a rare passage of the late Grand Arch-Prelate of our Church, who in many things was propheticall, *Where the foundations of faith are shaken, be it by Superstition or Prophaneness, he that puts not to his band, as firmly as he can, to support them, is too wary, and hath more care of himself then of the cause of Christ; & 'tis a waryness that brings more danger in the end then it shuns, for the Angel of the Lord issued out a curse against the Inhabitants of Meroz, because they came not out to help the Lord against the mighty*: thus incomparably he. 'Tis good therefore to do all things with respect to justice, for the day of retribution will come, and then the *lex talionis* will be revived; which, they need not to fear who do righteous things, and they shall be unable to abide or avoid who do the contrary; the consideration of which wrought so with *Antonio Venieri* the 62 Duke of *Venice*, that he did a notable Justice on his own Son when an Offender; for *Ludovico* his son being in love with a Senator's Wife, there happened some cause that he and her Husband fell out, and *Ludovico* caused Horns to be hung up at the Senatour's Gate; the insolence of that injury coming to the Dukes ear, so offended him, that he caused his son to be imprisoned, where he remained till he dyed, a rare President: and such, as if all Judges would follow, they would not need to be strictly tyed up, which they being not in the Civil Lawes, wherein much is left arbitrary to them, as the learned Doctor *Ridley* has very judiciously collected the Instances to my hand; I presume there may some reason be for some to doubt whether Judges in that Law may not be men and err in judgement by having the opportunity of that latitude; but that they have transgressed that way is no part of my charge to inquire, or of my work to blazon: I am a great honourer of the learned Civilians, and shall ever in my Orbe further all Civility to their renowned Profession; as owing my self much enriched from the light I have had and Collections I have made out of *Tholoffannus*, *Badans*, *Hopper* and *Grotius*,



is, four matchless Civilians, which I think fit here gratefully to remember: But I proceed.

*O Index, quibus in Scholis dedicisti, te presentem exhibere, dum poenas luit reus? executiones quippe judiciorum in criminosos, per ignobiles fieri convenit.*

This *Apostrophe* our Chancellour uses to shew the tenderness of his soul, which, though it can serve justice in pronounciation of its sentence on Malefactors, yet cannot abide the view of that execution it judicially awards criminals to; and this the good man thus sets forth to call men to tryal, whether they have bowels of compassion to Manhood, when they have resolutions of vehemence against vice the abusion and dishonour of it. For since it is tragical to behold sanguinary executions, and custome is apt to naturalize cruelty to men, the Chancellour dehorts (as I think) in this expression all Judges from seeing Execution of their sentences; least they should lose that softness and lenity which the Law intrusts them to express, where not derogatory to Equity and prudence. And therefore what Saint *Jerom* said of *Hylarion* in another case, I shall apply to this; The profound Judgement of the Judges, the diligence, impartiality and calmness they express in their hearing, examinining, and judging of cases, I admire not so much, as to see and hear them do this; because they know not to do it is to derogate from God and the King, whose Delegates in judgment they are: yea, not to do it is to contemn the glory of doing good to Mankind. And thereupon our Chancellour looking upon cruel Judges as great Monsters, calls them to account to him whence they learned their terrible Principles, and how they thought they should give God their answer for such misuse of his indulgence. *O Index, quibus in Scholis*, saith he.

*Mirventur ali signa que fecit, mirventur in-  
credibilem abstinentiam, scientiam, humili-  
tatem, ego nihil ita stupeo, quam gloriam  
illam & honorem calcare jussisse. Sanctus  
Hieronym. De Hylarione.*

*Quibus in Scholis* ] All learning was in Scholes from the teaching of the Master or Professor in them; and Scholes were the repose of learned men, where they did seat themselves to Meditation, and institution of those that applyed themselves to them for learnings sake. Etymologists say *Schola* comes from the *Hebrew* שָׁלוֹחַ, *vacavit*, or *otio vixit*; because when men had wearyed themselves with travel and peragrations, their quiescence from that toyl was called their Schole, that is, they sat down to distribute to others their Collections, and to propagate their acquirements to the good of succession. The Holy Text tells us of the Scholes of the Prophets; *Berosus* and *Middendorjuns* stroy the *Affyrians* and *Egyptians* to have Scholes; the *Phoenicians* also who had Colonies of Trade and Correspondence all the world over, trafficked also for letters, *Berythus* amongst them was famous for it and termed *pulcherrimam & legum nutricem*; and among the *Grecians* Scholes were so frequent, that all Greece was almost nothing but a great Schole, though *Athens* was called *Civitatem linguatam*, ἑλλάδος ὀφθαλμὸς, the eye and choice center of Science, because the notedest Masters resided there, and from thence dispersed themselves into all the World: so that Scholes were the Darlings of all Nations. Hence read we of the *Corinthians* Κεζύριον, where *Dyonisius* the *Syracusan* Tyrant was Professor after his banishment; the *Rhodian Gymnasium*, to which *Pompey the Great* was so great a Benefactor; the Scholes of *Alexandria* which *Strabo* remembers, and from whence some say the name Πόλις by way of eminency was given to *Alexandria*, as those of *Athens* did the name Ἄστυ to that; the *Carthaginian* Scholes in which *Tertullian* was Professor, Saint *Cyprian* a Rhetorician, and Saint *Augustine* a Student; the *Constantinopolitan* Scholes which brought up Saint *Basil the Great*, and *Julian the Apostate*; these, added to *Plato's Academus*, *Aristotle's Lyceum*, *Zeno's Stoa*, the *Cyniques Cyrosarges*, the *Academiques*, *Peripatetiques*, *Stoiques*, and *Epicurean* Scholes, make a large Muster of learned forces, and a strong *Battalia* against Barbarism. But if to these the Scholes of later times be added, there will be such an appearance of learned Liberality and Princely Greatness, as but to mention them will be the work of a life; I shall therefore refer my Reader to those excellent Authours that have written on them, as *Middendorjuns*, *Hespinian*, *Sturmius*, *Ludovicus Vives*, *Gatzenius*, and multitude of others, which *Fabian*, *Justinian*, and *Drandius*, in their *Bibliothecae* mention; yea, as not the least of all to *Junius* his *Academia*,

*Athenus Deip-  
nosoph. lib. 1.  
c. 17.*

*Caelius Rhodi-  
gin. Antiq lib.  
13. c. 25.*

*Laertius lib. 6.  
in vita Diogen.  
Cic. lib. 5. Tul-  
cul.  
Sabellic. Enne-  
ad. 6.  
¶ Strabo lib. 14.*

*Lib. 2. De Trad.  
Discipl.  
In Platea univer-  
sali Discurs. 14.  
Ad finem To. 2.  
Opera.*

(a) See my Apologie for learning and learned men. Printed Anno 1653.

(b) Strongly pressed in the Commons House that University Lands might be sold and the Colledges discolledged.

(c) This was my Message With the Apologie sent to D. C. by Doctor Bernard; who honestly delivered it in my words.

min, and hold my self excused in writing no more of Scholes here, because the summe of what I can briefly think of pertinent hereto, I (though very unworthy, yet I thank God I dare say it with a very great and just love to learning and Religion) did (a) Apologetically publish in those tragick times, when they both were in hazard of (b) Naufrage; and to the prevention of which, God knows, I therein did my utmost endeavour: To that Mite then, which God (I am assured) accepted into his Treasury, from my humble and honest zeal, for those then Orphans, do I refer my excuse for no further enlargement here, humbly beseeching God, that as he by his Grace then excited, and in that weak measure enabled me to that service, which no man can think had any Advantage attending it, unlesse it were that matchless one of being *Valiant for the Truth*: And, (c) Expressing it by conjuring him, that then had the Power, as he was a Gentleman, to doe by the Counsel and Information of the Addresse, as he thought in his Conscience God expected from him, that had the opportunity to doe good or evil, as he had; ) so He would graciously assist me in this humble undertaking, that from him I may be

blessed with Deliverance from the strife of Penns and tongues: This I here introduce not superbly, as if therein I thought my self to have deserved of learning, nothing lesse, (for I know, that my undertaking was but my duty; and that which God required of me, whose uninterestedness in the actuality of Contests rendred me less subject to the exception of any party then some others were.) But to notifie to those honourable, learned, and worthy persons abroad, that though *England* had too many Furies in it, who breathed out ruine to all that was sacred; yet, that there were many in it also, that were true men to the King, his Crown and Dignity, faithfull to the Church of *England* her Order and Discipline, and cordially affected to Learnings Lustre and Increase: But of this, if I have said too much I crave the Reader's pardon, and proceed to what our Chancellour prosequutes, to wit, the redargution of those persons, not onely that fatally invent, but that judicially promote tortures and torments.

These, the good and grave Oracle interrogates where they learned that Incompassion to be present at Tortures, and to see their fellowes in Manhood tortured, *Te præsentem exhibere, dum pœnas luit reus?* For though the Judgements uttered by them against Offenders be the Lawes Justice languaged by the Judges who are called the *Lex loquens*; yet the Executions of them, sayes the Text, *per ignobiles fieri convenit.* ] Since though such Greatness, as *Carrario's*, was delighted in giving those he was offended with to wilde and ravenous Dogs, which he kept on purpose to devour them; and others, whom he called to his Hall to speak with him, he tormented with two Scorpions which he

Shute's History  
Venice. p. 283.

Quoad corpus miserabiliter consumptum  
mortem lectius admiseret. Sabel. lib. 2.  
cap. 1.

Pontanus lib. 2. De Immanitate.

Fulgosus lib. 9. cap. 2.

Cæli. Rhodig. lib. 10. cap. 5.

Tormenta quæstionum ac pœnas parricidarum  
coram aspiciens, gladiatorisque ac  
bestiaris spectaculis plurimum delectatus.  
Sueton. in Claudio.

Hosea 11. 7.

Verf. 3. 9.

had for their dispatch; Though *Parastes* the Mother of *Cyrus* the younger, pleased her self to give men that which should breed worms in their bodies, which by degrees should eat them up, and yet protract their miseries upshot; And *Volesus Augustus* his Proconsul caused three hundred men in one day to be slain by his Command, and walked through them all agore, crying out, *O Kingly fight*; And *Macrinus* tyed dead and living men together till both were alike by the stench and Vermin; yea though butcherly *Claudius's* can look upon tortured persons and take pleasure in their afflictions, and those lamentable outcries, that by reason of them, they expresse; yet none but Monsters can thus do. Executions, though things as necessary in bodies politique, as Cuppings, Lancings, Scaryfyings, Amputations in bodies-natural, being the delight of those that are not of relenting bowels; which God himself expresses to us in that representation, which his wisdom, by the Prophet's pen, records to our Learning: when He complains his people were bent to back-sliding from him, and though his mercies called them to the most High, yet none of them would for them exalt him; what provocation would be greater then this, yet He expresses himself by a pathetique of undelightedness in afflicting them proportionably to their demerits; *How shall I give thee up Ephraim, how should I deliver thee Israel, how shall I make thee as Adnah, how shall*

Shall I see thee as Zeboim? My heart is turned within me, my repentings are kindled together, I will not execute the fierceness of mine anger, I will not return to destroy Ephraim for I am God and not man, &c. And if the Good Angels do rejoyce in Heaven at the good of man, surely their *Philanthropy* does indispose them to be instruments of his evil on earth any further than God's glory and his Saints good are concerned therein: although therefore we read in Scripture of Angels of the Lord that execute the Viols of his wrath, and expresse the grandeur of his power over the contumacious and refractory world; yet are we not presently to conclude they are always the good Angels that do it but mostly the contrary, *Executiones quippe Judiciorum fieri convenit per ignobiles*, saith the Text, that is, by lapsed Angels that hate God and every footstep of his image, and by men who are unworthy to live, and therefore are made the Dispatchers of other wicked men out of life. Hence is it that the Law both Common and Civil make those Executioners or Headsmen, who are condemned persons; and who purposely have their lives given them that they may serve the publick in that necessary though infamous office; which how hatefull it is all men know that know any thing; as, not onely the common taunt gives us to understand, when rude men say scornfully of any man, they call him an Hangman, but also all Authours testifie: whereupon they are called *ignobiles*, which Authours conjoin with *viliis, ignotus, abjectus in contemptum*; so Tully mentions (a) *Peregrina facies videtur hominis atque ignobilis*; so *inglorius & ignobilis* a little after; *Ignobilis pro face populi*, saith *Servius*; and *Virgil* mentions *ignobile gramen* for that which is a weed and grows in every ditch; so that not without cause is that office *Carnificis, quasi facis carnis*, of execution said to *convenire ignobilibus*, for they are onely fit for it, and them it fits as directly as a Thief does the Halter or the Halter the Thief: for persons of any whit raised spirits and sublimated Ingenuities abhor employments of vexation and violence, to which the curse and reproach of Vulgarities is appendant; and therefore some of the Emperours made Lawes to secure the publick Executioner from that violence against, and detestation which the people had of him. And if, notwithstanding he were the Executioner of justice, they had such an abhorrence of him, how greatly would they have banded against him, had he been as *Calergo* that base Greek was, who murdered with his own hand all the brave *Venetian* Gentlemen in *Candia*; and how joyfully would they see such an one rewarded as he was, who being taken by the *Venetians* was thrown down from the top of the Palace upon the point of swords, and being rent into diverse pieces was cast upon the Dunghill. For if the Sun in Heaven did retreat its oriency, as ashamed (as it were) to lend its light to deeds of cruelty, as in the Case of our Lord on the Cross; If a tender spirited *Vespasian* justly adjudged no Malefactor to death but with tears and in compassion to virtue, which otherwise could not be defended; If *Frederic the Second* made a Law against wrecks at Sea, as thinking them not fit to be Royal Boons, when the owner was ruined by their Naufrage; If our *Henry the Sixth* of England was so milde and mercifull that he could not endure the Quarters of a Traytour to be hanged up for him; If these Executions are so displeasing to brave Spirits and Christian generous mindes, those, that take content in acting them, and shew a more then ordinary readyness to accept the office of execution (though a very necessary one in any Government) may well be accounted *ignobiles quasi non notabiles*, unless in the sense *Herostrotus* was for his wickedness. For as it follows.

2 Sam. 24. 16.  
Revel. 16.

Tholosan. Syn-  
tagm. Juris. lib  
21. c. 38.

*Sunt enim exosi vel natura ipsa humana hu-  
jusmodi homines.*

Fornierius ad legem 42. p. 123.

(a) T. Tull. 104.

Shutes History of  
Venice. p. 218.

Sueton. in Vespas.

*Si quo casu rupta fuerant navigia, vel aliter ad terram pervenerant, tam navigia quam navigantium bona, illis integre referuntur ad quos spectabant. Titul. De Statu & immunitate locorum Religiosorum.*

*Non enim per Angelos sed per Demones execui facit Dominus judicia sua reddita in damnatos.*

This Clause confirms the former, for Angels are *Philanthropique*, and by reason of that do not onely convey to the souls of those they inspect discoveries, *secundum intellectum illuminationis*, which they are capable of; but they do serve man, and the elect chiefly, by an exact vigilancy, *non ex debito servitutis, sed ex effectu charitatis*

& ordine Legis Divinae. Now these which are described to stand before God, and to do his will, the Pursivants and Jannifaries of his Puissance, these are never instruments of torment to the damned, for they are without their Pale and Charge; the evil Angels being the Plagues of evil men: but sometimes they are commissioned to reveal to evil men good things from the Counsel of God; good to them which in his good time he will discover; and to the opposition of which, he, by it, blunts the edge of their malice and vehemence. For though the knowledge of Angels is too mysterious for our viatory State, and the Ambition of the Scholes has displayed it self somewhat too curiously therein; yet this, I hope, I may safely add to what heretofore I have delivered of Angels, that, *They are favourites of God, and have, τὸ πρῶτον εὐλαβῆν, the first Discovery of God, and make known to us, τὰς ὑπερὺν ἡμᾶς ἐκφαντοείας, the things that transcend our nature, and are of consequence for us to know; and being so beneficial to us, ought to have an awe in us towards them; as those impure spirits, the Apostate Angels, which are called here Damones, have over those on whom they are said, judicium reddita in damnatos exequi.*

Dionisius Areopag. De Caelesti Hierarchia c. 4. p. 18. Edit. Paris. Anno 1615.

(a) Investigatio Peripatetica.  
(b) In Militia Christiana.

Leges Boissardum lib. De Devinari- one.

In Florin. lib. 3. Ennead. 2. p. 132.

Flutarchus lib. 1. De plac. Philosoph. cap. 8.

Lib. 8. Civit. Dei. c. 14.

Saint Thomas ont of Apuleius defines these to be corpora aerea. animo passiva. mente rationalia, tempore aeterna. part. 1. qu. 51. 1. prim. & qu. 115. 5.

Plotinus Ennead. 3. lib. 4. p. 286.

Porphy. lib. 2. De Abstinencia. c. 36. p. 80. Edit. Holsteni.

Apolog. c. 32.

Lib. 2. c. 14.

Sunt enim Carnifices & lictores in hac Dei Republ. improbi Damones vilissimo ministerio additi in penam antiqui sceleris. P. Mitandula in Heptap. lib. 5. c. ultim. p. 28.

Lib. 2. De Abstinencia. c. 40. p. 83.

Non naturaliter mali Deones sed propria voluntate Aqu. parte prima qu. 63 a. 2. Lib. 8. c. 14. Civit. De

*Damones.*] This word, in the latitude of its Criticalness, is Subject enough for a whole Volume, many having taken great pains and shewed much learning concerning them, by name (a) *Andreas Casalpini, Steuchius, Crespetius, Psellus,* (b) *Gomez,* and many others; my humble aim shall onely be to make way to the Chancellour's intendment, by a short consideration of *Damones* as Antiquity notioned them. The *Greeks* by *δαίμονας* from *δαίμων* quasi *δαήμων*, understand *Plato's gnarus, sciens, intelligens;* the *Pythagoreans* thought the Air full of souls, and those they distinguished into *Damones & Heroas;* and *Ficinus* tells me, that they had an opinion, that to every one a *Demon* is given for good, which occasioned the *Pythagoreans* precary sonnet to *Jupiter,* that either he would be graciously pleased to deliver them from the evils they were subject to, or direct them to that *Demon* they should depend on for

their Tutelar; the *Stoiques* called these *Damones* *ἐπίουρα*, and *Saint Augustine* out of *Plato* divides the rational soul into three partitions, that of the Gods, that of men, and that of *Damones;* to these *Damones* he reserves the middle residence, *Nam Deorum sedes in Caelo est, Daemonum in aere, hominum in terra,* perhaps resting on the literal sense of *Saint Paul,* who calls the Devil the Prince of the Air; to which *Ficinus* suffragates in those words, *In Damonibus positum est propinquum corpori mundi hujus Imperium;* which does not onely point to that notion of their power as they are superior, but of their influence as they are the *Genius* that inclines, propends and inclines Nature to its proper specificque expression of it self; as that *τὸ ἐνδόν,* which carries to good and evil; which *Epipharmus* intended to us in those words, *Ὁ ἄριστος ἀνθρώπων δαίμων ἀγαθός ἐστι καὶ κακός;* and *Tertulian* in those words, *Nescitis Genios Damones dici;* and *Lactantius* when he sayes, *Hi Spiritus sibi Geniorum nomen assumunt;* these, and infinite such like passages out of the Ancients do inform us, that as the *Eudamones* were tutelary of men, so the *Cacodamones* (which are the *Damones* of our Text) are the Executioners of God's severity on the Godless world, who are not onely pestered with their ill motions here, which *Porphyrius* expresses by calling them, *ἄριστοι καὶ κακοὶ τῶν πλῆθους παθημάτων, &c.*

*The Causers of Plagues, Barrenness, Earthquakes, Drengths, and other evils in this world,* but shall be hereafter with that fire and torment which they are condemned to with them under the name of the Devil and his Angels, so sayes our Lord, *Go ye cursed into everlasting fire prepared for the Devil and his Angels;* which confirms the Chancellours position, that the Executions of God's judgement in *damnatos,* that is, on impenitent Malefactors, whom Justice has doomed to an eternal Exile from God's comfortable presence, is by these *Damones* performed; which the Scripture calls the Devil, who is not onely himself an evil spirit, but the cause of all the evil in our spirits, which by his temptations and craft he lurches into his power; and therefore *Saint Augustine's* advice is very good, *Magna Dei misericordia necessaria*

*Saria est, ut ne quisquam cum bene Angelos amicos se habere putat, habeat malos Demones amicos fides eosque tanto nocentiores quanto astutiores ac satatiores patiatur inimicos.* For as there is no good Action that men, whether Christian or Ethnique, do, but is, as *Ithavorinus* sayes, *By Goa's leave, and by the concurrence of some good Angel impelling and persuading to the performance of it;* nor did *Curius, Fabricius, Coruncannus, Calatinus, Metellus, Lucretius, Cato, Scipio, Lelius,* or the rest, do any Heroique deed but by this Motive; and as that seeming Marriner, who *Anno 1291.* took the charge of above 500. Matrons and noble Virgins upon the Siege of *Ptolemais,* and was by them offered all the wealth they had, and which of them he pleased to take to wife, so he would transport them any whether from the *Sultan's* rage, which he freely did, landing them in *Cyprus,* and that done, could not be found; as, I say, I can judge this to be no lesse then a good Angel, that officiated in so charitable and Christian a work; so do I verily believe that the contrary works are often the deeds of *Demons,* Devils or evil Spirits, whom God permits to afflict the world with disasters for their Rebellions against him; and who, in the tormenting of them, are the more diligent, because they are desirous to make others unhappy as they themselves are, as \* *Saint Augustine* well notes: which gives me occasion to minde my self and others of that duty which our Lord enjoins us to, ¶ *Watch and pray that you enter not into temptation.* For though *Satan* has a direct power over the damned, and God gives him a latitude of Commission against them, *exequi iudicia,*] to thoroughly torment them; yet he can do little or nothing to the Godly without special Concession from Him whose *Jewels* they are, whom he tenders as the *Apple of his eye,* and against whom he will succeed no power that is laxive in any degree, but only what advances his own Glory and their good.

*Juvante Deo, hoc est, savente Angelo Impulsore, suavesque egregia gesta, admirandaque visa. Phavorinus, De Excel. hominis. Parte prima, c. 53. p. 151.*

Fuller's *Hely Warr.* pag. 228.

\* *Damones esse credendum est nocendi cupidissimos, a justitia penitus alienos, superbia tumidos, invidia lividos, fallacia callidos, qui in hoc quidem acre habitant quia de cœli superioris sublimitate dejecti merito irrefragabilis transgressionis in hos filii congruo velut carcere perdammati sunt. lib. 8. De Civit. Dei, c. 22.*

¶ *Matth. 26. 41.*

*Demon est caput omnium malorum, non influxus interiori, sed gubernatione exteriori, in quantum avertuntur à Deo. Sanctus Thomas part. 3. qu. 8. art. 7.*

*Tentare ad nocendum est proprium demonum, sed mundus & caro tentant instrumentaliter. Sanct. Thom. part. 1. & qu. 114. art. 2.*

*Nec vero in Purgatorio cruciant animas quamvis predestinatas ad gloriam Angeli boni sed mali.*

This our Text-Master brings in to imponderate the argument he uses, that Executions are by ignoble persons; since not onely evil Angels or Devils do torment the damned in Hell, but even they, and they onely doe doe what is of terour and torment in Purgatory to the souls of God's predestinate. This is his sense, which I list not much to write on because it seems to me an *adversus* of his religious mistake more then any serious matter on which to ground an argument. For though I honour *Baronius,* who makes the Doctrine of Purgatory *Ex Apostolica Traditione;* and *Bellarmino,* who undertakes proof of it from the Scripture of the Old Testament, c. 3. from the New Testament, c. 4. from the Councils, c. 9. from the Greek and Latine Fathers, c. 10. of Catholique Consent, c. 15. yea though (a) *Bonaventure,* (b) *Cajetan,* (c) *Durand,* (d) *Aquinas,* (e) *Alexander Halensis,* (f) *Gnilielmus Parisiensis,* and multitudes of other doe assert it; yet truly, saving their learned and venerable names, Purgatory to me (in their sense) seems but a fiction, or rather a politique Engine to bring the gold and silver of credulous and well-meaning men into the *Pope's* Crucible. I do readily and humbly own my Lord *Jesus* the true Purgatory, he it is that purges us by his blood from all sin, and presents us spotless to his Father; he it is in whom that promise of God, *Though their sins be as red as Scarlet, they shall be made white as snow,* is yea and Amen to his Saints; and under him I blesse God for another Purgatory, Afflictions, which God in this life mercifully sends His, and by the merits of *Jesus* this Purgatory leaves us better then it found us.

These Purgatoryes the reformed and glorious Church of *England,* my Holy Mother,

*Volum. 1. ad Annum Christi 34. p. 242.*

*De Nomine Purgatorii.*

(a) *Centiloqui parte secunda sect. 4 p. 70. Tom. 6.*

(b) *Volum. 2. in 1 Cor. c. 3. p. 95.*

(c) *Lib. 3. Dist. 12. qu. 4. resp. ad 4.*

(d) *In Supplem. quæst. 69. art. 2. in conclusione.*

(e) *Parte quarta quæst. 5. De Sacram. Pœnitentiæ.*

(f) *Partis prima de universo pars prima. c. 60. 61. 62. p. 640. Impr. Venetiis.*

*Cent. Magdeb. Cent. 8. p. 549.*

*Chemnitius in Historia Purgatorii, parte prima, Examinii Concl. Tridentini, p. 78. &c. Tom. 2.*

*Isaiah 1. 18.*

ther, will acknowledge, and I according to her Declaration of the truth therein; but Purgatory in the *Romish* sense, for a third place between Heaven and Hell, and for a detinue of those that depart hence between the joyes of Heaven and the torments of Hell; this I cannot underlard: for our Lord, who knew all things, delivering it so plainly, *Come ye blessed Children of my Father inherit the Kingdom prepared for you from the beginning of the World*; and, *Go ye cursed into Hell-fire prepared for the*

Math. 25. 34.  
Vers. 41.

Cent. Magdeb 1. lib. 2. c. 4. p. 353.

Magdeb. Cent. 6. c. 10. p. 370.  
Cent. 6. c. 4. p. 134.  
Cent. 8. c. 6. p. 166.  
Cent. 9. c. 5. p. 116.  
Cent. 5. c. 4. p. 262.  
Cent. 13. c. 4. p. 214.  
Cent. 11. c. 4. p. 103.

Defence of the Apologie of the Church of England, p. 358. part. 2.

no cause to write much on the *Cruciant animas non boni Angeli sed mali*. For though I yield the souls of evil men have a cruciation wherein their souls really are tormented; *pœna damni & pœna sensus*, both in the loss of God's vision, and in the sense of inexpressible terrours, and intolerable and unendable torments; yet can I not see

*Habent omnes anima cum de saculo exierint diversas receptiones suas, habent gaudium boni & mali tormenta, sed cum facta fuerit resurrectio, & bonorum gaudium amplius erit, & malorum tormenta graviora, quando cum corpore torquentur. Sanct. Aug. Tract. 49. in Johannem, lege lib. 13. De Civitate Dei. c. 8.*

Ἡ ψυχή ἔχει πάντας τοὺς λόγους. Sentent. col. 17. p. 225.  
Edit. Cantabrigiæ, 232.

Lib. De Excellentia hominis. c. 43.  
44. 45.

ground to believe the souls of holy men, who are the purchase of *Christ's* blood, should be deprived of the felicity, that is the fruit of it, one moment after their dissolution: nor would our Lord have said to the Thief, *This day shalt thou be with me in Paradise*, had there been any interstitiary State as Purgatory is made. In the mean time if the souls of the godly are in this life tormented, 'tis by the permission of God without which no evil Angels can accede them; nay, not onely does God keep the souls of his under his Sovereignty, as that jewel in their bodies which has the ori-

Aureolus in 1 Sent. Dist. 40. p. 910.  
Alex. Alensis. qu. 26. art. 2. p. 155.  
Sanctus Augustin. c. 14. lib. De Predestinationat. & gratia.  
Lib. 6. Hyponostic.

*Nunquam nos verecundiores esse debere, quam cum de Diis agitur, si intramus templa compositi, si ad sacrificia accessuri vultura submitimus rogam adducimus, si in omne argumentum modestie fingimur quanto hoc magis facere debemus cum de sſderibus deſtellis de Deorum natura disputamus. Nat. Quæst. lib. 7. c. 30.*

His Majesties late Letter to the Lord Arch-Bishop of Canterbury, to be sent into every Diocels.

Devil and his Angels: Nor in the Apostles dayes is any mention made of Purgatory. I say, these being the onely two States after life by him mentioned, the third is by me suspected, in their sense, for an invention of subtlety, to trepan the world into a purchase of Pardons and Indulgencies; and with the Gain thereof to support the State of that Papal Hierarchy, as well in the Head of it, the Pope, as in the Toes of it, the Priests; both which finde a great advantage from this Doctrine, and the popular Assent to it: for, *As the Case now standeth*, saith our incomparable Jewel, *and as most men think*, the Pope could be contented to lose both Heaven and Hell to save his Purgatory. Waving then the belief of the place, there is

ground to believe the souls of holy men, who are the purchase of *Christ's* blood, should be deprived of the felicity, that is the fruit of it, one moment after their dissolution: nor would our Lord have said to the Thief, *This day shalt thou be with me in Paradise*, had there been any interstitiary State as Purgatory is made. In the mean time if the souls of the godly are in this life tormented, 'tis by the permission of God without which no evil Angels can accede them; nay, not onely does God keep the souls of his under his Sovereignty, as that jewel in their bodies which has the ori-

and is the center of reason, which *Porphyrius* allows it to have; and *Trismegist* tells us God loves, *ὡς ἑαυτοῦ*; as his own issue, *ἀποπάσμα ἢ ἀπαύασμα Θεοῦ*, the character and representation of God; the Oracle of *Apollo*, *μερίδα*, part of God, *ἀείσον οὐρανὸν ἑαυτοῦ*, and such like expressions, which *Phavorinus* has collected to the souls aggrandization: I say, God does not onely reserve the souls of his to himself, as exemptions from evil Angels, but even the bodies in which these souls are. For though I know the Saints of God are afflicted in this world by *Satan* and his Emissaries, evil men, and all the imaginable practice of their rage they execute upon them; yet is this both for the kinde and measure onely so far as God by it appoints consequence of good to his; and therefore good men are by mortification and abnegation, *cruciare animas* here, and then they shall not need the Purgatory that is attended by evil Angels: nay, God that has predestinated them to glory has so manifested his benignity to them, that as they have no cause to love him lesse then the most they can, so need they not fear his gracious conduct of them (humbly and holily demeaning themselves) to their eternal accomplishment. Concerning which Predestination to Glory, though much may be wisely and worthily written, yet I forbear to venture on it, the knowledge of it being too wonderfull for me; that being my Rule which *Seneca* cites from *Aristotle*, *That we never ought to be so modest in any thing, as in that which concerns the counsel and secrets of God*, which this Predestination being, I dare onely adore it, remembering the Sovereign command and counsel of Authority, which sober Laymen as well as Clergy-men ought to observe, *Since secret things belong to the Lord our God; but the things revealed to us and our Children.*

*Maligni enim Spiritus sunt per quos Dominus in hoc mundo miseris tribuit malum pœna.*

This the Chancellour proceeds in to fortifie his Argument, That Executions are convenient to be done *per ignobiles*; and as he in his believed Purgatory makes the evil Angels to be there the Tormentors, so here, sayes he, evil men are the Plaguers of Mankinde. Now these evil Instruments he terms *Maligni*, a word that has *Emphasis* in it, *gnus* the termination implying so much as from *benè benignus*, from *dignè indignus*, so likewise *malè* from *malignus*, which carryes not onely the sense of *malus* which Critiques derive from *ΜΩΝ*, *debilitavit* or *infirmavit*, as if the evil represented by it were *malum defectus* onely; in which sense *Scaliger* tells us, Souldiers that were cowardly and had not heart to face and fight the Enemy were called *Cacula militares* from *κακω*, whence *κακω* is used in Authours for that *vitium in malitia cum amittunt locum in acie*, I say, *Malignus* does not onely import this, but also a super-added asperity and delight in Mischief and Malesaction, when men do mischief *totis viribus*, which *Catullus* expresses by *mente maligna facere aliquid*; *Malignus qui asper, difficilis, invidus, avarus est*, saith *Donatus*, when men are peevish and short, not to be dealt with by debortation from their touchiness; for *Pliny* ranks *malignum* & *breve* together, when men are as barren of good, as Soil is that eats up all the Dung and Compost that is put into it, and yet brings forth nothing but weeds, such is *Pliny's* phrase in *maligna terra*; when I say a man is malignant, à *malo Genio*, & *prava atque perversa voluntate*, then no wonder that he is said by our Chancellour to be an ill Neighbour, a Tormentor of mankind: for as *Satan* is called *ὁ πονηρὸς*, the *Malignant*, and we pray to be delivered ἀπὸ τοῦ πονηροῦ, from his temptations, because they are the effects of his hatred and subtlety; so ought we to deprecate wicked men as the Instruments of punishment on the World, for as much as the Instruments to torture, execute, and dispatch Malesactors are such as are as bad as those they dispatch; who are therefore excused the Halter, that they may serve Justice in that ignoble and execrable, though necessary office, which better principled and less vicious men will not undertake.

Exercit. 300. sect. 3.

Epigram. 63

Lib. 7. c. 50.

*Malignus ager agricolis illiberalis & minus ferax.* Nonius. Plinius Ep. 4. F lib. 2.

*A Spiritu Sancto Satan vocatur adversarius, Angeli vero vocantur filii Dei, quo significatur Angelos sponte obtemperare & ultro servare. Satanam vero invite & coacte.* Calvinus 1. Job. 1. 6.

*Nam cum dixerit Deus 3 Reg. 22. Quis decipiet mihi Ahab? Malus erat Spiritus ille qui respondit, Ego ero Spiritus mendax in ore omnium Prophetarum ejus.*

This Scripture is brought in to confirm the prealleged Instances, not that Historically there was any such conference between God and any Spirit, or that really any Spirit made such answer to God; for I humbly conceive with *Tostatus*, that it was *solum Visio imaginaria*, whereby the sacred Pen-man introduces (by Authority from God) *Ahab* deceived by his own sin penal upon him; and thereby the just judgement of God, for his matchless Impiety, severely passed upon him: for here we are to take in that Rule of Divines, *Those things that are spoken of God ἀπὸ τοῦ πνεύματος, are to be understood of God θεοπνευστός.* And whereas in the Text 'tis said, *Quis decipiet mihi Ahab?* It is not to be understood as if God properly could be the Authour or Incourager of deceit *quà* such; for that being the defect of veracity is inconsistent with his Attribute and Essence; but then he is said to decieve (with reverence be it written) when he does that *per effectum* which turns to wicked mens disappointments, when he frustrates the counsels and enterprises of their Wisdom, takes them in their own snare, and withdraws that prudence from them which should stand them instead to their Conduct, and the fortuation of their counsels; and when he suffers *Satanus* implacability to exstuate against them and to work effectually upon them; for though true it be, that God does not (as I humbly think) indulge *Satan* more power then naturally he hath, yet in not giving him restraint to that power, nor men defence by his grace against it, *Satan* and his Instruments have power of deceiving men how potent and wise soever they be: And thus *Ahab* comes to be deceived

Tostatus in loc. Quæst. 37.

*Deus permittit mala fieri ad ostensionem potentiam divinam vel sapientiam vel benignitatem vel justitiam.* A. Halensis, part. 2. qu. 94. Numb. 4. art. 2.

by

by Gods permission of the evil Spirit to be a deluder of his Prophets, and they of him, *Malus erat Spiritus qui respondit.*] An evil Spirit or a *Demon* is here visionally ment, some have been curious to inquire what *Demon* it was; *Tostatus* saith *Rabbi Solomon* thinks it was the soul of *Naboth*, for the blood of which innocent Subject, slain, this penal delusion and ruine on *Ahab* was brought; but he will not allow, as I think he has reason, this conceit: First, Because *Naboth* was a just man, and his soul being in *Abraham's* bosome could not come thence to deceive any one. Secondly, Because *Naboth* as a just man died in charity, which would be inconsistent with this revenge of his soul. Thirdly, Because the souls of good men have no desire to harm any either good or bad, but to benefit them the most they can. Fourthly; Because his question presupposes a real Congregation of counsel, and yet the thing here mentioned was but a *Visio imaginaria*; whose soul then this was, if a soul it were, matters not; a Spirit the Text sayes it was and a mendacious one, and therefore I think the Devil, *who is said to be a Lier from the beginning*: And probably it was that *Demon* or *Damones* which used to answer *Ahab's* false Prophets in their Inquiries of unlawfull things: This Oracle that they rested upon as their strength and stability, God makes to be their seduction, and that not onely to *Ahab*, but to him by his lycophanting and Idolatrous Prophets. So it follows, *Ero Spiritus mendax in ore omnium Prophetarum ejus.*] As God suffers *Satan* himself to tempt some good men for their tryall, as he did *David*, *Job*, *Joshuah* the High-Priest, and *Peter*, so does he let loose *Satan* on evil men to bring to passe his displeasure against them: thus not onely by the immediate Accessee of *Satan* to them, but by the mediate Applications of his instruments no less prevalent to his ends, such here as the Prophets of *Ahab*, men of influence and popularity, of reputation and credit with Greatness, *Ahab's* bladders that bore him up, his favourites on whose breast he leaned, and to whose fidelity he impiously attributed more then Kinglyly he ought: These *Satan* undertakes to suborn and by these to make the delusion strong and inextricable. *Ero*] 'Tis not *sum* or *esse* *possum*, not *I am* or *I can be*, but, *I will be* whatever I mischievously have been or possibly can be to draw a mist over the eyes of *Ahab's* counsel, and to intenebrate his Prospect into the consequence of this Ginn of ruine to him; so fatally will I steep my subtlety to over-reach him, that whatever of extraordinary Injury my long experience and accurate malice enables me to, shall be discharged against him, *Ero*;] and that unawares to him I will be *Spiritus*] a mischief secret and indiscernable, he shall not know whence his bane ariseth; it shall be *latens malum* that shall provoke him to his ruine; *Ero Spiritus mendax*,] he shall account himself most happy in that counsel which shall at once prostrate his life and his glory: and this I will do not by any Instruments but those unmitrusted ones, his sacred favourites, *Ore Prophetarum, The mouth of his Prophets*:] O that is poyson with a witness that comes wickedly from the monthes of deluding Prophets, therefore God sentences those as causers of his people to err; when those mouthes are not seasoned with sanctity, but have the poyson of *Asps*, and vomit out the myre and dirt of falshood and fanaticisme, Princes and people are in danger. No times so tragick as those are in which such *dealbatores Potentum* are, nor doe any Leathergies so possess Nations, 'as when they are lull'd asleep by blinde Guides and unseeing Seers; when Prophets are fools and spiritual men are mad, then is the Day of a Nations Visitation: *Israel* found it so in *Ahab's* time, in which, not onely one, but all

Genest. 17. in locum.

1 Chron. 21. 1.  
Job. 1.  
Zach. 3. 1. 2.  
Luk. 22. 32

Jer. 22. 31.

*Etiā ab exemplis malorum sacerdotum vitiorum labes fuit dimanant in populum quandoque minus ii idonei sunt ad impetrandam gratiam ad quos vigilandi & orandi populo spectat officium tanto in mirum magis opus habet populus ut vigilet, surgat & impensius oret, ipse pro se, nec pro se tantum, sed & pro Presbyteris ejusmodi. Tho. Morus Equ. in Expositione Passionis, p. 126. Impresi. Lovan. 1566.*

Matth. 24. 24.

of *Ahab's* long-robed Favourites were tintured with demonical mendacity, not one of them excepted; for such was the *Demon's* confident Affirmation to God, *That he would be a lying Spirit in the mouth of all his Prophets*; that it seems to carry a Warrant to our belief, that he had taken Livery and Seison of them to be his own, *jurare in verba Magistris*, to be such and onely such as he would have them, who being himself the Authour of seduction, and the great Imposter that by his gulleries out-wits this worlds *Politicoes*, and by his frauds deceives, as far as God permits the possibility of it, *the other Worlds wise men, the very Elest*, according to that of our Lord, which he left his Church (in those Ages in which these seats should be acted) as their premunitionall caution against them, and their Lesson to intend the defeat of them, which they can no wayes better do then by *Faith in God's*



God's Power and Promise, the Victory of which overcomes the World, and Satan the Prince and Arch-Malignant of it.

*Non enim decuit Spiritum bonum exequitalia, licet à Domino prodiit iudicium quod Ahab mendacio deciperetur.*

Here our Text-Master shews whence it comes to passe, that *Ahab* was thus seduced and that not from a contingency or a fortuitous casualty, but from a just and sovereign preappointment of the penal act of Justice upon him, *à Domino prodiit iudicium*. He that made the World with a word can with a word doe what he pleaseth in it; He it is that commands times and seasons, men and Angels, creatures and Elements: the whole Regiment of Nature is his, to order and disorder it as he pleases; from this matchless Potentate, King of Kings, and Lord of Lords, comes *Ahab's* final and fatal Period, *à Domino prodiit iudicium*: and that not onely that Prophets should be the men, by a lye in their mouths, the means of his deception; but that as God permitted the thing to be effected by Instruments proper thereto, so did he imploy none but such to those ends, because *non decuit Spiritum bonum talia exequi*. ] If holy Spirits cannot in respect of their purity and charity condescend to those derogatory Acts of seduction and fraud, and such Artifices must be practised to effect the punishment of sinners demeritings; then either those that are proper for it must do it, or it must not be done, which omission not being allowable, for God's will must succeed, the deduction will be, that evil Spirits must be the Instruments; for the *non decuit* relates to the nature of good Spirits which is to do good, which execution of punishments *quæ* punishments and laxive to nature are not, nor is it suitable to the office of good Spirits (who are tutelars, to keep off) not Executioners to intrude upon men perplexities and discomforts. And therefore I conclude that be the *Demon* never so smooth-faced and beautiful, let his pretences be never so faire and obliging, let his pompous Inscription be *Holyness to the Lord*, or, *The Everlasting Kingdom*, or, *Behold my Zeal*, let him have in his Banner the *quinque Vulnera* of our Saviour, and profess to set him upon his Throne; yet all these are but *splendida mendacia*, but varnishes of a putrid and diabolical Villany, which can no more excuse it self by these facacious trickings and meretricious Ornaments, then *Poppæ Sabina* could to the Age she lived in, who knew her to be *well-spoken, witty, generous, and sweet natured, defective in no natural perfection, but that which is the onely Glory of a Woman, Chastity.*

*Huius prorsus mulieri cuncta alia fuerunt præter honestum animum, operis splendori generis sufficiebant, sermo comis, nec absurdum ingenium, eras prudens, magnifica, liberalis, sed & lasciva. Kæcæc Vici, in vita ejus.*

*Sed dicit Judex forsitan, Ego nihil egi manibus meis in cruciatibus istis; sed quid refert propriis facere manibus, an presentem esse, & quod factum est iterum atque iterum aggravare.*

This is well here objected, that it might as well be answered; *That God weighs not so much the Act as the Motive and Principle*. The Jews were the Cryers-out for *Christ's* crucifying, yet in as much as the *Scribes and Pharisees*, the Elders and Priests, set the people on and by their subtlety modelled his death, God's omniscience imputes to them the malice of the actual execution of him; *Urijah* was slain by the hand of the Enemy, though *Joab* was accessory because he connived at the Plot, which tended to his murther, yet *David* that willed and wotted it was chiefly charged by God with it. 'Tis not enough not to be openly evil, for that may be the Act of Policy not Innocency, *abscondere vitia non abscondere*, as *Tertullian's* words are: but he that will have a good footing, and lay a clear Title to God's Protection and Blessing, must be free from having any thing to doe in evil. *Marcus Arctusius* gave the Rule, *One Farthing subsidiary to wickedness bequils the giver as much as Pounds to that sinfull purpose*; no posting it off to others when they are what they sinfully are by our Authority: If *qui non vetat peccare cum possit, jubet*, what a Mountain of Impiety do they lie under; that will, direct, command, compell men to evil Actions, and are not satisfied till they commit them; certainly God has great reckonings to make with men in Place for this, because the errours of all underlings will be charged by God on the

*Matt 26. 3. c. 27. v. 1. & 25*

*2 Sam. 11. 14. 15. 16. 17. & c.*

*Ad impietatem perinde valet unum obulum conferre ac si quædam conferas.*

negligence, if no worse, of Superiors, who are not onely to look, that they themselves are not personally evil, but that no evil has countenance and corroboration from their Authority; all unrighteousness acted in a Nation, by the Governours privity, is the Governours in the account of God, because God has given them the sword, and that which is done by the colour of that, is, in God's account, done by them whose the Sword is; which if the Judges of the World would rightly consider, they would not think they should be excused by the darkes and shades that they abstrusely wrap themselves up in, who are the chief Engineers in that which is torment to some and temptation to more: yea, were it not that greatness has some unavoidable naeves and flaws in it incontinent with that durable peace and continual feast which nourishes an endless Jubilee in the soul, wise and holy men would not so little seek it as they doe shun it; and blesse God for *Agur's* Portion, *Food convenient for them*: but good men knowing the corruption of their hearts, and the dangerous influence of temptation in Greatness, have as well blessed God for the happiness to dwell among their own people, as, to be buried in the Sepulcher of their Fathers. I know the number of these modest unwilling ones is but small, but yet some there are, and those not the least excellent in their Ages and Places; Of all the Fathers of the Church, none merited more then *Athanasius*, yet no man shunned Governmens in it more then he; Of all the Dukes of Venice, none a braver one then *Contareni* the 60 Duke, yet he fearing to be chosen Duke left the City on purpose to avoid it, the Senate sent Lettèrs to invite him to the City, but come he would not till they had chosen a Duke, at last the Senate concluded to confiscate his Goods, and for ever banish him the City if he came not to the City, which dreadfull sentence brought him thither, and by his return brought the Dukedom with it to him; and the reason is, because Power does engage men to delegate that to others to act, which they must answer for to God as the Commissionators of it: for the rule is good, *Qui facit per alium, facit per se*. And therefore the Chancellour sayes in the following words.

*Credo quod vulnus, quo sanciatur animus Judicis penas hujusmodi infligentis nunquam in cicatricem venit.*

Here the Chancellour shews, that injustice pronounced by a Judge has often a Return upon him in the dismal effects of it, Terrour and torment of minde, which he calls *vulnus*, which is not a light superficial scratch or a shrewd drye rub and bruise, but a deep wound fixed in the quick which discovers its lésion in emission of bloud and expiration of Spirits; this is the nature of a wound which the guilty Conscience of a cruel Judge is said to labour under; and a fore torment it must needs be, for it is said *sanciare animam*, which denotes such a galling as is in the tender parts when they are rawed and tortured with scourges of rodde, so *Plautus*, *Quid cause est, quin virgis te usque ad saturitatem sanciam*; and *Tully*, *Servi nonnulli vulnerantur, ipse Rubrius in turba sanciatur*; from this grievous pain, which the *Jews* probably learned from the Nations, the torment of a guilty Conscience is metaphorized, for that it makes the life of man turbid and uneasy by it, which the *Greeks* hinted in that Adage, *Ἡ συνείδησις τῶν ἄρχῶν μέγιστη*. How these terrours of God in the souls of men have afflicted them, the examples of *Cain*, *Manasses*, *David*, *Judas*, make appear in holy Writ, and the like other Stories afford: Master Fox has many Collections in his *Martyrology* to this purpose, and were all the instances of the affrighting tristicity of it perished, that notable one of *Spira* would inliver the memory of them all; nor are the Stories of *Banner*, *Judge Morgan*, *Thornton*, *Arundel*, with others, much behinde it; but declare notably, that when there is a

*sanciatio animi*, as in these notable returns of God upon presumptuous sinning there is, then there is but a black night of horreur and despondency in the soul. Therefore as all men are hence admonished to look to themselves, that they provoke not God to chastise them with these Scorpions, so are Judges especially, because they are God's delegates, and they doing unjustly in the place of the just God, and to his vituperation and scandal, are by his just judgement, so much the severelyer handled, as there crime is more enormous:

1 Kings 4. 13.  
Neh. 2. 3.  
2 Sam. 7. 12.  
1 King. 18. 23.

Shute's History of  
Venice. p. 225.

In Ruder 18.  
Cic. 3. verr. 47.  
Idem in Fato 55.

In his Chapter of  
God's punishments  
upon Persecutors  
and Conemners of  
the Gospel. p. 106.  
2107, 2108, 2109.

Non delectatum esse eum Jure illo atro. Cic.  
5. Tuscul.  
Respicendum est judicanti ne quid aut durius aut remissius consuetur, quam causa deposcit, nec enim aut severitatis aut clementia gloria affectanda est sed propenso iudicio prout quaque res exposulas statuendum. Bractonus. lib. 3. c. 6.

normous: for this is *crimen laesa Majestatis caelestis*, since it is sacrilegiously to entitle the just God to unjust sentences, which indignity to him he recoyls in that fatal judgement of *setting men's sins in order before their faces*.

This is that which makes the wound *nunquam in cicatricem venire*,] that is, never heal; for when a wound tends to a scarr, which is the sign of it on the superficies of the skin, then men reck on the febrery matter is outed and all the noxiety removed, by reason of which nature closes its orifice and shuts its mouth from craving further aid from art, leaving onely the scarr as the testimony of its danger being over and escaped; but when the Conscience of a prodigious cruel sinner has got a wound from God's stroak upon it, and the sins of a cruel life, with all the aggravating circumstances are marshalled and set in rank and file before a man, then he sees nothing but despair and horrour, terrours and amazements, such as Cain and Judas had, and such as all bloody wretches shall finde to their consternation; for God who is good and does good, cannot away with evil men and evil actions, but brings them home upon the Actors in all the tragical fruits of them. Had *John* peace that slew his Master? Had *Bonner* the comforts of God on his death-bed who made *Hecatombs* of Triumph to his deluded zeal with the bones and bodies of burned Martyrs? Had *Benefield*, the butcherly Keeper of *Queen Elizabeth*, who thirsted after nothing more then that incomparable Ladies blood, and not onely suborned Witnessses against her, but joined with others (purely upon the account of her being a Protestant) to perswade the *Spaniards* at Court, either to dispose of her abroad or rid her out of the way? Had these, I say, any comfort, was their wound ever healed? O 'tis much to be doubted they had not; though Repentance has indeed a balm that can do all that is needfull, and if God give it and accept his gift, much may be done, but otherwise *Vulnus nunquam in cicatricem veniet*, and the reason is, the humours that poyson the wound are not rectified, sweetned or diverted, but there is a continual flux of them to the malade part which is harmed thereby, and still continued a wound. For as it followeth.

Fox. Aet. & Monumenti. p. 2096.

*Maximè dum recolit acerbitatem pœnarum miseri sic afflicti.*

Indeed this is God's terrour by which he gores and batters wicked men, and by the pelts and ramms of which he forces open the recesses of their fancyed content, and galls them in their tender parts; so that they have their torture ever before, because ever within them: This was evident in *Judas*, who when he remembered 'twas a Master that treacherously he had betrayed, and an innocent blood that he had contracted to shed, how raving and perplexed is he? so that the hands, that told the silver, tyed the halter by which he hanged himself: Famous to this purpose is the story of *Olivier*, Chancelour to *Henry the Second of France*, a fierce man he was and had condemned certain Protestant Gentlemen for taking Arms against the House of *Guise*, being instigated therunto by the Cardinal of *Lorraine*; sick the Chancelour fell, and troubled in Conscience, casting forth many sighs for his unrighteous sentence, at last on a sudden he skreeked out with a lamentable cry, saying, *O Cardinal thou wilt make us all be damned*.

Fox. Aet. & Monumenti. p. 2112.

The Consideration of which makes good men wary not to be Instruments of Injury and Cruelty. Whatever a Souldier parts with he should not with his Arms, but if he have by cowardice lost them, he ought with *Cato's* Son to enter the thickest strength and menacing'st storm of the Enemy to recover them: and so a good Christian, whatever he be forced from, should not be from his integrity, and from a calm and peaceable Conscience, which they cannot have that are delighted in envy, malice, and mischief to all but their own party. Remember this all yee that preferr this world before your Consciences, and to please a passion break out against Innocence, who care not who sink so yee swim, nor who is your foot-stool so you mount the *Bucephalus's* of your Ambition; Remember this yee that ride Post, and switch and spur to reach the *Babels* of your Contrivance, though the Cry of the oppressed, and the Groans of the famished poor be in the stone mortar (and materials of your Superstructure; Not, O unhappy men, your Counsel but God's shall stand; Sir *Garret Tryers* found it so, he, for a Grave-ship promised him by the *Spanish* Regent, undertook the destruction of the Protestant Professors in *Flanders*, but God struck him with such

Scutum reliquissè præcipuum flagitium, nec aut sacris adesse aut concilium inire ignominioso fas, Tacit. De Morib. Germa. not.

Aet. & Monumenti. p. 2105.

Anno 1576.  
Dinothus lib. 3.  
De bello civili.  
p. 208, 209.

Shute's History of  
Venice. p. 195.

Dinothus lib. 3.  
De bello Belgi-  
co civili. p. 194.

a blow as left him dead in his bed as he was just entering upon it, which, methinks, should make men study in all their advantages and actions, moderation and temper to express their worth by; which *John of Austria* not kenning, in eight hours caused the death of 14000. Citizens of *Antwerp*, who were put to the sword, and above 3000. perished in endeavouring escape, together with the loss of the City to the value of three Millions, besides all the wars and cruelties on the *Belgick* Provinces which were meerly in hate to the Natives, and to introduce the Inquisition there contrary to the Lawes of the Country. For when all the pudder they that are fiercest have made comes to the moment of death, then they will be forced to say to their fiercenesses, *I have no pleasure in them*; then the memory of one good deed done charitably and piously, will be more refectional then all their superb huffs and ranting pitilessnesses: yea in this worlds account 'twill appear in the issue most prudence to be milde and kinde, where men may doe it without Injury to Justice and Order. 'Twas a very memorable moderation the *Venetians* expressed to the *Zaratins* who had seven times revolted from the *Venetians*, and in all those revolts been reduced by sharp and terrible wars; yet for all that did not the State raze or sack the City, though delivered unto their mercy, but put a new Governour into it, and the chief Authours of the seventh Rebellion were for ever banished the City; this was the Method of that wise State: of a good temper was that famous *Requesizis*, one of the valiant and noble Governours of the King of *Spain's* in the low Countreyes, who coming thither found it all in a flame, yet *He, though a valiant and expert Souldier, was a lover of peace, grave rather then severe, and more studied the publick settlement then his own glory*; this made some airy persons detract from him: but God so honoured his bravery of minde, that he ever had the better of all his opposites; and moderately used the advantages he had to shame their enmity and not to ruine them for it. This was the praise of that Grandee, and the contrary had not onely lost him the lustre of that glory, but engaged him in that internal torture, that the memory of truculent and barbarous actions infelicitate their actors by, whose conscience is never healed but continually terrifies them, *maximè dum recolit acerbitatem panarum, &c.*

### CHAP. XXIII.

*Præterea, si ex contractibus, illatisve injuriis, vel hereditatis titulo, jus accreverit homini agendi in judicio, si testes non fuerint, vel si qui fuerint moriantur; succumbet ipse agens in causa sua, nisi jus suum probare valeat inevitabilibus conjecturis, quod facere crebro non contingit. &c.*

Here the Chancellour offers something in seeming extenuation of the Proceedings of the Civil Law in Cases of Contract, Reparation of Injury, or Title of Inheritance, which are three chief Subjects on which the justice of any National Law ought to work; and the main Argument he brings hereto is, the necessary presence and testimony of Witnesses to the maintenance of those Actions and the recovery of right by them, which he would make, as it may happen, defective to that end that Lawes are made, *Jus unicuique tribuere*. This is the summ of this Chapter, which I shall no further write upon, then to shew that in these Cases Witnesses are required, and without them, by that Law, no Action lyes so as to be recovered upon it.

*Ex Contractibus.* ] Contracts are the first of the Ternary, and matters of capaciousness they prove, and in the ordinary notion we account them those Accords and Agreements of men upon which Actions for non-performance of them valuably arise; *Erant namque Actiones præscriptæ verborum agendi formula pro natura cujusque negotii*, say the Civilians, hence is it that because man is a sociable creature and lives in the light of his reason, turning and winding things to his politick accommodation, which is the Principle of contract, the Lawes of Nations allow him his *jus prosequendi in judicio quod sibi debetur*, which if he rightly manage and punctually observes, he cannot fail of the Lawes equity in them. These Contracts then, to discourse at large of, would be the work of a life, for there is no end of them since they take in not onely those of Merchandise, but even

*Inventa sunt pacta & conventiones ut alium obligemus ad dandum vel faciendum quippiam.* Tholoffan. lib. 21. c. 7. 1.  
Lib. 21. c. 8. p. 407.  
Brafton lib. 3. c. 1.

of Oeconomy and Martialness, hence is the Agreement of two to be man and wife called Contract of Marriage, of Master and Servant, a Contract for service and wages : yea the Military art hath its Contracts too, as appears by those mutualities of accord that were ever between the Souldiers and their Leaders, to which the Apostle is thought, and that not improbably, to allude in those words, *I bear in my body, σηματα, the marks of the Lord Jesus*, which Phrase is borrowed, as I suppose, from those military Compacts that were of old, when Captains put on their Souldiers faces or hands, their Brands or Stamps of dignoscence, and without this they were no lawfull Souldiers : so to this day all Souldiers either are entertained by Indenture, or entry on the Band-roll, and have the Colours of their Regiment as the Badge of their Contract with their Chieftain to do him service according to the Laws of Warr, and the performance of his promised pay ; for reciprocation is absolutely necessary in Contracts, and where the persons that contract are not fit and proper, Contracts are insignificant, but if such they be as they ought, they are actionable to procure the performance of them, and not to fullfill them is to doe injuriously ; and that the Text sayes the Law does allow an Action for : to are the words, not onely *si ex Contractibus*, but *illatisve Injuriis.*]

σηματα ἐπὶ τοῦ σώματος ἢ ἄλλο τίς μίξος τοῦ σώματος.  
Ærius Medicus apud Lipsium.  
De Militia Romana, lib. 1.  
P. 45.

Bracton lib. 3. De Actionibus. c. 2.

Non valet donatio nisi tam dantis quam accipientis concurrat mutus consensus & voluntas nuda enim donatio & pactio non obligant, nec faciunt aliquem jure debitorum. Idem lib. 2. c. 5. lib. 3. c. 2.

*Illatisve Injuriis.*] So the old and true Text is, the later, *illatisve Injuriis*, is corrupt ; for the Chancellour's intent is to shew that the Law being *ars æqui & boni*, looks upon all departure from it as wander, and all measure beside it as Injury, *quicquid enim non jure fit injustè fit*. Now Injuries within the Text are chiefly those violences and uncharitable Actions which flow from an ill will and a pravity of Principle, which because it appears in some signal-violation of social kindness and politick order, is made to intitle the Magistrate to not onely see the Law executed upon it, but to interpret it a stroke of Malice (though at a distance at him.) And therefore is it that in Teespaffes, Assaults, and Batteries, the Declaration is *vi & armis*, the Trespasser, &c. did doe what he did ; because injury persisted in, and not satisfied for, is inchoate Rebellion, or a defiance of the *Castos Regni & Legum*, which aggravates the guilt : so the Romans accounted small offences, which simply were nummarily penal, to become in their repetition capital ; and Lipsius gives the reason, *Because thrice to repeat a fault is to reproach the Law of which it is a breach, and to dare it to severity against such a blustleffs effrontery*. By this then it appears, that Injuries are the warps of man, seduced from his primæve rectitude, and a recess from charity and righteousness, which is the onely noble endowment of humane Nature : the proneness to decline which, through the prevalence of passion regnant in us, and the fruit of Satan's influence on us, whereby our wills, wonn by him to a delight in unrighteousness, does that to another which is against Justice and that civil right, which God and Nature has vested in men, is that which is termed Injury : to avoid which, Lewis the Hungarian King being come down into Italy with great forces against the State of Venice, ( who were so weakened by a Plague that they were forced to declare, *That whosoever would come to them, after two years abode there, should be accounted a Citizen* ) and being informed of the Act of God, causal of their distress, and applied to with intreaty not to take advantage of it, condescended so far as to promise them, that during their Adversity he would make none attempt against them, which was a great Command of himself ; and which had he not done, he would, in my minde have been injurious : but enough of him and of Injuries, for which there is remedy appointed in all Lawes according to right reason as *Tholoffannus* abundantly makes good.

Voluntas & propositum distinguunt maleficia. Bracton li. 3. c. 2.

Bracton lib. 3. c. 4. p. 103.

Quod talem pravo ingenio censabant & satum ad peccandum fortasse, & contumacia iis visa punienda, & quod quasi per contemptum ludibriumque legis peccaret. lib. 5. De Milit. Rom. p. 345.

Quia affectio tua nomen imponit operi tuo, & crimen non contrahitur nisi nocendi voluntas intercedat, nec furtum committitur nisi ex affectu furandi. Bracton. lib. 3. cap. 2.

Shute's History of Venice. p. 197.

Syntagm. Juris universi. lib. 38. De Injuriis & Con.

*Vel Hæreditas Titulo.*] This is Title of Land, that which is patrimonial and successive, donative or testamental, acquisitive or emptional, of this Bracton treats: this the learned called anci-

Hæreditas est successio in universum jus quod defunctus antecessor habuit ex quacunque causa acquisitionis vel successionis eum sequina sua sine, &c. lib. 2. c. 29. p. 65.

ently

Tholoff. Syntag.  
Juris lib. 16. c. 5.

Tholoff. Syntag.  
Juris. De acqui-  
sionibus vel amitti-  
endis Heredit.  
lib. 46.  
Pandect.

Selden's Notes on  
cap. 21.  
Tholoff. Syntag.  
Juris universi.  
lib. 47. c. 11.

ently *κατὰ*, though since that term is restrained to the *Patrimonium Crucifixi*, those that are God's Portion, Evangelick Levites, as I may so say, who are there by in their Order understood, but more ordinarily Inheritance; *Hereditas* ] was that which was the Portion of the Children of the defunct Possessor, which were termed *Heredes necessarii*, and to whom it came by the Law of the twelve Tables, *sive velent sive nolent*: after these the next of the Bloud, or such as by Will they would appoint, whereof the Civil Law gives us much Learning every where in the body of it, and in the Doctors upon it. Now in all these Cafes either of Contracts, Injuries, or Inheritance, the Lawes Civil requiring lawful Witnesses both for Nature and Number, or such prevalent conjectures as are Tantamounts, doe but what, I humbly conceive, is rationally, religious, and worthy them, and thereupon I conceive them justifiable in so doing; nor can they well be said *deficere in Justitia*, because they do require that which is for the most part haveable if the Cause be just, and if a just cause once in an Age sink for want of it upon the Act of God who calls the Witnesses away before they have given their testimony, the Law is not to be charged for that it could not provide against, for God is to do with his Creature what he pleases whose he is; but rather the Law is to be justified which wisely provides for Witnesses to be examined in *perpetuam rei memoriam*: and the Parties, whom the want of Witnesses most prejudices, are to be blamed for omitting the indulged opportunity, the rule of Law being, *Currat tempus contra defides & sui temporis contemptores*. And if Lawes should be branded as defectuous in point of Justice for what thus may happen, no humane Law ever was or ever will be just; for as there may be some high Tides and strong windes that may force a breach upon the best Walls and Mounds of art imaginable, so may there also be some *casus omitti* which may be too extraordinary for ordinary Rules and Provisions to remedy: nay the Common Law it self will be in most Cafes thus defective, since in most, or all Cafes, Witnesses are necessary, and that heretofore in the beginning of every Action, and if Witnesses fail before a Tryal come, the suit were as good not proceed as fall for want of Proof; so that with favour to my learned Master, the Civil Law in requiring witnesses or inevitable Conjectures, without which it judicially determines no Action, does but what is just; and may be said, *unicuique quod suum est tribuere*, since that which is not made out by witness or presumptions of equivalency thereunto, is as if it were not at all any thing above a bare allegation; the rule of Law being to proceed to judgement, *secundum allegata & probata*. And so I end this Chapter.

#### CHAP. XXIV.

*Regnum Angliæ per Comitatus, ut Regnum Franciæ per Ballivatus distinguitur,*

THESE words are initial to what is of materiality in this Chapter, and thereupon I begin with them, the preceding Clauses being onely matter of form and transitional coherence to maintain the continuity of the discourse; which, though it be very comely, and proper to display the venust proportion of this Creature of the Chancellour's, which he himself could not but love (because 'twas his own, and so like his learned and pious minde wherein it was formed, and I cannot but admire for his sake; whom to serve I have herein spent some pains, and through the goodness of God I hope not unprofitably,) yet do I not think those things that are so ordinary as Prefaces and Flowers of Oratory are, fit to feise me from perfuance of more ponderous passages, therefore proceed I to these words, *Regnum Angliæ per Comitatus, &c.*

*Regnum Angliæ.* ] This is the Subject, a noble and Imperial one; but of it because I have written in the Notes on the seventeenth Chapter, and shall further in those on the twenty ninth Chapter, I forbear here: onely all men are to know, that *England* was ever a Monarchy and Imperial Crown, and though in regard of the Community of its Subjects, whose goods in all the latitude of felicity was aimed at by the just Monarchs and Lawes of it, the name Common-wealth has been given it: so

Stat. 3 Jacob. c. 5. 2 & 3 E. 6. c. 21. 1 & 2 P. & M. c. 5. 21 H. 8. c. 16. yet that Name, in contradiction to Imperial Crown, Monarchy, State and Kingdom, was never allowed here; nor attempted in any Change till the year 1649, when by an Ordinance it was, as far as God permitted that strange Engine to operate, new modelled and named a Common-wealth, or Free State; but as *ab Initio non fuit sic*, so blessed be God now it is not such in a sense of opposition to its Sovereign, but loyally returned to, and enjoyed by Him: Whom, God preserve long, our Gracious Protector and Great Encourager in virtue; and to Whom, God preserve us Christianly subject and Englishly loyal.

Sir Ed. Cook on Littleton. p. 163.

May 1649. Scobels Collect. c. 27. p. 30.

The Author's Prayer.

*Per Comitatus.* ] This is the Predicate what the Kingdom is in its politick Scheme, to wit, a Pack of Shires or Partitions of Government for the more apposite and orderly regulation of them and of the whole Island in them; now the main and superior parts of this Division is called *Comitatus*, possibly because it contained a Circuit of ground and people which was under the charge, *Casaris Comitatus*, of some one that was of its Kings and Masters near Attendants and bosom-friends, who was Companion of his Warr and of his peace: into this Model of Counties, Alfred is said to cast *England* about the year 871. and as Dutchiees were the Charges of Dukes, and thence took their Names, so Counties of Earls who presided them; it being usual with Antiquity to honour every Dignity with somewhat of trust Martial, or if not with the thing, yet at least with the Name, as Sir Henry Spelman, and Master Cambden with others assure us by most clear Authority. *Comitatus* then being the name of Offices had various Acceptions, of old it signified the *Senatus Imperatoris domesticus*, as we may say, *The Court of the King's House*; after, they were extended to that we call the *County Court*, which is the Court of the Earl or Count, now the Sheriff who hath the Custody of the County. These Charges are also called Shires from *scype* the Saxon word, *to part or divide*, because they are those limits and bounds of ground which our Ancestors, from the *Germans*, learned to model Government into, for its more secure and expedite carrying on. The Number of these of old, saith Mr. Cambden, were accounted by some 34, or 36. but at this day are reckoned at 40. and 13 in *Wales* settled in *Henry the Eighth's* time, as appears by the Statute 27 H. 8. c. 6. & 34 H. 8. c. 26. though Sir Edward Cook makes 41 Counties and 12 in *Wales*. And within some of these is every part of *England*, *Ita ut non sit locus in Anglia, qui non sit infra corpus Comitatus.* ] For because every County is under some Sheriff who has the Custody of it in times of Peace, (as the *Come* sanciently had in Warr, and as our Lord-Lieutenants at this day seem to have) and who is responsible for every legal judgement to be executed in it; therefore is every place in *England* under and within the Precinct of some County; yea though a privileged place it be, yet is it within the body of some County, though it may have a special Officer to whom the dispatch of judicial matters belongs. The Consideration of which was the cause that made the Isle of *Wight* to be declared in the Statute of 4 H. 7. c. 16. to be part of the County of *Southampton*; for that it being a rich Neck of Land and having many Inhabitants in it, as it might have the Priviledges and freedoms, so also should pay the Duties and Service to the Lawes that other parts of *England* doth.

Shyre quasi Share Vowel. Descrip. Britt. part. 1. p. 153.

Totius Anglia Pagos & Prouincias in Comitatus primus omnium commutavit. Ingulphus. Gloss. ad vocem Comes. Cambden Division of Britain.

29 H. 3. c. 35. 2 & 3 E. 6. c. 25.

Cambden's Britannia. Division of Britain. p. 159. Vowel. Descrip. Britt. p. 153. 1 Instit. on Littleton. p. 109.

So then by all this it appears, that as *France* was divided into *Baylywicks*, when, I think, the *Capets* reigned in *France*, which is but the same\* Charge under another name; *Ballivus* coming from *Bailhar tradere, committere*, and a Bayliff being nothing but a Commissary to execute anothers pleasure; in which sense we read of *Ballivus Provincialis, Ballivus Francix, Ballivus Libertatis, Ballivus Burgorum, Ballivus Manerii*, and *Balivi Vicecomitis*, of which Sir Henry Spelman sayes, *Hoc illud hominum genus est, &c. This is that sort of Bayliffs, that while they torture and catchpole men, do so dishonour the Name of Bayliff, that all the honourable Notion of it is by the Infamy of these Bayliffs Errand disgraced*: I say, when we read of Bayliffs, I mean Chief Ones. we read but the Name of the same Office and Officer with our Sheriff, whose Office is termed *Baliva* most frequently; so that the sense of the Text is, As there is in *France* no place but is under some *Baylywick* or other, so neither is there in *England* any place but is within some County or other.

\* Cook on Littleton. p. 163. B.

Glossar. in verbo Ballivus.

1 Instit. on Littleton. p. 61. B. 163. B.

*Comitatus quoque dividuntur in Hundreda qua alibi Wapentachia nuncupantur.*

As

Vowel's. 1. part.  
Description of Eng-  
land. c. 4.  
Inter LL. Sancti  
Edw. c. 32. De  
Hundredis &  
Wapentachiis.  
p. 143. Edit.  
Twilld.  
Mr. Selden's  
Notes on the Text.  
p. 25.  
Fleta lib. 2. c. 61.  
Lib. 1. c. 50.  
¶ Nescio an Medi-  
etas, magni habu-  
tur, qui vel 40.  
vel 30. numerant.  
Ecc. Gloss. in  
verbo. 365. 366.

See Stat. 33 H. 8.  
c. 10. 4 Cærol.  
c. 7.  
Brompton Chron.  
p. 957. Edit.  
London.  
Fleta lib. 2. c. 61.  
¶ Notes on this  
Chapter.  
Hoveden. Annal.  
partie poster. p.  
346.  
Sumner in Gloss  
ad verbum Wa-  
pentake.  
Inter Leg. Conq.  
p. 145. De Hun-  
dredis & Wa-  
pentachiis. Edit.  
Twilld.

As Counties were Lanches out of the whole Loaf of Land, so Hundreds or Wapentakes are Morsels from them; now though these are differently named, yet are they really the same, for the Lawes of Saint Edward revived by the Conquerour say so expressly, *Quod Angli vocant Hundredum supra dicti Comitatus* (to wit, *Warwick, Lincoln, Nottingham, Leicester, and Northampton Shires*.) *vocant Wapentachium*; and as Hundreds some called them, because they were the tenth part of a County, in which dwelt *Centum Pacis Regia fidei iussores*, (which I rather believe then that random conjecture of Ralph of Chester, who makes the Hundred to be *Provinculus centum Villarum*.) which is so ridiculous, that the learned Knight sayes and that truly, that *There is no Hundred that he knowes in England has 100 Villages in it, no, not one half, many great ones have but 40, or 30, others not 10, some not two*, thus he. Concerning Hundreds see *Malmesbury, De Gestis Anglorum*, p. 24. *Selden's Notes* on this Chapter, *Ingulphus*, p. 495. *Cambden. Brit.* p. 158. *Cook on M. Charta*, c. 35. And of Hundreds to be returned on Juryes the Stat. of 35 H. 8. c. 6. 27 Eliz. c. 6. make mention.

*Wapentachia.*] That this is the same with the former, though otherwise called, as I have written before: Generally this is acknowledged to be derived from *wapnu, arma*, and *tas, tactus est*; alluding to that *Honoratissimum genus assensus armis laudare*, which Master *Selden* quotes from *Tacitus*, it being usual with them to give Approbation in their Convents Military by touching their Weapons as token of Assent, and joining their utmost power to assert it. Amongst the Lawes of the Conquerour I finde this recorded, when any new Governour or Judge of the *Wapentake* first came to take his Charge, he called together all the chief men within his Bounds, *Et descendente eo de equo suo omnes assurgebant ei, ipse vero erecta lancea sua, ab omnibus secundum morem sædus accipiebat, omnes autem quotquot venissent eum lanceis suis ipsius hastam tangebant, & ita se confirmabant per contactum armorum pace palam concessa.*

*Hundreda vero dividuntur per Villas, sub quarum appellatione continentur & Burgi atque Civitates.*

It should seem *Villa* were in our Chancellour's time terms of Comprehension not Diminution, else he would not have shrowded under the term of *Villa* Cities and Burroughs; or at least *Villa* were Tantamounts and equivalent to *Burgi & Civitates*: This promiscuity of expression the learned *Selden* gives president of, and all to this purpose, that no place should be exempt from being *pars corporis Comitatus*; either part of the County in which the City, Ville or Burrough stands, or a County of it self; for rare is it to have any place privileged as *Battle-Abbey* was, to which the Conquerour gave Grant, *Leugam circumquaque adjacentem liberam & quietam ab omni Geldo & Scoto & Hydragio, &c. & omnibus auxiliis & placitis & querelis, & Shjris & Hundredis*: And therefore though Vills, Cities and Burroughs are commonly used one for another, as *Malmesbury* writing of *Claudia* or *Glocester*, called by the *Britains Airchala*, as a City devoted to the memory of *Claudius*; (of which *Seneca* makes mention in those words, *Barbaros in Britannia cum pro Deo colere, & in honorem ipsius Civitatem adificare*) whereas he terms *Bristol* but *Vicus celeberrimus*. Though, I say, these three names were of old confounded in use, yet now adayes they are distinct, Vills being open under Officers of the Crown as parts of the County; Burroughs are particular Governments and Corporations by Prescription or Charter, sending Members to Parliament mostly though not alwayes; but Cities are accounted such as are Shire-Towns, most an end Wall'd, having Sessions and Courts in them, and a Bishop's Seat; and these, requiring great Circuit and Jurisdiction, may uninjuriously be said to be contained under Vills, which our Text makes capacious as appears by those words.

*Villarum etenim meta, non muris, edificiis, aut stratist terminantur sed agrorum ambitibus territoriiis magnis, Hamletis quibusdam, &c.*

*Hamletis quibusdam.*] A Hamlet is some part, or member of a Ville or Town, so sayes

On this Chapter.  
ff. 10.

Charta Conq.  
Abbat. De Bello.  
in Comit. Suffex.

De Gestis Pontif.  
fic. lib. 4. p. 161.

Lib. De Morte  
Claudii.

Cook. Instit. up-  
on Littleton.  
p. 109. B.



sayes the Text, *Vix est locus aliquis in Anglia qui non infra villarum ambitus continetur*; For, *Ham* in *Saxon* signifies a Circuit, or Compass. Whence the word *Hem-me*, for the edge and limit of any Garment; Sir *Henry Spelman* sayes, the ancient word *Haga*, Sire (I think to our *Hedg*) to signifie a Trench, (*Hedges* being bounds, as *Trenches*, as *Ditches* are,) or rather little residencies for security and livelihood; *Ham* quasi *Home*, which, because many habitations conjoynd eminently are great Towns, are called by names ending in *Ham*: *Buckingham*, *Walsingham*, *Nottingham*. And *Demivills* are termed diminutively *Hamlets*, see the Stat. of 14 E. I. which I finde not Printed, though Sir *Henry Spelman* mention it.

Selden notes p. 27. Dyer, fol. 142. Glos p. 328. Glos p. 330.

*Præterea in Quolibet Comitatu est officarius quidam unus, Regis vicecomes appellatus.*

This *Præpositus*, or Deputy of the King is here set out by three terms; that of *Office Officiarius*; That of honour *Viccomes Regis*; That of number, *unus Officiarius*.] This word comes from *Officium*, & the termination *Rius* being personal, directs to the *He* that executes it; thus from *The-saurus* *The-saurarius*; from *Camera* *Camerarius*; from *Registrum* *Registrarius*; from *Cancellum* *Cancellarius*; from *Præbendum* *Præbendarius*; from *Ostium* *Ostiarus*; from *Janua* *Januarius*; from *Beneficium* *Beneficiarius*; and so in *Infinitem*.

*Quidam Unus*.] Many men, but One Governour, or Principal: God put a Dignity on One; Hear O *Israël*, the Lord thy God is one. And Reason and Policy has also given the Suffrage to One; *Unus in cælo sol, unus in regno rex, una in regione religio* is the rule of all Policy: and therefore the Kings of *England* it should seem by our Chancellours word, appointed to every County one Sheriff; yet till the 8 *Eliz.* 16. the Statute tells us divers Counties were pared, and had but one Sheriff between them (as I think yet some have) but by that Statute those Counties were parted, and one Sheriff appointed to each of them, as by the 13 of the same *Eliz.* c. 22. was appointed to others; the Nation probably filling more with fit persons, and the charge being better borne for one then two Counties; And because his office was *Judiciaria dignitas* as well as *Ministralis*, and like to that of the

6 Dent. 4.  
Deus est unus & maxime unus; Sancti Thom. 1 Part. Qu. 11. art. 3 & 4.  
Deus est unus secundum quod unum convertitur cum ente, non autem quod unum est principium numeri. Idem Eodem loco.  
Moræ ὁ πῶντος ἀναστῆναι ἀ-εθμῶ, Eusebius Orat. de laudibus Constant. Tom. I p. 457.  
Casus in sphaera Civit. p. 70.

*Romans* Consulage, therefore as the Law committed to this Officer, and required his residence thereupon, so did it not put Pluralities, or supernumerary duties upon him more then those he could reasonably be thought in his (a) *Proper Person* to perform: Nor did our Kings and their Counsell appoint any one to this place of Dignity, but such as was proper thereto, *Milites vel Armigeros*, men of blood, breeding, and estate; And to these one by one in their office has he committed great trust; For, since every mans business is no mans, and many in an office are authors, rather of confusion then orderly action. The Laws of Nature and Nations prefer Oneness in most things before Manyness, as I may so say. And as God by one soul in the body rules all the senses and faculties to a rational and orderly purpose, so does the King in the Law carry on wise and worthy Government in Counties, by this one (though not only) yet chief officer in it: and as the *Romans* were wont to make their *Equities* of select men, who had their horses appointed them, and were accounted to decline when the conditions and fitnesses of men were more calculated by their purses then minds; so is it in any place, and Government a great defect to chuse persons to offices, who are not nobly qualified thereunto, it being a rule with me, that the Kings Authority is never contemned, but when it is managed by weak men. And certainly, what the Emperours *Theodosius*, *Gratian*, and *Valentinian* decreed concerning Souldiers, "That no man of mean birth, sordid breeding, ill carriage, poor nature, or of illiterate minde, should be admitted to the noble company of Souldiers; but the best, and every way braveliest accomplished of men, is applicable hereunto, and practised in a great measure by our State, as in the hereafter Treaty hereof will appear.

Cook upon Littleton, 1 Part. p. 163.  
Stat. Lincoln 9 Ed. 2. 4 H. 4. c. 5.  
(a) 7 R. 2. c. 6. 9 Ed. 2. 4 Ed. 3. c. 9. 5 Ed. 3 c. 4. Tholossan. lib. 47. c. 15.  
Nunc pecunia judices tribuunt. Plin. lib. 37. c. 1.  
Longa pax militem incruentius legit, Veget de milit. Rom. lib. 2.  
Quotiescunque & aliquis militia crederat offerendum statim, de natalibus ipsius & de omni via conditione examen habeatur, & ad militiam nullus adspiceret nisi quem penitus liberum aut genere aut vita conditione inquisitio tam causa deprehenderit, lib. 70. Cod. Theodof. Tit. 6.

ἡλικαρνασσῶν τε καὶ ἰσπανίας  
ἐξουσίαν ἔχειν ἀρχιεπίσκοπος ἔχειν  
καὶ δυνάμει, σουλταν τε καὶ σαρδανι-  
κῶν ἐπίσκοπος. *Halicarnassus*, lib.  
11.

Cook on Littleton, p. 153.

Ex limitaneis ducibus Comes ordinis primi creatus Constantinus, Comes à principis Comitatu, quod ipsum soleans comitari. Panciroli in notitia Imperii, p. 112. c. 74.

Plin. Epist. 176.

Lib. 8. c. 46.

Epist. 101. lib. 7.  
Sueton in Nerone, c. 31.

Inter optimas lectissimorum militum turmas neminem è numero servorum dandum esse discernimus, neve ex canpona ductum, vel ex famosarum ministris tabernarum, aut ex coquorum aut pisorum numero, vel etiam eo quem obsequii deformitas militis fecerit, nec tracta de ergastulis nomina. Cod. Theodof. Tit. 13.

Lipius lib. 1. de Milit. Rom. p. 44.

(\*) Alberatus in Thesaur. Politic. Relat. de Reip. Suecia, p. 317.

*Regis Vice-comes appellatus.*] This puts a dignity on the Sheriff, that though he be not as the Roman Legats are by the Historian described to be, whom he termes of all the most honourable and sacred; having the power of an Emperour, and the sanctity of a Priest. Yet may this officer be allowed many, not only grains, but ounces and pounds of honor, for his derivation from the King, by the Count, or Earl of the County, to whom he succeeds; who therefore was called *Comes*, because probably he was either of the blood, or by merit inoculated into the stock of Princely greatness, to which he was a companion: Now this compartization in command (as I may so say) Time wearing off, and the wisdom of Princes disallowing Great mens rivalry, or potency, to prevent the irruption of it to Princely disturbance, has committed this trust to a hand where it is acted less formidably. And this Person or Officer, the Law calls *Vice-comes*; where *vice pro loco accipitur*, as Pliny phrases it, so *Bos in Aegypto numinis Vice colitur*, that is *loco*, so *Cartius uses vice alicujus sollicitus*, & *Saetonius vice mundi circummagi*; which is as much as *ad similitudinem mundi*, and *Livy has punge aliena vice*: so that this Officer being successor to the Earles of Counties, who originally had the charge and Government of the Counties, their Honourable Titles were called by; is hereupon to be accounted a great Officer, and to be chosen out of the most select band of the Shire-Gentlemen. And such, not onely *England* apprehends them to be, but also some other Countreys: For, to this day, in *Sweden* (\*) every Territory has its *Vice-comes qui alter fere prator & qui jus dicit*; Above whom is the *prefect*, or *Lamem*, with us Chief Justice, who rides Circuits, and by these *Vice-comites* are attended, which probably was the rise of our Circuits and Sheriff from some Northern Ancestry of ours; the *Danish* Laws (with help of the *Saxon*) affording us much of Institution, and Law-Method.

*Qui inter cetera officii sui ministeria, omnia mandata & judicia curiarum regis in Comitatu suo exequenda exequitur.*

This the Chancellour brings in to the fuller blazoning of the Sheriffs dignity, which is, not only *Ministerial*, but *Magisterial*, and *Judicial* as I humbly conceive it in some cases is, and as before the c. 17. of *Magna Charta* much more was; before which it is probable Sheriffs did arrogate to themselves Pleas of the Crown, by which they being ignorant of the Law, gave ill Judgment in the Case of Mans Life, which is a tender thing, and requires the Learning of the great and Grave Judges to the cognizance and consideration of it: I say, I humbly conceive there may be some thought that this inconvenience occasioned this barr of the seventeenth Chapter. And, the maine drift of the Chancellour is, to represent the Sheriff, as properly the Hands and Feet of Justice, the executor of the Law, that carries its wisdom and Justice to a thorough execution, and vital energiqueness. Hence is it that he has power both in *Jure & in fero*, and has committed to him according to Sir *Edward Cook*, a threefold custody, *vita Justitia*, For, no suit begins, or process is served but by the Sheriff; *Vita legis*, he is after long suits, & chargeable ones to make execution; *Vita Republica*, he is the principal Conservator of the Peace within the County. And thereupon the Text sayes right, that he is *omnia mandata curiarum regis in Comitatu suo exequi*: For, in that he is said *mandata curiarum regis exequi*, is implied Execution of the Kings Commands, because the King Commands by matter of Record, and *Rex precipit*, & *lex precipit* are equivalent, as heretofore more at large has been discoursed.

And now I seem to have a fair Challenge to write of the Courts of *Westminster-Hall*, which are the *Curia Regis Ordinaria*, The honourable Courts and Jurisdictions planted in this Kingdom, as King *James's* words are; but Sir *Edward Cook* writing of them, not to the elaboration of their nature, nor any before him that I know of, warns me to be modest and not to meddle with such intricacies, which I am very easily perswaded to avoid, because I know the learning of them more various then to be a-bridged

Cook on c. 17.  
*Magna Charta.*

Page. 162. Inquit.  
1 Part.

Speech 1609. p.  
534  
Institutes of the  
Jurisdiction of  
Courts

bridged as here it must, and mistake so easie, that truly I should be very prodigal of prudence to engage in it; it shall onely content me to professe my duty and reverence to the King's Majesties Courts and to the most Reverend and Learned Chief Justices, with their suitable Companions the Justices in them; to whom, as I can do no lesse so I will be excused in applying that to their worthy Master-ships, which *Paludanus*, upon the view of Sir *Tho. Moor's* Works, wrote to his friend, *Nec satis scio major enim cum voluptate ac admiratione felicem Britanniam, qua nunc ejusmodi floreat ingenii, ut cum ipsa possit antiquitate certare.* But I proceed.

Sir Rob. Forster. } Chief Justices.  
Sir Oiland Bridgman. }  
Sir Halas. Chief Baron.  
Fleta lib. 2. c. 26, 27.

In Epist. Petto Regido, Inter Opera Moii, Impr. Lovanii. 1566

*Cujus officium annale est, quo ei post annum in eodem ministrare non licet, nec duobus tunc sequentibus annis, ad idem officium reassumetur.*

Before this, Sherifdoms were granted for term of life, terms of years, or in Fee, but by the Stat. 14 E. 3. c. 7. it was restrained to one year; yet, how it come to pass I know not, but sure so it was, that Sheriffs did continue many years in their Offices, and, did many Oppressions to the people and evil Service to the King and his people, so are the words of the Statute: therefore by the Stat. 23 H. 6. c. 8. Provision is made against their Enormities, which are called, *Many and diverse Oppressions to the King's liege people, unduely, evilly, and falsly, to serve the King and his people.* And hence comes the limitation which our Chancellour terms *annale officium*, though by the 12 E. 4. c. 1. some relaxation is given, yet still is it *annale officium*; for the wisdom of our Ancestors looked upon longer time as too great an opportunity for mortal weakness and wickedness to evict: and therefore it anticipated the occasion of such temptation, it being a wise Proverb which we have, *Opportunity often makes a Thief*; thus was *Achan* lurch'd, *I saw among the Spoils a goodly Babylonish Garment, and 200 sheckles of Silver, and a wedge of Gold of 50 sheckles weight; then I coveted them and took them and hid them in the earth.* 'Tis a rare thing to be a *David* and see a *Bathsbeba* and be in love with her, and yet let her rest whose she rightfully is; nor is any sprigg in *Octavius* his Plume more Imperial and matchless then that which was rare in the *Cesars*, to be *perpetuo sanus*; to have an Empire and to be so little in love with the greatness of it, as upon serious and moderate thoughts to think of chusing a private life and resigning that is an Argument of supern Magnanimity; which truly if it be thick sown, as I question, yet that it comes up thinn, I question not. And if all the Instances of the danger of opportunities were obliated, yet in the survival of two, which our own stories do and will mention, the first of which was that of the Protector after R. 3. and that later (*O tell it not in Gath, declare it not in the streets of Ascalon, lest the uncircumcised rejoyce*;) That, That, (which by abuse of a gracious Law, and to the destruction of a Gracious King, engaged us in Warr and Wickedness) would more then enough revive to us the danger of Opportunities. So that all things considered, in as much as the Sheriff is an Officer of great power and trust, and many temptations attend it, yea much evil has been done under the umbrage of it, the wisdom of our Kings in their Parliaments has been great in limiting them as by the prementioned Statutes and as by those further ones, 1 R. 2. c. 11. 6 H. 8. c. 18. they have done; for in that it is left to be *Annale Officium*, there is time enough to discover the virtues of fit persons in their service to the King and Country. For a year (which is a time of 12 legal Months, ordinarily said the Measure of the Sun's march through the Zodiack) the *Heb.* called it *שנה*, à *mutatione*, from its revolution; the *Greeks* *ἐνιαυτός*, and *ἐνιαυτός*, ἀπὸ τοῦ ἐν ἑνιαυτῷ ἔσθαι, because as a Circle it turns into it self: the Learned make many Notions of *Annus*, they tell us of *Annus civilis, naturalis, Annus magnus*, and under these of *Annus Solstitialis, Lunaris, Embolismus, Bissextilis, Jubileus, Olympias*; and (a) *Tully* summs up all in that great year which contains 12554 years, but most ordinary is that Lunar year of 30 dayes, and the Solstice year of 12 Months, according to which our Law computes and our Chancellour is here, as I suppose, to be understood.

12. E. 4. c. 1.  
14 E. 3. c. 7.  
Rastal Statutes  
larg.

Josuah. c. 7. 21.

*Administrationem eorum (Regnum Angliæ & Galliarum) duntaxat mecum duco, jus vero fructumque ac proprietatem omnium vestrum haud dubio publicam, quæ ego animum quo dic habere desiero precor ut superi mihi hoc Regnum, nec vestrum modo, sed vitam quoque ipsam ut indignam qua retineatur, abripiant.* Hist. R. 3. per Tho. Morum. Equ. Aur. p. 56. Edit. Lovanii. Anno 1566.

Ποιῖν ὁ δὲ ἡλιος ἔνιαυτον, ἢ δε σελήνη τὸς ἀρῆς. Plutarch. Quæst. Rom. p. 282.  
Macrob. 1. Saturnal. c. 14.  
Capito in Glosf.  
Isidor. De Originib. p. 248.  
(a) In Hortensio.  
Brechæus ad legem 134.

Lib. De verborum signific. p. 311.  
 ¶ Lib. De Auro Nymph. p. 269. Edit.  
 Holst.  
 Iiid. De Orig. p. 248.  
 Plutarchus in *Quæstionibus Romanis.*  
 p. 263.  
 Τὸ δὲ παλαιὸν ἡ Μάρτιος ἡμερῶν  
 μῆτις ἐπότρυνε. Plutarch. libro  
*præcitato, & post illum.*  
 Alciar. De verborum signific. in legem 93.  
 p. 225.

All Nations then agreed in a year as the mensuration of time, onely they varied in Commencement of this time, *¶ Porphyrus* tells us the *Egyptians* made *Aquarius* ἀρχὴ ἔτους, *The Leader of the year*, others *Cancer*; the Christian account is with *January*, *μῆνα ἡ ἀρχὴ*, *the Door-Ment*, because it lets men into a Method of Computation; but many Christian Nations compute the year from *March* as we (because of the Reigns of our Princes) do with us; which I can say no more to, then that it seems to follow the Constitution of *Romulus*, who instituted but ten Months to the year, whereof *March* was the first, *January* and *February* being after added by *Numa*, which makes up our year of 365 dayes which I humbly conceive to be that time which our Text intends by, *Annale Officium.*

Id licere dicimus  
 quod cuique con-  
 ceditur. Cic. 5.  
 Tuscul.

23 H. 6. 8 Rast.

Peccare nemini  
 licet. Cic. 1.  
 Tuscul. 78.  
 23. H. 6. c. 8.  
 1 R. 2. c. 11.

42 E. 3. c. 9.  
 23 H. 6. c. 8.  
 Erasm. in Adag.  
 Chil. 1. Cent. 5.  
 Adag. 61.

*Quo ei post annum in eodem ministrare non licet.* ] This is added to shew that whatever Administration is beyond the allowance of the Law, has a *non licet* upon it, and intitles the Actor, not onely to the penalty of 200. l. for every year, but to be *in misericordia*: Now seeing that the Law by Acts of Parliament sayes, *He that is Sheriff shall be in that Office but one year, nor be reassumed to that Office for the next two years after*; and this it does on purpose to break off the Officers insolence over the people, and the peoples dread of the Officer, after the years expiration he being defunct as to all power, and (unless there be no other sufficient within the said County) acquiesce he ought, *ministrare non licet*, so are the words of the Statute; and hereupon, when as the under Sheriff of *Bristol* doubted concerning his capacity to hold the place from year to year, as the under Sheriff of *London* does, the Statute 6 H. 8. c. 18. did declare, that notwithstanding the Statute of Inhibition he might, or else those Statutes being in force he durst not; so well the later Lawes remedied the inconveniencies of former times, that the old Proverb, *Aginenses neque tertii neque quarti*, may be said of *English Sheriffs*: no man can ordinarily continue in it any time beyond that of a year, which is time enough for an honest man where such choice of them is, as in *England* blessed be God there are, and beyond it would be too much time for any that is not worthy to have it.

*Officiarius iste sic eligitur; Quolibet anno in Crastino Animarum conveniunt in Scaccario, &c.*

This shews us, that as there is one Officer, so he to be chosen, and so, and so onely (ordinarily) as the Statute of 14 E. 3. c. 7. appoints, which our Text is but an enlargement upon. And the first thing that is remarkable, is the Note of time, Greater, *Quolibet anno*, an annary Officer to be chosen annarily; The lesser or prefixt day of the year, *in crastino Animarum. Crastino Animarum.* ] This was a day set apart upon Papal ends, afore and in our Chancellour's time, but at this day is a Festival by virtue of the Statute of 5 & 6 E. 6. c. 3. which I do not assert to decline Canonical Compliance, or as thinking the Church of *England* may not harmlessly, as she doth, symbolize in these little externities with the *Romish* Church where she has any footstep or print of unsuperstitious Antiquity for her Colour or Warrant; but to satisfy the scruple of some tender spirited persons, that they may make more Conscience of contemning Authority herein then hitherto they have, for in that some Saints dayes and other Festivals are called Holy-dayes, our State does not call them such, *For the matter and nature either of the time or day, nor for any of the Saints sakes, whose memories are had on those dayes, for so all dayes and times considered are God's Creatures, and all of like Holiness, but for the nature and condition of those Godly and Holy Works wherewith onely God is to be honoured, and the Congregation to be edified, wherunto such times and dayes are sanctified and hallowed, that is to say, separated from all prophane uses, and dedicated and appointed not unto any Saint or Creature, but onely unto God and his true Worship,* these are the words of the Statute, which shews that pure prudence and piety destined these to the respect that with us they have, which our Ancestours were not onely directed to do by the light (as it were) of nature, which dictated the Commemoration of notable persons and Actions by a more then ordinary solemnity, but also by Example,

Note well.

Religiosum est  
 quod propter san-  
 ctitatem aliquam  
 remotum ac seposi-  
 tum à nobis est.  
 verbum à relin-  
 quendo dictum.  
 Massur. Sabinus  
 apud Aul. Gell.  
 lib. 4 c. 9. & 10.

Example, and Authority of God, Positively commanding it : And therefore there has never been any Nation so rude but has observed it; nor any so Religious but has been awed into the Conformity hereto : which made S. Bernard declare him unworthy of the Joy of the Festival, in the sacred comfort of it, who does not observe the Injunction of Fasting, in preparation for it.

*Indignus quippe solenni lætitia est qui statum vigiliæ abstinentiæ non observat, Sermo in Vigil. S. Andree.*

Now, though I know there may be, and is abuse of Holy-Dayes, as of the best things there may, and divers times is : yet do I not thence see any excuse they have that desie Holy-Dayes from this accident; but, methinks it would rather become their greater Zeale, and Knowledge, to Celebrate them so, as to rectifie that aberration, and to method and credit the reduction of its eccentricity : For, if great mercies and notable achievements be remembered on these Dayes, I see no reason but our Customs to Feast, and weare our best Robes, and do every thing most Triumphingly on these Dayes, are applaudable : The Heathen-Herald taught *Clytemnestra* this, when he tells her, *That sad lockes, and narrow austerities do not become a free-day, which is devoted to the Gods, the best of beings* : and S. Bernard highly encomiating the Feast of *All-Saints*, sayes to his Friends and Auditours, *Non ignoratis fratres, &c. Know ye not, that men of the world do on Festivals, Feast splendidly; and the Higher the Day is, the most dainty fare have they.* This shews, that Festivals were ever in account, because they were the relaxations of Life from its constant portadge, imprisonment, and toile; but, concerning the institution, nature, and qualities of this, *Tholosanus* gives a very great and good account, as others also do, whom I shall mention in the Notes on the 35 Chapter. That which I write this for, is, not to magnifie Holy-Dayes, as they gratifie any Carnal Principle in vaine men, which by them is pleased; or, in any opposition to Tender Spirits, whom some delight to grieve and contradict : God forbid any of these should prevaile with Me, who, I hope, have not so learned *Christ*; but, my Enlargement herein is only to allay (if I might) the animosity that (a) some have against Holy-Dayes, whereof that *Omnium Animarum* is one : and to shew, that *Craftino Animarum* is therefore set apart (as I suppose) by our Law, to chuse this High Officer in, because it supposes, the mindes and souls of the Great Men, then to nominate, being lesson'd with piety the day before, will have a great structure of it the morrow; and being convened there, before they have let the severity and honour of the precedent day evaporate, come big of it to the Nomination of this Officer; who, by being Elected on this day, gives name to *Craftino Animarum*; as the massacre of the *Danes* by the Women did to *Quindena Pascha*, another Law day.

*Petrus Victorius, lib. 28. var. lectionum c. 5. ex Æschilo in Agamemnone.*

*Serm. de seño Omnium Sanctorum.*

*Βίος ἀρεῶν τῶν μὲν ἀπὸ τῶν ἁγίων ἁγίων. Stobæus Serm. de avaritia.*

*Lib. 2. Synagm Juris, c. 16.*

(a) *Ord. 1641. c. 21. Scobels Collect.*

*Glossarum ad M. Paris. in verbo Hokeday.*

*Conueniunt in Scaccario.*] This is the place where these Great Ones meet to chuse, in the Exchequer, Originally the Court of the Revenew; whereupon *Polydore Virgil* would have it written *Scattarium*, from the German word *Schats*, or the Saxon *Scacca*, *thesaurus, impositio, taxatio*; Probably it may be so: For, it is the Sea, into which all the Rivers of Publique Revenew run; every Sheriff accounts for his Office into it: and therefore, when in *Edward the sixth* time, it was found, that the Sheriff of *Northumberland* for a long time had not accounted for his Office to the Exchequer, as other Sheriffs did, but converted the profits of it to his own use, the Statute of 2 & 3 of that King, c. 34. ordered redrefs of it; and brought in that out-lying-Deer into the Herd, making him responsible as others were. Concerning this Court Sir *Edward Cook* has written of late, as *Nigell* is said of old to do, who had *incomparabilem Scaccarii scientiam & de eadem optime scripsit*; of this Court therefore no more.

*Fleta, lib. 2. c. 25. 26.*

*4 Inst. Chapter Exchequer. & 1 Inst. p. 304 B. ex Ochamo, p. 17.*

Thirdly, As the Time and the Place, so the Persons Electors are admirable to be noticed, *Regis Omnes consiliarii*; That is, such of the Lords, and others of the Privy-Council as will: For, this *Omnes* is not *Necessitatis & coalitionis sed capacitatis & juris*. All of the Kings Councell may, if they please, and some of them must; and many will; and with them comes the Policy, and Gravity of the Nation. *Tam domini Spirituales quam Temperales.*] This is added, to shew the variety of our Princes Counsells, which, as they are of things that concern

*21 H. 8. c. 20. 31 E. 3. c. 9. 27 E. 3. c. 26. 1 E. 3. c. 14. 14 E. 3. c. 5.*

*Qui propter prudentia opinionum ad concilia principum suggerenda desinantur. Alberg. thesaur. Polit. c. 2. p. 2.*

Religion

Religion and Policy, so are furnished with men oracular in both Provinces *Subjects, divided in Terms, and by Names, of Spirituality and Temporality*, so sayes the Stat. 24 H. 8. c. 12. not that physically there is any difference between a Bishop, and Abbot, and a Lay-Baron, for they are alike men, and subject to like infirmities, possible to deceive, and be deceived; and alike are the Votes of their Baronies in Parliament: but, the distinction is, to import a kinde of metaphysical difference; as the Clergy Lords Calling being *Circa res Sacras*; imports, their mindes to be in *Sacris*, Holy men, *Having their Conversation in Heaven, whence they look for the High-Priest* of this Profession to visit them with an *Euge serve bone*; These then who are men set apart to God in their Order, and Dignified above, and distinguished from vulgar men in Priesthood, are called *Domini Spirituales*; not that they pretend the Pedegree of their Honour from *Christ Jesus*: For, they knowing his Kingdom not being (in this sence) of this World, their Prelacy in that sence also is not: but, that by reason of which, they are Spiritual-Lords is their Baronies, which they hold *Jure Ecclesiarum*; and by which, the Kings of this Land have erected them as Homadgers to them for such Baronies; and the Law and Custom of the Nation has incorporated them into the Baronage inseparably: whence, though severall Ordinances mounted against them for a time, battered them fore; I mean not the Act of 17 Carol. 28. but that of 1646. c. 64. of 1649. c. 53. of 1647. c. 124. c. 94. & 109. of 1648. c. 117. and c. 122. that of 1650. c. 29, 30. yet God has brought them into their wonted Right, to the free enjoyments of their lustre, with all the perquisites of it; which, as they are never to forget, but to make their lives (though not) pillars of Gratitude; for, that has too fixed a name for so fixless a thing, as the life of man (in his best estate) is; much less in old age (which is the state of most of our Reverend Fathers) *but burning and shining lights of holiness, and exact conscience*; which, when they do, and as Bishop *Jewell*, one of them, once said Heroickly, *Can deny their Parts, and their Relations, and their Honours, but the Faith and Truth of Christ they cannot deny*. When thus I say the Fathers of the Church do adorn their Order, Preaching frequently, Living holly, and Dying comfortably: There are no oppugners of their credit and greatness; but must blush at their peevish opposition against them; And such, since to the height of this Character, this Glorious Church of *England*, from the Reformation, abundantly has had, and I trust has; and ever (I hope) by Gods mercy will have: There will be no cause for any ingenious and noble Tongue and Pen to disown it, as it is held Prelacy, for since the honour that is attending on it may, and has been subsidiary to Piety, and may and has contributed much of its lustre to the bedecking thereof, I must be humbly bold to declare, my Prayers shall rather be to God that he would sanctifie and preserve in all exemplary Piety and Charity this Order, then to highten it above, or abate it from, what now it is; for 'tis well where it is, and may God ever supply it with pious and learned Successions; and may they ever continue in the Kings and Peoples love, as *Domini Spirituales*.

*Et Temporales*.] Of these I have written in the Notes on the Chapter; and the Titles of both Lords Spiritual and Temporal has been the language of so many Acts of Parliament, and for so long time that to be ignorant of it were to be sottish: for though in many Authours, specially Scripture, *Carnalis* be opposed to *Spiritualis*, and *Mundanus* to *Caelstis*, and *Temporalis* to *Aternus*, yet in the Rolls of Parliament and Books of their Statutes, *Spiritualis* and *Temporalis* are matched.

*Quam alii omnes justiciarii, omnes*.] This is to be pressely taken, All may, but do not, nor are necessarily to come, but chiefly the two Chief-Justices of the Benches, if they be present, so sayes the Statute; and though (a) *Fleta* calls the *Barons de Scaccario* Justices, and use intitles them to the Power and Honour of Justices or Judges, yet is not our Text content to couch them, but positively sayes, *Omnes Barones de Scaccario*; though the Statute prementioned nominates onely the Chief-Baron, making him one of the three prime Regents in this Choice, for the words are, *By the Chancellor, Treasurer, and Chief-Baron of the Exchequer, taking to them the Chief-Justices of the one Bench, and of the other if they be present*: see the 33. H. 6. c. 1. where these are also joined.

25 H. 8. c. 20.  
1 E. 6. c. 2.  
3 Eliz. c. 1.  
39 Eliz. c. 1.  
35 Eliz. c. 1.  
1 Eliz. c. 1.  
Cook J. Rep. de  
re Eccles.

See the Act of  
Parliament for  
their Restituti-  
on.

14 Ed. 3. c. 7.  
(a) lib. 2. c. 26.  
& 27.

14 Ed. 3. c. 7.

*Clericus Rotulorum & quidam alii officarii.* ] Because the Officers of Courts were often Clergy-men, therefore the term *Clericus* was given to Officers, 9 E. 2. c. 8. But this great Officer, called here *Clericus Rotulorum*, and so in the Statute 11 H. 7. c. 725. is, as I think, (and if I err I crave pardon) in later Statutes termed *Magister Rotulorum*; so in the Statutes 14 & 15 H. 8. c. 8. 21 H. 8. c. 13. *Gardein des Rolls de nostre cancellarie*, so sayes the old Instrument, *De forma mittendi extractas ad Scaccarium.*

*Veter. M. Charta part. 2. p. 47. B.*

*Et quidam alii officarii.* ] Though mention is made of other great Officers of the Realm in the Statute 2 R. 2. c. 5. yet more probably other then these, and perhaps some Chief-Officers of the Exchequer who are necessary to be used, but who our Text-Master means I am not able to resolve, nor is it much material; for the greater Persons being ascertained the lesse may passe as of lesse consequence, for that they meet, and by common consent nominate and agree upon the names of certain Gentlemen in every Shire, and them present to the King to prick whom of the presented he please, is the main work, and that the Chancellour sayes according to the now practice they annally do.

*Nominant de quolibet Comitatu tres Milites vel Armigeros.* ] *Tres* for the Number, *Milites vel Armigeros* for their Quality. *Three* is a sacred Number, *Tria sunt omnia* was a saying of old, not onely for that *Three* charactred the Trinity, according to which the Apostle sayes, *There are three that beare record in Heaven, the Father, the Son, and the Spirit, and these three are one*, but because this Number consisting of even and odd contains *σφόντες ἀπείδους*, which are the rise of Plains and referential of the Superficies, as *Plutarch's* words are; and sure when *Plautus* calls a Thief, *Hominem trium literarum*, he intends such a subtlety and reach in him, that he can be even and odd, play the *Jack* alone or in Company; being like *Alexis*, not this nor that, but having *utrinque temperamentum*. As some other Numbers have been noted extraordinary by Antiquity, as *Twelve*, *Seven*, so this *Three*, not onely, *τρία κἀπτα κἀνίστα*, (alluding to the manners of three Nations whose Names began with *Cappa*, the *Cappadocians*, *Cretians* and *Cilicians*; or as others, betokening those three men whose Names began with that Letter, *Cornelius Sylva*, *Corn. Cynna*, and *Corn. Lentulus*;) or not onely *τὰ τρία παρὰ τὸ αὐτῶν*, alluding to a custome of old, for the Judges to allow condemned persons before Execution, being filled with Wine and good Chear, to speak their mindes to three things freely, but also the Notation of three is prefixed to three exoptable things which are called *tria saluberrima*, *To eat so moderately as to rise with a stomach*, *To comply with reasonable labour and not decline it*, *To keep Natures vigour uninjured*, these are the three *Saluberrima*. These are Conceits of the Number *Three*, but not the reason of our Law, that pitching upon the nomination of three, does it probably as there is plentiful choice, submitting to the King, who is absolute herein, if he finde two that are equally worthy and neither of whom he knows how to wave, because he cannot chuse both, to chuse neither, but take the third to the displeasure and disfavour of neither.

1 John 5. 7.

*Lib. de anima procreat. E. Timæo. p. 1017.*

*Lilius Gyrald. in Enigmat. p. 444. Philo lib. De Profugis.*

*Erasm. Adag. Chil. 1. Cent. 6. Adag. 82.*

*Chil. 3. Cent. 3. Adag. 7.*

*Chil. 4. Cent. 4. Adag. 64.*

*Milites vel Armigeros.* ] These are the Names of the Flower of the less Nobility or Gentry, what they Heraldically import I have elsewhere shewed, that which they are here expressed for, is to necessitate the Sheriff to be a man remote from the *Plebs*; no high Shoe or bloudless man as we call men of no extract, but as the Statute of *Lincoln* requires, *He shall have Estate, that is, have sufficient Lands within the Shire to answer the King and his People and not to be in Service*: but as Justices of Peace are to be men of the best Reputation, with other wise and learned in the Lawes, so in other words sayes the Statute of 18 E. 1. c. 2. *The most worthy in the County*; 34 E. 3. c. 1. *The most sufficient Knights, Esquires and Gentlemen of the Law*; 13 R. 2. c. 7. 18. H. 6. c. 11. if such must be Justices of the Peace, then sure much more such should the Sheriff be, who being *praefectus Comitatus*, ought to have nothing of disparagement upon him, which he will have that has not a fortune to bear up the Port. And hence was it that though by 1 E. 2. men were compellable to take Knighthood that had Estates, yet if any were summoned that had not they were discharged; nor were then

In my Defence of Arms and Armory. 9 E. 2. Stat. of Sheriffs. 4 E. 3. c. 9. 5 E. 3. c. 4. 14 E. 3. c. 7. 1 R. 2. c. 11.

a Instit. p. 595.

then any made Knights who were not before made Esquires: therefore *Kingston* combatant with a *French* Lord 13 R. 2. being no Gentleman, was, that he might perform it, made an Esquire but no Knight; so carefull was the State to preserve the Reputation of great Offices, that they designed none to them that were not of Ability to keep up the Port of them, which because men of breeding and Estate can best do, therefore the Text sayes, the Persons nominated to be Sheriffs must be *Milites vel Armigeros*.

*Quos inter ceteros ejusdem Comitatus ipsi opinantur melioris esse dispositionis & fama.*

Herein appears, that as they must be Knights and Gentlemen of the County, that (truely I think) primitively was intended *resident, dwelling, and abiding there*, as the words of the Stat. of 8 H. 6. c. 7. 10 H. 6. c. 2. in the Case of Elections to Parliament are; though I know use interprets it, having Estates in the County, which is a kinde of fortunary residence. So, as they are to be men of Bloud, Birth, and Estate, so, of Fidelity and Intelligence, knowing men in the duty of their Place, and faithfull men according to what they know they ought to do; for this I take to be the sense of *melioris dispositionis & fama* in general, and to this sense incline the words of the Stat. 42 E. 3. c. 4. where men fit to be intrusted with Commissions of Inquiry are called, *The most worthy of the Country as well for the King's profit as the Commons*, and the 23 H. 6. c. 8. calls him that is to be a Sheriff, *a meet and sufficient man*. But the specific sense of *melioris dispositionis & fama* here, I suppose is, Men of sober and regular life, Men of orderly Conversation, that walk worthy of their places and conspicuities; for so *dispositio* is ranked with *ordo* in *Columella*, *Quis enim dubitat nihil esse pulchrius in omni ratione vite dispositione atque ordine*; so, *disposita hominum vita pro bene constituta, & que non fluctuatur* is in *Pliny*. Thus we say a man is well disposed when he does keep a good guard upon himself and lives virtuouly, which *Tully* terms, *disponere studia sua ad honorem*, when he speaks and lives in print, which is, *verba disponere, ut pictores varietatem colorum*, disposition here being not so much the intern principle, as that which appears in Conversation, the fruit of it; and that this is the sense, appears from its adjunct or copulation, *& fama*, which is exegetical of it, for no man can live with credit that does not keep orderly Hours, orderly Company, and orderly Methods in his Station, as a Christian, as a Gentleman, as a Master, as a Neighbour, all which concentrating in a person of worth, makes him as conspicuous for a man, as that house, which has *Art, Use, and Pleasure* in it, is for a Building.

Columell. lib. 5.  
Ep. 101.  
Epist. 45.

Cic. pro Muræna.  
Cic. in Orator.  
35.

Hanc dispositio-  
nem amantatem  
que rectorum late  
longeque precedit.  
Hippodromus.  
Plin. lib. 5. ep. 101.

4 H. 4. c. 5.

*Et ad Officium Vicecomitis Comitatus illius melius dispositos.*] Well affixed, for Gentlemen may be well-fortuned, well-affected, well-reported; and not be *dispositi ad Officium Vicecomitis*, for this Office being an Office of Trust, requires the residence of the Offices thus trusted within the County, that he may be ever at hand *solvere debitum*; and this seems to me to in reason exclude out-lyers, unlesse in Case of necessity, when that is admitted which otherwise is not, as in the Statute of 13 E. 1. c. 38. where the Statute sayes, *It shall not extend to great Assizes, in which it behooveth many times Knights to passe not resident in the County, for the scarcity of Knights*, for in all Cases of necessity Exemptions are void, 52 H. 3. c. 14. Then it is an Office where-

Momenti quadam grata & ingrata sunt,  
Senec. De Beneficiis. c. 12.  
Lib. 3. Instit. Orat. 8.

Καλὰ τὴ ἀλλ' ἢ πᾶσι χροῖα ἔσ'  
αἰεὶ. De Carminibus Ho-  
meri.

Cic. De petit. Consul. 14.  
(a) Lib. 18.

Cic. 1. De Invent. 13.

in use of discretion and reason will be frequent, and so it excludes weak and in solid men, for since experience tells us, that this Office calls for wisdom of minde, when to doe, and what, and what not; that being sometime true here, which *Quintilian* in other Cases said, *Est utilitatis & in tempore quaestio expedit, sed non nunc*. This, I say, being the Case of Sheriffs in their Office, men that have not their wits about them, and cannot *disponere unicuique munus suum*, as *Tully's* phrase is, will be very unfit for it; for it properliest becometh one that is *dispositus, provisusque rerum Civilium peritus*, as (a) *Tacitus* phrases it: for the Sheriff being the Minister of the Law must answer in his disposition the notion of disposition in Rhetorick, *Rerum inventarum in ordine distributione*, and thus when he does he is *melius*, that is *legalius & potius dispositus*, which in my apprehension excludes letter-lesse



or unbred men; yea, in as much as the Sheriffwick is an office of action, sickly, decrepit, or other infirm men, are not *Melius dispositi*, which in the Case of Jury men is expressed, in the Stat. 13 E. 3. c. 38. For the Act of God infirming them, either the office must be done by deputation; or not be done at all: for, personally to perform it, they that cannot ride, or move, are not to be expected, so that to be *Melius dispositus ad officium Vicecomitis*, seems to me to intend a man able and willing, to know and do the duty in the latitude of it; which, onely men of wisdom, experience, and activity, personally can execute: But, because that of *Clemangis* is in some degree applicable here, *Non perfectis vivitur hominibus, sed cum iis in quibus preclare agitur si sint simulacra virtutis*; and the Law allows the supplement of Under-Sheriffs, who are (I will not say *Melius*;) but *dispositi ad officium*: having oftentimes to them, committed by the High-Sheriff, the whole, or part of the exercising and executing of the office of the High-Sheriff; therefore less punctuality in these particulars is necessary: For, the Law knowing what dispositions under-Sheriffs are of, has required two Oaths of them before their Execution of their office, see the 27 Eliz. c. 12. which if they shall make conscience of, they shall do well.

*Ex quibus Rex unum tantum eligit, quem per literas suas patentes constituit Vicecomitem comitatus de quo eligitur pro anno tunc sequente.*

The Choice of the officer is the Kings, because the office is the Kings; the People and County the Kings; the Law which he is to Execute the Kings; And he calling out the single one, makes him *ipso facto* ponderous *melius dispositus ad officium*, and *melioris dispositionis & fama*; then, to be below the endowments it deserves. Supposing then the Person Pricked, or Elected, out of the three presented, the next and great Expression of the Kings pleasure, is, by the signing of Letter-Patents, to which are affixed the Broad-Seal, for his Authorization to be Sheriff of the Particular County, for that year then next following: which Commission, or Letter-Patents, sealed by the Broad-Seal, or Great-Seal in the custody of the Lord Chancellour, compleats his Authority as Sheriff. For, no Authority in the Kings Dominions is assumeable by any subject, but that which either is warranted by Common, or Statute Law, or prescription, or by the Broad-Seal; which is so effectually an Authority, that Honours, Offices, Profits, Pardons, all the great things of the Nation pass by it; which was the reason that *Edward the First* caused both the *Charters*, of *Magna Charta*, and *Charta de Foresta*, to be sent, under the Great Seale, to all Persons, and Places of Note, there safe to be kept: The Great Seale of the King importing his High Good-Will and Pleasure, to have those darling Laws inviolable; yea, for that the Broad-Seal is so lively a Print of Sovereign Majesty, the Statute of 28 E. 1. c. 6. sayes, *There shall no Writ from henceforth, that toucheth the Common Law, go forth under any of the Pettit Seales, but under the Broad-Seal*: and the Statute of 25 E. 3. makes the counterfeiting of it Treason. Good reason then has the Sheriff to see that he have the Great-Seal for his Authority; which before he hath the Text suggests.

*Officium Cancellarii est Regis sigillum custodire: Fleta lib. 2. c. 29.*

*Sigillum tantam probet Auctoritatem literis quantum vult is qui auctoritatem concedere potest, & proinde si persona sit publica, publica erit eius sigilli consignatio. Tholosan. lib. 48. cap. 14. Sect. 6.*

Stat. 25 Ed. 1. c. 1.

*Sed ipse antequam literas illas recipiat, Jurabit super Sancta Dei Evangelia inter alia, &c.*

This shews the wisdom of our Princes, that before they will Impower any Subject, though never so great and good, by their great Seale to do any thing, they will bring him under an Oath, to do his duty faithfully and conscionably, according to their Royal Intendment, and the Law to that purpose: Now this security antecedent to this possession, the Text terms *Jurabit super Sancta Dei Evangelia*;] which words denote both the Matter of it, Oath; and the Method and way of its Administration, *super Sancta Dei Evangelia*; Oathes are the sacred bonds that determine all Controversie: Not onely God himself is said to swear by himself, and to swear to his People his love to, and care of them: but, the Saints of God, in Holy Writ, confirmed, and assured any truth by oath, from which the Nations learned the Religion of oaths; That as the *Jews* did swear by Heaven and Earth, and by the Temple, and the Gold, by

*Plowden, Fol. 20. Dyer, Fol. 50. 132. 161. B. Hanes Case, 2 Rep. Fol. 16. Pages Case, 5 Rep. p. 51. B.*

*5 Matth. v. 33, 34. 35, 36, 37.*

*Jerusalem*, and by their own heads, which our Lord increpates them for prophana-  
ting; and after, *per caput Regis, & per Legem, sic & sic*: so the Heathens had  
their Rites and Ceremonies in swearing, which obfuscated the Majesty of that part of

Syntagm. Juris universi. lib. 50. *per*  
101um.  
Et lib. 6. c. 14. & multis aliis locis.

Lib. 1. De Tribus Sæcis Judæorum. Tit.  
De Form. Jurandi.

Religion. *Tholosanus* has collected the several Ceremonies of  
Nations, and the security they took to reside in Oaths; and because  
Oaths principally and properly are made to God, the Scripture ac-  
counts Oaths a part of Holy Worship, and accordingly the  
later *Jews* did swear by putting their hands upon the Books of the  
Law, and this Oath onely they held valid, saith *Drusus*, adding, *He*  
*knows not whether from this example comes the Christians custome of*

*swearing on the Gospels*; which the Christian World has embraced ever since Christi-  
anity: (in the Gospels being contained the life, death, and preaching of that *Jesus*  
who is our Saviour and shall be our Judge, and to whom God the Father has com-  
mitted all Judgement of whatsoever is done in the flesh, whether it be good or evil.)  
Now this Book so serious, so sacred, being that upon which the Law of *England* ap-  
points all men in *England* Witnesses and Officers to swear, adds to the *Emphasis*  
of the Oath, and brings it under a closer tye of Religion then otherwise Oaths would  
be; for though *Socrates* swore by a Dog and a Goose, and others had their *Paduaziv-*  
*se & opus*, not onely their Oaths that exclude every thought of God from them being  
*Rhodomontado'd* to express their internal putidness, yet Christians should either have  
the Grace, not at all to swear, which is the Letter of *Christ's* Charge, or when they do  
swear before the Magistrate, which is their duty to do being required thereto, to swear  
in Judgement, righteousness and truth; that is, *secundum* as well as *super Sancta Dei*  
*Evangelia*.

Erasm. Adag.  
Chil. 2. Cent. 9.  
Adag. 31.  
Math. 6.

*Quod bene, fideliter, indifferenter exercebit & faciet Officium suum toto anno, illo neque*  
*aliquid recipiet colore aut causa Officii sui ab aliquo alio quam à Rege.*

Vet. M. Charta.  
part. 2. p. 166.  
Cook on cap. 35.  
M. Charta. p. 74.  
Deus plus delecta-  
tur Adverbis  
quam Verbis.

This Clause contains the summe of his Oath, the form of which according to the  
Common-Law is set down in the Books, and the Confirmation of it in this double; That  
he shall do his duty in his Office, *benè* to God, *bonum benè*, perform a good office goodly-  
ly, that is, piously; *fideliter* to the King whose Officer he is, *indifferenter* to King  
and people, high and low, rich and poor, according to the Mandats of the Law and the  
duty of Charity: *Benè* as a Christian, *Fideliter* as a Servant, *Indifferenter* as an hon-  
est man; who does what Justice enjoins, *unicuique tribuere*, this is to be *melioris*  
*dispositionis & fame* then those are that care not what they are or doe, so they may  
live brave and dye rich: but this being a back-door to Integrity, the Common-Law  
provided against, by that appointment of the Sheriff to take nothing for the exercise of  
his Office, but of the King, the Master of it whose it is, and whose Servant and Bayliff  
the Sheriff is, see the Statute 3 E. 1. c. 26. And when the Statute of 23 H. 6. c. 10 confirms  
the 3 E. 1. c. 26, it adds onely some small fees that the Sheriff might take; *But after*  
*that this Rule of the Common-Law was altered, and that the Sheriff, Coroner, Goaler,*  
*and other the King's Ministers, might in some Case take of the Subject; it is not credi-*  
*ble what Extortions and Oppressions have thereupon ensued, so dangerous a thing it is to*  
*shake or alter any of the Rules or fundamental Points of the Common-Law, which in truth*  
*are the main Pillars and Supporters of the Fabrique of the Common-wealth, they are the*  
words of Sir *Edward Cook*; who, as very an Oracle as he was, did not decline this  
very Authority of our Chancellour in both those parts of his learned Comment quoted  
in the Margent, but gives him a most noble testimony as in the Notes on the subsequent  
Chapter shall appear.

Loco praticato  
p. 209. on Stat.  
Westm. 1.

CHAP. XXV.

*Quotiescunque contententes in curiis Regis Angliæ, ad exitum placiti super materia facti devenerint, &c.*

THIS Chapter treats of Juries, which Sir Edward Cook terms *The most exact and equal means of producing truth of any in the World*; and because, *what our Chancellour in this and the following Chapters delivers of them, is said by that Sage, to deserve writing in Letters of Gold*, Therefore will I begg of God the Grace, and of men the pardon to endeavour some dilucidation of it analogicall to it.

In his Preface to the 3 Reports.

*Contententes.* ] Plaintiffs and Defendants, *Actores & Rei*, are in all Lawes said to contend, not *Malitia, sed Justitia causa*, not so much from anger and choice as necessity. This phrase *Contententes* is used in all Actions of Vehemence, Rivalry and Competition, and it imports not only a preoccupation of that we are carryed towards by the velocity of love and rage, which gives wings, and speeds seizure, in which sense our Lord seems to intend those words, *the Kingdom of Heaven suffers violence, and the violent take it by force*, (saith putting men, while on earth, in a fiducial or second real possession of it) but also a prostration and annihilation of that we strive against, *contendere quasi contundere*, not onely to alarm and storm, but to raze the Walls and Foundations of that we assault, this is the nature of *contendere*, which, when it is the fruit of uncharitableness, is to be deprecated and avoided; so did Abraham with Lot, *Let there be no contention between me and thee, for we are Brethren*, for thus it is a fruit of the flesh, displeasing to God and exclusive of Heaven: thus *contententes* Christians ought not to be, but as it is the tryal of truth before the Minister of God the publick Magistrate, *in curiis Regis Angliæ*, so it is lawfull and necessary. And therefore the King's Courts are allways open for Administration of justice to all persons, and this the Law has wisely done to expresse its care of Christian Charity and humane Justice: Hence *Curia* (*Varro* derives) from *cura*, and *Festus* seconds him, *Curia est locus ubi publicas curas agebant*; whence *Agnus curio* in *Plantus*, a *carriæ-Lamb*, *quasi confectus curis*, saith *Beaman*: this I note to shew how much Magistracy deserves of subjection, that it thus cares and cares for remedy of evils, and appoints Sanctuaries against Violence; and does that not partially and by piece-meales, but fully and to all purposes, *ut nullatenus esset defectus Justitiæ*, for all the chief Courts are contemporary; *So that no man can say this is elder and that is later of them*, saith Sir Ed. Cook.

Constitutione facta & Status causa compositio procedendum est ad probationes. Tholoff. lib. 43. c. 6. Matth. 11. 12.

Gen. 13. 8. Gal. 5. 20.

Propter curam locum quoque quo quisque domum Senator confectur curiam appellat. lib. 2. De vita Pop. Rom. In Aul.

Preface to the 3 Reports.

*Ad exitum placiti super materia facti devenerint.* ] This *Exitus placiti* is the same with the Civilians *causa status compositio*, and it is previous, and *in potentia proxima* to tryal. Concerning it, see the Notes on the twentieth Chapter, where the *materia facti* is to be tryed by the Jury of twelve men, who are to try the fact, as the Judges, I humbly conceive, are the *questio Juris*, either upon demurrer, special Verdict, or Exceptions, for *cuilibet in sua arte perito est credendum*.

Cook on Littleton. p. 125.

Now as the Justices are always ready in order to hear causes, so do they of course send out Writs to empannel Juries to serve, for the most part, on those causes, and that *concord*, so are the words, *Concord Justitiarum per breve Regis scribunt Vicecomiti.* ] This is according to the rule of the Common-Law to which our Text relates, and which the later Statutes illustrate and make addition to; so sayes the Statute 35 H. 8. c. 6. And therefore the Text sayes, the Writs preparatory shall issue forth *concord*, because the Law allows time enough to prepare, and abhors surprize; the design of the Kings Courts being to promote Justice that it may run down like a mighty stream; therefore Copies of Pannels are to be allowed the parties six dayes before the Sessions of the Justices, 42 E. 3. c. 11. 6 H. 6. c. 2.

Cook on Littleton. f. 234.

*Justitiarum.* ] Of these I have written before, and shall doe in the Notes on c. 31. yet I crave leave to write, that within this word are contained not onely the Justices

O<sup>n</sup> Littleton, p.  
263.

of the Courts at *Westminster*, but also Justices of Assize, so is my authority from Sir *Edward Cook*.

*Per breve Regis scribunt Vice-Comiti.*] The *Venire Facias* issued forth according to the Common-Law, and the Statute 35 H. 8. c. 6. is called *Scriptum Justitiariorum*, because it issues forth of the Office of the Court which they preside in: This instrument of Authorization to the Sheriff to summon a Jury, is termed *Breve*, as much as

Tholofs. Syntagm Juris. lib. 22. c. 3.  
Sect. 29.

U<sup>t</sup> in articulo haberet Breves & numerum  
& tempora militarium, Lamprid. in A-  
lexand.

(a) Flavius Vopiscus in Aureliano,  
Badrus in Pandect. p. 559. Edit. Basil.  
A. 1534.

(b) Tholofs. lib. 17. c. 12. Sect. 34.

(c) Breve quidem cum sit formatum ad si-  
militudinem Regula Juris quia breviter &  
paucis verbis intentionem preferentis exponit  
& explanat. Bracton lib. 3. fol. 419.

Fleta. lib. 2. c. 12.  
I Institut. p. 73.

*Breviarium*, not only in the Common, but even in the Civill Laws, *Rationem libri seu numerum & debitorum breviaria uenabantur*; Thus *Lampridius* tells us *Alexander knew all his souldiers so well, that he had the Breves, or Notes nominally of them all*; so (a) *Aurelianus* is said to have *Breve nominum*; Hence comes the *Breves* in Ecclesiastical (b) Writers, especially the late Papal ones: Many *Breves* and *Bulls* from *Rome* we have had mentioned in Acts of Parliament, and Historians; Thus it grew in use with Lawyers very antiently here, to call the Summaries of the Cause *Briefs*, or *Breves*, and in English *Writs*, because written; so *Bracton*, *Fleta*, and Sir *Edward Cook* (c) discourse at large, of both Original, Judicial, Reall, Personal, Mixed; and other Writs, and especially *Fitz Herbert* in his *Natura Brevium*, and the Register, all which point to the knowledge of Writs, as a great piece of Law Learning.

*Quod ipse venire faciet coram eisdem Justitiariis ad certum diem per eos limitatum duodecem probos & legales homines de vicineto, ubi illud factum supponitur.*

Cook Institut. 1 P.  
pag 158.

*Venire Faciet.*] This is to be understood, not compulsive, but declarative: the Sheriff is not by the *posse comitatus* raised on them to compell them; but by summons to notify to them their return, and to shew them the Pannel; 42 E. 3. c. 11. 6 H. 6. c. 2. and if any Juror be returned that is not summoned, the Sheriff is finable: 35 H. 8. c. 6. 27 Eliz. c. 6. and, in case the summoned have no just excuse which the Law allows, they loose issues by non-appearance; 5 Eliz. c. 26. but the Act of God or other just detinue shall excuse them, provided it be made out to, and allowed by the Court.

Idem loco practica-  
ro.

*Duodecem probos & legales homines, &c.*] See my Notes on the twentieth Chapter, and concerning the number *Twelve*, see *Lorinus* in 1 Actor. v. 13. *Salmeron* 1 Part, *Tract.* 28. *Tom. 4 p. 251, 252.* *Tostatus* in *Matth. c. 10. quast. 24.* *Brentius Homil.* in 6. c. *Lucea*, *Spelman Gloss* p. 399. where the number 12 is notably instanced in, as esteemable in all Laws, especially when together, with the numbers there is weight in them; For, that is the Import of *probos & legales homines.*] as much as *Sacramentales*, men that know, and make conscience of their Oath; *Liberi & legales*, men that are engaged to no Lord, so as not to use the freedom of their reason, and integrity; nor are lureable by rewards, or pliable through need: but, such as may dispend 40. Shillings by the year, at least of Estate of *Fret-hold*, out of antient demesne; so sayes the Statute 35 H. 8. c. 6. Men that are *de vicineto*, next Neighbours, most sufficient, and least suspicious; 28 E. 1. c. 9 but all the Learning of those being most elaborately discoursed upon by Sir *Edward Cook*, I forbear writing further here of it.

*Qui neutram partium sic placitantium ulla affinitate attingunt.*

Sir Ed. Cook.  
Sect. 134. in-Lit-  
tleton.

Cum dua cognationes inter se divise per  
nuptias copulantur & altera ad alterius fi-  
les accedit, inde dicitur Affinis, J Cii.

Though there be many just exceptions against Jury-men, when summoned, which not onely daily practise, but good Authours justifie; yet the most of them are omitted particularizing here, and onely this of *affinity* is alledged, to be a barr to the Sheriffs summons of any who is so related to either party; For, *affinity* being contracted by Marriage, and Women being potent Orators with their Husbands, who naturally and wisely indulge their *wives*; the Common Law wisely excludes these alliances, lest their relation should preponderate their love to justice, and they forget to do right, when so to do, is to wrong (according to the vulgar notion of wrong) their Kinsmen:

And

And if this were part of the cause (as I believe it was) of the Statute 8 R. 2. c. 2. that no man of Law should ride Judge of Assize, or Goal-delivery in his own Country or where he dwells, confirmed by 13 H. 4. c. 2. and by the 33 H. 8. c. 24. where the words are, *Whereby some jealousy* (speaking of some that contrary to the 8 R. 2. had obtained to be Justices in their own Counties) *of their affection and favour towards their Kinsmen, Alliance, and Friends within the said County or Counties where they were born or inhabiting, hath been conceived and had against them by the King's most loving Subjects of the same Countries and Counties.* Therefore the Enaction is in the negative, and because Justice ought not to be deferred or denied to any man, nor ought any man to be condemned but by the Laws full tryal 9 H. 3. c. 29. that is, by good and true impartial Juries, consisting of men neither indigent, nor byassed; for so the Common-Law intends, against which no Judge is to goe, 2 E. 3. c. 8. 5 E. 3. c. 9. good cause is there that Juries (without which tryals and judgements cannot legally in ordinary be) should be compact of such as may verdict Justice, which they will readilyest doe, when they are uninterested as well in point of Alliance as Profit.

Note this.

4 Infit. p. 68.

*Ad recognoscendum super Sacramenta.*] That Juries are to be sworn before they are empannelled I have heretofore wrote of, what they are to doe in these their Gears the word *recognoscendum* makes forth, and that is taken in Authours for *affirmare, considerare*, to heed and observe so, as to give a clear and sad judgement of the nature of that they recognize; so *Tully, Literas tuas libenter legi recognovi enim tuam pristinam virtutem*, thence *dona, amorem, vetera recognoscere* is in good Authours frequent to expresse the lively Characters and great Impression of any thing in the minde, and the value of it. *Sipontinus* by *recognoscere* understands, *Opus compositum emendandi, aut limandi, aut reprehendendi causa revidere*, to review, peruse, and ponder before we passe it, as *Pliny* sayes *He did four times at least every thing he wrote*, and that at some Intervals, and to consider it as if it were more concerned *pro Regina justitia & veritate*, then *pro Domina Phantasia Regina*, so to look narrowly into it, as that we spie every tittle and cranny of it; thus *Suetonius* uses the word of *Caligula. Equites Romanos severe curisque nec sine moderatione recognovit*: the sense of our Text then is, that the Jury are so to follow the cause with their attention through the whole manage of the Evidence, and after when they are from the Barr by themselves, so to revive and make use of their Memories, Notes, and Observances, that they coming to the Barr, and being demanded by the Court whether they are all agreed, shall plenaryly affirm their Verdict and answeare chearfully by their Foreman what the common Conclusion of them all is. And this the Law calls *Verdictum* from the presumption it has that those that are Judges of it do therein consider the Allegations, Defences, and Proofs; and after poising them give the down-right to that side that has truth on it, whether Plaintiff or Defendant, which is the Summe of our Text.

Budæus in Pandect.

Epist. ad Attic. lib. 3.  
Tholoff. Syntag. Juris lib. 3. c. 3. ff. 3.

Decretum recognoscere. Cic. pro Palbo 3.  
Talamo adempto aquo quibus aut probris aliquid aut ignominia inest. c. 16.

*Quo adveniente die, Vicecomes returnabit breve pradiatum coram eisdem Justitiariis, una cum Pannello nominum eorundem quos ipse ad hoc summonuit.*

This is according to the Common Law and the prementioned Statutes upon it seconded by the subsequent ones, 35 H. 8. c. 6. and others; and the tenor of the clause is exegetical of the Lawes punctuality. Injury is done which the Law must right, a Complaint or Declaration is entred in the Court, pleaded to, Issue joined, and to compleat it a Writ is directed to the Sheriff to summon a Jury of twelve able and honest men to try the matter of fact; the Sheriff observes it, considers, and frames fit men into a Pannell, summons them to the certain Service upon the certain day of the return of the Writ; the Writ with the Pannell he returns to the Court, *iisdem Justitiariis*, from whom he had his Writ to summon, and this brings the cause to tryal by twelve, or the failing Jurors to lose their Issues: so exact is the Law that it leavs nothing uncertain, but requires an account of all its Intrusts, *Returnabit coram iisdem Justitiariis breve pradiatum.*

*Una cum Pannello.*] This is a word of art applyed to that piece of Parchment which is Table-wise, in figure oblong and narrow; being the diminutive of a Pane, which is large

Cook. 1. *Instit.*  
on Litt. p. 153. B.

large and square; so Pannel is the name of that habiliment which Horsemen use, the Pannel of a Saddle, and Pannells of Waindscot, and Panes of Glasse are frequently understood by us; probably this name was given to the Parchment from the Tabular figure of it, it being frequent of old to write in Tables or Panes and Pannells of Stone or Wood before Parchment or Paper came in use, yea here in *England* it was usual heretofore, and yet in some places is, to write in Panes or Tables of Slaze. This is the rise of the word, which, as it relates to Jurors, may admit of an Etymology, which though it be not genuine, yet may be harmonious to the sense of the Text. Pannel *quasi Pan*-all, a word parted between Greek and English; borrowing from *Pan* the God of Rusticks its more frequent use (for Country-yeomen ride most upon Pannells,) and from *all*, as the twelve in the Jury make but one body with one heart to try, and one tongue to deliver judgement on the fact in Issue, that which (according to this) is tslegal import, *sed hac obiter & leniter*.

Sir Ed. Cook  
sett 14. in p. 58.  
Littleron.

*Quos ad hoc summonuit.* ] This whole Subject of Juries is so learnedly written on by the prementioned Oracle, that it's arrogance almost to endeavour Addition, as 'twill be to little purpose to offer the learned Reader a Repetition; that therefore which I enlarge on is that which by him is omitted, the Grammatical Notation of the word, whence the legal follows. *Summoneo* is a law word, not of the sense that *monco* or

(a) 2 *Theff.* 3. 15.

(b) *Heb.* 8. 5.

*Cum in minimo Imperium contemnitur ex  
omni parte violatur. Regul.*

*Legitimam summonitionem recipere in  
propria persona ubi unque inventus fuerit  
in Comitatu, in quo fuerat rei petita,  
qui quidem si non inventiatur, sufficit, si  
ad domicilium fiat, dum tamen alicui de  
familia manifesto fuerit relata. Bracton.  
lib. 5. p. 333.*

*admonco* is, for that is the Act of ones equall or friend, and a branch of charity, which the Apostle (a) directs to, and which (b) *Moses* observing grew the man he was by it, as it declared the regularity of his soul, which knew obedience became it, not this sense has *summonitio* barely, but an aggravated one, *summenitus quasi submonitus* (*m* being doubled for Euphony and *b* rejected) admonished under the pains and detriments that the Contempt of the King's Writs and Courts can and will inflict, which though it be not high, yet is enough to punish the purse, and declare also the displeasure of Authority, even as much as those words, *As you will answer the contrary at your Peril*: which to avoid as the summons is to be punctual, and that if need be upon Oath, so the Issues lost are certain to be levved, except the Court do alleviate by admitting the Defaulters excuse, as by the Law they may.

*Quos si venerint utraque pars recusare poterit,*

This is done in pure favour to Justice; for, though the Sheriff be a sworne officer, and ought not to return men partially called, but to take them promiscuously, where they topically are (admitting there be fitting men in the hundred to serve, as every where in *England* diffused there is) yet, lest the Sheriff should by a bribe, which ex-oculates Justice, or for favour or envy pack a Jury, the Law allows exceptions, and admits a scrutiny of the Pannell, the manner of which I refer to the grave Judge, whom I often herein quote, most highly applauding the wisdom and Justice of the Law, thus to obviate a mischief, so out of measure mischievous, as but for this there would be in all causes, and against all persons. For, were the Sheriff left to a latitude, and what return he makes must serve, though never so tortious, partial, and impotent, that partiality would be found in Juries that has been found every where, where sidings and packings are to promote parties, and suppress Justice, which, because the Law hates, therefore it allows these checks to all exorbitances, which, had that peevish *Melville* in the Presbytery of *St. Andrews* in *Scotland* considered, as reasonably he ought, he would not have endeavoured boysterously to carry the Choice of the Minister to the Church of *Lockhart*, when he had but six only of the Fraternity with him, against Mr. *Bashanans* side, with which there was of the same body nineteen or twenty, blustering against the Major number (which every where carries it) with that impudence, *suffragia sunt ponderanda non numeranda*; the pride and injustice of which partiality is so much the more detestable, as it pretended better then it practised. To prevent which, the Text sayes, *Utraque pars recusare poterit*, and that alleadging their reason, *Dicens quod Vicecomes pannellum illud favorabiliter fecit pro parte altera: viz, de personis minus in-*  
*differentibus*

Sir Ed. Cook. ]  
sett. 214. on Litt.

Spotswood *Hist.*  
*Scotland* p. 336.

*differentibus*; concerning this see Sir Edward Cook on Littleton, p. 156, 157, &c. and to remedy this, by a fit return, was the Statute of 27 Eliz. c. 6. made; and that Juries excepted against, might not occasion the Causes non Trial, the 4 and 5 Philip and Mary, c. 7. grants a *Tales cum Circumstantibus*, the great end of the Law being to promote Justice; all proper means thereunto is promoted by the Law, which this being, the Statute was very rightly made, and very worthily continued.

Sec. 234.

*Qua exceptio si comperta fuerit vera per Sacramentum duorum hominum de eodem pannelo, ad hoc per Justitiaris electorum, mox illud pannelum quassabitur.*

This is the Common Law, in case of exception, which yet is appointed to be approved just, by that which is by Gods declaration an Oath, *the diremption of all controversie*: and by the Oath of two; *That in the mouth of two or three Witnesses every word might be established*: Now this the Law does, as well to prevent levity and spleen against the Sheriff, as to repress his partiality and injustice to the cause; since, as if it be an exception on good grounds, it must stand; so if it be not, it must not be allowed for such: therefore the exception must be *exceptio*, not *prolata*, but *comperta*; not alledged, but made good by matter found after enquiry: *comperta vera*, that's exception indeed, when tis not onely words, but truth; not surmise, or slander, but reality made out by discovery of the motives and methods of it: and *vera per sacramentum*; not by the belief or perswasion, but the Oath and veracity; not of one, or all, but of two: nor of any two, but *duorum de eodem pannelo ad hoc per Justitiaris electorum*; the best and most accomplished of the Pannel, whom the Judges suppose least privy, or plyable to partiality, these are to consider the exception: and, if upon the oath they have taken, they judge the exception just and true, *Mox pannelum illud quassabitur*; not only shall the Pannel be shaken, and under a harras and suspicion, but shall be totally nulled and evacuated. *Quashed quasi Ashed*, reduced to its first nothing, void, and of no effect.

6 Heb. 16.  
17 Deut. 6.

*Et Justitiarii tunc scribent Coronatoribus quod ipsi novum faciant Pannelum.*

The Sheriff having forfeited his credit once, the Law trusts him no further with the return of the new Pannel, but a Writ issues forth to the Coroner; Coroners were anciently officers of great credit, but time discrediting them, their rate was fain to be raised by the Statute 3 E. 1. c. 10. which sayes, *It is provided, that through all Shires sufficient men shall be chosen to be Coroners of the most wise and discreet Knights, which know, will, and may best attend upon such offices.* The office of a Coroner, the Statute 4 E. 1. exemplifies, and *Fleta*, lib. 2. c. 18. but more particularly the Statutes of 28 E. 3. c. 6. 3 H. 7. c. 1. 1 & 2 Philip & Mary c. 13. 1 H. 8. c. 7. 52 H. 3. 24. 28 E. 1. c. 3. 33 H. 8. c. 12. 23 H. 6. c. 11. 2 H. 5. c. 8. And the dignity of this officer appears in that he is the most ancient officer of the Crown, and was wont to be of Knights, and the best men of the County; yea, and the greatest Judge of the Common Law Courts, The Chiefe Justice of the Kings Bench is the chiefe Coroner of England: whereas then tis said, *scribent Coronatoribus*. Tis intended of the Coroners of the Shire, or the Hundred, that they being officers as well as Sheriffs, and under-Sheriffs, 23 H. 6. c. 11. and being men of Estate in the shire, according to the Statute 14 E. 3. c. 8. 1. shall make a just and indifferent return of persons, *omni exceptione majores*, and that is no *novum facere pannelum*; *id est* return men to serve in it, that fear God, and love truth, and that will do nothing for favour or affection against them: which, if they shall not do, as fall out it may, that corruption may go thorough the warp and wooff (as men proverbially say) of these officers ministerial, *etiam & illud quassabitur*.

De Officio Coronatoris.

Apud nos Corona officialis pervetusus est ad tuendam pacem & dignitatem regiam, universis praest Capitalis Justitarius Baci Regis qui & videtur summus Anglia Coronator habuit est. Spelman in Glois p. 192.

Regist. fol. 177.

*Et tunc Justitiarii eligent duos de clericis curiae illius vel alios de eodem comitatu, qui in praesentia curiae per eorum sacramentum facient indifferens pannelum.*

This is the thitd remedy of partiality in return of Juries, the Justices may for default

fault of the Sheriff and Coroner chose two Clerks of the Court; now Clerks and *Clerici* have divers acceptations, generally all men literate were thus called, and because Church-men were mostly of old such officers, therefore all men that are Bookish are said to be Clerkly. Thus in the Stat. 2 *Westm.* those there called *Clerici* were of old *Magistri Cancellarii*, and saith Sir *Edward Cook*, were associated to the Lord Chancellor: (a) *Fleta* calls *Clerici, honesti & circumspetti*, and in Stat. 13 & 14 *H. 8. c. 8.* mention is made of the six Clerks of the Chancery, who, because they were Clergy-men (I suppose) and were not marriable according to the Canons, are by that Statute allowed Marriage; so in the 9 *E. 2. c. 8.* the Clerks of the Exchequer are allowed non-residence from their Churches (for Clergy-men they were) and the reason is given by the Statute, *And such things as be thought necessary for the King and the Common-wealth, ought not to be said to be prejudicial to the liberty of the Church.*

Cap. 24. p. 407.  
2 Infit.  
(a) Lib. 2. c. 13.

*Clerici olim fuerunt legales & brevia disti-  
carnunt, scribebant, signabant, M. Patil.  
p. 207. Addit. p. 190.*

Gloss. ad M. Patil. in verbo *Clerici.*

*Solus omnino est qui sine amico est.*

*Mixes ὁ Χεῖρος ἀδελφὸς μαχί.*  
*Euripides in Heracl.*

(a) *Mark. 6. 7.*

Stat. 2 West-  
min. c. 47 p. 479.  
2 Infit.

*Clerici* then in the utmost of the Notion is not meant here, but only for Attendants in the Court, who are honest knowing men and will do their duty being sworn and called thereunto. Thus mention is made of Clerks in the Statutes 33 *H. 8. c. 24.* 27 *H. 8. c. 11.* 2 *H. 4. c. 10.* 34 & 35 *H. 8. c. 14.* and many other Statutes, and these notwithstanding the Law couples; not to one of them does it commit the Reformation of antecedent errors in Pannells, but to two Clerks the Law commits it, *Two*, because *Two are better than one*, less probable to be byassed and corrupted; *va feli* is true even in this sense, for as the Comedian sayes, *That which one hand does is seldom effectually done*; our Lord therefore sent out his (a) Apostles by *Two's*, that they should comfort and assist one another in the work of their Ministry: as Natures perfection is made up of two, so the Lawes execution (which is the life of it) in this case of Juries, is accomplished *per duos Clericos*, and therefore *Here is provision made for the continual, due, and speedy execution of the Law*, saith Sir *Edward Cook*. This being done and the Pannel not being exceptable against the Law, that abhors corruption, avoids also delay and progression *in infinitum*, thereupon a proceeding is to tryal, and the impannelled come into Court.

*Sed cum venerint sic impanellati, &c.* Still the liberty of exception against the Jury is allowed, and that not vaguely as expression of humour or design of protraction may aim at: for the Law being *ars equi & boni* hates and declines that, but as the exception is rationally grounded, and as it has a more then ordinary right to carry it to the centre of credit and approbation with the Court.

*Dicendo quod impanellatus ille est consanguineus.*] This is to be understood of kin by the whole blood, *ex utroque Parente*, and that this nearness may have great influence on men is clear in the Examples of *Melampus* to *Byas*, *Xerxes* to *Masistes*, of *Scipio Numantinus* to *Fabius*, of the two Brothers, one in *Pompey's* Army, the other in *Cynna's*, which *Volateran* mentions, of the two Brothers banished whom *Fulgosus* writes of, of *Tyberius* to *Drusus*, *Commodus* to his sister, *Leopold Arch-Duke of Austria* to his Brother *Frederick the Fair*, with hundred of others, but above all there are three that I read of most remarkable, The first, *Isazates* King of the *Adiabenes*, who, though he had four and twenty sons, yet left his Kingdom when he dyed to his onely Brother *Monobazes*; The second is of *Lucullus* the Roman Senator, who though much elder then his Brother *Marinus* in love to him would not be a Magistrate, till his Brother came to years to be a Magistrate also; The third is of *Antony Corarius* and *Gabriel Condemarinus Venetians*, and Nephews to *Gregory the Twelfth*, who were so endeared one to the other, that they became Monks in one House, *Anthony* being called first by his Father to *Rome* would not go without his Brother *Gabriel*, nor would he accept the Bishoprick of *Bononia*, till his Brother were Bishop of *Siena*, nor would he be Cardinalled, till his Brother had the Cap also, both of them were Legates *à latere* in the Council of *Constance*, at last *Gabriel* was called to the Popedom by the name of *Eugenius the Fourth*, when *Anthony* saw his Brother had given him the slip, he returned to his Cloister at *Venice* for grief: these and the like Instances of the vehemence of Consanguinity, give the Law occasion to make consanguinity an exception to a Juryman.

*Zuniger in The-  
atro v humana,  
p. 3342.  
Lib. 14. c. 2.  
Anthrop.  
Fulgosus lib. 5.  
c. 3.*

*Fulgosus lib. 5.  
c. 3.  
Propter quam rem  
absentis ambos  
Pop. Romanus a-  
diles creavit.  
Idem eodem loco.*

*Garimbertus lib.  
3. De vitis Pon-  
tife.*



*Vel affinis parti alteri.* ] This is Kindred by Marriage, of this I have written heretofore, see *Tholosanus* and the many Authours in him, and the Law is exclusive of this because it is such a nearness, that, *Those that are next of Kinn cannot by the Civil Lawes be compelled to witnesse against one.*

Synagm. Juris univetsi, lib. 9. c. 9.

Non cogi possunt contra proximos & affines qui proximi sunt testari. lib. 48. c. 13. ff. 27.

*Vel amicitia quacunque tali sibi conjunctus.* ] That is, not friendly at large, but intimate and strict, for *nescit nomen amicitie qui metuit*, he that has a friend of a Jury does not mistrust his inclination to, and endeavour for him and his cause. Indeed *Friendship* is the potent Magnetique that charms all, *Agellius* writes a whole Chapter of what a man ought to do for his friend, and *Tully* penned a whole Book *De Amicitia*, and *Seneca*, *Plutarch*, *Plato*, and all Moralists reckon *Friendship Inter suprema vite munera*. *Friendship* the onely riches and happines of life is that which ought to be admired above all, for it makes the haver of it more rich then *Phœnix* the Thief that did by it so great Robberies. *Friendship* is an union of souls and senses to a through compartization, to become as *Blofius* was to *Gracchus*, obsequious in all things, to sympathize in the worst of conditions, to make them partakers of our advantages, to consult them in our straits, to live theirs, yea to dye theirs; this is *Friendship*, to be a Member *ἢ συναπστηκόντων*, this is to be a friend, as the Proverb is, *more necessary then food or fire*; indeed the friendship of *Lucilius* to *Brutus*, of *Calius* to *Petronius*, of *Ticinnius* to *Cassius*, are great examples of cogency to men under the like engagement; and hard it is to extricate *Blofius Cumanus* from *Gracchus* his obligation on him, which has him so fast, that hee'd burn the Capitol to please his friend. *Friendship* is such a catch and device of holdfast, that *Scipio Africanus* would not stand Competitor with *Pompey* his friend for the greatest Honour. There are few *Rutilus's* who can withstand their friends importunity to do, in justice, and reply to them, *your friendship is not worth keeping if it tempt to unjust things*; Nor can the *Athenian Cleon* be matched in that more then manly self-Mastery, for before he took charge of the Common-wealth, he called all his friends into one place, and returned them their friendship, quitting all relation to them on that score. All these Examples shew the reason why the Law makes intimate *Friendship* a cause of challenge to a Jury-man, because it is apt to enervate Integrity, and to make a man incline to that Scale that his love lodges in, which is the cause that as men of Alliance and Friendship, so of *unindiffereny* are challengeable: see concerning the latitude of this *Sir Ed. Cook* in the forementioned place.

Ἀίθε τὰ πῶτα ὅσα ἔχοντες. Erasim. Adag. Cent. 3. Chil. 1. Adag. 8.

Πάντων ἡ ἴσον ὄσι ἡ φιλία, καὶ ἔστιν ἀλλοῦ μάλλον εὐφραίνει. Plut. lib. De Adulat. & Amici discrim. p. 51. Edit. Paris.

Alexand. ab Alexand. lib. 1. cap. 26.

Ἀναγκαίους & πνεύς καὶ ἔδα- τὶς ὁ φίλος. Adag. 75. Chil. 2. Cent. 2.

Malignit consulatn cadere quam amicam perdere. Plutarch. in Apothegm. Rom.

Οὐδὲ γὰρ ὄσιν αἰχρὸν ἔστι ἀναγκαῖον ἐπεὶ ἀνδ. ὄσι τὸ πρὸς ἴσον τέλος λαμβάνουσιν, &c. Plutarch in Amator. p. 758. Edit. Paris.

Valer. lib. 6. c. 4. Tanquam qua in administratione Civitatis rectum ac justum institutum, emolliat, & transuersum agat. Parisi secunda, sermo. 1.

Page 156, 157, 158, 159. 1 Instit. on Littleton.

*Sic quoque fiet de omnibus nominibus impanellatorum, quousque duodecim eorum jurentur ita indifferentes.*

While the Jury are swearing, Exceptions or Challenges may be made till Twelve, which are the Number of the Jury, be filled, against whom no challenge has been; these empannelled, (of which four are to be Hundredors) that is, of the same Hundred where the fact was committed, and all of them of the value of 40. s. the cause is tryable and concludable by them: these things the Law requiring is punctually to be persued, not that it hearkens to calumnies impertinent, for in all times there has been experience that ill will seldom speaks true, and partiality delights to make worth *Theomino dente rodi*, the mischief of which by the effects called *Succum loliginis & nigrum salem*, is so aspersive that it does *cum morfu addere & fama maculam*; not that the Law desires hereby to deferr the tryal of the cause to the injury of justice, for that it abhors, allowing exceptions no further or freer then to make the Jury indifferent men, who, when they are impannelled to their Number, are recorded, then *stabit Panckum*, ] provided they that are of it be of 40. s. in Lands, Tenements, or Hereditaments, As,

27 Eliz. c. 6.

Non observata forma insertur admittato adms. Reg. Juris. Adag 55. Cent 2. Chil. 2.

*Et Quilibet Juratorum hujusmodi habeat terras vel redditus pro Termino vite sue ad valorem Annum 40 s.*

2 H. 5. c. 3. Statute the second.

21 E. 1. Stat. de his qui ponendi sunt in assisis.

\* Vowel's description of England, p. 218.

Aust. Stat. Larg.

15 H. 6. c. 2.  
23 H. 6. c. 6.

Assisa Paris 51 H. 3.

Confirmed by 7 E. 6. c. 5.

24 & 35 H. 8. 24.

Note Well.

This is added to prevent poverty and necessity, by which men are apt to be taken off by fear and favour from Integrity and Justice, which the Law intends to promote in Trials by Juries: Now, though in places where Juries are not to this proportion haveable, challengers of *Reins deins le gard*, were remora's to Tryals, the Statute of 7 H. 7. c. 5. took that away in London, but yet, for ought I know, retains in Counties (where Free-holders of value are numerous) the limitation to men of 40 shillings a year, which, though it be but a small fortune now, yet was of old much more considerable: For, silver in the *Saxon* time at 12 d. an ounce, though it was risen to 20 d. and so continued as \* one faith, till *Henry the Eighth's* time; yet then it was but the third of what it is now; and all things else were but low rated to what now: in the 33 Ed. 3. c. 10. mention is made of 200 Marks *per Annum* for an Esquires value, and c. 12. of Knights of the same value, and 400 Marks accounted Knights of great Estate; in 36 of the same King c. 8. no man was to give for the hire of a Priest above 66 s. 8 d. a year; and if he had his board, but 26 s. 8 d. in money: but by the 2 H. 5. c. 2. a Parish Priest had 6 l. for his board, apparel, and other necessaries; so stood the rate by this Statute till the 21 *Jacob.* and then c. 8. it was repealed: and 25 E. 3. c. 3. wages of Workmen was very low, a Master Carpenter 2 d. a day, a Master Free-Mason 4 d. other Masons 3 d. Servants 1 d.  $\frac{1}{2}$ , Tylers 3 d. and their Knaves 1 d.  $\frac{1}{2}$ , Coverers of Fern and Straw 2 d. and their Knaves 1 d.  $\frac{1}{2}$ , without Meat or Drink; when in the 15 of H. 6. Wheat was at 6 d. & 8 d. a Quartar, and Barley at 3 d. 4 d. when 20 l. a year was a Justice of Peace his value; 18 H. 6. c. 11. (not long before the time our Text was written in) and five Marks *per annum* a man of valucs Estate, 22 E. 4. c. 6. and 6 d. 8 d. the price of a Horse; 11 H. 7. c. 13. Not to mention the Prises of Corn in the Statute 51 H. 3. nor that in E. 1. time, 20 l. a year was a great Estate, and 1 E. 2. Knighthood was to be taken upon it. Not to insist on these, even in the Memory of our Great Grand-fathers Charges and Rates are incredibly enhanced, by 4 H. 7. c. 8. twas penal to sell the finest Scarlet Cloth in Grain for above 16 s. a yard, and the finest other Cloth for above 11 s.; In the 23 H. 8. c. 7. French Wine was not to be sold above 8 d. a gallon, nor Sack above 12 d. and in the 24 of the same Reign, c. 3. no man was to take for a pound of Beeffe, or Pork, above a halfe penny; of Veale, or Mutton three farthings: and less where sold for less. The mannor of *Burlew* in *Cambridgeshire* containing 200 Acres of Arable, 100 Acres Meadow, and 100 Acres of Pasture, was at a Rack rented but at 100 l. a year; When these, and all other things were at the prementioned Rates, which, in a good measure they have been since our Chancellours Writing; fourty Shillings a year was somewhat considerable, as a convenient support to life, and a delivery of the Possessor from temptation to perjury, and a determent of him from all kinde of unjust and fraudulent demeanour; since upon his offence the Law will take hold of his Estate, which he having, is thereby solvent; And therefore this value of the Jurors probably being a good help to the honesty and honour of Jurors and Juries would do well (if the wisdom of the State think also so, and please to consider it) to be suitably preserved by enhancing the value of Jury mens fortunes, according to the value of Rents, and Prizes now; (40 l. a year being as little for a Free-holder now to have in Estate, as 40 s. then.) And, if ever Justice had need to be provided for, and that in this very point of Juries, never more cause that the best men of fortune and breeding should be returned and serve on them, then in this Age, when Forgery is so rife, and Knights of the Post so audacious, and against which there is no so sovereign means of anticipation, as brave and knowing Juries, who neither will slubber over the consideration of the Evidence given them, nor be meale-mouth'd to request the Courts Interrogation of such scruples as they are inquisitive about, and judge materiall to the dilucidation of the Fact they are serving upon the Tryall of.

*Et hic ordo observatur in omnibus actionibus & causis criminalibus, realibus, personalibus, præterquam ubi debitum vel damna in personalibus non excedunt quadraginta Markas moneta Anglicæ.*

*Hic Ordo observatur.* ] This is purposely set down to signifie the Lawes reverence of Order, as that great favourite of God, by which he rules the Common-Wealth of this World: Hence is it that the Humane Nature attributes to Order a kinde of Divinity, not onely as it is Essentiall in God, but as it is quiescentiall of all those disasters and tumults; that but for it would be every where, and in every thing; which the Heathen observing cries out, *Confusion and the trouble of settlements is every where mischievous*: because as the order of Nature is of God, so the order of Reason is from Man, who regulates and disposes his endowment by fit and proper modes of operation and convenience, to both Inferiour and Superiour purposes, of Politique and Christian Life: Hence is it that not onely Order is ascribed to Creation of the World, but to the continuation of every particle, and thing in it; yea, take away Order, and nothing remains but non-entity, or that which is next to it, confusion. What Seneca said of Solitude, is true of Order; Take that away and *ill Counsell's are busie, then mischiefe to mankind is Machinated; then evill desires and covetings are set on foot: then the mindes of men (however before modest) shew themselves in all their villanous licentiousness.* For if Order be ἀκολουθία καὶ ἑσπεδος, &c. as Philo's words are, *The consequence and series of things preceding and following*; then without Order no account can be given of any thing, so as to make it appear beauteous and usefull: This made Life and Death, Peace and War, Law and Trade, Arts and Sciences, Religion and Policy keep its Order; Yea, of all Orders that concern this World, none more then the *Hic Ordo* of our Text, which is *Ordo* of Judgments, for deciding Rights, and punishing Offences. For, though the Romans took care of their *Ordines* (of which *Brissonius* gives us a very notable account, and of which too much can hardly be said; the Ceremonies, and extern part of them, couching the most substantiall and consequentiall nerves and ligaments of Civil Society: according to that of *Theodorick*; That *Common-Wealth is most happy which does abound with conspicuous Subjects; as the Firmament is illustrious which has the Embossery of glistening Stars; Not that dignity qua such betters men, (for that is onely the gift of God, and the work of Virtue) but it renders men more discreet and circumspect, as they are prescribed by it, the most excellent and exemplary Order of life.*) I say, though the Romans loved Order, yet the care that the Civill and Common Lawes have *circa Ordinem Judiciale[m] Civilium causarum*, as *Theophrastus* his words are, is most notable, as that immoveable method from which there is no recess but with danger and inconvenience; therefore the Text sayes not *hic Ordo suadetur*, or *hic Ordo observari debet*: For, many things are fairely commended by Power, that are not embraced by Practice; and many things ought to be done, that are not accordingly done as they ought: but the words are *hic Ordo observatur*, as if the Chancellour intended satisfaction of the Prince, and in him of all men: that in all changes and vicissitudes which Crowns are (in Common with all sublanaries) subject to; the same Order yet remains in the midst of them unreversed, all men in this Nation being concerned, how various soever they are in other matters, to carry on this very way and method of Triall, and no other.

*Ubiunque est aliquid principium oportet quod sit aliquis ordo, quia ordo includit in se modum prioris & posterioris S. Thom. 1. 2. quest. 26. art. 1.*

Παλαιῶν ἀπὸ τῶν ἀναξία κοινῶν. Plutarchus, lib. 1. Sympos. Quest. 2. p. 618.

*Tunc mala consilia agitantur, tunc aut aliis aut ipsis futura pericula frunt, tunc cupiditates improbas ordinant, tunc quidquid aut metu aut pudore celabat animus exprimit Senec. Epist. 10.*

(2) *Lib. de Mundi Opificio. p. 6.*

*Lib. 3. Select. Ant. tit. Juris, c. 1.*

*Constat saltem esse Republicam qua multis civibus resplendet ornata, nam sicut caelum stellis redditur clarum, sic valent urbes lumine dignitatum, non quia fiat homo alter honoribus, sed quia modestior efficitur a quo conversationis ordo melior postulat. Theodorick apud Cassiodor. Varr. lib. 6. Forma Illust. Vacantis 11. p. 100.*

*Syntag. Juris universi, lib. 12. c. 26.*

*Præterquam ubi damna vel debitum in Personalibus non excedunt quadraginta Markas Moneta Anglicæ.*

This is a Salvo to the general Rule: For, the Law proportioning the quality of the Jury-men to the quality of the Matter in Triall, as it requires more Estate in those that trie Title of Land, which is called realty; so, less in that which is of lesser value, as personalty

Cook on Little-  
ton, p. 156. B.  
An Ordinance  
for Engueſts. 33  
E. 1. Anno Dom.  
1305.  
Stat. de his qui po-  
nendi ſunt in Af-  
ſſis. Anno 1293.

personally eſteemed. The value of Juries in great cauſes heretofore has been obſerved 40 s. per Annum of Freehold out of ancient Demefnes, or what is equivalent to it ; and by the 27 Eliz. c. 6. it is advanced to 4<sup>l</sup> Land, becauſe Sheriffs were found to ſpare at Home the moſt able and ſufficient Freeholders, and to return the poorer and ſimpler ſort, leaſt able to diſcern the cauſes in queſtion; and moſt unable to bear the Charges of Appearance and Attendances in ſuch Caſes. For reformation whereof the value of Jurors was enhanced, which though it be not applicable to Corporations where men of ſuch value are not ever to be had, by reaſon of which there is a Proviſion in the ſaid Statute ; yet is it for the moſt part, and where it may (as in Hundreds and Counties it may) to be practiſed : for as the Law compells not to impoſſibilities, ſo does it not allow neglects or obſtructions to juſtice, which, as they are occaſioned by peremptory Challenges without ſhewing cauſe, which was the indulgence of the common Law in the King's Caſe, till by the Statute of 33 Ed. 1. it was otherwiſe enacted ; ſo does it favour Tryals in places where men of ſuch value cannot be had. Like Law becauſe like reaſon there was for that Enaction in the Statute 21 Ed. 1. for though therein was required that every Juror that paſſed in tryal out of his proper County ſhould have Land to the value of 100. s. at the leaſt ; yet is there a ſaving of the Law's former requiry of 40. s. Lands, and of ſuch other value in Towns, Cities, and Burroughs as hath been accuſtomed, which ſhews, that the aim of the Law is to promote juſtice, and to preſcribe nothing but what is poſſible and feaſible to that end *Quia tunc non requiritur quod Juratores in Actionibus hujusmodi tantum expendere poſſunt*, ſaith our Text. ] What then may the promiſcuity of men try the cauſe, ſhall any he that has a face be admitted without challenge or exception ? nothing leſs ; For, as the Common Law required men *well to live*, as we ſay, ſuch as having Eſtates of their own, know what it is to get and keep, and ſo are likeliſt to be ſparing of caſting away another mans by raſh or heedleſs Verdict ; and hazard their own by attainr for Perjury : as I ſay, the Common Law limited who and who not ſhould be returned : ſo divers Statutes ſubſequent to our Text has Enacted, eſpecially in the City of London, where, by reaſon of the great confluence of People, and Trade, perſonal actions abound ; by the 11 H. 7. c. 21. no perſon is to be empannelled in the Courts of the ſaid City, except he be of Lands, Tenements, or Goods and Chattells, to the value of forty Mark ; and, that for Lands, Tenements, or Actions Perſonall, wherein the Debt of Damadges amounteth to the ſumm of forty Mark, or above, no man be Empannelled except he have in Lands, Tenements, Goods and Chattells, to the value of 100. Marks ; which the Statute of 4 H. 8. c. 3. ſeems to make analogouſ to the 40. s. per annum required of Freeholders in Counties by the Law ; and thereupon enables them to do what they can in their condition by the Law : ſo, that the Law being intent upon Juſtice, and the equall and impartiall conduct of right means to that important end, provides for every circumſtance, as well of men as things. And in men, that they ſhall be of value, properly *Engliſh* : that is, of intrinſique worth, whoſe Eſtates ſhall be valuable, as if they were Bullion, for that is the ſence, *Moneta Anglia*. ] *England* being a Noble Kingdom ; whoſe Sovereign Stamps no Coyne but what is Standard ; not onely made Paſſable by (a) Statute, ( for ſo Power may make Money of Leather or Metall ; as the King of *Spain* frequently doth to be Currant Money ) but Paſſable, becauſe Gold and Silver ; paſſed the Kings Mint ; and returnable thither with the loſs onely of Coynage ; And this is called the *Money of England* : 2 H. 4. c. 5 and to preſerve this from abaſement and undervaluation were the Statutes of 19 H. 7. c. 5. 17 R. 2. c. 1. yea, on this ground was, and is adulterating of the Kings Coyne (b) the Currant Money of *England* made High Treafon 25 E. 3. diminifhing of it High Treafon, 5 Eliz. 11. 18 Eliz. c. 1. all which I inſtance in to explicate the Term *Moneta Anglia*. ] to be indigative of reall value ; and applied to the Juror, for that it intends him really worth, *pecuniis numeratis*, a legal value, which in this Caſe is left to the Juſtices diſcretion, according to common reputation, and the judgment of wiſdom, which is preſumed ( and that not groundleſſly ) to be in thoſe Venerable Sages ; therefore wiſely left to their diſcretion.

(a) 1 Mariz  
c. 6.  
1 & 2 P. &  
Mary. c. 11.  
25 E. 3. c. 12  
5 & 6 E. 6. c. 19.

(b) Counterfeit-  
ing Lymburgh.

*Habebunt tamen terram vel redditum, ad valorem competentem, juxta discretionem Justiciariorum.*

*Habebunt.* ] That I conceive to be as much as *presumantur habere*; for judgement of discretion is charitable where it knows nothing to the contrary, and Justices when they have no cause, will not seek a cause of doubt against a man where he is reputed to live in fashion and to pay *scot and lot* as we say. *Terram vel redditum,* ] that is Lands, or Houses called Candle-Rents, or Annuities, or Rent-charges, I suppose, to a proportion of equality to the matter in Issue is *competens valor*, within the Text. And so, I think, the Reverend Justices will declare it, and their judgement must stand; for the Law sayes, according as the Text quotes it,

*Juxta discretionem Justiciariorum.* ] That is, according to that natural and learned judgement that their Years, Study, and Place enables them to and presumes them of; and this is not that vage discretion, in better English *Arbitrariness*, which *Empson*, and *Dudley* obtained to vex the Subjects by in *Henry the Seventh's* time, and for which they suffered deservedly; but the *discretion of the Justices* that the Statutes of 23 H. 8. c. 3. 35 H. 8. c. 6. intend, which is the proportion of the qualification to the drift and scope of the Law.

*Discretio est discernere per Legem justum.*  
Reg. Juris.

Dr. & Student.  
c. 52.

*Alioquin ipsi minimè jurabuntur, nè per inediam & paupertatem Juratorum hujusmodi de facili valeant corrumpi & subornari.*

This is the reason why the Law requires ability of Estate in Jurors, not that it thinks Poverty inconsistent with Integrity or Wisdom, the endowment of those that have no inheritance besides it; or that it expresses thereby an evil eye to poor men, because God's is not good to them in a fortuary way: nothing lesse, the Chancellour is of a more pious and prudent Genius then thus to precipitate, for he knew, *That a poor man by his wisdom delivered the City*; so the *Wiseman* has told us, and we may know, that many mean estated persons have been very contributive to the good of their Countreyes, as by name *Sarbolla* that mean *Candiot*, who, when *Bressia* was besieged, and the *Venetians* knew not what to do to relieve it, made offer to the Senate to undertake the succour of it, which they accepted, and he by his art did bring over Land, and over Mountains and Hills, mighty Vessels from *Venice* to the Lake which kept *Bressia* from Delivery; the like did the poor Centurion when *Mellito* and all the *Venetian* Gentlemen were surrounded in the Valley of *Sabia*; these, I say, and thousand such instances would confute the rashness of that position, that men are not to be trusted because they are poor, (for they that are poor in estate may be rich in virtue, and so accomplished to actions of integrity and Heroicisms:) but the intent of the Law is to supersede and undermine that common pest of poverty, Sordidness and illiberality of Spirit, which makes men open handed to receive any thing that is put into it, that may answer a want and supply a need; thus is Perjury imputed to Gifts by Jurors received, so 11 H. 6. c. 4. 11 H. 7. c. 21. And that the more sufficient men be of Lands and Tenements, the more unlikely are they to be driven or moved to Perjury by brocage, power, or corruption, they are the words of the Statute of 15 H. 6. c. 5. which is the very same with what is the reason in the Text, *Nè per inediam & paupertatem Juratorum hujusmodi de facili valeant corrumpi aut subornari*, for since necessity has no Law, and hunger breaks through stone Walls, there is no better a prevention to the sordid effects of need, then thus to provide as the Law hath. *Livius Drusus* was a brave man, so generous and liberal in minde, that, he left nothing unobliged by his bounty, but Heaven and the Sea; yet the Historian sayes of him, when he grew short of money, he did many things unbecoming him: and *Agur* when he begs of God neither poverty nor riches, but food convenient for him, teaches us the danger as well of the left-hand, extreme poverty, as of the right-hand, riches; the one making a man forget God, the other forget a mans self.

*Eccles. 9. 15.*

*Shute's History of Venice. p. 260.*

Page 355.

*Cum pecunia egros multa contra dignitatem fecit. Autel. Victor. lib. De vitis illustribus.*

*Et si per tales exceptiones, Juratorum nomina in Pannello cancellentur, quod non remaneat numerus sufficiens, &c.*

There is no need of much enlargement herein, for this is but enumerative of what has been heretofore asserted; Juries of twelve sufficient men of the County must be summoned, and before they be arrayed may be challenged. If twelve of the array be not unchallenged by whom the cause may be tried, then must more and more Jury men, *omni exceptione majores*, be summoned by the Sheriff, according to a Writ directed to him to that end: For there must be no defect in Justice; while the County has solvent men, and those not legally challengeable, there must be returns of them, *quod & sapius fieri potest*, saith the Text; and that to prevent injustice in the Nation, which then is chargeable on it, when causes hang undetermined: *ob defectum Juratorum*, which to prevent, the Law grants *Tales*, not onely of other persons in the Shire (\*) but of the next adjoining Shire-men, if none in the Shire there be fit. So in the Case of attain, wherein perjury has been committed, as Neighbours may be partial, the Statute of 23 H. 8. c. 3. appoints.

(\*) 35 H. 8.  
c. 6. Confirm  
by 2 & 3 E. 6.  
c. 3. 4 & 5 P.  
& Mary. c. 7.

*Et hæc est forma, qualiter Juratores & veritatis hujusmodi inquisitores eligi debent in curia Regis, similiter & jurari.*

Twas *hic est Ordo* before, and *hæc est Forma* now, both to one purpose, to notifie the exactness of the Law to keep it selfe in a Method, and to walk by Rule: Forms are the prescripts of God in Nature, and of Nature to Polities for avoidance of confusion. The *Jewes*, the first People and Polity, had their Forms in all things; in their Sacrifices, Worship, Dedication, Solemnization of Festivalls, Oaths, Marriages, Funerals, making Peace and War, in their Enfranchisements, Jubilees, in every thing. And from them the Nations learned Forms; *Tully* speaks that with an Orators confidence and a Good Mans Truth: *Jura & forma de omnibus rebus constituta*, and as things had their Forms to distinguish them by; in which sense we read of *Forma dicendi*, *honestatis*, *scribendi*, *Temporum & Reipublice forma*, *scelerum forma*, *provinciae forma*, & *forma ædificii*, and such like in Authours; So also had persons their Forms. So among the *Romans*, there were Forms for every Order of men, which *Brissonius* tells us of, and no Authours of theirs omit mention more or less of. And these Forms, though we look upon them as accidentall things, which may *adesse & abesse sine interitu subjecli*; yet are not to be innovated, or forcibly entred upon without great consideration: Because they couch great mysteries in them, which are necessary to be cherished for the advantage they give to the more essentiall parts of Truth and Policy: which is the reason that both the Civil, Canon and Common Lawes do insist much on Forms. *Hæc est forma* sayes the Text, and so ends this Chapter.

Drusius, lib. de  
tribus Sedis Ju-  
dizorum.

Pro Quintio 14.

Aulus Gellius,  
lib. 3. c. 18.  
lib. 1. c. 9.

## CHAP. XXVI.

*Juratis demum in forma prædicta, &c.*

THIS Chapter begins with an Exegetique Recapitulation of what had passed concerning Juries in the preceding Chapter: For, there the number of a Jury being twelve, and those twelve not trivial, but *prebii & legales homines*; that is, such as are of good Conversation, and Morally Civill, and have besides their Goods, Moneys, Leafes, and other less-fixed Subsistences termed *Mobilia*: Lands, Tenements, and Hereditaments which are called *Possessiones à post sedendo*; (because they give being to those that come after the present enjoyers, being descendible to either Corporal or Testamentary Heires, and sufficient to conserve them in their condition without dependence or necessity of fortune, which betrayes men to by-courses, to the prejudice of Honesty and Justice) I say, the Chan-

*Possideo à post vel porro sedeo; possessiones sunt agri late patens publici privatique quos initio non mancipatione sed quisque ut potuit occupavit atque possidet. Isidor. Orig. lib. 15. c. 13.*

• cellour

cellour having Premised this, Proceeds now to the further Narrative of what such qualified persons are by the Law expected to do, in discharge of that great confidence it has reposed in them; and that he does by Enumeration of severall Particulars, wherein their Exactness and Sincerity is required: Concerning which, before I Write further, I think fit to touch shortly upon that Motive to the Lawes choice of Men of Fortune for this employment, as is couched in those words, *Unde statum suum ipsi continere poterint.* ] By which I collect the Judgment of experience resident in the Law, and in the Compilers of it, to be, that all Perjury and unjust Dealing proceeds from a Departure, and Discard of Moderation and Contentment with the Condition God has designed men to bear, and requires them to be patient under. And indeed, there is no account of sin more rational then that which refers it to incontinence: Men derogate from Gods Wisdom and Power, and aggrandize themselves beyond what God has fitted them for, and will carry them thorough; and this makes them steer a course to extremes, which is, *seipos non continere*: For, as it is in Valour, there is no excuse admitted by that Person that is willing to fight; but, when all the discouragements imaginable are presented, Magnanimity replies as Pompey did, *Necesse est ut eam, non ut vivam*: so is it in Modesty of Minde, nothing will tempt it to go beyond its boundary, or trespass on the Peace of its intern calmeness: Its true, Valour in the best men will tempt to venture hard for the Master-Prizes in this Worlds Lottery; and hard it is upon meere Worldly grounds to withstand the Irritations and Impulses of their cogent Interest: but, for all this, where God gives Continenence of minde, the virtue of that endowment will reply to those fuffurrations, as *Phanorinus* did to those that reproached him for flattering *Adrian*, who loved to be accounted a Learned Person and Prince then he was; *Why should I not admire and humour him who commands thirty Legions*: so sayes Continenence, when Ambition sollicites to comply with base and by-ends to gratifie sensuality, *Cur non cedam huic*, &c. Why should I not observe the Command of God and Nature, which learns me to live of a little, and to be sober in keeping my self in mine own Orbe: For, while men do, as one told *Cleon*, *Intra suam pelliculam se continere*; and are desirous of nothing more then they enjoy honestly, and can use temperately, they avoid delight in Riches of Violence, and Honours of Fraud and Usurpation; which *Romulus* deserved, and had accordingly Renown for: For, though he had the choice of all the 800. *Sabin* Virgins, yet kept he himself to his own (though old) Wife *Herfilia*: and though he might take the freedom of high feeding, and Martiall Comptations, by the visceration of which Men grow Valiant, and heady, beyond Measure and Mercy; yet, the Historian sayes, he kept himself free from taint: *Ego quantum volui bibo, non quantum posui*, was the account he gives, and surely twas a solid one, and tuitive of Virtue, beyond all curbs beneath effectual Grace.

When I read of that *Athenian* Young Man, who to preserve himself against the lust of *Demetrius*, cast himself into a Cauldron of boyling water and dyed: and of that *Roman* Generall that refused Presents, and contented himself with a few Roots for his Meale, and them forily Cooked by his own hand, and cryed out, in defiance of the Impor-tunity of his gratefull Presenters; *I have no need of your Gold, while I can command my Senses, and they not me, I shall never want that which satisfies the luxury, not necessity of them*: I say, when I read this, and consider the defects and excursions of Christians, I blush to finde *Christ* so often in the Mouth, where he is so much an Alien from the Heart and Life: *Men ought to live as they of old did, though they speak daintily, as the Nectariques do.* For, no shipwrack is so terrible at Sea, as this wrack to the Soul and Sense of Man is when they are intemperate; *Intra statum suum se continere,* ] is not onely to avoid *Marsja's* Insolence, in Challenging *Apollo* to Pipe with him, whom when *Apollo* overcame (as soon he did; for the Presumer was no *Muscian*, but a *bravado*) he hung him on Pine-tree: I say, to be Moderate, and affect nothing beyond our Station, is not onely to avoid one, but all Evill, which the contrary prompts to, confirms in, and ruins for: so long as the Registers of *Lucifer's* Pride, and *Corahs* Conspiracy, and *Absoloms* Rebellion, and *Rebens* Incest, and *Jehus* Murther, and *Achans* Covetuousness, yea, and of *Judas* his Treachery are in being, and Mention of Holy Writ; the danger of not keeping in one Station, and not complying with Gods pleasure,

Αγών ἔστιν ἡ δόξα σκλήρης. Adag. 62. Cent. 3. Chil. 3.

Cur non cedam huic qui triginta habet legiones. Sabellicus Tom. 2. Ennead. 7. lib 4.

Adag. 92. Chil. 1. Cent. 6. p. 264.

Memoria traditum est 500. fere annos post Roman conditam nullas rei uxoria neque altiores cantiones in urbe Roma aut in Latio fuisse. A. Gellius, lib. 4. c. 3.

Dum his omnibus imperare scio non opus est pecunia vestra.

Vituro discas moribus praeteritis, loqui veris praesentibus. A. Gellius lib. 1. c. 10. Erasm. Chil. 2. Cent. 7.

pleasure, will be lively testimonies against that humour: *Intra statum suum se non Continere.* 'Tis good to remember the Fable of the Crab that left the Sea, and would feed in the Land, where the Wolfe met with it and devoured it: the Crab bewailing his condition when 'twas too late, was told, *Being thou wast a Creature of the Sea you should have kept there and not affected the Land, but your trial of*

Θαλάττιος δὲ ὄν μιν ποτὲ γίνε χερσαῖος. *Adag.* 11. *Chil.* 3. *Cent.* 5.

*Conclusions has concluded your Security.* And when God lets the Reins lie loose, and men have latitudes penall as well as peccant; then, there is no meane for them to rest in, but they go from one

wickedness to another, till they be the shame of men and the curse of God: *Piccinino* the Italian Generall is a notable example of this; For, he having defeated *Antonini* at *Novara*, resolved revenge on his Enemy by any means he could invent, and effect, he slew great numbers of the Inhabitants of *Novara* in heat of blood, and those that escaped he Executed by the Common-Hangman, and being at last glutted with blood, and not knowing almost which way to be further vile, he sets to sale young Children, Matrons, and Reverend Priests; And all this he did by not heeding *se intra statum suum continere*, which the Law foreseeing, prescribes such valuable proportions of Estate in those that are to serve on Juries, that they by it may *se intra statum suum continere*: For, if once passion predominate, and men sinfully look abroad, then they court unlawfully, and attempt desperately the accomplishment of it. In Anno 1494. one of the Bishops of *St. Andrews* did Ershrine the bones of *St. Palladius*, who first Converted *Scotland*: This Shrine being Silver was the Eye-fore of a Gentleman neer *Fordon*, in the County of *Mernis*, who when Times were disastrous seized upon the Shrine because it was Silver, and made away with the Relique, but his family soon after decayed, which was probably a Curse of God on his Sacriledg and Prophaneness. And so I have done with this passage, *Intra statum suum se continere,*] because though it be necessary to be inculcated, yet it must not court me to extravagat.

Shutes Hist. Veni- ce, p. 333.

Spotiswood, p. 7.

Now then I return to what is to be done previous to, and conductive of their Service to a just and worthy issue. *Totum recordum & processus placiti quod pendet inter partes.*] That which I think the Civill Law calls *Libellus accusationis*, the Common Law calls *Recordum*, a word from *Recordor*; the Record being the summary and substance of the Suit or Cause, and therefore the Text sayes it is appointed to be read as the proces of the Cause is here also: Critiques make this word (a) *Recordor* to be the most Emphatick word that comes from *Cor*, *Valla* confounds *memini* with *Recordor*, because Records are a kind of immortal memory, the Lawyers also call the Entry of things in the Books, or rather Rolls of the Court a Record, and this was called a Roll, because entred on a Parchment that was rolled up: so Statute 9 R. 2. c. 4. but 8 H. 6. c. 12. tis called a *Record*; and a *Process*, or *Record*, 14 E. 3. c. 6. 9 H. 5. c. 4. 4 H. 6. c. 3.

Tholosanus Syn- tag. Juris, lib. 22. c. 7. de Accu- satione Solemni. (a) lib. 3. c. 58.

Quia per scriptum recordatur, quid factum.

*Ac dilucide exponetur eis exitus placiti.*] What the *exitus placiti* is see the Notes on the twentieth Chapter. That which is phrased here *dilucide exponetur*, is in sense, the Jury shall heare distinctly in their Mother-Tongue the true state of the Contention, abstracted from all those disguises and pretences, that craft and vehemence impose on it; to prevent which the Law appoints, that it shall appeare plain and unmysterious: *dilucide exponere* is as much as *εμφανίζειν*, *Intra lucere*, as I may so say, to search into, and perambulate the bowells of a Cause; yea, tis as much as to tell the Jury what Points the concernment of the Cause rests upon: This then, as to do it shortly and pithily, requires ability, so declares honesty in the doing of it; For, it is almost *sine qua non*, to Right Judgment: therefore the Text adds, *De cujus veritate Jurati illi curiam certificabunt,*] that is, they shall give their Verdict according to their Evidences and the Righteous Instructions of the Court; both which if they follow they may be said *curiam certificare de veritate.*] For, the discreet Verdict of the Jury is a Certificate to the Judges, how they finde the Cause to be, and accordingly are led to dispose their Verdict upon it.



*Quibus peractis, utraque partium per se & Consiliarios suos in presentia Curia referet & manifestabit omnes & singulas materias & evidencias, quibus cos docere se posse credit veritatem exitus talis placitati.*

This remembers the method of Pleading Causes; *per se & Consiliarios.*] Of old probably men that knew how, and would venture the Cause upon their own Memory and Judgment to manage it, were permitted to Plead their Cause; but laterly it has not been in any degree so: but as the Courts to encourage the Study of the Law, expected Causes before them should be Plead and prosecuted by Juridique men; so have all Parties in Suit chose rather to take the cooperation of a man of Law, whose Profession it is to know the Patriall Lawes, then to hazard his Cause to save a Fee: And for as much as *Counsell and Strength is for the War* (not onely the Field, but the Court-Warr) and Causes are best defended by the Truth of their Cause, and the prudence of the Parties carriage in it: The Text sayes, *per se & Consiliarios suos in presentia curia referet & manifestabit*; That is, as the Plea is framed by Counsell, so is the defence or stablition of it to be made by Counsell, and that vocally, *in presentia Curia*; and this the Text terms *referre & manifestare*; that is, *referendo manifestare*: and this insinuates great accomplishments in Counsellours; Prudence *tempestive referendo*; this *εὐχαιρία* is the wisdom of a man exactly to observe, if he would succeed in what he attempts. Counsell that speaks over-much, and beyond the proportion of the Courts liking, or that interposes when the Court is declaring its Judgment, is not favoured by the Court: therefore a man of Counsell, as he expects not to recall what is past and gone, nor seeks the Rose out of its season, so will he watch, and catch at every opportunity he worthily may to accomplish his purpose. Not that wise men are ever fortunate, or that their Counsell is ever valued; For *Socrates*, though the Wisest of men, was *obscure and unknown to most of the Age he lived in*, as was *Epicetus* his saying, which *Seneca* suffragated to in his 39<sup>th</sup> Epistle: but, though a Wise man does not ever succeed, yet in doing so he does as a Wise man ought, *bene consulere*; and that no man can, who does not regard the Times and Seasons, the humours and passions of prevalent and potent Parties, and carry himself wisely in all Affairs: which *Cato* doing, is by *Paterculus* Characted to be *like a God then a Man, who did not virtuous things for applause, or advantage sake, but because he could not bring his divine soul into servility to his brutish sense, nor account anything worthy his reason that did not excite him to Justice.*

Secondly, As the Counsellour must *referre*, which implies prudence, so he must *manifestare eisdem Juratis omnes & singulas materias & evidencias*;] and this implies Memory, Art, Elocution: For *Manifestare* is a word that argues a rescue of any thing from its shade and obfuscation, and a reddition of it apert and visible. This potency of Oratory, and strenuity of Memory and Invention, is that Engine which from the Canons and Sacars of Language discharges such batteries on the eares of Auditours as makes them intenable against them: which, when Counsellours abound in, and by it expres the learning of their minds, they prevaile in all Causes, and over all Persons they are retained to Plead in, and before: which being the defect of many men of the Long Robe, makes them so rude in speech, and ingrate to the eares of their Hearers, that nothing seems more defective in them then good words, and a gracefull delivery of them; which they that want cannot *Manifestare* within the Text. For, though they may apprehend *Materias & Evidencias*, yet if by proper words they cannot *Manifestare Materias & Evidencias* cause to the Jury they are short of what they ought; yet further that of the Text *referet & manifestabit Juratis, &c.*] points us out to the double duty of a good Counsellour after hearing of the Record read; First *Referet*, that is, he shall be a Monitor to the Jury to observe what they have heard: thus (*Referendarius Pape* is

ὁ δὲν παρέλθον μὴκέτι ζῆται πάλιν. *Prov. Grec.*

Ἐλάτθανε παρὰ πῶς πλείους. *Epicetus, lib. 4. c. 8. lib. 3. c. 23.*

*Quamdiu videbatur furere Democritus vix recipit Societatem fama. Quamdiu Catonem Civitas ignoravit, respuit, nec Intellexit, dum perdidit. Ep 79.*

*Homo virtutis simillimus & per omnia ingenio diis quam hominibus propior, qui nunquam recte fecit ut facere videretur, sed quia aliter non poterat. Patercul. lib. 2.*

*Adco negligitur Oratoria ab horum temporum disculis ut in actionibus eorum sax quo que quotidiani sermonis sada ac pudenda vitia deprehenduntur ut ignorent leges, non teneant senatus consulta, Jus civitatis ultro derideant, sapientia vero studium & præcepta prudentium penitus reformident. Quintill. Dialog. de Oratore, p. 455.*

Panciroi in notitia.

put for the Popes Remembrancer, or Master of his Requests, to put him in minde what supplicants presented their requests to him) and *Manifestabit*] to satisfie them that what they have heard in the Record, was necessary so to be insisted on for the assertion of Right, the cause of the Suit.

Shutes History of Venice, p. 368.

Ἐν ἐλεφαντίνῳ κυκλεῖ το μολύβδιον ξίφος. Diogen. in *Apothegmat.*

*Omnes materias & evidencias.*] That is, all points of Law in the Case, and all Testimonies in Confirmation of the Fact, which the Law so and so adjudges to be proved; or else *materias per evidencias*, That is, a good Counsellour will so manifest the Cause full of matter and moment, that he will omit no Evidence that may clear it to be what he explicates it; And this to do is to be as notable a Patron to a Cause as *Barbaro* the *Bressian* Governour was to that City of his Charge, which though it were miserably straitned, and the People in it disanimated, yet he kept against the potent assaults of it, by his noble courage and obliging demeanour; being such an *Argos* in every part of his Government, that he kept up his own Honour and his Masters Interest against the force and rage of those who were enemies to both: Thus, if our Counsellour do, he will not carry a Leaden Sword in a Golden Sheath; that is, no Law under his Barr-Gown, evidence no Oratory in his Pleading and defence: but be such an one as will *referre & manifestare omnes & singulas materias & evidencias.*]

*Et tunc adducere potest utraque pars coram iisdem Justitiariis & Juratis omnes & singulos testes quos pro parte sua ipse producere velit.*

As before there was an *Ordo* in the Summoning of the Jury and Arraying them, so here is there an Order expressed in our work, the end for which they were so called and empannelled, *Tunc adducere potest*: when the Record is read, and the Counsell have evidenced for their Clyent, then the Witnesses are produced to confirm what points are necessary to be sworn to; That as there is *Utraque pars*, and *Iidem Justitiarii*, and *Jurati*, all pluralls: so then is to answer these in the plurality of their constitution, *Omnes & singuli testes*; All, if they can speak to all parts of the Fact, which is rare, every one to what part he can depose. For the Law expects no Witness should evidence any thing but what is just, and known to him: and to the deposition of which it admits him not before he be charged by the *Gospells* with all fidelity, to utter his knowledge: and, if the Justices do lay the load of Gods Power, Omniscience and Mercy, the great discoveries of the *Gospells*, they do what the Text words by *Qui super Sancta Dei Evangelia per Justitiarios onerati.*]

*Quid facias in isto suffragiorum impiorum situario deprehensus, dubitas enim illo in momento quo in diaboli ecclesia fueris, omnes angelos prospicere de celo & singulos denotare, Tertullianus lib. de Spectacul. c. 27.*

*Qui Super Sancta Dei Evangelia per Justitiarios Onerati, &c.*

Why the *Gospells* are, that upon which men lay their hands when they Swear, I have shewen in the precedent Chapter: now, the expression of the Common Law by the mouth of our Chancellour, when Juries are said to be *Onerati* by it, is to be enquired into; And an Oath upon the *Gospel* is called a Charge, or Burden; because it presses the Soul to performance of it upon penalty of the *Gospel* violated, being evidence against the violators, as a heavy weight presses the body down, and fills the Porter with care and fear till he be discharged of it: This the *Hibrews* expressed, not by *שׂוּר*, nor by *שׂוּר*, nor yet by *שׂוּר*, though all these words are used to signifie Presure: but they expressed it by *שׂוּר*, or *שׂוּר*, a word that is lifted up in its import above other words of the same seeming sense: For this word is used Metaphorically, for any Office, Charge, or Ministry that is committed to any one, because these intrusts require care and intentness, which makes Nature in those that bear them heavy, and droop: Thus the Prophets denunciation against People is called their Burthen; and *Dumah's* Charge and Penal Menaceis termed the Burden of *Dumah*; and thus all care is called a Burthen: *Cast thy Burthen upon the Lord*; which *S. Peter* renders, *Cast your care upon him for he careth for you*: so do the *Latins* use *Onus* and *Onerare* for any thing grievous: *Malis onerare aliquem*, and *Catenis onerare aliquem*, *Injuriis, maledictis onerare*; and *Tully Argumentis quamplurimis onerare Judicem*: and *Livy*, when he speaks of one that did vehemently

1 Zeph. 11.  
2 Chron. c. 2. v.  
Zach. 12. v. 3.  
Numb. 4. 15.  
Zeph. 3. 18.  
Isai. 21. 11.

Psal. 55. 22.  
1 Pet. 50. v. 7.  
Terent. And. 5. 1.  
3.  
3. De Nat. Deor.  
10.

mently commend his friend, writes, he did *laudibus illum enervare*; and Tacitus, *Onerabat parentium Oras ordo Mutinensis*; these, and thousands such like expressions, shew, that to charge a man upon the Gospels, as here, is to lay load upon his soul cogent to his performance: and this the Law purposely does to keep men servile to Justice; that they should not dare to doe contrary to it, least they burden themselves with God's curse and their Conscience's rebuke.

Lib. 4 ab urbe 63; lib. 23.

*Et si necessitas exegerit dividantur testes hujusmodi, donec ipsi deposuerint quicquid velint.*

This the Common Law and the practise upon it does to prevent combination and injurious Confederacy; for since it may fall out, that Witnesses, like sons of *Belial*, may agree to depose one and the same falshood, and by dexterity, helped out by *Satan*, contrive Testimony to such an harmony, and sameness of Note, that they may, that give it, *sing one song*, as we say; the Law has given not onely the Direction, but the Mandat to undermine this Artifice, by honest policy, *dividantur Testes*, sayes the Text; but that onely, *si necessitas exegerit*, ] which is the great Regent of the World; which made the Comedian cry out, *Necessitas plus posse quam Pietas*: for all men do allow Necessity to be of the *quorum quarum quorum* in all Cases and things, which though it may be pretended by many, who naturally are mutable and politickly are *Proteus'd*, as the people of *Chios* are spotted for versafality by that Proverb, *Not one of Chios by birth, but one of Chios in nature*; yet is no further to be the temper of Wise-men, then it is inevitable, sinless, and cogent: in which sense *Tully* uttered that Aphorism, *To give way to Time, that is, Necessity, that carries all down before it, is the part and property of a Wise-man*, which Truth, apt to be abused the same Oratour, qualifies with, *\* Quicquid non licet certe non oportet*; and *Saint Bernard* yet restrains more, in his applications to *Pope Eugenius*, *Certainly* (sayes he) *in Christian Philosophy, and by rule of the Wisdom that is from above, nothing is comely but what is lawfull, nothing expedient but that which is comely and lawfull*; and *Saint Augustine* confirms it, *A thing may be lawfull which may not be expedient, but expedient that cannot be which is not lawfull*. Though then Necessity be to be harkned to, yet it must onely be such an one in judicial Affairs, as that is in Martial-ones, *cum res ad Triarios redit*, when things are so urgent that there is no avoiding it, but either Witnesses must be heard and examined apart, or else they will out-swear, or rather forswear truth and misguide the Court; when the Justices see they are resolved to carry their design by resolute and agreed deposition, *tunc dividantur testes*; and yet that onely, *donec deposuerint ipsi quicquid velint*] the Law searches out truth onely, and to doe that, may examine suspected evidence apart, but that done, and the testimony made, the Witnesses are *in statu quo*; for the Law ordinarily takes evidence as it's given in open Court, all that will being present, and the Court asking the Witnesses in the hearing and view one of another, and if it do separate Witnesses, and take their testimony severally, 'tis upon jealousy of *legerdemaine* dealing: for as that of *Seneca* is true, *Aculeos subdunt exempla nibilia*, so is it on the contrary, *one scabbed sheep infects a whole flock*, *Cenciliant inter se impij inimicissimas amicitias*, saith *S. Bernard*, and if there be one Villain in a pack; he can design what others act, as *Darius* said of the *Ionian* defection, *Histiens was the Shoemaker though Aristagoras wore the Shoe*. Therefore our Law to prevent mischief provides to catch these false Witnesses in a net, *dividantur testes*, ] that so they, being ignorant what each other depose, may by their contradictory depositions invalidate the credit of that they depose, *Ita quod dictum unius non docebit aut concitabit eorum alium ad consimiliter testificandum*, saith our Text.

*Ἄνθρωπος χιῶν ἀλλὰ χιῶν. Adag. 60. Chil. 2. Cent. 2.*

*Tempori cedere, id est, necessitati parere semper sapientis habitum est. Cic. 4. Epist. Famil.*

*\* Cic. pro Balbo.*

*Certe in Christiana Philosophia non decere nisi quod licet, nec expedire nisi quod & decet & licet, lib. 3. De Consider.*

*Potesť aliquid licere & non expedire, expedire autem quod non licet non potest. S. Aug. De Adult. Conjug. c. 15.*

*Ut qui sub venillo considebant pugnare detent. Adag. Chil. 1. Cent. 2. adag. 23.*

*Lib. De Tranquill. c. 1. Serm. 24. Hoc Calciamen- tum consur Histixus Aristagoras induit. Chil. 3. Cent. 4. Adag. 42.*

*Quibus consummatis, postquam Juratores illi deinde ad eorum libitum, &c.*

This is onely matter of form, and declares the Lawes order in Proceedings; every Article

Article of proceeding is by steps and degrees proportionable to the nature of the cause, and the Judgement the Law is expected to give in it. As therefore the Jurors do hear and observe the Record, the Evidence, and the Direction of the Court, so in their retreat to debate and consider of their Verdict, as they are not compelled by the Law to come before they have considered and agreed their Verdict, so are they not favoured in their unreasonable Cunctation; a Verdict must be given before the Jury can be free, and the Court whose legal Prisoners they are, (for they are in *Custodia Ministrorum Curie*,) not allowing them fire, candle, or drink, till they have given up their private Verdict, and after that, when they have all those conveniencies, yet they are not discharged, till they have given their Verdict in Court. I say, all this considered, the Law does wisely to allow convenient time to debate, but none to unnecessary delay; and as it keeps them from food and fire, that necessity may drive them to dispatch and agree, so does it keep them under the eye of the Court from conference with any (the Ministers of the Court, being sworn men, servants to the Court, and so in this sense the Court) least if they were at liberty they might be solicited and bribed by the parties in Contest, to the overthrow of right. And this discovers the exactness of the Law, that it leaves no stone unturned to promote discovery of truth, which when it has found, then it appoints, that those that departed the Court to consider in order to a Verdict, should return orderly with it, *reveniet in Curiam* saith the Text; and then *modo & forma* they give their Verdict, and according to that Verdict, *Iustitiaris reddent & formabunt iudicium suum*,] that is, as I humbly conceive, the Sentence arising from the matter of fact verdicted, the Justices before whom the Verdict is given, supposing the Jury just and untampered with (as the Law concludes them to be when they follow their evidence, and the direction of the Court according to it) do give judgement, that is, suffer judgement to be entred according to it. And this argues Juries notable promoters of justice in tryals of fact, because the Law, which is *ars equi & boni*, has appointed that its judgement shall be entred according to the Verdicts of them; which if the Gentlemen and men of Fortune in this Nation doe rightly consider, they would be more punctual to serve on Juries then they are. For besides the notable experience it begets in men, and the parts in them it displays; it not only advances distribution of Justice in the Nation, but it facilitates and makes more current the judgement of the King's Justices in his Courts, since all the burden lies not on them, but the matter of fact passes the Verdict of Juries, compacted of Knights, Gentlemen, and Freeholders, who are considerable men in Counties.

6 Ed. 6. Term.  
Pascha.  
Cook 1. Instit.  
p. 227.  
Dr. & Student.  
c. 52.

Fleta lib. 4. c. 9.  
De Veredicto  
Juratorum.

Note this.

*Tamen si pars altera contra quam veredictum huiusmodi prolatum est, conqueratur se per illud injustè esse gravatum, persequi tunc potest pars illa versus Juratores illos, & versus partem qua obtinuit, breve de attainctâ. &c.*

Still the Law by our Text affords remedy against injustice. For though Verdicts are not as the Law of the *Medes* and *Persians* irreverfible, yet as Judgments pronounced in the King's Courts they must stand, till they be reverfied by Attaint or a Writ of error, 4 H. 4. c. 23. 9 R. 2. c. 3. 31 E. 3. c. 12. 27 Eliz. c. 8. 31 Eliz. c. 1. 5 E. 3. c. 2. 10 E. 3. c. 3. 3 H. 7. c. 10. 27 Eliz. c. 5. 3 Jacob. 8. so may the Jury be attainted for their partiality and perjury 3 E. 1. c. 37. 1 E. 3. c. 6. 5 E. 3. c. 6, & 7. 28 E. 3. c. 8. & 34 c. 7. 23 H. 8. c. 3., and so in sundry other Statutes.

52. H. 3. c. 20.  
1 E. 3. c. 4.  
1 Instit. p. 355.  
289. &c.

Attinctos quasi victos. Spelman. Gloss.  
p. 58.

Cic. pro Caelio:

Attinctâ & attainctura pro istius modi reatus manifestatione & hereditaria successione qua per eam sublata est conquinatio, Spelm. Gloss. p. 58.

Idem eodem loco. p. 294. B.

Glanvil. lib. 2. c. 19.

*Breve de attainctâ.*] This is an ancient Writ at the Common Law called a Writ of Attaint, because it refers to persons vanquished in judgement, weighed in the ballance of Justice and found too light, the word seems to come from *ad* and *tango*, *attingo*, as much as to overtake, and to guiltily reach, thought to be *extremis digitis*: the word in Oratours signifies less then in Lawyers; for the Lawyers make *Attaint* and *Attainder*, to be the highest dishonour, Felony, Treason, Perjury; the ancient books call it, *Breve de Convictione*, that is, a Writ to summon an honest Jury to attaint a perjurious one, which false Jury, after Conviction and Attaint, contracts a very sore punishment, the particulars whereof, collected out of the Antiquities of the Common Law, Sir Edward Cook has furnished

me with, the first whereof is, *Amittat liberam Legem in perpetuum*, that is, let a Jury-man, that has contrary to the fear of God, the reverence of the Law, the charity to his Neighbour, and the peace of his own soul, been sordid, and for gain, fear, or love given false Verdict in a cause; let such an one (I say) be out of the Lawes protection, as he extruded the Law his affection; let him lose the Law of a Freeman, and become lawless as a Villain: hence; I suppose, the Book 24 E 3. fol. 24. calls this, *The villanous Judgement*, not to reproach the Judgment of the Law, but as to the persons meriting it, who thereby of Free-men become villaines. Secondly, As his Person should be out of the Law's favour, and protection, so *Forisfaciant omnia bona & eatalla sua*, let his Estate, that consists of Money, Plate, Debts, Leases, Annuities, be forfeit to the King, as a Compensation to the King's Honour for the blot that it has suffered by his perjuriousness. Thirdly, *Terra & Tenementa in manus Domini Regis capiantur*, ] while he lives, let his real Estate be anothers, and not his to enjoy or command. Fourthly, *Quod uxores & liberi extra domos ejicerentur*, ] The innocent Wife and Children that are at home in the House, harmlessly associating each other where their security is, are to be cast forth to the contempt and injury of cold and want; which, how dolorous that condition is, let *Hagar's* tears speak, who, extruded by her Mistresse, sat like a forlorn in the open Wildernesse; to which perhaps as well as to the punishment of *Cain*, the *Psalmist* might allude in that imprecation he Prophetically makes on wicked men, to whom his Person for his piety was an eye-sore, *Let his Children be Vagabonds and his seed begg their bread*, that is, let them be men that have no home, but wander here and there as never out of their way. Fifthly, *Domus sua prostrentur*, ] Let not onely they and theirs not have being in their own House, but let their own House not be in being, but become a Monument of the confusion that is penal on perjurious falsehood. Sixthly, *Arbores sua extirpentur*, ] Let not onely the Building and Ornament, Trees the Beauty, Profit and Honour of it cease; and his rich laden Meadows, which filled his Dairy, and stalled his Oxen, and supported his Plough, let them all be ploughed and broken up; and to the compleatment of his punishment, when his Wife, Children, House, Lands, have been sorely harressed, let his Body be imprisoned without Bayl or Mahisprise, and this touches the Offender to the quick, when he is restrained, and can stirr no further then the Bar and Lock of a thick door, or the length of a strong Chain, or the narrow bounds of a loathsome strait Room will permit him, then 'tis misery with a witness. Imprisonment is one of the punishments that all Nations inflict on Offenders, and though *Celins-Rodiginus* tells us of other ends of Prisons then punishments of gross Crimes; yet certainly the chief ends of Prisons was to keep them bound, who would abuse Liberty to injure and ill-principle others. Thus we read of the *Cretan Labyrinth*, and the *Messenians Thesaurus*, the *Carians Termerio*, whence the use of *Termeria mala*, the *Cypriots Ceramon*, the *Bæotians Kæzans*, and the *Persians Leches*, the *Attamans Barabrum* and *Melita*, the *Spartans Decas* and *Carda*, the *Latomins* built by *Dionysius* the Tyrant of *Syracuse*, the *Roman Sceleratus Campus*; their *Gemonii Gracchus*, their *Spoliarium*, *Tullianam Ancon*. These, and others such like afflictions on facinorous men, are equalled by this severity of our Law in the imprisonment of perjurious Jurors bodies, which judgement of the Common Law, the Statute of 23 H. 8. c. 3. does mitigate the severity of, and therefore to that I referre the Reader.

Nor is the Common Law onely so severe in this Case of Perjury, but even all National Lawes equal them in severity. *Tholossanus* has to my hand collected the severity of many Nations against Perjury, and the *Digest* seconds all severity against it; for when (a) *Paulus* sayes, *Sufficit Perjurii poena*, the *Gloss* adds, *Perjurii poena divina exitium, humana dedecus*, which it has out of *Tully*, that *Helio* of Law, Language and Wisdom, lib. 2. *De Legibus*. And therefore is it that an Oath being *παράμα ἰμνεον*, no trivial customary thing, as *Phil's* words are, but a citation of God to bear witness of it, if it be false it provokes God, because it makes truth it self witness of a lye, is so punished by God and men, as in the subsequent words appear, which are.

Gen. 21. 16.  
Gen. 4. 12. 14.

Psal. 109. 10.

Fleta lib. 1. 26.  
c. 42.

Antiquit. lib. 17.  
c. 9.

Sabellicus lib. 6. Ennead. 1.  
Adag. Centur. 1. Col. 1. Adag. 89.

Alex. ab Alexand. lib. 3. c. 5.

Cic. in Verrem. Liv. lib. 6. Belli Tunisi  
Cælius lib. 17. c. 9.  
Alex. ab Alex. lib. 2. c. 6.  
Cælius Rhodig. lib. 17. c. 9.

Diod. Sicul. p. 69. Edit. Manoriz.  
Syntagm. Juris universi, lib. 50. c. 6.  
Digest. lib. 4. tit. 2. c. Nam Perjurii poena  
in Marg. p. 523. lib. 3. tit. 2. p. 354. D.  
in Marg.  
(a) Lib. 11. ad Edict. 22.

Μάρτυρες ὃ καλεῖν ἐν ἰδίῳ  
δεῖν ἀποσπῶταλον. lib. De Deca-  
logo. p. 756.

Virtute

*Virtute cuius si compertum fuerit per sacramentum viginti quatuor hominum, in forma prenotata returnatorum, electorum, & juratorum, qui multo majora habebunt patrimonia quam Juratores primi, Quod idem primi Juratores falsum fecerant Sacramentum, &c.*

*Virtute cuius.*] That is, *Brevis de Attinela*; for this is the Warrant for the Sheriffs Summons: For, *compertum* it cannot be, if not *quasitum*; and *quasitum* it cannot be, *sine mandato Regis*, and that can be no otherwise then *Brevis de Attinela*. So, that if attaints be necessary to punish Perjury in Juries, that punishment must be discovered due to the Fact, by the Fact legally proved, and that the Text sayes must be by the Oath of foure and twenty men, this is the direction of the Common Law: For, neither in the Statute 11 H. 7. c. 24. or 1 H. 8. c. 11. which are expired: or of 23 H. 8. c. 3. do I finde the direction for it other then as by the Common Law; in affirmance of which, so much of the Statute of 23 H. 8. c. 3. as concerns the number and value of the Jury on attaints was made; For, in as much as an attaint, when proved, contracts great infamy and punishment, the Law before it ad judges and inflicts them, expects to be notably satisfied; and this appears from the enhansment of the number of the Jurors to try this, whereas twelve serve in other cases, foure and twenty must be in this; and whereas men of the value of 40 s. Freehold, or 4 l. in some cases, here the Law requires that the Jurors shall have every one 20 pounds by the year Freehold, &c. 15 H. 6. c. 5. 18 H. 6. c. 2. and thus stood it when our Text was written, though the Statute 23 H. 8. c. 3. reduce the quality to 20 Marks, and this confirms that of the Text, *Multo majora habebunt patrimonia quam Juratores primi.*] These then returned, elected, and sworn in due Form of Law, are to enquire whether or no that be true which is suggested; *Quod idem primi Juratores falsum fecerant Sacramentum.*] In what sense Oaths are termed *Sacramenta*, I have written in the Notes on the 20. Chapter. That which the Law aims at, is to prevent false Oathes by punishment of those most severely that are guilty of them, *That (a) others may heare and fear, and do no more presumptuously.* For, the Law having indulged Triall of the Fact to Juries, and the Court charging them to *make true enquiry of all things in evidence before them, and not to give Verdict for favour or affection, so help them God,* They for favour or affection going maliciously against their evidence, deserve not onely infamy, but all the consequent punishments of their seduction: And, although *Bracton* sayes favour may be

shewed *quo ad infamiam*, yet is there none *quo ad pœnam redemptionis*: for, as God is a hater of false Swearers, *Zach* 8. 17. and a *swift witness* against them, *Mal* 3. 5. so have ever the Lawes of this Land been eager against them: by the Lawes of *Cnutte* it was Banishment, and to forfeit his Land: by the Lawes of (a) *Ethelstan* to want Christian Burial: and so by those of *St. Edward* (b) to be as it were un-Christian'd. And because they that were perjurious were not *Oaths-worth*, therefore were they never to be believed afterwards: which is in our Texts

words, *nec aliter recipientur in testimonium veritatis.*] for, the reason is by *Bracton* added, *Quia qui semel convictus de perjurio prasumitur quod iterum velit perjurare*, according to which the Books are cited by our Judicious *Selden*, in his Notes on this very Chapter.

*Et pars que succubuit in priori placito restituetur ad omnia qua ipse perdidit occasione eius.*

This conveniently follows, for if a Detriment be befallen a man upon false Oath, the evacuation and disproofe of that Oath, and the attaint of the person foresworn by it must inferr Restitution of that which the improbated Oath occasioned: For, as that of *Glanvil* in point of the punishment, is true, *Qua pœna adeo recte instituta esset ut quoslibet ab illicita prestatione Sacramenti in tali casu coerceat similitudo supplicii*; so in point of Restitution, that implies the Nature of the recompence, to have what they lost, and their reasonable costs and damadges: so 23 H. 8. c. 3. confirming 11 H. 7. c. 4. and the same was the Common Law before in point of Restitution, of what was lost

13. Eliz. c. 25.

*Sacramenta militaria apud Romanos.* Sueton in *Caligula*. *Turnebus Advers.* lib. 27. c. 20. 3 *Instit.* c. 74. p. 163. (a) *Deut.* 17. 13.

Lib. 4. *Tract.* 4. c. 5. p. 299. *Homicida perjurus & adulter ni oculus ad se redierint & compeserint una cum his flagitiosis sceleribus patria exterminantur.* *In*ter L. *Canuti.* c. 6. p. 108. 116. Edit. *Twiss.* (a) P. 52. c. 25. (b) T. 58.

Lib. 4. *Tract.* 4. c. 5. p. 292.

Lib. 2. c. 19. *Dyer fol.* 250.

# A Commentary upon FORTESCUE.

lost by the false Verdict; for so sayes our Text, *Restituitur ad omnia quæ ipse perdidit occasione ejus.*]

*Quis tunc igitur, etiamsi immemor salutis animæ suæ fuerit, non formidine tanta poenæ & verecundiâ tantæ infamiae veritatem non diceret sic juratus, &c.*

This Clause is inferentiall of what the Chancellour collectts from the premised severity of the Law towards violated Faith, and abused Justice; and its interrogative vehemence having the Oratory of a positive negation, mindes us, that no man that is wise and worthy will pawn his Soul to fill his Purse, or hazzard his Good Name to accept a petty Bribe. For since God would have every man a *Cæcus*, to be armed with innocence from top to toe, and in no part or point void of its Muniment, but wholly invulnerable by willfull and notorious sin; No man that will have the *hornam messem* of Heaven, and obtain his vessell as top full of glory as it can contain, and a good Conscience preserved, will have from the righteous Judge; no man I say, that strives for this, must or dare make his soul a *Πορνικὸν ὄνιον*, sordid to sin and vice, which God abhors, and for which he hath prepared terrours in life, and torments after death. For since the Holy Ghost has told us, that without shall be *Dogs, and Euchaunters, and Whoremongers, and Murderers, and Idolaters, and whosoever loveth and maketh a lie, and into the new Jerusalem no unclean thing must enter*: but unto him that ordereth his Conversation aright the salvation of God shall be shewed, The good and grave Knight here confirms his own and his Readers mindes in the belief of this, That no man can be false to the Law and the King in violating his Oath, and injurious to his Neighbour, in parting with his right, which he ought to justifie; but he that neither feares God, nor reverenceth Man, he that is *Immemor salutis*, and cares not whether he sink or swim, as we say, and is desperate, not valuing Reputation, or Personall dishonour, but rests *sinè formidine tantæ poenæ, and sinè verecundiâ tantæ infamie.*

*Αἰσῆλος ὑπάρχεις ὡς Καίκευς. Adag. 25. Chil. 3. Cent. 4.*

*Adag. 62. Chil. 4. Cent. 1.*

*Chil. 2. Cent. 9. Adag. 24.*

*Revel. 22. Ephes. 5. 5. Rom. 21. 27. Psal. 50. 23.*

In that then the Text sayes *Quis enim tametsi immemor salutis suæ fuerit;* it points out to us the piety of the Law that Swears us on the *Gospell*, that we might remember the requiries of the *Gospell*; to love truth in the inward Man, and to do as we would be done by, as the God of the *Gospell* exacts from us, and to feare to do the contrary upon the Curses that the violated *Gospell* threatens upon its violators; so does it minde us that some there are that as they put the *evill day far from them*, so do they in their actions demeane themselves, as unmindefull of all those glorious remains that the Image of God in them is capable of, and has deposited for them: which prophane-ness (for it is a vilipendency of a birth-right no less noble then *Esau's* was, and sold no less triflingly then was his) if it should prevaile in a seduced sinner, to promote or give way to, and he throw away his Eternity as a thing of naught, yet is there in the legall censure of this Perjury in Jury-men attainted, somewhat that the Chancellour thinks being more affective of the sense of Man, will more work with him then his Heaven will; For that few understanding aright do not sutably value, but this every son of *Adam* can judge of, and will endeavour to avoid *disgrace to his Name, and punishment in his Body*. For surely, of all things cogent in man, feare is the first and firme-*st*; *Primus in orbe Deos fecit timor*: and the Prophet, who well knew what the power of mortall passion was, cries out to God to affect his enemies with this one of them, as that which would reduce all the rest to termes; *Θεὸς Κύριε γοβήσα, as Aquila reads it*: and our Translators after it, *Put them in feare O Lord, that the Nations may know they are but men*. Feare, O tis that which brings men into servility and compliænce, which makes *Lapide* read these words by *Pone legislatorem super eos*; and *Cajetan* by *pone dominum*; and others by *Pone jugum vel dominium*; because all these, being terrible, cause feare and dread in the objects of their terrour and fury, and that our Chancellours expressions may have their allowance of weight, this *formido* is no transient feare, which does not *cadere in vixim constantem*; but it is *metus permanens*: such as does not onely make the heart ake, and the joynts to tremble, but such as therefore is such from the prospect it has into all the *arcana* and dimensions of that which it feares: hence *Scaliger* derives *formido à formis id est spectris*; not onely for that men by feare take appearances for

*Amos. 6. 3.*

*Psal. 9. 20.*

*Cic. 4. Tuscul. 31. Pavidus formidine poenæ Virgil.*

more

*Horribiles formidines ex ignorantia rerum existunt,*  
Cic. 1. de Finibus.  
lib. 26. 9.

more then they truly are, accordingly to that of the Orator, *Horrible feares arise out of the ignorance of things*: but because feares soften and cajoule men into obsequiousness. Even God himselfe prevails mostly on men by feare; *When thy Judgements are in the World, saith the Prophet, the Inhabitants of the World will learn righteousness.* What, no otherwayes, nor before? will not the love of *Christ* constrain? no, not the World; the little Flock onely are so tender and mouldable: It is the feare of Gods

Lib. 4. *De rerum vocabulis*  
Cap. ΠΕΡΙ ΛΕΜΑΤΩΝ ἰθρικῶν.

*Erasm. Adag. 75. Chil. 3. Cent. 4.*

(a) *Cent. 1. Adag. 21. Chil. 4.*

Soveraignty that brings the rebell World to crouch. If men do *Litersam cantionem canere*, as *Julius Pollux* his words are, tis against their wills: The sense then is, Perjury being so great an offence in the Jurour, and the Law not leaving men to that liberty in point of Oaths, that *Cercyra* left men in other things, according to that *Sarcastique adage* (a) *Lybera Cercyra caca ubi licet*; but requiring not onely that no Jury man shall be an ambidexter, but if he be such punishing him according to the Statute 5 *Ed. 3. c. 10.* and the other prementioned Statutes; but also that he be inculpable, and know no party in Judgment, as he will avoid that sore judgment of attain: the Chancellour does well to urge, that if a man lay aside all Religion and Morall virtue, yet in the bare *formido pœna* there is enough it self to deter him from provocation of the Law, and procurement of his own punishment according to it; especially when there is *verecundia tanta infamia*] added to it. For this offence does not onely afflict the person, Fortune and Relations, but bespatters, yea deturpates and dishonours the good Name of any man; and to be infamous Men naturally hate, to be odious and contemptible is the plague-fore of life, which every man shuns: This God himselfe humbles man by, when he tells him, *That he being little lower then the Angells, and crowned with Majesty and Honour, abode not, but became as the beast that perished*: For this of suffering diminution is the great Crest-fall to all Manly mindes, when men are ranked with the dogs of the flock, they are no company

Plal. 8. 5.

*Generosioris arboris statim planta cum fructu est.* Adag. 74. Chil. 1. Cent. 3.

(a) *Unus quisque debet agere secundum quod sibi ipse decet.* A Gellius lib. 1. c. 6. P. 3.

*Impetu quodam currere ad mortem commune cum multis; sed deliberare & causas ejus expendere utque senserit ratio vita mortisque consilium suscipere vel ponere, ingentis est animi.* Plin. secundus in Epist.

for any but persons of disregard; and to such do they onely incline who are infamous. Whereas brave and virtuous mindes are like generous Trees, that will not onely bring forth fruit, and that quickly, but will thrive in no soyle that is not generous like themselves: This then the Chancellour considering, arraigns the perjurious person, as not onely stupid, in not fearing the punishment of his Crimes, but phrantick, in contemning all modesty and care of his report and esteem: *Mistellus* in (a) *Agellius* tells the World, *That the brave minde holds himselfe obliged to do every thing like it selfe.* And if ever any man would have a fair autumne, he must have a tender respect to his spring and solstice; Reputation once lost is not regain'd but by something stupendious, next doore to *Hyperhumane*, which considered, the Chancellour brings in the deareness of a good name, and the avoidance of the contrary, as pregnant motives to avoid Perjury; If the thoughts of Heaven and bodily freedom would not prevaile, yet the care of avoiding disgrace should make a man that is Sworn to do right, feare to forfeit his oath.

*Et si unus forsitan tantus sui honoris prodigus esse non pepercerit, aliqui tamen Juratorum tantorum famam suam non negligent, &c.*

This the Text adds to shew, that as one scabbed sheep may be in the flock of a Jury, so in that there may be others sound and good, that infected and seduced one can do no injury to Justice, if the rest or any part of them hold their own: For though that may, in a sense, be true in Juries, which was reproachfully spoken of the discordant *Carians*, *Multitudo Imperatorum Cariam perdidit*; yet so long as there is any limb of that body hayle, all the others subversions signifie nothing: For the Enquiry of the Court is, *Are ye all agreed of your Verdict?* if any one sayes no, (holding his own against the others perjurious seduction) the combination comes to naught. So that the Law considering that men here are set *inter sacra & saxa, inter malleum & incudem, in acie novacula*, that they have many temptations to conflict with, bids them in this storm *ἰσχυρῶς ἀγκυρᾶν καλᾶζειν* put forth their anchor, Integrity; and rather expose themselves to the utmost hazzard, though it be to be *Liberide nudiores* then to divide the spoile

Adag. 7. Cent. 7.  
Chil. 2.

Cent. 1. Chil. 1.  
15. 16. 18.



spoyle with the wicked: For, though most men may be *Versatiles Artemones*, and turn and winde every way as the gust of their advantage drives them; yet a good and well-Principled Man will walk sure, and know his footing before he will trust his body and fortune upon it, crying out with him in the Adage, *Pedibus ingredior, natam enim non didici*: and this to do, and to be fixed to Justice, is *Famam suam non negligere*, which the Text mentions, and which Sir *Nicholas Throgmorton's* Jury made good, and have immortality of fame for.

Adag. 9. Chil. 4. Cent. 1.  
Adag. 23. Chil. 2. Cent. 2.  
In Anno 1554.  
Hollingshed. p. 1105.

*Neque bona & possessiones taliter distrabi patientur.*] This relates to the reward of integrity, security to a mans person and fortune; For, as the Law easily beares down whatever is a perjurious Jurors, and sinks all of him and his in a bottomless contempt, and an irrecoverable loss: which the Text terms *bona & possessiones distrabi*. Yet, upright and true men *non patientur talia*, because they do not forget their rights by wrong doing: And therefore of all the bladders and supports to Estates, none like those of Justice in an Ancestor, that gives a durable basis to all that's built upon it, and to endeavour to sink it, is (a) *to sink a bottle full of wine*: O tis a rare custody in the worst time that innocency has, when men walk in the Circle of the Law, they do (b) *ἐν δίκῃ ἐμμένειν duabus nixus in portis sedere ancoris*, and they that seize their fortunes contrary to Equity and Law, are publick enemies; For they that suffer for righteousness have the Spirit of glory resting on them: That onely being a comfortless suffering which is the fruit of busy-bodding, and evill-doing against the Lawes of men, and the Vice-gerent of God.

(a) Ἀσκὸν βαπτίζεις πνεύματος πλῆθ-  
ην. Adag. 32. Chil. 3. Cent. 4.  
(b) Adag. 13. Cent. Chil. 1.

This then being the circumspection of the Law to prevent Perjury in Jury-men, the Chancellour is by me to be considered, not in opposition to the course of other Laws, but as recollecting his precedent arguments for the triall of truth by Juries; as that the Act of God and Nature determine not the remedy of Justice, that Witnesses are not taken hab nab, as we say, *Ignoti*] such as no body ownes, but are their own affirmers; whose condition, life and way men are unsatisfied in, because secret and subdalous; Men never known in their own, nor ever known out of other mens way: nor *Conductitii*,] bought, and made Witnesses, as *Plautus's Fidinia Conductitia* was, who played what Tune his Company called for: and *Varro* calls all works of Pay *Conductitia opera*. No such buyers and sellers of Innocence in the Temple of Juries doth the Law suffer, but overthrowes the Tables of these Money-Changers, and all this it does to make way for upright Judgment: *Tunc canunt Cygni cum tacebunt Graculi*. For when men are sordidly set on gain, if their houses and estate be *θλοσος ἀγαθῶν*, and they have *ἀγαθῶν μυρμυκία*, heapes of Gold; yet, if they be venal, they will truckle to Perjury, as every Workman that will be well paid, learns to humour and please his Employer and Pay-Master: and this the Law looking upon, as the Moth and Canker of Integrity, decries and punishes it, and that with the concurrent acclamation of all honest men; who, because they know not the deceits and lurches of their own hearts, are pleased to have these Mandative Preventions put upon them; For Faith untainted, and Truth pure and defecate, saith *Seneca*, is the most sacred good thing in the divine soul of man, compellable to evill by no necessity; perswadable by no bribe or leare; resolute against all terrour, constant in retaining its innocency: so, that acceptance of rewards being punishable, the Law has done wisely to see, that witnesses be not *conductitii*, such as either neede for want of fortune, and will take for Covetise any gratification to elude justice, and become false.

Epid. 6. 2.  
Lib. 1. de Re Rust. 17.  
Omnia conductor solvit, Ovid 1. Amor.  
Eleg. 10.

Πολλῶν ὁ ἄλιμος γίγνεται διδάσ-  
καλος.

Chil. 1. Cent. 3. Adag. 34.  
Nemo justus esse potest qui mortem, qui do-  
lorem, qui exilium, qui egestatem timeret, aut  
qui ea qua sunt contraria aequitati antepo-  
nit. Cic. 1. Offic.

Fides sanctissimum humani peccatoris bonum  
est, nulla necessitate ad fallendum cogitur,  
nulla corrumpitur premio; ars (inquit) occi-  
de, cæde, non prodam, sed quo magis secreta  
quæris dolor hoc illa sitim condam. Senec.  
lib. de Const. Sapient.

*Vagi inconstantes.*] These are ill qualities which the Law abhors in Witnesses who under this name are accompted loose persons, though perhaps not such as the Statute 39 *Eliz.* 17. calls Vagrants; or the 1 *Jacob.* 7. Vagabonds; yet little better, *Vagus qui passionem manifesto ostendit*, saith *Festus*. This the Greeks call by *πρᾶντης*, qui sint negotio, modo huc, modo illuc, inutiliter discorrit, An Erratile and Planetary peice of Manhood carried up and down by the impetuosity of vice to this and that, without settlement in any thing. The Ancients, as they accounted confidence and stability the all, almost, of Virtue and Wis-

Vagabundus effu-  
sus in voluptates,  
ac vagabundus  
semper & ebrius.  
Senec. lib. de vita  
Beata.

Pro Gluentic.  
Pro Milone.

dom, so levity and vagenesse the complement of all evil and infamy; *Tully* mentions *aliquem vagum & exulem errare*, and *aves vage, errores vagi*, and *fortuna vaga & volubilis*; and in *Martial* there is, *Juvenus vagus*, and *Gressus vagi*, *Lumina vaga*, and *Murmura vaga*; and *Pliny* writing of the name of the herb *Ambrosia*, terms it, *Nomen vagum, inconstans, & multis opinionibus obnoxium*, by all which the Law's Wisdom is apparent, for therefore does it exclude necessitous persons, or such as have habituated themselves to shift and shirk, from all credit, as Witnesses; because Custom has made it a second nature to them, and they cannot but be almost such in all cases, who doe apply themselves to be such in any.

Si careat suspicio testimonium vel propter personam à qua fertur, quod honesta sit, vel propter causam quod neque lucri, neque gratia, neque inimicitia causa sit, admittendus est, Calistratus lib. 4. De Cognationibus.

*Aut quorum Conditiones, vel Malitia ignorantur.*] That is, they are so well known to be reputed honest and upright, that, if such they be not, their testimony is abated in the credit, for the Law requires stanch Witnesses, and presumes them such where they are not either convicted or violently presumed, and the Law being so *Argus-eyed*, and giving liberty to all well-grounded information, and it so importing the adverse party to inform against the Witness, if cause and justice there be for so doing: this considered, occasioned the words, *Aut quorum conditiones vel malitia ignorantur*. These are the infamous persons that the Lawes exclude Testimony, the allowed ones follow to be touched upon.

*Vicini sunt Testes, de propriis vivere potentes, fama integra & opinionis illasa.*]

This added to the former perfects the Parallel, there 'twas *non ignoti*, here *vicini sunt*; there 'twas *non conductitii*, here *de propriis vivere potentes*; there 'twas *pauperes, rari, inconstantes*, here 'tis *fama integra, & opinionis illasa*; so that the variation adding to the Emphasis still directs us to our Authours Excellence, which is to render the Law considerate in every particle and point of its Justice; for it aiming at the great end of Government, Right-doing, imployes every instance of its power and reason to minister to that; and that it doing, by impeding the contrary as well as by advancing the proper tendencies thereto, arrives at that compleatness therein, that denominates *England* the Throne and Center of Justice; and that not onely for the exactness of Witnesses, and impartiality of Juries, but for that the Returners of Juries are not men mercenary, ill to live, but of great fortune, bloud and breeding, *per officarium nobilem & indifferentem electi*,] and, when served they are to testify their knowledge in a Cause; 'tis not arbitrary, whether they will or will not, but they are fineable if they do not: yea, and as the cause may be, I think, the party that suffers damages by the absence of a Witness legally summoned and served to appear, and not appearing, being well and no act of God impeding him, may bring his Action against such an Absenter, and recover in it against him, which is perhaps the cause that the Text sayes,

*Et coram Judice venire compulsi.*] That is, the obstinacy of such absence being penal, both from the King whose Laws are contemned, and to recompence of the party who by it is damnified, the Witnesses may be well said to be *coram Judice venire compulsi*. This then the Law doing, and to that end which is onely propitious to Order and National Charity; the conclusion of the Chancellour is to good purpose, *Quid ultra vere nihil est*, meaning this the *Hercules* Pillar and the *Meta ultima* of all politique prudence and Magistratique care: for, when that is done to further virtue, which the wit of man can devise or carry on, what more can be thought endeavourable then is aimed at in this procedure; which, how the Lawes of *England* effect, let those judge who consider, that such are onely allowed to serve on Juries as are *fide digni*, and are men of Estate, and those to give testimony unto them, *who are not onely unblemished, but are positive, and not by hear-say, Witnesses*. So tenacious is the Law of its just Spirit, that it abates not one *Iota* of it to gratifie any Greatness or Prevalency, but gives this Motto, *Fiat Justitia & ruat mundus*; which Constancy, upon so divine a Basis, displays the rectitude of its Principle, and bespeaks the great reward of honour from God and men. For when men of wavering mindes have played all their prizes, and had

Qui se non opinari sed scire, non audivisse sed vidisse, non interfuisse, sed egisse dicunt, Cic. pro Archia.

had a venture in every Lottery of Levity and Change, that will be the indeleble Mark of a Wiseman, which *Seneca* commends *Socrates* for, whom he brings in justifying himself immovable, notwithstanding popular tumults, as the Rocks are for all the high Seas that dash against them. And therefore though *Maro* may commend *Latinus* as he deserved, for being, as he publishes him, *Ille velut Pelagi raptes immota resistit*; and (a) *Pappyrus* may be cried up as the onely Roman Youth that could keep a Secret, and be constantly resolute against the sieges of love to discover it: Though *Robert Earl of Gloucester*, Son to *H. 1.* have the praise of our Historians for adhering to a good matter, and being zealous in it: And that Christian Rule in *Saint Cyprian* should be owned Gospel by us, which is not to be hoped it should in this degenerate Age be, wherein Gold and Greatnesse are the onely *Namens*; I say, should all these be amassed into one, yet would they not come up to the *Lawes Constant & perpetua voluntas* *Jus aenicumque tribuendi*. And therefore 'tis a good Rule that a wise man, Monarch, and Christian gave us, *That the Law was the surest foundation of happiness that any man could rest upon*; which when the belief of it evidences it self in practice, will prevail with me to admire the graduates in this Perfection; as Contenders with the *Venetian Senate* for Mastery in Constancy, of which, truly I think, they gave a matchless President in the case of *Carmagnola* their Generall, who, though openly suspected in the Senate, wherein Execution of him was concluded, yet in all the eight Months that passed between their Conclusion and his Execution, though he had many friends in the Senate and some of them poor, who might have received great rewards for discovering his danger to him; none of them discovered it to him, nor did he know of it till it fell fatally upon him; which Justice, to the honour and success of the Senate, argues them, that were Members of it, ambitious rather to honour their Government, then advance themselves; which if we of this Nation would doe, we should better deserve then we doe, the freedom of such a Law and Government, as we, blessed be God, have constituted. By all then that has been written it appears, that a readier way to justice no man can go, then by those steps that the Law has chalked out. And so I take leave of the Text, and proceed to the following Chapter.

*Præleo me non aliter quam rupes aliqua in vadoso mari destituta, quam fluctus non desinunt, undiqueque moti sunt, verberare, nec ideo aui loco eam movent, aut per tot ætates crebro incursu suo consumunt. Seneca lib. De beata vita, c. 27.*

(a) Agellius lib. 1. c. 23.

Malmesbury Hist. Novel. lib. 2.

*Manere debet apud nos frater fidei robur immotile, & stabilis, atque inconcussa virtus contra omnes incursus & impetus obstrantium stultorum. Sc. Sanct. Cyprian. Epist. 7.*

Shute's History of Venice. p. 334.

## CHAP. XXVII.

*Sed quomodo in criminalibus Leges Angliæ scrutantur veritatem, etiam rimare pernecessarium est.*

HERE the Chancellour, like an exact Master, observes Method to the clear and kindly attainment of his end, which was to endear the Law to the Prince, and the Prince to it; and that upon conviction that it is the most expedite way to govern English men by, and has the best means of discovering offences and providing remedies for them in *England*, that can possibly be found out: to which end considering, that causes relating to justice are either such as are civil, or criminal, having fully in the two forgoing Chapters treated of civil Actions with their remedies and manner of prosecution, he now comes to Criminals, as they are tried and proceeded against in *England* by the Common Law or by the Statute Law, which come under the title of *Leges Angliæ*. And this he thinks not onely convenient to explore and detect, *sed pernecessarium*, as that which unles removed will obstruct his after and more effectual passage; for his Errand being to the Prince, whose soul and reason he would conquer to and confirm in, so just and belovefull a thing both to King and people, as a good opinion of the Law of *England* is, he judges it *pernecessarium* throughly and absolutely requisite to evidence to the Prince, that the Law is not more defensive of privilege, then Prerogative; nor a stouter Bulwark to civil Rights between man and man, then of the Sovereign's Person, Honour, and Prerogatives, the violation of which endowments of Sovereignty it judges criminal.

Ab Ερεῖω vel  
Ερεῖω Bec-  
man, lib. de  
Orig. Lingua  
Lat.

And that the Chancellours intentness may more illustrate it self, I shall crave leave to touch upon two things in this transitionall clause. 1. The Epithite he gives the Lawes Enquest after Criminall Offences, *Scrutantur Veritatem*: the Greeks expres the Verb *Scrutor* by *ἰσχυρίζω*, quod proprie est interrogando aut colloquendo scrutor, elicio, indago: and by this the Chancellour informs us the meanes and way of discovery of Treasons, Felonies, and Breaches of the Peace, which are all Criminalls, to wit, by way of Enquiry, Examination, and following offences by a wise and diligent perfruit, while the bruite of them is fresh, and the stinch of them warm and reaking; Not but that the truth of some Facts lie a great while unfound out, because either secret, or not ripe for vengeance in their discovery: But when ever the Law has intelligence of offences and offenders, by the Ministers of Justice, and Officers of the Crown, it eagerly pursues them, and dives into the Nature, Circumstances, and aggravations of them; and this to know is *perneccessarium*, because it implies zeale to Justice, and gubernative severity; which by prosecuting offenders is tender, and conservative of well doers: and this the Chancellour intends by *Scrutantur Veritatem*.

Secondly, The Chancellours drift in bringing Criminalls to be discourfed on is notable, *rimare perneccessarium*; it should, I think, be *rimari*, for the Verb is *deponent*, and has no active, because it is of active signification; the Noun *Rima* signifies a Cleft, Chap, or Chink, which is not close joynd: and by allusion *plenus rimarum* is by *Terence* the discription of a babler, who has such wide chinks and chops in his mouth between his lips, that all secrecies pass thorough them: *Plautus* also uses *invenire rimam* to finde excuse, or means to escape, as little Vermin do at the least crevise, or chinke. Hence one sense of the Verb *Rimor* is to cleave, as Timber that is shaken by the winde doth, though the usuallest be to search out narrowly in every corner and cleft; so *Claudian* uses *fuga rimari canibus*, for to Hunt with Hounds in every corner, to which our Chancellour without doubt has respect: telling the Prince, that as the Law is very exact in its appointment of all things that concern King and Subject, and is defective in no point of regimentall prudence; so is it his care to finde out apt words to carry his ardent affection to the Lawes of *England*, pleasingly to the Princes ear, and from thence to his love and affections.

Ἐρεῖωτι τὰς  
ἡραφάς.  
John. 5. 39.  
Rimari est qua-  
rere valde, Festus

*Ut in eis plenarie agnita ambarum legum forma, que earum efficacius latentem re-  
velat veritatem certius agnoscamus.*

Here the Chancellour intimates to us three things; First, The end and use of good Lawes, *latentem revelare veritatem*. Secondly, The *modus*, by which Judgment is rightly made, and in what manner the Law does this, that's *plenaria agnitione ambarum legum forma*. Thirdly, The danger of civil broils to render National Law odious, and forraigne Lawes amiable; This I collect from the expression of *ambarum legum*: For our Chancellour would never have so eagerly asserted the Common Law of *England*, and debacchated against other Laws, had he not seen them probable to be competitors with the Municpe Laws, the love of which exotique Lawes probably he perceived, either stealing into the Princes heart, or whispred into his care by Adulatorious Forraigners in the time of his Exile.

The end and use of good Lawes he makes to be *latentem revelare veritatem*: Truth is the precious Jewell which does *latere*, and is not come at but with toile and hazzard; which made the *Pythagoreans* say, *veritas in puteo*: indeed methinks *Solomon* had some meaning analogick to this, when he bids us *get wisdom rather then gold*; now both *Wisdom* and *Gold* do not lie on the surface; nor are they obvious, but obtained with difficulty. Since therefore her lustre has such damps; and her price is so invisible, the work of us mortalls is to prosecute truth so hard, and follow after her so earnestly, that we give no rest to our eyes, nor recreation to our lives, till we apprehend her *Dulcis veritas in interiora melodia*; This therefore the Chancellour here publishes to be the labour of the Law, *Latentem revelare veritatem*: to rescue the beauty and virginity of truth from the rape and force of pretended virtue, but recall falsehood her antagonist.

For, such is the craft of the World's *Polyrates's*, that they do *omnem movere lapidem*,

Πρω. 16. 16.

Ἀληθία ἐστὶν ὁ θεὸς ὡς εἶπεν, &c.  
Dyonisius Areopag. apud Sto-  
bizum *Serm.* 60, 61.  
τὸ σῶζεν τὴν ἀληθίαν, χρυσοῦν  
ἐστὶν δάκτυλον. Evagrius apud e-  
undem.

dem, to bury truth in the heap of fallacies, and to make Justice set up somewhat as a Law, which should bastardize her, and, in stead of her, legitimate that spurious product of villany, injustice. This makes the Law so exact to trie, so vigilant to avoid trapping, and from this are often delays occasioned, which are reall advantages to truth, not (as is supposed) methods purposely studied to enhance gain: For as Mariners, when they have but a bad winde oiten shift sayles, and waft from shore to shore, that they may make some way to their Port, and not lose all progress because they have not a full gale: so are Law-Makers necessitated to use all means to right Truth, and use all instruments to her clarification, rather then lose one grain or atome of her. For all truth *qua* such is mysterious, and to be sought after till it be found, if ever it be; and the least dram of it that we attaine as the consequence of our acquisition, will be well-come to us; and we shall account our selves to be recompenced for all our labour by it.

The truth then that the Law seeks for here, and having found reveales, is the truth of Fact; that is, whether a Malefactor be so bad as he is suspected, and accused to be: For it sometimes falls out, that the clamour is greater then the offence deserves; and if the punishment should be in hast executed, the Magistrate would be *artifex injuria non opifex Justitia*: therefore Policy, that is well advited, cautions that a just assay should be taken of every man and thing, and that such Arts should be practised as may sever the precious from the vile, and the Gold from the dross; and that is done by examinations of Witnesses upon such heads as may best conduce to knowledge of what they understand in the cause: For Lawes are intended to settle the rule of equall distribution both of mine and thine, rewards and punishments: and being directed to so usefull an end as is the decision of debates by the line and plummet of Truth, what more usefull benefit to humane Societies, then Lawes?

But how shall good Lawes be fitted to answer these good ends, or how shall men make use of good Lawes to the latitude of these good ends. That the Chancellour resolves in the second place, *Plenaria agnitione ambarum legum forma.*] For knowledg of the forms which do *dare esse*, makes a man capable to judge of their fitness and conducibility to those ends. As it is not a write skill in simples, and a bare book learned speculation that makes a good Physician; but the knowledge of the operation, and the view of them in practice upon Patients that makes an expert practicer: so is it not a light and oscitant touch in the study of Law that makes a man capable to judge of the Law, but an accomplished Mastery of the reason of it, and a coyification of it into ones Mother reason, rectifying it thereby, that entitles a man to judgement of what the Law is, and is not. For Formes, as they are modelled and fixed to the freehold of the Law, are not purprestures that are destroyable without great inconvenience, but they are so fastned to the maine Principles of Polity, that with them they endanger the ruine of Government: For we must reasonably imagine that the fetters up of them, wise, (and in their times) worthy men, had solid reason for what they did; and thereupon doing it, we are to conclude there is some inconvenience will ensue that demolition, which was on purpose raised as a Sanctuary to Order: The consideration of which may lead us into the reason, why judgment of Forms, Methods, and Regulations of Government in the World, is not committed usually to young and green-headed men, whose brains are too Mercuriall to fix, and too Sultanish to deliberate of things; but to grave and sad men, who are above the levities of youth, and beneath the dotages of old age. *Byas* that wise Law-Maker appointed no man to be Governour of his People till fourty yeares of Age; and the reason was, Youth is light and heady, Age is foure and infirm: and the usuall saying was, *con-*

*filia senum hastas esse juvenum*; pointing out no doubt at this, that Experience the fruit of yeares is the season of Judgment. And therefore as to the Case in point, he that will judge of whether Lawes Proceedings are best, must know the forms of both, which few fully do that are not of yeares; and spend not their yeares in study and search into both Lawes. Yea, suppose a man had the Law-learning of *Volusius Metianus* the Master of that renowned *Marcus Antoninus*, who gives this testimony of him, that he was *in legibus interpretandis experientissimus*; yet if he be as *Volusius* was, in *uisdem vislandis longe magis exercitatus*, what is he profited by it? Such a *Volusius* who askes, whe. her one thinks there be any Law in the World which he knew not, may be answered

*Ἄλλοτε μὲν ἀμείβετο, ὅτι τὸ πρῶτον  
πρὸς ἀδελφούς.*

*Epist. ad Tullium  
nova.*

answered as he was, *Dic mihi, estne ulla lex in mundo quam praestes & observes?* That then which must give a man a right judgment of Laws, will be consideration thorowly of the Forms, Steps, and Marches by which they move; and how suitable they are to the People, they are to Order: For our Chancellour now speaks to the Prince as solicited by his breeding and conversation abroad, to close with Forreign Lawes, under which he saw People Obedient and Loyall, and Countreys in peace: when in *England* where the Common Law had, in pretence, its course, at least where no other Law but the Common Law was admitted, Rebellion prevailed, and Civill Wars continued (a mote or beam in the Princes eye, which made him look as it were a-squint, or unpleasingly on the Common Law, and delightfully on other Lawes) the Chancellour Courts him to continue the Common Law his darling, though the other Law had some, yea much respect, as, in its kinde, it was worthy to have of him.

*Si reus quispiam de Felonia aut Proditione in Anglia reatus crimen suum coram Judicibus dedicat.*

Concerning Treason and Felony somewhat hath been written heretofore, yet this Chapter being purposely designed by our Text to the treaty of it, I crave leave to add further what I humbly conceive pertinent to this place. *Reus de Felonia aut Proditione*] This refers to the two great capital Offences punishable by Law; *Felony*] which anciently was the offence of the Vassal against his Lord, perhaps for little Thefts and flight of hand, whence it may be that fore on the finger called a Fellen may come: since, Felony was punished with forfeiture of the Estate and Goods of the person offending, which though they were redeemable by *Mere* and *Mergild*, yet now are not; for *Henry the First* made Theft, the most ordinary Felony, punishable with death; and

Very Felons and Thieves, words of Stat. 8 Eliz. c. 4.

Spelman Glofs. in voce.

(a) 8 Eliz. c. 4. 1 Jac. 2. 12. 25 H. 8. c. 6. 32 H. 8. c. 3. 5 Eliz. 17. 4 & 5 P. & M. c. 4. 2 & 3 E. 6. c. 2. 5 Eliz. c. 5. 19 Eliz. c. 7. 5 Eliz. c. 20. 39 Eliz. c. 9. 23 H. 8. c. 1. 32 H. 8. c. 3. 5 & 6 E. 6. c. 9. & 10. 27 Eliz. c. 2. 1 E. 6. c. 12.

Stamford. Pleas of the Crown.  
Cook 3. part. Instit. Pleas of the Crown.  
& on Litt. p. 391.  
Spelman in Glofs.

though the Common Law brought off Felons by their books, yet since many Statutes, raking away Clergy, leave Felony to the punishment of hanging the body and forfeiture of the Estate. The crime of Felony is a grievous one, and to call a man *Felon*, is to entitle him to all the opprobry and danger imaginable. At this day then Felony is the great brand of every offence against the Peace, Crown, and Dignity of our Sovereign Lord the King; for, all Treason, though it be more, in the punishment, yet it has in it *felleum animum* which makes the atrocity of it. To discourse of Felony at large is needless, since both *Stamford*, *Sir Edm. Cook*, and others have abundantly done it, therefore I refer the Reader to them.

*Vel proditione.*] This in the latitude of it signifies any falseness, but chiefly that which concerns the Magistrate, and his charge, to deliver up whom or which into the enemies hand is capital by all Lawes. *Tholoffanus* gives us an account of all Nations abhorrency of it, and severity against it: but this *proditio* here is *alta proditio*, or *lesa Majestas*; which being an offence against the great God, thorough the King, who is *Deus post primum secundus*, and is *Solo deo Minor*, the Minister of God for our good, and the dispenser of the power of God to the foundation of Order; the Lawes of *England* makes capital, as in the Notes on the 22 Chapter I have shewen; Onely as in all Cases, not the accusation but proof makes the guilt; so is it here, and thereupon in order to proof, the offender, or presumed so to be, is called by our Text *Reatus*.

Lib. 135. Syntag.  
Juris universi:

*In Anglia Reatus.*] I confess, at the first view of this I thought it was a fault in the Copy, and that *Reatus* should have been *Reatus*; the word used in the Statute *De Bigamis*, *Quando de felonia reati fuerunt*: but when I considered the word had another sense there, then this must have here, I searched to finde the proper notation of it, and found it to signifie Arrested, or Accused, so *Gents rettes de Felony* Stat. 1. *Westminst.* c. 15. so in the Statute *Marlbridge*, c. 28. *Si clericus aliquis pro crimine aliquo vel retto quod ad Coronam pestineat arrestatus fuerit*; and so *Westminst.* 1. c. 2. *Pur view est ensement que quant Clerk est par rette de Felony*; and so c. 15. *Gents rettes de Felony*: and methinks *reatus* may come as well from *raptatus* as from the other Etymologies, Accusations and Arrests for Treason being things of violence, the party that is guilty of them being not willingly apprehended for them.

Cap. 5. 2 Instit.  
p. 273.

2 Instit. p. 285.

Tag. 150.

Pag. 163.

*Crimen*

*Crimen suum coram iudicibus dedit.*] If the Felony be confessed, then the Triall in form of Law is needless: but if he do *dedicere*; that is, deny it, and stand upon his integrity as not guilty, then it must be tried *modo & forma*; which the Law therefore provides for, because it meets with few offenders that take the Prophets advice, *to confess their sins, and give glory to God*: for they are so far from that, that they have contrived a Proverb, in barr of that ingenuity, *Confess and be hanged*. The Law therefore thinking fit to search into all offences of this nature, as intolerable, provides for the Triall, as well as the apprehension and detection of it, which is, by' empannelling of a Jury to trie it.

*Mo: Vicecomes comitatus ubi facinus illud commissum est, venire faciet coram eisdem iudicibus viginti quatuor probos & legales homines, &c.*

This Jury is but to consist of twelve, but the summons is to be of double as many, that there may be room for exception: and this the Law does to prevent all surprize, especially in Treason, which being a heinous guilt, and having a heavy doom; all the Justice that can be done in *favorem vite & relationum*, is herein shewed: These then good men and true, of the Neighbourhood, as in actions real and personall, returned, having in Estate 5. l. a year in Lands and Rents, as appoints the Statute 21 E. 1. appearing in Court, the Fact is Triable: If the Prisoner interpose not by challenge of them, or some of them, which the Law allows him to do, *Restatus ille eos calumpniare potest, &c.*] sayes the Text.

*Stat. de his qui ponendi sunt in assessis.*

*Et insuper in favorem vite calumpniare potest triginta quinque homines quos ipse maxime formidat.*

This shews not onely that an offender may challenge, but also why, and how many he may disable to serve against him: The freedom that the Law allows him is *calumpniare*, which we translate challenge; and so our Historians use the word as well as our Lawyers: so *Walsingham* uses it when relating the famous Coronation of *Richard the second*, and the presence the Lord *Frevil* had to be Champion to the King: and the men he may disable are such of the Returne as he does *Maxime formidare*; that is, such as he feares, as well for their Justice and Impartiality as for their Enmity: (For a Traytor has as great spight against Loyalty in the Jury as any thing else) and this he may do to the number of 35. not to three full Juries, for then there may be a *Progressio in infinitum*, and no Triall easily be, but to as many as may be within three whole Juries, that the Law may be known to favour life, and avoid cruelty. Tis true, I know by the 22 H. 8. c. 14. these peremptory challenges were reduced to twenty, confirmed by 28 of the same King c. 1.; and by the 32 H. 8. c. 3. made perpetual: but the Statute of 1 & 2 P. & M. restoring the Triall by the Common Law, offenders are indulged challenge peremptory to 35. as the Text sayes, *Qui adejus calumpniam cancellabuntur in panello, &c. Licet ipse nullam causam assignare sciat, &c.*

*Quoniam perante Dominum Baldwinus Frevil, idem officium calumpniasset sed minime obtinisset, p. 195.*

*Spelman Gloss in verbo Calumpnia, p. 116.*

*Resolution of the Judges in the Case of Sir Walter Rawleigh, 1 Inst. p. 156. B.*

*Quis enim tunc mori possit inique in Anglia pro Crimine, cum tot injuriam habere ille poterit ob favorem vite sua.*

This the Chancellour infers to shew the Prince how much the Laws permit to the favour of life, even in those Cases wherein the Law is most provoked; and the *Quis inique mori possit in Anglia, &c.*] Is not to be expounded as if it were a challenge to the bitterest foe to our Lawes, to instance in one that injuriously had died, or to boast of no naxe or Scarr in the administration of Justice, nothing less: For this *Livia(a)* of our Law may be in some things too speedy to be justified to her own *Augustus*. Some instances will not be denied to be produceable, wherein there may have been *more hast then good speed*: there may be such an offender as many Freeholders in a Shire, condemning in the Sessions of their own judgments, and that upon perhaps a bruite,

*(a) Τοις ἐπιβουλοῖσι ἐν τριπλίᾳ ταχὺ ἢ αὐτῶν Διῆται De Livia Erasmi. Adag. 39. Chil. 1. Cent. 7.*

or

Ingenii magni, malignus, sermone rudis habitu rusticus, ad qualibet atrociam facinorosa suscipienda princeps, ab omni aut erga homines misericordia aut erga superos reverentia alienissimus. Tho. Morus Cancellar., in R. 3. vna p. 52. Impress. Lovanii.

or mistake; may in pursuance of that prepossession verdict guilty in Triall upon him: And there may be *Iniqua Tempora*, wherein such bloody Usurpers as *Richard the third*, and such Parasites as *Sir George Ruliff* his creature domineering. Many may *iniquè mori* in *England*, these Times and things have been elder and later in *England*, therefore the Chancellours *Quis tunc*, &c. is not rigidly and absolutely to be taken, as if it imported an affirmation, excluding all instance to the contrary: but it is interpretable as an inference of prudence which from meanes judges of ends; & so we must apprehend the Chancellour, to intend that thorow

the punctuality required by Law to the Trial of Causes, there is as much as art and conscience can contrive to extrude corruption, and to favour preservation of Right, Life, and reputation: And that if the sins of the Nation have not provoked God to give up the Subjects to Irreligion and falseness, there is safety to all that's deare to an *Englishman* in his Triall, nor does often any good thing that is his suffer by them; yea, if Juries be but knowing, honest, and resolute, nothing of injury can judicially be done in *England*, and, especially in Case of Life: and, when in such Times and Cases things have been *hand-over-head* injuriously carried, Times of better temper and Restitution have reversed the judgments, and dishonoured the practices of them: so did the Nation do by the Murther of *Thomas* the good Duke of *Lancaster*, who was not put to death *per legem terræ*; and therefore was declared unlawfully Proceeded against, by Parliament. And so, though our eyes saw, and the hearts of Wife and Worthy men in the Nation mourned for, the Extrajudicial Proceedings of *High Courts of Justice*, and *Courts Martiall*, as they were called; wherein not onely many of the Loyall and brave spirited Lords, Knights, Gentlemen and Commons of *England* were Sentenced, and by Order of it Executed: yea, and what is ever to be rivetted into the abhorrence of an *Englishman*, the Sacred and Divine Person of our then Wise and Pious Sovereign King *CHARLES the first*; forced within the Power, and Martyred by the violence of that execrable Usurpation: though, I say, this Nation has had such Monstrous impieties acted in it, yet has it obtained from God the Mercy and Opportunity of Nationally disclaiming, and Nobly abhorring the Sacrilege and Truculency of it: yea, and to perpetuate the Antipathy of the Nation against it, has by Act of Parliament, not onely censured it, but set apart the 30<sup>th</sup> of *January*: (if any such day ought, as but for that Dedication to Pennance, it ought not to be allowed in the Moneth for ever after) to be a Day of Humiliation, *Nigro Carbone notandus*, and of expiation for that Nefarious Fact; which I will no further censure because the Sentence of Law has past on it: I return then to what follows.

Hollingshed. p. 339.  
Cook. 4. Part. Infilii. Chap. Parliament.  
Act of 13 of the King Entitled an Act for Preservation of His Majesties Person and Government against Treasonable, Seditious practices and attempts.  
See the Act Entitled an Act for the Attainder of several persons guilty of the horrid Murther of his late Sacred Majesty King *Charles the first*, Anno 12. Car. 2. confirmed by 13 of our most gracious King.

*Malleme revera viginti facinorosos mortem pietate evadere, quam unum justum injustè condemnari.*

This vehemence of our Chancellour's well becomes his pious and divine soul; which knew, that to erre on the right hand, by too much lenity, was safer, then to erre on the left by too much rigour: And as I am bound to believe that his afflictions had brought God and him into intimacy, so does he in his actions resolve to follow God in all the actions of Judicature his Providence shall interest him: And hence it is, that as Gods delight is Mercy, and Judgment is declared by him to be his strange work; so does our Chancellour here profess his alienation from injustice, and that if he must be a Judge he had rather rid the World of many Miscreants, then be accessory to the oppression of one Righteous Person unrighteously adjudged to death by him. And good reason he had thus to prefix his *Malleme* to that truth, because not onely the righteous man is better then his neighbour, and the best is to be preserved; and the destruction of one good man is afflictive to God, according to that of the *Psalmist*; *Precious in the eyes of the Lord is the death of his saints*: but also as one good and just man may be more worth then a World of dissolute, (and God Damne Me) sinners; so is the testimony of God himself, who, when he looked upon the Earth, and beheld it was corrupt, for all flesh had corrupted his way upon the earth: yet in the seventh Chapter v. 1. God sayes to, and of *Noah*, *Thee onely have I seen righteous before me in this Generation*: and as for the sake of this just man, God reserved some men alive, who were with him in the Ark, so for the

Isay. 28. 21.

Prov. 12. 26.

Psal. 116. 15.

Gen. 6. v. 12.



the unjust cruelty of the Jewish Nation against that Holy One, and that just One our Lord Jesus, whom they barbarously and with high contempt crucified, did God bring the fierce and puissant Roman upon them, who rised the Temple, sacked the City, carried away the Nation captive, and determined the account of Jewes and Judaism all the World over. These examples tell us, there is reason for the Chancellours Mallet; nor are the instances only in Scripture, whence the prepollency of one to many may be confirmed, but in other Authours also. Aristides is represented to us so just, that the Grecian Judges would prefer his word to many other mens oaths: and Socrates so matchlessly wise and exemplary, that after his Countreymen put him (the eye and soul of Greece) to death, they never did any brave action either at home or abroad, but dwindled away, as if God revenged in their infamy the death of that Heroick. Among the Romans there is honour done Fabius Cæso, as the only conservator of the Government. And Quintinus Cæso, by opposing the Agragian Law, is counted a Patriot more worth then all the Plebs. So Fabius Cunctator; these and such like are famous above many. And if one worthy man whose Justice has the oriency of a Carbuncle, and glisters in the night of degeneration, to the dislustre and eclipse of those whose interests in the domineering follies of Ages make them dark as Hell, and dismall as those subterraneous labyrinths that the fiends of Satan retreat to: If thus, I say, one just person may be corrective of a multitudes exorbitancy, and reduce them from the evil of their wayes; good reason is there for this choice of our Chancellour, in desiring rather to pardon twenty evill doers, then punish unjustly with death one just man. Since in the one he contributes time (if God will give grace) to their Repentance, who by living longer may live better: but in the other he drawes innocent blood upon himselfe, which David deprecates, Deliver me from blood-guiltiness, O God, thou God of my salvation.

Unus ille vir ipse consul Rempublicam sustinuit. Livius lib. 2.

Unus impetus tribunus popularisque precellas sustinuit. lib. 3.

Psal. 51.

In hoc equidem processu nihil est crudele, nihil inhumannum, nec ledi poterit Innocens in corpore aut membris suis.

As the guilty being impeached cannot (salvis legibus) go unpunished, so cannot the innocent be charged in his body, or any member of it; for the Law of England is a mercifull Law, and sayes, disclaimingly as to cruelty, as Persens in a like nature did, Neque enim mihi cornua fibra: for the Law has nothing of the Adamant, Flint, Steel; which are said Cornu in pectore gestare; but it is composed of sweetness where it may allure, and of pittie even when it is forced to correct: and he is not a true Judge of this Law who condemns offenders without remorse for their sin, and obduration the cause of it: Nor are our Punishments, Racks, Torments, Making up between Walls alive, inhumane Butcheries, such as in other Nations are wont; those cruelties are no methods of our Law: If the offence be light, suitable to it is the punishment: if criminal, then death: and if men deserve neither, by judgment of their Peers; innocent they are: and as such cannot suffer in their whole, or any part of their body; For as no man can be put to death but secundum legem terra; so not lose any limb nisi per legem terra: For Mayhem is an offence against the Law, and actionable, unless where the loss of a Member is permitted by Act of Parliament: For, though of old the privities of men for Adultery, and their eyes and hands for Theft were avitable; yet since Christianity, and the more illuminate times of it, loss of members of the body has been allowed, but in very few Cases, as in striking a Judge in executing his office, or any other man in the face of the Court, the Court sitting: and loosing of eares in case of Cheating and Forgery. So that considering that punishments are upon such just grounds, and that no person has permission in England, through the greatness of his power, to oppress any man, nor may any man justly dread Calumniam Inimicorum; because (non torquetur ille ad arbitrium ipsorum) but they can no otherwise be revenged of him (except perjuriously and murderously, which the Law will severely punish them for) then the Law allows, and the guilt deserves: since, I say, the Law of England is so tutive of the Estate, Life, and Member of men, as it (to the admiration and acclamation of all our neighbour Nations) is known and confessed to be. The Chancellours inference is most true, Sub hac lege vivere quietum & securum est; And so

Satyr. Prima.

Coak 1 Infit. p. 126, 127. &c.

Stat. 3. Hen. 6. 72.

with a Prayer to the Prince to chuse (upon these things premised, and the reason of them weighed) whether either the foreign or patrial Lawes he will best approve and adhere to, he concludes this Chapter.

## CHAP. XXVIII.

*Cui Princeps. Ardnum ambiguumve Cancellarie, non conspicio, &c.*

**T**His Chapter personates the Prince, as ingeniously suppled by the Chancellours application and reason, into a plenary concession of his Allegations, and a subjection to the prevalence of his learned Arguments: and as the severall passages in it proclaim the Prince generously ductile, (for I make no question but the penning of it is exploratory of his addiction, and rather historically true then parasitically fancied) so the account he is personated to give, is amply Masculine in the vigour of its reason; for as the Chancellour did not present him, *Rebus palestra & olei*, as light things are called by *THEY*, but with the great things of the Law, and grave Arguments to work upon his judgement and affections, to love and follow it, so the Prince did not shew himself *morosum titubantemque* to such wise offerings; for that had been to brow-beat his age, and to dishearten his loyalty. Yea if such unsetledness of humour caused the desultory Satyr, when invited in time of Frost and Snow into the Country Swains

*Sunt quidam ita natura muneribus in iidem habiles, ita ornati, ut non nati, sed ab aliquo Deo sibi videntur. Cic. lib. De clar. Oratoribus.*

*Valebit, neque enim mihi ratio est cum ejusmodi homine habere hospitium commune.*

*Ἐκ τῆς αὐτῆς σβηλας τὸ δεικνύον, ἃ τὸ ψυχρὸν ἔχειν, Adag. Chil. 1. Cent. 8. Adag. 30.*

*Et pro hac suspitione constitutum est, ne quis extraneum hospitetur nisi de clara die, nec permittat eum recedere nisi declarata die. Bracton lib. 3. De Corona c. 18. p. 137. Chil. 3. c. 15. p. 134.*

*Ad accusationem hujus criminis admittitur quilibet de populo liber homo & servus. &c. dum tamen sit is ille qui accusat integra fama, & non criminofus quia criminofus ab omni accusatione repelluntur. Bracton lib. 3. De Corona. c. 3. fol. 118.*

*In uno homine, velut in Archivis quodam celeberrimo, perfectiones & proprietates, creaturarum reponuntur, quorumque ipse & complementum esse. & thesaurus velut omnium uberrimus, sic Luscina cantu, Elephas memoria, prudentia. Simias gestulatione, canes sagacitate, &c. Al-drovandus, Orath. lib. 11. p. 639.*

*— of Janti*

*— b 7*

*1777*

house, seeing his Host blow his hands, before there was a fire for cold, and when there was a fire for heat, to cry out to the Swain, *Farewell Sir, Ile have nothing to do with them that are of so uneven a temper*; I say, if this Owl (as it were) of the Desart could not away with *hot and cold out of the same month*, much lesse could the good and loyal Chancellour have borne the peevishness and obstinacy of youthy greatness, if it could have deserted its native Majesty so far as to have shewed anything unlike love, gratitude, and resignation to his constant duty, unshaken loyalty, and matchless learning expressed towards him in his education and travel; but the goodness of the Prince was such, that he was resolved never to try the patience of his Chancellour by doing any thing of contradiction to him: and therefore he is brought in here (as I believe he truly carried himself) gently yielding to what is insinuated to him, and protesting averfation to morosity or waveringness in the choice of that he commends to him; for every man desires to live long, and see good dayes; and this to obtain is to be secure, to live a safe life *secura quasi secutura mala rescindere*, to dock all reverfional pretenders to annoyance, and that by a fine and recovery of obedience to that Law which provides muniment for such a darling as life, and security in it, is. And this the Law of *England* yielding all the Subjects under it, by preventing all occasions and improvements of malice, and by allowing refuges to those that are prosecuted by it, to wit, innocent persons, who may in the King's Courts, and by the King's Subjects, Juries, in tryal of the Causes be preserved and quitted; since it is not the fair plea, nor the numerous evidence that the Law is seduced by, but the justice of the cause made out by clear and honest Witnesses, *omni exceptione Majores*, that it is led by; when, I say, in this happy consistency, it regards the body of man, that little Digest of Omnipotency, wherein there is a perfect correspondency to the Method of our English Polity, the Heart Sovereign, the Brain Chancellour, the Faculties Peers, the Bloud Lawes, the Veins and Arteries Officers of ministerial distribution; the Parts and Members the Commoners in this Common-wealth; and all congregated in the Parliament of the Body: when I humbly conceive all these are orderly preserved secure from lation and confusion by the Lawes, not onely of our civil society, but national function; and with these, the Goods and Fortunes which

which are appendant to these. There is great reason to acknowledge the Lawes of *England* the most deserving Darlings of *English-men*: Let me be free, I care not who knows this *English* Humour in me, I value the *English* cooking of Dyet, making of Cloaths; way of House-keeping, friendliness of greeting, fidelity of word, steddy-ness in counsell, zeal in Religion, boldness in the field, and matchless administration of Justice beyond any of these of forein Extract, and I hope I write herein *more Majorum*, and if I erre, 'tis *ex amore Patrie*, *Cui deesse* (to use the Historians words) *aliis turpe*, *Camillo nefas esset*. And so I conclude this Chapter under pardon of my Text-Master for writing no more; and, of the enamourated with forein things and Customs, for writing so much; and if this little be to be vile in their eyes, I shall venture to be yet more vile, in those Chapters that particularly are explorative of the Lawes and Modes of that Country where our Chancellour was then an Exile; yet no otherwise or further then becomes a modest and generous Ingenuity, and the necessary vindication of my Native Country, and her Customs; Lawes; and Sovereign (to whose Honour I am an humble Valect) doth require of, and I hope will take kindly from me.

*Note this*

CHAP. XXIX.

*Cancellarius. Juvenis recessisti Princeps, ab Anglia, quo tibi ignota est dispositio terra illius, &c.*

HERE the Chancellour mindes the Prince of the necessity his youth has to be instructed in the Country of *England*, who is to judge of the Lawes of *England*; for in as much as the wisdom of Legislators is seen in conforming Lawes to the nature of the people they are to regulate, and the Lawes of *England* being thus suited to it and the Subjects of it, the right judgement of those Lawes will best be presumed to be, where the best knowledge of the Country, where they rule, is had. Now that not being possible to be in the Prince, whom the fury of what the Chancellour thought Rebellion, drove away; the good Man, who had long been a man of Law and Prudence, applies himself to supply that to him, which the force of his Father's Extruder denied him to be accomplished with.

*Juvenis recessisti*] This Youth is one of the six Ages of life, being the time from 28 to 40. for these Ages learned men thus distribute, 1. Infancy, from the birth to 7 years old; 2. Childhood, from thence to 14; 3. *Adolescentia* or the adult-age, thence to 25 or 28; 4. Youth, thence to 40; 5. Age, thence to 70; Old age, *quod nullo annorum termino finitur*, and this they call the ultimate part of old age, & *terminatur in morte*. Amongst these Ages, Youth, by reason of which the Prince is termed *Juvenis*, is the sturdy and pleasant part of life, that which has evaded the Meridian of Adoleicency, and grows towards the After-noon of age; this was amongst the *Romans* the Military age, *ἡλικία Ῥωμαίων*, and *Ulpian the Scholiast* upon *Demosthenes* tells us, there was a Law among the *Athenians* that men onely should go to warr from 18 to 40. which though (a) *Vegetius* seems to confirm, yet *Lipsius* denyes or at least suspects, because the *Gracchian* Law was, which was direct against so young admissions; and if consideration be had to those passages in great Authours, that 50 years old was the boundary of mens warring; and that 30 years service was the utmost time the *Romans* required men to, as *Sigonius*, *Tacitus*, *Salust*, and many other Authours agree: then about 20 years of age must this youth for Warr begin, though I know *Tubero* in *Agellius* affirms the time from 17. but I dispute not this, that which I am to urge is, that in some time from 17 or 18 our Prince here was, when he left *England*, or else our Chancellour would not have said, *Juvenis recessisti*, and that it was then when per-

Linwood lib. 12.  
De sacra uncti-  
one, p. 18. B.  
K. adultus in  
Glosi.

*Juvenis à juvando, quod ea aetas maxime fit apta ad laborem tolerandum.*

*A Jurisconsultis juvenes dicuntur, qui a-  
dolescentium excefferunt aetatem quoad in-  
cipiant inter Seniores reputari. Plin. lib.  
7. c. 56.*

(a) *Incipientem pueritatem ad dilectum ve-  
cari, lib. 1. c. 4.  
Lipsius lib. 1. p. 12. 17.*

*Lex à quinquagesimo anno militem non  
cogit. Senec. De Brev. vitæ. c. 15.*

*Fabius Inquit lib. 9.  
Liv. lib. 42.*

*Lipsius lib. 1. De Milit. Rom. p. 16.*

Quemadmodum in minore corporis habitu potest homo esse perfectus, sic & in minore temporis modo potest esse vita perfecta. Senec. Epist. 93.

(a) Tholofs. lib. 17. c. 6. c. 18. & lib. 18. c. 2. 18.

Complectamur illum & amemus, plena est voluptatis si illa scias uti, Quam dulce est cupiditates fugasse ac reliquisse. Epist. 12. & sic Ep. 68.

Shutes History Venice, p. 334.

Plin. lib. 3. c. 23. 1 De Remed. A. mor. 400.

De statu dignitatis recedere Cic. Attic. lib. 1. 15. 8.

Cic. pro Quintio 3. Offic. 24.

Vivet enim vivetque semper atque etiam latius in memoria hominum & sermone versabitur, postquam ab oculis recessit, Plin. Ep. 15.

Brompton in regno Cantie, p. 728. Edit. Lond.

Bochartus Geograph. sacre, p. 729.

Lib. 1. c. 39.

haps the gaities of life did so engage him, that he was not for love to them at leisure to consider the more consequent parts of intellectual accomplishment. For, though it cannot be denied but that some there have been of rare perfections, young in yeares, as I have heretofore shewed, and as further I might in the examples of (a) *Daniel, Solomon, Josiah, Damas* that famous *Magesian* Bishop, of whom *St. Ignatius* writes honourably, and *Timothy* the Bishop of *Ephesus*, whose youth *St. Paul* gives a glorious testimony to, as that which was exemplary, and not to be contemned but imitated; yet for the most part it is otherwise: men do *sero sapere*; not ponder and gravely weigh things till they have great abatements of passion, and advances of calmness, which is the reason that *Seneca*, a great lover of the florid and sparkling times of life; yet gives his vote for Age, *That men ought to bless God for it, as that which affords the one onely comfort, if we know how to use it*; which considered, the Chancellour mindes the Prince, that in regard he came away so early from *England*, before he thoroughly understood it, he should be-think himselfe what he did before he banish the *English* Lawes his love, *Juvenis recessisti*.

*Recessisti*.] Mannerlily and softly expressed; that which after Ages would call force; the Chancellour calls *leaving England*: the Chancellour knew nothing more unpleasing to Princes then to be compelled, and therefore though compelled he was (for he would not sure have left this Land had there not been danger in staying in it, where another was more in favour then he, and in Power then his Father,) yet though on these termes he betook himself to *France*, in hope to finde a Sanctuary, which some Princes have not found; though the Marquess of *Mont-Ferrat* did among the *Venetians*: whom when he was beaten out of his Countrey, they so courteously entertained, that he was, in the return of his Countrey to him, unwilling to leave *Venice*: I say, though this Phoenix courtesie was his happiness, yet no Prince has cause to hope for it: and therefore this Prince may reasonably be thought unwilling enough to goe, but when he was there, bravely bore this misfortune, as his attendant and wise instructor here expresses it in this word *Recessisti*,

*Ab Anglia Recessisti*.] Concerning *England* something I have wrot on the 17<sup>th</sup> & 24<sup>th</sup> Chapters, yet am bold to add what follows: *Recessisti* here imports not the choice of the Prince, but a fate upon him; such an one, as though he beare because he must, yet he delighted in no more, then great Spirits do to retreat, *Recedere quasi retrocedere*: which because it is mostly a token of worlting; has some term of diminution affixed to it: *Turpiter victa Venus saepe recessit* is *Ovids*. Thus when a man changes his condition of life, and being ashamed as it were, or forced by necessity of Affairs to seek somewhat better then he at present has, he is said *Recedere à conditione, à persona, à statu*; and *Tully* uses *recedere ab usitata consuetudine*, and *recedere ab officio* for *non facere officium*: This considered, the Chancellours words here argue no more desire in the Prince to depart *England* and take refuge in *France*, then men do when they die which is to recede life; not because they think death better, but because life can no longer be enjoyed. For, alas, what was it not that is desirable to get and hold, which he parted not with in parting

with *England*? a Countrey one of the best and largest of the Islands of the known World; the glory of *Brittain*: called *England* from *Angela* the daughter of a certain *Saxon* Duke, who Ruling it, and loving her, called his Government after her name. Anciently it was called *Albion*, after *Brittain*; famous it has been in antiquity for its fertility: *Onocritus* the *Athenian* Philosopher, whom *Tatian* and *Clement Alexandrinus* think was Authour of those Poems ascribed to *Orpheus*, relates it to have so fruitful a soyle, *Ut Cereris sedem ibi fuisse videatur*, furnished also it has been thought of old, and is yet, with those accommodations which toled hither the *Phonicians* to us, and with the Lead and Tinn that they came to fetch returned us Learning and Arts, (many *Greek* Philosophers coming hither in their floats,) and calling *Sylly*, a part of this Island,

Island *Kassiteros*, the *Cassiterides*; yea so happily situated is it, that it seems to be the *Eden* of the World, subject to no extremes, either of vehement heat or violent cold; so that it is no *Carrhamitis*, or house of death, as Northern Countreyes are, that hardly ever see day, or feel warmth; nor is it in the Centre of the Sun, or under its direct perpendicular; but temperated with heat and cold intermixed, that it may truly be called *Regnum Dei*, a place that God has peculiarly blessed with all comforts for life, Water, Flesh, Fish, Herbs, Fruits, for medicine and delight, abounding in Cattle of labour, profit, chase, but none of prey, furnished with goodly Cities, famous Churches, religious Houses, charitable Hospitals, noble Seats and large Parks about them, beyond most, or all Christendom in so small a Circuit, which made *Charles the Great* call it the Store-house and Granary of the whole Western World, and *Henry of Huntingdon* begin his History with its praises, calling it *Beatissima Insularum*, after whom a Poet says thus,

Ex Alfr. Rhevâ-  
lenfi.

*Anglia terrarum decus, & flos finitimarum  
Est contenta sui felicitate boni,  
Externas gentes consumptis rebus egentes  
Cum famas ledit, recreat & reficit;  
Commoda terra satis, miranda fertilitatis  
Prosperitate viget cum bona pacis habet.*

Which I thus English,

*Blest England, Europe's Crown, in neighbours eye  
Twixt groundless envy had and admiration,  
To wants of whom thy store's a granary,  
And yields abundance to the famish'd Nation:  
Ah fertile soyle, Ah earthly Paradise,  
Where life's delights abound, where dainties flow,  
On which Jehovah's mercy sets such price  
By peace preventeth plenty's overthrow.*

It is famous for its ancient reception of *Christianity* from *Joseph of Arimathea*, *Simon Zelotes*, &c which was here propagated before the year 200. Four Englishmen converted eight Nations of Europe to Christ, *Winfred* the *Devonshire-man* converted the *Germans*, *Saxons*, *Franconians*, *Hassians*, and *Thuringeans*; *Wilbred* the *Northern-man* the *Freisians* and *Hollanders*; *Nicbo*. *Breakspear* of *Middlesex* the *Norwegians*; and *Tho.* of *Waldent* the *Lithuanians*.

Cambden's Re-  
mains.

It is famous for pious Princes, of whom it hath had more then any Nation, besides the Kings of it are anointed, and hence are capable of spiritual Jurisdiction, according to that of our Law Term *Hilarii*, 33 E. 3. *Reges sacrosancto oleo uncti sunt spiritualis Jurisdictionis capaces*. Its Crown had and hath very large Territories, for besides *Ireland* they have commanded from the Isles of *Orkney* unto the *Pyrene Mountains*. Its famous for its beauties and features, no Nation affording men and women so generally handsome and proper as it doth, which made *Goropius* say, *Angli quasi angle, quia omnes caperent sui admiratione*, what the Poet said of *Chios*, taking its name from *Chione*, signifying white and clear, may be said of her,

5. Rep. De Jure  
Regis. Eccles. p.  
16.

Cambden's Re-  
mains. p. 4.

— *Qua divitissima forma,  
Ad ille procis placuit. —  
Who being of a specious hue,  
A thousand Captives to her drew.*

It is famous for its valour, its Inhabitants being Lions of courage and generosity, equally brave both on Horse-back and on foot, with Sword, Target, or Bow and Arrow, or on Sea, where it has ever appeared with Navies, not so numerous and rude as *Duellins* the Roman led against *Carthage*, which were growing on the Stub and sailing on the Sea in 55 dayes; or those 220 tall Ships led against *Hieron*, which bare leaf

Vowell's descri-  
ption of England,  
p. 200.

leaf and faile in 45 dayes; nor like the Ships *Scipio* led in the 2 *Carthage* Warrs, which were felled in the Wood and floating on the Sea in six Weeks; nor were they 700 in number, as *Polybius* sayes the *Romans* lost in one fight that number when the *Carthaginians* accosted them; but with tall brave warlike Ships, of vast Bulk, great strength, laden with *Robinet*, *Falconet*, *Falcon minion*, *Sacre*, *demy Culverin*, *Culverin*, *demy Canon*, *Canon*, *E Canon*, *Basilisk* which carry shot from 1 to 60 pound Bullet; and were manned by great quantities of men.

M. Patif. p. 290.  
948.

It's famous for its wealth, hence called by some of the Pope's *puteus inexhaustus*, and had it not been so, their avarice had drawn it long since dry, and the dayes of *H. 3.* so vainly and prodigally expensive had undone it.

It's famous for its learning, there being no Nation to which it leads not the dance, its Clergy have ever been pious and learned to a Miracle, and Arts have hence had great Founders and Benefactors, here were born *Alexand. Halensis Aquinas* his Master, *Scotus* the subtle, *Bradwardine* the profound, *Ockham* the invincible, *Bede* the venerable, and *Burley* the perspicuous. It's famous, renowned and envied for its Common Law, and peculiar priviledge from the Injuries of great men, and depredation on property, the people of it being no Villains but Freemen, and the Lawes being not arbitrary, but settled and fixed, and not alterable without consent of King, Lords, and Commons in full and free Parliament assembled. This, This was the faire Paradife of beauty and bravery, from which this noble young Prince, notwithstanding his Father's present and his own probable future right, was forced;

— *Quis talia fando*  
*Temperet à lachrymis.* —

and from which, all things considered, he could not but be unwillingly driven, since if he knew so well what *England* was as he might have done had he longer stayed in it, and learned more experience from the prospect into it, he would account it the *Phoenix* of Lands and Lawes: so, in short intends the Chancellour to represent it in those comprehensive words, *Quasi agnoveris, & caterarum regionum emolumenta qualitatisque eisdem comparaveris, non admirareris ea quibus jam agitur animus tuus.*

*Anglia sane tam fertilis est quod quantitate ad quantitatem comparata, ipsa ceteras omnes quasi regiones exsuperat ubertate fructuum.*

This is the first instance of the excellency of *England*, Fertility of soyle and Plenty of fruits; for though he could have instanced that it was Ethnique and barbarous, that the Inhabitants were a kinde of *Cannibals*, and without God in the World, & *sub hoc malo Lemnio latuisset Anglia*, if God had not rescued us; yet he reserves that for a fitter place, and comes in first with that instance of the goodness of a Land, plenty, which the Holy Ghost, in *Canaan's* case flowing with *Milk and Honey*, calls the glory of a Land; and as the sterility of a Land is the curse of the Inhabitants, *A fruitfull Land turns he into a barren Wilderuess for the iniquity of those that dwell therein*; so an unctious and fruitfull Land is the blessing of any people: now this fruitfullness men usually impute to three causes, *supra, intra, extra*, God's blessing above in making the *Clouds* to drop fatness, and giving *rain* and fruitfull seasons; *Intra*, in the depth and fatness of the Womb and Soyle which receives not the dew and seed in vain, but nourishes and gives it rooting and extension; *Extra*, in mans endeavour of labour and ingenuity to improve what God has endowed to the reasonable latitude of its capacity: In all these, and whatever can rationally be couched under them, *England* is *fertilis regio*.

Chil. 1. Cent. 8.  
Adag. 27.

Psal. 107. 34.

1. The mercy of God has seated it under a calm and temperate Heaven; tis to *Brittain* what *Alabanda* was to the *Carians*, *The most fortunate Island*: For it has neither extremity of heat or cold, but a mixture of both, to keep the constitutions of its Inhabitants interdependent to the extremes, either of remissness or intentness; And this temperature working upon the People, Lawes, Customs, every thing of it, renders it *Beatissima Insularum*: and we of *England* may say gratulatorily to God in the *Psalmist's* words

words, *Non taliter fecit omni genti*, For had he not distinguished us from other Nations as he has, we might have been as savadge in Manners as we ethnically were, and out-beasted the beasts of *Africk*, then whom the men there are little better: For as all beasts of the same kinde are not alike in all places, but some Lions are more milde (such as live on mountains) not having that fury of heat in them which the desert Lions in *Africa* have, as *Aldrovandus* instructs me, so is their difference of men according to the temperaments of their constitutions; which are regulated by the aires and clymates under which they are born, bred, and live; and therefore God having suited the Ayre, Earth, Men, Lawes, all to each other, and made them all fruitfull of encouragement, riches, liberty, there is just cause to bless God for his mercy, that is the maine ingredient to our National and Personal fertility: Tis Gods Word of Sovereignty that impregnates the Earth, and makes it bring forth seed to the sower, and bread to him that eateth: that increases the breed of Cattell, and blesses the increase of our Flocks. For, though we in this Land have no Mines of Gold and Silver, no Quarries of Diamonds, no Beds of Pearls, no Wombs of Spices; yet we have Treasuries of Lead and Tin, Lodges of Wool and Hides, Magazines of Cloathing and Drapery, Nurseries of Cattell; and we have blessed be God, Noble Marchant-Men, who ship out Native, and return for them Forraign Commodities, and this makes *England* an *Indies*, a *Spain*, an *Italy*, a *Germany*, full of the Wealth of Sea and Land: This is the source of Fertility, *supra*, and in the *Psalmists* words, *Blessed are the People that are in such a case, yea blessed are they that have the Lord for their God*; And I pray God the Mercies God has shewed us of this Nation do not make things *Mandrabuli more succedere*; that is, not make us do by our benefactor as *Mandrabulus* did by *Juno*, whom the first year he offered a golden sheep to, the second year one of silver, the third one of brass: God forbid that we should so requite the Lord, O foolish people and unwise! God forbid when he has not been a barren wilderness to us, we should abuse our mercies to his dishonour.

Secondly, As the *fertilitas cœli* is the blessing of *England*, so *fertilitas soli* is that with which the Nation of *England* is happy in also, Our Land is another *Campania*, all marrow and fatness; There is no Shire or Angle of its compass but has much of fruitfullness in it: Here there is Corn, there Grasse, in one part Wood, in another Mines, on this quarter grows Timber for building, on that Cattell feed for increase; In this there are no desarts, no unimproved grounds to speak of, but every part as it is fitted for some specifick purpose, so is by the Inhabitants well and wisely improved to the end it is most correspondent to, by reason of which there is not much bad land in *England*, as in other Nations: For *England* for the Sea-Coasts and middle part of it is all fertile, and (as it were) for the most part deep soyled, either fit for Gardning, Feeding, Plowing, or else Wood-land; and were there no other argument of its good soyle then that it nourishes so many Inhabitants, and that so affluently, in so little a Tract, and gives its Inhabitants such succulent nutriment, that makes them of bold, brave, warlike, daring and manly courages, that no Nation does pleasingly face, or willingly abide Battaille with them: yet, even this alone were an argument of a rich soyle. For that patch which brings forth much in a little, must needs have the potentiality of much in it: And when to it the benefit of Navigation is considered, what it has of Native growth more then it consumes, it exporting fetches in return what forraign Commodity it wants. So that, what with its own fertility, and Trade, (Blessed be God,) it has Breasts enough to suckle its numerous brats at; and if we be sequacious of our good King, whose extremities have taught him experience and sagacity to direct Trade, as well as to lead Forces, and Administer Justice; for he is *Ex ætroque Caesar*: I believe we shall carry the staple of Trade and make our maritime force comfortable to those in amity, and formidable to the rest in enmity with us. For if *England* had not been the Granary of the western World; if it were not the *Phoenix Kingdom*, if it were not *Tanquam inter stellas luna minores*, neither the *Romans* of old, nor the *Picts*, *Saxons*, *Danes*, *Normans*, *Spaniards*, had invaded us, had we been a hungry, vast, and improlifick Soyle, and nothing would have grown with-

out

*Leones non omnes sunt ejusdem temperamenti; qui montes incolunt minus habent caloris & ferocia & vicissim quanto plus o-sive participant tanto sunt calidiores & audaciores veluti colentes desertum Angna qui totius Africae sunt truculentissimi. Aldrovando lib. de quadrup. p. 10.*

*Ἄει τὸ θυμὸν ἀγεί θείος ὡς τὸ θυμὸν* *Homerus apud Erasmi Adag. 22. Chil. 1. Cent. 2.*

*Psal. 144. 15.*

*Mandrabuli more res succedunt, Adag. 58. Cent. 2. Chil. 1. Deut. 32. 6.*

*Plus apud Campanos unguenti quam apud Cæteros olei fit. Adag. 45. Cent. 2. Chil. 1.*

See Doctour Ridley's View of Civill and Ecclesiasticall Lawes. p. 174.

out much cost, labour, and hardship, no Nation would have been eager after us: but when every conquering slave that could not live in his own Countrey but miserably; lives here bravely, and with ease; this made those attempts on us, which some times were repulsed, but when prevailing, took the season of the Nations dissension, and the Nations dissociation into Parties. So that God having indulged the Land of *England* with a brave Soyle, nobly planted, pleasantly watered, inhabited by Lords, Knights, Gentlemen and Yeomen, with Artificers, Labourers, and Common people in abundance: though this nineteen years here has been a fierce Civil War, in which truest Battells have been fought, and multitudes of men of all ranks, ages, and artifices; yet is there almost little sign of a Warr, no want of men, no visible depopulation; so fruitfull has God made this time of Captivity, that though many of the wealthy Subjects have been beggered and diminished, especially such as had personal and portable estates, yet Forraigners went not away with the spoyle of it, the Nation still kept it, it is but transferred from men to men; *England* yet, blessed be God, holds its own. And therefore if it please God to give us, that are Natives, duty to our superiours, and love to one another, the ruine of *England* by these Wars may yet be its making; For there is a third way of Fertility, and that is Mans industry, which is in the effect a *nemo scit*; for it brings impossible things to pass: This industry, O! it can almost do any thing, it has (as it were) removed Mountains, or at least made wayes thorough them, so did *Cesar* over the *Alpes*, and *Alexander* in his voyage to the *Indies*: it has dried up and diverted Seas and navigable Torrents: it has erected *Hecatombs* and *Pyramids* from little attoms of principall materialls; it has made glasse malleable, instructed in all Arts, Languages, Sciences, Professions: found out the use of Simples and their Compositions; of Mettalls, and their digestion; of Mineralls and their use; of Peace, Warr, Justice, Religion: nothing has been too hard for the industry of man to cope with and conquer. Yea, so far has it usurped upon Gods peculiar, that it has found out many secrets: and if *Archimedes* did not delude himselfe, could move the Center of the Earth if it might fix its Engine.

Now though I do not believe industry can do all that's boasted of it, yet I do advisedly conclude, that in the industry of man there is such a latent power and life of actuation, that it comes neer the verg of miraculous: thus have men devised engines of battery and Military use, whereby the strongest Castles are surpris'd and won, and which seconded by diligence can do every thing: and hereupon have sundry noble achievements and notable been performed; yea industry has formed polities, and founded Empires; and the *Roman* one, so vast in circumference, so venerable in its edicts, so formidable in its Armies, so consultive in its Senate, so fruitfull in wise men, so conservative of it self, so victorious over the Universe, was but the industry of a *Romulus*, a *Numa*, &c. of those numinated Heroes that succeeded them: so successful have mens industries been, that they have grown by it like fishes that have had no equals to feed on the nutriment of vast seas but themselves, and to whom alone the lesser fishes have been preys. And if mans industry have besides all this tamed Lions, Panthers, and Tigers; charmed Serpents, enamour'd Dolphins, civiliz'd *Barbarians*, reformed debauches; nay even joyned, as *Julius Cesar* dreamed he had done, the Empires of heaven and earth; it may well be a notable improvement to fertility of soyle; if it have discovered the globe of earth, and the path of safety and knowledge in the undiscernable waters, reducing all ports and Nations to such points of the compass as the compass directs the Mariner by steering to reach, and to know what latitude he is in, and what degree he must make too; if it have subjected the seas *Leviathans*, and the earths *Behemoths*: yea, leurd the Eagles of loftiness, Towing *Bajazets*, and warlike *Belisariuses* into cages of restraint, and straits of nullity; if it put life into dying and almost extinguished interests, and them recalled to life, and as it were after their interment, suscitated them to their wonted or improved glory, then is it a thing to be encouraged in all, which is the reason that all Governments have encouraged industry, as that which has a Cornucopia attending it, & that which is most seen in the trade of our late Monarchs Reigns, & has been most productive of the wealth of *England* of any thing else, for by reason of it we have Europe in a sort in *England*: Now every wast ground is built upon, every incult and over-grown field tilled; every bogg dreigned; many parks by the owners converted from parks of pleasure to mines of revenew (though I am no friend to disparking, where mens fortunes

will

*Ut ingenium adhiberetur ad turrim. M. Paris. p. 201. l. 27. hinc machinam reticulum vel aliquod hujusmodi vocamus an Engine. Glos. ad M. Paris in verbo Ingenium.*



will bear, and their Children be provided for without them) and all this by the industry of man, finding supports therefrom for the increase of people and charges of living, which good and frugal mindes consider, and therefore to it submit; so that adde to home-Industry forein Trade, (which is but the former diversified, and by the Changes too and fro incredibly advantageous to the Nation) and there can be no fertility thought of in a Land but *England* has, which God preserve to us and make us worthy of it; yea, and may they ever be accounted Enemies to all that is good in the Nation, that do bear ill will to the Industry of it, for they doe, *Taurum tollere qui Vitulum sustulerint*, as the *Adage* is.

Though therefore much might be spoken of the furtherances of Fertility from addition of *Compost* to the soyle, or quickning it by *Marle*, Chalk, Earth, Salt, Rags, Horn, Leather, Shaving, and all overflowings, with restings, and lying fallow, and equal to them all folding of Sheep, the breed and profit of which has enriched many Families to a proportion like that *Corinthian Cydon*, who was so full and free, that he kept open house all the year long; as also by *substraction*, when the succulency of the Mother may be such that it stifles the child in her Womb, who is not able to take it off; rank Soyles parching up, through inordinate heat and height of nutriment, the Grain that is sowed in it, or at least running it up all into blade and straw without ear or berry: Or lastly by *Diversion*, when it has been worne out by one Grain or burthen, imploy it to another purpose, that being prudent in ordering grounds, which is so in greater matters, all things not being alike practicable in all times, but changings in those lesser things being convenient to avoid evils, as *Augustus* did, who in following *Scipio Numantinus*, in whose time *Pratorian Cohorts* were set up for defence of his person, which after, from being *Firmamentum Imperii*, became in *Lipinus* his words, *Pestis Imperii*, I say, though on all these there might be profitable enlargement, yet I contract my self, not to disserve my Country, whose Glory I am ever willing to advance in prayer, and practise: but to return to the Chancellours position, that comparing *England* Acre for Acre with any other, it gives place for fruitfulness to no Country; nay, in that it hath those seven endowments which the Philosopher makes the glory of a Land, 1. Nobility of Vegetables. 2. Wholesome fountains and fruitfull Rivers. 3. A benign influence of the Sun. 4. Abundance of conveniencies of Cattel and other things to the use of man. 5. Pleasantness of situation in the Landskip of it, having Woods, Rivers, Springs, Meadows, enterwoven. 6. Plenty of healthfull victuals and fruits: and 7. Temperateness of Air and Climate. It may I humbly think in these and the foregoing respects be accounted fellow to any Country in the world; and this the Chancellour intends at least when he sayes it does, *Ceteras omnes quasi regiones exsuperat ubertate fructuum,*] and adds, *Etiam suum ultra ipsa profert vix industria hominis concitata*, which I take not to be altogether Hyperbolick to shew his *patkos* to his Native Country, which probably he loved better *carrendo quam fruendo*, but to have such a truth in it, as, candidly expounded, directs the Reader to the true estimate of *England*, which in no Corner, and in no Hill almost of it, no not in *Wales* or *Cornwall*, the dryest and steelest parts of it, is void of herbage, but carries a green Coat upon it, which breeds and raises young Cattel of all sorts; and by reason of which not the peasantry (as *France* terms them) but the Yeomandry and Farmers, as we in *England* call Country Occupiers of Land, are the happiest of any Swains in the World; for whereas in other Lands they are shoelesse, spoonlesse, dishlesse, except accommodated with wooden ware, which is the highest of their furniture; those poor Labourers being the prime and nobler Beasts, labouring to make themselves miserable, and their Lords luxuriant, and to them mercilesse. These with us in *England* (and blessed be God and the Law for it) while they continue to know themselves and their betters, the Nobility and Gentry rejoyce to see it; the Yeoman and Country *Corydon* is a great Proprietor of Land (Freehold, and Socage Tenure of Inheritance) served in Plate, attended with Servants, cloathed in the best Cloath and Silks, trimmed with silver and gold, full of money in his purse, and ready upon all occasions to lend on Bond, or lay out on Purchase; yea, generous to his Wife, Children, and Family, who eat and drink in great plenty and variety; yea many Yeomen are so gratefull to God and the Gentry, under whom they have grown rich and lived happily, that they breed their sons to Learning and Callings of Wor-

M. Pacif. in vitis  
P. 155.  
7 R. 2. c. 4.

Semper aliquis in  
Cydonis domo.  
Adag. 15. Cent.  
2. Chl. 2.

De Militia Ro-  
mana, lib. 2. p. 60

Politic. lib. 6.  
Cassan. Catalog.  
Glor. Mundi.  
p. 468.

Note this &  
be thankfull.

ship, and having well-bred and well-portioned their Daughters, married them into generous families, and unto men whose Merits make their way to Honour and Eminency; and all this while the Yeoman labours little bodily, but looks over his servants, and by prudent ordering the wayes of his family and husbandry, attains great advances in fortune: and I think it may very truly be said, that mostly by this means the Yeoman does live more free from care, and give his Children better Portions than the younger brother Gentry, and this he does by God's blessing on his labour from the soyle and the fruits of the ground; the fertility whereof, to the proportion of the Chancellour's Expression, is hence in a good degree confirmed, and I think by no judicious man will be, in such degree, denied.

*Nam agri ejus, campi, salus, & nemora, tanta facunditate germina ebulliunt, ut inculta illa, saepe plus commodi afferunt possessoribus suis quam arata, licet fertilissima ipsa sunt. segetum, & bladorum.*

Having before in generall commended the fertility of the Nation, he makes good the lustre of the whole by the dignity of the particulars which compleat it. *Agri ejus* ] *Donatus* and *Varro* derive *Ager* ab *agendo*, quia in illo multa aguntur; the Learned largely take it for any neighbouring Territory to great Cities, thus *Ager Campanus*, *Leontinus* and the like is read in Authours; but strictly they take it for that place in the Country wherein Country men live and do Country Affairs; and therefore they derive from *Ager*, *peragro*, *peregre*, and *peregrinus*, as one qui multos agros pererrat. The *Latins* make *Ager* fourfold, *Seminalis*, *Constitutus*, *Pascuus*, and *Floriger*, or *Restibilis* & *Novalis*; our Law-language calls open common fields *Agri*, and men that live in remote places with little Neighbourhood *Agrestes*: thus in Deeds and Conveyances, arable Lands in the fields is understood for the common fields, where no mans particular right is enclosed though bounded.

*Brechezus ad leg.*  
27. p. 77. de verb.  
signific.  
*De Agro, aratione,*  
*& aratoribus,*  
*lege Turnebum.*  
*Adversar. lib. 1.*  
*c. 6.*  
*Becman. De ling.*  
*Latina.*  
*Varro lib. 4. E-*  
*legant.*

*Unde Roma Campus Martius. Caesar. 3.*  
*Bell. Civil. 144.*

*Siculi circum aut Hippodromum ἵππων vocabant, a flexu quadrigarum qua ibi certabant. Becman in verbo.*

*Campi* ] *Valla* terms *Campus* Planities terra ampla & grandis, ideo spatiosa platea arcave, campi nomen acceperunt, and hence is it that Geographers when they describe any Country that is plain and open, call it *campestris Regio*, I take this word *Campus* as *Lipsius* does *Promotus* and *Promotio* for a pure Roman word, and as that is given to one that is famous ob strenua facta multisque cades, so is this term *Campus* proper to vast and roomy places, where there is convenience to stirr and act businesse; Fields to fight in are called *Camps* hence, because the men in them are not couped up, but can fight with numbers and in variety of figures.

*Saltus* ] The Translator renders this *Groves*; and some think, how probably I say not, in these occult places they did in Ethnique times celebrate Idolatry, and in that were merrily mad in dancing and capering, not onely to shew their joy to serve their Idol, but to sacrifice their Activity to the worship of it: hence the Scripture tells us of Idols in the Groves, and *David's* dancing before the Ark in the sight of *Israel*, may be thought to shew, that though he were a King, 1 Chr. 15. yet he would expresse as much of Exultation and Activity to the service of the true God, as the Worshippers of

1 King. 15. 13. &  
16. 32.

*Saltus densior silva & invia, quod ibi arbores saliant in quo pasci & astuare pecudes solent, Valla lib 4. Et Brechezus ad Leg. 30. p. 27. de verb. signific.*  
*Saltus est ubi silva & pastiones sunt, Cajus Aelius, lib. 1. signific.*

*Saltus pro magna possessione magnum agri modum conjunctarum quatuor Centuriarum in agris divisis appellari Saltus. Varro De re Rustic. lib. 1. c. 16.*  
*Turneb. Advers. lib. 26. c. 9. idem. lib. 30. c. 22. p. 99.*  
*Alciat. in Leg. 30. p. 86. de verborum signific.*

Idols did to their false ones: but this is too high a Capre from the truth of the word's notation, *Saltus* is a Lawn in a Park or Forest, wherein Beasts of Venery and Chase do shade and repose themselves, and from thence, because Hares and Harts are saliant Creatures and the inhabitants of Woods and Groves, the Woods and Groves are called *Saltus*; thus *Ovid* uses *apri saltus Venatoribus*, and *Virgil* *magnos canibus circumdare saltus*, and thus *Saltus* signifies a great Tract of ground, where there is scope enough for the nimble foot of those beasts of chase; *Livy* tells us of *salus Pyrenaus* and *salus Grajus*, here our Text calls the Coverts and Lawnes of Deer, *cubile & lustrum eorum*, as *Pliny's* words are, lib. 8. c. 32. *Saltus*, as much as Philosophers mean by *σάδμσ*.

*Et Nemora*] These *Festus* calls, *Sylvas amanas*, where Cattel feed in the shade, free from the heat of the Sun, or biting of the Breezes that in the heat sting and disquiet them; and they are called *Nemora* from *vetus pasco*, because they afford pleasure to the eye in the greenness, and food to the creature who feeds upon the gripe of them; Authours ascribe pleasure to them, *Virgil*, *Fortunatorum nemorum amana vireta odoratum lauri nemus*; *Tully* says much of these in those words, *Nemora & Sylva multos commovent*; and the *Romans* when they called that place which they consecrated in the *Aricine* Territory to *Diana*, *Nemus*, are thought to do no dishonour to the word. Our Law accounts *Nemora* Woods the Treasuries of Timber, and though true it be that feeding under them is not sweet where Timber over-shadows it; yet the Law does take special care to preserve Timber, that is, such wood as is fit for building of Houses and Shipping, and as the Common Law makes the unreasonable and unreasonably felling of it, wast, so do sundry Statutes forbid it, or at least express how, and how not, 'tisto be felled, so Stat. 35 H. 8. c. 17. made perpetual by 13 Eliz. c. 25. And in regard of the late liberty of destroying and wasting the lusty Timber of this Nation, there may (I humbly think) be very further usefull Prohibitions and Penalties on Offenders added for the future, for our Ships are our Walls, and of our well-grown, and sturdy Iron-sided Oak are our Ships made; and if they be wanting, and wanting they will be if Providence be not the better Steward; what shall become of our Trade abroad and our Security at home: but because *Rome* was not built in a day, nor is a Reformation in the true Law-sense effectable presently; it becomes me to be silent any further then to remember those that have Power and Opportunity; that this is of no less consequence then other things, which in former times have been made, as is this, penal to misuse them; *Aspe*-wood was in H. 6. time used for Shafts, the Statute of 4 E. 4. c. 9. permits Patten-makers onely to make Pattens of such *Aspe* as was not fit for Shafts; *English* Horses were Felony to be delivered into *Scotland*, 32 H. 8. c. 6. 1 E. 6. c. 5. 5 Eliz. c. 19. Bell-mettal, or Brass to cast Ordinance not to be transported, 2 & 3 E. 6. c. 37. Sheep not to be carried out of *England*, 8 Eliz. c. 3. Corn not to be transported but upon some cases, 13 Eliz. c. 13. confirmed by 21 Jacob. 28. & 3 Carol. c. 4. Leather not to be transported 18 Eliz. c. 9. Timber not to be consumed by new Iron-Mills, 27 Eliz. 19. and why (God and good men forgive my zeal to *Englands* Navy) should it not be made almost Treason to sell Timber for shipping to Foreiners, or to build shipping here, and abroad to sell them to such, as either actually are, or upon any reason of State may be the Nations Enemies. But this is a Digression, for which I both do penance in my self, and crave pardon of my betters, whose wisdom I do praise God for, and humbly submit to, not arrogantly censure

I return then to the Text-Master's meaning, that is, to the praise of *Englands* fruitfulness, even in the herbage under the shades of trees, and growths of Timber, which he says does not onely keep Cattel alive, *life and soul together*, as we say, but nourish them to a rankness and lusty increase of flesh, insomuch that the profit of their feeding equals the proceed of tillage, all charges considered; for though these Groves should be *fertilissima frugum & bladorum*, which they reasonably cannot be expected to be, which ly in the shade and under the dripp; yet so great is the charge of the plough, and so little that of feeding, that there is not in the conclusion much difference; yea, I believe as great Estates have been gotten by Timber and grasing, as by Tillage, though the Law affords great priviledge to Tillage, and generally (I think) all Covenants made against Tillage are void, and severall Lawes have been made in favour of Tillage, that of 4 H. 7. c. 19. 6 H. 8. c. 5. 7 H. 8. c. 1. and others, though expired and repealed by 39 Eliz. c. 1. and 21 Jacob. c. 28. but the Common Law favours ploughing as the way and means to procure bread, *the staff of life*, and to nourish Cattel for the service of man and portage of commodities: and therefore when in H. 1. or H. 2. times Tillage was much decayed, I read that great numbers of Husbandmen came to the King's Courts, offering up their Plough shears to him in token of their Calling ceased, and they undone, which was occasioned by Lords and great mens turning their Demesnes, Woods, Forests, and arable Grounds into Pasture, and a very good effect followed it; for many good Lawes came in use which encouraged Husbandry, and when the Stat. 12 R. 2. c. 5. was repealed by 5 Eliz. 4. & 21 Jac. 28.

Cic. in Attic. lib.  
15. 312.  
6 Æneid. 128.  
132.  
Lib. 1. De Divi-  
nat. 185.

Sir Francis Bar-  
rington's Case.  
Cook lib. 2. p.  
138.  
1 Jac. 2r.  
1 Eliz. 15.  
23 Eliz. c. 5.

Fleta lib. 2. c. 77.

Mr. Fabian Phi-  
lip's Tenures p. 59

'twas not to dishonour and dishearten plowing, but to release those that had geniuses to higher things than the plough from the rigour of the Statute; since many men may be of a calling for some yeares, who after may be fitter for other things than it: in as much then as that Statute tied those that were in the calling of Husbandry for twelve yeares not to alter, it was by the 5 *Eliz. c. 4.* (as to that) repealed: but still the patronage of Husbandry is in the Law, which highly favours it, and that in consideration of six disadvantages that accompany the abatement of Husbandry: First Idleness: Secondly Depopulation. Thirdly Decay of one of the greatest Commodities of the Realm. Fourthly, The destruction of Churches and the Service of God. Fifthly, Injury to Patrons and their Clerks, Gods Ministers. Sixthly, The defence of the Land against forraign enemies enfeebled, the bodies of husbandmen being strong for Warr.

These and sundry other reasons are the cause our Law favours husbandry, and so do

all Lawes and Nations: *Tempore Agricultura nullo pacto agricola debent molestari*; yea, special Lawes *contra juris rationem*, are there to exempt husbandmen, and (a) *Diodorus Siculus* reports, that the *Indians* before the *Trojan War*, did use to War without any injury to them: and *Philo* in his Book purposely written of it, sets forth the usefull and excellent benefits of it; and *Patricius* sayes plainly, *Unless men will grow too dainty to be of that sex, and will invade the delicacy of females, they ought not to hold themselves too good to be husbandmen, for it is a course of life becoming the most excellent minds, and persons of greatest gallantry have delighted in it: All which, and much more, might be said in commendation of it, if need were so to do, but when it commends it selfe, as it so much does to our bodies, in bringing us bread, and flesh, to our purses, in filling them with money, to our glory, in manning ships and camps.*

There needs no more to be added then the suffrage of King *Solomon*, who in the person of the Preacher sayes, *The profit of the earth is for all: The King himselfe is served by the field.*

And therefore when the Chancellour tells us, *England has Nemora segetum & bladorum fertilissima*, he sayes much to the pleasure and plenty of all estates: For, in that the fields are *fertilissima segetum*, he means there is bread enough, because Corn plenty; For *Segetis* is that grain that is ground for bread. *Et Bladorum.*] Which is a synonomus word; *Bled* in the *French* being thought by mutation of *l* for *r*; to be *Bred* our word, which the Latins call *Panis* from the Greek

*Παν*: because it is the all of life, Men in distress calling for *Bread Bread for the Lords sake*; and hence this word *Bladum* is taken, as *Segetis*, for all grain that is makeable into bread, and used as such to be eaten; Not onely Wheat and Rye distinct, or together called *Messing Bladem Hybernagium*, but for all, as well the former as

Barley and Oats, of which bread usually is made: And may be extended also to Beanes and Pease, of which for need bread may be made.

Though, I know, *Bracton* excludes them from Herbage, or Blade, making them Swines food, not Mans: For as the best tempered piece of Steele is called a Sword blade; and the keenest mettled Man a

notable blade; so the best Herbage of the Ground is called here *Blade*: and of this *England* is said to be most fertile.

*Includuntur quoque in terra illa pasturarum arva fossatis & sapibus.*

The Riches of *Englands* Land is much occasioned by Enclosure, not of Commons, for truly I question whether, that be not within the *Curse*; of removing the ancient bounds, and grinding the face of the Poor, for whom I perswade my self onely the piety of our Princes, and the charity of their subjects (the *quondam* proprietors under them, left them free) but of mens distinct estates, which no one but themselves had common in it. For where any had right to enclose without their consent, and leaving them a fit proportion, was forbidden by the Common Law, and confirmed by the Statute *Merton. 20 H. 3. c. 4. & 13 E. 1. c. 49.* which, though it gave leave for great men to ap-

prove

1 Infit. p. 85.  
2 Infit. p. 260.  
the Stat. *Merton.*  
4.

*Cod. de Agricult & Conf. lib. 11. l. Colonus nunquam.*

*Luc. de Tenna lib. 1. c. eodem.*

*Cass. Catal. Gl. M. p. 435.*

(a) *Mutua cade grassantur, agricolis nulla in re nocent, sed intactos relinquunt tanquam communis utilitatis ministros neque bestium agros urunt neque arbores cadunt.*  
3. *Antiq.*

*Infit. Reipubl. lib. 3. Titulo secundo.*

*Panciroi in notitia Imperii de Magistr. Municipal. c. 9.*

*Ecclef. 5. 9.*

*Segetis proprie fruges eorum seminum ex quibus conficitur panis Valla. lib. 4.*

*Plin. lib. 18. c. 17.*

*Gloss ad M. Paris. in verbo Bladz.*

*Fleta. lib. 2. c. 12. de exitibus Gran-giarum.*

*Item notandum quod sub nomine Herb-gii non continentur Glans, Bracton lib. 4. p. 226.*

*Deut. 27. 17.*

*Cook on Stat. Merton.*

2 *Infit. p. 88.*

prove against their Tenants where they left them sufficient common of pasture, yet did not enable them to enclose as they pleased; for if they leave not sufficient Common in the residue, the Commoner may break down the whole inclosure (saith Sir Edward Cook) because it standeth upon his ground, which is his Common: the same Law of preserving Tenants Right, as indulging Lords in point of inclosure is reserved by the 3 & 4 of E. 6. c. 2. and by the 43 Eliz. c. 11. Persons undertaking to dreyn Marshes, and keep them dry, must be by approvement made between the Lords and Commoners of those Marshes and the undertakers: and when Burwell in King James's time did Winn and Inn the Marshes of Lesnes and Faunts in Kent, that were drowned, he was faine to agree with the Lords and owners of the same surrounded grounds before he could do it; so sayes the Statute 4 Jacob. 8. & c. 13. These all shew that the Texts *Includuntur* is not Inclosure of Power only, but of Law; of right rather than might: And this so done enhanfes the common profit of the Nation, and the particular profit of the owner; because it makes dry and leane grounds well fenced and fat.

*Idem loco practica-*  
10.

*Pasturarum arva.*] That is, by having cost bestowed on them (which when they lie open the owners will not) to become lusty and succulent, and by being delivered from the constant harras of the plough, which rips up the heart of them (for *arva* comes from *aratrum*, whence *ambervales hostia*, because offered for the fields, our Harvest *quasi arvi festum* and their *arvi-pendium*) become walks for seeding of Kine and Beefes: For that which Varro calls *Arvum agrum necdum satum*, our Chancellour terms *Pasturarum arvom*; Feeding, or Pasture grounds: so Bracton uses the word, *Est enim communia in eo quod dicitur pastura de omni quod edi poterit vel pasci.*

*Quia in arvis offe-*  
*rebantur Felus.*  
Varro lib. 1. de Re  
Rust. c. 29.  
Lib. 4. fol. 222.

*Fossis & sapibus.*] Hedge and Ditch is the word of our Law and instruments of conveyance, which some Books call *defensa*, and we at this day in some places, Fences; which, as every owner is bound by Law to keep, so, being sufficient to break thorough them, and lay open any mans ground is a Trespass, and an Action lies for it: the Statute of 1 Mar. Sess. 2. c. 12. made the casting down, or digging the Pales, Hedges, Ditches, or other enclosure of any Park, or other enclosed ground, by the number of twelve or above to be Felony; but the 1 Eliz. 16. limited it only to the Queens life, and untill the end of the Parliament then next following, but the Trespass still remains for breaking Fence, Hedge, or Ditch, the conveniences of which Mures or Inclosures to pastures the preamble to the 4 Jacob. 11. incomparably sets forth; and the 7 Jacob. c. 13. as to parks, makes penall; For as Walls and Fences Military are reckoned *Inter sacra*, and they had their *Fossa interiores & exteriores*, within, and without to keep the Enemy from assault, and when he had got the wall, to keep him, yet at distance by the Inn-ditch, so did the wisdom of antiquity to keep Cattell safe from prey of beasts and thieves, secure them by Inclosures fenced and ditched, which is the signification of the word Parke, from the French *Parquer*, to enclose.

M. Paris. 143. in  
*vita Sancti Alba-*  
*ni.* l. 11.

Lipius Polior-  
cheti lib. 3. Dialog.  
5. p. 166. 167.

*Vallo vel fossa*  
*circundare Glos.*  
M. Paris. in verbo  
*Parca.*

*Desuper arboribus plantatis quibus muniuntur à procellis, & astra solis eorum gre-*  
*ges & armenta.*

As mostly the hedges are of quick which keeps the fence thick, and the bank strong, so in the quick are planted Trees of all sorts; but chiefly those that beare a great leafe, and give a good shade, Timber Trees, Oake, Elm, Ash, and though sometimes Apple, Pare, Crabb, as in Hereford and Worcester shire and in Kent the Garden of England (yea *Sparsum every where*) yet generally the other, because of the lop-wood, whereof Stakes, Gates, and other things may be made, as well as the Cattell defended by the shade of them. These Trees, they are not said *nasci*, but *plantari*; (for thornes and briars are the Earths aborigines) Trees are planted with the art of the hand and care of the eye, yea, and to the comfort of the heart of the planter: Thus the good man is likened to a Tree planted by the rivers of waters, his goodness is from his plantation; a noble vine he is because God made him a noble vine. Thus God is said to plant his Church for a vineyard, wherein his

*Arbor est generale nomen & appellations*  
*ejus vites quoque & hederas. &c. conti-*  
*nentur Jurisconsulti.*

*Planta de arboribus dicitur ea qua trans-*  
*ferenda gratia vel de arboribus rapta, vel*  
*ex seminibus est orta, Servius in 2 Georg.*

Jerem. 2. 21.

Plal. 1.

Isay. 5.

Ordinances

Isay. 61. 1. 2. 3. 4.  
5. 7.

Ordinances produce liquor of life to penitent and prostrate sinners, and that upon this ground that he hath planted it to that end, *To binde up the broken heart, and to speak peace unto the Captives.* Whereas then our Text sayes, *arboribus plantatis* ] it means Trees purposely set to answer the owners end, in the Hedges ornament, the Cattels umbrage, and the Lopps profit.

*Quibus muniuntur à procellis & astu solis eorum greges & armenta.*

This shews the end for which Culturage had this care and defence raised about it; as the Ships that carry rich Merchandise have Gunns aboard to defend their lading; and Castles that have the Commands of Countries, have all military habiliments to preserve and carry on their designs and interests; so the field having its riches, Corn and Cattel, has not onely Hedges and Ditches to prevent Beasts forrage and Swines rooting, but Trees shelter for the Cattel against heat and cold.

*Greges & armenta* ] These words comprehend small and great Cattel, the Gregory Creatures are properly Sheep and Goats; these are the flocks to which our Lord alludes in those words, *Fear not little flock*, meaning these, who are commanded to be milde, passive, and tender spirited: the *Armenta* are such as are called *Majora animalia qua arationi destinuntur*, such as are Cowes, Oxen, Asses, Deer, and Swine, are said also to be in Herds, *The evil Spirit went into the Herd of Swine*: Now both these sorts, though they have pelts well covered with wool and hair, yet are sensible of extremes either of heat or cold; and because the oppression of nature by either hinders the frolickness and vivacity of them, whence the thriving and fatning of them comes, therefore experience prepares remedies for both those inconveniencies, which the Text calls *Muniuntur*, ] a term applied

Luk 12. 32.

Math. 8.

*Instrumenta sua Monachis nullatenus ostendere voluerunt, id est, ait Glossator, scripta sua authentica charta donationum, & evidentiæ Munimenta vocantur.*  
Gloss. in M. Paris. in verbo *Munim.* & in Hist. p. 311.

*In vita Agricola.*  
*Præditiis, custodiis, vigiliisque coloniam munire.* Cic. 1. In Catil. 3.

(a) Pro Flacco.  
80.  
(b) De Senect.  
47.

to any defence: in some Authours, *Letters credential*, or *Certificates*, whereby men unknown are testified to be what they are, are called *Munimenta*; *Sipontinus* sayes, *muniere* is as much as *fortificare, preparare*, 'tis to adorn and furnish them against the time of need and trial, for as *bare Walls make giddy Houswives*, so open fields without shelter makes but lean and thistleless Cattel, that look as a man, that would be resolute, does in *Tacitus* his words, *contra pudorem se muniere*, and as brave Commanders doe secure their charges by Watches and Guards obstructive to the treacherous enemy; and as innocence endeavours *Muniri & ornari bonorum omnium præsidio*, as (a) *Tully's* words are, and as bodies alive are (b) *Muniri contra avium morsum*, whose Carcasses when they are dead they worry and snap at, so are Cattel great and small, by shades from winde and heat preserved, and this shelter is termed *Munimentum*.

Valla in Raudenf.

Lib. 3. 106.

3 Argonaut.  
Lib 8. Belli Punici.

*Ἀκλόω νόταν λευιτάτην.*  
Scalig. lib. 1.  
Poetic. c. 22.  
*Procella vis ventorum cum pluvia ab eo quod omnia procellas.* Scivius.

*A Procellis* ] This is *vehementior venti impetus sed non durans*, most an end in the Sea rather than on Land, a cold blast we call it, because it carries all down before it, and shatters all that is near it; a Tempest, which, because of the terrour and havock it makes, is by *Silius* called *immanis*, by *Seneca*, *insana, tristis*, by *Catullus*, *turbida*, whence not onely the violation of peace by insurrection is termed *Procella*, but all things of terrour expressed by it, *Aequor procellosum* in *Valerius*, and *Venti procelloso* in *Livy*, yea *Nati procelloso* in *Ovid*, all to shew the unpleasing nature of cold and bleak Airs; which therefore are called *Procella*, from *Celes* that nimble Courser, who flew like the winde, and denotes such a sharp blast, as not onely makes the Beasts to quake, but wets them to the skin with the rain that accompanies it.

*Et astu Solis* ] as Trees are defences from cold windes, so from sultry heats and accession of Vermine which vex and bite the Cattel, for as digestion is fortified by an equal proportion of heat and moisture, so the temperament of cold and heat in weather is contributive to the feeding of Cattel, and therefore as in hot Countries men in the day keep their Houses and take their *Sirenato's* and refreshments by the umbrages they make to shelter them from the fury of the heat, so doe provident Husbandes prepare

prepare for Cattels conveniencies to cool them, by interposing some natural or artificial defences from the Sun, for the heat of the Sun does not onely parch the Hide and Skin, but exhales the natural heat and disperits Cattel, which is the reason that our Text speaks of Trees planted not onely to defend Cattel from the cold storms, but also from the Suns heat.

*Ipsaque Pastura ut plurimum irrigata sunt, quo infra earum claustra reclusa animalia, custodia non egent per diem nec per noctem.*

These are the feeding grounds, wherein the Milch Kine for Daries, and the Oxen and Cattel that are for the Shambles, feed; and as they are called *Pastura à pascendo*, so in other books \* *Oxgangs*, these, as they are rich and from the spring of the ground, afford a good gripe; so are they fitted with springs or standing ponds of water, which are as necessary to make Cattel thrive as the gras they bite or the hard meat they chew; for as meat goes down with men like chopt hay (as we say) when they have not drink to it, so is it with cattel thristless dyet, where the throat of them is not cooled, and the passage cleansed by water; this Element, of all, is that which cattel rejoyce in, and the residence of them is by the waters; God when he planted *Eden*, made it Rivery, it had limpid streams issuing from it in abundance; and the Patriarchs, when they seated themselves for Accommodation of their cattel, respected waters as the great convenience of their imployment; in *Gen. 26.* we read of the waters of *Gerer*, and the Herdsmen contending with *Jacob's* Herdsmen; in *Exod. 2. 16, 17.* of *Jethro's* Daughters, and the servants that watered their Father's cattel, and where-ever in Scripture pasture is mentioned, water is spoken off, or at least presumed near: and the Text here calls this accommodation of water, *Irrigatio, irrigata sunt Pastura*, where *irregare* is as much as *ad-aquare, quasi aquas in agrum aut hortum per rigationem deducere*, thus *Tully* (a) uses the word waters in plenty, as *Nilus* overflows *Egypt*; Authours use this word to signifie number, thus *Plautus* sayes of one, he was *homo irrigatus plagis*, and (b) *Pliny* expressing cruelty, *sanguine irrigari*, and *Seneca, gena irrigantur assiduo rore*; and *irrigua aquarum* are those lanches by which waters are let into Grounds to overflow and fertilize them, so that these being in grounds, answer the requiries of cattel, both to cool them within, and make their food go down cleaverly with them, yet it saves them the labour to be driven to water, which wastes the body of cattel, and often chafes them; besides by reason of this the charge of looking after them is lessened, for, they being able to water themselves when they have a minde to it, a little looking to them once a day is all they require; yea by reason of both the ditch, hedg, and water, they need no watch, or at least lesse then without them they would.

\* *Libra: a terra continet quatuor bovatas (id est, Oxgangs) terra unaqueque bovata tredecim acres continet; & librata continet quinginti duo acres. Glos. ad M. Tit. In verbo librata.*

*Agri aquarum irrigatione aut pluvia carentes, nullos fructus cultoribus praestant. Lucas, De Penna, c. De fundis rei privatae, tit. 11.*

*Ex agris irrigatis his in anno fructus percipiuntur. Papinianus apud Cassau. Catta. Glos. M. P. 589.*

(a) *Cic. 2. De Nat. Deorum. Plautus Epid. 3. 15.*

(b) *Lib. 2. c. 6.*

*Iniqua aquarum, loca per qua aqua rivos producit ad irrigandum. Plinius lib. 6. c. 26. & lib. 5. c. 4.*

*Signum autem benignitatis pastoris est, quod greges non diffugerit, Meta lib. 2. c. 79.*

*Nam ibi non sunt Lupi*] The Wolf is a terrible creature, heretofore frequent in *England*, or rather in *Wales*, where *Edgar*, a Prince of happy power, is said to lay on the *Welch* a charge of 300. Wolf-skins a year, in token of Tribute and Dependance; to the performance of which, he gave liberty to the *Welch* to chase them into any part of *England*. They are a kind of wild dog, savage and crafty, enemies to sheep and all creatures of mansuetude; in relation to which ferity of nature, they have the Characters of *acres, avidi, asperes, cruenti*, and by reason of these, the flocks of *England* and they, were never *Cater-cosins*, as we say: but the love of the Nation to the sheep preponderating, the Wolf went to the pot, which is the reason that Wolves are destroyed. The savageness therefore of this creature, as it caused the eracing of them here, so did it make them abhorred every where; the *Adage* insinuated enough of the fatality of the nature of this beast where a Victor, *Before a Precipice, behinde Wolves*: and therefore, though our flocks in *England* have not Shepherds so fierce as those of *Agla*, who will with their Crook and Sling persue a Lion and make him leave his prey, which gave

*Vowell's Description of England. P. 225.*

*In laqueo lupus. Adag.*

*Ἐμπροσθεν κρημνὸς ὀπίσθεν λύκοι. Chil. 3. Cent. 4. Ad. 94.*

Si leo ovem vel agnum surantur apprehensū baculo vel lapide fugientibus Leonibus timorem incutiat. Aldrovandus lib. 4. de quadrup. digit Ovipar. p. 3. 9.

(a) Cent. 4. Chil. 1. Adag. 31.

rise to the *Adage*, which is called a man of feare and faint-heartedness; *Timidior Leone Agla*, yet our sheep are secure from this, that with us there are no Wolves; And he that seeks Wolves here must (a) *Λύκω πρὸς ζῆσειν*, make account to seek what he shall never finde: for so safe are our flocks, that unless they straggle, or are for corporall food, or to make money of, stollen, they will be forthcoming.

*Ursi nec leones.*] As no Wolves, so no Beares nor Lions; those beasts are in the extreme parts of the World: Beares in the Northern climates, Lions in *Asia* and *Africk*; some have said we have had, though no Lions, yet Beares breeding in *England*; but *Gesner* denies it: though in the Northern parts of Europe he allow some to have been, yet not in *England*. But we have had *Wolves* in *Sheeps* cloathing, Beares and Lions in Mens shapes; we have had a Generation in it, who, like the *Cassares* of *Mosambick*, fyled their teeth, as sharp as needles, to bite asunder the Gordian Knot of Government, so that of late that of *Aeschylus* is true of *England*, *Here was a fountain of all evill opened*: and though our flocks in the field have been safe from wilde beasts, yet not the Flocks in the Church from Scism and Heresie; nor the Flocks of humble and innocent Subjects from violence, oppression, and what not, that was clamourous to God for

Vengeance, and to Men for patience and prayers: No Age of *England* ever knew such truculent spirits in manhood as there have been lately amongst us, whom God deliver all peaceable subjects from: but I return to the Text.

*Quare de nocte oves eorum incuspidata in campis recumbunt in caulis & ovidibus.*]

The Law watches the Sheep from the Stealer, whose act is Felony and Death; the terror of which, if it keep the Thief off, the flock feeds quiet. For, though the night be the season of prey, because they that are wicked, are wicked in the night; yet the night is secure even to the sheep in *England*: The sheep of all creatures is a harmless creature, that for a beast, which the Dove is for a bird; And it has no forecast for it self, which *Aristophanes* notes, in that he calls the life of a simple negligent person *Προβατισμῖον*: yet the sheep is *χρυσόμαλλον*, a Golden Fleece, a rich and profitable creature, his flesh good for dyet, his wooll for cloathing, his fat for tallow, his horns and hoofs for soyle; and this beast has this quality, that he will wander and straggle, if he be not kept; and though he have no force to repell danger, yet has no foresight to avoid it. Therefore the use is, to keep the sheep in the fields, *In caulis & ovidibus*; That is, in such pens and prisons, that they shall not straggle in the night, and be taken up as night-ramblers are.

*Caula.*] Is a repository for sheep, where they were kept safe from injury, a kinde of denn, or under-ground lodge, wherein (before the finding out the use of building above-ground) they lodged them. *Servius* terms them *Munimenta & septa ovium*; and generally any refuge of security to sheep is called *Caula*.

*Ovile.*] Is the same under another name, properly this was a place in the *Campus Martius*, figured like the pens of sheep, open lattesses, in which the *Romans* stood, and thorough which gave their suffrages; *Citatis Centuria Senioribus datum secreto in ovili cum his colloquendi tempus*. Twas concerning choice of a Consul to make Head against *Hanniball*. Ordinarily the *Ovile* is *Stabulum ubi Oves stabulantur*.

*Quibus Impinguntur Terra eorum.*] The folds and pens are not onely the security of the sheep from stray, but the fertility of the ground, which their dung adds to, and invigorates: For as the sheep-walks are most in those Countreys that are Champaign and arid, so are the grounds helped against their naturall sterility, by those foldings of sheep, the soyle of which is not only very succulent and productive of Corn and Grasse, but avoids great charge, which oitherwayes those remote grounds and barren would occasion;

Non in Anglia quanquam in Europa in plaga septentrionali. Ulyss. Aldrov. lib. 1. p. 122. Quadrup. Ovip.

Linschotten descripsit. Indias. p. 76.

Νὺν ἡλιῶν εὐρεθὲ πῶγν πᾶσις εὐ-  
σηδὺς φίλοις. In Persia.

Has tantas viri virtutes, ingenia vitia a-  
quabant, inhumana crudelitas, perfidia plus-  
quam punica, nihil veri, nihil sancti, nullius  
dei metus, nullus iusjurandum nulla religio,  
Livius lib. 1. de Hannibale.

Surgens de nocte  
larrone. Virgil.

In Pluto.  
Budæus lib.  
de Asser. n.  
Et ejus par-  
tibus lib. 4.  
p. 175.

In 9 Ænoid.

Livius dec. 3. lib.  
6.  
Brechans ad le-  
gem 198. de verb  
significatione.



occasion. So good and wise is God in the work of Nature and Providence, that he has appointed every thing its station, and given a compensation to every defect, and an alloy to every redundancy. Deep and fat soyls, that need no soyling from sheep, are not proper for breed of them, though for raising the bodies of sheep they may be; therefore the breed is in hungry and lean grounds; where the Corn-fields are made by their foldings.

*Unde homines Patriæ illius vix operis sudore gravantur*] This is onely to be understood candidly, that *England* is no iron stony Soyl, lying under the perpendicular of the curse, *Bryers and Thorns onely to bring forth*; but it is a full and free soyl, on which the Tiller lives as easily, and from whence he has as comfortable support for himself and his family, as any Nation in the world yields its inhabitants; and because the feeding of cattel is more advanced by prudence and care, then by toyl and labour, our Text sayes, the Country man, *vix sudore gravatur*, that is, his flocks yield him profit when he stands still and lyes down by them as they feed: but this is not the condition onely of Country-men, their lives are divided between the Plough and the Flock; some there are that in some places wholly stock their grounds with flocks, but alas this Land has not many parts of it so fitted to it, but that even there are many Ploughs jogging also. It's true indeed, I believe *England* is the richest in flocks for number and goodness of any Island in the world, and men we have had, whom reports have made incredibly rich in Sheep, as that Ancestor of the Lord *Spencer*, whom fame speaks (as is pretended, but with what truth I affirm not) to be by Record in the Tower richer in cattel then *Job*; and that *L. Cheyne* owner of one of the Islands in *Kent*, either *Sheppey* or *Thamet*, who being in *France*; and laying a wager with the then King of *France* of 100000 *l.* and when the King asked whether he was able to pay it if he lost it, hereplied, *That his Sheeps tayls in the Isle should pay for it*, and reported they are to have been of that value. I say, these and other instances may be produced of men very rich in sheep, but that thence *England* should be made onely a sheep-walk, and the ground rendred such, as yields fruits and profits without labour, is more a noble Character of the Chancellour's love to his native Country, then that which can be made strictly good; that it is a brave soyle, and that sheep abound in it, is true, so is the assertion, that men are as soon made rich by the standing of sheep, as by any thing, but that sheep are gold to all, and that all parts of the Land are proper for sheep, is not inferrable hence; though truly I think (but ever with submission to better judgements) that breeding sheep, and tending flocks is not onely a gainfull, but a very divine Patriarchal course of life, and those that follow it have in a kinde opportunity *Spiritu vivere*: for besides that the care of flocks is in *Philo's* words *The Tyrociny to State-Government*, and that the minde is exercised more in intellectual acts then corporal ones, gives the opportunity to meditate and dwell more at home then other Callings permit: thus *Jacob* is said *To go out and meditate in the field*, which probably was to read and contemplate while his flocks fed, whereas in the occupation of the Plough, no longer is there thrist then the Plough jogs; whereupon the Statute of 1 R. 3. c. 1. calls *Handicrafts, easie Occupations*, and *going to plough and cart, laborious Occupations*; for though in such soyles as *Babylon* and the *Sybarites* Country, there be 100, 200, 300 for one, as *Pliny* tells us; or truer 30, 60, and some 100 fold, which our Lord alluded to in that 13 *Matth.* 8. yet in most Countries there being tougher soyles and less increases, the toils of Husbandmen are great, and their wayes and manner of life scant, narrow, and full of hardship, which makes the poorer sort of people, born and bred to misery, take to that, as the calling which is most suitable to their mean birth, breeding, and spirits, for by hard labour, constant tugg, and incessant vigilance, they do *ἀπὸ νεκρῶ φρολογεῖν*, *rifle the monuments of natures riches*, for the gain that arises by the crop on her, which when they attain, they have what they expect in compensation of their diligence and charge, when as in the pastoral life there is not that pain and trouble required. Whereas then the Fathers of old, and our fore-fathers are said by our Text, *Spiritu magis vivere*, and *greges malle pascere quam animi quietem agriculturæ sollicitudine*

Ὁ δὲ τὸ παιδικὸν ἀκρῶ ἀ-  
εῖσι ἀντὶ τῆς βασιλείας, Philo  
in lib. De Josepho, p. 526.

Budæus lib. De  
Asa, & ejus par-  
tibus, lib. 5. p. 261.

Chil. 1. Cent. 9. Adag. 12.

Ἰταίης δ' ἔχθη δμοία τῆς βα-  
λδύμασσιν, Eurypid. in Hecuba  
Adag. 78. Chil. 1. Cent. 8.

2 Instit. c. 25. ad finem.

*Pastores autem expedit habere discretos & vigilantes & benignos ne oves per iras suas torqueantur. Sed ut pacifice in latitia suis depascant pasturas.* Eleta lib. 2. c. 79.

*citadine turbare*; our Chancellour is to be understood, that *England* was ever very rich in sheep, by reason of which, our Cloathing is the worthiest and richest commodity of this Kingdom; And divide our Native Commodities exported into ten parts, and that (saith Sir Edward Cook) which comes from the sheeps back is nine parts, in value of the ten, and setteth great numbers of people on work; which considered, as Pests and Rots of sheep are a great chastisement of God, so are all things that depreciate the wools and cloathing of our Nation to be cautioned against: by 11 E. 3. 2. none were to weare any cloath but such as is made in *England*; and c. 3. no Cloaths made beyond the seas were to be brought into the Kings dominions; but this being thought hard, was by 24 H. 8. c. 13. in part repealed, and by 1 Jacb. 25. in general words; by the 31 E. 3. c. 8. the weight, goodness, and sale-place of wools is appointed, confirmed by 13 R. 2. c. 9. 8 H. 6. c. 22. 3 E. 4. c. 1. 23 H. 8. c. 17. 13 Eliz. 25. yea, and when the *Florentines* and other Natives came into *England*, and made clothes of Ray, there was by the 2 E. 3. c. 14. the Measure and Assizes of them set down, which was repealed by 5 & 6 E. 6. c. 6. but yet the more precise goodness of later and more usuall cloathing specified; and by 4 E. 4. c. 1. the length and breadth of cloths made to be sold, is limited; and no cloaths wrought beyond the sea are to be brought into this Land: And since *Henry the eighth* time, when the new Drapery was brought in, more Acts have been made for wooll and cloathing then ever before. From all which I collect the great concernment of the sheep, and proceed of them to this Nation, which is the cause, that the Chancellour supposes men that have so much leisure, as the sheep-Masters of *England* have, whom their flocks make rich, without their constant corporall labour, more probable to abound in exercises of their mindes and understandings, then other people, that are more harrassed, and so are less masters of reason: thereupon he sayes, as it follows,

*Ex quibus homines regionis illius magis redduntur dispositi ad discernendum in causis qua magni sunt examinis, quam sunt viri qui telluris operibus inhabitantes exercitibus familiaritate mentis contrahunt ruditatem.*

This illation seems to have some weight in it, for though the temperature of the aire do contribute much to mens complexions and constitutions, and thence to their virtues and vices; by reason of which the *Greeks* are termed light; the *Africans* inconstant; the *Germans* strong and valiant; the *Italians* grave; the *Spaniards* proud; the *French* fiery, and so onward. Though, I say, the milde climates producing, by moderate influences, temperate and wise mindes in men, may, in a good sense be accounted the externall cause of mens fitness here with us in this moderate Zone for Judicial affaires; yet can it not be denied but that Education and ingenuity of calling, wherein men have leisure, and helps to polish their mindes, is a very notable furtherance to intellectuall plenitude: And hereupon this land having so much of advantage reflecting on the Inhabitants of it, from its plenty, and the ease of many gainfull callings in it, may well be called *μακροβουνοον*, as *Herodotus* words are, a most blessed Island; the men whereof, as of a Countrey blessed by God, are not dull *Greeks*, rude *Arabs*, riotous *Muscovites*, fiery *Goths*, barbarous *Vandalls*, gluttonous *Danes*, no nor light airy *Braves*, but sober, stanch, resolute, apprehensive men; fit for the field, for the Court, in peace and war, jest and earnest, serious and trite things: and by reason of this advantage of their Mother-aire, and the attendants on it, they are in our Chancellours sense Native Statesmen and Justicers, having a kinde of constitutionall judiciousness in them, resulting from the liberty of their Lawes, and the enfranchisement and heroising of their spirits thereby; And that not only in that single act of selfe-preservation (which men of *Anaxarchus* his temper, who was *Philosophorum omnium adulatorum abjectissimus*, thrive by, when such as *Calisthenes*, though they have ten thousand times the merits of those flatterers, are ruined by plain-dealing) not only, I say, are *English* men wise in that of promoting their own particular interests, but in *rebus magni examinis*; such as are triall of life and estate, actions of promise and contract, projects of combination and forge-

Cassan. Catal. Gl. Mundi. p 473.

Olympiod Excerpt. p. 856. Edit. Sylbur. gii.

Country from *Contrada* the Italian word; so Emperour *Fredersick* in his Epistle to our H. 3. M. Paris. p. 357. *Contrada* rota descendit inde usque ad *Joppen*. id est Regio aut *Glofi*.

*Eam sententiam sic ad unguem servavit huius temporis homine ut hominis vocabulo videatur indignus qui non qua ratione suis consuleret commodis noverit.* Erasim. ad Adag. 21. Ghil. 1. Cent. 6.

ry; the cryptick and hellish secrecies of Treason, Rebellion, Murther: These, though buried as it were under ground, doth the sagacity of an *English* Jury follow, and pursue to their subterraneous caves, and un-litter those kennells of villany and mines of poyson and rancour that are brewing in them: and this they do, by an ingenuity and naturall endowment, which the Text termes in them, *magis apti & dispositi*; which, though I do not believe, in the Astrologers sense, is by pure influence of the Stars and energy of conception, yet I may think arises from some benignity and largesse of God; according to the receptivity of the soul, and the concurrents of other appointments, which, I think, is the sense of those that hold *unam animam in naturalibus esse alia excellentiorem & perfectiorem*; though perhaps it do thwart the opinion of *St. Thomas Hales*, and others, who determine *animas esse aequales*. For, since we see there is in the souls of men degrees of *ingeny*, whence it should come but from a prelation of endowment, I am not able to determine, nor do I determine any thing, but leave it *sub iudice*, only in that our Text sayes, *Magis apti & dispositi*, it asserts a priority in some to others, and this consists much in a fitness of the body to the soul; For, as a Gun unevenly boarded, and not cleverly mounted, will shoot at random, though it have the best powder and marks-man imaginable; prick out the rarest notes to a Songster, yet if his voice be naught, the Musick will not be delightfull; lead men never so puissantly, yet if the men lead do not follow on, no battell is well fought, or day bravely got; so let the soul be never so divine and wise, yet if the body mated to it be dull and stupid, the incorrespondency will destroy all the precellency that is not answered by the other part of the quire, which is the harmony of body and soul. So that by *apti* and *dispositi* the Chancellour intends the fitness and towardliness of men to great imployments, *Aptus est qui convenienter alicui rei junctus est* (saith *Tully*) and *Virgil*, *Axem stellis ardentibus aptum*: Criticks account this verbal very large in its signification, *comprehendere vinculo* they called *apere*; and *Muret*, in giving the description of its contrary *ineptus* sets *aptus* amply forth; *He that sees not what the present time requires to be done, or he that is impertinent in saying or doing what were better unspoken or undone, forfeiting his credit with those judicious persons, who are Witnesses of what he says and does, he is ineptus, a fond man*: Therefore in all good Authours the word *aptus* being the avoidance of the prementioned extreme; is used to significantly express any thing; so (a) *Tully* applies it to *Cato*, of whom he writes, *Nulla aptior persona qua de illa atate loqueretur*; that is, *accommodatior & convenientior*: None more proper for that work then he that was so grave a man. So *Apta compositio membrorum*, *apta & coherentia*, *apta verba ad Latinorum consuetudinem*, *Apta ad stabilitatem commissura & adactus finiendos accommodata*; so *Aptus esse & decere*; so *Celsus* has *Aptus curationi ager*; and *Pliny*, *His aptus alicui rei*; and *Quintilian*, *Animi apti*; yea, all Authours *equa apta*, *color aptus*, *tempus aptum*, *verba apta joco*, *umbra apta pastoribus*, *apta arma*, and therefore tis well here matched with *dispositi*: ] As in other Authours, *Aptum & ratione dispositum*; and *dispositi in curmas*; So *Livy* termes wise Counsel's *Disposita in omnem fortunam consilia*: and *Pliny* calls *Sabinus*, *liberalis vir*, *subtilis*, *dispositus*, *acer*; *disertus*. By all which the Chancellour applying *apti* to his Country-men; makes them not men whose heads are in their heels, and when they are driven to straits, cry out bemoaningly, as he in *Aristophanes* did, that his minde was shut up within his skin, and could not appear to do him credit without the memento of a lash: no such dull figures of manhood as deserve the taunt *Plautus* gives the servants of his time, *Deadbeasts chastise living men*; no such *inelegantiores Lebethrii*, as the (a) *Adage* has it, are the Frecholders of *England*; God be praised they do not labour under that *mentis ruditas* which other common people (whose spirits are suppressed, and their breedings mean, because of the tenuity of their conditions) are unhappy in, and contemptible for; but as God has given us of this Nation a pleasant Land, a free Law, and a ple-

Cass. Catal. Gl. Mundi. p. 475.  
*Anima secundum ordinem naturae non perferat alteri avina*, S. Thom. Part. 1. qu. 64. art. 4.  
*Anima quanto nobilior est tanto plures potentias operationis & organa habet*, part. 1. qu. 30. art. 2.

*Anima non impeditur à suo corpore ut est possibile ab ea, sed ut habetis aliquid repugnans animae*, S. Thom. Part. 1. quest. 75. art. 3

*Ex omnibus Latinis verbis hujus verbi vim vel maxime putavi*, Cic. 2. de claris Oratorib.

*Qui aut tempus quid postulet non videt, aut plura loquitur aut se ostentat, aut eorum quibus cum est vel dignitatis vel commodi rationem non habet, aut denique in aliquo genere, aut incontinens, aut multus est, is ineptus dicitur*, Advers. lib. 15. c. 9.

(a) Cic. in Caelio.  
 1. Offic. de Opt. Genere Orato.  
 2. De Nat. Deorum.  
 Lib. 2. c. 12.  
 Lib. 12. c. 7.

Cic. pro Roscio, lib. 18. lib. 35.

Ὁ τῶς δὲ ἰμῶν ἵν' ἄν' ἐν τῶς οὐρεῖσιν. *Adag.* 18. *Cent.* 2. *Chil.* 2.

*Vidos homines mortui incurfant boves*, *Plautus* de loris quibus caduntur serui, qua facti fuerit e coris bovalibus, *Etasir.* *Adag.* 18. *Chil.* 2. *Cent.* 2.

(a) *Adag.* 48. *Cent.* 6. *Chil.* 1.

nary discovery of his Gospel, so has he endowed the Nation with that tillage and culture of breeding, which has polished all the rudeness of their mindes into a smooth and amiable orieny; so that if we do not sin against our light, and provoke God to intenebrate us, there are mercies enough upon the Nation and the people, to force from our Neighbours the confession, *That God has made us the head and not the tayle*, and that 'tis not onely better with us then we deserve, but then with any our Neighbours: And I never hear any Reverter of us to this, that is here called, *ruditas mentis*, till we wilfully shut our eyes against the light, and harden our hearts against God's fear, which if ever this Nation should be guilty of, we may again, as the *Angles*, *Picts*, and *British* did before Christianity, *mentis ruditate gravari*. 'Tis a dangerous thing to give way to reigning sins, either in a Nation or person; in the History of France there is a notable story of *Fredegund* the fair Wife of *Chilperick*, who suffering her self to be courted by *Landri de la Towre*, at last grew so enamoured of him, that she was impatient to be without him; *Chilperick* riding one day a hunting, went up, just as he was going, into his wives Chamber to complement her, and finding her combing her head, being behinde her, tapped her most softly upon her head with his rod, she thinking *Chilperick* had been gone, and it had been *Landri*, replied, *A good Knight should alwayes strike before and not behinde*, the King understood the meaning and went sorrowfull away; but she, finding her self overshoot in her tongue, plotted her Husbands death, which her Paramour and she brought to passe, and a miserable Woman she became. But this rudeness of minde not being the unhappiness here meant, but a Progression of misery beyond it, I prosecute no further, but return to the Text.

Deut. 28. v. 13.

Isa. 6. 10.  
Isa. 63. 17.

History of France.  
p. 30.

*Regio etiam illa ita respersa, refertaque est possessoribus terrarum & agrorum, quod in ea, villula tam parva reperiri non poterit, in qua non est Miles, Armiger, vel Pater familias, qualis ibidem Franclaine vulgariter nuncupant.*

By this the Chancellour persists in the commendatory description of *England*, as from the fertility of its soyle, so from the plenty and splendour of its inhabitants; for whereas amongst the *Romans* and *Germans* their *Villa* were onely Granges and Sheepcoats, where their *Drudges* kept Cattel, tended Vines, and sowed Grain to furnish the great men that dwelt in Cities of concourse, pleasure, and business; whereas the Country seats were mopish and dull, rude and uncompt, and men used them more for profit and necessity then pleasure and choice, in *England* every corner is so thwacked with inhabitants, and so orderly disposed, that 'tis not onely possible to finde men of office and honour in every *Ville*, but impossible almost to finde any *Ville* without them, there is such plenty of them as if the Land were sown with them, so that one would think they could not live each by other; and so are they verging each upon other, that Corn, thrust down in a bushel, packs not closer to make the weight of the bushel

Budæus in Pandectus, p. 166.  
Edit. Vascos.

*Ager profusus ad serendas segetes arborum dicitur, plantatus autem & constitus arboribus, aut vineis vitium nominatur, edificatus vero villa est.* Brechtus ad leg. 27. lib. De signific. verborum.

¶ Lazijs lib. 12. c. 6. p. 1073.

In duodecim tabulis legum nostrarum nusquam nominatur villa.  
Plin lib. 19. c. 4.  
(\* ) Villam imparito distribuit partem unam urbanum, rusticam alteram & tertiam fructuariam Columella, lib. 1. c. 6.

Budæus in Pandectis, p. 166. Edit. Vascos.

So that the name *Villa* being *Roman* (not so eminent as the Law of the twelve Tables) the *Roman* sense of *Villa* is yet unforfotten, though somewhat advanced by time and transplantation; amongst them their *Villa* was *domus extra urbem adificata cum omnibus adificiis, qua non pecora solum armentaq; recipere possent, sed etiam omnis generis artifices & familiam*, to which *Varro* lib. 1. *De re Rust.* and *Pliny* accord. (\*) *Varro* sayes it is so called *Villa*, *Quod in ea conuehantur fructus & euehantur cum venenit*, and hence comes the word *way*, *quasi ueha*, the passage on which Carts go too and fro: this was called *Pagus* also from *πῆσν fons*, because it was usually in loco paludato, for that neither man nor beast thriving without water, ancient Granges and Daries were commonly seated low, where the defences from storms are most, and supplies of water and rich grounds best.

The *Roman* Authors make three properties of a *Villa*; 1. That it contain room

for the Master and Lord, that's as our Mansion-houses, or Halls, or Courts, or Granges, or Berries, or Places. *Pratoria*, such were *Cicero's Tusculum* and *Academy*, and *Pompey's Firmianum*, from whence our term *Farm* perhaps may come, or *Budeus* his *Sammaurianum*, on these the *Romans* bestowed great costs, *Ampla & operosa Pratoria gravabatur Augustus*; *Villas videlicet quasdam elegantius & sumptuosius extructas*, saith *Suetonius*, and of *Caligula*, *In extructionibus Pratoriorum atque Villarum omni posthabita ratione, nihil tam efficere concupiscebat, quam quod effici posse rogaretur*; and of *Hadrian's* tis written, *Tiburtinam villam mirifice ex edificavit, ita ut in ea, & Provinciarum & locorum celeberrima nomina inscriberet, Lycaum, Academiam, Prytaneum, Canopum, Pacilem, Tempe vocaret*, as desiring by sight of their names, to be put in minde to contract the single rarities of them all into the Ornament of his Country Seat, and as it were, Palace of pleasure.

Brechaus in leg. 166. p. 362. De verb. signific. Budeus lib. 1. de affe p. 19. Edit. Vasco. In Augusto. c. 27. In Caligula. Spartianus in Hadriano.

2. The second Appendix to a *Roman Villa* was *Humiliores ac potius case quam domus in quibus pecora erant, & familia servique habita, aut qui opera faciebant rustica*, to which *Cic.* alludes, when writing to his friend, he calls this, *Villula sordida & valde pusilla*, of this *Varro* lib. 2. c. 9. *De re Rust.* fo *Horat.* 2 *Serm.*

Alciat. in 211. leg. p. 459. De verb. signific. Epist. lib. 12. ad Attic.

*Si vacuum tepido cepisset Villula tecto.*

And from this part of the *Villa* arises the word *Villains*, who were *Omnes Villa adscripti & colenari conditioni addicti*, these were ever to be at their charges and never to be off their labours, unless in their Lords service, or to tend his cattel or commands.

3. The third part of their Village is *pars fructuaria*, their store-houses or granaries, in which they repose and stow all their fruits that from the ground they gathered; for the Husbandman or Swain was but to labour to sow, reap, and bring in or gather the fruits, when once that was done, the Lords disposed of them, to which *Columella* refers, *Nec tamen instituendo villicam domesticarum rerum villico remittimus curam, sed tantum modo laborem ejus; adjutrice data levamus.*

Alciat. Brechaus } ad leg. 198. lib. De verb. signif. Fornerius } Lib. 7. Rei Rustic.

These were the three parts constituent of a *Villa*, and these every *Villula*, or *Mansion-house* in *England* has; the Mannor or Lords repose, the Farm-house or Baylywick, where the Bayly and hindes are, and the cattel both oxen and horses with the Dary is kept, and the Barns and Granaries where the fruits lye, and out of which they are by the Bayliff delivered by tale, either to the officers of the house for their respective expences, or to Market for exchange of money, wherewith to buy other necessaries for the Lord and his family, and

Manzo sive Mansio, Italica est quantitas terra qua sufficit duobus bobus in anno ad laborandum. Papias Glossator.

Vadianus Jurisconsultus in Origin. dicit esse villam cum pradio Ecclesie annexam & servitio seculari liberam, vide plura in Gloss. ad. M. Paris. in verbo Mansus.

to defray the wages of his menial servants and day-labourers, together with his sports, travels, and other pecuniary disbursements: yea, so has time bettered these rude and thin-carcaffed Cottages, from what they originally were, that from being clamped with clay and headed with heath, neither capable to keep out winde or rain, they are now generally well built and notably covered; yea, often adorned luxuriantly, and that to encourage the Tenant to pray for his Lord, and the servant to labour truly for his bountifull Master, under whom he lives in comfort and plenty. So that our Chancellour in this clause highly extolls the opulency and pregnancy of *Englands* Treasury, which is not onely many in Inhabitants, but mighty in wealth and abounding in conveniencies, not onely of life, but for State, distinction and ornament, that, as *England* is the *Phenix* Nation, so every *Villula* and hemm-breadth of it is so digested, that it seems to be a little Common-wealth, a Model of the National Government. For whether the *Romans* here placing their Colonies in the *British* Towns, and having their *Villa* in the Country, or whether from a Native *British* Origen I know not; no *Villa* (I mean not in the large sense which equalls it with *Pagus*, *vici*, *nrbs*), but in a restrained sense, for a Neighbour-hood or small conjuncture of houses) but has a system of politick Government in it, the Civil Magistrate, the Lord of the *Soyl*, who has from the Crown, or other great Lord (who from the Crown holds it) *Dominium Seli*, all Regalities and Perquisites, or such of them as the King excepts not to his own use; such are Jurisdiction and profit of Courts for trials of offences capital, criminal, or at least Trespasses and Actions within the Mannor, Escheats upon Felonies,

or

or other Accidents, Custody of Infants and Lunaticks, power of passing Estates and admitting Tenants, Reliefs upon death, Hunting, Hawking, Fishing, and the like: *The Church-Magistrate*, the Parson, Vicar, or Rector of the Church, who has, *sub Episcopo, curam animarum*, and lives *de proprio*, the Church-Glebe, and the Tithes and Church-book profits, for which he is by the Law to reside, and to preach, instruct, reprove, and inspect the people, that *They perish not for want of knowledge and faith, which comes by hearing the word*, which he is constantly on *Lords dayes*, and other dayes if need be, to preach, and that their knowledge may be sweetned to them in the blood of *Christ*, which he is to offer to such of them as present themselves for knowing and worthy receivers at the Lords Table, *and he knows not notoriously ignorant and scandalous in their lives.*

The Officers both Civil and Ecclesiastical; Constables, and Headboroughs to keep the peace, and to prevent frays and unneighbourly fudes, and to secure offenders to publick justice, and to lead men, if need be, to defend themselves against unlawfull Assaulters, and predatorial insurrections against them; and the Church-wardens and Side-men to see the fabrick of the Church kept decently, and to receive and pay the incomes and expences of it, and to answer for it in all cases wherein it shall come in question, who, together with the Overseers of the poor, take care for persons impotent, sick, poor, aged, Orphans, and other objects of charity, that God be not provoked by neglect of them to deny his blessings to the fruits of the ground, and revenues of the Parishoners, nor the Religion and Polity, under which those poor souls are bred and live, be evil spoken of, as inoperative, dead and lifeless as to works of charity to men, as well as piety to God. Now because this resemblance of the National Government in every Seigniorie collated a dignity and ray of Grandeur to those Lords and Gentlemen, whom the Kings of this Land (from whom all Lands and Jurisdictions originally moved) dignified and priviledged by Chartar, to reward their service, or encourage their loyalty for the future; therefore the Chancellour does not content himself to write, that many such Knights, Esquires, and Freeholders there are, but terms *England* in all parts, and in every *Villa*, *respersa reserptaque*, words that signifie plenty which way soever we look.

Cic. 7. verr.

Argon. 59. 46.  
lib. 6. c. 2.  
Pro Roscio A.  
meric.  
Ad Qu. Fratrem.  
lib. 2. 16.

1 Academ.  
5. Verr.

*Respersa* ] *Respergere* is as much as *circum circa spargere*, thus *Tully* uses it, *Quum Pratoris nequissimi inertissimique oculos pradonum remi respergerent*; and *Sanguine respergere dextram* is in *Catullus*, and *Mero respergere tergora* is *Columella's* phrase, so *Juvenis respersus cade fraterna* in *Catullus*, and *Manus respersa sanguine* in *Cicero*; and *Pliny* notably tells us, that the flights of birds go in numbers, *respersu pinnarum*, or *penarum hostem obcaccantes*; and *Reserta* ] the other word, is a word of accumulation, noting plenty, stuffed as full as full can be; so *Cicero* to his brother owns the receipt of his Letters, together with *Casars* also, *resertis omni officio diligentia & suavitate*, and in other places he mates *plenus* and *locuples* with *resertus*, which sets forth the Chancellours meaning, to shew that *England* is a Land close-packed with Inhabitants, so wedged together, that a man would wonder how they set their horses together, especially when they are so potent and rich, not onely as they are *Possessores terrarum*, (for so in a large sense Occupiers or Farmers of Land are, during the terms of which demised to them they are paying their rents and performing the annexed Conditions possessors of the Lands so demised) but as they are *Possessores proprio jure*, *en son proper droit*; as onely those are whom he expresses by those words, *Miles*, *Armiger*, *Paterfamilias*.

*Miles* ] Of this I have written in the notes on the 22. Chapter: That which I add here, is, that the Chancellour meanes not this in the large sense, as every souldier is capable of the title, but as only Honorarily it is understood, as they are Dignities, bestowed by the Sovereign on men *Dilecti & electi* as they were, not onely the choice for vigour of body, being *Florentioris etatis*, but as they were men of fortune and interest, who were fit to be Senators for Counsell, as well as Champions for conduct; and hence of old called *Ritters*, that is, *Scrutores* or *Saviours*, *eo quod virtute & fortitudine servent patriam*. By reason of which, what donaries, largesses, and priviledges these *Equites* or *Milites* had, the *Roman* stories every where tell us, especially learned *Lipsius*, who spares no cost of time and judgment to illustrate their

*Electi Milites & Primicerii qui primi inceris scribebantur, Duces Exercituum.*  
Gloss. ad M. Paris. in verbo Primicerii.

*Seminarium Senarum equitum esse locum.* Noldenus *De Signi Nobil.* 60. 62.

*Besoldus De Nob. & Comit. Imperii.*

*Lipsius, De Militia Rom.* p. 26.

their *Militia*, and all the parts and premium's of it: These Knights, as we call them, were then very honourable, the *Carians* called them *Alabandi*, from *Alabandus* the son of *Carrens*, who obtained, on horseback, a famous victory for them over their enemies (*Ala* in their Tongue signifying a Battle, and *Banda* Victory) whence probably our term Band, for a company of warlike men; and the Nationall standing Forces in *M. Paris*, *Civiliam communiarum legiones*, are called Trained Bands: and the *Germans*, in part our Ancestours, were wont to call *Antiqua nobilitatis principem prepotentem Banderum*, which might be *Seir* (though with some alteration, as the badge of time) to the word Banneret, and Banneret, a degree of Knighthood more eminent then the Bachelour; though that being done *ictu gladii*, seems the more natively military; and catholickly honoured: much here then might be said of Knights, as that they ought to have those six qualifications which *Casaneus* from *Acurfius* mentions, that they are to be men of fortune; and that none but such ought to be in their places to Parliament, to serve Coroners, or on Assizes, as Proto-Jury-men. That none were compellable to Knighthood when the Law was such, but those who were *Claro loco nati*, or *Gentilhommes de estate*, and had 20 l. a year; nor to just and perform Manly actions, but such as either were actually such, or stood Candidates upon their Emeriting such to be: These who by service, tenure, fortune, courage, were able and willing to serve their King and Country: of these I could write much, but the incomparable *M. Selden* has prevented me herein, and so has Sir *William Segar*, and others, whom I refer the Reader to, as also to the Statute of *H. 1. c. 11.* which Sir *Edward Cook* writes of, on the Statute *1 E. 2. De Militibus*; For, this honour, however in times of Peace, tis given to reward riches honestly gotten, and learning industriously acquired: yet, in the native rise of it is purely a brat of the field, and the fruit and reward of hardship in, and victory after the encounter with an enemy. And those chains and neck-jewels which Knights and their Ladies, as an honour, defluent on them (*Uxor fulget radiis mariti*) wear, as tokens of respect, were at first remunerations of valour, and that as it were by direction of the light of Nature; For even among the *Caffares*, or black People of *Mosambick*, nothing is accounted so honourable as to kill enemies in battell, and every man they took and killed they dismembered of his *Virilia*, and after they had dryed them, to preserve them from putrefaction, then they carry them to their King, and before him spit those out of their mouthes at his feet, who commands them to be gathered up, and given to them again, and ever after they are accounted as Knights; and these privities they string, and wear as Collars of SS. at publick Feasts, Marriages, and Meetings: yea their wives wear them as Carcanets of Jewells. The consideration of all which amounts to the honour of our Chancellours reason, in alleadging *England* to be a rich Country, and the Free-holders of it fit for matters, *Magni examinis*, because they are men of blood, wealth, and honour, and no *Ville* but has such in it, the chiefe whereof are *Milites*.

Adag 99. Cbil. 2. Cons. 2.

Catal. Gl. Mundi, p. 327. Digest. lib. 4. tit. 6. Miles periculi Com. p. 359.

1 H. 5. c. 3. 8 H. 6. c. 7. 2 H. 5. c. 4. Patent 38. E. 2.

Multi de Militibus universitatis regni qui se volunt. Baccalaureos appellant sunt contris M. Paris de Jusis apud Brackley, Temps H. 3. p. 768. Lege Gloss. in M. Paris in verbo Baccalaurei.

(a) 2 Instit. p. 595.

Lindfootten Hist. East Indias.

*Armiger.*] This originally was a title of service, by standard-bearing to Lords, and great Cheiftains, and thereupon in some Books *Armigeri & servientes* are joyned; so, when the *French King* understood that our *Henry the third* would assault him in *Poitew*, he prepared a great Army of Knights, notably prepared, and of Esquires and Attendants to the number of 20000. these were called also *Scutiferi*, and (a) *signiferi* (so *Robert De Veer* is termed *Signifer Gulielmi Longespata*) also *Primicerii* and (b) *Balkaniferi*; yea, men of this rank and title have not only been accounted brothers in Arms to Princes, but taken to be husbands in Arms to Queens, and yet not been disparaged; so was *Owen ap Theodore* to *Katharine*, once Queen Dowager of *England*, and when she was so, maintained an action as Queen of *England*: so our Law and Nationall civility accounted ever highly of these, because they were men of great valour and merit, which was not onely the reason that Lands held in Serjeantry have been to finde two Esquires to go in the Kings Vant-guard upon occasion of war with the *Welch*, as a grave Authour informs me, but that men in times of trouble purchased these, their friends and confederates as leaders, and daring to defend them by puissance and force, so I collect from Statute *1 R.*

Erat numerus militum eleganter ad unguem armatorum quatuor milia alique undique adventantibus, Armigerorum autem & servantium ac Balifarum numerus ad viginti milia numerabantur. M. Paris. p. 534. (a) Idem. p. 791.

(b) B. p. 698. l. 22. 2 Instit. p. 50.

My good friend M. Fabian Phillips, in his disc. of Capite Tenures p. 23. Reg. Stat. L. 13.

2. c. 7.

2. c. 7. which sayes, *Because that divers people of small garrison of Land, Rent, or other possessions, do make great retinue of People, as well Esquires as of others, in many parts of the Realm.* So at this day no man is charged with light-horse (which is a Gentlemans service) but such as are in account Esquires, and are fellows to those whom the Statutes of 1 H. 5. c. 1. 8 H. 6. c. 7. 2 H. 5. c. 4. 13 Eliz. c. 19. intends. And though before Henry the fourths time men were not distinguishable but by their *Forinsecum servitium*; yet the 1 H. 5. c. 5. appointing additions to ascertain men otherwise doubtfull, Titles came in use, and this of Esquire, before the time of our Chancellours writing; concerning the degrees, priviledges, and other curiosities of them, the former authorities about Knighthood referred to, are proper to be in them consulted, onely these are the numerous part of the men of fortune, blood, and breeding, in the Nation, and the second degree of the minor Nobility, comprehending in it, under the notion of Gentlemen, Knights and Esquires.

Sir Edward Cook  
2 Instit. On the  
Statute addition  
p. 665.

*Paterfamilias.*] This word does not denote one, a servant or substitute, *Manerii Ballivus, domus dominica Custos, & Domesticus Famulus*, as M. Paris calls some; no, nor the *Major Domus* or Vice-Master; nor yet a Farmer (as *Firma* and *Firmarius* used in our old Authours, understand them: and as the Romans called their *Coloni* and *Paganii*, of which (a) *Tully*, (b) *Lazius*, and others write) but *Paterfamilias* imports one (c) *Qui sui juris est, nullique addictus mancipio*, called the Father of the Family; *Non quod familiam sed jus familia habet*, as the Lawyers say: This we in England anciently called the *Good Man*; And the old Dames in my memory were wont to call their husbands, *my Good Man*: later times more gentitized, discard that name from all

M. Paris. p. 555.

Gloss ad M. Paris. in verbo *vice dominus*.  
M. Paris. p. 56. 258.

(a) *Pro domo sua*

(b) *Lib. 12. c. 6.*

(c) Brechtus ad Leg. 46. p. 130. de  
verb. signific. & in leg. 195.

mouthes, but those that are plebeian, and though it be enunciative of *Franklaynes*; that is, free-liers, and owners of Land, in which sense *Swaine-Mote* is the name of the *Conventus libere tenentium*, according to the old Custom or Law, *Swaine-motum teneatur ter in anno*; yet is it now not much set by, though from this condition of them, there are many now grown into Families, now called *Franklin*, who are men in the County of *Middl.* and other parts. *Magnis ditati possessionibus*, which the Text expresth to set out this *Paterfamilias* by, And this is an argument of much wealth; For therefore he that is

M. Paris. p. 206.

Gloss ad M. Paris. in verbo *Swaine*.  
Ex quibus Robertus Knolls ex paupere  
mediocrique valetio mox factus ductor [Re-  
gii exercitus] ad divitias usque regales ex-  
crevit ibidem.  
Walsingham in E. 3. p. 166.

the *Paterfamilias* here, is counted *ditatus*, because he has *possessiones*, not like those *Ascriptitii*, which were a sort of Husbandmen, that bound themselves by Indenture to till the ground, promising not to depart till their manumission, nor as possessours of the one onely Farm, or Mansion they live in, but many farmes and portions of lands they demise to others, and those not only in their own County wherein they live, and in which they are members; but in other shires, and not onely Copy-hold, which is a badge of villenage, but free-holds: yea, and those not onely Tenancies, but even capitall Messages, and

Gloss in M. Paris  
Verb. *Ascriptitii*.

*Agri cultores & sutores vinearum non de-  
bent eligi in consules, ubi est copia aliorum  
sapientium.* Jacob. Rebuffus lib. 1. cap. de  
*Agricolis*.

chiefe Mannors, by reason whereof they are drawn sometimes to beare Offices in forraign Counties upon extraordinary occasion; and have opportunity to place their children apart, when their age and their Parents pleasure is they should Marry, or be bestowed in a course of life, to live upon what by their fatherly gift is become their own; And as many possessions in number, so large in their extent, noble in their royalty, and rich in their revenue: For of this race of men who were and are but plain Good Man, and *John*, and *Thomas*, many in *Kent*, and *Middlesex* especially, besides *sparsim* in every severall County have been men of Knights estate, who could dispnd many hundreds a year, and yet put up to raise Daughters portions; yea, so ambitious are many of them to be Gentlemen, that they by plentiful living obtaine the courtesie of being called Master, and written Gentleman; and their posterities by being bred to Learning and Law, either in Universities, or Inns of Chancery and Court, turn perfect sparks, and listed gallants, companions to Knights and Esquires, and often adopted into those orders: And from this source, which is no ignoble one, have risen many of the now flourishing Gentry; For the gain of callings, whether Clerkly or Civicall, has preserved and augmented estates, when the state and thrifles laziness



of the old *English* Gentleman has sold them, and servants, by proving themselves laborious and provident Bees; have entred by purchase upon their Masters hives and their honey too. For besides the good pleasure of God who has decreed revolutions in families as well as Governments, and variations in the parts as well as in the whole of the world, there is a cancre even in time which eats out the luster and puts out the light of the brightest family, whom few ages see obsolete and vanished, and another in place of it: and there are periodique vices which Varlets and Bigots in families have, by which Ancestors Graves, Corps, Monuments, Royalties, and Seats are transferred from them to others; whose humours are more retentive, and veines less vain and riotous. And this is the cause why God ought onely to be eyed in the desired fortunacion of families; for no humane wit, providence, or adjunct whatsoever can preserve against this moth, or promote against this depression, nor can the brightest star that arises in the firmament of a family, shine to any durable illusttricity, if it be denyed the rayes of power and mercy to adjuvate and continue it; yea most an end it is seen, that as blazing stars are portentuous prefaces of changes in States, so are notable wits and polite persons (sparkling remarkably in families) proems to the temporary if not total eclipse of them, for either they suddenly dye *re infecta* (not reaping what they have sown, nor having past the last round of the ladder of greatness) or else they neither leave no heirs of their name, or such as are no honour to their names.

And therefore though the counsel of God be secret, and no man can preface what, and when, and why, and by whom this family shall be made or marr'd; yet all wise men know, that there have been; are, and ever will be floods and ebbs in families; and men there will be in them who are made for the rise and fall of many in them; some crown what others curse, some purchase, others profusely squander, some are blest with Marriages apparently rich, and succedaneously more rich, and they live to have issue by them, and those inheritors; others marry upon hopes, and their abortion mutilates them even to a necessitous condition; some cast away themselves, not caring whom they joyn to, and their desperate Voyage; judged Ship-wrack, proves a conquest of *Peru*; or springing of a Mine of gold and treasure; the summ of all is to trust God, and design things with virtue and moderate wisdom; not relying too much on the arm of flesh, and the event is mostly better then when so much of mans policy and wisdom predominates, for God's counsel will stand, and most an end he sets his wisdom to defeat ours which is not also his: they seldom reckon of successes aright that reckon without their Host (as with reverence) the Proverb is, they doe, that take not God into their thoughts, counsels, and actions; nay it is often the judgement of men to be blinded by delusion, and deafned through pride and passion against the counsel that propitiates and tenders (if followed) safety to them. In the *Irish Chronicle*, in Sir *John Perot's* Deputy-ship, there is a notable story, there was an engagement against the *Obrins*, who had betaken themselves to a Wood, and there lay hid ready to entertain the *English* valour which would come out there to assault them, *Jaques Wingfield* a brave Commander, and experienced, had two Nephews, Sir *Peter*, and Captain *George Carew*, who were hot upon the service, and by all means would enter the Wood upon the *Irish*, *Jaques* would not let them, but Sir *Peter* would no nay but in he must go, slighting his Uncles counsel, and Captain *George* would have gone in also but that his Uncle forcibly hindred him, saying, *I will not lose you both at once*, Sir *Peter* was presently taken and slain; but I recall my self to my Text, which thus followes.

*Ab Aymaro de Valence comite. Pembrochiz qui fuit unus de assessoribus & iudicibus super mortem, T. de Lancastriz usque ad ipsum Johannem de Halting, nullus unquam comes Pembrochiz patrem suum vidit, sed nec pater filii visione laicus est: Wallingham in R. 2. p. 376. Edit. Lond.*

Vowel. p. 170.

*Nec non libere tenentes alii, & valetti plurimi suis Patrimoniis sufficientes, ad facendam juratam in forma pernotata.*

This is added to shew, that over and above Knights, Esquires, and reputed Gentlemen, (whom the courtesie of the Nation favours with that appellation for their wealths sake, they being *Magnis ditati possessionibus*;) there are others of fortune and solid substance Socagers and Copy-holders; who are fit to serve on Juries, having Lands and Lands-worth to the value of the highest requiry; and this shews the general wealth of *England*, that it is not cooped up in a few great mens hands, who share out to themselves the delicate parts of the National dainties, leaving bare

bones to the meaner people, and rendring their ingenuity fruitless to them, but spread abroad to all orders and degrees of men, so as every one has his encouragement, and may perform his duty in turns; and, by being capable hereof, endeavours by all good means to discipline, train, and institute himself thereto. Now as before our Text explicated the noble parts of this Nations anatomy, so now writes he his observations on the other, though lesse eminent, yet as usefull parts of the body politick; and these he terms *libere tenentes* and *valelli*] the former free-holders without doubt were opposed to Villains, such as held their Lands in base Tenure, and base services; therefore being *ad natum domini*, and subject to his passions, either of lust, rage, or reward, now this not being the condition of all Country men, but some (either by hardiness making conditions with Conquerours to enjoy their rights, or purchasing their darling liberty out of the Tallons of victorious seifers of them; rested free in their persons, relations, lands, and acquirements, paying only *Quit-rents*, or other inconsiderable annual acknowledgments, as owning their

Cook upon Littleton, lib. 1. p. 43. B.

The King, Lords, and great men did ever reserve the *Sectas Curia*, though they made gift of Lands in *Frankl-maigne*; therefore the Bishops and Clergy owned this, *Item ratione hujusmodi possessionum*, the King and other men might compell *Episcopos, Praetores, Religiosos, & Rectores Ecclesiarum sacre Sectas ad Curiam Laicalem*. M. Paris in *Addamentis*, p. 202. *Ubi silla est servitius, quam tenentes debent Domino suo & Curia ejus*. Glos. in *Textum annexum*.

*Lords Seigniorie*, and yet their own freedom, which if distrained from them, or they compelled to any service or payment not due by the condition and compact of their Tenure, nor customary in the Mannor, then had they remedy against the Lord by Bill in Chancery, as he had by seifure, in case they broke truce and were Trespassers upon him) continuing free, their Tenure was called Land of Inheritance and Free-focage, which yet owes some suites and service to the Lord it is held of, and may pay also a Quit-rent, and as it may happen a Fine at every alienation of 10. s. or some such small matter, yet that certain and not at the will of the Lord; and these Tenants

are called Barons, and from them the Court-Baron is denominated; yea, the Tenure of these is so estimable in Law (being of old date and upon grand consideration) that they are a kinde of Cheque-mates to the Lord, because without them, in some cases, he cannot dispose of matters in his Mannor, not but that the Lords and Free-holders estates are for the most part distinct and cognizable each from other, but because the conjunction of both, in cases of inclosures of Commons, and division of Waits, and other such like things, as depends upon the Court-Baron, is necessary: and methinks this complication of things in a harmony commends highly the prudence of Antiquity, in that it made such a dependance as occasioned correspondence and communication between the head and foot, the hand and heart, the better to keep the end of God in mans creation, inviolate, that man should serve God, in serving these common ends that unite mindes under his supreme Government Dominion and Conduct, and the delegations of it to Magistrates.

See Littleton. Sect. 117. & Sir Ed. Cook on him, lib. 2.

*Et Valelli plurimi, &c.*] These I suppose are men of less note, and not so free, for though, when our Chancellour wrote, there was no Slavery or Villeinage in England, for those were antiquated in R. 2. time; yet there were seeming badges and prints of that deformity, which yet in H. 6. time, and to this day some mistakingly judge to scar the face of freedom, and those they take to be them which our Law calls Yeomen, see Stat. 16 R. 2. c. 4. & 20 R. 2. c. 2.

Burgaticum] terras Colonorum, vel Burgorum, & Ingeniorum, Heritages en voiture, Glos. ad M. Paris. Garciones, id est, Pedites, & sequentes Equos, quos vulgus expertum est pessimos esse ribaldos. M. Paris, p. 698, 208, 522. 355.

These are the next order to Gentlemen, termed Yeomen *quasi* young men, as some think, or from *Gemen* or *Yemen* in the Saxon signifying a Commoner; so that of old these were men of no rank above servants, though *Valet* in the French imports *quasi valet son maistre*, thence the word *wallet* [*pera viatoria*] the bearers of this as some called them *Valets* or *Varlets*, others called them *Garcions*, though of old it was a title of better repute, for all young persons though Gentlemen, if not Knights, and under eighteen years old, were called *Valets* in France, as we called them Batchelours in England, hence *Valet de Chambre*, a Title of Honour to the King; but Francis the First of France, perceiving those that attended him to be no better then *Roturiers* (our Yeomen) introduced Gentlemen of the Chamber, though yet in the King's Palace here the Officer Yeoman remains, Stat. 33. H. 8. c. 12. yet in subserviency to the Gentlemen-Officers; so are Grooms another Court word, in French *Valet*, or *Varlet*; so that the Texts *Valelli* or *Valetti* are such of the Commoners of Countries, who hold not their Land

Land *sub nomine Culvertagii & perpetua Servitutis*, but having been Servants or Tenants to great men, have either, *pro bono servitio impenso vel impendendo*; had Land given them, or by industry and thrift (blessed by God) been purchasers of Land in fee to them and their heirs, and that in such sort for the quality, and in such proportion for the value, that the Law requires Jury men to be of, as before in the Chapter of Juries I have shewed; that they may be said to be *Sufficientes ad faciendam juratam in forma prænata*.

M. Paris, p. 234.

*Sunt namque Valēti diversi in Regione illa, qui plusquam sexcenta scuta per annum expendere possunt, quo jurata superius descripta sepiissime in Regione illa fiunt.*

This is added to shew that Juries are peculiar to *England*, because Country-men of estate are onely in *England*, in the several Hundreds of the Counties of it; now though it be usual for men of the Plough to be and abide up and down in the Country in Nations abroad, yet onely with us are they men of estate, and allowed, as such, to be judicial Members of Juries, and fit they should be Judges of fact on other mens estates, because they have estates of their own, and so knowing what an estate is, are presumed to be more intent upon, and considerate about their Verdict in their Neighbours case. And this is the reason that not onely the Law requires they shall have solid and solvent estates, but accordingly such in very deed they have, most of them to a very convenient proportion; but some, and that not a few, *qui plusquam sexcenta Scuta expendere possent*.

*Scuta* ] are *French Crowns*, so called I think from the Shield of the Arms of *France*, that they have on one side of them; there are three sorts of them, *Escu sol*, the best Crown now made having a star on one side; *Escu coronne*, the next less by a *sons* then the former; and *Escu veil* the old Crown, worth 7. s. 2. d. Sterling; of the former Crowns I take our Chancellour to mean, and according to that his computation of 600 yearly, valuing a Crown at 4. s. 6. d. comes to about 130. l. *English* a year; which in our Chancellours time when silver was at 20. d. an ounce, comes to almost 400. l. a year now, which though it be a great Estate, is no more then many in every County of these true Yeomen, gentilized onely by the courtesie of the Nation, have with advantage, and many to double the value; now these *Churles* (not hunger-starved like the *Peasants* of *France*, nor cowed down like the *Boores* in *Germany*, but keeping free houses, and being full of riches and plenty) are the persons whom the Text mentions, not onely as men of possessions, but as by them possessions fitted to serve on Juries with Knights and Esquires.

*Presertim in ingentibus causis, de Militibus, Armigeris, & aliis quorum possessiones in universo excedunt duo millia Scutorum per annum.*

This is subjoined to make good what before has been shewen in the Chapter of Juries, that Jury men were chosen of different worth, according to the different value and nature of the cause they were to serve upon; in case of life and title of land, great Assises, none but Knights were summoned and served in *Glanvil's* time, and after, and in our Chancellours time, though Esquires and great Yeomen under the name of *alii* did serve on them, yet those had *Possessiones*, and those to the value of a Knights estate, towards 400, or 500 l. a year, as now things go; for I compute the Crown which we call a *French Crown*, though the Translator reckons it much less in words, but not in truth, for he renders 2000 *Scuta* by 500 Marks *English* in his time, which is full as much and more then 600 pounds sterling now.

Lib. 2. c. 13, 14.  
15. Duodecim  
Militis gladio  
cinctos electi in  
Assisa de consensu  
partium litiganti-  
um, hanc Assisam  
solenniorem ob ma-  
gnam & specialem  
aliquam causam  
indistam. Glou.  
apud M. Paris.  
in verb. Assisam.

*Quare cogitari nequit tales subornari posse, vel perjurari velle, nedum ob timorem Dei, sed & ob honorem suum conservandum, & vituperium damnus quoque inde consequutum evitandum etiam ne eorum hæredes ipsorum lædantur infamia.*

The Premises considered, and the Members of Juries being affluent men (above the exigencies

exigences and pressures of life, which sollicite men often, and sometimes, yea too often prevaile with them, to exchange a good conscience for a transient accommodation) and being also such as disdain to stain their honours, infamize their posterities, endanger their fortunes, and displeas God the righteous Judg, *who delights in truth in the inward man*; and being such as those in whom the *perse* and *velle* of integrity is upon no ordinary termes presumed to be: How, I say, these things well weighed, can by the wit of men and Governments, any more probable way be excogitated to preserve Justice and right Trial then *England* by Juries has, I cannot conceive? For, surely there cannot be any thing cohibitive and repellent of temptation, if the fear of God and shame amongst men be not prevalent to the formidation of, and the abstinence from it.

First, *Obtorem dei.*] For that being the beginning of wisdom, is that which layes the ground-work for all the after-superstructure; Feare of God keeps the soule stiff girt against all temptations, intent upon duty, vigilant over its affections, exact in charitable distributions: Fear of God is a complex virtue, that has *omnis religionis & boni rationem* in it; 'Tis that which adapts a man to every command without dispute, to avoid every thing prohibited without seeking evasions, and attempting dispensation for non-performance, to observe every voice of God, either in his Word, by his Spirit, or of his Rod, and to follow the dictations of it: 'Tis that which searches the souls festers, quickens its dimm prospect, sharpens its devoute appetite, nimbles its obsequious foot, elevates its active hands, invigorates the whole man, to be what God will have him, and suffer what he has preappointed for him: And therefore *Solomon* who was an incarnate *Lucifer*, and knew experimentally, and thorough practice, what wisdom was, *initiates it from the feare of the Lord*, because that directs a man to make God the aime, center, and achme of his wisdom, and to be wise for his soul and eternity, both concerned and advanced by Gods glory, which his feare propagates; and therefore though heathens determine wisdom by knowledge of Men, Creatures, Books, Arts, and Politick Practiques upon them, though they are excited to good, and deterred from evil, by rewards and punishments, which bribe them to either one or other; yet the best prescript is, to take and leave, as Gods fear principles and excites us; *Fear God and keep his Commandments, for this is the whole duty of man: Feare God*, and that will make us keep his Commandments, which are not grievous to his fearers, but pathes of pleasure and peace: *And feare God*, by keeping his Commandments, for that is the best indication of our fear, and *all his Commandments*; for that testifies our internall sincerity; yea, and *Feare God and keep his Commandments*, for 'tis *ὅλον τὸ καθήκον*, the whole duty of man: Though not wholly the duty of man, for Angells and Saints feare, yea Devils feare God, and 'tis their duty so to do, as well as mans; But 'tis the whole duty of man: because, whatever God requires of renovated man, whatever he accepts as the reparation of lapsed Nature, thorough the Interposition of *Christ*, who fortifies the soul in his fear, and out-brazens it against its Worldly confronts to a persistency, is couched in this fear; This do O holy soul and live a Saint, and die and ever after live an Angell.

So then, the feare of God being such a curb, as heretofore in this Book in the notes on the fourth Chapter I have shewed it is to all good men, in the examples of *Abraham, Moses, Joseph, Job, Jeremiah, David, Paul*; the Primitive Martyrs, and all the Seraphick comprehenders, and Militant Heroicks, who keep themselves unspotted of the world, and meddle not with that abominable thing that God hates, *ea ratione*, because he hates it, and because it makes them unlike him, whom their piety indeayours to assimilate, it must needs work upon precise pious soules *proprie & quarto modo*, and restrain others of morall and civill principles, by way of proportion, and as resulting from that surviving awe of God that is left upon their soules intemperate, and so it is amulettick. For, if the fear of man, whose power is only temporary, and terrible to the outward parts, the subject of its violence and dirily is such, that it forces him to do or not do against the eddy and propension of his genius and affection: How much more shall the feare of an immortall God (ruling in the soul by a golden scepter of love, and impending over the soul, erring from him by perfidie and elective degeneration, clouds of fire and brimstone; and those eternally to be suffering in, without any possibility of reprieve, relaxation, or discharge) preponderate it to do what he commands, and decline what he forbids, *ob timorem dei.*

Secondly,

Secondly, *Honorem suum conservandum,*] That's another stimulation to integrity, and a disinclination to perjury and prostitution of conscience; And this is so suasive with mortalls, that they will part with life rather then with that they account honour: though some will do as the old doting and unfortunate Captain did, who rendred a City of the King of Spain's to his enemy, to save his head; but the King told him, *Perdisti mi villa y guardaste la barba cana.* Sir, You have rendered my Town to save your white beard, which you shall be no gainer by: Thus sometimes it is, and usually aske Hectors what the chiefe Article in the Creed of Gallantry is, and they will quote *Honor & vita equo passu ambulant;* this is the *Diana* of this Worlds *Ephesians*, this the Image that came down from their *Jupiter*; such gods in the likeness of men they venerate: and what assaults this they execute, and are quickly in arms against, and by this zeale to their imaginary eminence (which consists chiefly in opinion and popular suffrage, and has it's systole's, and diastole's, as the ages humour is, more or less, quicker, or less smart) they think themselves safe in point of honour and reputation: Now the wit of man cannot contrive, should it be intent on the exploration many ages a more durable and certain way of stabilizing that, then Justice, the ready way to a good name, the great Idol that men fall down before sinlesly: *A good name, saith Solomon, is as a precious ointment;* This the learned render by *Existimatio*, which is something *extra estimationem*, without, beyond, and above esteem; *Dignitatis illa se status legibus & moribus comprobatus,* as the *Civilians* call it: and *Budens*, when he sayes, estimation is the consideration and perpenstion of any thing, adds, *Existimatio iudicium & arbitratus*: therefore though some do calculate it to the proportion of *Δόξα, Fama*, yet he makes it more according to the computation of (a) *A Gellius*, whose words are *Fama ex vulgi iudicio nascitur sed existimatum hominem esse qui in primis censetur*; that is, *Inter bonos & graves*: For, both esteem and reproach or infamy, follows the account of such, and such best rule the exchange of both; And therefore when the Text writes of *Ob honorem suum conservandum* added to the former, one would think our Master had produced arguments cogent enough, yet least the fear of Religion, and of mens undervaluations should not take men off from injurious courses, but they should persist to accumulalte advantages to themselves by the gain of unrighteousness, the Chancellour adds, *Dammum quoque consequenturum evitandum*; which what that is, the Notes on the 26<sup>th</sup> Chapter sets forth: yet as here the instance of it is introduced, it appears to be that argument, which like the deep base drouds and prevails over all the other Notes of arguments. For, many atheistick mindes make nothing of God; (he not being in all their thoughts, they put the evil day of his terrour, and vifitation of them farr off; drolling away the severe impressions and softnings of conscience, with resolved wickedness, and Hectorean bravadoes) and the good thoughts and reports of men they set light by, so they may add a cubit to their fortunary stature: they can make cakes to the Queen of heaven, and adore the Planetary Deities, that have profitable and pleasant aspects on them: they care not whose places they usurp, whose children they exheridate, whose reputation they prostitute, whose estate they defraud, whose right they suppress, whose bread they eat; To these that of *Alatharick* in *Cassiodore* is not applicable, who, writing to *Cyprian* the Senator, sayes, *Merito tibi prolixior etas optatur in qua fama semper robustior invenitur.* Let men censure them as they will, they will make much of one, and a fat sorrow (they cry) is better then a leane one, rather would they be envied then pitied; *Populus me sibilat, as domi ipse mihi plando*, crie they, for these against such like quezinesses prescribe, and proclaime themselves stanch, they care not for fame, 'tis but ayre and prattle of people, and that they value not; but when the Lawes of Government, fine and imprison, when all they have must so pot for the offence against the King, in wilfull violation of his Lawes, and that in the odious way of perjury, and that in the case of a false Jury-man, Then, then men look about them, and are afraid to be indeed what in affection they perhaps are, because they have *wherewith*, and must loose that from themselves, and in a good part from their posterities; This keeps them within compais, *Ad evitandum securum damnnum*, they will keep honest; For, though they scruple not with *David*, the water of *Beth'chem*, because it is the price of blood, but have consciences so large, that thorough the wide arch, and into the bottomless hell of them, vessels of never so great burthen

*Mariana in Hist Hispan.*

*Tholofs. Syntag. Juris universi, lib. 31. c. 29. Sect. 4. Annotat. in Pandect. p. 199. Edit. Vasios. Luter. 1556. in Folio. (a) Lib. 11. c. 4.*

*Tholofs. lib. 32. c. 11. Sect. 5. & lib. 38. c. 2. Sect. 9. Natura perennis fontis est gloria vena laudabilis nam sicut ille fluendo non expenditur sic nec ista celebri sermone siccatur. Alathar. apud Cassiod. variar lib. 8. Ep. 21. Cypriano Patrio.*

*2 Sam. 6. 23.*

burthen with masts and sayles; fins with colours flying, and Effronteries neighing, may pass currantly and without boggle; yet ruine of estate their punishment, more terrifies them than Gods curse and Heavens loss: And this the Law knowing, urges them by it, not onely *sub timore & infamia curtelagii & perpetua servitatis*, as Henry the third did summon his subjects against the French; but as King John did his Nobles, as they would keep their estates, and prevent being *nothing*, next degree to nothing, by forfeit of their estates: All which considered, the prudence of the Law in deterring men from these sinfull engagements, to the injury of man and displeasure of God, is very remarkable. And hereupon the Chancellours inference is very good and material; *Taliter (fili Regis) disposita, inhabitataque non sunt aliqua alia mundi regna.*]

M. Paris. p. 233. 234.

*Rex multos Anglos ut ad obsidinem veniant jubet nisi velint sub nomine nothing quod latine nequam sonat recitari M. Paris. p. 15. Nothing lucifera unde nihil nunc Nihil. Glos. ad M. Paris. in verbo.*

Which he adds, not to depreciate other Countreys which are also great instances of divine bounty and power, but to raise his owne Countreys reputation, and his Countrey mens gratitude: If God has made us like *Capernaum*, lifted up to heaven; If he has given us the purity of Religion, the prerogative of being Governed by our own Lords, our Kings, and their and our own Laws; *the freedom of sitting under our owne Vines; and enjoying our good things in peace;* If he have caused a cessation of leading into Captivity, and *complaining in our streets;* *Non taliter disposita inhabitataque sunt alia mundi regna* in this sense; but in that we have Trials of life and fortune by Juries, good men of estate, and true indisposition, standing stiff to the rule of Justice, and inclinable neither to the fear of Power, love of gaine, or byas of malice; but such, as if they had a minde to be villanous, dare not for fear of shame and ruine to their persons, fortunes, and posterities: This, This, that *there is in England, Justice free neither bought nor sold; full, not curtayl'd or partiall; speedy, not tedious and uncertain;* occasions the *Non taliter disposita* here, &c. For surely, as the Coyne of *England* is, of any in the world, the most to the intrinsicke value of what the Money goes for (the Kings of *England* having passed many Lawes, in all times, for the custody of it from devirgination: and (a) King *James* of blessed memory, notwithstanding them, caused a search to be made into the Coyne, and a Jury to be summoned of brave men to trie it, and came himself in Person to see the Assay made of it) I say, as our Coyne is the best, so is our Justice the best, in that just Assay of it, which Juries of Knights, Esquires, and other Free-holders of *Englands* severall Counties make, in causes upon which they are summoned to serve. And the reason why this is a peculiar happines to *English-men*, is, because *England* onely has Persons of these ranks, dispersed in every County; so it follows.

*Libera quia nihil iniquitas venali iustitia plena quia iustitia non debet claudirare celestis quia dilatio est quedam negatio. Cooks 2 Instit. p. 56.*

2 Instit. p. 741.

9 E. 3. 6. 1. 2 R. 2. 2. 2 H. 4. 6.  
19 H. 7. 5. 5 H. 4. 9. 13 H. 4. 6.  
3 H. 5. 1. 3 H. 5. 2. 9 H. 5. 11.  
2 H. 6. 6. 9. 12. 17 E. 4. 1. 1 R. 3. 9.  
3 H. 7. 3. 4 H. 7. 2. 19 H. 7. 5. 3 H.  
3. 1. 7 E. 6. 6. 13. Eliz. 1.  
(a) *Howe* Chronicle, p. 912.

*Nam licet in eis sunt viri magna potentie magnarum opum & possessionum, non tamen eorum unus prope moratur ad alterum ut in Anglia commorantur viri, nec tanta ut ibi hereditatorum est copia & possidentium terras.*

No doubt but every Country has its blessing, some in Soyle and Fruits, some in Beasts and Birds, some in Mettalls and Ores, some in Men of all personal Accomplishments, others Great in Power, Purse and Command; yet *England*, our Chancellour thinks, has some advantadge above them all: because, as our Hemisphere has no extremities of Weather; nor our Seas any Leviathans of Fish; nor our Land Behemoths of Beasts; so our Land no men Giants of greatnes, to whom all their Neighbourhoods are but crumbs and morsells for their ingurgitation: *England* being an Island, every thing in it is framed by the mercy of God, and the wisdom of Government, to a generall good; and to such a method of improvement as is most dilate, and least oppressive: Abroad in the Continent, Great men, as it were, live alone in the Earth; their vast uninhabited Territories their Titles swell with, give them room to Lord it so over their vassalls, that they shrivell their spirits into a non-ingenuity, and leave thereby mighty Tracts of ground untilld; as thinking it toyle enough to get Meat and Drink, with a few ragged Clothes: for their Lord, who takes them, and all they have for his propriety, and rewards them with nothing but severe Lawes from him, and hard lives under him,

such

such as these *Viri magna potentia magnarum opum & possessionum*, are there abroad in France, Germany, and all Countries; yea in England we have had such great persons of power and estate, as did (in a sort) stand upon terms with Princes, *Lupus* Earl of Chester, the Lords in King John's time mentioned by \* *Paris*, *Hugh Bigot* E. of Bungey, who in the time of H. 3. is said to utter that R. hyme,

*If I Were in my Castle at Bungey,  
Upon the water of Waveny,  
I would not see a button by the King of Cockney.*

R. Bigot Earl of Norfolk, Marshal of England; Bohun E. of Hereford and Essex, Constable of England; and Gilbert de Clare E. of Chester, the Earles of Oxford, and Arundel, the Duke of Norfolk, and others later have been men of great power and fortune; to this day we have some such in England, but yet they are lessened by the Lawes encouragement to industry, and the blessing of God on frugality and gaining courses of life, which steal upon the luxuriant idle lives of great men, and undermines their fortunes by its thrift which often purchases them: and this makes England (though not nutritive of Great men like the *Asian* Grandees, or the *German* Dukes and Electoral Bishops, or the *Italian* Seigniors, Dukes, and Princes, who all are Masters of Castles and Armies, and upon displeasure will call their Leidges to their defence; when in England all men, as well great as small, rich as poor, are bound to the peace, and must not armedly dispute with their Prince, as *Leoline* Prince of Wales traytorously did, and for it lost his life and Government, and as all Traitors since have done to their deserved ruine) produce what is more conspicuous in the Nation, An universal wealth and courage, diffused among the people of all Counties; who, though they live near one another, yet do thrive, entertain, negotiate, marry one with another, and mostly are not *Malvicines* each to other, or do act the part of *Mangonells*, slinging the stones of envy and destruction each at other, but as fair guests about Prince Arthur's round Table sit merry in their respective seats, bearing their proportions of service to their Countries, according to their Sovereigns pleasure and the Lawes requiry. The summ of all is this, there may be some absoleter and more supreme great men in other Countries, because they keep their Tenants slaves, when ours are free, and make them drudges and beggars, when ours have easie lives and rich purses under their Lords, who let them good penyworths and rejoice in their increase under them: but the Chancellour sayes, there is not in any Country, though much bigger then England, *Tanta hereditatorum copia*, such a harvest and plenty of Socagers, Freeholders, and men of value, who have whereof to leave to their Heirs, and Executors after them (for *Copia* come à *con* & *ope*, plenty of any thing, *copia quasi coopia*, as *modicam quasi modicum*) so that in this *copia hereditatorum*, the Chancellour intends men of value in Lands or Lands-worth (for the equivalence is as much within the intent of the Text as the thing in kinde) to be as it were thick-sowed up and down England, and thick come up; which facilitates the Bayliffs labour in every Hundred, to summon his Jury upon all occasions.

*Vix enim in Villa una Regionum aliarum reperiri poterit vir unus; Patrimonio sufficiens ut in Juratis.*

'Twas in the precedent clause the Chancellour's assertion of his Country England, that it was so packed and stuffed with landed and estated men, that in it so small a Ville or Thorp cannot be found, wherein dwelleth not a Knight, Esquire, or some Freeholder of good Lands, or all of them, I may add, and that almost every where; but here, when he parallels other Countries, he sayes, *vix enim in villa una*, scarce can there in a Ville be found one of ability to be a Jury-man, that is, worth 40. s. 5. l. or 20. l. a year, the reason not being because the soyle of other Countries is not so fertile, or the natural ingenuity of other Country men less then ours, but onely from the oppression of the Great men that suck all the nutriment from them; and as Pikes in a

*Rolinus Cancellarius Ancis Butgundix multas domos excellentissimas construi fecit, & suis posteris viginti quinque villas, in quibus erant castra amplissima & superba cum viginti quinque millibus, lib. Tutonensum redditu anni reliquit, Cassian. Catal. Gl. Mundi, p. 585.*

\* *Isti communes conjurati & confederati Stephanum Cantuariensem Archiepiscop. Capitalem consentaneum habuerunt. p. 254.*

Vowell's Description of England, p. 195.  
Hypodeig. Neustrix, p. 487.  
Mr. Fab Philips of Capite Tenures p. 11, & 121.

*Ligeancia obligatio Vasalli erga Dominum, ut servitium debitum ei praestandum obedientia, & pro eo stet contra omnes nunc soli Regi agnoscimus, M. Paris. p. 345. Temp. E. 1.*

Gloss. M. Paris. ad verb. Malvicine.

*Athenzus in deipnosophist. lib. 4. c. 13. p. 293.*

1 Inrit. in Littleton. p. 6.  
*In re modica non est copia, Jul. Scallig. in Theophr. lib. De Plantis.*

*Hac tamen veluti in laudem patrii soli non [tantum] ex animi judicio, sed amoris indulgentia prodidit, Cluverius Anriq. lib. 1. p. 29. De Bodiao laudante Galles.*

river

Flebi pene Servorum habetur loco, qua per se nihil audeat, & nulli adhibetur consilio. Cæsar De Gallis, Com. lib. 6.

De Quadruped. lib. 1. p. 11.

Dedecet se quadrupedum animantium Regem ad inguivolum meum alimenti causa accedere, tua interest per montes proficisci ad capiendas cervos, & alia hujus generis animantia Leonino vidui competens, quibus verbis Leo, quasi decantatus, oculis in terram defixis, afflicto animo discedit. Aldrov. lib. 1. De Quadrup. p. 11.

Chil. 1. Cent. 6. Adag. 93.

Chute's History of Venice. p. 466.

Adag. 94. Cent. 6. Chil. 1.

river prey upon the lesser fishes, and by the continual drip of their amazing Greatness, upon which they dare not cast one confident look, they become poor-spirited, lazy, and incogitative to progg, and ingenuously improve their lives of labour; for let them advance what they can, 'tis but to add heaps to their Lord, not a grain falls to their grist, miserable they are and ever must be: This, This, is that which not onely

arraigns their Lords of less generosity then the Lyons of *Africk* have, if *Aldrovandus* from *Alian* do not mislead me (who when they in hard weather come to the Cottages of the Moors in the Defarts, and knock at the door, when the poor woman, keeping the door shut, answers them in the Moors language which they understand, 'Tis your part, as King of the beasts, to take your prey upon beasts which are proper for your food, and not to come to seek relief at my poor Cottage, where I am so far from plenty, whereof to relieve beasts, that I have not enough to feed me and my family; these words do so charme the Lion, that he departs ashamed, as sensible he has done an act disgracefull to him: This I say is reported to be the genero-

sity of that creature, who abhors to oppress poverty) when as the great men abroad do nothing else but infelicitate the lives of their Peasants, Boores, and Villains, by hard exactions from them, and strait allowances to them; and by this keep them to narrow-spirited, that they know not what it is *pennas nido majores extendere*, and if any of them act above the spear of vulgarity, 'tis by the sustation of a miracle, or something which I can reckon no lesse then it; so was *Chongins* from a dull Smith kindled into a bravery to become the place and power of *Cham* of *Tartary*, and to behave himself in it bravely against the *Turks*; so did that young *Sicilian*, who, when the *Venetian* General was in distress, offered to fire *Ottoman's* Navy, which he did, and when he was taken, being asked by *Ottoman* what moved him to do it, bravely replied, that He had done it to hinder the common enemy of *Christendom*, and that this attempt would be much more glorious if he might as easily run his sword through his body, as he had set fire on his Gallies; though these and such like examples there may be of mean persons, low bred, and lowly living, who having these Towres and altitudes in their mindes, look upon the Valleys below them as too mean for their delight; yet the major part being accustomed to nothing but toil and poverty, do not in *summ ipsorum sinum inspuere*, but content themselves to know nothing more then they ought, and desire nothing beyond what they have: this makes those vast Countries, where men *magna potentie, & magnarum opum, & possessionum* are, to be barren of middle men, who amount to the value of Jury-men, That one overgrown Giant starves all his Neighbourhood, whom his Magnitude suffers onely to be *Pigmies*.

*Nam raro ibidem, aliqui præter nobiles reperiantur possessores agrorum, aliorumque immobilium, extra civitates & muratas villas.*

'Tis not *nunquam* but *raro*, not said by our Text that abroad there are none out of Cities and Towns, men of estate and estates worth (*Possessores agrorum aliorumque immobilium*) but seldom or but few such: Such an one is *Rara avis in terris nigroque simillima cygnus*; One of a City and two of a Tribe, as the Scripture phrase is to express paucity, the great Priviledges and Possessions are reserved for the Nobles, who being the braver Sparks, have the glitter of estates to dazle the eyes of their humble Valets by. This is purposely subjoined to shew the value foreign Lawes put upon Nobility of race, and to these onely is indulged to be owners of Cattles and Countries, and Offices of honour and renown; for though in Cities and Corporations men of Trade and Arts have Estates in Burgage, and are great Bankers, full of plenty and riches to live, and bestow their Children by; yet the Lands that lye in the Country are Granges and Husbandries, appertaining to Lords, Knights, and Gentlemen, who are called *Nobiles a la mode de France*, and to whom the occupiers and dwellers in and upon them are but servants: and therefore these that are so great Masters of all that's conspicuous and desirable in life, ought to consider, that (as *Philo* excellently, *Tò αἰζῆναι, &c.*) *Nobility is not onely measured by blood and descent from Ancestors of Prowesse, but by personall virtue and deeds of merit in him that claims it*, which, if a man want,

Si Rusticus amat feudum nobile, non fit nobilis, Cass. Catal. Gl. Mundi. p. 312.

Lib. De Nobilitate. p. 904. 905. 906, &c.

though



though he have all the lustre of successional glory, and be of a family, whom honour it self has been entailed to, and centred in, as in its element; yet no true Nobility is thence devolved on a degenerate successour: King *Alatharicus* writing to *Opilion*, tells him, *What a sparkling Ancestry he broke out from, and how uniform the virtues of his brother were to those of his father; that Nobility seemed to make his family her hive, and to hatch all her noble brood in his Relations*: Yet, when all is thus by him expressed, he concludes; *That though Honour and life be contemporary to them, yet if virtue be not also concomitant, there is a great abatement of the super-excellency of it*. Though therefore Nobility be a rare advantage to every ascent and conspicuity of life, yet is it chiefly and only in the account of God and wise men so, when it designs and acts service to God and men, in promoting his glory and their good: For this to do, is to excell, *Nobiles esse quasi noscibiles*, to carry the badge of their honour on their actions; which is more Pompous and Magnificent than trains of Lackeys, and volleys of Oathes, Then contempt of studies, and of lives of employment and gainfull subsistence, which are so abominated by the great and gaious youth, that they deride those that are votaries to diligence in them, as ignoble spirits, and by wholly waving them, leave them to such as will intend them; which *Budaus* sadly bemoans in *France*, and others may as sadly in *England*: wherein truly nothing is thought noble but what comes too neer idleness and prodigality, contempt of Religion, and breach of promise, which God knowes are so farr from being gentle and noble, that they are immoralities which vitiate the faire portraitures of mercy in those advancements of men to greatness by God, whose vassalls they are, and to whom they must be responsible: But the best remedy of this is, to pray God to turn the hearts of men from libertinism to a severer life, by which honour will have more prevalence then by any other engine: For, 'tis not the coruscation of an Ancestour, or the vapour of a Title, or the plenty of a Revenue that Nobilitates men, but the wisdom of the minde and action seconding these, that makes a conspicuity and veneration by reason of them; And this the Treaters on Honours and Nobility, put the stress of their arguments in defence of it upon, since riches and force are nobilities, which beasts have in common with men; but reason and sagacity is that which only is that endowment which Men and Angells have: and that because they are made to be the daily Attendants and Courtiers in ordinary before God. Though therefore I concur with the excellent discourses of *Bartholus*, *Clisthovius*, *Bonus de Curtili*, *Lucas de Penna*, *Lundolphus*, *Pogius Florentinus*, and others, who have acclimated Nobility not more elegantly then so Princely a subject requires; Though I allow of that heroick principle, to stand upon the honour of our Ancestours and family, yet still I like the association of virtue in a divine sense with it; which by making a man acceptable to God (as *Bartholus* his words are, *Apud deum iste nobilis est quem deus sua gratia gratum sibi fecit*) makes him also honourable amongst men, which *St. Jerom* applying to *Marcella*, made her truly noble in his testimony of her: other Nobility abstracted from this, is Nobility reversed, turned topsie-turvy; like that the Father imputes to *Helvidius* the heretick, of whom he sayes, *Nobilis factus es eo scelere*, 'tis Nobility in the sense; *Lais* the *Curtizan* is called *Nobilis scorta*; and the place where the *Romans* had the overthrow said to be *Nobilis ille clade Romana locus est*: And the best fruit it produces will be but like that mistaken bravery of minde, which that vaine *Lombard* expressed, whom the *Venetian* Senate decreeing whatever he demanded, as a recompence for his art, in setting up the three wonderfull pillars in that City; he requested onely the sanction, *That it might be lawfull for all dice-players, and card-players, to play and cheat betwixt those pillars, without any fear of punishment*: This, I say, will be the sequell of such gallantry, when as that Nobility that is mingled with piety and prudence, refuses and abhors commerce with that vice, which alleges the dignity

*Pater his fascibus praesit sed & frater eadem resplenduit claritate; Ipsa quodam modo dignitas in stemmatibus vestris larem posuit & domesticum factum est publicum decus Alathar. Opilioni apud Cassiod. variar lib. 6. Ep. 16.*

*Origo ipsa jam gloria est, laus nobilitati con-nascitur, idem vobis est dignitatis quod vita principum, Var. lib. 3. Ep. 6.*

*Magna abundantia laudis est in penuria Republica vel mediocria munera meruisse, Alathar. Senatui Ep. 41. Var. lib. 5.*

*Hujus mali causa est nobilium institutum, qui res consentaneas & mutua ope nixas, generis claritatem literarumque peritiam collidi inter se & diffinitive putant, quo errore factum est ut disciplina olim ingenua appellata ad plebem jamam transierint non tantum a nobilibus sed etiam, O mores perditos a sacrosolis repudiata, ne non generosus esse & laetus, antistitum ordo praesulumque putaretur; lib. 1. de Assis p. 24. Edit. Vascos.*

(2) In *Tandell*, p. 49. & 91.

Note this well.

*Nobilitas est dignitas proveniens a consuetudine clari sanguinis, a parentibus originem sumens & in liberis legitimis per carnem continuata [Jurisconsulti.]*

*Nihil in ea laudabo nisi quod propria est, & eo nobilior quod ex opibus & nobilitate facta est paupertate, & humilitate nobilior Epist. ad Principem virginem.*

*History Venice*, p. 105.

*Unde melius nobilitati collegam querimus quam de vena nobilium, qui se promittit alborere moribus, quam refugit sanguine villicum, Vathar. Agapio Ep. 41. Cassiod. var. lib. 6.*

Quid enim generosius quam tot litterarum proceres habuisse majores Athl. senatus Var. lib. 6. Ep. 1. & lib. 2. Ep. 5.

of descent by the ignobility of action: By all which it appears, that as Nobility has preferency to plebeity, so it is exalted in the positivity of such degrees of heroicizm as makes Nobles transcend Vulgars in virtues Divine, Civil, and Politick; To be Noble for Wisdom, as was *Solomon*; for Meekness, as was *Moses*; for Patience, as was *Jeb*: to dimm and eclipse ordinary excellencies, as *Alexander, Aristotle, Antoninus, Cæsar, Scipio, Tully, Metellus* did their contemporaries. Not onely to be lineally descended from Nobles, but to be noble in thought, word, and deed; such as these are the true *Εὐσεβοει*, whom *Justinian* calls his Nobles; not onely from the sheilds in which their Ancestors were effigiated, but from the notable conduct, and un-tainted loyalty that their deportments in the trusts credited to them, discover of them; and to such Nobles as these too much cannot be attributed: too great portions of Nations be given, because they are of men in Nations the best, 'tis fit they should be best accommodated; virtue is a valuable consideration for any purchase of favour and fortune, and by reason of the impression of this on the first blazing stars in Families, did Nobility descend to posterity, and with Nobility great patrimonies to support it in a decent and becoming Equipage; for Honour without Estate is like a stomach without Meat, a very great and unpleasing burthen. Therefore wise Governments have ever exalted those to Nobility, who either have had ample fortunes, or virtues attractive of such, ingenuity and diligence being magnetick of them; which, though it be not ever employed in gross and corporally laborious courses of life, yet if it be in callings, that equally merrit of Governments, ought to be suitably rewarded by them: And hereupon, as Peace and Warr are the two poles on which the world of Government turnes, as the common sort of Arts-men and Labourers do follow those professions of Peace; so the Nobles and Gentry do engage in courses of Chivalry, especially in *France*, where the Cavalry is made up of them, and that is the strength and glory of that Kingdom: For the Infantry being so kept under, by their indigent and suppressed lives, are not so

Tedites ut bellicosi & fortes evadant, opus est ut in conditione aliqua non servili aut inopi sed libera & copiosa degant, itaque si quod regnum & status in nobiles generosos potissimum excrescat, Agricola autem & aratores loco tantum & conditione operariorum inferunt, aut forte Tuguria sibi meri existant, qui pro mendicis recto coopertis haberi possint, equitatu certe polleere possit, sed pediatu minime, Dom Baconus Cellular. in Hist. H. 7. p. 45. Edit. Lat.

considerable as ours are, whose spirits being boayed up by the freedom of the Lawes, vouchsafing them that plenty and accommodation that their labour and parsimony acquires to them; they are bold and brave spirited in the field, and as ready to encounter their King and Countreys foes, as they were to beare the brunt of heat and cold, early and late, wet and dry, in their Country employment. And this is the reason that the Commoners of *England* being landed, are so subsidiary to their Princes and Laws in all kinds of aide and duty, because they have whereon to keep up their own spirits, and to breed their servants and sons to manly and lusty exercises, from which as their train, they ascend to ambitions of rivalry with men of generous birth, and often have more of prowess in their minds then great born and bred men have, for though the Nobles and Gentry with us have the great Royalties and Demesnes, the vast estates and revenues, the lofty and towering Woods, the bottomless and rich Mines, yet the Yeoman and his fellows have very much riches in money, land, yea and Royalties too in every Shire. And therefore though it is the *French* Crown's interest to keep the Commoner poor, and the Noblesse their Cavalry may eat him up, and he not dare to begrudg their hard dealing, but crouch and cringe to their Greatness, as thinking his unswallowed down Carcass happiness and priviledge enough for him to have; yet the *English* Commoner is on better terms, live he in what part of *England* he will, as remote from Neighbours as he can, yet the Law is his Buckler, and the Nations justice so just a Guardian to him and his, that he (following his honest vocation, and serving God, his Prince, and Country according to the Laws) need fear no man further, then the fear of prudence and civility obliges inferiours to be disposed to their superiours: for though the Law and Custome of the Nation exclude High-shooes from services of Honour and Command, such as are Deputy Lieventantships, Justicehips of the peace, Memberships to Parliament, from being Captains of Trained Bands, personal service to Princes at Coronation, (I mean near their body, according to the nature of some Tenures, and sundry other things of the like nature;) yet do they not stand out-lawed and excommunicate from being rich in land and money, free in house-keeping and cloathing, but are what the Commoners of *France* are not, *Possessores agrorum aliorumque immobilium.*

Nobiles

*Nobiles quoque ibidem Pasturarum copiam non habent.* ] Though the Nobles, who are there all those that we call Knights, Esquires, and Gentlemen ( for as by the Civil Law there is no Title beneath Knights, the rest going under the name of people, so in France there are onely two degrees, the Nobles and the Commons) though the Nobles, I say, have all the Country Seats and Demesnes, yet are their Seats not furnished with pasture, grazing, and Meadow-Demesnes, as ours here are; for *Pasturarum copiam non habent* ] and the reason is, not onely because France is much a Hilly Country, but also because its fields are champaign and vast, far from improvement by Inclosure, an enemy to Horsemen, who love to finde or lay all in Common, plain before them; besides it being an In-land Country is not so irrigated by sweet and silver Rivers, which overflowing the banks fertilize the conterminating Lands by their Inundation, as other Countries which lye lower and being deep and flat, are accommodated by: and therefore because the Nobles have not such Granges and Farms whose *Cressow* grounds feed sturdy Oxen, succulent milch Cowes, deep fleeced Sheep, and stall them also with their sweet-sented hay in Winter, whereby their houses are provided for with all Substantialts to Hospitality, and of the Supernumeraries sold, buy other additions to that excellent and royal Entertainments of Families, which is peculiarly the glory of England. The French Nobles, while themselves and their retinues with their military treatment, when their Army is in motion for the three or four hot Months of the year, and the rest they live at home, plentifully for their own persons and children, but all their retinue is at board-wages; for since they have not pasture in plenty, nor must not husband things warily, as men do, that *make the most* ( as we say ) of *their own*, pinch they must some way to bring their revenue and expences to be Carter-cousins, for that Principle of mistake runs through the warp and wouf of Greatness. Those callings and courses of life that relate to Learning, Corporations, or Agriculture, do not *Statui nobili convenire*, so is the Text, *Vincas colere aut aratro manus imponere statui non convenit*: ] Which, though it were received here of old, when the Civil Wars of the Nation made Souldiers the best Trumps, and ruffed off the board of honour all the stakes of wealth and place, according to that clause in the Statute of *Merton. c. 7.* which forbids that Wards should be married *Villanis, seu Burgensibus, ne disparagentur*, yet now is altogether obsoleted; Peace the Mother of Arts and Mistress of Riches bringing in those into the bed of honour, whose fortunes and merits, dignified by the Sovereign's favour, vouchsafed admission to: so that though in France a Nobleman's estate, though small, may not be inched out by setting his sons, or overlooking himself the occupation and improvement of it, because it is below his Greatness so to do, yet with us nothing is more usual, no, nor more commendable ( due regard being had to moderation in the degree, and consideration of the Farmer, whose calling this chiefly is ) then so to do; for though we do not *Manus aratro apponere, & vincas colere*, which are the employments of perfect Colones, yet to inspect those that thus doe, and to order what, and see accordingly that they doe, is the employment of many Gentlemen, who yet keep Bayliffs, and notwithstanding finde it necessary to cast an eye into their offices; nor ought any man how great in birth, breeding, and fortune soever, disdain the knowledge and care of the Plough, who considers his Progenitors in time and virtue taken from it to the highest Atchievements; the Romans took many brave Citizens from the Plough to be their Generals; and the Families of *Lentulus* and *Cicero* took their names from their employments in the Country; and though the Germans our Ancestors did not much dote on Tillage, but rather on Forrage, which is the reason that Historians note them to abhorr it as unmanly, and to commit it to their women, or to those poor spirits whom they call *Burii*, probably the Swains that drudged in the Farm, which we call yet in some places a *Berry*; yet is Tillage a very usefull employment and very creditable, which besides the Authorities heretofore in this Chapter and on this argument quoted, is confirmable from that of *Tully*, who, though an Orator by knowledge and profession, so applauds it; that he gives it the utmost courtesie of his eloquent munificence, *Nihil agricultura melius, &c. Nothing is more profitable*

Ridley, *vien*  
*Lames Ecclesiasti-*  
*cal & Civil, p.*  
*95, 96.*

*Aranti Concinnato viator attulit distatu-*  
*ram, Serranum invenere ferentem oblati*  
*honores, lege exempla apud Cass. Catal.*  
*Gloriz Mundi, p. 414.*

*Μη γαρ σπον μιν δε δεκαειξον,*  
*Strabo lib. 7. & lib. 4.*

*Agricultura non sudent majorque pars*  
*vitiis eorum lacte, casto, & carne con-*  
*stitit, Caesar de Antiq. Germanis, Com.*  
*lib. 4.*

Cluverius *Antiq. lib. 1. p. 132.*

*Ἀποιεὺς ἔθ' ἡ κηπίαις ἡ ἀλ-*  
*λων γαρσμων, Strabo de Bri-*  
*tannis, lib. 4.*

*Nihil agricultura melius, nihil uberius, ni-*  
*hil dulcius, nihil libero homine dignius, lib. 1.*  
*Offic. & lib. 1. De benefici.*

and usefull then Husbandry, nothing sweeter and more worthy a free-spirited man then to imploy his time and minde in and about it. And therefore for Nobles (as France calls

*In omni Gallia eorum hominum qui ali-  
quo sunt numero atque honore, duo sunt  
genera, nam plebs penè servorum habetur  
loco, qui per se nihil audent, & nulli adhi-  
betur consilio. Cæsar. Comment. lib. 6.*

all that are not the common people) to think Tillage or Vine-  
dressing, I mean, overlooking the drudgers in them, not *statui suo  
convenire*, is more from a huff of pride then the reason of prudence  
in them, for no man ought to count *that Calling slavery that brings  
in penny-savoury*; and that it does when it inches out the shortness  
of rent-fortunes to more capacious purposes. Nor are Punctilio's

nationally to be stood upon, where they are not credited and supported by some for-  
tunary Grandeurs: and therefore since necessity is the Lord-Marshall that determines  
decency, and what is comfortable with all mens estates under it, it is prudence to sub-  
mit to that which is most for convenience, and has the directest tendency to preser-  
vation and increase; which, Industry having the suffrage of Nations for, encourages  
Nations and Princes to reward estates with Honours, and account those Honours best  
supported that are well underlaid with Revenues. And thus as the *Venetians, Flo-  
rentines*; and we do account Merchandise not beneath a Gentleman; so did not *Lewis  
the Twelfth*, that wise and worthy Prince, who priviledged the Citizens of certain great  
Cities to hold noble Tenures, which is contrary to the Law of *France*, and gives the  
reason, *quia ista Civitatis habent jura Nobilitatis*; for since those places do benefit the  
Crown, good reason they should be benefited with honour from the Crown; which  
yet the *French* do not generally receive for a rule, for *Cassianus* one of that Country  
sayes, *Apud nos Gallos, nobiles ut plurimum habitant in rure, & ibi rejecta omni mer-  
catura, culti agrorum (saltem non multum opulenti) & rusticana rei per familiam va-  
cant, &c.* which is not contrary to what the Text sayes, for the Gallants do attend the  
Army of the King, and what time they are at home they do not think any inspection  
over their Revenues, which consists of Vineyards and Tillage, *suitable to their state*,  
because their whole intentness is upon the Army, in which they are brave and live  
freely, commanding whatever they please and come to, and when they are from that, on  
hunting; and this humour was in a great measure here till the warrs (between the  
Houses of *York* and *Lancaster* determining in *H. 7.*) ceased; for then the Gentry and  
Youth, not having whereon martially to busie their mindes, fell to such callings of indu-  
stry; as throne by peace: thus came the younger sons of noble and generous families to  
Corporations, as Apprentices to Trades, and to Inns of Courts, and Chancery, and other  
callings of gain to their future decent subsistence, and the Commonalty fell to tillage and  
manual labour; to busie and support the multitudes of which, the great men of *England*,  
who had depopulated Farms, which brought *infrequentiam & diminutionem populi & per  
consequentiam Oppidorum, Ecclesiarum, decimarum & similiarum*, as the noble Historians  
words are, were faine to be enjoin'd to restore Husbandry, hereupon by the Statute of  
*4 H. 7. c. 19.* there was a penalty for decaying houses of Husbandry, or not laying con-  
venient Land for the maintenance of the same, which Statute though it were repealed by  
the *39 Eliz. c. 1.* yet by *c. 2.* arable Land made Pasture, since *1 Eliz.* was again to  
be converted to Tillage, and what is arable was not to be converted to pasture,  
which good provision for the Plough, the main engine of all our chief support for life  
(bread) brought Husbandry in request, and with it riches, plenty, and civility of  
manners. And hence by the blessing of God comes it to passe that our Yeomen, who  
are the strength of the Nation and the best foot-souldiers in the World, are so much  
encouraged and in so good plight both in purse and courage; and hence comes Justice  
to flow so currantly in Juries by the substantialness of these who are numerous in  
them; which I am the longer upon, to shew the vanity of disdainig honest and gain-  
ing callings, and preferring an idleness of sin, shift, and want, before lives of busi-  
ness and profit, as the reward and compensation of them. Let the Nobles of *France*  
stand upon honour in this matter, the Gentry of *England* finde too fatally the  
unhappy fruit of idle children and relations, and knowing Industry in Husban-  
dry, Trades, and Professions of Learning, blessed by God with heights of Attain-  
ment, equall to, and sometimes much transcending their families honour and e-  
state, do now freely, and further I hope will dispose their children to them: for  
as there is no toyle like to that of idleness, so no pleasure better returned with  
peace and plenty then that of honest callings. To return then to our Chancellour;  
this

*Cass. Catal. Gl.  
Mundi, p. 314.  
Barthol. Expo-  
lus Tract. De  
Imperat milibus  
eligendis, In verbo  
Nobilitatis.*

*Dom Baconus  
Cancellar. in  
Hist. H. 7. p. 44.  
Lai.*

*Magnam partem  
fundi Regni A-  
griculis, & media  
sortis hominibus  
mancipabat, &  
perpetuabat. Idem  
eodem.*

Note this.

this being premised to introduce the parallel of *England* and *France* to the production of Juries, his conclusion is, that because Juries, where men of estate are not, are *multum remoti*; nor to be had in Countreys where men are poor, and not of the value required: It follows, that since alone *England* abounds with numbers of such qualified men, and so neer together as Jury-men ought to be, who do *Veritatem facti agnoscere ratione vicinitatis*, Justice by their verdict, in matters of fact, is onely haveable in *England*; which I so far admire, that I think if it be kept up in the honour of it, as I hope our Masters the Judges will see it shall, we in *England* shall avoid that too true Character, that the *French* Chancellour gives his Country, *Hæc Ennomiâ gallia non regitur*, &c. By this good law *France* is not governed. In which there is great indulgence to vice, and rare rewards to virtue; where to blemish men of worth and wisdom is so frequent; where recoveries of right by suite is so dubious, that modest and good men were better loose their right, and be quiet, then seek the recovery of it, with so much trouble, and so little certainty of obtaining it: Thus the Chancellour, whose words I modestly translate, that I may not offend many of our Gallants, who are so *Frenchified*, that they despise every thing almost that is *English*: Though therefore no man can deny to *France* that which God has made it remarkable for, that it has an excellent ayre, plenty of corn and food, furniture of men and arts, quick and commodious, that it is the rising sun that looks to be adored; yet do I not joyne with *Blondus*, *Langolius*, *Bonandus*, *Textor*, and *Cassaneus* in their Hyperbolicks, when they make that Prophecie of the 2 *Daniel* 44. where God is said to set up a Kingdom that never shall be destroyed; and the Kingdom shall not be left to other People, but it shall break to peices and consume all those Kingdomes: to be meant of *France*; which for greatness of virtue, probity of manners, counsell, prudence, civility joyued with piety, and military skill is inferiour to no Nation in the world. Though, I say, I should grant to *France* much of this, yet there is yet an addition, to be wished it, which a learned *Frenchman* made long agoe, (a) *O beatam futuram Galliam si tam contigisset heros habere frugis, quam bonos habere solet*; yea, and for all this, though it were granted to be so happy, *Ut hic Palladem cum Baccho certare videretur*, as *Cassaneus* his words are: yet in the Justice of it's Trialls, 'twould (under favour of all the prealleged Characters) come beneath *England*; For here the poorest subject cannot be injured in his goods, or body, but he has remedy by a Jury of twelve men, and the like for his life; for cast he must be by them, or die he cannot: when as there is not a Marshall (if Marshall *Biron* be to be beleived, and why he should not I know not) can be free from being accounted, and condemned, as a Traytor, by the single testimony of one, though a base person, as he alleaged *La Fin* to be, who had bewitched him by the potency of a charm, and an image of wax, which deluded him into a beleife he should be King of *France*; but from such seductions, delusions, accusers, laws and ends, good Lord deliver us: And so I end this Chapter.

*Ut modestissimo cuique & innocencia prædito jus suum obtinere plerumque non liceat, aut certe in illis meandris forensibus hærere, in labyrinthosis dilationum similis consensere, veteratioris pragmatiorum imposturas plurima iudicium fastidia fastusque quorundam perpeti, nulle indignitates devorare necesse sit.* Budæus in Pandect. p. 45. Edit. Vasiosam in folio.

*Terra est frumenti præcipue & pabuli ferax & æliana lucis inmanibus.* Pompon. Mæla lib. 3. de situ orbis. p. 7. Edit. Steph.

*Nec potest sane aliud esse præfiguratum præter illud.* Casian. Catal. Gl. Mundi. p. 554. *Textor in Epithetis.* (a) Budæus Cancellar. lib. 4. de assere & eius partibus. Catal. G. Mundi p. 573.

*History France in H. 4. p. 1043. 1049.*

## CHAP. XXX.

*Tunc Princeps. Comparationes odiosas esse licet dixerimus, &c.*

THIS whole Chapter is but introductionall, of the Prince replying to the insinuations of the Chancellour, concerning the Justice of Juries, and the possibility of having them in *England* above other Countreys; To which, though the Prince is produced, mildly answering, yet in that is there much strenuity expressed, in refracting those lightnings that the Chancellours love to his Common Lawes Languaged it selfe by. Now, though the Prince waves comparisons, as engines, rather to advance humour, provoke passion, and manifest pride, then to dilucidate truth, and to lay open the candidates to a true judgement: yet, in that he keeps to a modest assertion of the Civill Law, and states it's Regency and Authority in the Continent, whereof *France* is a part; though he allows the Common Law the same favour in this Island, he does

but

but right without inconvenience to either Lawes, and the contenders for them, since all the zeal and fervour that men passionately appear in to the averment of their darlings, is but that squib of wit, which, though it soars high, and blazes in the firmament of popular admiration, evaporates and dissolves in a crack and issue of nothing but smoak and stench; for God that made nothing in vain, but has given every living thing not onely breath but pabulary subsistence for its continuation, and a providence of support to make that by his benediction effectual to that end; that same great and good God, directing Neighbourhoods to join into Cities, Counties, and Kingdoms, and to be governed by Rules and Lawes of prudence and order; has no doubt fitted every thing, not Lawes excepted, to every Country, and every Country to the Lawes his wisdom in the humane nature appointed for them; and the Lawes of one Nation will univversally no more fit another, then all cloaths will fit one body, or one bodies proportion fit every bodies: In the common Principles, Lawes in civilized Nations all agree, though in the particulars they differ, as cloaths made all of one shape for mens bodies doe in the more or lesse of them; and as that is the best suit of cloaths that best sets forth, and most accommodates the body with warmth, agility, and defence against injury, so is that the best Law for any Nation, that most promotes its peace, piety, and wealth, and impedes the cankers and subversions of them; which since the Civil Law does abroad (and for ought I know deserves in that regard that character which a learned Professor of it gives, *That if all the Rules, Maxims, Constitutions, and Lawes of all other people and Countries were put together, I except none* (saith he) *save the Lawes of the Hebrews which came immediately from God, they are not comparable to the Law of the Romans, neither in wisdom nor equity, neither in gravity nor in sufficiency; thus largely he,)* yet notwithstanding all this (which truly, being taken *pro confesso*, is very much for the honour of those Lawes) the Common Law of England has that specifick energy and adaption to the Land of England, as no Law in the world hath or can have: And I pray God I and mine, and all the true men of England, may live and dye in the love and under the obedience of it, and of the Protectors of it, Kings; and their Counsellours, Parliaments. And so I end this Chapter.

Dr. Ridley in his  
view of the Civil  
and Canon Law.  
P. 3.

The Author's  
Wish.

#### CHAP. XXXI.

*Sed licet non infime Cancellarie, nos deletet forma, qua Leges Angliæ in contentio-  
nibus revelant veritatem, &c.*

**I**N this Chapter the Prince is personated as scrupling the goodness and lawfulness of Juries, by reason of the seeming opposition the constitution of them has to the Law of God; for the Prince, supposing that God in *Deut. 17. 6.* settled the decision of matters upon the mouth of two or three Witnesses, does exclude all determinations of judicial causes from any interest in them, but what is of the nature of that constitution, which the Prince sayes was a proof according to the Law of nature and reason, and not a temporary Law in the ceremoniality of it, determining with the Jewish Polity, which the Scholes call *Vetus Lex figura vel umbra*; and therefore our Lord, who was the dissolution of whatever was not moral, but by his coming abrogated, con-

*Ceterum Lex ista Molis proprie ad facti  
controversium pertinet, in Proverbum  
transiit, ita ut de rebus aliis usurpatur, -  
Grotius in Matth. 18. 16.*

*Hoc dicitur ne passim sed cum discretione  
ad iudicium mortis procedatur, in quo com-  
pescitur malitia invidorum. Hugo Cardin.  
in Deut. 17. 16.*

*Sub testimonio trium peribit omnis malus,  
& salvabitur omnis bonus; Patris scilicet  
Filii & Sp. Sancti sit peccatoris condem-  
natio est sub testimonio cordis, oris, operis,  
Hugo Card. in loc.*

firms this to the *Pharisees* in *John 8. 17.* and *Grotius* sayes, that this was so generally received that it became proverbial, and so he takes the meaning of *John 8. 17.* & *2 Cor. 13. 1.* yea, because the weight of proofs shall not be scantied and want its full advantage, the Holy Ghost adds two or three Witnesses, not thereby onely to exclude one, but to take in a third for down weight if need be; and this is the reason undoubtedly why the Lawes of Nations, and our Law chiefly, though they allow two Witnesses, good and stanch, proof enough, yet they look upon three as the fuller evidence; as in Company the more the merryer, so in Evidences the more Witnesses, the more unquestionable the truth of their evidence; and therefore our Lord does not plead Prerogative, *As he was the truth,* and

and ought to be believed upon his own assertion, but he appeals to the Lawyers themselves, who were his great opposites, and critically carped at him, and exhibits himself forinsecally to them, as one that ought to be credited, because his words and works had the testimony of God by miracle; and of their consciences, by the conviction of them upon what he said and did: and therefore he sayes, having approved himself according to the method of their own Law, from the appointment of their own Law-giver *Moses*, not to beleive his words thus attested, was not onely to contemne *Moses*, but to proclaime their enmity and malice against him, who, by testimony Juridick, was affirmed to be the true God-man he asserted himself to be: This is the Princes objection, that in as much as God had set down the way of condemnation to be by two or three Witnesses; and *Christ* the new Law-giver confirmed this, and subjected himself to the manner of triall concerning the truth of his Doctrine and Divinity; *Hinc legi contraire est legi divina refragare*: that is, to prescribe another method then what God has set, is to wander from Gods appointment, and to contradict the wisdom of God the Father in the positivity of his appointment, and of the Judge of quick and dead, who approves it; yea, 'tis to set up mortall weaknes against immortal Power, Goodnes, Wisdom, and Sovereignty, which is Treason against the Sovereign of our soules: *Nemo enim potest melius aut aliud fundamentum ponere quam posuit dominus*; saith the Prince in our Text; and upon this doubt, not narrowly or pusilly raised, but breaking forth from reason and piety regnant in him, and evidencing it self in the proposall of its arrest to his gravity, who is able, ready, and willing to enlarge it, by his resolution of the difficulty does he apply to the Chancellour; this is the summ of this one and thirtieth Chapter.

Math. 13. 16.

CHAP. XXXII.

*Chancellarius, Non his quibus turbatis Princeps contrariantur leges Angliæ licet aliter quo dammodo in dubiis ipsa eliciunt veritatem.*

HERE the Chancellour endeavours answer of the personated Prince his expectation; and that in the solution of those doubts which he in the precedent Chapter raised, to the discharge of which undertaking he applies himself not with the *levis armatura* of words, light in their nature, and cheap to utter, for then his reply had been like that *Χελιδων μυστα*, or swallows nest, wherein the Poets tell us there is great noise, but no musick: no such hail-shot does he from the birding-piece of a bombatte-Oratory discharge on the Princes reason rampier'd up, and in a kinde of civill hostility against him, with no such mean and trifling lime-twiggs does he hope to catch this bird of Paradise with: but, knowing him to have a Kingly reason, and to answer in a souler plentitude his Majesty's birth, and corporall sanctity, poures forth upon him a volley of solid reason and judicious gravity; by the force of which cannon-shot, so artlily levelled, he doubts not but to batter the breast-works raised against him, and to gaine those Towres of opposition, from whence these artillery on him played; And the better to effect this, he yeilds to the Prince in that which is the ground-work of this scruple, that what God has appointed as a morall and fixed rule is irremoveable; and to wave it, or wander from it is *contraire divina legi*, to rebell against the Divine Sovereignty, which is the highest sacriledge: This he grants; yet does he hold his owne, in denying the Princes inference: For, though the Old Law does appoint, that *in the mouth of two or three Witnesses every word shall be established*; yet does it not take away all prudent improvement of that prescription to the end of it's institution, but under the latitude of that remedy admit whatever after-experience shall discover necessary; to obviate after villany the defeat of God's intention in that prescript, to which undoubtedly that Law of *Moses* was too short in the letter, as in other things it is supposed to be; And therefore as the New Law being (as the Scholes term it) *Lex veritatis*; supplied that in the maine things that concerned the grace of men and the glory of

2 Chil. 2 Cent.  
Adag. 2. p. 437.

*Contraire vel contradicere, Glanvill lib. 10. c. 12.*

*Lex nova nihil determinat circa caeremonialia vel judicialia nec præcipit alia moralia quam lex vetus 1. 2. St. Thom. Quest. 308. art. 2.*

*Lex vetus erat bona quia consonabat rationi, reprimensdo concupiscentius, sed erat imperfecta quia non poterat sufficienter ad finem inducere, St. Thom. 1. Secunda. Qu. 93. art. 1.*

God.

*Lex vetus differt à lege naturali non ut ab ea penitus aliena sed ut aliquid ei superaddens, S. Thom. 1. 2. q. 99. art. 1.*

*Deut. 17. 6. c. 19. 15.*

*In ore duorum vel trium] Bona fama, jus testimonii moribus Hebraeis non habent amentes, pueri ante annum tredecim, fures etiam post restitutionem qui de alca viciant, publicani qui plus aquo exigunt, caprarii & si qui alii ea faciant, qua verberibus digna sunt. Rejici etiam possint qui valde propinqui aut familiares aut inimici sunt partium alteri, Grot. in c. 17. Deut. 6.*

*18 H. 1. Coram rege inter Wakeling de Stoke & W. de la Guildhal. Si Francigena appellaverit Anglum de perjurio, furto, homicidio, aut Rape, quod dicitur aperta rapina, qua negari non poterit Anglus se defendat per quod melius voluerit aut iudicio Ferri candentis vel duello. Leg. Guil. 1. p. 177. Edit. Twifd. Brompton in W. 1. p. 912.*

God, to which it's promulgation is the rule and line; so does the Lawes of Nationall prudence conform to the *Mosaick Norm* in the Moral and Natural rules of it, though they may alter and vary in some explanatory methods, or additions of circumstance adapted to time and men; the liberty whereof may be conceived indulged to Government, by the *Magna Charta* of Christian liberty, to those notable and noble ends of carrying on order and Justice in the World: And, of this nature is the addition of Juries in *England* unto the *two or three witnesses*, which our Law does not do *à l'eu domini*, as if it arrogated a power of antiquation in the point of *witnesses* (for the Law does every thing by *witnesses*, where *witnesses* can be had that are *fide digni*, which the Lawes of God and all Nations enjoyne :) but it adds to *witnesses*, Juries; *nun prudentia & sub ratione majoris certitudinis*, who upon their oathes and consciences are to Judge whether they think the depositions are true, and the *witnesses* creditable in that they have averred: For, as in bonds, the security men have by sureties bound with the prime debtor, does not make the payment of the debt less, but more sure: so in matters of *witness*, Juries empannelled to hear and verdict a cause in Triall, does not depreciate and abate the justice of decisions by *witnesses*, but enhance the reputation, and imply the more credit and conscience in them: And hence I humbly conceive the Law of *England* may, on good grounds, be argued a very pious and just Law, in that it takes all advantages to promote Justice, the great soder of civill societies; and that not onely by *witnesses*, which God prescribes signally, but also from that honour he does *witnesses*, by terming himselfe by that Name: *Job. 16. 16. Mal. 2. 14.* and by terming his holy Spirit the *witness*; and his holy Apostles *witnesses*: all which proving his approbation of *witnesses*, concludes the Lawes wisdom and justifiableness in allowing *witnesses*, and without them (where to be had) ordinarily doing nothing. But yet, hence is there no ground to conclude that the addition of Juries is supererogative; and not onely more then needs must, but a sinfull supplement to that which is already perfect; which suspicion the Chancellour takes off in those words, *Non contrariantur licet aliter quodammodo ipse in dubiis eliciant veritatem:*] which is as much as if in other words I humbly conceive his sense had uttered; That, though there be a variation of the method in some adjuncts to it, yet no aberration from the end, discovery of Justice: For, as the intent of God was not the precise letter (sithence then the number, *two or three witnesses*, how false or fordid soever, must have been his appointment, without any limitation, which being the destruction of Justice, cannot be the sanction of the great Justicer, who is *Summum jus sine aliqua injuria macula*; and being contrary to his will in other places of his Law, would imply contradiction, which is odious to God) so, to keepe to *two or three witnesses*, where they presumed to be true may be otherwise, and not to admit that which may discover them to be otherwise, as Juries (added to them) in the triall of a cause and judgment on it may, is not against the Tenour of the Enaction of God, in the maine intent and drift of it; for that being the discovery of truth, and the delivery of Right from all Combination against it, is pursued and attained in this way of Triall by *witnesses* and Juries.

Not that the Law wholly rests on Juries, and decides nothing by *witnesses* without them; For, that in certain Cases it does, as hereafter in it's proper place shall be shewed, but because the Law introduced Juries, First, to clear truth more against falsehood and conspiracy then otherwise it could be: For were *witnesses* only taken, that might pass for current which is adulterate, as in that notable record cited by Mr. *Selden* on this Text, in the Bishop of *Salisbury* Court at *Sunning*, whereof the Entry is *willielmus producit sectam suam & ipsi quos producit per se discordantes sunt in multis & in tempore & in aliis circumstantiis, &c. Wakelinus producit sectam qui concordati sunt in omnibus & per omnia, & dicunt omnes quos ipse producit pro se*, which shewes the use of Juries to judge whether of the parties *witnesses* are most creditable, and accordingly to verdict the matter: another use of Juries also there is to prevent the incertainty of judging integrity, and it's contrary by dubious events, wherein God is not ever pleased to evidence his pleasure to the determination of right, but leaves them to the empire of second causes, from the conclusion of which there is nothing peremptorily collectable, such as were triall by Ordeal of fire, which was in use *tempore* of the Conquerour, or by Duell, Combate, and



and Battel, of which *Glanvil* speaks in those words; *Per Duellum potest placitum terminari*, which was antiquated in *Henry the Seconds* time, when *Glanvil*, treating of the Great Assise brought in place of it, sayes, *Ex aequitate maximè prodita est legalis institutio. Jus enim quod post multas & longas dilationes vix evincitur per duellum, per beneficium istius constitutionis commodius & acceleratius expeditur*, so that Juries coming in and antiquating these, there is satisfaction by them to more certain justice then otherwayes was; all which well weighed amounts to the Chancellours position, that Juries with Witnesses do not contradict the divine constitution, *licet aliter quodammodo in dubiis eliciunt veritatem.*

*Glanvil lib. 1. c. 1.*  
*Idem lib. 2. c. 19.*  
*Spelman in verb. Duelli, Glōs.*

*Quid duorum hominum testimonio obest Lex illa generalis Concilii, qua cavetur, &c.*

This the Chancellour produces to prove that even the Canonists and Popes with their Councils, that cry up the Civil and Canon Lawes and the proceedings of them by two or three Witnesses, and will not away with Juries, because they pretend their institution is besides the rule and appointment of God in the prealleged Scriptures; and the proceedings of Nations according to it; yet even they are by our Chancellour instanced in, as proceeding by other Methods then two or three Witnesses. And the particular case of their variation is in that about testimony against Cardinals to make them criminous; for these Cardinals created, whether by Pope *Eugenius the Fourth*, or *Pontian*, or *Sylvester*, were held the *Religionis duces & antistites*, in the Roman Church of great authority, *Creatura Pape, solo Pape minores, Cardines à quo motus est firmatè in claudendo, & aperiendo, &c.* Cardinals from *Cardo* an Hinge, because as the hinge moves the door to and fro, so do these the affairs of the Church, and as the heart guides the man, so doe these the Mystery of the Church and State of Christendom; these then so magnificent Prelates were at first but few in number; and of eminent parts and perfections, which made them worthily venerable; after, when they being found usefull to the interest of the Pope, they grew more and mightier, and the Pope made what number and whom he would, which made his Holiness so strong in the carriage of affairs, that he left almost no room for temporal Princes, but all was swayed by him and his Creatures; yet for all his power and pretences, though the Cardinals were incardinated and let into the Papacy so dexterously that there was no injuring them without injury to his Holiness, in Pope *Honorius's* time they were all by the Emperour *Isaacius* banished, and so object, *ut non fuisset qui resistere debuisset de clero*; for though their institution was good to carry on the amity of the Greek and Latine Church, and to gratifie the Greeks, the (a) two first Cardinals *Bessarion* and *Isidore* of *Sarmatia* being Greeks, and so I think were (b) all the Cardinals some time after; yet when the Popes made no bones (as we say) of the Council Canons, but multiplied their number, debased their nature by chusing not for birth, parts, and piety, but for vice, craft, and policy, contrary to the first *Oecumenical Council of Basil*, then, with his *Italians* whom he mostly Cardinalated, did he introduce that magnificent Grandeur, which as it arrogates preheminance over Princes, so in time becomes a check to his Holiness. So that now he that can accomplish the Cardinalitial favour, and to be highest in the Suffrage of the Conclave, is not onely likely but sure to be Pope; and therefore as they can curb and (in a sort) awe the Pope, so does he claw them to make them his Vassals. These, These, are the *Purpurata Mancipia*, that as *Legats à latere*, and *Conciliaris pro capite*, do enrich his Holiness, and for these scarlet Sons are the Canons of the Council, here in the Text mentioned, made; though I confesse I can finde no Council (but perhaps 'tis my ignorance, for which I crave pardon) where 12 onely is admitted for proof against a Cardinal: for in the second Council of *Rome*, under Pope *Sylvester the Second*, it was decreed (as much and more contrary to God's constitution of two or three Witnesses then Juries are) that a Presbyter-Cardinal was not to be

*Tholoff Syntagm. Juris. lib. 15. c. 4.*  
*Binius ad fin. Tom. 3. Concilior. p. 1027.*  
*In Summis majoris Antonii, part. 3. lib. 2. c. 2. De Electione & Potestate Cardinalium. Et Tit. 21. c. 1. De Statu Cardinalium & Legatorum, Cardinales debent esse Dei amici singulares per vita perfectionem, ut sicut præcellunt a- liis dignitate, ita excellunt in sanctitate, ff. 1. quantum, &c.*  
*Rubeus lib. 1. Rational. Divinor. Offic. c. 55. Impress. Venet.*  
*Aurel. Acad. Charif. lib. Singul. de Offic. Præf. Prætorio.*  
*Lib. 1. Ceremon. Ecclesiastic. p. 44.*  
*Rituaria Eccles. lib. 1. sect. 8. sub Leone 10. Papa.*  
*Baronius Tom. 3. p. 346.*  
*Albergat. Discurs. Polit. p. 386. 388.*  
*Callander, p. 129. De Officio Missæ.*  
*(a) Tom. 3. Concil. p. 1027.*  
*Chalcondylas, lib. 1. De rebus Turc.*  
*(b) Tom. 3. p. 651.*

*Binius, To. 3. p. 66.*  
*Jus Pontificium. c. Trāfulum. 2. q. 5.*

*Cardinales, filii primi gradus dicuntur, Tholoff. lib. 15. c. 4. ff. 2.*  
*Cum summi Pontificis sedes vacat, in interregno sacro sanctum Cardinalium Collegium Republicam Christianam regit, verumquæ difficultati consulit, donec Pontifex creatus, Tholoff. loco eodem, ff. 16.*

*Binius Tom. 1. Concil. p. 317. & 318.*

Spelman. Gloss.  
in verb. Cardinal.

Aventinus lib. 4.  
Hist. Boiorum.

condemned of crime under 44. Witnesses, a Deacon-Cardinal under 36. & *summus Presul*, that is, a Cardinal, not under 72. Witnesses, which Canon was undoubtedly overborne by the Pope and his Cardinals, on purpose to make proof against and condemnation of Cardinals, impossible, or not ordinarily feasible; for in what deed of darkness and subtilty (wherein their *Eminencies* are often parties) will such Politico's as they, be so publick as to admit 72 Witnesses against them; and since without that number they cannot be convicted, they are as good as pardoned, that is, not fully accused so as to be punished by degradation, be they never so enormous and scandalous: thus Pope John the Ninth when a Cardinal, was *Gallant*, as we call it now, in better English *Stallion*, to the famous Roman Courtezan, who ruling Rome gratified her humble servant with first the Bishoprick of *Bononia*, then *Ravenna*, and at last the Popedom, which *Aventine* thinks gave rise to the story of Pope Joan, this John being Papafyed by a woman, and so called the *Woman-Pope*; thus the then Pope's Holiness in Anno 1364, accused six Cardinals to have conspired his death, and went so far as to almost degrade them for it, which if true, 'twas Murther before God, but alas by the artifices of the Conclave and their adherents, the sentence was said not to be passed legally and with good conscience and consideration of the Churches honour, and therefore it was not prosecuted. By all which it appears, that the Church, which the Prince acknowledged the Pope his Cardinals and Councils to be, (appointing otherwise in this case then the word of God does in the prealleged Authorities of Scripture set down) doth as much seem to go above and besides Scripture as the Law of England does in case of Juries; since they, added to Witnesses two or three, do onely corroborate truth and make it less capable to be deluded and prevaricated with, then upon the single account of Witnesses and their depositions, it might in probability be: and this I conceive to be the intendment of our Text in alledging this Canon concerning Cardinals, wherein the rule of God in *Deut. 17.* is in the Letter of it departed from, and yet without the Prince's scruple, which the Chancellour insinuates to dissolve this his scruple in the case of Juries upon no less if not a more rational and equitable account. And therefore as this sanction of the Church concerning Cardinals, which the Prince (according to the Religion of our Chancellour's time) thought unerrable, was not by him concluded sinfull, because an addition of a greater number to that of two or three, and all to promote right (as was pretended) to truth, relating to those *Presulary Eminencies*; so ought not the annexing of twelve Jury-men to the evidence, which is to the same end of evincing right and subverting its contrary, to be excepted against, but admitted as that which tends to the design of God in that judicial Constitution: and hereupon our Texts inference is most rational, if two or three worthy men confirming a testimony make it irrefragable; and not to be ordinarily impeached, much more a greater number, *Quia plus semper continet in se quod est minus.*

Quanto magis ponderat in Iudiciis plurimum idoneorum testimonium fides, quam unius tantum, tanto tutiore aequitate nititur ipsa constitutio, quam duellum. Cum enim ex unius jurati testimonio procedit duellum, duo decim ad minus legalium hominum exigat ista constitutio juramenta, Glanvil. lib. 2. c. 7.

*Supererogationis meritum promittebatur stabulario, si plusquam duos quos recepit denarios ipse in vulnerati Curationem erogasset.*

This is relative to the story of the mercifull Samaritan, *Luke 10.* who did not onely come to the distressed and wounded man (when the Priests and Levites, who saw his misery, turned the deaf ear to his moans, and the pittiless eye to his sad misfortune (for the Text sayes, *They passed by on the one side,*) but bound up his wounds, putting in oyl and wine to purge and heal them, and set him on his own beast, and brought him to an Inn, and took care of him; and to compleat his courtesie, on the Morrow when he departed, he took out two pence and gave them to the Host, and said unto him, take care of him, and whatsoever thou spendest more, when I come again I will repay thee, v. 35. This whatsoever thou spendest more is termed *Meritum Supererogationis*; for, because there might be a necessity to carry on the kindness to the distressed person further then the Samaritan could then see, or perhaps was then (being on his Journey and having no more then would barely defray his own charge) convenient for him to moneyly supply, he promises compensation for, when he comes again, that is, upon notice of it: now this the Chancellour makes use of to clear the necessity, that supplements be  
(by

(by after-prudence and experience made) to those things, which at their first stablition could not be conceived of, or provided for; and this is the reason why more then two or three Witnesses are permitted by the Civil and Canon Law in certain cases, as well as Juries of twelve added to two or three by the Common Law, as in the Notes of the 26. Chapter I have at large discovered. And therefore though the Law of England join Juries to Witnesses in causes where Juries are to be had, and is therefore justifiable, yet does it not suffer causes to fall by reason of the invalidity of testimonies where Juries cannot be had, but proceeds in those \* cases *secundum rationem*, and *jure Gentium*, for so it follows.

*Numerus supplet quod in fide deficit,*  
Digest. lib. 22. Tit. 5. §. Numerus p.  
3087. & lib. 22. Tit. 5. c. 21.  
Loriusus Deut. 17. 6.  
Tarrinaceus de Testibus, dist. 61. num. 42.  
& seq.  
See Mr. Selden's Notes on c. 21. of our  
Text.  
\* 9 Rep. Abbot of Strata Marcella's  
Case, p. 30.

*Nisi qua supra altum mare, extracorpore cujuslibet comitatus Regni illius fiant, qua postmodum in placito coram Admirallo Angliæ deducantur, per testes illa juxta Legum Angliæ sanctiones probari debent.*

Here the Chancellour makes good his assertion in the 24. Chapter, *Ita ut non sit locus in Anglia, qui non sit infra corpus Comitatus*; for being to speak of *Maritime* matters and cases that are in debate about Contracts beyond the Sea, or Wrecks and Administrations of justice upon the Sea, he refers them to a particular Jurisdiction exempt from the ordinary Courts of Justice, to wit, the Court of Admiralty, and gives the reason, because the original of the cause was from the Sea, which is *extra corpus cujuslibet Comitatus* and because every cause regularly ought to be tryed in the County where began, unless by a *Certiorari* it be removed to a higher Tribunal, he shews, how the fact being upon the high Sea, and so out of any County, ought to have and so hath a particular Judge to determine it; which is the Lord Admirall: The Court of which is not left to proceed how it pleases, but in the prosecution towards sentence must pronounce *secundum allegata & probata*, for so his words are, *Qua postmodum in placito coram Admirallo Angliæ deducantur, per Testes illa juxta Legum Angliæ sanctiones probari debent.*

For the first, what *Altum Mare* in this case is, This, I humbly conceive, is thus phrased, not to lead into the vast consideration of it, but to resolve the Jurisdiction hereby intended; for *Mare* is called by the Learned *altum*, in regard it is *Hellino aquarum*, and in common opinion, *bottomless*. The Learned have been full of disputes about it, and they say, that the Sea is the moist and liquid part of the Universe, which they therefore term *Ποταμὸς, ἢ νῆματα, ἢ θαλάσσιος*, as the Philosophers words are. Seas, the Ancients called the circumvallation of earth, or the girdle of its loynes, which blessed it with moisture to help on fructification, with passage to further Civility and Trade. The Ancients speak variously of Seas, the great Secretary of Nature calls the Sea, *Ἄρρη ἢ σῶμα τῆ παντὸς ὕδατος*, which is what *Moses* calls the Sea in *Gen 1. 10. הַמַּיִם הַמְקוּמָוִת* the gathering together of waters; and that not a bare gathering together; for though the *Hebrews* have above twenty words to signify that, yet they express this gathering not by the general word *קָבַץ*, which signifies all kindes of gathering together, but by a special word importing a gathering together by Statute and good warrant, by a Law of establishment, by a sanction of power not to be controlled, and Decree not to be reversed; by which God is said to set bounds to the Sea, beyond which its furly Waves shall not passe: such a collection of waters as of Lines in the Circle, *all which concenter in the Sea and make a Mass of Waters*. And though all Seas are waters, yet all waters are not Sea, for waters are particulars, Sea general, waters are in propriety, Sea *qua* such is *nullius in bonis*, but in occupancy; yea when the *Roman Empire* was expanded over almost the whole world, 'twas said to them not unaptly, *Mare liberum esse, non Romanorum*, yet there are Authorities of impropriating Seas; waters may rise and fall, as the Springs that feed them or the rains that fall into them; the Sea, properly so called, is neither added to, nor subtracted from; for it is the Sphere of liquidity, and is not in its true notion exhaustible, unless God miraculously dry it up or add thereto by opening the fountains of the deep, as in the Deluge. Indeed particular Arms and Toes of Sea by bordering on Land may through the nar-

Lib. De Mundo  
c. 2.

2 Meteorolog c. 1.

*Mes appert per l'opinion de Bralton & Britton auxi, que fozsam jesusam & la gan cy longe come ils sont in au sur le mere n'appert al Roy, mes occupantis conceduntur.* Conttable's Case, 5 Rep. p. 108.  
Grotius de Jur. Belli & Pacis, lib. 2. p. 134, 135.

rownness of passage swell and augment their depth, because the great quantity of moisture in the Channel not being voidable, must needs, while it is in passage raise its bulk, for all bodies must have place, but the Sea is vast and so capacious that it ordinary is what it is, and though it gives yet receives nothing from the Land but what the Land returns of its own: and therefore although some have ascribed Originals by way of Fountain or Spring to the Sea, yet the *Philosopher* wholly refutes that, and concludes, that *Sea is the source of all waters, ἡ πηγή ὕδατος*, and that all Rivers empty themselves into the Sea, as into their great Reservoir and Vessel of capacity.

Now the Sea being so vast a body of waters that the Earth seems to be but an Island in it, and being called by *אֲבִיסּוּם*, an *Abyss* of waters, as God is an *Abyss* of mercy, as I take the allusion to be, *Abyssus ad Abyssum invocat, The Abyss of misery calling to the Abyss of mercy, Psal. 42.* The Sea, I say, so vast, may well be called *Altum* in this sense, though this be not altogether the sense of the Chancellour; for he here makes *altum Mare* to be that which being *extra regnum*, is exempt from the ordinary Jurisdiction of Law, which it would not be, were it *infra corpus Comitatus*; for where *altum Mare* is, there is the power of the Common Law; as to tryal of causes, determined: every man that is upon the Sea of *England* is within the Allegiance of the King the Sovereign, notwithstanding that Sea be *altum Mare*; but yet tryal of all causes that are *super altum Mare* shall be, by the particular Jurisdiction of the Admiralty, determined, as appears by sundry Parliament Rolls; whereby the Jurisdiction of that Court is very ancient, and as is plain by the Lawes of *Oleron*, which R. 1. made when he was there in *France*, returning from the Holy Land, and is every where confirmed in Law-books. *Altum Mare* then is the proper Region of the Admirals Jurisdiction, as appears not onely from the common consent of books, and the concurrent allowance of time, but also by divers Statutes declaring the power of the Admiral, as 13 R. 2. c. 5. 15 R. 2. c. 3. 2 H. 4. c. 11. 5 Eliz. 5. all which do limit the Admiral to the high Sea, and exclude his Jurisdiction over any cause that is *infra corpus Comitatus*; for in that case the Law gives restitution, as appears in sundry cases, *Hibernici sunt sub Admirallo Angliæ de re facta super altum Mare*; the Libel in the Admiralty Court makes the cause to commence, *Sur le haut mere, & infra Jurisdictionem del' Admiralty*; and so the learned Chief Justice *Cook* understands our Text here, for rehearsing the very passage we are discoursing upon, he sayes, *Which proveth by expresse words that the Jurisdiction of the Admiral is confined to the high Sea, which is not within any County of the Realm.*

Now then the question is, what is *Altum Mare*? for that must determine the *Corpus Comitatus*; since whatever is not *altum Mare* is *infra corpus Comitatus*, and subject to the Common Law and Justice of the Nation. Now *altum Mare* is thought to be where one can see no Land on the other side of that he stands; for in such case where a man may see from one Land to another, he is said to be *infra corpus Comitatus*, and the Coroner shall exercise his office, and the Country take knowledge of it, and the Tryal shall be by a Jury of twelve men and not by the Admiral, because the cause grows not *super altum mare*: and generally where the water doth flow and reflow it is within the body of the County, as appears in the Abbot of (a) *Ramsley's* case, and (b) *Diggs* his case; and if a man be slain upon any Arm of the Sea, where he may see Land on both sides, the Coroner shall enquire of this Murder and not the Admiral: and yet there is a good Authority for a *divisum Imperium* (as it were) between the Common Law and the Admiralty; for though the low-water-mark be *infra corpus Comitatus* at the reflow, and for causes thence arising determinable by the Common Law, yet when the Sea is full, the Admiral hath Jurisdiction *super aquam*, as long as the Sea flows.

The Power then of the Admirall is *super altum mare* onely, unless by speciall commission it be enlarged, as by 28 H. 8. c. 15. it is; and the Jurisdiction very ancient, not onely since, but before the Conquest: for that the Monarchs of *Britain* had command of their Seas, commonly called the *Narrow Seas*, is confirmed by ancient Records, not onely of King *Edgar*, who is said, *Quatuor Maria vindicare*; and of *Edward the third*, who in *Rotul. Scotia* of 10 Regni sui, sayes thus, *Nos advertentes quod progenitores nostri Reges*

2 Meteorologiæ.  
c. 1, & 2.

Gen. 1. 2.

See our learned  
Mr. Selden in  
his Notes on this  
Chapter.  
8 H. 3. 9 H. 3  
15 H. 3.  
Vide Rotul. 12  
E. 3.  
4 Infit. p. 144.  
1 Infit. p. 260.  
B.

4 Infit. 138. 139.  
& seq.  
2 R. 2. fol. 12.  
Stamford. Pleas  
Crown, fol. 151.  
Dyer, p. 159.

4. Infit. p. 141.

1 E. 2. Tit. Coron.  
199.

(a) 41 E. 3.  
(b) 17 Eliz. *Diggs* his Case in Scac-  
carto.  
Stamford p. 51. Pleas Crown.  
Cook. 3. part. Infit. fol. 112. Chap. of  
Piracy.

9. Report. p. 107. *Sir Menty Constable's Case.*

Reges Anglie Domini Maris Anglicani circumquaque & etiam defensores; but also from sundry other reasons and authorities, cleared in the learned *Seldens Mare Clausum*: And if they had such command of the Seas, was it not fit they should depute Guardians of their Power, which they called Admiralls, yea, and they did; and most an end more then one at a time for the Nation: For (saith Sir Edward Cook) the wisdom of those dayes would not trust one man with so great a charge, Page 145. Part 4. This great Officer of Admirall was in the Saxons time called *Aen mere al*, over all the Sea: *Præfectus maris sive Archibalassus*; and the Office called *Custodia Maritima Anglia*; the Latine *Admirallus* most derive from *ἀλμυεῖς*, à *salsigine quod in salso Mari suum exercet imperium*: but the best derivation of the word seemes to be that the learned Sir Henry Spelman mentions, *Ex Arabici & Græci conuubio, ab Arabico amir, & Græco ἄλιος quasi præfectus Marinus*; and the Knight likes this well, first, for that Homer calls Neptune *ἄλιος*, as ruler of the Sea; and it was usuall in *aula orientalis imperii*, to have words *bilinguis huiusce modi compositionis*; and that the word *Admirallus* and *Amireus* is used for one in great trust, appeares from sundry authorities by him laboriously quoted; so that both the Admiralty and the Admirall have been in good esteem and of great jurisdiction, not only from Edward the third's time, as some have thought, because then the Court of Admiralty had it's solemnity of proceedings but from Richard the first's time, in which and for long since there were Admiralls of the West, East, and Northern Coasts, and of the floates in the Mouth of the Thames; but Admiralls of England there were none as I think (but under correction ever till the tenth of Richard the second; when Richard Fitz-Alan the younger Earl of Arundell and Surrey was created *Admirallus Anglie*. The Admiralls Jurisdiction is then *super altum mare*, and that because that cannot be *intra corpus comitatus*, and so not triable by a Jury *de vicineto*, now the *high Sea* is said to be *extra corpus comitatus*, because the Counties are the Kings as part of his Dominions, so are the narrow Seas, but this *altum mare* in the large notion is said to be *mare liberum, nullius in bonis*: but Gods Common, in which all creatures claime share, and have the priviledg and convenience, Gods blessing and their own industry by help thereof occasion to them, this is the effect of the record quoted in (a) Sir Henry Constable's Case, and hence it is, that because they are the pretensions of all Nations that descend into them, they are to be accounted of by the Laws of Nations, and the offences done upon them, for ought I know; punishable by those Laws, which the Admirall being Judge of, proceeds accordingly by; And this represents the Admirall to be a very Commander and Prince of Power, whose command is not only over the boldest and desperatest mettled men in the Nation, but over those that often commit great outrages farr off, and yet are accountable for them when they come home; so great is the Admiralls Power, that the whole Sea-Regiment, next under the King and his Laws, is his; which is the reason that Antiquity delegated this power to Peers of fidelity and prudence: Thus Tully in this place was called *ἑταίροισιν*, Bishop of the Sea-Coast; and Forcatulus tells us, France highly sets by this Officer, and gives him a large proportion of power, and requires a sutable measure of care in him, which justifies the Monarchs of England in committing this trust to great Peers, and noble heroicks. And may the honour of it ever be blest with such a Guardian as it now (thanks be to God, and our most gracious Sovereign) has, in the Noble and illustrious Prince James, Duke of York, the most August Lord Admiral of England, whose Grace I beseech God long to preserve in health and happiness.

See in Sir Henry Constable's Case. s. Rep. p. 108. 'tis resolved by the Court. *Que le Roy avera Flotsam jetsam & Lagan comme est abandonné par son prerogative comment que ils sont en au sur le mere; and the reason there is, Car le mere est del' ligeance del Roy & parcel de son corone d'Angleterre.*

Tho:ofs. Syntagm. lib. 47. c. 26. 9.

Spelmans Glosi. p. 16. 17.

Spelman. in Glosi in voce Admiral.

(a) Non est aliquis qui inde privilegium habere possit. Rex non magis quam privata persona, propter incertum rei eventum; eo quod constare non possit, ad quam regionem sunt applicanda. Six Ed. Cooks s. Rep.

Spelman in Glosi: loco præcitato. Seldens Mare Clausum.

*Vult me Pompeius esse, quem tota hæc Maritima ora habent, ἑταίροισιν speculatorem & custodem. Sic Ep. ad Attic.*

*In majori dignitate constituti sunt Duces & Principes militum, apud nos vulgo dicitur Constabularis, Castanus. Carol. p. 33.*

*Admirallus Gallica primum vox fuit, & dignitas latissime deinde a variis populis usurpata pro illo illustri præfetto, cui maris imperium & littorum, a rege conceditum est, qui classes & navalia.*

*Per testes illa juxta legum Anglie Sanctiones probari debent.]*

I take this proove of facts Triable before the Admirall, to be in this place intended according to the Civill Lawes, which is, by witnesses, *fide digni, oculati testes*; For such were, I think, within the *Sanctiones legum Anglie*, when our Chancellor wrote; but since many inconveniences happening (as I learn from the Preamble the

3 Instit. p. 112.

See *Resolnt. of the Judges*, Temp. Eliz. Regii.  
 3 Infit. p. 112.  
 4 Infit. p. 147. Title *Court of the Commission*, c. 23.

the Statutes of the 27 H. 8. c. 4. & 28 c. 15.) Piracies and Outrages committed on the Sea, are to be tryed by witnesses with a Jury, and this by special Commission to the Admiral from the King, wherein some of the Judges of the Realm are ever Commissioners, and the Tryal is to be according to the course of the Lawes of England, directed by the Statutes.

*Consimiliter quoque coram Constabulario & Mariscallo Angliæ fieri solitum est de facto quod in Regno alio actum est.*

As some mens affairs living in Counties, and others sailing on the Seas, occasion their converse each with other, and so their Trespas one against the other, and against the Law, which appoints decisions of these Controversies according to the respective natures of them; so are their injuries done to men in forein parts, which ought to have, and accordingly have appointed Tryals and Punishments for them: and these are tryable before the Lord Constable and Marshall of England, which I take (but if I err I humbly begg pardon) not to be only the Marshall mentioned in some Statutes under the notion of Marshall of the King's house, because the Statute of 13 R. 2. c. 3. limits the bounds of that to twelve Miles of the King's lodging: but the Constable and Marshall within the Text I take to be a more splendid person, the latitude of whose power

Abbot Strata  
 Marcella's Case  
 9 Rep. p. 30. 31.

5 E. 3 c. 2. 10 E.  
 3. c. 3. 28 E. 1. c. 3  
 13 R. 2. c. 3. &  
 in other Statutes.

Spelman. in *Gloss. in voc. Constabularii*.

Hertog. & Hertug. *Clavertius lib. 1. Antiq. German. c. 48.*

*Eram & alia Totestates & Dignitates per Provincias & Patrias universas, &c. Qua Heteroches apud Anglos vocabantur, scilicet Barones nobiles, & insignes Sapientes, & fideles, & animosi. Latine vero dicebantur Ductores Exercitus; apud Gallos capitales Constabularii vel Marechalii Exercitus. Inter Leges Ed. Confels. p. 147. Edit. Twissdeni.*

\* *Feron au Catalogue des grands maistres de France.*

Tholoff. *Syntagm. lib. 6. c. 3. ff. 6.*

Flor. Wigorn. in *Anno 1118.*

Spelm. *Gloss. p. 184.*

Selden *Notes on this Chap. p. 27.*

Dyer. p. 285.

4 Infit. p. 127.

1 Infit. on *Lit-leton. p. 74.*

28 E. 1. c. 3.  
*Fleta lib. 2. c. 3.*  
*L. 2. Case del Marshallea, 10 Rep.*  
 4 Infit. p. 123.

Cook. 3. Infit.  
 c. 7. p. 48. c.  
*Præmunire p. 120.*  
 & seq.

ingham, who was attainted of Treason, 13 H. 8. and came to the Crown by forfeiture, and since that time I think it hath (in regard of the amplitude of the power) not been granted in Fee to any Subject, but by Commission for a day or two upon tryal of a Peer, or such like extraordinary matter; and when it was resolved 25 of the Queen, that an appeal did lye in the case of *Doughtry*, whose head Sir *Francis Drake* strook off, and that it was tryable before the Constable, the Queen would not make a Constable, & ideo dormivit appellum. The consideration of this Officer in the magnitude of his Authority, makes the Law very punctual to bound it, that it transgress not to oppress Subjects under the colour of Justice towards them; therefore, when as this, which anciently had moderate bounds, exceeded them, the Statute of the 13 R. 2. c. 2, & 3. bounded it not onely to limits of place but of Jurisdiction, so sayes the 1 H. 4. c. 14. *All the Appeals to be made of things done within the Realm shall be tryed and determined by the good Lawes of the Realm, and all the Appeals to be made of things done out of the Realm shall be tryed and determined before the Constable and Marshall of England*, they are the words of that Statute; from whence I collect, that the Common Law had alwayes a jealousy of all power that was not conservative of the Subjects safety, but might bring him ad aliud examen than the known usual Common Lawes. And therefore our Sir *Edward Cook*, speaking of the Lord High Steward the

*Marescallus*

*Marescallus* here, for though they are two names, and some will have them two Offices, the Constable in Warr and the Marshall in peace; yet in as much as they are in the Statutes put copulatively, I take them to be (as the L. Keeper's and L. Chancellor's authority are declared to be one in 5 *Eliz. c. 18.*) but *Synonomous*. See concerning these things Sir *Edward Cook* in his Notes on the Court of Chivalry, where much notable learning in this matter is produced. The judgement of Parliament in Good *Thomas E. of Lancaster's* Case, put to death by Martial-Law, 39 *E. 3.* declared unlawfull by the Parliament of 14 *E. 4.* is notable, which Sir *Edward Cook* recites in the Chapter of Murder, to shew what Courts Martial are, when Common Law Courts sit, and *Westminster-hall* is open: see more of the *Marshal* and *Constable* in Sir *William Segar*, and those other Authorities quoted in the *Margent*, which, if there were need of it, I could extend to an infinity of similar Quotations.

*Fleta lib. 2. c. 4.*  
 &c. 5. *De Officio*  
*Mariscalli Forin-*  
*seci. de Officio*  
*Mariscalli tempo-*  
*re Tacis.*  
 4 *Instit. c. 71.*

3 *Instit. p. 52, 53.*  
 Note this Judgement.

*Honor. Military & Civil, lib 3. c. 17.*  
 4 *Instit p. 125.*  
*Speiman. Gloss. p. 119.*  
*Walsingham in R. 2. p. 245.*

*Etiā & in Curiis quarundam libertatum in Anglia, ubi per Legem mercatoriam proceditur, probant per testes contractus inter Mercatores extra Regnum factos.*

As the former cases do shew the Common Law in cases of necessity to admit witnesses according to which they judge, which Mr. *Selden* has particularized in his notes on the 21. Chapter of our Authour, and our Authour himself has herein by the former instances made good, so is this another case in which the same method to Judgement is allowed; and this is called *Lex mercatoria*, and comprehended under *Lex terra*: for this Land being opportune to the Sea, and of no great circuit (though it be one of the noblest and capaciouslest of Islands) is concerned to promote Trade as that Bridge which makes a passage to it over the vast Seas to the utmost Nations inhabiting their Coasts, and not onely vents to them native Commodities, but takes from them in exchange their growths, and by the proceed of them not onely acquires wealth, and increaseth the Navy, but accommodates the Nation with all things necessary for the universal compleatness of natural and politick life; which zeal of the Nation to Trade has notably appeared from the Reigns of *H. 3.* to this day, in which descent there have been above 120 Acts of Parliament relating to Trade; *Yea, all Acts, that have been derogatory thereto, have been ever noted in this Nation to be short lived.* These Courts then here in our Text are, as the learned *Selden* instructs me, such as the *Law of the Staple*, called so, because they were places which held and stayed Trade and Merchants, as a *Staple* doth a Lock and thereby a door; for though before the Conquest Merchants had liberty of egress and regress for certain time, so not onely the Lawes of *Ethelstan* but *Alfred*, as the *Mirror* relates, permitted 40 dayes and not above, which the 30. Chapter of *Magna Charta* confirms, yet after *Staples* of Trade erected, limiting Trade to certain places and times, Merchants grew discontented and Trade fell, till by the 2 *E. 3. c. 9.* all *Staples* were determined according to the great Charter, and Merchants set at liberty to go and come with their Merchandises when they saw fit, untill they be forbidden: the Motives to the Constitutions of *Staples* are set down in the Preamble to the Statute of 27 *E. 3. c. 1.* To prevent the damage which hath notoriously come as well to us (they are the King's in Statute-words) and to the great men, as to our people of our Realm of England, and of our Lands of Wales and Ireland, &c. To the honour of God, and in relief of our Realm and Lands aforesaid, &c. and cap. 2. As encouragement is given to Merchants to bring in Commodities, so assurance of safety to them and theirs, with such seltene remedy, as the nature of their being strangers, and from home, requires; according to the *Law of the Staple* and not the *Common Law*, which celerity of Justice contributed much to Trade, so did also the laying open of all Ports to land Merchandise at; for though native commodities are to be brought to certain places and to none other, as all *Tynn* was to be shipped forth at the Port of *Dartmouth*, till 15 *R. 2. c. 8.* which repealed that 14 of the same Reign c. 7. so also that till the 21 *Jacob. 28.* which repealed the 15 *R. 2. c. 8.* that limitation stood good; so all goods brought into the River of

See the Case of  
 Abbot Strata  
 Marcella, 9 *Rep.*  
 p. 30. 31.  
 Cook 1 *Instit.*  
 p. 11. B.

Note this.

*Selden on the*  
*Text.*

*Mercatorum Na-*  
*vigna vel immo-*  
*rum quidem qua-*  
*cunque ex alio*  
*nullis facta tem-*  
*pestatibus in Por-*  
*tum aliquem in-*  
*vehentur, tran-*  
*quilla pace fruun-*  
*tor. Inter Leg.*  
*Ethelst.*

*Stat. 2. Anno*  
 1353.

*Tynn*

*Tyne* is to be unladen at *Newcastle*, the 21 *H. 8. c. 18.* all *Wools, &c.* to be brought to the *Staple*, 27 *E. 3. c. 2.* 2 *H. 5. c. 6.* 2 *R. 2. c. 3.* 2 *H. 6. c. 4.* which though they are now determined, yet were long in force, but yet the *Staple-Law* stands good; and as the Statute of 3 *H. 7. c. 7.* gives liberty to land Merchandise at any Port, entering them in the

*Item propter personas qui celere habere debent iustitiam, sicut sunt Mercatores quibus exhibetur iustitia Popondron, lib. 5. de Brevis de reho, p. 334. & lib. 1. de exceptionibus, p. 444.*

*Cum commercia hominum maxima utilitas sint & facilis esse expeditio debeat, placuit negotiatoribus proponi proprios iudices, & fere apud omnes gentes, cum & juris gentium commercia sunt. Tholosan. Syntagm. Juris lib. 47. c. 37. Sect. 1.*

4 *Infit. c. 60.*

(a) *Cooks sixth Report.*

*Nota quod in curia mercatorum debet iudicari de aquo & bono omittis juris solennitatibus, hoc est, non inspectis apicibus qui veritatem negotii non tangunt. lib. 29. Sect. Tit. mandati vel contra.*

*Neque enim ille magis jurisconsultus quam iustitia fuit; itaque qua proficiscerentur a legibus & a jure civili semper ad facilitatem aequitatemque referbat, neque constituere litium actiones malebat quam controversias tollerat. 9. Philipp.*

*Si levanda navis gratia jactus mercium factus sit, omnium contributione sarcietur, Quod pro omnibus daturum est. Digest lib. 14. Tit. 2. de lege Rhodia.*

*In necessitatibus nemo liberalis existit. Reg. Jur. Bartolus apud digest. lib. 23. tit. 2. p. 2118.*

*Kings Books*, paying his *Customes*, and such *Merchandises* not being prohibited; so does it allow safety and speedy Justice to all *Traders* concerned in them, and that by the *Law Merchant*, which *Bracton* termes *Celeris Justitia*, and which is indulged them as they are common instruments of advantage, and in lieu of the same kindness *Natives* have in their *Countreys*; as also for the reason of *Religion*, which *Bracton* mentions, *Propter privilegium & favorem Crucesignatorum, quorum negotia maturitatem desiderant & instantiam*: and as the *Law* is in the *Staple* for *Merchants Aliens*, and is in all *Nations* of the *World*, wherein in causes of *Trade* there are proper *Judges*; so is it on the *Land* for *Natives* in *Faires*, wherein *Courts of Pipouderes* are, which are established in *Faires* and *Markets* by *Common Law* and ancient *Charters*, confirmed by the 2 *E. 3. c. 15.* & 5 *E. 3. c. 5.* which under *Faires* couches this as the Justice in them; but the 17 *E. 4. c. 2.* is punctuall in the *Court of*

*Pipouderes*, the *Plantiff* must swear that the contract was made in the time and jurisdiction of the same *Faire*, which done, there is justice to be had *de hora in horam*, as fast as the dust can fall from the foot it adheres to, that is, smartly and speedily: From hence the words he came with a powder, and ile pay you with a powder, *Pipouderes*; this *Court* is a *Court of Record* confirmed by sundry *Statutes*, as in (a) *Gentlemans* and *Gregories Cases* is set forth; and the rules of it are such as *Bartholus* mentions, to be equity and right, omitting the niceties and traverses of craft, which do not concern the truth of the matter in question, but give releife to fraud, according to which the Statute of 43 *Eliz. c. 12.* proceeds in the *Trialls* of assurance by policy, which *Law* is thought very beneficial to avoid differences and suits, which without it would be tedious, chargeable, and detrimental to *Trade*; For, surely the greatest controversies that arise, is by ignorance of right reason, and resolution to oppose it, in favour to our selves, or displeasure to others, the contrary to which *Tully* commends, as the glory of *Servius Sulpitius*, above all the men he knew or ever read of; for he was not so much a criticall lawyer, who applied himselfe to tie knots and raise scruples, to intricate and clogg causes with dark and abstruse disputes; but, as a man of conscience he accommodated all causes and cases to equity and conscience, being willing to end more causes then continue them in debate.

This regard to equity and speed of Justice, is the cause why our Text sayes, the *Law Merchant* for contracts beyond the *Seas* is allowed; For the rule being ordinarily that actions must be tried in the *County* where the cause of them lay, and by free-men of that *County*, who are in *Law* accounted *de visineto*, and this not being possible in cases commencing *extra regnum* where no *County* or *Visine* of *English* men is, yet necessary that some trial should be, the *Law* admits what prooffe can be, and therefore witnesses, *Probant per testes contractus, &c.* saith our Text; and therefore as the *Lex Rhodia* which *Vivian* comments upon, was most reasonable, *To wit, that if a ship in a storm did exonerate it self of some goods to save the rest and the lives of the men, that there should be an average, and all the goods should be contributive to the loss of those goods cast overboard, because they were an expiation as it were for the whole secured.* So say I of this proceeding of the *Common-Law*, 'tis most just; for that it takes the best course that can be to decide differences, and when it cannot do what it would, yet is excused for just in doing the utmost it can to exprefs Justice, for that rule of *Bartolus* is most true, *Necessity takes away freedom.*

*Similiter*



*Similiter si charta in qua testes nominantur deducatur in curia regis, processus tunc fiet erga testes illos, &c.*

This is another case, in which evidence by witnesses *sans* Juries is allowed; for, since the Norman Conquest, that *scriptum obfirmatum*, which the Romans called *Symbolum*, *Tabula* (whence *Tablina* in *Pliny*, for the place where Deeds and Records were kept, which we call *Ἀρχεῖον*, or *Archivum*;) *Epistola*, *Testamentum*, *Chirographum* they forsooth must let in *Charta*, in our *English* a *Deed*. This was ever subscribed with witnesses, not such as we now use, any that first comes, but the best men of the County, and neighbourhood; and that in *perpetuam rei memoriam*, to preserve the credit of it alive, even when the witnesses are dead; men of quality being probably known either by their hands or signets, which they affixed to their testimony. Now these, if they came in question, if the parties were alive to prove them, were by them proved; but, if they were of old date, and free from suspicion, upon production of them they were allowed (every man being as it were a witness for reverend and unspotted antiquity: ) In these and such like cases the Law allows, and accepts of proof by witnesses; but where the causes are referable to a proper County, and a Jury of the neighbour can be had, *Per testes solum lex ipsa nunquam litem dirimit*, saith the Chancellor, adding the reason, because it is the most excellent form; *Et remotior à corruptionis periculo*, as our Text is, concerning the excellency of the triall by Juries, which this Chapter proceeds to treat of, see the Notes on the 25<sup>th</sup> and 26<sup>th</sup> Chapters, wherein truly I have written my thoughts of Juries, not, I hope, passionately, but with that gravity which becomes a sober Author, considering that legal Juries are not made up of simple men, of which scarce soure of the twelve understand the Evidence; so that it may seem rather to be a matter of superfluity than of good policy, to refer a matter to their verdict, when, as they say, *no other thing then as the judge taught them before*; *Stultum enim est id facere per plura quod fieri potest per pauciora*, (as the words of a more learned then (in that) wise man's were) but Juries are, and ought to be made of men of worth and prudence, and when such, they are the readiest way to right judgement of fact of any in the world; and the *mos patriæ* and ancient triall of *England* being established by these, no wise and worthy mans mouth is to be opened against them: the Rule of Law being, as heretofore quoted, *Neminem oportet esse legibus sapientiore*.

*O quam horrendum & detestabile discrimen saepe accidit ex forma per depositionem testium procedendi.*

Concerning this see the Notes on the one and twentieth Chapter, whereby appeareth what dangers may come, and yet justifies in those Lands, where this is the way of triall, that to be not onely tolerable but necessary; For God having in all Nations stirred up brave spirits to affect Rule, and subjecting to them the less generous ones, gives them so excited, prudence to compile Lawes suitable to reason and civill convenience, and to perfect such endeavours as they discover in the use, the fitness or unfitness of them, It must be thought and concluded that Lawes being suited to People, and People to Lawes, the change of them with introduction of others, would be altogether as inconvenient for; and nauseous to them, as high food is to a swayne, or course diet to a Courtier; the consideration whereof prompts wise men to applaud the carrying on of Government in all places by the Topique Lawes, which ever are the best for those places and persons they were fitted for, and have been prosperously governed by.

*Nonne si quis clandestinum contrahat Matrimonium, & postea coram testibus mulierem aliam ipse affidaverit, cum eadem consummare Matrimonium ardebitur in foro contentioso, & postea in penitentiali foro judicabitur ipse concumbere cum prima si debite requiratur, & penitere debet quoties exactione propria concubuerit cum secunda, licet in utroque foro iudex fuerit homo unus & idem.*

This the Chancellor brings afresh, as a Cannon, that by its shot of reason, will (as

S f f he

Plin. lib. 35.  
Bodæus in *Tabl. dect.*  
Reliq. p. 243. *Ed. Vascos.*

*Chirographorum consecutionem Anglicanam, qua antea usque ad Edwardi Regis tempora fidelium presentium subscriptionibus cum crucibus aureis absque sacris signaculis firma fuerunt, Normanni condemnantes, Chirographas Chartas vocabant, & chartarum firmitatem cum cera impressione per uniuscuiusque speciale sigillum sub insulatione trium vel quatuor testium asstantium consuecere consuebant. Ingulphus Abb. Crowl. in *Histor. Edit. Savell.**

Doctor Ridley in his View of the *Civill and Ecclesiasticall Law.* p. 184.

*Reg. Jur.*

he thinks) through and through the credit of deposition by witnesses, and lay it low in the opinion of wise men; to wit, that Witnesses may make that good in the Law which is not such in conscience; and want of Witnesses, that void in Law which in conscience stands good before God, who judges righteous judgement, and who considers things as they are, and not as they appear. And this our Text refers to the case of Marriage, the most excellent, social, and free life imaginable (perfect Virginitie and calm Chastity, much professed but rarely attained, onely excepted.) This Marriage is called *Matrimonium*, because it of old was the Act of the will and affections, fixing parties upon each other in a constant and faithfull bond of love, cohabitation, and communication of all things each to other. *Alexander ab Alex.* tell us that the Temple *Virilis Fortuna* was the place whether all women repaired that would stand to be chosen, and there they stood naked, that everyone might see they had no imperfection, but were such indeed as their choosers took them to be: but from the beginning it was not so; for the purer ages, though they allowed candidation, yea, and as it were *candida veste*, the fairest carrying usually the Market away: yet there was much sobriety and modest kindness expressed each to other, and these parties were called *Pater* and *Materfamilias*, as much as those that though they had not yet coupled, yet did intend a Race of Natures improvement from them. For though there have been some who debase *Materfamilias* to *justa Pel-*

*Note this.*  
*Ne quis in Matrimonii vinculo in-*  
*dissolubili, fraude*  
*deciperetur. Alex.*  
*ab Alex. lib. 1.*  
*c. 19.*

*Sulpitius, Eam qua in manum conven-*  
*erat, in manu mancipioque mariti esse dixit,*  
*id est, justam esse Matremfamilias; eam-*  
*que Concubinam, qua cum viro hujus-*  
*modi uxoris consuevisset, justam pellicem*  
*esse. Budæus in Pandect. prior. p. 27. E.*  
*Edit. Valco.*

*Idonei veterum antiquarum enarratores tra-*  
*diderunt Matronam dictam esse proprie, qua*  
*in Matrimonium cum viro convenisset, quod*  
*in Matrimonio maneret, etiam si sibi liberi*  
*nondum nati forent, distumque esse ita à*  
*matris nomine non adepto jam, sed cum*  
*spe & omine mox adipiscendo. A. Gellius*  
*lib. 12. c. 6.*

(a) *Lib. 1. Regul. Digest. lib. 2. Tit. De*  
*ritu Nuptiar. p. 2106.*

(b) *Digest. lib. 23. Tit. 1. De Sponsa-*  
*libus.*

*Lege Zuingerum*  
*in Theatro. a p.*  
*3317. ad p. 3338.*

*De die & in facie Ecclesia celebrentur.*  
*Lindwood. lib. 4. De Sponsalibus p. 147.*  
*& p. 149.*

*Gratian. Decret. parti. 2. caus. 30. qu. 5.*  
*per totum fol. 1573.*

*Tholoff. Syntag. Juris, lib. 9. c. 5. ff. 9.*

*Tholoff. Syntag.*  
*Juris universi,*  
*lib. 9. c. 5. ff. 12.*

*lex*, yet Antiquity in the stream of it did not; for *Sulpitius*, the Oracle of Lawyers, makes a vast difference, as much as between a lawfull Wife and a Mistress of pleasure: and therefore the more reserved Authors called these by the grave and venerated name of Matrons; and thus *Agellius* affirms her to be accounted a Matron, who was solemnly joined in Marriage with a man, in his hand as publickly owning her, and one that with him continued, although yet there were no issue between them, but they in hope and in persurance of it cohabited and communicated each with other: and *Budæus* confirms it, as all I think must do, that write truth. Hence is it that not onely the Church has this definition of Marriage in her forms of solemnization, and in her Canons concerning it: but the Lawes of Nations do affirm the nature of it to a *Unisoniety*, as appears in the (a) *Digest*; and as they had their (b) *Sponsiones*, (it being a custome of old to promise before Marriage, and to have some interstitiary time from their consent to their Marriage, which we at this day call,

*fairly promised or contracted*;) so did they express every thing of more then ordinary solemnity by something nuptial; the Heathens had their *ritus Matrimoniales*, which their Priests performed; they had their *dies Nuptiales*, *μεγάλη, ἀπώλη, ἐπώλη*, the Eve to, the day of, and the day after the Marriage, and these they called *Dies Nuptiarum legitimi*; they had their *Locus sacer*, and their *Astantes Testes*, their *Ornatus Nuptialis*, their *Invocationes & Hymnos Nuptiales*, their *Munera & Cane Nuptiales*; all things in the *Paradoe* of our times, onely Christianity has sanctified them by this transplantation of them into a more sacred Soyle. This is the nature of the thing spoken of in the Text, *Marriage*, of which enough; because I have written of it in the Notes on the 21 Chapter: But the adjunct to it is that which makes the

stir here, *Clandestinum Matrimonium*,] such as we call, *Stolne Marriages*, when persons either *non sui juris* do marry, or when they that are *sui juris* do not *canonicè nubere*; this the Canonists say is sundry wayes so made, 1. When it is done without Witnesses. 2. When without all solemnity, *hand over head*, as we say: 3. When no publication of the *Banes* has been, and when parents consents has

not been had. These, the practices of lascivious persons, the Lawes of all Religion and Society declaim against, not as it is an Act of the will and affection for ferruminating two hearts into one, and making up such a comfort as has all the Notes of delight and content in it; for so no doubt 'tis consentaneous to nature, and approved by the God of nature, by whose donation, the powers of their compact express themselves: but as the Act has an appearance of evil in it, and is abused by evil persons, who by it live in scandal and are causal of breach of charity in them that censure them as sinners in their association, which in it self may be, nay is, before God, lawfull, *consent onely being in foro Dei of the*

*form*

form of Marriage; these, together with the Marriages of Priests, who mostly were guilty of this keeping their Marriages close to avoid loss of preferment, knowing that, if their Marriages could be proved by witnesses or instruments, their children would be legitimate, caused the Canons of the Church to be most planted to the battery of this. And in the time of *Gregory the Ninth*, Canons were made damnative of it; for so far as any thing is clandestine, so far has it been thought suspicious and uningenuous: so *Cæsar* accounts *Clandestina Concilia*, and *Tully*, *Clandestinum Colloquium cum hoste*, so *Clandestinum fœdus* in \* *Livy*, and *Motus clandestini* in *Lucretius*. Yea our Law does not allow clandestine Marriage, but disavows the posterity of it; for that Marriage that the Law of England allows, is open and authoritative Marriage, In the face of the Church, by a lawfull Minister, and according to the office and form for it appointed, of which the Bishop can take notice, and certifie whether loyal ac-couple or not, and in which case onely the issue, *quoad Legem Terræ*, will be lawfull. To this Marriage then, as Inheritance to the issue, so dower to the Wife is allowed, and all other Matrimonial Priviledges, which are denied in clandestine Marriages, because the Church and Magistrate judges not *de occultis sed apertis*; for *non observata forma inferiur annullatio actus*, as the rule (I have heretofore quoted) is, which I the rather note, because stolne Matches and libidinous Actings under the Palliædoe and Umbrage of clandestine Marriages; has been charged on our \* Nation long agoe, (but I hope better of us now.) For though it be too true that Marriage was never under so little practical reverence as now it is (the more is the pity and the shame,) it being fashionable to desert the company of their own to attend (as Gallants and Mistresses) on others Husbands and Wives: yet, God be thanked, Marriage that is honourable amongst all men, is the Sanctuary to which all modesty beneath perfect Vir-ginity, betakes it self; and though the sinfull liberty of many Gallants may break in upon the severity of his bond, yet on the gravest and greatest part of the Nation, that of St. *Jerome*, charged on the † *Scors*, is not charge-able. Every man may, and many men do drink of the water of their own Spring, so far is the Saxon humour yet undecocted in us, that we are for Wives, and but for one at a time neither. For though the Jews, Chaldees, Greeks, Romans, and other Nations had many, yea, though wife King *Solomon* was fascinated by this curiosity, which laid load on his death-bed repentance; yet with us in England the Law has been to have onely one wife at one time, though the Statute of 1 Jac. c. 11. first made it felony without Clergy. And this respect that the Law has ever had to Marriage, is the reason that clandestine Marriage has been decryed, as that which evil persons have pretended to credit leachery; and good persons, though they did it upon weighty reasons as to the world, and warrantable as before God, yet did not avoid that censure, which no humour or prudence, as they account this act of theirs, could countervail. Better a thousand times not marry at all then privately; then to one that dares not, or will not be known of it. 'Tis a slavery which no inge-nious minde can content itself to be under, because it is subject to be upbraided, and dares not justifie its loyalty. Upon all which considered, the Chancellour's minde is now to be learned, and that is, that where the Law judges onely by witnesses, that being proved which is less, as promise of Marriage before witness, shall oblige; when the greater (Marriage) being clandestine and secret; though lawfull and firm before God, may be condemned, and one and the same man, by one and the same Judge, compelled to performance with the one, and suffer penance for per-formance with the other, though that in different Tribunals, called *Fora* because the Judges sat in the Market places which were the most conspicuous and tenacious places, and because thither people applied, the seats of Justice are called *Fora*. For as penance may be enjoyned in † *Curia Charitatis*, which is the *Forum pœnitentiale* here, for paying the wife her due benevolence, according to the rule of the Apostle in 1 *Corinth*. vii. 3. (she that is clandestinely married, not being in the eye of the Church and Law the wife but a woman that lives pleasurably, and so sinfully with him, be-cause not solemnly married to him) so may he that has promised

Ridley, *View of the Canon and Civil Law*, p. 208. Lib. 7. *Commen. Lib. De Senect.* \* Lib. 4.

12 H. 8. c. 38.

Abbot *Strat. Marcell. Case* 10. *Rep.* Ridley, *View of the Lawes*, p. 200. 201. *Glanvil. lib. 7. c. 1.* *Reg. Juris.*

\* *Gentem Anglorum spiritus legalibus connubiis adterando & luxuriando Sodomitici Genis fœdam duxisse vitam.* *Bonifacius Episc. Mentz in Epist. apud Antoninum, Tit. 14. c. 2. ff.*

† *Natio uxores proprias non habet*, lib. 1. *Adv. Jovinianum.*

*Omniam fere qui ad Septentrionem & ortum habitant, soli unica uxore conte si initio fuerit.* *Sabellicus Ennead. 6. lib. 2.*

*Zuinger's Theatr. vitæ humanae*, vol. 2. lib. 2. p. 3317, ad 3326.

*Eorum appellas Quintilianus in quo iudicia publica exercebantur.*

*Budæus in Pandect. in p. 35. 67. 269.*

† *Glanvil. lib. 10. c. 12.* *Quia Ecclesia non potest judicare de his qua latent, & ideo si de clam contractis nuptiis coram iudice Ecclesiastico agatur, enim dubium illi sit non interveniente Ecclesiastica solemnitate an fuerat factum Matrimonium, non potest compellere servare illud.* *Tholoff. Syntag. lib. 9. c. 5. De Personis & ritu Nuptiarum.*

be enjoined to make good his promise *in foro contentioso*, that is, by action of the Case to the person to whom he is affidated, notwithstanding he is married privately to the first, because the second promised has a damage by the bruit of being promised, and loofeth her opportunity with another, and the Man that couples with the Woman he is clandestinely married to, shall be enjoined penance for his effeminacy with her (who, though in truth his own wife) yet in repute is but his woman.

Which considered, the Chancellour urges this effect of witnesses upon the positivity of their Oathes (which cannot be softened by consideration of circumstances which in case of a Jury would be probably in some sort allowed) to be very hard, *O quam horrendum & detestabile discrimen*, as his words are, which are an emphatick ejaculation, arguing admiration and vehemence; as if he considered a man thus straightned, as not knowing what to do, which way to take, but to be perplexed, as the *Leviathan* is described in *Job*, so it follows.

*Nonne in hoc casu ut in Job perplexi sunt testiculi Leviathan; Proh pudor vere perplexi sunt.*

This passage out of *Job* is in Chap. 40. v. 17. spoken of the *Behemoth* of the Land, the Elephant, the words are, *He moveth his taile like a Cedar, the sinewes of his stoves are wrapped together*; which words, though there be some that apply to the *Leviathan*, or *Whale*, yet the streame of learned men understand the *Elephant*, *Ones*, the Creature which cannot be chased without danger and hazard to his hunters. Now this beast,

*Behemoth Elephantem intelligunt omnes Hebræi. Grot. in locum.*

a) *Ad invincibile robur præstandum supra omnia animalia reliqua, in Loc. Aldrovandus de Quadrup. 2 p. 440. ad p. 450.*

*Testes habet non foris conspicuos sed intus circa renes conditos, Plinius de Elephant. 10.*

(a) *נֶרְוִי. Verere, formidare.*

*Nervi intricati sunt, nam nervus intus absconditus habet, Grot. in Loc. ex Arist. lib. 12. de Gen. Animal. Aldrov. de Quadruped. p. 430. 431.*

(a) *Pellican* sayes, the Ramification of his testicles is purposely expressed to set forth his invincible strength above all creatures; Since the nerves so plashed and entertwined each in other, do confirm and fix the strength of the part in which they are thus complicated; this beast, I say, is said to be perplexed, the word *נֶרְוִי* signifying a nerve, by *R. David* on 48 *Esay* 4. is rendred by *virga ferrea*, because the nerves are in *Cervice*, and makes the body like a pillar of iron or brass, solid and durable, especially when nerves are *נֶרְוִי פִּרְוִי* *Nervi testicularum*, the nerves of those parts which are most guarded by us, because most to be feared in their hurt-taking; and therefore *נֶרְוִי רַמְּסִי* ramificated, thickned and strengthened by their reticulation: This then I conceive to be the sense of the words, though God had made the *Elephant* of such strength even in his tenderest parts, yet such a straight is he

sometimes upon hunting, or other exigent brought to, that his strength failes him, and he growes cold in the nest of his heat, and weak in the element and sphear of his strength; which applied to the instance in the Text, makes good the purpose of our Chancellour, that the various effects of actions, as they are proved by witness or not, may distract men of great wit and courage, so that they may not know which way to turn themselves; but as people in feares and transports, are sorely angariated, *Proh pudor vere perplexi*, as the Texts words are: For, as between two scoles, we say, *a man gets a fall*, so between these two rivalls, for a mans company, the man loofeth himself, in an uncouth despaire and dissatisfaction, which of the wayes to take, and women to apply to. And

*Ligula modus magicus frequens apud Gallos, quo excellentia Matrimonia solvantur, & conjugale vinculum à deo institutum labefactatur; & tamen hoc agere non tantum perditurum hominum est, sed virorum bonorum & honestarum seminarum, nec putant hoc tam eporni facinore deum offendi, quod id impune patrant omnes & doceant. Boissardus, lib. de divinat.*

this the Chancellour charges on the proceeding by witnesses, as causall of the confusion and uncertainty, but whether so or not, I determine not, since arguments from accidents to Subjects do not follow always, For though I know there be no such Magick Girdle in our Law, as *Boissardus* sayes amongst the *French* is usuall, and approved to dissolve Marriages, by incapacitating the parties to act their kindenesses each to other, which is a perplexity, which every unhappy sufferer cries *Proh pudor* upon; yet, in as much as possible it is, that witnesses credited over-much by Juries, may drive a matter to this farall issue, I will not peremptorily say, that 'tis impossible, though I may safely say, 'tis improbable any such thing should, and, I think, without president, that *Tale malum aut discrimen in casu aliquo evenire possit, etiamsi Leviathan ipse ea generare nitatur*, as the words of the Text are; And so with a recollection of what has passed, and an application of the reason of them to the credit of the Common Law in this method

method of Juries, he concludes the Chapter, gratulating the Lawes as victorious after all the eclipses and scrutines, prejudice in some, and disaffection in others put upon them; notwithstanding all which they do, *Tanto magis clarescere, quanto eisdem tu amplius reluctaris*, as his conclusive words are.

## CHAP. XXXIII.

*Princeps. Video, inquit, & eas inter totius orbis jura, in casu quo jam sudasti praefergere, considero in Legibus suis minimè delectator, &c.*

THIS Chapter is purely transitional, and framed, by the liberty of Dialogue, to accommodate the continuity of the discourse; and to introduce the Chancellour, not so much imperiously commanding (for that had not well become him though the Nonages of Princes level them also to their Tutor's temporary and disciplinary Sovereignty) as sweetly following the Prince with such tuition as might occasion his Questions, and such solidity as by answer might resolve them. Now, as in Comparisons there cannot be a total and compleat correspondence, but in some of the four feet they move upon, they are defective and untunable; so in Discourses Dialogique, there is not a direct and strict verity of History and Fact in every part of the questionary and to be resolved part, because that (like *Chancery-Bills*) being formed to discover, is composed of such generalls; as in the answer to them, will comprehend the matter aimed at to be resolved. For, as Rivers by circumambieny and circularity of current and channel bring themselves to their Center, and the Rider on them to his Port; so do Questions vaguely, if with strength of art proposed, promise proper resolution to what is most material and of consequence in them. And hereupon, though I am apt to believe the Prince might answer in the love of his heart and satisfaction of his judgement this personation here, in those words, *Video, & eas inter totius Orbis Jura in casu quo tu sudasti praefergere*; ] yet do I, under favour of our Text-Master, much doubt his privity to the next clause, *Considero tamen Progenitorum meorum, &c.* ] because (as I shall in the next Chapter make appear) I know not whom of the Kings of England he could intend here; for none of them do I ever remember, so little concerned in their own stability as to part with the Munice Common Law, the firmest Bond of Sovereignty and Subjection next Religion, according to which it is framed, and which, in all the severity of it, it affirms; nor is it (were there any truth in the story of such mistake) usual for, or commendable in Princes, to mention their Predecessours with dishonour, as truly this is, *not to be delighted in their own, but enamoured with forein Lawes*. This, I say, being the Subject of this Chapter, and so onely the Prince's, as by it he is personated in the order of the Dialogue, courts me to no long stay on the consideration of it, but serves me for a Pass to the following Chapter, in the Notes on which the fuller display of these matters will appear.

*Satagentes proinde Leges Civiles ad Angliæ Regimen inducere, & Patrias Leges repudiare fuisse conatos.*

Master *Selden* on these words confesses, *He understands not the Prince*, and his reason is, because the Chancellour here, speaking in the person of the Prince, tells of some of his Progenitors, who, admiring the Civil Lawes, endeavoured extrusion of the Lawes of the Land, commonly used, and alwayes approved best for this Nation: and what King, (saith he) of England ever desired the Lawes of Rome? As intimating, that no president can be brought for this averment. But, with leave of that learned Gentleman, I think, if due consideration be had to the form of speech, 'twill not be strange, that he should put a question at large to receive an answer in point: For the Chancellour, being desirous to take occasion to speak of both Lawes, and of the conveniencies and inconveniencies of those to good Government and Order, and coveting a just provocation to bring them in view with reproach, who endeavoured to remove the ancient bounds, and to take off the dishonour from Kings, the faults of whose

whose Ministers are accounted to them, most an end to their disadvantage, and sometimes to the endangering of their Governments, brings the Prince in, laying a heavy charge against those he complains of, that so, in the answer the truth may be the more transparent. And therefore the words are not to be taken *de facto*, as if any Kings had so done; but *de more Prudentis*, who, desiring to make way for this design, does it by assertions, which are not onely postulative of, but important to be answered. For suggestions, that seem in their first appearance wilde and eccentricque, in their just *examen* cause notable defences and discoveries of matchless advantage, it being in resolutions depending upon Question, as in things that men seek for and would finde, they must seek as well where they are not as where they are; so the depth of wisdom is often arrived to, when questions are made not seemingly conducing to it: and we often finde what we most expect, from that design or essay that we least confide in.

As for any that endeavoured to undermine the good Lawes of *England* by *Foreign* and *Imperial* Lawes, they were not of the *Race of Kings*; (for they are as much honoured, secured, and dignified by the Lawes of *England*, as by any other Law: and Government is as much carryed on, in the point of Justice, under the *English* Lawes as any, insomuch that King *James*, who was born and bred under the distribution of the *Civil* Law, and was of great years, experience, and learning in the Lawes of Nations, sayes, as heretofore I have quoted him, *Notwithstanding that he thinks he is able to prove it, that the grounds of the Common Law of England are the best of any Law in the World either Civil or Municipal, and the fittest for this people*, thus He; Kings and Princes of wisdom and moderation, preferring old and approved Lawes and Customs beyond new conclusions and models.) But those that were for novelty, and either appeared vain or vile persons, such as had new projects to rule towards, or thought Lawes but like Rattles, of no solid import to the honour of a Nation, *Non tam comites Regni, quam hostes Publici*, as *Sarisburyensis* terms some evil Counsellours in his time; such were *Alexander* Archbishop of *York*, *Robert de Vere* Deputy of *Ireland*, *Michael de la Pool* Earl of *Suffolk*, *Robert Tresilian* Chief Justice, who, in the Parliament 11 R. 2. were by the King and Lords in Parliament protested against, for endeavouring such a subversion of the Lawes as this the Chancellour treats of; see the judgement thereon in Mr. *Selden* on *Fortescue*, c. 32. p. 41. There is an Account in *Roger Bacon*, that King *Stephen* made an Edict against the Lawes of *Italy*, which *Sarisburyensis*, a man of great place and authority both with the King and the Pope, sayes, *was onely to indict the Canon Law*; for he mentions it as an offence to the Church, his words are these, *Alios vidi qui libros Legis deputant igni, nec scindere verentur, si in manus eorum Jura pervenirent aut Canones*; and he goes on, *Tempore Regis Stephani à Regno jussa sunt Leges Romana, quas in Britanniam domus venerabilis Patris Theobaldi Britanniarum Primatis asciverat; ne quis etiam libros retineret editto Regio prohibitum est, & Vicario nostro indictum silentium, sed Deo faciente eo magis virtus Legis invaluit, quo eam amplius nitentur impictas infirmare*, so He.

Speech at Whitehall, Anno 1607. p. 512. Of his Works.

De Nugis Cur. l. 2. c. 21.

See Sir Ed. Cooks Preface to the 2. Report. Lib. 8. c. 22. usque ad finem. Edis. 1595 Lugdun. Batavorum.

In Cap. 33. p. 45.

In Novella lib. 2. p. 104. Edis. London.

Tag. 104.

Indeed, saith the learned *Selden*, in Archbishop *Theobald's* time both the *Canons* and *Civil* Law began to be published; and its like enough, that going from *Bee* in *Normandy* (where he was *Abbot*) to *Rome* for his *Pall*, he might bring those Lawes home with him; and it should seem the then *Pope* took this so heavily, that he by a *Legate* severely increpated him, and told him, as I have it from *William Malmsbury*, *Non debere illum, qui se Christi fidei subiectum memipisset, indignari, si a ministris Christi ad satisfactionem vocatus esset, tanti reatus conscius, quantum nostra Sacula nunquam vidissent*, and he adds, that he seems in a kinde ungratefull in thus doing, *Ex debito etiam oportere ut Ecclesia faveret, cujus sinu exceptus non manu militum in Regnum promotus fuisset*. But *Stephen*, for all their bigg words, despised the *Canons*, and commanded none of the *Clergy* to use them, or go to *Rome* to appeal, *Quia si quis contra voluntatem suam & Regni dignitatem ab Anglia quoquam iret, difficilis ei fortasse reditus esset*, they were the words of *Alberic de Ver.* the Kings Lawyer or Justice, as I finde them before quoted.

[Horum revera consilium vehementer admiror.] And well he may, for the Lawes of *England* make *England* not a popular State, but an *August Monarchy*; not dependant

on Pope, or People, but on God: not elective, but successive, and by constant recognition settled and declared it so; not subject to absorptions, as the *salique Law of France*, which cuts off daughters and their issue, but as rightfully successive in the line of descent, whether Male or Female, married or single, of an other Nation or our own; right to the Crown takes away all imperfections: no King is an alien, a minor, an idiot; he that is such is every way accomplished, worthy our duty and prayers. That adage had significancy, *Quicquid coronatum videris, etiamsi bos sit, adorato*; so that all things considered, and the Common and Statute Law being so subsidiary to the Crown, and subsisting it upon such a basis, as nothing but Treason, Treachery, Perjury, and National defection can endanger or subvert, I clearly am of the minde, that the Counsell; that shall disparage the Lawes that yeild such aide to the being, subsistence and glory of Regality, should be attainted; For 'tis against reason that such a *Zimri should have peace* who thus endeavours to abuse his *Master*, by dishonouring his Masters Mistriss, the Law.

But in all times some sycophants have bespattered the eares of greatnels, and suffurated pernicious Principles into it, which has, by Gods just vengeance, been the ruine of the givers of such ill advice; of this number were *Empson* and *Dudley*, who; contrary to the antient way of trying men *per legem terra*, upon a bare information, without Triall by twelve men, obtained an Act of Parliament of 11 H. 7. c. 3. to be impowered to determine all offences, against the Statutes made, and not repealed: This unjust and injurious act (they are Sir *Edward Cooks* words, not mine) by the forged, feigned, and crafty informations of them, brought great dammage and wrongfull vexation; and the ill success hereof, and the fearefull ends of these two oppressors should deterr others from committing the like, and should admonish Parliaments, that in stead of this ordinary and precious triall *Per legem terra*, they bring not in absolute and partiall trialls by discretion, so sayes verbatim Sir *Edward Cook*. For 'tis fit that those that attempt to subvert and enervate the Kings Lawes, should, according to the old writ, *Ad capiendum impugnatores Juris Regis*, be carried *ad Goalam de Newgate*, which is *lex terra*, by process of Law, in this case, to take a man without answer or summons, and the reason is, *Merito beneficium legis amittit qui legem ipsam subvertere intendit*; and I wish all that will not take warning by their miscarriage may fare as they did: For, as the Lawes have hitherto seen their desire upon their enemies, and by their judgment sent them to their Execution, so, I hope, for hereafter they shall: and so the Prince ends this three and thirtieth Chapter.

2 Infit. p. 51.

Cooks 2 Infit. p. 51.  
Regist. p. 64.

Sir Ed. Cook  
2 Infit. p. 53.

CHAP. XXXIV.

*Cancellarius. Non admiraris Princeps si causam hujus conaminis mente sollicita pertrahares, &c. Audisti namque superius, quomodo inter leges civiles precipua sententia est maxima illa que sic canit; quod principi placuit legis habet vigorem, &c.*

THIS Chapter openeth the cause why the Prince expected to be answered by him, according to his scruple pre-recited; And for what concerns the rule of the *Civill Law*, *Quod Principi placuit, &c.* I shall referr the Reader to the Notes on the ninth Chapter, where, as in every other part of this Book I have endeavoured (by Gods grace conducting me) to demean my self as a sober Author, a sincere Subject, an humble Christian, and an honest *English Man* ought to do; of that then I have nothing to add, but to pray in *David's* words, *Give thy judgments, O Lord, unto the King, and thy righteousness unto the Kings son*: And then, when the King by this Royall Donation is redeemed from error in judgment, there will be no terrour in the rule, *Quod principi placuit legis habet vigorem*; For, then he will not judge upon his own advice, but with advice of Counsellours, and in the capacity of a Regall Encathedration, attended with sage and prudent men of all ranks and ages, which makes it *Placitum non mera voluntatis & arbitrii, sed rationis, consilii, justitia*, as all the Doctors agree this clause of their Law to import; and thus sending it, as it on the one hand waves the

The Authors  
desire in this  
Book.

confusion

*In usu fuit reipublica officia consensu & suffragio populi dispensare, & hoc elevatione manuum; unde à Græcis χηροσολειά vocantur qui in rescriptis imperatoris Theodosii & Valentini Creatores appellantur cum vulgo creditores, Cujacius apud Petreium in notis ad Philonis librum de officio Judicis.*

(a) *Leges namque Anglorum licet non scriptas leges appellari non videtur absurdum, cum hoc ipsum lex sit quod principi placet & legis habet vigorem, eas scilicet quas super dubiis in consilio definitur Procerum quidem consilio, & principis accedente auctoritate constas esse promulgatas. Glanvil. in Prolog. ant. Tractat. de leg. & Consuetud. Angl.*

4 Inst. c. 1. p. 3.

*Qua quidem de causa Moses Reges istos ac principes quasi corporales quosdam Deos suo nomine constituit qui in Rep. regenda & moderanda vicariam et operam præstant. Hopperus, lib. de Inst. Principum. Verum ac proprium boni principis munus est dei imaginem & similitudinem ut gerens, suorum commodorum oblitus, in unius Republica veram ac solidam bonum cedat. Hopper loco eodem.*

*Rex] Deorum omnium commune elogium, sic Apollo à Theocrito, Neptunus ab Homero, Priapus ab Orpheo, deorum dii omnes ab omnibus Poetis. Cerda in lib. 10. Æneid. p. 493.*

Lib. 2. de Jur. Belli & pacis. p. 337.

Eicon Basilic. 6. 150.

confusion of popular suffrages, the candidates to which do cringe and crouch to their voters; and being their creatures are apt to tempt them to partiality, to gratifie their importunate cravings, which was the inconvenience in the popular Government of Rome, so does it also relate to the absolute and unlimited wills of Princes, over whom, though Authoritatively and with Magistrery none have power within their Dominions, but onely God, whose their Life, Breath, Thrones, Power, and Soules are, and who with them can do what he please; yet in these the voice of wisdom advocating, the love of benevolence conjuring, and the reason of policy advising, all transactions by advice and serious consideration (separate and abstract from passion, and the bewitching transports of it) do but declare them great to good purposes, and not advantage Princes beyond what's virtuous and safe for them to assume, and for their Subjects to submit to. For so (a) *Glanvil*, who wrote in *Henry the second's* time, (a happy Reign under a most pious Prince, under whom Justice so flourished, that no man durst be unjust, or contumacious against the Lawes;) I say, this King, who ruled so potently, because he seconded his power with virtue, did so demean himself under the liberty of this Maxime of grandeur, that (a) *Glanvil*, one of his

Judges, allows this, *Quod principi placuit*, &c. not to be contrary to the Common Law of *England*, when associated with the Council of his wise men, His Peers and Commons in Parliament. For, as in the sense of the Kings giving life to the preparations and advices of both the Houses, it is said, a Parliament can do every thing, it being the *ultimum sapientie*, of which no dishonourable or defectuous thing ought to be imagined; so in the sense of the two Houses counselling the King to pass a Law, and he accordingly assenting, *Quod Principi placuit* may become an *English Law*, without any entrenchment on lenity, or the Subjects liberty, both which are then only endangered, when they are beleagured with Power and Passion, in the High-noon of which, reason is as at Midnight dark and inorient. So long then as God perswades the Prince to moderation, and keeps his eyes intent on his dependance on him, whose vicarage his mortall divinity is, the greatness of his power will not provoke him to extend it beyond the line of prudence and piety; but so to use the prerogative and participation with supernity that he hath, that it may appeare he onely resolves it into the glory of his institutor, and end of his institution; which is not onely the voice of Scripture in the assertion of wisdom, *By me Kings Reign, and Princes decree Judgment*: but also of those Heathen Oracles, which by calling *Apollo, Neptune, Priapus, Jupiter, Kings*, taught King to act according to the nature of God, *Suaviter & fortiter*; Paternly, with bowells of good will to their Weale, and severely to the preservation of Authority in all the just and usefull appendencies to it. And since the power of legislati-

on is eminently in the Prince, and every humane Law depends so upon the will of Man, that it not onely is there in *origine*, but in *duratione*, as *Grotius* his words are, there is good reason to pray for Princes direction in well doing, that they may both further it by their Lawes and in their lives; which if they do desire to do, this *Quod Principi placuit legis habet vigorem* will not be too great a prerogative for them. For, though they will easily contemne such shadows of God, who reverence not that supreme and adorable Majesty, in comparison of whom all the glory of men and Angels is but obscurity: Yet hath he given such characters of divine Authority and sacred power upon Kings, as none may without sin seek to blot them out; nor shall their black veiles be able to hide the shining of my face, while God gives me a heart frequently and humbly to converse with him, from whom alone are all the traditions of true Glory and Majesty; so saith that glorious Monarch, our Martyr'd King Charles.

Qualiter



*Qualiter non sanciant Leges Angliæ, dum nedum regaliter, sed & politicè Rex ejusdem dominatur, &c.*

Of this see the Comment on the ninth Chapter, where the Text being the same with what it here is; the discourse thereon is proper to be recurr'd to; onely let me hint an instance of the moderation and bounty of one of our Kings, who commanded very sovereignly, yet was himself commanded to part with his own advantage for their good. 'Tis of *Edward Grandchilde of Edgar*, who remitted the *Danegeld* to the people, which he looked upon as the Devils heap, being exacted from the poor Subject by violence, and therefore commanded the return of it to the owners, protesting, *Not one farthing of it so unjustly obtained should ever bide with him*; which I introduce, not as the onely instance of such Monarchique bounty and benevolence (for later examples there are as great as it; *The Act of oblivion or free and general pardon, &c.* not being a lesser but a far greater indulgence, thanks be to God for giving his Majesty a heart to do it, and thanks be to his Majesty for being so free too, and so constant in that magnificent Action, which has, to use the Scripture phrase though in another sense, *prepared salvation for Walls and Bulwarks of safety in the loyalty of his people*) I say, I quote not that now, as the only instance of Regal Heroicism; but to minde men, that are strait-laced, and think Monarchy not so free a Government as the Republican way is, that Greatness of minde directs Princes to bound themselves where no bound is besides that of their own fixation; and that, be the Regal power what in the Ocean and Altitude of it, it can in a mortal man and managery be, yet even this great power, when it is dispensed with an eye to God the Judge; (to whom Princes as well as others are, and shall be accountable, and in conscience to justice which Princes are to propagate and carry on) cannot be but beneficial to pious and peaceable Subjects; and that the freest *Regiments* men fancy to live under, will without this restraint either finde occasions by arrogations of advantage to it self, or take occasion of derogation from others, to exercise its power vexatiously. Enough then of this part of the Chapter, I proceed.

*Et de tam fera Exactione, nisi Iota unum voluit retinere.* Ingulphus Edit. Savell. p. 510. Voluminis.

12 Car. 2.

Note this O *England* and be thankfull.

Isa. 26. 1.

*Quod Reges quidem Angliæ egre ferentes ]*

Who these were which the Chancellour predicates this of, I do not well know; for though King *John*, *Henry the Third*, *Edward the Second*, *Richard the Third*, and *Henry the Fourth* may be as probable to be intended as any, in regard that the Chancellour might think, that the rigour of some of their proceedings, transcending the moderate tenour of the Common Lawes, tended unto somewhat incongruous with politick Dominion, and came too near to that which he here calls, *Libere dominari in subditos, ut faciunt Reges regaliter tantum principantes.* ] Yet that any of them did declare and produce so much displeasure against the Native Lawes, (because they were such a Sanctuary to liberty and such a Mall to the contrary, as *libere dominari* in our Text's sense would be, and shewed so great desire of other Lawes by which they might be the more lawless) as might give rise to this assertion of our Text, is to me a Riddle. I confesse the confession of my learned Antecessor on this service to *Fortescue*, Mr. *Selden*, who sayes, here *I understand him not*, from him I learn that there was a protestation against forein Lawes, and that the King in Parliament declared, and that with a plenary concurrence, *That the Realm of England, unques ne ferra rule ne gonerne par la Ley Civil;* which shews, that they ever accounted the patrial Lawes most fit for *England*; and satisfies me, that there was no signal endeavour in our Princes to alter the frame of our Lawes, but that this, which the Chancellour here insinuates, has an eye more to some particular actions that signified, in the externity of them, some such tendency, rather than any studied and designed scope to such an impossible Atchievement. And therefore that *H. 7.* thought *libere dominari* (in our Text's sense) an unprincely English Principle, is plain from this, that though he came in by battel, and recovered his Crown by a hot Military dispute: yet, *pro animi sui magnitudine aleam*

Notes on Chap. 33. p. 41.

11 R. 2.

Dom. Baconus Cancell. in H. 7.

tim jecit, he waved all Titles of Arms, and betook himself to his native right, and built up his regality by those durable and firm foundations of Law and inheritance, which he would so use, as a King by just claime and right of descent ought to do. And though he discarded not other pretenses as second to this, but kept them to obviate private enmity and publick contradiction; yet his great trust, next to God, was in the Law, which devolving the Crown on him, with it brought all perquisites of it, and laid all the obligations (*I write the word with reverence*) on him, to rule *Mores Majorum*, that is, by the *Patriall Lawes*: and how the issuant successive Monarchs from him have strenuously propagated this president all men know, that know any thing, and all men must confess, that will owne the truth. For though mistakes and prejudices have given being to some seemingly-unpleasing actions, yet in truth there has been as great alienation in the mindes of our Monarchs, from introducing *Perisiam servitutem*, (as *Tully* calls that Government which is *Non modo Romano homini sed nec Persa cuiquam tolerabile*, as *Lipsius* quotes him) as the Parliaments and People of it has had opposition and regret in their natures against it; and that not onely because the

E. Bacons Hist.  
II. 7.

In notis ad lib. 2.  
Senec. de Beneficiis. p. 29.

Postremo cum juramento addidit, quod noluit sacramentum violare ad quod astrictus fuerat in Coronatione sua, concedendo literas pacis, & indulgentia tam notorie delinquentibus, in sua persona contemptum & totius regni perturbationem & Majestatis Regia laisionem. *Walsingham* in E. 2. p. 92.

Lawes Muncipe are the secrecy of their own establishment as well as of their Peoples freedom, but also because to maintain those Lawes they were sworn at their Coronation. Which truth *Edward the second* made use of, in Answer to the Lords and others in Arms against him, under pretext of their Liberty, assuring them, that he would never neglect the Majesty and piety of a King, so farr as to depart from his Coronation Oath; and that since they had taken Arms in defiance of him and the Laws, they should be tried by God and

their Countrey, whom they had disturbed thereby, and not be acquitted by his favour, to whom their hostility was as much as in them lay a Detronement, or at least without mercy the prologue to it. And therefore as I in this, stick at the *Quidam Regum*,] &c. not knowing who the Chancellour intends; so do I at the act here charged on them, *Moliti sunt ipsi progenitores tui hoc jugum politicum abjicere, ut consimiliter & ipsi in subiectum populum regaliter tantum dominarint; sed potius debacchari queant, &c.*] This certainly is a very great charge, yet 'tis euphemiz'd by the generality of the expression, and the namelesness of the persons it refers to. Yet perhaps our Chancellour to the other before mentioned, whom he conceived to rule besides the Laws, and were thereby censurable, *Moliri jugum politicum abjicere*] he might mean *Edward the third* who though (by the Stat. 14 Regni, it was ordained, *That the Realm of England and the People thereof, shall not be subject to the King, or Kingdom of France*; the reason of which Act was, because the Kings of *England* then being Kings of *France* also, the subjects of *England* might be subject to the King and Kingdom of *France*, and so grow into a Government like that of *France*, which is in the Texts words, *In subiectum populum regaliter tantum dominari.*] To prevent which, the Peers and Commons in Parliament requested the King to declare, That the Kingdom of *England* never was, nor ought to be in subjection, nor in the obeysance of the Kings of *France* which for the time have been, nor of the Realm of *France*: and a little after, *Our said Realm of England, nor the people of the same, of what estate or condition they be, shall not in any time to come be put in subjection nor obeysance of us, nor of our Heires nor Successors, as Kings of France, as afore is said; nor be subject nor obedient, but shall be free of all manner of subjection and obeysance afore said, as they were wont to be in the time of our Progenitors, Kirgs of England*; so declares that Statute: notwithstanding which Statute his fingers (are thought by some) to itch after something in the *French* Government here. For though in the six and thirtieth of his Reign he passed an Act at the instance of his Parliament, that *Pleas and Records*

Foulton, p. 140.

E. 3. c. 15.

Ut singuli artes suas exercerent, & ut nulli pannus prætensis aut pellura uterentur, nisi qui possim expendere per annum centum libras; & ut plebei operarii & agricultores non vesterentur cibis delicatis aut potibus sed hæc omnia nullum essetum capiebant. *Walsingham* in E. 3. p. 173. *Edm. Lond.*

of Law, which till that time were in *French*, should henceforward be pleaded in the *English* tongue, and enrolled in *Latine*; yet he did at that time, as *Walsingham* writes (though I confess no such printed Act is in Anno 36.) endeavour reducement of the Commons *A la mode de France*; *No man was to wear rich clothing but he that could spend 100. l. a year; and the husbandmen and day-labourers should not eat nor drink daintily*: which though it was a fruitless constitution, it being free in *England* for men to wear, eat, drink, and live in any reasonable proportion, to Gods mercy, in the blessing of their industry, and the discretion men shew in the

the managing of it) yet it was suspected to be some little experiment towards a more plain change: but whether this were any inducement to the Chancellour thus to write or not, I cannot say, onely somewhat historically true there was, which occasioned this averment of the Chancellours, who by this *Moliti sunt Progenitores tui hoc jugum politicum abjicere, & ipsi in subiectum populum regaliter tantum dominari, sed potius debacchari queant* ] did not intend to blemish the Predecessors of his Prince, for that ought not to be suffered, as King James of happy Memory, the once Learned deceased King of this Land, counsels not to permit, *Suffer not both your Princes* (saith he) *and your Parents to be dishonoured by any, especially sith the example also toucheth your self, in leaving thereby to your Successors the measure of that which they shall meet on again to you in your like behalf,* thus that King. No such intent, I say, had our Text-Master, but his aim being to press on the Prince the love of the Lawes, he produces all those instances of discouragement to the contrary, from consideration of the naufrage Princes have been incommodated by, who have least adhered to the National Lawes, and lain in their affections loofest from them, as did *Edward the Second*, whom *Peirs Gaveston* so misled, that, *though he loved gain better then Justice, and his own profit beyond the common profit of the Realm; yet was so favoured by the King beyond measure, that he led him into very praterlegal courses;* so did *Edington*, Treasurer to *E. 3.* who to advantage himself did not care to embase the Coyn, whereby every thing growing dear caused much murmure in the Nation; for that it not onely burthened the Subject, but dishonoured the Crown, in that which is one of the Glories of it, the Coyn.

And therefore our Chancellour, writing thus to the Prince, does not *παρορθεύειν*; write beside his Text, as those Musicians do err in their art that do rave *extra Cantionem*, but he keeps in these notes of good counsell close to the duty of a grave Counsellour and a good subject, who, intent on his duty, proposes to his Prince such studies and wayes of politick Government, as may make his Government paternal in his lenity, and loyal in his Subjects obedience; for well he knew, besides the provocation of God and the hazard of the Prince's peace, the contrary thereto does but betray seduction and transport, which is the greatest abatement to the glory of a Monarch of any thing possible to diminish him: and when he has done all he can to make good his first departure and eccentricity, his conclusion towards serenity will be retractation, which had *Edward the First* foreseen, he would not have broken the Act of 25 of his Reign, by laying unusual Taxes without consent of Parliament on his Subjects, which occasioned their murmure and disquiet, produced his passing the Act *De Tallagio non concedendo, Anno 34 Reg.* which, though it were acceptable to the Subject, yet did not advance him so high in their opinion, as forbearance to burthen them, of which they could be eased no other way then by such an Act, would have procured him: which the Chancellour, (no *Aristodemus* who had been seven years at *Athens* and yet was altogether an infant in strength) no such fruitless Student or Traveller but a man of great sageness and conscience, makes forth to the Prince by the just measure of Government, according to the Law of nature and the Comments of national practice and just constitution upon it, in a discourse which he purposely penned and termed; which though I have never seen, nor could I hear of any that ever saw it, yet was in being long after his time: and for which, as this, and other his Works, men do honour Fortescue in the words almost that the *Oxford* Oratour did learned *Cambden*, *Velata lugent furinum capita, ille velum decrabit, occulta stupent natura mysteria, ille aperit, dignus unise qui caelo à consiliis adoptetur, & sacer fiet jurisprudentia arbiter;* yea, as the most ingenuous *Descharies* does our matchless *Dr. Harvey*, *As the first He that gave rise to the circulation of politick bloud in the body of the English Government;* none (I think without partiality) ever before him giving us so full and succinct an Historical and rational account of the *English* Lawes and Government, as he did, who, as he was a great States-man and Lawyer, whose many years, generous education and experience, had instructed him in what was knowable to a matchless accomplishment, so was he a very just and conscientious

Basilicon Doron lib. 2. p. 158, & 168. Works in fol.

*Nullius consilium, nullius consortium, nulliusve solatium curaro videbatur nisi Petri solius, qui pecuniam potius quam aequitatem plus respexit, munera quam casarum qualitates.* Wallingham p. 70. in Anno 1310.

Hypodeigm. Neustria. p. 122.

Cent. 2. Chil. 2. Adag. 47.

Confirmaciones Chartarum. 8 Instit. p. 532.

*Ἐρασμὸς ἐν ὀδύλλας ἐκ ἐπιγραφῶν, Ad. 7. Chil. 2. Cen. 2.*

*The praise of Fortescue.*

*Townlxi Orat in memoriam Cambden. 1624. Imp. Oxoniz.*

*Cui laus hac tribuenda est quod primum in ista materia glaciem fregit, primusque docuerit multas esse exiguas vias in arteriarum extremitatibus, per quas sanguis quem à corde accipiunt, in ramulos venarum ingreditur.* Descharies in Method. Dissert. p. 43. De D. Harvey.

*Interveniente enim populi voluntate & assensu crescit robur & potentia regum & major est ipsorum auctoritas & saliores progressus.* Comminzus Com. lib. 55. de Gest. Ludov. 11. p. 179.

Christian and *English* man, whose influence on his Prince spent it self in nothing more then in confirming him in the reason and love of the Lawes; For, as wisdom and experience enables to give good counsel, which doth not only make Monarchs prayed for, and praised while they adhere to them, but conjure Subjects to obey, in and for the Lord, their Governours so set over and to ruling amidst them, This is the effect of that part of the Chapter which treats of those things, *Politice regere & Regaliter dominari*, as they are pourtrayed out in the Governments of the Kings of *England* and *France*: but because concerning this I have written in the Notes upon the fourteenth Chapter, I conclude here, yet still following the Chancellour, who to make the Government of *England*, under its gentle and paternal Monarchy, appear glorious, compares it with the Government of *France*, which he accounts more despoticque, and so less indulgent, as in the following Chapter is set forth.

## CHAP. XXXV.

*Reminiscere (Princeps divine) qualiter villas & oppida Regni Francia frugam opulentissima, dum ibidem peregrinaris, conspexisti.*

THIS Chapter treats of the condition of the *French* Subjects under the high and mighty Government of the *French* King, who governing his people not according to the ancient constitution of *France*, by a generall Assembly of the three Estates, the Clergy, Nobles, and People, by whose sanction every one was bound, not the

King excepted: (I say, after *Albergatus* no meane Authour) this way of Government being after a long continuance changed, in *Lewis the eleventh's* time it was made capitall (not onely to endeavour, but even to word the restitution thereof.) *France* and the People thereof become ruled by Armies and Counsels of power, in which only Royall will and pleasure did preside; This being the condition of *France* in the infelicity of her Subjects crushed and crumbled into nothing by the hard hand of power unallayed, and unveluctly lined by the lenity of Politick Government mixed with Regal. The Chancellour (who was ever bred up under our paternal and divine mixture, which he treats of in many Chapters,

*Quicquid in eo conventu decerneretur legis habebat vigorem, neque modo populos obligabat sed ipsum regem. Sed postquam regum virtus defecit, & cuique sua libido imperavit, hac consuetudo congregandorum statuum abolita est, ut paulatim hoc iugum summo veretur. Tempore autem Ludovici undecimi perduellionis reus habebatur, quisquis de eo consilio restituendo verbum fecisset; solebatque Rex ille usurpare, se ex Ephelis jam excessisse, neque tutoris egeret, Albergatus discurs. Politic. p. 167.*

Comminzus Com. lib. 10. de Gestis Ludov. 11.

as the Government which approximates that of God, and of Paradise, if man had continued in innocence) mindes the Prince of what fruit he ought to collect from travell, and how great advantages to intellectuall accomplishment his pilgrimage in *France* gave him; since, while he was at leisure to observe (being discharged from the encumbrances of business, and pomp of life) he might, and ought to lay the foundation of after wisdom in the observation of present occurrences, which, because those of the Government and People of *France* (the place of his displeasing present abode. (For, who can leave *England*, the happiest of Islands and Nations if it had one publique spirited man in it, as the wise Abbot of *Escalia* adieuing it, said, without grief or regret) were most contiguous to him? he humbly addresses to him the recollection of himself concerning those discoveries of his Travell, which may facilitate to him the truth and importance of his Chancellours arguments, in behalfe of *England's* constitution and Lawes, here in compare with them. Now, though I well know comparifons in Governments as well as in persons, is no further discreetly practicable, then is civill, seasonable, and necessary, *which restraints and modifications I am resolved shall bound me*; yet must I crave leave to do right to mine own Native Countrey, and her most admired Government, Lawes and Monarchs, which according to all Authors and Confessions is the most free and fatherly, and to disclaime all admiration, or (as to my private affection and sphere) admission of any thing which is enervative of it, or in any degree tends to the eclipse of the glorious Monarchy herein by God fixed, which being Thron'd in righteoufness, is, I hope, established in the blessed posture it is in, for this World's Eternity, as I may so say, or in plainer *English*, ever to last in the line of that *Majestick Family*, that now (blessed be God) Rightfully and Royally enjoys it, till

Contem Politic. lib. 1. c. 21. p. 48.

Shiloh

*Sibich comes the second and last time to Judgement.* This then premised, as that tender of affection which kindled in me from my Text-Masters spark and flame in this Chapter, was not to be stifled but publickly owned as a signature of my loyalty, I proceed to follow him in his method, taking the augmentation of *England's* lustre from that comparison of the State of *France*, which our Chancellour here represents.

*Regni Franciæ frugum opulentissima* ] This is that part of *Gaul* which is thought denominated from *Francus*, Son or Nephew to *Heclor*, who, after the destruction of *Troy*, about the year 420. is storied to be Chieftain to the *Franconians*, a *German*-people, who, being stirred up by the narrowness of their own border and the desire of a more convenient abode, moved armedly into *Gaul*, and being prosperous, sat down in that part which is between the River *Scald* and *Senæ*, and thence was called *France* or *Gallia Comata*, from (I suppose) its fertility and abundant succulency of soyle. I or though I know *Pliny* tells us all *Gaul* was called (a) *Comata*, yet this particular noble Island of it was specially so called, because the *Eden* and Flower of all the Land: and this the Text complies with, in that it terms it *frugum opulentissima* ] Two words very comprehensive and purposely phrasive of the latitude of abundance. For *Fruges* ] is a word that contains every esculent and pabulary thing; *Varro* derives *frumentum* à *fruendo*, because by food men enjoy themselves in a plenitude of health and strength, (b) others determine it, à *frumine eminenti sub mento gutturis seu gargulionis parte, qua sibus in alvum mittitur, à ferendo cibum appellari*; whence soever, sure I am 'tis used in Authours to denote plenty and abundance. *Opulentissima* here ] so *Locuples frugibus annus* in *Horace*, *Parens frugum tellus, gravida, læta, matra fruges* in *Virgil*, *Fæta frugibus terra, Cereem fruges appellamus, unum autem Liberum* in *Tully*; all which applied to the Text's sense, sets forth *France* as a noble Country: and indeed, such it to be, I myself have as well in a good part seen, as more fully from the best Authours read. *Pomponius Mela*, though he makes it no *India*, that it produces *Pismires* as bigg as little *Doggs*, *Honey* running down in streams, *Woods* full of *Wool*, *Reeds* laden with *Sugar*, and *Vines* with clusters of *Grapes* incredible; yet he terms it, (c) *Terra frumenti præcipui & pabuli ferax*: which is the reason that though *France* be but a part of *Gaul*, yet *Tota illa pars Europæ, &c.* That most noble part of *Europe*, heretofore *Gaul*, is now called by the name of a little spot in it, *France*, so saith *Cluverius*. And therefore thole commendations that the Natives give it, are not besides the truth altogether. *Budans*, a most grave and learned *French*-man, writes of it elegantly; and when he has asserted it of a clement Air, productive of things good and plentiful in their kinde, concludes thus, *In ea summum Liberi Patris cum Cerere certamen, ut vini nobilitates non possis sine Nomenclatoris opera numerare.* Which made *Maximilian* the Emperour wickedly, and with prophaneness too great for a Christian, say, *That if Nature could bring about his design to be a God, he would be that God; and then by his Will, he would pass his Divinity to his eldest Son, and his second Son he would make King of France*, as supposing it the second preferment to that of his fancied Godhead. Add to this what our most accomplished Historian, and late deceased Country-man, *Dr. Heylin* reports in these words, *The Soyl is extraordinarily fruitfull, and hath three Loadstones to draw riches out of other Countreys, Corn, Wine, Salt; for which there is yearly brought into France 2000000. l. Sterling, and the Country so full of pleasant Fruits and Vines, that never eye beheld a fairer object*, so He. I say, add this to all the rest, and to that of *Strabo* which *Rosellius* quotes, and there was good reason to say, *France* is a Country *Frugum opulentissima*. ]

Cluverius Antiq. lib. 3. c. 26.

*Gallia Comata qua nunc Francia dicitur, Budzus in Pandect. p. 16. Edit Valcos.*

(a) *Comata Gallia, omnis Gallia uno nomine appellata. lib. 4. c. 14.*

*Generale nomen est, non modo ad frumenta, leguminaque; sed etiam ad omnes fructus terra quos in alimoniam vertimus, Varro, lib. De Ling. Lat.*

(b) *Festus, Servius, & Donatus.*

2 Epistol. 1.  
2 Georg.  
2 De Natur. Deorum.

*Tam pinguis alicubi & tam feracis feli, ut in ea, mella frontibus destant; lanae sylva ferant, &c. lib. 3. De situ Orbis. c. 7.*  
(c) *Lib. 3. c. 2.*

*Tota illa pars Europæ præsertim ac omnium pene nobilissima Gallia, in idem Franciæ nomen transiit. Antiq. lib. 3. cap. 20.*

Lib. 4. De Affe p. 169. Edit. Valcos.  
*Ut ex filiiis meis Prizogenitus esset Deus post me, & natus secundus Gallias imperavit. Lansius in Consult. Europæ. p. 169. Geography p. 175. in fol.*

*Pymand. Mercurii, lib. 5. c. 11. Dialog. 5. p. 119.*

*Regis terra illius hominibus ad arma, & eorum equis ita onusta, ut vix in eorum aliquibus quam-magnis Oppidis tu hospitari valebas.*

This clause shews *France* had need to be such as it is described, because it has such Armies

Grimston Hist.  
France, p. 20.

Relatione de Re-  
gno Gallico, p.  
165.

3 Offic. 66.

Livy 3. ab Urbe.

Tacitus lib. 2.

Cic. 1. Divinat.

In Comment. ad Taciti lib. De Mo-  
rib. German. p. 449.

Nic. Faber. in Notis ad lib. 2. Controv.  
Senec. 10. p. 111.

Walsingham in Hypodeigm. Neuftriz.  
p. 118, 119.

Cum multis Dominis & Baronibus & du-  
obus millibus fere hominum nominatorum  
de Armis, de Communibus vero numerus  
ignoratur. Idem loco eodem.

Bonum Principem Augustum, & bene  
illi convenisse Parentis nomen fatemur, ob  
nullam aliam causam, hac gratum ac fa-  
vorabilem reddidit: hac hodieque praeferat  
illi famam quae vix vivis Principibus  
servit. Senec. lib. De Clem.

Armies in pay in, and moving through it; for as St. *Clewis* the chief founder of that Go-  
vernment is storied by the Histories of *France* to achieve his Greatness, the pedestal to  
this, by such Artifices and practices of unchristian Policy, as I forbear to name; so have  
many after-Governours there carried on their Grandeurs by fierceness and might of  
sury. So that not any lenitive dare be offered to soften the pleasure of the *French King*,  
but his Will must be the Law, which *Albergatus* confirms me in, who writes after the  
politick opinion, *Ab ejus arbitrio solo omnis & belli & pacis deliberatio, &c. Tanquam  
verus Monarcha solus omnium Dominus, &c.* which uncontrouledness of power, because  
he findes men at Arms properest to advance and establish, to these does he give the  
civil spoil of the Land, that is, power to propagate his pleasure be it what it will, and  
opportunity under the pretext of that to do what they will with the poor Peasant,  
and drudging Country-man, who by these *Homines ad Arma* are said to be bur-  
thened. *Onusta* ] not somewhat charged, as by pilfering and stragling numbers of  
loose people any place through which they passe, will be; but *Onusta* ] a word of num-  
ber, weight, and measure, having all the dimensions of grievance, as full of burthen,  
not onely as we proverbially say, *As an Egg is full of meat*; but as a Ship is when  
stowed to its full lading, so *Onusta frumento Navis* in *Tully*, when a Mariner knowing  
Corn to bear a great price at the Port he intends for, crowds as much as his Bulk will  
bear; *Onustus prada*, when a Souldier has so much spoil that he even breaks his back  
with the portage of it; *Tergum vulneribus onustum*, the description of a souldier whose  
breast was not onely pierced standing, but his back all wounds when flying; *Onustus  
cibo & vino*, when a mans stomach and head is so overcharged, that he is fit for nothing  
but a bason and a bed: these are the Notions of the *Onusta* here, which points out  
*France* so charged and furcharged with these Cavaliers, that there was no room for  
any thing but these *Homines ad Arma*, ] that is, Horsemen, for so our Chancellour

intends to expresse the King of *France* his strength by. For though  
we read of *Viri ad Arma nati* in *Lipsius* and others; yea, though  
*Men at Arms* in the *Venetian History* signified fusely *All Souldiers*,  
*Shute* p. 14. yet in our stories and laws, according to which, to-  
geiher with the common Notion of them in *France*, our Chancel-  
lour went, *Viri ad Arma* are onely Horsemen, and so besides this  
in the Text, *& equis eorum*, ] other stories understand them; thus  
*Thomas Beauchamp* Earl of *Warwick* is by *Walsingham* said to en-  
counter *Contra ducentos homines de Armis*, and *Homines Armo-  
rum* a little after; so the same Authour, writing *How E. 3. over-  
threw Philip of France*, adds, *With many Nobles and Barons, with  
two thousand men called, Men at Arms.* These, I say, being in so

great measure did not onely terrifie the people, but make the receipt of strangers in  
great Towns as homely and scarce, as the safety of them on their travels questionable.  
Now this the Chancellour remembers the Prince of, to raise in him a love to the po-  
litick, and yet Imperial Government of *England*, which, though it be seconded by  
force to suppress Rebellion and resist Invasion, yet is founded on general Consent,  
and Parliamentary recognition: So that what *Seneca* writes of *Augustus* is true of

our Monarchs, *That they well deserve the Name of Parents, who are  
so tender and benign, that their Subjects good is more cared for by  
them then their own greatness; so that if their power and their Sub-  
jects happiness (which is ever best in their respective conjunction)  
could be separate, which is not possible, their kindness would carry  
them rather to wish their people happy then themselves great: yea,  
so immortal a Garland is it to the Heads and Hearses of meritfull*

*Princes; that it will bud a fresh blossom of glory to their memories when dead in per-  
son, though it deny any ornament or addition to living loveless ones.* Which instance,  
to wave forein presidents, is evident in the Reigns of two of our Monarchs, *Edward  
the First*, and *Queen Elizabeth*: the former, at the Parliament of the seventeenth  
of his Reign, was befought by the Peers, Prelates and Commons fully there in obe-  
dience to him convened, to renew the confirmation of the great *Charter* and *Char-  
ta de Foresta*, according to what he had promised, but he stood off a long time; at  
last, being pressed to perform his Regall promise, he did it with a *Salvo Jure Corona  
nostra*,

*nostra*, which the whole Parliament took so heavily, that they returned home unsatisfied: And the latter, *Q. Elizabeth*, so tempered her subjects, between awe of, and love to her, and so dreaded any appearance of violence, other then that of her Imperiall, and necessary legall influence on her subjects, that she is in no story charged with any Act, but what has a defence of Motherly tenderness, as well as Majestick courage in it. Though then such like powers of *Homines ad arma* be not used nor approved of in *England* (except upon extraordinary occasions, when discontents and Parties, that will not be fairly reasoned, and gravely Lawed down, must be pessundated by the terrour of them; (*this kinde of Devil being not like the Gospell Devil; cast out by prayers and teares, unless they are associated with force and punishment*) yet in *France* they are, and without them the Plebs would be but ruleless; and therefore necessity, that has no law, calls for these *homines ad arma* there, and what their being in abundance any where can occasion better then rudeness and licentious outrage, let the (a) Authour inform us, who sayes, the *Neapolitans, Mikancis and Sicilians*, who have had triall of both the *Spaniards and French* for their Masters, chuse rather to submit themselves to the proud and severe yoke of the *Spaniard*, then to the lusts and insolence of the *French*, which if they were such as denied even in Towns to Traveller, and that a Prince, *Vix hospitari*] that is, hardly lodging; what churlishness, to say no worfe, do they express to meaner persons, and their own Countrey men, when they are more out of sight.

*Quod cum audissent Comites, eum displicentia ad propria discesserunt Walsingham in E. 1. p. 44.*

Matth. 17. 21.

(a) Doctor Heylin. p. 180.

*Ubi ab incolis didicisti, homines illos, licet in villa una per mensem aut duos perhendinaverint, pro suis aut eorum suorum expensis soluisse aut solvere velle.*

This is a further instance, not of the miseries of a Warr; for, if an enemy had done this, the People of *France*, sufferers under it, might have said in the *Psalmists* words, *If it had been an enemy that had done this we could have borne it, but it was ye, our Countrey men, our friends and our acquaintance*, and this is that which renders it intolerably afflictive. For as much as the poor Peasant has nothing to live upon but his labour, and a high Rent, and payes contribution, to the Kings Army, and that in so plentifull a measure, that the Revenues of the Crown, to defray the charge of Government, is (a) counted as vast from that very Kingdom, as the *Romans* before the Conquest of *Mithrydates*, and the third expedition of *Pompey* had from all their Empire; yea, so absolute is the Sovereignty of their King, and so content are they to be what he pleases, that he imposes nothing but they submit to, and applaud the hand that puts so sore a burthen on them, which *Budæus* notes as a virtue in them, so meritfull as nothing can be more: so doth \* *Comineus*, adding, *That it is unjust and inhumane, that a Prince, having such obsequious and open purst People should press them beyond their ability; it being much more faire and generous to smooth them into a willingness by gentle invitation and reason of love; quam imperiosa agere pro sua libidine; that is, then to screw and force by power and feare what they have, and he pleases to command from them, thus he;* which well considered, as it layes load of infamy on those, that when there is but one Harvest and Crop in the year, from which profit and subsistence is gained, exact unlawfull and unreasonable Contributions all the year long, and that without consideration of what the Payers suffer, and the Receiver is by His Officers deceived of; (of which *Hybræas* the Orator told *Antony*; *Asia has paid thee, Noble Chieftain, two hundred thousand talents, Τὴν αἰσὶν ἐν εἰρηνοῦς*, &c. *This, if thou hast not received, call thy Collectors to account, to whom we have paid it, and if thou hast had it answered thee, since thou canst not give us two Crops, and two returns, exact not two Tributes, each of which answers, or rather exceeds the utmost we can render thee.*) As, I say, it accuses the

Psal 41. 9.

(a) *Quo anno hæc prodidi, Princeps noster tantam ferme pecuniam ex ditione Gallica percipit, Budæus, lib. 3. de Assc. p. 114. B.*

*Sic enim sunt Galli homines, ut prout quidque Principi aut collibus aut collibus dicitur, id perinde jus fasque esse credatur; omnium hand dubie mortalium, qui quidem barbari non sint, maxime ut Græce dicitur Pytharchici id est principalibus editis aquo animo obsequentes. Idem. p. 115.*

\* *Commentarius de rebus gestis Ludovicæ 11. lib. 10. p. 405. Paris. 1569.*

*Budæus, lib. 3. de assc. p. 119.*

Imposers of much merciflesness, so it renders the Imposed miserably poor and cowed; For our Text sayes, they do not onely perhendinare, (a word Lawyers and Historians use for stay, thence perhaps the word *Enn* or *Inn*, which is the stay for Travellers for a night or two; so *Walsingham* uses *perhendinare* to denote a stay, *Magnates autem apud Sanctum Albanum cum suis armatis exercitibus per tri-duum perhendinantes*; so that *perhendinare* here is not onely a

*Hoc est enim perendie quod Græci ὑσάδευον dicunt quasi post crastinum. Budæus in Pandect, p. 32. Edit Vascof. In E. 2. p. 91.*

chargeable

chargeable, but a long stay, *per mensem aut duos menses*; and a loosing one to put a further greivance, as the Text sayes, they pay nothing at their departure, neither for man or horse, which is not onely the allegation of our Text, but the complaint of learned *Comineus* a creditable Knight, who sayes lamentingly, *That the oppression on the poor Country-man is very great, not onely by the Taxes that is unreasonably leavyed upon them; but ab Equestribus etiam cohortibus; &c. but from the charge the Cavalry, that lye on them, occasion, whom they not onely eat up, but abuse licentiously; nor are they contented with what growes on the Farm and field, but compell them to travel for delicater dyet then at home they have; and when they are gone to get them dainties, endeavour to abuse their wives and daughters to their lust, thus Comineus;* which is, what follows in our Text.

*Qua quidem cohortes obsequantur hinc illuc perpetuo. & non solum vivunt sumptu miserorum, sed etiam proterve & insolenter in eos multa faciunt; nec enim contenti sunt iis qua passim in agris reperunt, verum miseris etiam hominibus vim adferunt, eosque cogunt longius abire, & aliunde adferre cibaria delicatiora, mitto quod uxorum quoque & filiarum pudicitiam tentant, Comineus. lib. 10 De Gestis Ludov. 11. p. 400.*

*Sed quod pejus est, ardebunt incolas Villarum & Oppidorum in qua descenderant, sibi de vinis, carnibus & aliis quibus indigebant, etiam carioribus necessariis quam ibi reperiebantur, à circumvicinis Villatis, suis propriis sumptibus providere.*

This *not to be contented with what is in house and at hand*, is one of the unwelcomest qualities in a Boarder, even though he pay well as to the value and time; but when one comes on free quarter, and on charity, (as Government ought to think they do that come upon anothers propriety, and yet are courteously treated) then to capitulate and indent what they will and will not have, then to take and leave what they list, and to call for what is not to be had but with trouble and charge, is not onely uncivil but unreasonable. Yet this is the condition of the *French* souldiery, who do not come, as our Country men have in many places (even during this late unnatural Commotion) done, with Caps in their hands, and carriages of humanity and gentleness; but with stern looks, drawn swords, cock'd pistols, *Damn me*, and all horrid oaths of Hell in their mouths, and when they are quartered, so continue their imperiousness, that 'tis hard to live in the house with them unstrapadoed, if not murdered. This irregularity, which often frightens inhabitants from their houses, and ever makes their houses

*Huic autem incommodo facile posuit occurrere, si bimestri quovis dependenter eis stipendia; sic enim nullam essent habituri causam qua se purgarent de injuria illis quas inferunt, necessitate quadam ut aiunt, eo quod ipsis non persolvitur. Idem lib. 10. p. 400.*

\* Dr. Ridley, *View Laws Civil and Eccles.* p. 22.

terrors to them, is the effect of ill discipline and want of pay: for had they whereon to live and pay currantly, they might be kept to the stricter conformity; but when live they must, and money they have not, the Officer bears with them for his own peace, which to prevent, as the Plague that infects Countries with ill will to souldiers, the \* *Romans* took a course to provide dyet in kinde for their souldiers, Summer dyet from *April. 1. to Septem. 1.* and the Winter *à converso*, which dyet was two dayes Bisket, the third day foster bread; one day wine, another day Vinegar; one day Bacon, and two dayes Mutton, and by this kept they them lusty and vigorous, yet temperate and civil. For though I know to keep up the spirit there must be good dyet, and enough of it, such as is flesh, wine, strong bear, and other changeable food; yet that men should be their own Carvers at anothers cost and table, and make the giver a *Vallet* to their curiosity and intemperance, is that which *France* onely its poor Subjects are abused by: we of *England*, God be blessed, do not understand other then by hear-say and reading. For though in *Ireland* from *Edward the Second's* time, when the Earl of *Desmond* commanded in chief, the damnable custome of *Coign* and *Livory* was there set a-foot, and continued to *H. 4.* his time, when, by the Statute of *12 H. 4. c. 6.* it was destroyed, for that by pretext of it the Commanders of the Army exacted from people horse-meat, man's-meat, and money at pleasure without ticket or satisfaction: yet (times of flagrant warr onely excepted) were such rigorous courses never in practice with us here; nor in times of warr were they justified any other, then by necessity and want of pay. So far is our licentiousness from the constant temper of the *French*, that necessity onely works that seldome and skulkingly with us, which choice and no temptation, but that of ill humour and inclination to vice and rudeness, evidenceth boldly in them. And since the Government of *France* is supported by Armies and Garrisons, and those so numerous, that *Charles the Ninth* is reported to have 15000 horse and 100000 foot of his own Nation, besides 50000 horse and foot of

*Davis History of Ireland, p. 30.*

*Heylin, Geogr. p. 242.*

*Swisses,*



Swisses, Germans, and other Nations; and Lewis the Thirteenth is storied to have at once five Royal Armies on foot, keeping 120000 men in pay many years, rigging 1000 ('tis 10000 in Dr. Heylin, but I ghesse it the errour of the Press) ships for sayle and service: yea, forasmuch as the Kings of France so depend on the fidelity of the souldiers, there is no relief for the poor Peasant and Country-dweller hopeable, but they must have what they will, though to procure it they do *arctare*, ] put the purse of the poor provider into little ease, and though he pawn (as it were) his own skin, bone, body and soul almost to purchase it; for, *They must needs go that these Gallants of fury drive*, whose violence has career enough to precipitate even dulness it self, and to make it fly with the wings of fear to avoid the Talons of their fury.

Geogr. p. 237.

*Et si qui sic facere rennebant, concito fastibus casti, hoc agere compellebantur.* ] This shews; that *must* is in France not onely for the King, but for every Horse-man, who, if he be but mounted and become a man at Arms, thinks himself absolute, holding his office by the Scepter of his Batton, which is so nimble, that 'tis no sooner a word but a blow; and that upon his head who is *de jure* head of him; while in his family and under his roof: Now these *Fustes*, with which on unwilling, because (God knows) unable Hosts, they do execution, I take to be no *teffera Hospitales*; nor can the Ruffian, that thus vapours and fumes, say with him in *Plantus, Deum hospitalem & tefferam mecum fero*: nor do these *Hospitium renantiare, ne hospitii jus violarent*, as *Tully* sayes the custome was; for this in them had been a grace of ingratiatiion, which would rather have been thought a Prodigy then any thing ordinary, and fictive rather then real. I say, I take this Mall of their uncivil execution to be no earnest for their welcome, but an intimation of that Club-law that they hold their interest in their Quarters by, and therefore while that is up, the Housekeeper is bound not onely to the peace of good words, but even of willing looks; for if he shew any disgust of his guests pleasures, strait to the lace he goes, which does so terrify them; that they are fain to take injuries contentedly, and to give thanks for being eaten up, and *out of house and home*, as we say; for so are these Horsemen flush'd with their tyrannous absoluteniess in their Quarters, that, to use *Cominius* his words, *No reason or humanity can restrain them from injury and violence.*

In Pznul.

In Verr. Act. 1.  
Budæus in Pandect. p. 84. & in reliq. p. 253. B.

*Est quædam sane in nobis innata pravitatis, adeo magna quidem ut nulla plana ratio nos ab injuriis & violentia coerceat, Cominius Comment. lib. 19. De Geris; Ludov. p. 396.*

*Ac deinde consumptis in Villa una victualibus, focalibus, & equorum præbendis ad Villam aliam homines illi properabant.*

This continues the misery, 'tis general, every part must bear its proportion; these Carriers do circuit it to obtain the fattest prey and the plentifullest provision; these Clyents to *Venus* and *Bellona*, the hot Goddesses, are all for dyet and drink; that in the vigour of them reach the utmost extents of their flaming constitutions, which vice rather then nature hath so accended, that nothing but cold and hunger can reduce. Rather therefore then they will want these cherishings of their pleasure, by which the Wolf of feebleness and dispiriting is kept from the door of their moving Tabernacles; they will; as bite close while any thing is to be had, so change their pasture when it begins to abate, Victuals of all sorts they will have; for though the House-keeper; *Sea-mew like*, must live upon the *Spuma Marina*, the Dew (as it were) or nothing; yet these *Bucçeri* must have *first and second course*, all sorts of things *Vitualia*] *quia vescuntur ab hominibus*, they must have speedy, as soon as they call, willingly without regret, plentifully without scant, and seasonably, according as the nature of the year ushers in variety of dyet. And as food, so fire must they have, *Focalia*] for this, as it is as denominative of an house, as *Arais* of a Temple, and as much to the completion of entertainment as meat is; (since without fire and candle, which are *Focalia*, what comfort have men in entertainment.) I know *Focalia* has other senses in Authours; the *Operimentum colli & sancium* is so called by *Quintilian*; but the Greeks applyed the word *pugillaribus & luctatoribus*, which *Turnebus* notes as well as others: yet our Chancellour by *Focalia* intends those things that appertain to fire, which is best when 'tis in the Chimney; and thus it is near of kin to the Ancient's *Focaria*; Sier to

Adag. 73. Cænt.  
2. Chil. 2. p. 465.

*Focus privata cujusque domus, quemadmodum Ara aliquando Templum significat.*

*Urbes, agrum, aras, focos, seque mi dederunt, Plautus Amphitt. Act. 1. Sc. 1.*

Lib. 11. c. 36.  
Adverf. lib. 7.  
c. 10.

the word *Fornicator*, who was Servant to the Baths and Fornaces, he that heated them, which because he ever kept hot, he was termed *Fornicator*; thence an old *Fornicator* we call a man of years, that when he is past action of folly, yet is speculatively, and in word, filthy and obscene.

Turneb. *advers.*  
lib. 3. c. 9.

Tholoff. *Synrag.*  
*Juris*, lib. 15. c.  
23. ff. 2.

lib. 15. c. 4.

*Et Equorum prabendis*] This is to express Horse-meat, not onely pasture and herbage, but Provender, Hay, Straw, which are all *Prabende*; because they do *in fructibus consistere*: and such grass, hay, and grain being, they are termed *Equorum prabende*, though I know *Prabenda* in the Plural number in the Canon Law has another sense, according to what the Ancients held the Residentiaries in Religious Houses and Cathedral Churches, enjoyed to supply religious Pilgrims and Strangers that came to them with testimonials, and *Agellius* extends it to all necessaries for an Army, when he sayes, *Ventidius Bassus* being straitned, *Magistratibus qui sortiti Provincias fuissent, prabenda publicè conduxisse*, these, and other large Notions of the word being not to the Chancellour's purpose, I keep my self to that sense of *prabende* which is obvious, and respects horses in Armies, whose Quarters these Blades of Buff and Fury do change as they do their own when they impair, according to the old Proverb, *Love me and love my horse*, which love to their horses they best shew by putting them into good pastures.

Heylin. *Geogr.*  
p. 174.

*Ad Villam aliam homines illi properabant, eam consimiliter devastando.*] These flying Tormenters, like fleas, skip every where, biting close, soon in and out of places, as they said of *Charles the Eighth's* expedition in and out of *Italy*, *Try they will before they buy*; yet not so happy the poor Peasant, to have things bought of and paid for to him. Eat and drink and wench and rave they will, but a penny they will not part with in payment for what they take, *Nè denarium unum pro necessariis*, sayes the Text. And this ubiquity of theirs, though it terrifies all the Country; yet it ruines it less, and impoverisheth it, as it were, more justly, every part alike. No Angle of the Country that's good for any thing but is a *Prabend* for souldiers and their horses; yea, and for somewhat more rapacious and bloody, their wenches, called usually Sucklers and Laundresses, which the Text terms *Concubina*, a word more prest then

*Meretrice* dicitur, qua indifferenter se exponit omnibus; *Concutina* vero, qua uni soli se exhibet. Est autem *Concubinatus* fornicatio quadam continuata cum soluta determinata, ita ut sit velut cohabitatio quadam ac si Matrimonio esset conjuncta, *Sayerus in Clavi Regia Sacerd.* lib. 3. c. 2. mm. 9.

*Meretrices*; for those are common to the feisers be they what they will, *first come first served*, when these are a sort of loose proprieties, pretendedly loyal to their own Mates, but extremely disorderly and villanous. Yet these, though forbidden by the strict rules of Warr, are suffered to attend Armies, and are so influential

(being the Baggages that attend the luggage, lumber, and heavy draught of the Army) that they are taken care of by the Quarter-Masters, and are as curious to be pleased as any; yea, being vitious women and warped from modesty, are the most beastly and pestilent enemies to the modesty of their own sex that can be imagined: yet even these, so fordid, so nasty, so troublesome, do they constrain their Quarters to receive *in magna copia*,] in great abundance; yea, for these as well as for themselves do they compell the inhabitants of the Vills they come to and stay in, to provide all necessaries, not onely food and fire, but *Socularia*] *Genus calciamenti à Sacco deductum*, a Shooe like a slipper with an heel, which we call a *Sock*; after the likeness whereof it was made: the *Comedian* tells us as well of *Risus Socii*, as of *Luctus Cothurni*; but *socculus* the Diminutive, *Suetonius* writes of.

In Vitellio. c. 2.

Plin lib. 9. c. 35.  
Venuleius lib.  
De Militibus.

Sueton in Calig.  
c. 9.  
Plin. lib. 7. c. 43.

*Caligis*] This is the Boot-hose, or legg, or short stocking which the Souldier wears, hence called *Caligati Milites*; and though *Caliga* properly signifie *tegumentum Tibiarum militare*, the cover of the military Pipe, suppose the Coronet or Fife; yet it being of likeness to a Hose signifies that. This *Caliga*, or military *Calciament*, gave the name to *Cajus*, Son to *Germanicus* the Emperour, who was called *Caligula*, *Quia Manipulario habitu inter Milites educabatur*.

*Usque ad minimam earum Ligulam*] Not onely food and fire, washing and lodging, shoes and hose, but Laces, and every Utensil about these Fire-brands, must the poor Peasant finde; which makes me believe, that either *France* is all gold, or the Peasants

Peasant all drofs; for, unless whatever he touches be Coyn, he cannot but be as bare as a louse, who has thus many Risers of him successively each to other: and therefore no wonder they are poor spirited that are thus harrassed and outed of all ability to live handsomely or lay up any thing for their Children. Alas, poor souls, all their thoughts are how to please and progg to live, the gayety of life they neither know nor desire, all that they have to call their own is an house of children, a wife horridly nasty, an house slenderly furnished, a back barely covered, and an Army of Vermine every where about them, and this is the condition of all those that dwell in open places, without Garrisons and walled Towns; for of them there is not one *expers de calamitate ista*] saith our Text. For though Garrisons and walled Towns, *Villa & Oppida murata*] be more chargeable, for that they maintain Garrisons to defend them; and discipline in them is very strict, because it is in view of all the Inhabitants, whose clamour would have audience if it were deserved; yet is that charge ten thousand times recompenced in the security they have that dwell in them, which is the reason that in all places, set *England* aside, no security is almost out of Cities and Towns, fellows to them, there being not onely a force in Walls to deny access to Spoilers, but a kinde of charm, which languages the rude approachers to beware of Sacrilege in violating them: *In municipiis Muros esse sanctos*, is *Marcianns's* his rule; *lib. 4. Regularum*, concerning *Muri* and the Notions of them, consult *Turnebus* his excellent learning, which I quote onely to avoid prolixity, though the use of Walls is from the very intance in consideration very important, since these Walls do not onely keep off the trouble, charge, and danger of Souldiers Quarterings, but the often passes and repasses of them; for so the Text sayes, *Qua non semel aut bis in anno hac nephanda pressura gravatur*, but very often is thus vexed and impoverished; so that they are not plagues for a day and away, but at all times, so often as they please: and this adds to the misery.

*Si quis violaverit Muros, capite punietur.* Pompon. *lib. 2. Digest. p. 119.*  
*Advers. lib. 13. c. 18. lib. 6. c. 6. lib. 16. c. 11. lib. 30. c. 30.*

*Præterea non patitur Rex quenquam Regni sui saltem emere; quem non emat ab ipso Rege, pretio ejus solum arbitrio affecto.*

This Royal Monopoly of Salt is that which is one of the Mines of the *French Crown's* Revenue; and though our Text count it a part of the smart misery of the there people to buy so necessary a thing as salt is, which they cannot be without, any more almost then they can without water, fire, or air; yet truly propriety being the measure of the value of things (provided the price assessed, though it be *proprio arbitrio*, yet if it be in any degree moderate) 'tis *damnum sine injuria* to the people, since the King may as well make the most of his own as private men; though I think seldom Princes do, though their Farmers and those that officiate for them, grinding the people to enrich themselves, draw much murmure of the oppressed people upon their Principals: for so unhappy are Princes, that offend who will under pretext of their authority, and by colour of their service, the distaste and *odium* of them is apportioned to Princes, which is a good caution to Princes not to crush their shoulders and crimple the supports of their usefull lives with such superadditions (to the unavoidable care of their proper offices) as arise from mal-administration of men in place under them, *Let every back bear its own burthen*, which I purposely here insert, not onely, as it is just, to vindicate the right of Royal Commodities, as *Salt* in *France* is; but to remember the fatality of this Artifice of popular tumult upon the pretext of oppression by evil Counsellours and Instruments, towards the best of men and Kings his Contemporaries, *St. Charles*, who so heavily complains of them, that his words are, *If I had not mine own innocency and God's protection, it were hard for me to stand out against those Stratagems and Conflicts of malice, which by falsities seek to oppress the truth; and by jealousies to supply the defect of real causes, which might seem to justify such unjust engagements against me*, so He. This premised, I proceed to discourse of this the *French King's* restraint of *Salt* to any but such as buy it of him; and the reason is, because it is the King's commodity. *Brecheus*, that learned *French* man, tells us, that it has been the perquisite of Regality, and that which Magistracy has taken as its Revenue in ancient times, among the *Romans* alwayes; and thence in those Countries which were fractions of it, and took pattern according to the proportion of their parts to its whole,

*Eicon Basilic. c. 15. Initio.*

*A veteribus Romanis jamdudum institutum fuit, in Leg. 17. ff. Salinatium. p. 51. De verb. signific.*

to retain their necessary usages amongst them. This then of *Salt*, one of the great necessities to life, I shall not write of at large, but refer the Reader to the Authours in the Margent; onely let me minde the Reader, that this *Sal* here, is not that *Sal metallicum*, id est, *fossitium*, which *Strabo* lib. 5. calls *Ἀλβυκλον*, and (a) *Pliny*, (b) *Dioscorides*; and (c) *Varro* mention, and of which I think I may with learned men conclude, that not onely *Abfolom's* Pillar was made of, but also *Lot's* wives figure, as the solid body that in the perennity of its consistence would eternize the memory of their sins and punishments. No such *Salt* is the King of *France's* commodity here, but that *Salt*

which the *Wiseman* saith, *Salt savoureth every thing*; that which not onely our Lord hints of its conservating quality in that allusion to discretion, the steerage of the conversation from danger and disgrace, *Have salt in your selves and be at peace one with another*; but that *Salt* which is the relish of every Palate, and makes good every crudity, which the Ancients apprehending under the name of *Salt* and *Wood*, comprehended all necessities to a charitable entertainment: so that though many things to the celebrity of a Court-feast may be wanting, yet where *bread*, *beere*, *fire*, and *salt* is, there is no lack of the integralls of Meals, and those not ony subsidiary to life, but wholesome to promote the comfort of it, being in some measure there. And

therefore the universal requiry of *Salt* enhances the quantity that is vented and the price of it, especially where it being in the sale no general commodity, by occasion of which, one underfelling another, the buyer has the more choice to deal with men, either as their good humour and necessities do render them more tractable, or to forbear them when the contrary; but in one hand, who either must be pleased in the price, or the accommodation cannot be had. This being the state of *Salt* in *France*, the Text complains of it as a fore curb to the Natives; for it is prized *solo Regis arbitrio*, and at such Rates (though Merchants may chuse to buy it to transport, for buy it they will not but at such a rate as they can get by exporting it) yet the eaters and users on the *terra firma* must; and by this he does so *Orbem [Gallicum] Sale defricare*, as the speech in *Turnebus* is, *That he by his Salt at his own price dreyns away the bloud of their purses*, and so does in a kinde, as of old was wont though in another manner, consecrate by \* the *Salt* his Table of Royal plenty and riches, which he supports his Imperial Charges in a good part with. For though he has other vast incomes, yet this of *Salt* is not the least; and therefore in that he has it, and that for so mighty a people, and that in such a measure as he may set his own rate, it is a very great Prerogative; which, since it must be in one hand, is fittest to be in the best and most charitable one,

who like *Meroveus*, the *quondam* Governour of *France*, ruled so, *That in ten years he omitted not one hour to do well*; for Princes, as they have opportunities, so have spirits suitable thereto, and though private men may be narrow and make the utmost they can of what they have, yet they, out of their greatness of minde, love to be bountifull, and in so doing deserve not the complaints that otherwise would arise upon enhancing. For as it would seem too hard a pressure on Subjects to make them pay a rate for their breath, light and water, so some make it hard to put such a gabell upon *Salt*; yet, as I said before, it has been very anciently laid not onely on the *Roman* and other Government's Subjects, but even in *France*. And though this *Salique Law* has excluded the Subjects from the Merchandise of *Salt* any otherwise but by buying it of the King, as well as the other *Salique Law* has Females from that Crown; yet there being a vast Revenue (reckoned at least to 700000 Crowns a year coming to the Crown by it;) and being a continuance of a long time in the Crown,

the Nation findes no burden of it, but grows rich notwithstanding it. For Princes do let and sell good pennyworths, and if their Subjects are pinched, 'tis by their Ministers avarices which cannot be avoided, not their desires to sell to the utmost value, for some they must trust, and if they chuse the wisest they can, yet they may be deceived, *Opportunity often making the thief*, and then their being deceived is more their misfortune, then their sin or mis-government. And therefore the Subjects of *France*

are

Cælius Rhodig. *lect. Antiq. lib. 7.*

cap. 2.

Plin. *Nat. Hist. lib. 31 à cap. 7. ad c. 10.*

Brechezus *loco praticato.*

(a) *Lib. 18. c. 11. lib. 31. c. 7.*

(b) *Lib. 5. c. 123.*

(c) *Lib. 1. c. 7.*

Josephus *lib. 1. Antiq.*

Burchardus in *descript. Terra sancta.*

part. 1. c. 7.

Marc. p. 50.

Parochi & Xenoparochi idem sunt. qui Peregrinis Salem & Ligna praelant. sub nomine autem harum specierum omnia hospitibus necessaria intelligimus, Budzus in *Pandect. reliq. p. 263. Edis. Valsol.*

*Advers. lib. 14.*

c. 19. p. 510.

\* *Turnebus ad-*

*vers. lib. 10. c. 22.*

p. 327.

*Leges Budzum*

*lib. 4. De Alfo.*

p. 147. *Edis.*

*Valsol.*

*Grimston's Hist.*

*France. p. 12.*

\* *Ἀρδεωσις δὲ ἐκ φύσεων δὲ ἁλῶν ἰσθμῶν, Philo lib. De Septenario & Festis; p. 1280.*

*Tholoff. Syntag. Juris universi. lib. 3.*

c. 9. ff. 1. & seq.

*Albergatus Disc. Politic. p. 243.*

*Reylin's Geog.*

are no more displeas'd at this, then the *Egyptians* were with *Joseph's* store of Corn, which, though it bought out the Land, to King *Pharaoh*, yet rescued them that sold it from famine and perishing. For though this *Salt* raise a vast sum of money, yet it thereby defends the people from rebellion and invasion; because it maintains an Army that suppresses the one and advances boldly to refuse the other. 'Tis true, I confess, there is no comfort in being hanged on a golden Tree, no more then for a Virgin to be flattered by a beauteous person. If ruined a Subject must be, whether it be by Princes or others, men account it ruine and welcome it not; but yet in things beneath ruine, in shortnings and abbreviations of life, for particulars to suffer them to the accommodation of the generality, is very endurable; for time and use wears out those prints of regret, that upon the first example and introduction of unwonted things, were fixed in the mindes of men against them. The twelve Peers of *France* were wondred at, when first instituted by *Charlemaigne* to make his voyage in the Warrs with *Spain* more honourable in shew; yet ever since they continuing, are counted the Nobilities stabiliment and the allowed height of their honour. This imposition on *Salt* grew up first under the Warrs between *Philip* of *Valois* King of *France*, and our King *Edward*; the *French* King being in want of money made a Decree, That no man, of what degree soever, should sell or buy *Salt* but from his Granaries, which he set up (seising all *Salt* in every Proprietors hand, and giving them a reasonable price for it) which done, he set what price he thought good upon it, and made every one at his stated price buy according to the proportion of his family; and from that time ever downward. This then taken up on that necessity, has been kept up, *Ingeniosum profecto inventum* (saith *Gaguin*) *quo nemo à tributo liber esset, & unde ingeni Regibus pecunia quotannis venit*; yet time has made this *Gabell* natural to the *French* Subjects, as Tunnage and Poundage is here. For though saith Sir *E. Cook*, that were given to *H. 5.* but during his life in respect of his recovery of his right in *France*, and there was a Proviso in the Act, that the King should not make a Grant thereof to any person, nor that it should be any President for hereafter: yet it continued all the Kings times after, and all of them enjoyed it, which confirms, *That time makes that pleasing which at first was not so.* And so, though for the *French* to purchase *Salt* at the King's rate were at the first hard and disgustfull, yet use has made the Nation perfect in the custome and way of so doing; that onely which argues the rigour of it is, that the Subjects must not onely pay the King's rate for the *Salt* they buy, but must buy such a proportion as the bodies of the persons in his family, are by the King's Commissioners computed to spend, so sayes our Text.

Petr. Martyr. in  
1 Reg. c. 9.

Από καλῆ ἔν-  
αυ κῆν ἀπῆ-  
ξασ, Chil. 2.  
Cent. 2. Ad.  
8. p. 459.

French History,  
p. 56.

Tholoff. Syntag.  
lib. 3. c. 9.

Lib. 4. c. 2. De  
Gest. Francor.

3 H. 5.  
2. Instit. c. 30.  
M. Chatta, p. 61.

*Et si insulsum pauper quivis mavult edere, quam sal excessivo pretio comparare, mox compellitur ille tantum de sale Regis adejus pretiam emere, quantum congruet tot personis, quot ipse in domo sua sovet.*

Indeed this is hard, that a poor soul, that must (through necessity) want much accommodation, because money that fetches it, is short with him, that yet such a miserable wretch (rich in nothing but children, wants, and vermine) should be compelled to take *Salt*, which perhaps he would stive without, or to such a proportion onely as his money will reach to, (other things being considered also, which are as much or more concerning to him) beyond his ability, is very irksome and certainly offensive to God, because an oppression to the poor, whom God leaves in the world as objects of charity and exercises of our gratitude to him, between us and whom he onely has made the difference. Yet is not this so strict as true, that it is the condition of all parts of *France*, the pressure whereof none feel but they that are least pityed by greatness, and least able to relieve themselves against the burdens of it. But poor Wretch that the Peasant is, he has no remedy, but to commit his cause to God the onely helpfull Patron of distressed Subjects, and unless he turn the heart of a Prince and make his bowells yern to his poor Vassals, there is no remedy but patience; Better suffer any misery and diminution then sin against the Law of Dominion and the fidelity of Subjection. This is the safest way to a good life and death; though certainly they have other Principles whose spirits rise up against Governours, whose accounts being onely makeable to God, are not to be questioned by men any further then the Lawes of Nations allow; and the limitations of Religion expound those allowances; my Prayer being ever, *That God would season*

Miserimum erat  
spectaculum vide-  
re multitudinis &  
populi arummat,  
Comingus Com.  
lib. 10. De Gestis  
Ludov. p. 403.

A good Prin-  
ciple.

The Au-  
thour's pray-  
all er.

Eicon. Basilic.  
c. 35.

all good Subjects with that piety of resolution, that they may make them love and obey, more then fear and be in awe of their Prince; for love makes loyal, when hatred and dread is the preparation to treachery and revolt. He said well that avowed his own experience of God's work on his gracious soul, *I had rather prevent my peoples ruine then rule over them, nor am I so ambitious of that dominion, which is but my right, as of their happiness, if it could expiate or countenance such a way of obtaining it by the highest injuries of Subjects committed against their Sovereign, thus the Oracle of English Monarchs.*

*Insuper omnes Regni illius incolæ, dant omni anno Regi suo quartam partem omnium vinorum quæ sibi accrescunt.*

Chil. 1. Cent. 6.  
Adag. 37.

This is a further addition to the Revenue of that King, which though some may censure for *Mala vicinia* to the precedent *salsuginosa vicinia*; yet truly I know not how to think other, but that it is a reserve of the Crown on all the Vineyards, which were originally derived from it: and then 'tis no more a levy on his Subjects, then Rent is Tax on a Tenant, or Tithes on the Occupier of ground. Yet in as much as our Text-Master, who lived long there, refers it to a badge of servitude and villenage according to the old rule, *Quisquid acquiritur servo, acquiritur domino ejusdem servi*, seems to be more then ordinarily worthy notice; for in our Chancellour's time this fourth part *de Claro*, of the growth of Vines, was in effect, reckoning the charge of Tillage and gathering, the third: and *Cassaneus* adding another imposition of the eighth part, *de vino venali*, then the fourth part of the growth in kinde, and the eighth part of the value in price, brings the best part of the profit of Vineyards unto the Crown: for as all persons are bound to yield it the fourth part of their growth without diminution, so are they every where to give it without exception.

*Ut sero in tota Francia ubi offava de vino venali fisco debetur.* Cassaneus Catal. Gl. Mundi. p. 214.

*Et omnis Caupo, quartum denarium pretium vinorum qua ipse vendidit.*

*Caupena, ubi etiam advena & ad comedendum & ad cubandum, non ad stabulandum recipiuntur; & differt à Taberna, qua est locus ubi comestabilia venduntur, & comedentes recipiuntur, non ad cubandum vel ad equos stabulandos, sed comedendum tantum.* Digest. lib. 23. tit. 2. Marg. D. Taberna. p. 2115.

\* In Leg. 198. p. 429. De verborum signific.

This *Caupo* the Translator terms a Vintner, because such are with us the great sellers of wine; and of these is there a wealthy Corporation in London. Yet *Caupo* in the Law signifies so much as amounts to an *Ordinary*, where men eat, drink, and lodge, but not their horses; which differs from a Tavern, in that therein men eat and drink onely and not lodge, it being a Tippling-house for a pass, and so the lawfull residence in it onely for the day: though \* *Brecheus* takes it otherwise, *Caupo mercedem accipit, ut Viatores in Caupona manere patiatur, stabularius ut permittat apud eum jumenta stabulari*; yet our Text restrains *Caupo* to an house of enter-

tainment, an Hostlery as in France they call them, which though the Statutes of 15 R. 2. c. 8. 4 H. 4. c. 25. 21 H. 8. c. 21. so calling, understand Inns for beasts receipt as well as mens: yet the Text primarily respects them as selling wine for mens drinking. But I take *Caupo* to be more general, and to extend to any kinde of negotiatour, as *cauponari* to any kinde of dealing; for it being Sier to *Cupedia*, which refers to *lantiore esculenta venalia*, takes in all kinde of dealing for things, which the Greeks render by *καπηλεία*: thus *Ennius* uses *cauponari bellum*, which he borrows from *Æschilus*, *Ὁυ καπηλείων μάχην*; and *Philostratus* thus tells us *Apollonius Tyranus* wrote an Epistle *Σιτοκαπηλοῖς*, to the Corn-Merchants; and in another place, when he writes of the toyl and moyl of callings, he sayes, *There is no greater slavery in the world, then your Merchants by sea and land have, who do not onely keep Faires in all weathers, and notwithstanding all hazards; but Πιεζέμεναι καπηλοῖς ἀναμυχθέντες, but keep so with comers and goers in those publick houses, that they are ever bibbing, and buying or selling in them, which he reckoned defamatory.* For the Ancients made Lawes again Tavern-keepers, as persons infamous and not admittable to Magistracy; yea, in as much as the keepers of them were to receive all comers and minister to all their wants (which worthy people would not conforme to doe.) Of old those that kept such houses were counted *E face plebis, no better, as we say, then they should be*; under which reproach *Rahab* went, and was therefore called *The Harlot*; and our Lord is thought to be disgracefully alluded to in that scandalous taunt of the

Lib. 1. De vita Apollonii c. 20.  
¶ Lib. 4. c. 10.

Plato lib. De Legibus,  
Tholoff. Syntag. Juris, lib. 39. c. 7.

Job. 2. 1.

the Pharisees, A wine-bibber, a friend of Publicans and sinners. This then is the large notion of *Canpo*, which the Text Master restrains here, not to limit its verbal latitude, but to reach the sense of his purpose in the Quotation; That every publick house and merriment in it, payes a duty to the publick charge, and that being the fourth part of the price, comes surely to a vast Revenue.

*Et ultra hac, omnes Villa & Burgi solvunt Regi annuatim ingentes summas super eos assessas, pro stipendiis hominum ad arma.*

Concerning *Vills*, see the Notes on the 29<sup>th</sup> Chapter. That which their mention here intends, is to notify, that as the open Country-dweller payes in his spoyle by the Army, so the immured ones answer in taxes; and these, as they are annual, so are they not light and easie, but heavy and hard. *Ingentes summas* ] not onely great but wonderous summs, such as exceed almost numeration; for *Ingens* is a word of capacity, and has a kinde of latitudinary vastness in it, *Ingens Mules, ingens Exercitus, ingentes Colossi*, and *Populi ingentes*; are frequent in Authours: yea every thing that is notorious and prodigiously wonderfull is termed by it. *Virgil* tells us of *ingenti amore percussus*, and *Pliny* of *ingens animus, fortis, magnus & constans*, and *Livy* of *cura ingentes, ingentes gratias, clamores, bella*, and *ingentis nominis Rex*; these things set forth the concurrence of Authours with our Text to expresse extraordinary Taxes by *ingentes summas*. And sure such they must needs be, for *France* is a Country that has 23 vast Provinces, and every Vill and Town in them being yearly assessed, the summe total of such Provents must be exarithmetique; yet so insatiable is the minde of some Princes as well as meaner men, that they think they never have enough, though they force men to digg upon the Rock, as he told *Pyssistratus* the *Athenian* Tyrant, where nothing but toyl and grief is to be expected, and yet must it be done to pay his Masters imposition upon him, although the end of such levyes be not profecuted, but the Subject preyed upon by the Army he payes, as if it were forces of Enemies: for the Text sayes, the taxes are levyed *Pro stipendiis hominum ad Arma* ] but in truth they have least of it, which causes the following words, that the *Armata Regis, qua quam magna semper est, &c.* ] That the Royal Army which is great is grievous also, making little difference between taking all in an enemies Country, and leaving none in their own Country: and this makes the condition of *France* sad, that men must pay to support an Army, and yet, by that Army they contribute to, be eaten up and totally ruined. Yet this is the misery of Armies, that they are not onely chargeable but insolent and cruel, and are armed such to be and not to be refused, because they come into Countries all over prepared for commands and terrour. *Armata* ] (a) *Tully* points out to this sense of *armata* ] *Armatos si Latine loqui volumus, quos appellare vere possumus, spinor eos qui scutis telisque parati ornatique sunt*, and in another place he speaks of one *incredibili armatus audacia*, and *Silius* mentions, *Armata dolis mens*, and *armatum fide pectus*: so that the Army of the King being potent and poor, and being not paid their wages, are forced to either spoile or starve. And hunger breaking through stone Walls, and necessity forcing to what (but for it, is execrable and not the choice of men) the *French* Subject is hardly dealt with, who payes money for his security; yet is quartered upon by the Souldiers; yea and that in *Vills* and *Burroughs*, such an animosity is there in the Nobles against Corporations, and the Inhabitants of them, that they can neither bear their thrift, nor forbear borrowing of them when thrifty they are and can lend. Yea it sometimes happens that the buffes of greatness better endure detriment to Nations, then take reparations by the help of Citizens and Burgeesses of *Vills* and *Cities*. There is a famous story confirming this in *Walsingham*: In the time of *Richard the Second* there was one *Mexer* a *Scotch* man infested our Coast so boldly, that no Ship could stir to and fro but it was snapped; the Admiral of *England* that then was cared for none of these things, so true a *Gallio* he was in neglect of his duty, that the Subjects were afraid to trade, and merchandise grew scarce and dear: yea the Pirat braved so by his successes, that he said, *He would surpris England ere long*. When no spirit in the Nation rose to the suppression of this mischief, Sir *John Philpot* a Citizen of *London*, and a man of great wit and wealth, pitying his native Country (so nosed by a bold enemy, and neglected by

2 Georg.  
Plin. Panegy.  
103.  
Liv. lib. 4.  
Lib. 10. Bell  
Tunici.  
J. Sleidanus illu-  
strum rerum &  
Gallia descript.

*Armata dicebatur virgo sacrificans cui basinam togae eras in humerum rejecta, Eccl. (a) Cicero pro Cecin. 44. Cic. pro domo sua lib. 1. 38.*

In R. 2. p. 213.

Ducis Lancastrie & ceterorum Dominorum defectum ne dicam falsitatem, qui Regni defendere debuerant, attente considerans Wallingham. p. 219. in R. 2.

Loco praticato.

Ut Comes non habuit quod responderet, Idem eod. loco.

Psal. 124. 7.  
Isaj. 1. 26.

God give us to think of this seasonably.

Bona qua bellum aufert, sunt liber Religiois usus, Reipub. tranquillitas, studia literarum, possessiones, agri, vinea, pradia, domus, agricultura, mercatura, navigatio, &c. Milites enim castra sequuntur, saepe non ut bonam & iustam causam defendant: sed ut spoliato & exuto omnibus fortunis adversario, divores domum redeant, pileis inter se nummos distribuant, hostericum non ulnis sed hastis metiantur, Lib. De Bello & Duello, c. 29. p. 219.

by heedless Ministers of State) resolved with himself to clear the Seas of this Cormorant and to secure his Country-men and their Vessels from his rapacious clutches, *Thereupon de propria pecunia conduxit mille armatos, &c.* he raised a thousand men at his own charge, and with them set upon the Pirat, and not onely took his prizes, but him the Arch-Pirat also; which action, though it had the acclamation of the Commons, yet brought him no favour with the great men: for Sir John Philpot was summoned before the Lords, and told, he was too blame so to do, *Ac si non licuisset benefacere Regi & Regno sine consilio Comitum & Baronum,* saith the Historian. Patiently he bore the several censures of his Judges, till overcharged with the tartness of the Lord Stafford, who rating him more then he thought became him, was by Sir John stoutly replied upon to this purpose, *That he, not moved with pride or ambition, but with pity on their sloth and his Nations dishonour, undertook the enterprize; and that what he had at his own charge done, was so farr from deserving displeasure, that he hoped it was an acceptable work to God and his Country-men: and that his Lordship ought rather to commend his zeal to his Country, then blazon it as a demerit of it,* which reply did so daunt that Lord, that he had not a word to say, thus the Story; which I note, because it often falls out, that Great-men think nothing worthy or acceptable, that comes from a hand they like not; (as seldom do the haughty of the Nobles and Gentry, Cities or Citizens, though descended of Noble and Knightly Families;) who, though they will seek Portions with Wives in Citizens Daughters (and were it not for London, what Mine of that kinde would they finde in England, as meanly as they think of it) yet are too often detracters from them, and utter phrases of disparagement to it, like that Marginal Note which my *Waltingham* has on this story in hand of Queen Elizabeth's time, *A sawcy Knave, Merchants answer to a Nobleman.* But enough of this, onely 'tis pity Corporations, that are Staples of Trade, should pay to avoid Quarterings on them, and yet be quartred upon: but this being the posture of things in our Chancellour's time of stay in France, occasions me to conclude, *That all's fish that comes into the Souldiers Net.* And since their Net, which heretofore caught the Nation, is broken and we are escaped; and our Governours are as at the first, and our Judges as at the beginning; as the forequoted Scripture expresses the happines of a restored people; how much becomes it us all to sacrifice to God (in the advancement of his glory and the gratitude of our reformed lives) the first and fatlings of our serenity and order. For what

*Bocerns* writes of Armies and Souldiers is most true, *All the good they doe (necessity of Rebellion and Invasion excepted) is toleration of all Religions to gratifie the parties potent in them, disturbance of settled order, decrease of good learning, dispossession of Subjects of their houses, lands, vineyards, and accommodations, impediment of husbandry, trade, navigation, destruction of buildings, murders of men, and waste of cattel and wealth; for the souldier quassuch does more intend his spoile and pay then examine the cause; and caring not for any thing beyond returning home rich when he shall be discharged, studies no civility to the Country he is a stranger to and a temporary Conquerour of,* thus *Bocerns.* From the danger of this then (God be thanked) England being delivered, we have a mercy beyond the Subjects of France; wherein, though there is no enemy, there is notwithstanding an Army, which does quarter on the people shrewdly, so it follows.

*Et ultra hec, qualibet Villa semper sustinet duos sagittarios ad minus, & aliquae plures, in omni apparatus.*

Still more and more charge, belike France is all Gold and Gold's worth, not onely the fourth part of the Grapes, and a penny on the Quart for wine sold, taxes raised yearly on Vills and Burroughs, free-quarring on the Peasants who live in the open Country; but also besides all these, every Town and Ville is bound to maintain at their own charge two Archers at least, and some more, every way compleat, in all manner and equipage of Warr: this will amount to a mighty Army. Consider then if we doe, France to be in length 660 Italian Miles, in breadth 570, in circumference 2040, its 23 great Provinces, that contain in Parish-Priests of the Clergy, who yet are but a small part of the men, yet are in number said to be 130000, other Ministers

Heylin. Geogr. p. 171.



thers 100000, 3 Archbishops, 104 Bishops, 1450 Abbyes, 540 Arch-Priorities, 12320 Priorities, 567 Nunneries, 700 Convents of Fryers, 259 Commanderies of Malta, 27400 Parish Churches, in which are computed 15 Millions of people. I say, France so vast in circuit and numerous in people, having perhaps as many Villis and Burroughs as Egypt had Cities in Amasis his time, which Budanus sayes, were 20000: if at 14 thousand of them 2 comes to 28000 Archers, and 6000 at 3 a Ville is 18 thousand more. I say, these thus computed make a very vast Army of Archers, and those are no mean Artillery but of great terrour and execution. Antiquity thought so of them, for besides that the Asiaticque Nations and the Indians to this day use them, the Romans and Germans had much esteem of them. Tully numbers Archers among the Magna tormentorum copia; multis Sagittariis, multo labore, &c. and Tacitus reports the Germans to Asperare sagittas ossibus, and Quintilian tells us of Armatas sagittis & face; and Ovid, though he wantonly uses the phrase Nudis sagittis uti ad bella, yet alludes to the customs of Warrs, to have Arrows in a readines, when the wolf of an enemy was before them, this dogg of Arrows was behinde hanging at their backs, ready to fix them. For as Arrows are an Engine of Warr, doing execution without noise and at distance, so are they very fatal in their galls to Horses, and their injuries to foot-souldiers, which made Moses, who was mighty in word and deed, compose his Army much of Archers and Darters, if Philo's Authority be Canon in the case; for he sayes, he had Αρομιστας and αρομδωμιστας, which are often as potent to force an enemy from his station, as that Persian money named Sagittarius, was, to force Agesilaus out of Asia, when the King of Persia by Timocrates gave him thirty thousand of them to have his Room rather than his Company. The Archers then of our Text are such as doe, though they doe not Venenatas emittere sagittas (as some barbarous Nations used, to cure the ill consequence of which Pliny tells us, men studied Remedies) yet doe Vulniferas emittere sagittas, and such as brings men in potentia proxima, by mayhem to death. Thus Saint Bernard tells us allusively, that God has three great sorts of Arrows to wound the hairy-scalp of wickedness, loss of fortunes, Corporal disquiet, and Infernal torment, and that there are but three defences against them; Calm fear, Devout love, and Virtuons wisdom, by which they will be frustrated. And certainly as heed to, and provision for the evil day afore it comes, is the way to conquer the terrour and despoyl the triumph of it when it comes; so to be unprepared for and negligent of it, is not onely to yield the breast of life and happiness to the fury of Arrows of enmity, and to court a foe, in me convertite ferrum, but cloggs the disconsolacy and shame of such advantage and insult, with reproach of asnery. And therefore our Nation, who ever found great advantage by Archers and Arrows, Not onely by many notable acts and discomfitures of Warr against the Infidels\* and others; but subdued and reduced divers and many Regions and Countreies to their due obeysance, to the great honour, fame, and surety of this Realm and Subiects, and to the terrible dread and fear of all strange Nations, they are the words of the Statute. 33 H. 8. c. 9. enjoynes Archery to be maintained; so did before 3 H. 8. 3. 6 H. 8. c. 2. which, though they are repealed by the 33 forementioned, yet stand good as to the approbation of Archery therein directed. And this the Text noting as a piece of the wisdom of the French (who has often been defeated and galled by our Archers and their Volleys of Arrows, as at Hambont in Edward the Third's time under the Lord Mannes conduct, after at Abville and Saint Requier, after at the battells of Poitiers, Aulroy, Agincourt, in the expedition of the Lord D. Arbeny and Earl Morley against the French in Henry the Seventh's time) finding the use and consequence of them, array their Nation with them; though I read of no great execution that they have done by them, but yet they do continue the exaction of Archers from every Vill and Burrough, which doth finde duos ad minus sagittarios, & aliqui plures.

Hejlius Geogr.

Budanus lib. De Affe. p. 195. Edit. Basil. 1595. in fol.

Lib. 5. ad Attic. 108.

¶ De Germanis. Quintill. lib. 3. c. 4. 20.

Sagitta quod satis longe agatur, vel à satis & istus, vel quod sagax sit istus, Etymolog.

Lib. De vita Mosis, p. 628. Plutarch, in Apollonem.

Natur. Hist. lib. 28. c. 8. p. 577. & lib. 20. c. 20. p. 441. lib. 6. c. 29.

Stimulus amissa pecunia, pestis corporalis miseria, malleus infernalis memoria, Sanct. Bernard. in Sententiis.

\* Holingshed, p. 473. Temp. R. 2.

Holingshed. p. 363. 371. 389. 397. 770. 771.

In omni apparatu & habilimentis sufficientibus ad serviendum Regi in guerris suis.

This comes in to shew, that not onely the bare Archers are to be found, but them set forth to, and furnished for performance in the warr; For omnis apparatus signifies a good cloathing and arraying, as an Archer should be, with Bowes, Arrowes of all sorts, Files, Whetstones, Gloves, Bracers, Bow-strings, Sword, and all things esse that

Atque ad illam  
causarum operam  
ad quam ego nun-  
quam nisi appara-  
tus & meditatus  
accedo.

1 De Legib. 17.  
1 De Invent. 74.  
Valla lib. 5.

that to Archery appertaineth: *apparatus* signifying not onely the furnishing it self, but the preparation to it, training up to the exercise, and this added to the former, makes compleat apparature: Thus *Tully* defines *apparatus homo*, and *instruckta & appa-  
ta domus omnibus rebus*, as much as *ornata*, so that every thing that is deficient of the perfection of its kinde, being said *à magnificientia generis recedere*. This *apparatus* being the triumph over that mutilation, is that which is understood the compleatness of it, which because in matters of warr to have all necessaries to carry on our underta-  
king to its full execution, do become a Souldier. Habiliments of all sorts are necessary, and 'tis said, *Cum habilimentis sufficientibus*, whereby is meant, according to the *French* *Habiliments* notation, aptly, strongly, cunningly, and with good decorum; and this to be enabled by good setting forth to do, is *cum Habilimentis sufficientibus*, (as the Texts words are) worthy the Kings service in his warrs.

Nul terre sans  
guerre. Prov.  
Gall. Translated,  
He that hath  
Land, is seldom  
out of Law.  
Hypodeigm.  
Neuftrix, p. 176.

Hist. France.  
In his life.

A brave K.  
and a true  
publick Fa-  
ther.

Cent. 6. Chil. 1.  
Adag. 25.

Reges enim illi, so-  
lum dici merentur  
quis & alios vir-  
tutum plenitudine  
regant. Callan.  
Catal. Gl. M.  
p. 212.  
Gaguinus in  
Chron. Franc.  
Cass. Catal. Gl.  
Mundi, p. 579.  
Hist. France in  
life of Lewis 11.  
p. 415.

Cass. Catal. Gl.  
Mund. p. 579.

[In *Guerris suis*.] A word made Latin from the *French Guerre*, which signifies pri-  
marily intestine dissention and contest, a thing frequent in *France*, but is used largely  
for any Military encounter; so *Walsingham* expresses it, and thence the word *Warr*  
which is of the same latitude: For wars being the Kings to begin and end, as to him in  
his Majestick consideration seems meet, those that are to assist him by tenure and roll  
are so to do in *France*, when ever his Army is in motion, and his Royal Orders to sum-  
mon them to their Quarters; which *Quoties libet eos summonere*] is a very vast power  
in that King; and those People willingest submit to, and with least regret bear, who  
live in the times of such as *Lewis the twelfth* was, whom *Histories publish to be good to  
his subjects*, and alwayes studied to ease them; for he raised many Armies of Horse and  
Foot without the oppression of his People by new impositions, which made his subjects often  
and freely grant him increase of Subsidies to supply his forein and domestick affairs, yet  
would he not allow of those impositions, desiring rather to cut off the expences of his own Per-  
son and Household to save his People from oppression and spoyle: Thus noble was King  
*Lewis*, who, though he had all he pleased of his subjects in vassalage to him, and could  
mow the faire Meadow of *France* by the sithe of his Power as often as he pleased, and  
that to such a proportion as should shave, rather then only sheare the fleece of his sub-  
jects: yet amidst all these temptations, he employed not his Power to burthen and pinch  
them, but knowing God his Chief, knew  $\alpha\gamma\tau\acute{o}\nu\ \chi\tau\acute{o}\ \mu\acute{\iota}\lambda\alpha\nu$ , what was white or  
black, good or evil in him, would accordingly reward or punish it. I say, under such  
a Prince no latitude of power is too great, because God gives him power over his  
temptation, and thereby secures them that otherwise he could annoy: but when Prin-  
ces of other temper, whose will is the Law, (when it wills nothing consenting with the  
Law of God, Nations, Reason and Religion) are in power, then full sad is the case of Sub-  
jects, & full dismal the accounts those Princes have to make to God for terrifying their  
quiet and patient people, and burthening their contented backs beyond measure, and  
the proportion of necessity: which *Lewis* the eleventh King of *France* in a high mea-  
sure practicing, and rejoicing in nothing more then to tyrannize, did feel repaid him  
in the dreadfull terrours of his sick and death-bed; for when he began to decline, he  
was a terror to himself, hating and mistrusting every one, (not his own son and son-  
in-law, his daughter, Nobles, Courtiers, Commanders, excepted) but prosecuted  
them all with jealousies, onely *James Cottiera*, a *Burgundian* Physitian, he trusts, and  
was so desirous to live, that to draw forth *Cottiera's* utmost skill to save him, he gave  
him 10000 Crowns a Month, and what Lands and Offices for himself and his friends  
he would demand, his Nephew he made Bishop of *Amiens*; In short, so he would but  
prolong his life, he was contented he should command his Crown and Scepter: after this,  
being fearfull of death, he sends for *Francis* the pious Hermite of *Calabria*, falls down  
upon his knees before him, desiring him to prolong his life: he causes the holy Reliques  
to be brought from *Rheimes*, *Paris*, and *Rome*, and by them standing by him, hoped to  
preserve his life; and when all the Divines about him, told him, he could not escape  
death, but was to prepare for the entertainment of it, all he sayes is, *I had hope that  
God would help me*, but God knew he little deserved it; for though he took the poli-  
tickeff course he could to have his cruelty in Government concealed, setting up his  
Statue in his life time, with his knees bended, and his hands joyned together and lifted  
up as a devotionary, and this he did to prevent the effigiation of himself when dead.

as the manner is, with both his hands downwards, to signifie those that did *in utroque male administrare*; yet by this did he not avoid the severe Character of *Historians*: for miserable Prince as he was, God was not near in the comforts of adversity, the prosperity of whom was not only an estrangement from, but an enmity against God. Much good may Honours do them that buy them so dear as some great men, whose will is the Law, often doe: so did the *French Queen Katharine*, who to establish her Regency after *Henry the Second*, found no better means then to abolish the fundamentall Lawes, the order of the Realm, the privilege of the Princes of the blood, the authority of the general Estates, and the Prerogative of the Parliaments. O surely 'tis a shrewd grief to undergoe the cross purposes Princes affairs are ruled by. *Philip the Fair* would needs raise impositions of ten Deniers on every livre in Merchandises and Wares, the people in *Picards, Normandy, Orleans, Lyons*, and other places flew into such sedition that they made his life a trouble to him. And in *Charles the Sixth's* time, by reason of high Government, it came to that pass, that his very Servants banded against him, his Counsell plotted his ruine, and the chief Controulers of his actions were the Princes of the blood. These, These, are the miseries of Governments depending on will, which is such a wilde thing, if not bounded by God who onely can keep it from the hour of temptation and miscarriage, that there is nothing more satall (except Hell) then it is; nay, it is that which makes the Hell of torment. This boundless Will in the dangerous effects of it, is the cause of that *His non ponderatis*, which produces *Tallagia alia*, &c. to the ruin and grief of subjects; for when Greatness is set upon the carier, and will go on *non obstante* Religion and Justice: O then 'tis nothing but God can remora it. *Saint Clovis*, the Founder of the *Gallique* Greatness, is storyed to commence his Achievements after a method very dreadfull; He slew all his Kinsmen that their Principalties might come to him and his Race, he spoiled men prodigeously of their goods, he seized and slew *Chararic* and his son, condemning them (as they were polling) to be put into a Monastery; the son seeing the father weep bitterly said, *These green branches will grow again, for the Stock is not dead, but God will suffer him to perish that causeth them to be cut off*; which speech *Clovis* hearing of, said, *They complain for the loss of their haire, let their heads be cut off, and slain they were*. Add to this his Conspiracy with the servants of *Raguachair*, and when they had brought *Raguachair* bound into his presence, he reviles him for unworthy the blood of *Merovee* thus to suffer himself to be bound; and when those that he hired to binde him came for their reward, he reproached them with *Avaunt Traitors, Is't not enough that I suffer you to live, I love the Treason but I hate the Traitor*: these and sundry the like which *Gregory of Tours* charges on him, make him a most grievous sinner though a great King, and the more grievous because so great a Personage. All these confirm, that *Oppression* proceeds from unlimited Wills. When Princes give way to vage desire, they bound no where, but think what they have too little, when what they would have, is farr further too much. Alas, What would the *French* Monarch have more then he has, who has all his Subjects have? Enlarge his Revenues he would, but to what proportion he knows not himself, nor doe his Subjects: *Lewis the Eleventh* advanced the Revenue of *France* one Million and half of Crowns; *Francis the First* doubled that Advance; his Successour *Henry the Second* doubled the first double; *Charles the Ninth* added to the six Millions a seventh; *Henry the Third* brought the seven to ten Millions, and after to fifteen; in *Henry the Fourth's* time the Treasurer of the Duke of *Mayenn* said that his Master had more improved the Revenues of the Crown of *France* then any King had done before him, advancing it from two to five Millions Sterling, and yet not a tenth part come clearly to the King's Revenue, the Crown having 30000 Officers to gather its Revenue. These and the like unhappineses of our natures in heighth of fortune, argue Princes as men in danger; and Subjects under the ill Aspects of that Greatness, not happy, but as the Text's words are, *Laceffita Plebs calamitatibus in miseria non minima vivere*.

Hist. France,  
P. 157.

Tolle malam voluntatem, & tolle gehennam.

French Hist.  
P. 16. 17.

Heylin's Geogr.  
P. 238.

*His & aliis calamitatibus Plebs illa laceffita in miseria non minima vivit.*

These forementioned and others equivalent Oppressions, he calls *Calamitates*, to set forth the inevitable and fatal nature of them: for *Calamitas* is properly the violent beating

Καλαμος πικρὸς ἐστὶ τὸ καλῶς ἀμῶδες.

beating down of Corn or other vegetables by Winde, Hail, Rain, or other Tempest. *Theophrastus* to shew the demolishing nature of it, renders it by *καλῶν*; that which causes pain in the fracture of a bone. From this *Calamitas* comes *clades*, which originally is *Surculorum contritio*, and so *Calamitas calamorum* is taken for *Strages stratarum arborum*; here it imports such affliction and sorrow of streight as men in love have, and as those that we say are at their Witts end, that know not which way to bestir themselves. *Laceffita Injuriis*] Made mad by oppression, \* as the phrase is; thus *Laceffere aliquem ad pugnam & bellum* is To provoke to battel, and *Sermones laceffere* To provoke talk; and when *Silins* sayes the Bull does *rupes laceffere*, he relates to the Bulls madnes, which will butt his rage against the hard Rock; and *Tarnebus* when he reproaches intemperate men, sayes, they do *Mortem laceffere*; and I remember *¶ Walsingham* writing of *Pierce Gaveston* sayes, he did *Laceffere insolentis Regni Nobiles*, &c. He provoked by his insolencies the Nobles of England, till they took his head off, and therein taught him more wit then to provoke honour and valour. By then this clause, *Laceffita plebs in miseria non minima vivit*] the Chancellour does not onely mean they are kept short, as those pastures are that are overlaid, but so afflicted as those are that have craving bellies, and no food or money to buy it. This *Cominans* in other words

sets out to the life, *France* he tells us was before and in *Charles the Seventh* time twenty years afflicted with grievous exactions, which *Lewis* his son encreased upon them (as if he had fulfilled that commination that God threatned in that scourge of his, *That should eat the fruit of the cattel and the fruit of the land until the people be destroyed, who also shall not leave Corn, Wine, or Oyl, or the encrease of the Kine, or flocks of the Sheep, untill they have destroyed them;*) for so immane was he, that my \* *Author* sayes, *It was a miserable thing to consider the extremitie his cruelty forced people to*: which makes me often to minde my self and all my Countrymen to be thankfull to God for his mercy in our good Princes and good Lawes, which do not onely give us freedom and security with full consent, but deny the contrary upon pious and politick grounds. For as *England* has ever had more Parkes and Chases in it then any part of the world no larger then it, ever had or has; so has it had more in number and virtue *Pious and Mercifull Princes* then any Nation of the Christian World ever has had; which is the reason the Lawes and they, have so well agreed to bless their people with riches, freedom, and co-operation in Government under them, that I may (under favour of the great and noble *State-Oracle*, the now Lord Chancellour of *England*) use his words very seasonably here, when speaking of our most dear and beloved Sovereign he sayes, *He hath not yet given us, or have we felt any other instance of his Greatness and Power and Superiority and Dominion over us, nisi aut levatione periculi aut accessione dignitatis, by giving us peace, honour, and security, which we could not have without him, by desiring nothing for himself but what is as good for us as for himself*, thus that Reverend and Honourable Sage; which makes me re-assume my former Magnification of the Government of *England*, in which there is no slave, no Subject so vile and vulgar who can say he is *laceffitus*, or does live in misery through the oppression of his Prince and the Lawes; but according to the thirst he expresses, and the blessing of God on it, lives in the enjoyment of what they acquire to him. Which not being the happiness of the people of *France*, they are said in our Text to live *In non minima miseria*; because, though they are in continuall factions, according to that which *Cesar* wrote long since of them, and *Budeus* does not deny, *In Gallia, non solum in omnibus Civitatibus, atque in omnibus pagis, partibusque; sed pene etiam in singulis domibus factiones sunt*, which is enough to keep them miserable; yet have enough whereon to support their lives and relations comfortably: yet is that they have, so charged, that the exhaustion from it leaves nothing theirs, but renders them so poor, *That they doe hardly keep life and soul together*, for the Text sayes *Aquam quotidie bibit*] As in the foregoing instances, the fortunes and estates of the peafants were charged, so as therce to render them poor in estate; so here is a particularization of that which is in a sort afflictive of their bodies, while, though they have wine and appetites to drink it, their expences be so enlarged by their taxes, that they are fain to spare every luxuriancy to answer them: and for that cause, while they sell their

\* Eccles. 7. 7.  
Livius.

*Mortem laceffis qui luxuriose intemperanterque vivendo valetudinem labefactat.*  
Tutneb. advers. lib. 11. c. 19 ad finem.

¶ *Donec privatus capite, docuit suo miserabili sine nobilibus Milites non laceffendos.*  
In Edw. 1. p. 66.

*Rusticos pasena esse Militum, Milites pasena esse Diabolorum.* Dictum Ludovic. 12.

Deut. 28. 51.

\* *Cominans*  
*De Gestis*  
Ludov. lib. 10.  
p. 403.

Note this.

Camden in his  
Remains.

The Lord  
Chancellor's  
Speech at the  
opening of the  
Parliament  
in May.  
1661.

*Budeus in Pandect. p. 193.*  
Comment. lib. 6.  
de bello Gallico.

their wine they *drink water*, and that not onely sometimes for pleasure or medicine, but *quotidie*, as often as they eat their bread, day by day. Now this *water-drinking* the Text makes a part of their misery, not as water is the Mother of liquors, and in some Countries, Seasons, and Cases excellently wholesome, being the natural drink of man and beast, and so a blessing and no injury; but as it is that, which in common account being cheap and chill, is unproductive of such generous Spirits as lustier liquors generate; and as it is that which has such a mortifying operation upon nature, that it leaves the drinker dejected and sad, and denies Nature all the merry notes of her Musick and prankness.

For thus *Water* understood amongst all Nations passes for a drink of meanness and want: hence that passage in the *Prophet*, wherein God alluding to the custome of Power to afflict perverse and facinorous Delinquents with a dungeon, and onely bread and water therein, sayes, *Though the Lord give you the bread of adversity and water of affliction, yet it shall be well*, intimating, that onely bread and water are the support of nature under *adversity* and *affliction*: so God's menacing *Jerusalem's* reduction to short commons for abuse of her plenty, sayes, *I will break the Staff of bread in Jerusalem, and they shall eat bread by weight, and with care; and they shall drink water by measure and with astonishment*. So that to drink water dayly, and that to save charges, and to be able by such denial of themselves to gratifie the great levyes upon them, which they should be unable to disarrear if they did not so, is that which confirms their misery according to the allegation of the Text, *Nec alium plebei gustant liquorem nisi in solemnibus festis* ] Though water be most wholesome and the drink of epidemicalness, and though it does many good offices to nature, feeding it to no excess, engaging the intrals to no inflammation, though it impede corrosion and putrefaction, most of which injuries to nature are promoted by sophisticated wines, and other ill-compounded liquors, as well as by salt, crude, and indigested dyet; yet when water is become (in this sense) of a servant a Master, when it, from being serviceable to cleanness and to cookery of meat, advances to congregate with men, and that to be the onely drink they must take down, then 'tis hard. *Water* is thought cold comfort, welcome it is to Armies on their march, and to Shepherds for their flocks, and to Travellers on their plod, and to Garrisons in a siege, and to Prisoners in their Dungeons; but to men that labour hard and have Wines growing, yet must sell their wines to pay impositions and finde Souldiers dainties, while they themselves are forced to drink water, this is irksome. Yet the condition of *France* is such, that the poor Peasant is kept so short, that eat and drink courselly he must; which though some do in *England*, 'tis because of other accidents, not their impositions. But in *France* the *Plebs* drink water except onely *Diebus Festis* ] These *Dies festi* or *Holy-dayes* I have written of in the Notes on the 24 Chapter, that which I add here, is to notifie the practice of Antiquity to indulge to these great dayes, and the solemnities of them, extraordinaries of all sorts, not onely cloaths and entertainments, but every other thing, the best whereof then appeared; so *Philo* tells us the *Jews* did, and *Turnebus* with *Budens* out of the *Roman* Authours confirm. For though I know they had their (a) *Dies Magni*, besides these *Festa*; yet did they in these Festivalz abound *argento, veste, omni apparatu, ornatuque*, as (b) *Budens* testifies: which entertainment of Festivals, as the *Christian Church* has ever retained, as is evident in the Councils, and as *Polydor Virgil* has made good: so also the custome of *France* is, that though the *Plebs* drink water ordinarily, yet on *Holy-dayes* they feed and drink better; their compositions are then, as larger and freer, so more cheary and spiritfull: then they tipple wine *Cum Privilegio*.

Ἐπὶ τὸ πλὴν δεῖσθαι ἐστὶ τὸ καθαρὸν ἢ γλυκὺ, Dioscorides lib. 5. cap. 10. lib. 6. cap. 33.

Legge Commentar. in lib. 5. c. 10. p. 623.

Isa 30. 20.

Ezech. 4. 16.

Ad tria sufficit aqua, ad potandum, ad lavandum, ad cibos coquendos; sic verbum Dei crudus carnis cogitatus igne Spiritus sancti accendit coquit, & vertit in sensus spirituales, & cibos mentis, Sanct. Bernard. Serm. 22. in Cant. Cantio.

Lib. Περὶ ἐορτῶν, p. 1174.

Non solum autem veteres diebus festis & latis solebant tempore ramis ornare & velare; sed & in magna laetitia familiaribusque sacris & nuptiis suos postes etiam fertis umbrabant atque velabant & insulis decorabant ac insigneabant, addebant & lucernas. Turnebus Adv. l. lib. 25. c. 4. p. 929. & lib. 27. c. 7. p. 1051.

(a) Budæus in Tandell. p. 19. Edit. Vascos.

(b) In Tandell. reliq. p. 139. Imp. Ea fl. 1514.

(c) Lib. 6. De Invent. c. 3.

*Froccis sive Collobitis de canabo ad modum anni saccorum teguntur.*

As their drink is water, so their garments mean, *Frocks* of *Canvas* made of *Hemp*. This *Froek* anciently was the habiliment of *Monks*; so *Matthew Paris* tells us in the life

Formam Cuculli & Frocci quam colorem transmutavit Primitivum. In vita Wolnochi. M. Paris p. 38.

Indicit omni anno totum convenium cum festa sua de tunicis, omni altero anno de Cucillis, & omni tertio anno de Froccis, Ingulph. Hist. Croyl.

life of *Wolnoth*, and so *Ingulphus*; not that I would have it mistaken as if these *Frocks* were that Vest we call the *Candida Vestis* or the *Surplisse*, but that Monastique Garment, which of brown and course linnen, or woollen hung down from the neck to the knees, and which now Porters in *London* wear and Horse-keepers: yea because they are worne also by Country *Jobsons* at this day, and denote fervility, we have a phraze when we would express our anger to one under our power, *I'll canvas his Jacket*, or *I'll canvas his Coat* for him.

This then of *Canvas* hangs over their close garments, which is in colour and nature much like our *Barge-cloaths*, either brown or of an hair-colour, good for weather and toyle; and this I my self have seen the Peasants of *France* in, God knows, with wooden shoes and pitifull other accoutrements.

*Ad modum panni sacculorum teguntur*] *Pannus* is the general name for all that which is  $\text{ἰδὸν ἰσῶδες αἰέμα}$ , not onely honey, oyl, balsam, which keep the inward parts from waste and injury; but that hemp, flax, and cotton, which rising from the ground, cloth, though course yet warm for out-side covering, is made of. The *Greeks* call *Pannus* by  $\text{Ῥάδος, τὸ τριβάνιον ἢ τὸ αἰσώπειον, ὅτι εἰς αἰσώματα κατὰ κολῆται}$ , saith *Suidas*. Indeed *Pannus* is taken for cloathing of meanness, and things of meanness; so *Paracelsus* calls a blemish born with one, *Pannus*; *Pliny* stiles the tumour or swelling in the groyne by *Pannus*, and *Turnebus* tells us of *pannaria mala*; and *Pannicularia* in the

*Digest* signifies rayment and things of small value, not above five Crowns, which a man carries with him into prison or the place of his death, so *Ulpian* uses *pannicularia*; and he that is rude and beggarly in habit, a *ragsbame* or *rakesbame* is termed *pannosus*: so (a) *Justine* tells us of a Military Feat that was done under disguise, *Permutato Regis habitum pannosus sarmenta collo gerens, castra hostium ingreditur*; and Saint (b) *Bernard* makes it *A sanctification of poverty that our Lord humbled himself to be Pannus involutus*; thus for *Panni*. But the specification is *Saccorum*] *Saccus* is one of the original words, that hold

their own almost in all languages, in the *Heb.*  $\text{פֶּשֶׁת}$  or  $\text{פֶּשֶׁת}$ , whence the *Greek*  $\text{σάκκος}$ , which is, to strain wine so exactly as we would count it worthy our drinking, and keep it choicely as men do Cordials; hence the best wine is called by *Julius Pollux*  $\text{δυσὸν Σακκίας}$ , and *Theophrastus* mentions  $\text{Σακκίονον}$ , which wine, called *Sack*, holds its own (as we say) for esteem even with us. From this custome of streining wine through these *Sacks* or *sacking*, which were called (c) *Sacci Vinarii*, we use to call every thing of linnen or hair, that carries any value in it *A Sack*, *A Sack of Corn*, *A Sack of money* (for money-baggs are little Sacks.) Hence Religious men because their penitent souls are precious, and their natural sins by their sorrow is drained from them, were prescribed to put on *Sackcloth*: from whence its grown the Livery of those Superstitious, who, under the pretext of *Sackcloth*, carry on subtle projects. So then when *Sackcloth* is applied to the poor *French*, 'tis to shew their poverty, which cannot exceed the meanest cloathing for their bravery.

*Panno de lana præterquam de vilissima, & hoc solum in tunicis subter Froccas illas non utuntur.*]

Cloth of hair they wear, but cloth of wool they wear not, or if they do, but that sort of it which is next door to hair, that is *Doggs-hair*, as we sarcastically call course cloth. For since the nature of the *French* is confident and violent, necessity is on the King to humble them, if he will keep his high Government; and if humble them he will, it must be in all things, as well in cloaths, as meat, drink, and money. And this the Text asserts he does in that they are allowed no fine cloth to wear, for that is for fine fellows, Masters of Peasants; the rough and course remains of refuse Wools are for their Vests, and yet those not in view portending any value, nor in Garments of any capacity; but in their short Coats like Cassocks, *In Tunicis suis subter Froccas*.

In verbo  
 $\text{Ῥάδος}$ .

Lib. 15. c. 14.  
Advert. lib. 18.  
c. 13. p. 1010.

¶ In L. Divus De bonis damnatorum.  
Pannosus qui seruida veste, crasso panno vilisque operibus est, nec hoc nisi de panno dicitur.

(a) Justinus lib. 2.

(b) Pannus involutus sacram in corpore suo dedicavit pauperiatem, Serm. 4. De Nativ. Dom.

Sacco Vinum Veres, Turneb.

Advert. lib. 13.  
c. 14.

(c) Plin. lib. 24.  
c. 1. & 2.

*Tunica* ] most Authours agree in to be the Caslock or *Polonian* Coats, a Garment close and warm, which though the *Greeks*, and we after them ( for *England* was ever more like the grave then light Nations in habit and religion ) used long ; yet the *French* Peasants cut off, wearing it in the place of a doublet; it being loofe and warm, plyant to the body in the labour and activity of it. Some derive *Tunica*, à corpore induendo, others ab inducendo; because it is a garment drawn over not onely the body but also some other coverings of the body. Critique Authours discourse much of this Garment : in *Turnebus* we read of *Tunica Nilotis*, *Tunica coloria*, *Demissa tunica*, *Manuleata tunica*, *Tunica Russa* : and it should seem that the *Laticlavian* Robe, which Senators had, was a *Tunica*; which, though not so long as womens trains, yet longer then the Military Coats, and was as the now Gowns Aldermen use, drawn over their other cloaths : so that *Tunica* understood for the exterior and visible Garment, was applied to the externity of other things. The shell of a nut, *Tunica nuclei*; the skin or coat that covers the eye, which Anatomists make *Cornea, uvula, vitrea, crystallina*, this they called *Oculorum tunica*: that fatal Coat which Malefactors had of Pitch about them, when they went to be burned, was called *Tunica molesta*. In short, what the Text intends by *Tunica* is shortly uttered in that which is the Country-mans garbe with us, *The short Coat*; which, though our Yeomen and Farmers wear, as Gentlemen do under a wide and longer vest : yet the Peasants in *France* wear under their *Frocks* of *Canvas* or *Sacking*. And this is their abatement and the badge of their servitude being the Vests of Porters.

*Tunica vestis est cui toga superinducitur.* Budzus in *Pandect.* p. 54. Edit. Valcos.

Advers. lib. 30. c. 30. lib. 13. c. 19. lib. 11. c. 23. lib. 2. c. 4. lib. 13. c. 19. lib. 30. c. 21.

Cui Laticlavii jus non erat, ita cingatur, ut tunica prioribus oris infra genua paulum posterioribus ad medios poplites usque perveniant; nam infra mulierum est, supra Centurionum. Budzus in *Pandect.* p. 54. Edit. Valcos.

Rosinus Antiq. Rom. lib. 5. c. 35. p. 224.

*Neque caligis nisi ad genua disco-operto residuo tibiarnum.* ]

This further argues their suppression and vility, that they go bare-foot, having neither hose nor shoes, but those of wood, or old ones, the refuse of our Nation transported thither. Now, as to be well shod as well as well clad was among the *Romans* and is amongst all Nations a sign of freedom and prosperity, so to be the contrary is a sign of extreme poverty. And therefore the *French* Peasants are kept so poor that they cannot afford to buy hosen to shelter their shin-bone ( the *Tibia* here, which not onely gives strength but beauty to that flesh, which environing it, adorns and symmetrizeth the legg ) but are fain to goe bare from the gartring, to which their breeches reach ; and are so farr from great breeches ( which are semi-peticoats, and the invents of effeminate wantons, who by affectation of them proclaim their lubricity, and what it is they are enamoured with ) that they are glad they can purchase any thing that will tolerably cover their body, and defend the knee, where the motive vigour is, from cold and injury ; which breeches so girt under the knee, may well be called *Tibialia* : as those other things were, which the *Romans* wore on that part armed with it, of which *Suetonius* writes, and of which to write more would be useless.

Rosin. De Antiq. Rom. lib. 5. c. 36. p. 225. Proprie os cruris oppositum sura, Celsus lib. 3. c. 1.

Arma quibus crura munitur Tibialia vocant.

Hyme quaternis cum pingui toga tunica, & subucula thorace laneo & femoralibus & tibialibus munitur, in Aug. 6. 32.

*Mulieres etiam nudipedes sunt; exceptis diebus festis* ] This is a further degree of the poor Peasants misery, that not onely he himself must endure hardship, but even his wife and Daughter ; women in sex must do it also, and in that, in this particular of going barefoot, the badge of very beggary. Now, though true it be; that God made man, one nature, in two sexes, in which regard *Philo* elegantly calls man, *The male-woman*, and woman, *The female-man*, puts them into conditions of compassiency : ( and the state of Marriage is under the indispensable condition of *For better for worse, for richer for poorer, in sickness and in health.* And usual it is, and otherwayes it can not be, but that poor mens wives must be miserable with their poor Husbands ( I mean, in that scantness of outward accommodation which men call a worldly misery : ) yet, for women so to be objected to hardship is very irksome to any man to behold, and unpleasing for me to write of. Tears here are the properest encounters of these Narratives, and 'tis pity a pen should any further eternize such Barbarism, then to be the remembrancer of that abhorrence, which men in all successions ought to have of it, for womens sakes who suffer by it. But so it

Ἄνθρωπος ὡς γυναικὶ ἀνδρῶτος καὶ ἀπρὸς ἀνδρῶτος θήλημα, οἷς τὰς ἐπι γυνέσται καὶ ἀνδρῶν ὀμυλίας, Philo lib. De Cherubim. p. 115.

Mulieres quasi Molliores.

is in France, the poor women are fain, to save hose and shoes, to go bare-foot and bare-legg'd, as beggars do, fulfilling that of *Philo*, though in another sense then he meant it, *That they are subject to vulgar customs*; onely herein they exceed perfect beggars, that they have hose and shoes for Holy-dayes, to Masse and to Recreation, where they see and are seen, they will go trimm; otherwise, nasty and pitifull persons they about their household affairs are. And this our Chancellour uses as an Argument of the French Country-womens hard lives; though truely the Wives of their Nobles and Villagers or Citizens, are plentifully accommodated with all necessaries; yea, so glorious and gay are they, and so have they by their fashions new-fangled our Nation, that though I do not wish a revival of somewhat like that *Senatus Muliebris* in *Heliogabalus* his time, which scoffing and deriding their vanities, brought an *Odiu* on, and diminution of women, the wearers of them. This, I say, I wish not, least it too much lessen them (whom we men ought to have high value of, and great loves for; because they are not onely unspeakable blessings of life, when they are worthy their names women, but also the means of the continuance of the Race of mankind and so our temporal eternizers;) but that which I do wish is without prejudice I am sure, and without all displeasure I hope to the truely worthy of that Sex; that as (a) *Budaus* wished for *Paris*; so I, for *London* and the Suburbs, might see such a constitution,

Τουακωρ ἴδιον τὸ ἕδος κείνου  
 &c. lib. De Temulentia, p.  
 247.

Cum autem esset dies sanctus Pentecostes, supplicaverunt Cremonenses, ut propter diem sanctum differretur Pugna usque in crastinum saltem. Rigordus De Medoanensibus in Gestis Philipp. Regis Franc. p. 112.

Fecit & in colle Quirinali Senaculum, id est, Mulierum Senatum, in quo antea fuerat Conventus Matronalis solennibus dumtaxat diebus, facta & Senatusconsulta ridicula de legibus Matronalibus, qua quo vestitus incederent, qua cui cederet, qua ad cuius osculum veniret, qua pilento, qua equo saginario, qua asino vereretur, qua capento mulari, qua bonum, qua sella veheretur, &c. Lampridius in Heliogab. p. 199. Tom. 2. Hist. August. Script. Lat.

Yopisc. in Aurel.

(a) In Pandect. p. 66. Edit. Vascol.

Ut de nostratibus Matronis statueret, qua cuique cedere, qua cuique Dux aut Comes esse deberet, quid gestare, quid indui, quid amictiri, quidve cingi unamquamque deceret; but enough of this. Onely, since the poor mens wives of France are bare-footed all dayes but Holy-dayes, and then put on hose and shoes in reverence to those dayes,

Gulielm. de Nangis, De Gestis Ludovici Regis. p. 412. Script. Gall.

Literis suis patentibus sub pena excommunicationis precipiens universis Ecclesiarum Rectoribus & Vicariis sua Provincia, & illorum subditis, ut de cetero non abstineant in festis quorundam Sanctorum, ab operibus manualibus & servilibus, qua prius in talibus festis fieri non licebit. Walsingham p. 172.

I cannot but wonder whence that injunction of *Simon Islip* Arch-Bishop of *Canterbury* in *Ed. 3.* time should proceed, when Holy-dayes being in the greatest esteem and credit, because Canonically according to strictness observed, were to be dayes of recreation and devotion (which is the reason that the Historian makes *Saint Lewis* the French King's penance on Holy-dayes to be meritorious) and no Arts-man to work upon them; yet then the Arch-bishop by his Letter Patents to all his Clergy, inhibited upon pain of Excommunication, from abstaining on some Saints dayes from their Callings of labour, and permitted them to work thereon as upon common dayes. But I return to our Text.

*Carnes non comedunt ibidem Mares & Fœminæ; præter lardum Baconis, quo impinguant pulmentaria sua in minima quantitate.*

This Lent all the year with the poor Drudges of France, our Text produces as a further argument of the tenuity of their condition, and their Taxes exhaustion from them. For that they eat no flesh, is not (I conceive) from any religious observation, or any State-injunction, but purely for cheapness sake; and by their hard dyet to enable them to keep somewhat about them to entertain their Masters with, when they come abroad: and without which to treat and appease them, they would be cruelly tyrannous. For flesh they breed up and have, and stomachs they have to eat it, and a *snappow* and then they get of it; but they dyet on roots, grains, and fruits, which they make into pottages: this the Text calls *Pulmentaria*] the same in effect with *Pulmenta*, that we call, water-grewel, pulse, or thin pottage, the dyet of poor people: to which *Horace* alludes, *Canes ut pariter pulmenta laboribus emptia*; and that which *Apuleius*, *Plautus*, and others mention as thin dyet: this the Text sayes they do make hearty and strong with a small piece of lard of bacon, or, as I rather believe, by the lard of bacon in the broth, they so quat their stomachs that they make it go further by it; to this use of it *Plautus* alludes when he sayes, *Ipse ego pulmenta utor unctisisco*; and for this use lard of bacon is fitly called *Lard* from *arduo*, quia arduo firmum

Horat. 1. Ep. 19.  
 Jus porcerum pul-  
 lorum, piscium, &  
 jus pulmentorum,  
 Largissimas epu-  
 las, Apuleius.  
 Pulmentum pri-  
 dem ei eripuit.  
 Accius Plautus  
 in Aulul. 9. 17.



*firmum & arduum facit*; and thus bacon by being salted and hung in the smoak, and over the fire, has much of the succulency and moisture exhausted; which being the matter of tenderness and putrefaction; renders it. (in the absence of them) more compact, firm, and durable. Now this Bacon or Lard, becoming a dish that will dure, is ready ever upon the sudden, which is the reason that some of the \* Ancients have called it, *Succidiam*, because they do dayly cut such portions off as they use; and *Tully* sayes *Cato* was wont to call his garden hence *Succidiam*, *quia inde quotidie aliquod rescari possit.* This then so cheap to the Peasants, who bring up the swine of which it is made, and so ready at hand, and satiating the gross labourer's stomach, is the flesh, that onely those poor souls are able to provide, which though they can do but in *minima quantitate*, yet better a little then none at all.

*Succidia verbum Catonianum, quo nostri lardum significat, ex quo in usum suum quotidie partes succidunt. Agellius lib. 13. c. 23.*

*Carnes assatas coctasve alias ipsi non gustant, praterquam interdum de intestinis & capitibus animalium pro nobilibus & mercatoribus occisorum.*

This shews, that the best of what they breed and kill, they sell to make Rent and pay Taxes and Quartrings; and that which they keep is the course parts, which are not moneys-worth: and therefore they themselves sometimes feast with it, but *Carnes assatas coctasve, Rost and boyled meats*, which are the Staples of dyet with us, they attain not to. *Carnes assatas*] This word *assatas* Etymologists derive from *ardeo*; and in the best Roman Authours *assare* and *assum* is as much as *merum solum*: by way of *Metaphor* it signifies the effect of fire on any thing that extracts by its heat the moisture of it, and thence obdurates it, leaving nothing almost but siccity in it, or at least nothing so much as siccity, this our language calls *Through roasted*. From this prevalency of fire, which by extraction of the humid parts, leaves siccity to predominate in roasted flesh, Critiques term every thing of solitary import by *assare*, and the words derivative from it, *Vox assa, A voice without Musick, Tibie assa, Musick without voice; Assa, The place in the baths where they do onely sweat and not wash*, we call it a *Stove*; *Assa, Nurses that are so intent on the Babes they suckle, that they forget themselves and their relations, to tend them*: so *Assam pro mero solo sine aqua & humiditate*. And when the Poets were said to devote a Poem to any particular person, they were said *assare*; and their Poems were called *Assamenta*. This is the Notion of the word, and the Ordeal by fire in which the flesh of beasts is purged and made innocent to the stomach of man; as also it is by the Ordeal of water (*Coctasve*) which is the effect of fire working by water on flesh; not by parching up, but by soaking out the moisture and humid parts of flesh, which it allures to its self, and by which the liquor of its purgation is heighthned and spirituated. This, though it hath not the preeminence of the former, but follows it in the account of cookery, we saying, *roast and boyled*, yet is very wholesome dyet; and for weak and declining bodies, thought most nutritive. It is with us here the dyet mostly of the meaner sort, because it requires least charge and attendance to its cooking; but in *France* they use it much, because they delight in pottage, which is sier'd from it. Yet the Text sayes, the Country people have neither one or other; all they of flesh attain to is the offalls, the nobler parts are for the freemen, and those that are moneyed and can fare and live high, which our Text sayes are the *Nobiles & Mercatores*. The former for their bloud and Commands sake, the greatness and dread of which will fetch from the poor Commons whatever it desires: The later, the Merchant or Citizen for his money sake, which does not onely purchase him esteem in all places, as *Cassanus* sets forth notably, but also procure him all conveniencies to life and lustre. For though in *France*, Prerogatives and Seats of Honour and Military Tenure be not purchasable by Merchants and men of Trade; yet are such owned for very rich in money and money's worth. And I think the (a) *Julian Law*, that prohibited a Senator's Son or Daughter to marry any one whose Father or Mother did *Artem ludicram exercere*, will not in the exposition even of *France*, which stand most upon Punctilio's, extend to men of Trade, the *Mercatores* here; seeing Trade of Merchandise, buying and selling staple and usefull commodities, is not *Ars vilis*

*Ubi aliquid aruit & rostrum est, a-bis humidum, solum id quod siccum & aridum superest. Recmaa in veris.*

*Assatrices vocabantur, quia assideat sata. Etymolog.*

Catalog. Gl. Mundi. p. 442.

*Mercatores quia pecuniam possident hisce temporibus, plurimum gratia valent; verum nulla gaudent prerogativa, quia omnis lucri avidi profectio Nobilitatem in Regno illo maculat. Albergatus in Re. Reg. Gallic. p. 115.*

(a) Digest. lib. 23. tit. 2. §. 1. 40.

Paulus lib. 5. Ad Legem Juliam de Papiam, p. 2116

but *nobilis*, (as noble as the Advocate, who sells his breath to the Clyents see, or the Souldier his life to his Generals pay, or any other profession which men practice for reward) and so the Holy Story accounts it, when it terms the Merchants of Tyre, *The honourable of the earth.*

Amos. 3. 8.

*Sed Gentes ad Arma comedant alimenta sua, ita ut vix ova eorum ipsis relinquuntur pro summis vescenda deliciis.*

Before it was *Homines ad Arma*, by which the Cavalry were understood; now 'tis *Gentes ad Arma*, *All the Souldiery*. Provision the Peasants breed up, and perhaps sometimes and in some measure sell to raise their Rents, and other charges, but the most of what they get about them, by hard toyl and parsimony, is but to satiate the Souldier, not to recreate themselves: which makes me think these poor wretches with others in the *Asian* Governments to be very miserable; and those, that so belabour them with affliction and pressure, to justly fear the return of that commination in *Amos*,

Amos. 5. 11.

Zeph. 1. 17.  
Vers. 21.

¶ Dent. 28. 36.

*Forasmuch therefore as your treading is upon the poor, and ye take from him burdens of wheat, ye have built houses of hewn stone, but ye shall not dwell in them; ye have planted pleasant Vineyards; but ye shall not drink wine of them; for I know your manifold transgressions and your mighty sins, &c.* or that in *Deuteronomy*. For truly if Poverty, which is God's affliction, be Great mens marks to level their power at, and against it pitilessly to discharge it self; if they that could eat flesh which they breed up, if they had it, are not permitted an egg the slightest dyet, Princes that have Subjects thus harrassed and shortned, have great cause to have long ears and quick eyes; yea soft hearts; to hear their Subjects groans, pity their griefs, and remove their afflictors; and that not so much upon politick and plausible grounds, as upon Principles of conscience to avoid the terrours of death-beds, and the wrath of their eternal and supereminent Sovereign, under whose power they themselves are as well as the meanest

*Quod enim conservandis Regibus firmitus presidium, quam pietas, quam mansuetudo, quam clementia & liberalitas esse potest. Gaguinus lib. 4. fol. 32. Edit. veter.*

Ludovico, inquit, Regnavi hactenus, plurimis vexigaliis & tributis meum populum vexans, nec mihi satis cura fuit, monetam cudere, qua legitimi ponderis esset; eam ob rem multorum odia in me concitavi: Ecce, post me regnaturus es, miserere Patrie animae, & qua perperam à me gesta sunt, ipse emendes. Idem lib. 7. p. 70. B.

Eicon Basil. c. 27.  
To the then Pr.  
of Wales, now  
our Gracious  
Lord and Sovereign.

of their people; so *Lewis the Pious* told the world when he was in affliction, *That nothing preserved Kings so safe as piety to God, clemency, meekness, and justice to men.* And *Philip the Fair*, when he was to dye, calling for his Son *Lewis* that was to succeed him, said to him thus, *Lewis, hitherto of my life I have reigned as a Monarch, vexing my people with unreasonable, and to them raving taxes and tributes, debasing my coyn, by making that go for a value which indeed it was not worth, by this means I have raised the hatred of my Subjects against me: O Lewis, behold thou art to reign after me, have pity upon the soul of thy father, which is now departing, and see thou amend what has been faulty in my Government, thus He.* And thus have our pious *English* Monarchs breathed out their Imperial souls in benedictions to the people, and valedictions to the world, shewing that they dyed in the love of God as well as of men: Hear the Soul that was *All*, (as it were Heaven on Earth) *The true Glory of Princes consists in advancing God's Glory, in the maintenance of true Religion and the Churches good; also in the dispensation of Civil Power with Justice, and Honour to the publick peace: And in another place, Since the publick Interest consists in the mutual and common Good both of Prince and People; nothing can be more happy for all, then in safe, grave, and honourable wayes to contribute their counsels, in common enacting all things by publick consent, without Tyranny or Tumults, &c.* And how well this counsel in the name of God and by Paternal Authority given,

A word in season is like Apples of gold in pictures of silver.

✓ The Happy Act of Indemnity and Oblivion.

A divine sentence is in the lips of the K. his mouth transgresseth not in Judgement. *Prov. 16. 10.*

is obedientially followed by our most excellent Lord and Master, Hear himself to his Parliament expressing, *In God's name provide full Remedies for any future mischiefs; Be as severe as you will against new Offenders, especially if they be so upon old Principles, and pull up these Principles by the roots: but I shall never think him a Wise man, who would endeavour to undermine or shake that Foundation of our publick peace, by infringing that Act in the least degree; or that he can be my friend, or wish me well, who would perswade me ever to consent to the breach of a promise I so solemnly made when I was abroad, and performed with that solemnity;*

lemnity; because, and after I promised it, I cannot expect any attempts of that kinde, by any men of merit and virtue: thus divinely, and like himself speaks our good King.

In his speech at the opening of the Parliament. 1661.

This digression I have thought fit to make in relation to that sensibleness which good Princes have of their poor Subjects conditions, which surely they must needs relent at, who have Subjects dutifull to them, yet so miserable, that though they breed up flesh and dainties, hardly can keep on egg, the most trite thing about a Country-dwelling, for their own dainties, but are fain to crouch to the Souldiers that quarter with them to their undoing, so sayes the Text, the misery of the poor Peasant is, *Vix ova eorum ipsis relinquuntur pro summis vescenda deliciis,*

*Et si quid in Opibus eis aliquando accreverit, quo locuples eorum aliquis reputetur; concito ipse ad Regis subsidium plus Vicinis suis ceteris oneretur; quo, ex tunc concivinis ceteris ipse equabitur paupertate.*

This is a further degree of misery, that a Governour's eye should be evil because God's is good; or, that the thrift of a subject, not by vice or villany, but by labour and frugality, should be the occasion of his scrutiny in order to his diminution. This, though it be here said to be the condition of the Peasant, yet is not his affliction from his Prince or Parliament; but from those Souldiers in command near him, who can so pester him with inroads, and charge him with levyes, that those lanches out of him shall leave him as bare as his Neighbours: A cruelty that surely the Judge of quick and dead will severely punish, and such as the Prince, whose Agents these are, should endeavour to understand, and understanding to punish and redress; which *Forcatulus*, that learned French Lawyer, sayes, was the excellency of *Meroveus*, the Founder and Amplier of the French Government, who thought it his duty to overcome his enemies by valour, and oblige his party by kindeness, and not to permit his power to be abused to the injury of any, not to suffer his Army to be licentious, but to restrain them where such they were; accounting it an encouragement to violence, not to prevent it by strict Mandates, and to punish it when, notwithstanding them, perpetrated: by which means he appeared not to them a rigid Lord, but a calm Father, and so inserted himself into the love of the people, that to minde his Successours of what the people delighted, they should after his example express towards them, they called them *Meroveus's*. And surely if this example had been followed in France in our Chancellour's time, he would not have had so just occasion to have bemoaned the miseries of the poor Peasants, as in other, so in this respect. For as enjoyments of mens acquisitions is a great encouragement to them to industriously endeavour; and ingenuously design their plenty and locupletation: so to be deprived of those compensations, and to become the spoyle of others, who by their power worry their plenty and rape it from them, is a disheartning of him to any thing above idleness; or at best to make him but slow and improlifick in expression of himself. For since the French Nation, according to their old *Druid* delirancy, derive their Origin from *Dis* the God of riches; that so many poor wretches should be in the Nation, who have not prodigally wasted their patrimonies, if any they can be thought to have from that Tradition, must proceed from the violence of some over others, and the success they have had therein against them; which has made the Nobles absolutely great and rich, and the Peasants absolutely poor and miserable: And for which no better Apology can be made, then what I have heard, and is generally the character of the common French people. *Keep them poor and servile, and they will be gentle and loyal; but let them prosper and be flush, and the waves of the Sea are not more insolent, proud, and boisterous then they are.*

*Si vis tribunus esse, immo si vis vivere, manus militum contine. Nemo pullum alienum rapiat, ovem nemo contingat, uvam nullus auferat, segetem nemo deserat, oleum, sal, lignum nemo exigat: annon sua contentus sit de prada hostis, non de lacrymis Provincialium habeat. Flavius Yopisc. de Aureliano in Epistol. Militari. p. 273.*

*Ego boni ducis sanctus sum officio, qui debellare hostes didici, & socios honorifice tractare, eorumque ulcisci injurias; didicerat autem optime Militum licentiam coercere, inquam. Principem irritare Milites quos non castigat. Forcatulus De Gallor. Imp. & Philosoph. lib. 5. p. 310. B. Imp. Paris 1579.*

*Idemque omnibus populariter charus atque ita venerandus, ut ab ipso posteri Reges Merovingi in Francia appellari ceperint. iudicio manifesto rara virtutis. Idem eodem loco.*

Cesar lib. 6. De Bell. Gall.

Cic. lib. 2. De Nat. Deorum.

*Galli natura feri sunt atque superbi, & in rebus tentandis animosi, in prosperis intolerandi, in suis commodis augendis assidui, in aliens negligentes, & in re bellica saepe promissa fallentes. Quandoquidem hac apud illos viguit opinio, ubi commodum adest, ibi quoque adest honestatem & Majestatem, siletque proverbio usurpari habeat Galliam amicam, sed vicinum nequaquam. Albergatus in Discursu Politic. p. 160.*

*Hæc ni fallor forma est status gentis plebana Regionis illius* ] This concludes the narrative of the common mans condition in *France*; which, though it be full of triflicity, and in the severalties of it very unwishable, because beneath the delight or endurance of a free spirit; yet must be borne by those whose subjections to their Prince calls them to this servitude: which though the Chancellour has given me from this Text occasion to illustrate and civilly to aggravate, with all those Historique circumstances, that carry it to a plenarty of discovery, and thereby render it unamiable; yet as the Chancellour's scope then, so mine now, is not to provoke those Subjects to impatience, or to arraign the Polity of that great and Majestique Nation; but, by the detection of that (so indulgent to Military men and their accommodation, and so unbenign to men in courses of civil life, such as is Husbandry, Arts, Merchandise,) to raise a just value and religious gratulation to God, and the Kings and Parliaments of our own Nation, by whose favours and mediations there is therein impartiality of freedom to all, *Every man here setting under his own Vine and under his own Fig-tree*; (and the Laws being equally the benefit and terrour of poor and rich, noble and common Subjects as they are good: bad.) We, that are so privileged by and happy under this Paradis'd Government, ought to expref all loyalty and readines to observe the Lawes, and venerate the Law-makers, who certainly have been ever as true nursing fathers to this Nation, as love, cohabiting with humane infirmity, would permit them: nor have for the most part more concerned themselves to promote their own private interest then consisted with the respective interest of their Subjects, according to the measure of the known Lawes; so declares good King *Charles the Blessed*, *I can be contented to recede much from mine own interests and personal rights of which I conceive my self to be Master, but in what concerns Truth, Justice, the Rights of the Church, and my Crown, together with the general good of my Kingdoms (all which I am bound to preserve as much as morally lyes in me) here I am and ever shall be fixed and resolute*, so He. And so should every subject testify his loyalty to be fixed and resolute for the King, his Laws, and his peoples rights, against all insolence and innovation that rises up against them; for the Law being the surest foundation, all appearance according to it, and in opposition to whatever is srowardly contradictory and adverse thereto, is very worthy good Subjects: And I pray God give us all of this Nation the grace, *To fear God and honour the King, and not to hearken to them that are given to change*. Thus much concerning the *French Plebs*, and the restraint of them.

Eicon Basil.  
cap. 6.

Note this.

*Nobiles tamen non sic exactionibus opprimuntur.* ] This shews the partiality that is in *France*, in that the poor go to pot, while the rich go if not scot-free, yet are not exacted upon; for *France* being a Military Government, and the Nobles attending the King in his Warrs and Armies, excuse themselves and their estates from all forrage and charge, putting the whole burthen on the poor Tradesmen, Vine-dressers & Husbandmen: and this the Nobles do by a kinde of Aoriginal right, as the instance of their freedom And not to suffer them to be thus privileged, were to enrage them to those disorders that their quick spirits are naturally inclined to, and their enraged anger would make them persist in. Therefore as the great men of *France* have ever gloryed in great heads of hair unpolled, as a token of their being free-men; so have they preserved to themselves the liberty not to be polled of their fortunes by exactions. For by this means the King does not onely

keep up his Horsemen to keep under the rude common people, and repress the insolencies of their discontents; but prevents the dangerous effects of displeas'd and unobliged Greatness: which has been such a pest to *France*, that it has not onely raised great Armies in it, but kept them so raised up to the waste and spoyle of men and treasure. For great spirits are impatient of diminution, and when they are that way as they think undervalued, meditate Returns, edged from the irritation of rage and grief, which ever make a desperate medley, as in *Contarino's* assault of *Forseari* Duke of *Venice* appeared; for that onely proceeded from the opinion *Contarino* had that *Forseari* was the obstacle to his Admirallship of the *Adriatique Seas*. And so in other cases abundantly might be instanced, the avoidance whereof is that which dictates to a

*Non contribuant ad collectas Nobiles & ex consist. Carol. 6. cavetur ne subsidia aliqua, talia, focagia, impositiones, auxilia, a Nobilibus & eorum Successoribus solvantur vel exigantur* Tholoff. Syntag. Juris. lib. 3. c. 8. ff. 6.

*Gallorum enim Optimates recepto more, qui in Francos translatus est, casarium insignem & copiosam labenter ostentaverunt, eo fortasse libentius quod (ut jam dixi) Franci quasi Liberi potissimum nominarentur.* Forcatul. lib. 5. De Gall. Imp. Et Philo p. 300. B. Edit. Paris. 1579.

Shure's Hist. of  
Venice.

Non-

Non provocation of great persons and parties; which is the reason the Text says, *Nobiles non sic exactionibus opprimuntur.*

*Sed si illorum aliquis calumniatus fuerit de crimine, licet per inimicos suos, non semper coram Judice Ordinario ipse convocari solet; sed quam sepe in Regis Camera, & alibi in privato loco.*

This Clause presents the Nobles not sometimes very happy: for since Greatness is subject to temptation and Envy, both which are productive of Enemies, and Enemies contrivers of Accusations, and Accusations too often believed, and proceeded upon before the truth of things be thoroughly examined, greatness is even in France a thing of danger: for, who can be secure there, where his enemy may accuse, and he not be capable to defend himself juridically; nay, how can innocence stand in judgement, if it may not be tried *per Pares*; Persons of Honour; as the Peers of a Nation cannot but be presumed to be. Yet the Text says this is the condition of the Nobility in France, who, though they are privileged, that in criminal Cases they usually may answer and defend by their Proctor, that they contribute not towards payments to the King, (*Talia namque munera plebeis impenduntur pro modo suarum facultatum*, as my \* Authours words are;) though I say, *Non sic exactionibus opprimuntur*] yet their persons are in danger and their fortunes too, by being accused and condemned clandestinely as it were. *Non semper coram Judice Ordinario*] in common apprehension, is before the Judges that judge according to the Lawes of Nations, and the Customs of the Country, and are men of Law, and Graduates in that faculty. But the Notion of *Ordinarius Judex* in France, as I have it from *Cassianus* a French-man born, and a Lawyer bred, is this, When a man is to judge a cause who has no Law in him, but goes (as it were) according to the private instructions he has from his Superiour, or according to the swing of his own will, having no rule to go by. Now, though true it be that these Judges purposely delegated, and termed *Ordinary*, (because they have but the learning of ordinary men in them, that is, they know no more of the Law then is the Law of reason) ought to be ruled by the judgement of the Lawyer, or Lawyer's assistant to, and associated with them in the Commission, and so mostly are and proceed according to the course of the Lawes in those Cases. Yet so sad is the case of the Nobles there, that alwayes they are not summoned to a juridical answer; but sometimes, yea, *quam sepe*, that is, *sapissime*, are summoned into the *Camera Regis* to hear their dooms according to their *Princes Royal Wills and pleasures*: now, this *Camera Regis* is not *Paris* the Royal City, as *London* also here is, and thence in the Statute of 3 & 4 E. 6. c. 21. is termed the *King's Chamber*; nor the *Bed-Chamber* or *Chamber of Presence*, which the *Greeks* called *Καμάρα*, because it was arched on the top and had a convex figure, which they render by *Fornex*, the Archness of its figure being the same in building that the *Psalloides* is in the body, argues state and united strength. Hence *Camera* signifies any thing that has an Arch-figure, *Camera Naves sunt arche & exiles*, like close Liters, or Arks rather, which (a) *Philo* calls, *The sacred repository of the Law, and the Vessel fitted for their retention*; it being the custome of Antiquity to make their Chests for any sacred purpose Arch-figured, as we see at this day in many old Churches in the Chancells of them: and these Chests were the *Camera* of the Church-utensils, Plate, Registers, Copes, Vestments, &c. where in those times deemed the external Majesty of Religion to consist. This is some notion of *Camera*, which, as to the Text's sense, may (as I conceive) be the Chamber of the King, where he lyes down to rest; for in Military times Princes had their Pavilions in the fields with their Armies, over which they had Arches not onely to prevent weather and winde, but dust and filth's accession to them; and these were called *Aulea*, like the Canopies of State, Monarchs to this day use to dine and sleep under; some call them *Tentor*

Tholoff. Syntag. Juris universi. lib. 32. c. 24. ff. 20. \* Guido Pap. Decis. 384.

Ordinarii Judices vocantur in Gallia qui judicant, cum ipsi non sunt periti, id est, non sunt graduati in Jure; omnis enim graduatus presumitur esse peritus. Et ideo his Judicibus appenduntur Assesores, qui homines sunt periti, & qui illos judices informant in jure in omnibus Casibus. Catalog. Gloriz Mundi, p. 291. 294.

Ordinaria & delegata potius copulantur p. 293.

Rohnius Antiq. Rom. lib. 10. c. 20. (a) Νοοφυλακίδα ἱερὴν ὑβάρην. lib. De Nominum Mutatione, p. 1050.

Ἀρχεὶον τῶ βασιλέως. lib. 3. De vit. Mos. p. 668.

Camera, id est, ex arca Domini. Tholoff. Syntag. Juri. lib. 6. c. 3. ff. 8.

Camera] roela ad excipiendum pulverem, ne super mensas spargeretur atque dapes simul confunderet. Ab Horatio Aulea vocatur, quem morem hodie Principes & Monarchas servare comperimus est, apud quos mensas sub quibusdam veluti Tentoris fericeis parari sepe videmus. Rohnius Antiq. Rom. lib. 5. c. 27. p. 211.

Qui praest cubi-  
cuis Camera Re-  
gia. Cassan Ca-  
tal. Gl. Mundi.  
p. 263.

Serres Hist. of  
France, p. 559.  
London Impresi.  
1607.

Modestinus ad L. Pompeiam de Pa-  
ricidiis.

Schottus in Notis ad Contr. 17. Senec.  
lib. 1. p. 142.

Minime maiores nostri legendum puta-  
verunt eum, qui ad Patriam delendam &  
Parentes & Liberos interficiendas venerit.  
Pomponius Digest. lib. 11.

Lib. De Septena-  
rio & Festis. p.  
1034.

\*Οτι παραπλήσιον εστιν αν-  
θρωποι Θεω δρωσιν, η χειρο-  
ιδως ηδε αν ος κροισον αγαδον.  
Philo lib. de Judice, p. 721.

Philo in lib. Quod det potio-  
ri, p. 170.

\*Ουκ ερισω μωρον αλλα κη τη  
τω λεγει χειροποιεα. Idem lib.  
de Mundi Opific. p. 19.

A good Mo-  
nition to  
Greatness.

Magnum sunt mensura, dicitur enorme.  
Plin. Ep. 203.

Longitudines ad regulam & lineam, al-  
titudines ad perpendicularem, anguli ad nor-  
mam respondentes exigantur. Vitruvius lib.  
7. De Opere Teſtorio.

ria sericea: to these in our settled times, wherein Princes have fixed Courts, these *Camera* do succeed; and the officer of State, that has the charge of them, is called *Camerarius Regis*; in France, *Le grand Chambellan*. None of these Chambers does the Text chiefly intend, but the sense of our Text-Master in alledging this, is to tell us, that when Great men are in France under displeasure, they are summoned to the *King's Chamber* (not his *Chambre des Comptes*, or *Chambre du domaine*, or *Chambre du Conseil*, or *Chambre dorée*, but his *Chambre Royal* purposely erected as a Court of censure and doom: for when any, that were of dangerous consequence, appeared, they were called to the *King's Chamber*; so were the Lutherans in Henry the Second's time, and others down all along since) to hear their doom. *Et alibi in privato loco, &c.* Up he goe, and his doom is privately adjudged him, without judgement of his Peers; or defence of himself, *Mox ut criminofum eum Principis conscientia relatu aliorum judi- caverit*; very hard to be condemned unheard, yet it must be undergone, *In Sacco positus absque figura Judicii per propositi Mariscallorum Ministros voltanter in flumine projectus submergitur*] surely a Judgement full of terrible cruelty, *The Judgement on Parricide*; for of old, Parricides were scourged with bloody Rods, then put into a Sack with a dog, a cock, a viper, and an ape, all alive sewed up with them, and they all cast with the Sack into the Sea. And though I confess no Judgement can be too severe for such a Villany as it is to kill the *Pater Patrie*; yet this of giving an offender a cruel death, *Absque forma Judicii*, is much more rigid then (I doubt) to God can well be answered; for he being the father of Mercies and the fountain of Justice, de-

lights not to see Princes, in power under him, to be inclement and truculent, *Ως μη πο- ρον εν τω δρωσιν*, as Philo's words are, *As not onely the punishers of them offending in making their lives a torture to them, but after depriving them of an easie dispatch*; for this he accounts the errour of his entrust, and too near a compartization with those quadrupedial furies which he hath inferiorated to man in reason, and thence made the Subjects of his Empire: but that which he loves and commends in those earthly Gods, whose lustres both of power and life are determinable, is, *That they should imitate him in beneficence, in suffering the Sun of their favour and the Rain of their care to impend all their Subjects*; and though they correct their enormities, yet they then should pity their infirmities, and bestow their Compassions on them as men in nature with themselves; and if this they would do, considering themselves *Τδ Θεωδης δη- μιουργημα, &c.* The divine Artificer, whereby it hath exemplified its transcendency to the utmost capacity Mortality can attain to; their wills would be the Law by the victory their goodness gets over the loves of men, rather than their persons and power be terrible to them: then would not that complaint of our Text be so true as it is,

*Qualiter & mori audivisti majorem multo numerum hominum quam qui legitimo processu Juris extiterunt*] For however some Princes in the *ακμη* and lustiness of their power may pish at calm and paternal exhibitions of themselves to their politique Children; yet, when Experience the best Master has ingenerated the calmness of wisdom in them, they will account it the onely rise to continuation and serenity: nor can any Prince be thought, as *Lewis the Twelfth* was, *A Father to his people*, but he that by Justice governs, by Prowess defends, by Parsimony enriches, and by clemency obliges his Subjects; for fury and severity unallayed by that Regal Grandeur which uses them onely as Physick, is not the endowment of Kings, but the intemperance of sinfull nature, which, though it torments others for a while, yet ends in the reproach and dishonour of its Practicers. And therefore let flattery prostitute truth never so much to the temporary satisfaction of licencious Greatness, yet all things done beyond the rules of Religion, Morality, and National Lawes, are *Enormia*; for since these are the squares and proportions according to which Imperial Architects should raise and carry on their politique fabrique, whatever in any dimension transgresses this, is *enormous*: and though men mince it, and write not so openly and with vehemence as our Chancellour does of the absoluteness that is taken

taken from colour of that Maxim of Law, *Quod Principi placuit*, which means nothing less than is imposed upon it to be its sense; yet do they in their hearts conclude, that such things are *detestabiliter, damnabiliterque perpetrata*, that is, that they are sins committed by them against the Laws of their Government, and therefore in their nature detestable, and against the Lawes of Religion and therefore damnable: which Doctrine certainly, as true as truth it self, if it had been canonized at *Rome*, would have undermined that horrid Artifice of secular policy which is conclave'd there; and which wrought puissantly, and to a notorious degree of wickedness in the case of *Robert Somercot* our Country-man, whom I read storied for one of the foremost of the three *Elects* for the Popedom after the death of *Pope Gregory*: the *Cardinals* being set to have an *Italian* and not an *English* man (and *Celestine* as after he was called and not *Somercot*) made *Somercot* away by poyson to prevent his obtainment of the Chaire, which they feared otherwise he would have had; but enough of this. For as our Chancellour here took leave of the memory of these practicks to excuse his Dialogue from any fuller Register of them, and to prevent the exasperation of his pen, which might else be keener than otherwise would be convenient; so shall I, after his judicious example, desist the further Comment on this Chapter, the residuary parts whereof are onely enunciative of the design of this his exaggeration in what passages has concerning the people of *France* occurred, and concerning the Subjects of *England* are further to be produced. And as on the Text that concerned the people of *France* I have discoursed with all the veracity and modesty I could, acknowledging the *French* Nation very wise, warlike, and prosperous, and their Government best fitted for their Clymate and People; so shall I, in what follows concerning the just equity and excellency of the *English* Lawes, and the condition of *England's* men under *England's* Monarchs, write the truth and nothing but the truth, according to the modesty and humble submissedness I have herein endeavoured to express, and hope I shall be by my betters allowed to have accordingly acted; hoping, that God will give us of this Nation grace, upon sight of the mercy we enjoy beyond others, to value our Governours and Government above others, and to pray for, and give obedience to the King, his Parliament, and his Lawes, now happily flourishing amongst us. For surely if there be any National Government that has a symmetricalness to the Government of Heaven, 'tis this of our native Country; wherein, as our Sovereign resembles (with reverence to God the incomparable King of Kings and Lord of Lords I write it) the supreme Wisdom and Goodness, being by the Law said to be under no defect, and not possible (as King) to do wrong; so his Peers and Commons in Parliament do (in their proportion) assimilate Angels and Saints; and his Lawes, that divine charity which directs all the Subjects to fear and love him, and to be at peace one with another. The consideration of which in this blessed Ternary, might perhaps occasion that old saying, which thus is in a good measure made plain by it, *Regnum Anglia Regnum Dei*, which though I know to be commonly understood of God's particular Patronage of *England*; yet may as well beintended of the form of our Government after the Model of the Heavenly Empire: which premised, I humbly conclude this and enter on the following Chapter.

Fuller's Hist. of the Worthies of England in Lincolnshire. p. 155.

Leg. Cassanæum part. 5. Catal. Gl. Mundi. p. 198. & seq.

Acta exteriora indicant interiora secreta. Reg. Juris Cook & Rep. 146.

The Authour's hearty Advice to his Country-men.

Rex hoc solum non potest facere quod non potest injuste agere. Reg. Juris Cook. 11 Rep. p. 72. 74.

Attribuat Rex Legi quod Lex attribuit ei, videlicet, Dominationem & Imperium. Non est curis Rex ubi dominatur Voluntas & non Lex. Bracton. lib. 4.

Ath. in Fascicul. Florum Juris in Lit. R.

CHAP. XXXVI.

*In Regno Angliæ nullus perhendinat in alterius domo, invito Domino.*

AS in the fore-going Chapter he shewed the misery of the open Country of *France*, where the Souldier commands all, and makes the poor Husbandman afraid to own himself Master of the house he lives in, and labours hard to pay his Rent for; so in this he paralels the condition of the *English*-husbandman with it: and he begins first with that which is the life of all security, the House, which he sayes the Common

Common Law does so preserve to the owners Propriety, that no man can come upon his ground against his will but is a Trespasser; no man lodge in his house without his consent and against his declared mind but is punishable, and, as the case may be, a felon for so doing. Now this the Chancellour does to shew the just Imperiality of the Crown of *England*, which, as it depends on none but God, to whom onely our Kings are (as to their Superiour) accountable, (the *Popes* of *Rome* being but *Usurpers* in their claim, and God jealous of and displeas'd at their insolent rivalry with him, causing a fire at *Lyon* that burned the *Pope's* Wardrobe there, in which was that detestable Charter which weak King *John* made to the *Pope* to bring the Crown of *England* into servage to the Sea of *Rome*, evidenced his displeasure that any testimony should be extant of this Nations slavery.) I say, as the Chancellour by this instance of the Text clears the freedom of the Kingdom of *England*, so does he avouch the exemption of every Subject in it from Vassallage; for as he asserts that the will of the Housekeeper is warrant enough for a mans abidance in it, though he be not ordinarily of the family; so doth he assure, that the will of the Master not had, no man can long, if at all, lawfully abide therein: the reason whereof is from that common right which the Common Law does every rightfull Claimant to it for aid, *Sub clypeo Legis nemo decipitur* is the rule, and this the justice of *England* does to withstand intrusion upon men by bold braving persons, who else would take up their Quarters, presuming on the courtesie they never deserved nor are ever resolv'd to requite. For though the civility of the Nation gives welcome, and did infinitely more in old times then now, to any man of creditable appearance, that came for a day and away, to any house of credit; yet *perbendinare* (which imports three dayes stay, *μικροειρη*, and under colour of that, *differre in longum, de die in diem*) it denies to any without invitation, which invitation has a more amicable sense then the *Invito Domino*] here, for that is an act of the will, choice, and allowance, which the *Greeks* render by *πρὸςκαλέμας*, a calling of one to him by his word, letter, or servant, acquainting him when and what he is then and there to doe; but this *Invito Domino* is as much as the Master unconsulted with, and in defiance of, and so not onely without his privity, but against his publication to the contrary. When any man staves in an house when the Master bids him be gone, he is a trespasser, and may be a felon, because he does *Perbendinare in alterius domo invito domino*] for the Law looks at the commencement of every action, and judges the effect according to it. And therefore if a man come forcibly into my house, and after he has so done I shew not my distaste because I fear; yet the Law I suppose will judge the force offered, and not qualifie it by my after-silence, *Quia quod ab initio non valet, progressu temporis non convalescit*: nor will the Law believe any man has a good intention to be harmlesly in the house when he enters into it uninvited, and staves in it against the pleasure of the Master of it, whose the house is, and to whom the Lawes and charges of hospitality in it are accountable.

*Si non in Hospitiis publicis*] These are publick houses called Inns, and being purposely appointed for receipt of strangers, if they carry themselves civilly and keep lawfull hours, they may presume the Masters good will as long as they stay and spend their money in it; though I make no question but if any man or men come to an Inn, and stay there above three dayes and nights (not having business, or being impeded travel by the act of God, or other unthought of accident) he or they may be suspected and drawn to give account of their stay even in these houses: for the Law raising them for strangers and travellers accomodation, intends they shall in the use of them be Sanctuaries of refuge against the incommodations of Journeyes, and not Lodges of disorder and harbours of vice. The word *Hospes*, whence *hospitia* comes, the Law defines to import a forein dweller which has an house, and because this house that is the receipt of those unknown persons that come to it, does empty the purse of their guests by heighs of charges for necessaries had in them; it makes the word *ἄσπις* to be *ἕσπις*, the word used of old for a stranger which we use for an enemy, which if an Host be, he is unworthy his place, for that is to be friendly and true to strangers. And of old before Inns and Hosts in them were in use, there were places of kindeness set apart to receive strangers, which places were called *Hospitalia* or *Proxenia*; hence *Jupiter Xenius* was called the *Hospital God*, and concerning affairs of these places they invocated him: and

26 H. 8. c. 1.  
 3 Eliz. c. 1.  
 3 Jac. c. 4.  
 2 Instit. p. 274.  
 \* 11 Eliz. c. 2.  
 25 H. 8. c. 12.

Common rights in  
 2 E. 3. called com-  
 mon Law 14 E. 3.  
 2 Instit. p. 56.

See the Notes on  
 the 35 Chap.

*Engitivum esse eū  
 ait Callius, quia ea  
 mente discedit, ne  
 ad dominum redeat,  
 tametsi mutato  
 consilio ad eum re-  
 vertatur; nemo enim  
 tali peccato, paritētia  
 sua nocens esse desinit.*  
 Ulpian. apud  
 Digest. lib. 21.  
 Tit. 1. p. 1965.

*Hospitia*] locus  
 erat ubi recipiuntur  
 homines causa  
 misericordie  
 vel auxilii.  
 Digest. lib. 22.  
 Tit. 1. p. 1966. S  
 Asylum.

Budæus in Pan-  
 dect. p. 34. B.  
 Edit. Vascos.



as these were Residencies of amicableness, and the elder Ages used them to maintain charity; so were these certain Emblems of kindeness intercurrent, which being brought with the repairers to them, gave them the assurance to receive welcome; as being not a cheat, but one really in amity with them. These were, as heretofore I have mentioned, called *Tessera Hospitalis*, which might be as our Tallyes cleft in the middle, one part with the comer, another residing with the Hospitallers, and without this brought and corresponding with the other part, they that came with them were suspected and not welcome; which probably gave rise to the Proverb with us, *An unbid guest must bring his stool along with him*. At first the entertainment in these was plain and homely, probably they lay in straw, and had viands much like that in the Holy-Text, where 'tis said, *Jacl set butter and milke before Sisera in a Lordly dish*; - but when the *Greeks* grew fortunate and effeminate, then their luxury spread its self over all their civility; and by them was brought in great Entertainments, not onely lodging of them in gorgeous Chambers and rich Beds, but also the first night entertaining them at a publick supper, and next day sending them pullen, eggs, apples, herbs, and all other Country things: in reference to which perhaps the custome of our Nation for the Sheriffs to entertain and present the Judges in their Circuits, was a long time continued with us. To these Sanctuaries, for such they were while the strangers in amity with them were entertained, (which was for three dayes and yet is kept up in sundry places, where the *Chartree Monks* have Convent) during which time they are sanctuarized, and have security from the immunity of their residence, not to be injured, so saith (a) *Acursius*; and *Baldus*, as he is quoted in the Margent of the (b) *Digest*, adds, *Nota argumentum ex hac Glossa quod Malefactor non possit extrahi de Hospitali sicut nec de Ecclesia*; concerning these (c) *Tholosanus* has fully written, that which I shall add, is, that Antiquity giving so great honour and priviledge to these, they in time became abused, not onely to harbour idleness and enormity, but to charge the Country in which they were with burdens in provision for them; to remedy which there were Lawes made to ease and relieve the people against the exactions of them. And though Sanctuaries (such kinde of Hospitals) are taken away with us by the Statute of 21 *Jacob. c. 28.* yet Inns and receipts for travellers, the *Hospitia publica* in the Text, remain: and the Law takes great care that such there should be in all convenient places, and those in them so honest and so able to furnish them, that no necessary for horse and man shall be wanting, nor any rates put upon them but such as are reasonable; by the 13 *R. 2. c. 8.* the gains of Victuallers and Hostlers is ascertained, and what they shall take for hay and oates over and above the Market; and though the strictness of the later clause in that Statute be, by the Stat. 21. *Jac. 1. 1.* & 28. repealed, yet the main scope of good using guests is retained: Inn-keepers must take reasonable prices, and make good horse-bread and full weight under the penalty even of that Statute of 21 *Jacob. 21.* This exaction of Inns is punishable by the Common Law in *Leets*, as being *Contra publicam pacem & fidem Regni*, and an enormity which dishonoureth the Government, and imposeth upon strangers and men in need, who being unknown and far from home are unable to right themselves against it: And hereupon as the Text sayes the Law provides that Inns shall have present pay, and men not run in arrears or take from them on Ticket, *Ubi tunc pro omnibus qua. ibidem expendit, ipse plenarie solvet ante ejus abinde recessum*; ] so doth it caution that the prices so paid be no more then they have is worth, consideration being had of the charges an Inn-keeper is at to fit himself with all things necessary to entertainment, for house-rent, servants, dyet, wages, spoile of goods, candle, and all other things of house-keeping considered, together with the uncertainty of guests, and the casualty of fire considered, either they must take great gains, or live they cannot without becoming beggars; which the Law considering, allows them a convenient latitude, which, those that will encourage guests to come to their houses as they travel by them, do not abuse.

In Pandect. reli-  
quas, p. 253.

Judges v. 25;

Note this.

(a) *Asylum*] locus erat ubi recipiebantur homines causa misericordiae vel auxilii, puta Hospitalia & consimilia, ab a quod est sine & sylvos quod est tractus, quia non extraherentur inde, qui eo confugerant.

(b) *Gloss. ad Digest. lib. 21. Tit. 1. p. 1966. De Adilicio Edicto F. Asylum.*

(c) *Syracum. Jutis. lib. 15. c. 28.*

*Observare autem Proconsulem oportet, ne in Hospitiis praevidendis oneret Provincias sicut Imperator noster cum patre Aufidio Severiano rescripsit. Ulpian. lib. 1. De offic. Proconsulis.*

*Lib. 1. Digest. Tit. 15. p. 134.*

See 22 H. 8. c. 41  
5. E. 6. c. 14.

*Nec impune quisque bona alterius capit sine voluntate Proprietarii eorumdem. ]*

This, though it be the Common Law, yet is confirmed to the Proprietor against his disseisor by several Statutes; for, because Power would often make bold with what was anothers, and Greatness sometimes thought it durst not be refused, because it was under its opportunity to ruin what did not crouch to it, Lords and Great mens servants seising for their Masters uses what they pleased without and against the owner's will, & under such a price as they could not afford it, the Kings of *Engl.* consented to Laws of restriction, not only to themselves, as in the Statutes of 28 *E. 1. c. 2.* 36 *E. 3. c. 6.* 23 *H. 6. c. 14.* 7 *R. 2. c. 8.* making it penalty felonious to take from any man what he is lawfully possessed of without his consent, although it be for the King's or Queen's own uses, so are the Statutes of 28 *E. 1. c. 2.* & 20 *R. 2. c. 5.* For though fit it be that the King, being the Head of his Subjects, and the *Noble He* that impregnates this whole politick Body with life and lustre, should be supplied from this body with all things necessary to his subsistence for so beneficent purposes: yet does the King think fit, out of grace to his people, not to make his Prerogative their punishment, but to live and let live, that is, to cherish their industry and good-will, by ease of, and justice to them, as in greater, so in lesser things. And thus our sacred Kings have in all Ages done to prevent the insolence and deceit of their Purveyors, who, to enrich themselves, have abused the King's power to the peoples impoverishing, that as none can purvey but for the King or Queen, or the Royal Issue; so none can for them, but by their special warrant with the owners consent, at a reasonable value by the Constables of the Town assessed, if the buyer and seller cannot agree to pay ready money or at a certain prefixed day, so is the 21 Chapter of *Magna Charta*, 3 *E. 1. c. 31.* 4 *E. 3. c. 3.* 5 *E. 3. c. 2.* 10 *E. 3. c. 1.* 14 *E. 3. c. 19.* 25 *E. 3. c. 1.* 1 *R. 2. c. 3.* 2 *H. 4. c. 14.* 1 *H. 5. c. 10.* 11 *H. 6. c. 8.* 20 *H. 6. c. 8.* 28 *H. 6. c. 1.* 2 *E. 6. c. 3.* All which and sundry others since made, being in affirmance of propriety, and that by the King himself and his Great-men, for the common good declare their joynt and several zeals for propriety; For the Common Law (saith Sir Ed. Cook) has so admeasured the Prerogative of the King, as he cannot take nor prejudice the inheritance of any; I'll add, Nor can or ought the Subject to entrench upon his Prerogative, but to hold himself bound to give unto *Cesar*, the things that are *Casars*, for the Law also is so, and so is and ought to be owned; which I the rather note, because Protection and Propriety, that is, Possession, is no further, or otherwise due to any Subject by the Law, then according to his duty by the Law he gives subjection and aid to the King, Defender of the Law; and if he justifies the possession of Subjects in their propriety, there is reason his Subjects should justify him in the propriety and possession of his power. Which since they mainly do by owning according to the Law his just Prerogative, it becomes them to consider their duty in the point of religious and legal obedience; for by the favour of King's have good Lawes been made, and these in particular which conserve Property according to the Notion of our Text.

*Neque in Regno illo prapeditur aliquis de Sale, aut quibusdam mercimoniis aliis ad proprium arbitrium, & de quocunque venditore providere.*

This shews the liberty of *Englisch* ingenuity, that it may work upon any thing it judges a profitable employment for it. For as the enhancing of any commodity by one person or more, with exclusion of others, is accounted a Monopoly, and so against the Common Law, and against the Statute of 21 *Jac. c. 3.* so, to deny any Subject to deal in what he sees most convenient and gainfull for him (the Commodity not being forbidden, or dangerous to the Publick, but such as consists with honesty and usefulness) I humbly conceive to hinder him of this (where no tropique Priviledge according to Law is co-operating with such impedement) is to abridge him of his Right; for the Text sayes, *Neque in illo Regno prapeditur aliquis. ]*

*Droit ne peut pas morier, Reg. Littletoni, Sec 1 Institut. p. 279.*

Sir Ed. Cook.  
2 Institut. p. 35.

2 Institut. p. 36.

*De Possessione, id est, De Proprietate.*

Digest lib. 5. Tit. 1. De Judiciis. C.  
Si de vi ] p. 694. lib 7. Tit. 6. p. 944.  
Cook, Littleton p. 146. B.

Note this well.

All sort of victuals men may eat, and all sorts of ordinary cloaths men, that can pay for them, may wear and in any Merchandise men in open places by buying and selling may trade, and with whom they will buy and sell or not they may please; the Land is open for all industry; and trade both home and forein not embargued: for though the Corporations for Trade, such as are the Merchants-Adventurers, and those that trade to *Turky, Muscovia, Eastland*, the Corporation of the Merchants of *Exceter*, and the *East-India's*, were first erected and since continued to regulate trade, and to prevent, by the prudence of their own experience the overclogging of Markets, which is apt to be when every person that will, may trade, and for what proportion he pleases, to the ruin of the commodity; while necessitous men, that must sell, sell at the rates foreiners will buy, and so the purses of the Subjects of *England* are emptied to fill those foreiners, to whose Markets such Merchandises are so unproportionably carried. I say, though on these and other grounds, Corporations restrained such from trade to those places who were not Members and submitted to the Government of them; yet in all other cases Trade was ever free, not onely to Aliens, who by the Stat. of 9 E. 3. c. 1. 27 E. 3. c. 2. 11 R. 2. c. 7. 1 H. 4. c. 17. 14 H. 6. c. 6. and many others by which they were permitted to sell the commodities they brought in gross, or in retail, (notwithstanding any Charter to the contrary) but also to native Subjects, who, during the time of their Princes Warrs, being charged, ought indifferently to enjoy all the benefis of their most happy peace, so sayes the 3 Jacob. 6. which therefore gives liberty, notwithstanding all former Charters to the contrary, to all his Majesties Subjects, from henceforth at all times to have free libertij to trade into, and from the Dominions of Spain, Portugal, and France, &c. so the King be paid his customs; and the freedoms of Corporations, Cities, and Towns not infringed; so that the like restraint on Salt in France, is here on no Merchandisable Commodity whatever, other then such as is charged by Act of Parliament, or Royal Mines, which are *Mera Regalia*, as the Tyn in *Devonshire* and *Cornwall* is, which being the King's in the right of his *Seigniorij* in the *Dutchy of Cornwall*, is his commodity, and from his Farmers to be bought; but once of them bought is freely to be traded in.

12 H. 7. c. 6.

See the Preamble to the Statute of 4 Jac. c. 9.

Cook. 4 Instit. Jurisdiction of Courts. chap. 45.

*Rex tamen necessaria domus sua, &c.* ] Concerning this, see the foregoing Notes on this Chapter, and the several Statutes therein quoted, which do confirm the Text in the severalties of the Chancellour's assertion.

*Neque Rex ipse per se aut Ministros suos Tallagia, Subsidia, aut quavis alia onera, &c.*

Concerning this, see the Notes on the ninth Chapter, which do confirm what here is in our Text. Blessed be God and our Kings, the case of *England* is not like that of *Rome*, wherein, every man of power thought himself but pitifully accommodated, if he did not set his foot upon the neck of the Common Wealth, and trample down the Majesty of that to set up his own Greatness: But such as makes the generality of the Subjects rich and happy, and the Prince happy in governing such wealthy and well-ordered people. And by reason of this freedom is it that the Text sayes, that the poorest man in *England* uses *fructus quos sibi parit terra sua* ] that is, eats, drinks, sells, wears whatever he has growing; yea can dispose of any emolument that he gets *propria, vel aliena industria*, that is; by his labour or others kindeness to him, *ad libitum arbitriumve* ] as he pleases, without asking any leave to spend or give it; for though a man may not burn his house, because that is destruction and may tend to the ruine of other men, whose houses by contaction or Neighbourhood may be burned also; yet any man may sell his freehold or pull it down (no custom being in the Mannour to the contrary) and use his Land to what kinde of purpose, not forbidden by Law, he pleases: so much does the Law of *England* favour propriery, that it submits every thing to it that may consist with the publick and other private interests intermixed with it.

*Ipsi Patria munus afferre, & faciles suis illam pretere potentia & dignitas est, humili se ac depresso loco stare putat, quisquis non supra Republicam stetit, accepti ab illa Exercitii in ipsam convertuntur, & Imperatoris concio est. Senec lib. 5. De Benefic. p. 94.*

*Unde inhabitantes terram illam locupletes sunt, abundantes auro, & argento, & cunctis necessariis vite.*

This *Unde* relates as well to the freedom of Trade, as to the Subjects exemption from

from unreasonable arbitrary and un-Parliamentary Taxes; for Trade being the way to get estates and freedom from vast contribution to the publick (except in extraordinary occasions, when all lying at the stake, all is due to the Common-wealths service and support) being the means to preserve an estate so gotten, the locupletation and enriching of the Nation may be reasonably ascribed to both, and they both be allowed the

*Cum id tempora Republ. postularent, aut à maneris pro familiari copia faciendi assiduitate.* Budzus in Pandect. p. 121. B. Edit. Vascol.

(a) *Locuples porro. est qui satis & idonee habet pro magnitudine rei quam creditor petit.* Tholoss. Syntagm. lib. 24. c. 1. ff. 21. Alciat. & Forner. in Leg. 234. ff. 1.

(b) *Lib. 5. c. 10. 39.*

(c) *Lib. De Senectut. 52.*

*Locupletem aut dicitur qui pleraque loca hoc est possessiones ac pradia tenet.* Agellius lib. 10. c. 5.

Unde here. In that then the Subjects of England are said to be *Locupletes*, that is, *Affidui*, for so the Law of the twelve Tables defines it, *ab assibus, id est, Are dando*, when men are such as answers every thing that is required of them, this is one sense of (a) *Locuples*, though the genuine one be from the great possessions men have, for which they are termed *Locupletes*: *Locuples à lata hano, hoc est locorum plenus, qui pleraque loca, id est, qui multas possessiones habet, saith Festus*; and with him accords (b) *Quintilian*: and (c) *Tully*, when he writes *Semper enim boni assiduique Domini, referta cella vinaria, olearia & penaria, villaque tota locuples est, abundat porco, hado, agno, gallinà, lacte, caseo, melle, &c.* intends a man

rich in real estate, Lands of great revenue, Rents of liberal income, such as our Law calls men of great Demeasnes and Freeholds of Inheritance; for though in the largeness of the word, and the acceptation of Authours, any person of note and thing of value is termed *Locuples*, as *Annus locuples frugibus* by *Horace*; *Locuples ac referta Provincia, Locuples copiis civitas, Copiosa plane & locuples mulier* by *Tully*; *Locuples & speciosa eloquentia* by *Quintilian*; and *Plato* with *Pythagoras* are by the Orator termed *Locupletissimi Authores*: yet the more proper notion of *Locupletis* from fixed estates in Land. And thus the Chancellour sayes the Subjects are *Locupletes*, some of them rich in real estate, others in personal, *Abundantes auro*.

5 Verr. 39.

1 Verr. 30.

lib. 5. c. 14.

1 De Divinat.

179.

*Abundantes auro & argento & cunctis necessariis vitæ*] This is meant of personal estate, which consists of Movables, Money, Plate, Leases, Merchandises, Household-stuff, Corn, Cattel, and other things money-worth; which are called *necessaria vitæ*, because without them there is no living: for money being the nerves of all commerce, and that which answers every thing in its exchange for it. In the terms *Auro & Argento*] are the general notations of riches and plenty; so *Abraham* is said to be very rich in Cattel, in silver and in gold; so in *Joseph's* brethrens sacks, there was silver and gold; so *Balaam* joyns silver and gold together, *Numb. xxii. 18. & xxiv. 13.* and the Gods of the Nation are said to be of silver and gold, *Psal. cxv. 4. Dan. v. 4.* and so in sundry other places: by which it appears, that our Chancellour speaks according to the account of portable wealth, which is reckoned by money and plate, *silver and gold*; and in this he sayes the Subjects of England do abound. For though England has no Mines of gold or silver, as *Diodorus* sayes France of old had, which *Forcarulus*, in love to his Country perhaps, is ready to believe, and make publick for Franc's glory; yet England has such Staples of Cloth, Wool, Tyn, Lead, and other such like useful trafficks, that will transmute themselves into gold and silver, and by turning and winding the peny in trade will advance the Rent of Land, the Revenues of Custome, the Hire of Workmen, and the plenty of living; which is equal to the having gold and silver in kinde, since it not onely is equivalent to, but in some degree better thus then it, especially when by this means there are *Cetera vitæ necessaria* purchased, which is Household furniture of all sorts; so that the Subject is not onely rich, but accommodated neatly and correspondently to his condition, having his house and its appurtenances compleat, as well as his purse full.

Gen. xliii. 2.  
Gen. xxiv. 35.  
Gen. xliiv. 3.

Lib. 1. De Gal-  
lorum Imperio &  
Philosophia, p.  
48. B.

*Aquam ipsi non bibunt, nisi quando ob devotionis & penitentia zelum aliquando ab aliis potibus se abstinunt.*

This is purposely inserted to shew, that necessity and choice are two different impulses to the drinking of water. In France the Peasant drinks it to save charges; here, when it is drunken, 'tis upon religious accounts, for penance, and humbling of the flesh; which is well added by our Text to bring the poor's draught into the possibility of a Prophet's reward, and of a Prophet's practice, *self-abasement*, which is the sense

sense of those three words, *Devotion, Penance, and Zeal*, or rather the Zeal of devotion or penance, which is that which alone is in them commendable; for there is no devout soul; that is penitent for sin, and casts himself down before God in confession and contrition for sin, but is willing to deny himself any thing that is fuel to the fire of his carnal combustion: which because liquor of mettle is, he drinks water. Now this the Chancellour sayes the *English* do thus drink but not for poverty; for so the Peasant does not *aquam bibere*, but drinks beere and wine, the former commonly, the other upon feast-occasions, when also *They eat all sorts of dyet that the Season and Country yields, and their purses and stomachs will reach too, whether fish or flesh.*

*Pannis de lanis bonis ipsi induuntur in omnibus operimentis suis*] As all Merchandises, furniture, meat, and drinks are free, so all Apparel. It's true indeed here have been sumptuary (a) Lawes to restrain such and such things to particular degrees; but those have been but temporary and short-lived. For though *Inordinate and excessive Apparel*, as the words of the Stat 3 E. 4. c. 5. are, is a great waster, especially when it is such as *Nero's* was; who never wore a sute of cloaths twice, or *Heliogabalus*, who did not onely make luxuriant garments for himself, but *Leonibus & Bestiis nobilissimas parabat vestes*; and so *Lollia Paulina*, whose garments were all trimmed with Pearl; or as *Agrippina, Aurelian*, and others, who all were very extravagant in them, these indeed 'tis fit should be restrained and denied, *If men will not deny themselves the having them.* But for any other cloaths to be denied, though it has been, yet at this day it is not; the Nation being so full of Gentry in all places, that the younger brothers, no less Gentlemen then their elder, think themselves concerned to oppose it, being loth to see their industry, secundated by God, to be eclipsed by Lawes in disfavour of them.

(a) 37 E. 3. c. 8.  
3 E. 4. c. 5. 22 E.  
4. c. 1. 1 H. 8. c.  
14. 6 H. 8. c. 1.  
7 H. 8. c. 7 1  
Phil. & M. c. 2.  
Phavorinus part.  
10. De hominis  
Excellentia, c. 19.  
p. 65.  
See his gra-  
cious Maje-  
sties Speech  
at the Proro-  
gation of this  
Parl. 1662.

*Etiā abundant in lectisterniis & quolibet suppellectili, cui lana congruit, in omnibus domibus suis, nec non opulenti ipsi sunt bustilimentis domus, necessariis cultura, & omnibus que ad felicem vitam exigantur secundum status suos.*

This further sets forth the riches of the House-keepers of *England* in the furniture of their Chambers and Rooms for their Recreations and Callings, (a) *Abundant Lectisterniis* sayes the Text] These we call Bed-steeds at this day; but of old they were the Beds that they eat upon in their Solemnities and Feasts devoted to their Gods. Hence properly *Lectisternium* (from *lectus & sterno*) implied the Preparations in the Capitol for *Jupiter, Juno, and Minerva*; concerning these *Livy* and *Valerius Maximus* write: hence *Plautus* terms him that doth *Lectum sternere*, (as we say) cover the Bed or Table, *Lectisterniator*. With us one of the chief furnitures of houses are these *Lectisternia*, not onely Couches but Beds well furnished with Curtains, Vallens, Counterpanes, Hangings, Blankets, Pillows, Tables, &c. which the Text terms *Suppellectilia*] these the (b) Civil Law accounts as aforesaid, and (c) *Pliny* too in these words, *Totam suppellectilem ligneam*; every thing also that was usefull and gracefull in any condition or course of life was hence called *Suppellex*, (d) *Turnebus* uses *Philosophia suppellex*, and *Servi suppellecticarii* for the Wardroper, and (e) *Tully* has *Oratorum suppellex*, and *Vita suppellex*, and *Cogitatio suppellectilis ad delicias, Lanta & magnifica suppellex*. So much is *Suppellex* changed in its sense from what it first imported, namely, the Tents or Receipts of Ambassadors when they went their journeys, which being covered with Leather, as our Sumpter-horses lading, and our *Portmanteaus* at this day are, (which carries the Journey-provision, and thence were called *Suppellectilia*;) that now every implement not onely of the house is couched under *Suppellectile*, but every furniture of what nature soever. Here in our Text *Suppellectile cui lana congruit*] signifies the furniture of Beds, such as I pre-described; which, though they are now made of silks in great abundance, yet in *Henry the Sixth's* time were of home-bred, and home-spun making. *De Lana*] For our Ancestours in the *Golden Age* of thirfe, kept their

Alciat. in Leg. 45. p. 127. de verborum signific.  
(a) Quod sacrorum gratia lecti in Templis sternebantur, ad discumbendum in epulo publico.  
Lib. 5. ab Urbe.  
Valerius Maximus lib. 2. cap. 1. De Nuptiis.  
Tu esto Lectisterniator, Tu argentum elaito. Plautus.  
(b) Suppellex] domesticum instrumentum Patrifamilias, quod neque auro, argento, que facta, vel vesti adnumeratur, id est, res mobiles cujus numero sunt mensa Trapazophori, Lecti inargentati, Sipontinus.  
(c) Lib. 5. c. 8.  
(d) Lib. 8. c. 9. lib. 15. c. 4.  
(e) Lib. 1. De Orat. 80.  
Lib. De Amicit.  
Lib. 2. Philip.

*Suppellectilis origo, immanavit, quod olim his qui legationem proficere-  
rentur, locari sole-  
rent, qua sub pelli-  
bus usui forent.*  
Fornetius in Leg.  
183. p. 392. De  
verb. signific.

PROV. XXXI.

their families un-idle, and not onely killed the provisions they bred, but also made the linnen and woollen they wore; which profitable practice being brought to maturity in the house, *The Womans Kingdom*, our Law terms them *Spinsters* from that property of a virtuous woman, that so to do *Solomon* describes, who certainly wrote what in that case was *The conclusion of wisdom*: for the house being the place of residence and security, does then best please a noble Master and Mistris, when 'tis well arrayed and furnished for all purposes of entertainment and convenience; which because the House-keepers of *England* have to a greater proportion then is usual any where else, yea, to so compleat a degree, as no addition is almost possible to be made thereto, the Text sayes, they are *Opulenti in omnibus necessariis ad quietam & felicem vitam, secundum statum suum.*

*Nec in placitum ipsi ducuntur nisi coram Judicibus Ordinariis* ] See the Notes on the 26. and 27. Chapters, wherein, what concerns the residue of our Text in this Chapter, is written upon; which being well-weighed, and the differences of Despotique and Paternal Governments considered by the good and evil effect of them, his conclu-

Ὅτι πῖ ἀγαθὸς δυνεὶ φύλαξ,  
οὔτε καὶ φάρ δυνεὶ. Plato lib. I.  
De Republ. p. 576.

Ἄριστον ἢ ἀνομία καὶ ἀδίκημα, καὶ τὸ μὴ σῶζει τὰς πόλεις καὶ τ' ἄλλα πάντα, τὸ δ' ὀφθαλμοῦ καὶ ἀνατρέχει. Plato in Minoe, p. 564. inducit Socratem sic loquentem.

sion commended to the Prince, is, That the Lawes of *England* are the best rules of governing *England* by; and that those Princes, (*Progenitores tui* as his words are) who declined the observance of them, were led there. from by the Prepotency of passion and the neglect of justice, which they, as Princes, should ever have prized above all, which is modestly the substance of that which he expresses in those words, *Et nonne ambitio, luxus, & libido quos pradii Progenitores tui Regni bono preferabant, eos ad hoc commercium concitabat,* ] which he requests the Prince to consider as the monition of his loyal Servant, for his Royal peace and fame, which are best propagated and advanced thereby, And so he concludes this Chapter.

## CHAP. XXXVII.

*Sanctus Thomas in libro quem Regi Cypri de regimine Principum scripsit, dicit, Quod Rex datur propter Regnum, & non Regnum propter Regem.*

Cogitanti mihi quid offerrem Regia celsitudini dignum meaque professioni congruum & officio, id occurrit potissime offerendum ut Regi Regni de Regno conscriberem. In Troasmo ad librum.

Papa potest canonizare aliquem approbando & manifestando alicujus hominis sanctitatem & toti Ecclesie proponere, & eorum venerationem mandare; nam inter pueros homines Papa est caput Ecclesie. Tria autem sunt de Canonizatione alicujus Sancti, Sanctitatis ejus approbatio. 2. Sanctitatis ejus adepti a populo veneratio. 3. Fidei totius Ecclesie beneficia illius Sancti postem confirmatio. Baptista Rubæus in Rationali Divoorum. Offic. lib. 1. c. 58. p. 209. Impres. Venet.

**T**HIS Chapter commences with a quotation from *Saint Thomas*, and from that little Tract of his, which in very great duty and devotion to the dignity and piety of Kings, he wrote to the then King of *Cyprus*; it is in the order of his works placed in the seventeenth Tome amongst his *Opuscula*: and though it be amongst his Breviaries, yet it has many valuations with me from several adjuncts of conspicuity, which justly may be attributed to it. The first whereof is from the Authour *Thomas Aquinas*, whom the Text terms *Sanctus Thomas*, which title our Chancellour not onely gives him as he was sanctified by divine grace, and a Member of that mystical body of *Christ*, but as also this holy man was canonized by *Pope John* the 22. about the year 1323. and that not so much for the piety of his life, as for that miracle which by invocation on him is pretended to be wrought on his decayed Niece. Now though this Canonization (to write gently of his *Holiness* and his *Saintings*) have some things in

it, which in the design of them presume those that by it are (as far as it can) honoured; yet the many natural, religious, learned accomplishments he above the rest of his Contemporaries had, render him semi-divine with me, though he were abstracted from his Registry in their *Calendar*; and these (amongst many others) are, First, His Origin was noble, *Aquine* in *Campany*, and from Parents in it, as some write, descended from the Earl of *Apulia* and the Kings of *Sicily*; or as others from the *Lombard-Race*, and that Earl of *Aquine* who lived in *Charles the Great's* time about the year 800, which honour of his bloud and birth no doubt kindled him to great endeavours, and to such expressions

Amor vita Sancti Aquinatis.

of

of an holy Magnanimity, as seldom appears in the brats of Plebeity. Secondly, The prediction of his after-proof by an holy man, who, when his Mother was with childe with him, told her, She was with childe with one that would be most famous, adding his name, profession, addition, and acception with God and the world, *Nec res sanctissimi viri mentem fefellit*, saith his *Biographer*. Thirdly, His early entry upon serious study; for coming very young to *Naples*, he quickly mastered Logick and natural Philosophy, disputing so notably in them, that every one that heard him admired, and expected a futable progress. Fourthly, His declension of applause and publick suffrage, cloistring up himself in a Convent, notwithstanding the many temptations and civil violences he had expressed to further his conspicuity. Fifthly, His obediential obstinacy in embracing this order of religion against the commands of *Theodora* his Mother; and continuing in the love and labour of it, maugre his Mothers Artifices to remove him, and his brothers vehemence in rending, tearing, and abusing his Priestly habits. Sixthly, His famous Masters, *John St. Geminian* and *Albericus Magnus*, who were so proud of him, that they would not suffer him to lye hid, but so proclaimed him to the World, *Uta lucerna non jam sub modio sed de candelabro emicaret*. Seventhly, His constancy and abnegation of himself for *Christ's* sake, refusing a large Patrimony with his brethren, and after, the Great Archbishoprick of *Naples*, when *Clement the Fourth* presented him to it. Eighthly, His capacious memory which held whatever was reposed in it. Ninthly, His general admiration and acception with all degrees, Bishops, Archbishops, Cardinals who frequented his readings, and grew famous by them. Tenthly, His choice friends *Clement the Fourth*, *Urban the Fourth*, *Gregory the Tenth*, *Lewis the Holy of France*, *Cardinal Bonaventure*, *Pelomans Lucensis*, and *Reginaldus Privernas*, *Birds of a feather fly together*; I omit the miracles ascribed to him, as that of the Woman of *St. Sabins* Monastery, *Reynald*, &c, because I think them questionable: but these prementioned excellencies concentrated in him, made him a Vessel of much grace, fit to glorifie God here on earth, and fitted for God's glory of him in Heaven. This, This, is the Saint *Thomas*, the Authour of the book quoted by our Text-Master.

The Book this matchless Authour wrote, was of the Government of Princes, a very high subject worthy his incomparable Genius, which made its nest with the stars, and thought triter Texts were beneath the Majesty of its endowment; that it was His, is praise enough to it, and that he wrote to a Prince of Princely qualities and offices, commends his prudence in so proportionate a choice: for surely he must have some rayes of a Princely minde in himself, who has the confidence to write to Princes of matters purely Princely, and to treat aptly and with counsel of those secrets which are lock'd up in the Cabinets of Grandeur; and to which none can unacrilegiously approach, but those that are pious, modest, loyal, and prudent; and such in every degree Saint *Thomas* therein approving himself, directed his thoughts to the then King of *Cyprus*. These things premised as emphatique in that our Chancellour here quotes out of him, we will humbly and in God's fear consider the particulars as they are pertinent to the order of our Commentary.

*Libri quos de Regimine Principum ad Cypri regem conscripsit, ostendunt quod illic usque suarum virtutum fama, nominisque reverentia penetraverit, quid autem libris illis huic Regi conscribendo occasione praestiterit, nondum mihi compertum est, nisi quod crediderim suarum virtutum famam, gratum eum & amicum tunc illi regi, tunc alius multis ipsam reddidisse. Autor vita ejus.*

*Rex datur propter Regnum & non Regnum propter Regem* ] This is a truth no wise man can, and no just Prince will deny; for God instituting Government in nature, which requires something regitive in every multitude, and having in that institution a regard to the generality of his creatures and the propagation of it, though he place the power of order and jurisdiction in one or a few, yet does he it in order to those many whose good he therein chiefly eyes. For in that God gives one the Prerogative and Jurisdiction over multitudes of others, 'tis not as that one is such numerally, but as that One in number, is Many and All in dignity, as having a divine Vicarage in him, in the worth whereof he's worth 10000 of them, the Sun, Shield, Father, Oracle, the All of them. And hence, though true it be that the *Philanthropy* of God displays it self in putting the Many of his creatures under One for their good and profit, which is *Rex datur propter Regnum*; ] yet true also it is, that though multitudes are not made for *Holocausts* to the rage of Princes, which is *Non Regnum propter Regem* ] yet comfort;

*Oportet esse in omni multitudine aliquod regitivum. Lib. 1. c. 1. De Regimine Principum.*

Κλίτικὴ πρὸς  
τὸ ἐπ' αὐτῶν  
λεῖψαι τὸ τοῦ τῶ  
εἰλων, ἢ δὴ  
βλαβῆναι τὸ ἰχ-  
θῶν. Plato  
lib. 1. De  
Rep. p. 576.

K. James in his  
book of The true  
Law of Free Ma-  
narchies, p. 195.  
of his Works in  
folio.

Eicon. Basilic  
p. 76. Edit. Ottav.

Gubernatoris est navem contra maris  
pericula servando illasam ad portum salu-  
tis: bonum autem & salus consociata  
multitudinis est ut quus unitas conservetur,  
qua dicitur pax, qua remota, socialis vita  
perit unitas, quinimo multitudo dissentiens  
sibi ipsi onerosa Lib. 1. De Reg. Princi-  
pum. c. 2. p. 237.

\* Lib. De Excellentia hominis. part. 1.  
c. 53. p. 131.

See the Preamble to the Stat. 3 Jacob.  
c. 26.

Lib. 1. c. 2. De  
Regim. Princi-  
pum.

fort, observances, and supports of Princes they are appointed to be, and Princes that love, govern, and discipline them deserve, *ex opere operato*; they should be such to them; and therefore God has endowed Princes not onely with such qualities as are attractive of Subjects loves, and have cogency on the wise and worthy of them, Justice and Generousness, whereby their hearts are pleasingly and to their profit stolne from themselves and set on their Princes with resolutions of loyalty and reverence towards them; but also with such adjuments of extern terrour, as shall make the good safe in their fidelity, and the refractory punished for their mutiny and disorder. Now this Doctrine of the Text quoted out of *Aquinas*, all good Princes have in the sense of St. *Thomas*, and all good Authours owned, especially our own; so is the sense of the Preamble to the 1 E. 6. c. 12. shewing, that Princes as Fathers are to make Lawes best suting to the tempers of their people and to the time of their Reigns: so King *James of blessed memory* acknowledged the duty of Kings in those words, *As a loving father and careful watch-man, caring for them more then for himself, knowing himself to be ordained for them, and they not for him; and therefore countable to that great God who placed him as his Lieutenant over them, upon the peril of his soul, to procure the weale of both souls and bodies, as far as in him lyeth of all them that are committed to his charge, &c.* not to encourage their Subjects peulancy and peremptoriness. (For though Princes are so generous that their Subjects cannot ask more then they can give, yet Princes may reserve to themselves the incommunicable Jewel of their conscience, and not be forced to part with that whose loss nothing can repair or requite;) but to minde

themselves of their account to God, which as Fathers they are to make, and to their Subjects, as to their Children, to express; and by which they infinitely deserve more love and support then ever they have from them, be they never so dutiful and open-hearted to them. And therefore Kings being as Angels, *Dati à divina bonitate propter homines, non solum Christianos, sed & Gentiles, & cujuscunque generis atque conditionis*, as \* *Phavorinus* says of them; whatever can be attributed to them without sin and flattery is very highly due to them, and but the bare duty and not supererogation of Subjects to them. And therefore this position is true in its just and prudent sense; in which onely our Text-Master quotes

it, and I after him discourse on it; for in the *Anabaptistique* and *Jesuitique* sense of judicial power in multitudes over their supreme Magistrates, 'tis treasonous, execrable, irreligious, anti-scriptural; 'tis all that is pestilent to Monarchies, dishonourable to Religion, and every way unsafe for the sacred persons of Princes. Concerning these things then, I having written in my Notes on the 13, 14, and 15. Chapters of this Book, I shall pursue it here no further, onely pray, *That Princes and People may ever keep close to the Lawes of their Sovereignty and Subjection*; for otherwise, *Nulla est securitas, sed omnia sunt incerta cum à Jure disceditur, nec confirmari quicquam potest quod positum est in alterius voluntate, nè dicam libidine*, as *Aquinas* his words are.

*Quare Rex qui hac peragere nequit, impotens est necessario judicandus. Sed si ipse passionibus propriis aut penuria ita oppressus est, quod manus suas cohibere nequit à depilatione subditorum suorum, quo ipsemet eos depauperat, nec vivere sinit & sustentari propriis substantiis suis: quanto tunc impotentior ille judicandus est, quam si eos defendere ipse non sufficeret erga aliorum injurias?*

Here the Chancellour shews, that as the Mastery men act over themselves, is more noble then that they can over others; so the weakness men expresse in being conquered by their lawless wills and reasonless passions, is more notorious and defamatory then to be victor'd by an Adversary: and this he applies in the reason of it to Princes in order to themselves and their Subjects; for God having endowed them with divine souls, and with Authority over their Subjects, men in common nature with them, and to whom they as Fathers, Shepherds, and Guardians ought to evidence themselves; for such to fauciate and exhaust them, and by a leontine voracity to consume them and theirs, and all to bring their Wills to be the Law, and their pleasures the Iron-saw by which they hackle the persons, fortunes, and freedoms of their poor, Vassals,



fals, is an act of truculency, so altogether unmanly and illegal, that Polybius sayes, *Nothing is more execrable than the injury and avarice of Governours*; yea, so to doe is not onely to be an enemy but worse then an enemy, a worrier of the flock he by office is, and by affection pretends to love and keep. Yet this is the unhappines of absolute Greatness, that while it musters and marshals forces to evict forein assault and Subjects fedition, it self is found guilty of violence and depredation upon the lives, estates, and ferenities of its Subjects, to whom because it does by a pravity of will and a vicious affectation, which it may if it will resist, do that which is unjust, therefore is *Impotentior* | less virtuously just and abundant in true fortitude then that Prince is, who, though he has force, yet dare not fight, because his number is not such as he promises himself victory by; and so by tear suffers his Subjects to be spoiled, whom, by a manly venture and a masculine performance, he might have secured. Now this impuissance our Chancellour layes down as God's punishment of vice, which so allayes the soul, that by innocencing it, leaves onely in it a pavidness and irresolution to any act of Heroickness; that look as an unchaste wife cannot comfort her self against all the infirmities of life and crosses of her Marriage-state, That she has a good conscience to God and her Husband, whom by disloyalty she has not abused; so a Prince that is never pleased better then when he by negligence reduces himself to straits, and then mercilessly relieves them upon his Subjects, *Depilati-one subditorum* | frequently; not once and away, but to such a proportion as it may be said, *Depauperat subditos*: ] and to suffer his Subjects so to be made miserable by it, as *Nec sinit vivere, & sustentari propriis substantiis.* ] Surely thus to put the Yoke of servitude on Subjects, to gratifie the licentious Insubjection of the Prince's Soul to Reason and Religion, seems to bode ill to any Prince that is guilty of it. And therefore *Praxaspes, Cambyses* his favourite did friendlyly by his Master, whom, when he saw *Persianly* luxurious and rubified by an high and ranting computation, he with civil affection and majesty of prudence, admonished him from reiterating such a Kingless joyalty, telling him, *That Kings, who are the Chiefs of Nations, on whom all their eyes are, and after whose examples they all do, ought to be wary what they do, lest by an ill President they undoe thousands of their Subjects*; for one ill example shall more pervert then many good Lawes can rectifie. And therefore one of the most Kingly qualities, that mortality is capable of, is *Self-Mastery*; because where that is endeavoured by us, and from God consolidated to us, we are able to keep our prospect into things clear, and not judge by the false Glasses of extremes, which magnifie or diminish, multiply or lessen, as our addictions to those vices are more or lesse prevalent or intense: for still judgement being obfuscated, our power is transferred to that we are enjoyed by, which is the victor-lust. Therefore where ever wisdom resides in Princes, I mean not onely cathedrally but personally, there is in those Princes a constant study to keep free from all Preoccupations; and so to ascribe to others, as not to exclude themselves the liberty to consider and judge what they themselves are to doe. And this truly I think we of this Nation have very really and to a miracle of Regal Constancy, seen in that once Father of us all, whom I take leave frequently to quote as my Oracle, *King Charles the First*, whom no adversity, no eclipse, not even that of death, could make recede from his resolution of Patronage to the Church, the Law, the Crown, the subject; to all these he being firm, gave not way for fear or hope, but quitted himself as a Christian, whose graces had mastered his infirmities. And the second to him is his Son, our now *Gracious Sovereign*, who by that fixed immovableness that he, notwithstanding all temptations to the contrary, retained, and in the

Τὸν πρῶτον αὐτῶν ἔβραζε καὶ πρῶτον ἐξῆται. Polyb. lib. 1. p. 82.

Παμβασιλεία, quasi dicas, Regnum omnibus numeris absolutum; ejusmodi erant Reges Principes Romani, Ulpiani tempore, nihil jam prisca civilitatis retinentes, omnia arbitrio suo statuentes, ut & nunc Reges nostri sunt, qui omnia in potestate habent, quique ut Homericus ille Jupiter, quoquo se verterint, omnia circumagunt, nutu etiam solo omnia quatientes: denique Humani Joves, sed qui tamen hominum more emoriantur. Budæus de Reg. Gallie. Annot. in Pandect. p. 49. Edit. Valcol.

Illud natura non patitur ut alierum spoliis nostras facultates, copias, opes augeamus, hoc enim expectant leges, hoc enim incolumem esse Civium conjunctionem, quam qui dirimunt, eos morte, exilio, vinensilis, damno coercent. Jacob. Tapia. lib. 2. De triplici bono & vera hominis Nobilitate. p. 245.

Turpem dicens ebrietatem in Rege quem oculi omnium auresque sequerentur. Seneca lib. 3. De Ira.

Herodotus lib. 3. Hist.

Potens etiam non solum à possum verbo, verum etiam à potior deducitur. Tutneb. lib. 29. c. 24.

Non enim me cuiquam mancipavi, nullius nomen fero, multorum magnorum virorum iudicio credo, aliquid & meo iudicio. Senec. Ep. 45.

Kingly Constancy.

Speech at the opening of the Parliament. 1661.  
 L. Chancellours Speech then and thereunto annexed.  
 Lib. De studio literarum recte instituendo. p. 10. B. Edit. Valcol.

Impotentia & Incontinentia conjunguntur in bonis authoribus. Turn. advers. lib. 20. c. 21.  
 Ne quis vestrum neve eorum aliquis, qui vobis paruerit, offensionem aut divinam aut nostram concietis. Spelman in Concilio 396. ad An. Christi 912.

Atihoreles 2. Lib. 2. Politic.  
 \* Εἰς μίαν ψυχὴν ἢ πῶλιν ἀνδρείαν καὶ σπουδῆς. Polyb. lib. 6. p. 491.  
 Lib. 1. De Gestis Alphonf.

Ἐστὶ δὲ ἡ ἀδμία τὸ παραβαλεῖν τὸ πάτρια ἔθνη, καὶ τὸ νόμιμα. Philo. lib. de virtutibus & vitiis. p. 295.

Κατὰ τὴν δὲ γνώμην καὶ τὸ λογισμὸν διαφορεῖς. Polyb. lib. 6. p. 456.

Ὅπως πάντα ταῦτα εὐνοήσους ὁ νῆς, ἐπιμύθια σπουδῆς καὶ δικαιοσύνη ἀποφύγη. Plato lib. 1. de Leg. p. 774.

Act of Oblivion and Indempnity expressed, which He calls, *The principal Corner-stone, which supports the excellent building of this Government.* Declared such a piece of fatherly tenderness and piety, as could proceed from no heart but such an one, in which God hath treasured up a stock of mercy, and justice, and wisdom to redeem a Nation, they are the words of His Majesties great Chancellour; and of them I may say in *Budens* the *Parisian* Chancellour's words, *Mercurialis hic sermo, mentium sublimium interpret est, mirificorumque sensuum enarrator disertus & copiosus.* But I return to the occasion of our instance, which is, The necessity of Power in Princes to refuse passions when they are not co-incident with reason, which power unless they have, be they never so great, they are *Impotentia nexubus vinculati,* ] and with King *John* will put their Crowns under servage rather than not be revenged of their opposites: which ill habit and dittemper of soul is that remain of sin unmortified, which thief-like having once crept into the house, opens the doors and lets all its Comarado's in to him; and so this, being the effect of incontinence, not keeping desires within their prison, carries them to all the expressions of vageness and immorality, so that, no bounds being observed, they lye open to all kindes and all degrees of transport. 'Twas a rare charge *Athelstane* gave the Fathers and others in the Council of *Gratelean*, *I would have you, saith he, doe by me as our Lord Jesus commanded we all should doe; Doe as me would be done by: Give me therefore onely what is my right as your King, and keep what is God's right to his use, and what is yours to your selves, that none of you or your creatures may by wrong-doing deserve and have the displeasure of God and of me,* Thus this King, whose potency over his will and passion rendred him more like God then his throne did, without which he had been but Polyphemized, goodly statured, yet defective in the main instance of and ingredient in his admirableness. By this then it appears that our Law considering, and our Princes willing themselves to be considered politick Monarchs, whose Sovereigntyes admit mixtures of paternity to them, did onely intend such practice of power over their subjects as should render them able to support themselves by their subjects, and willing (their subjects in such subjection to them) to preserve in the free use of what God, Nature and Industry had made theirs. This is the sense of all that the Chancellour doth or can write on this argument, for the glory of a King is to be *Liber* in his Prerogative, and *Potens* in his Subjects; so is the King by his, *How?* His virtue-regal secures himself and his Subjects *Erga propriam passionem & rapinam,* and so declares him and them *Liberi.* ] And then that he is able to defend them, *Eorum quoque bona & facultates,* ] and theirs from assaults of enemies, thieves, robbers, and seditions by Sea and Land; this declares him *Potens* by them, and they potent under him. For of all things in the world the most sovereign expression of wisdom is, *Σάλευ τὸ πάτρια ἔθνη, &c.* *To keep close to the Lawes of our Country and the civil customes of our fore-fathers, and to live by the Written Lawes, and by them to judge of all men and things,* which happy compact accomplishes that felicity which \* *Polybins* sayes *Licurgus* brought to his Country, when, by the right settlement of equality between men, *He did so cement them, that they did join together into one common Soul and City of civility and wisdom.* For though wise *Alphonfus* of *Arragon*, whom *Panormitan* titles *Regum gloria & sapientia exemplar,* thought it solæcismous *Reges ab aliis regi, & Duces ab aliis duci,* calling those that would do nothing without their Councils concurrence, *Consiliariorum Mancipia;* yet that Maxime of so doing will remain the eternal honour and security of Kings: For, since the *Lawes of Nature* and *Nations* prescribe it, *to do otherwise is to be injurious to their durable and wise enations,* which the pristine Kings, *Polybins* gravely tells us, did so devoutly abhorr, that as they were chosen for their abilities of intellect and resolution; so did they not so much as think of bringing, *τὴν βασιλείαν εἰς πλεονεξίαν, &c.* *their Government under the vassallage of their lawless and corrupt wills, ἀλλὰ παραπλήσοι ἔχον τὴν βίβλιαν τοῖς ἄλλοις, but invigilated their charges and were not haughty and rigid but calm and familiar with them; and by this preference of justice, lenity, and temperance to fierceness, wrath; and luxury, which Plato prescribes as the very necessary project of Princes, and which renders them truly worthy; and therefore the delight and blessing of*

of their Subjects. This then to be able to doe, notwithstanding the temptations of self-accommodation to the contrary, is to be *potentior, liberiorve* ] then any King can be who can deny him nothing, will and power can accumulate to him; for this which *sufficit seipsum debellare*, as the Text's words are, is onely the felicity of those moderate and virtuous Kings, who, because they know they are delegated by God to rule according to his method, exalt righteousness, and are themselves thereby exalted: *Quod potest & semper facit Rex politice regens populum suum*

*Quare experientia effectu tibi constat Princeps, Progenitores tuos qui sic politicum regimen abjicere satagerunt, &c.*

This clause the Chancellour adds, to shew the ill success Princes have in England had, who have ruled *prater morem Majorum*; for though we have here been blessed (as I said before) with many most pious and just Princes, who have so ruled, as became England, wherein, to use Plato's words of Greece, *Men ought to be virtuous and free, and lovingly to live together, and are onely to be kept such by the Lawes, their delight and buckler*: yet some we have had, who, though I say not they endeavoured *Politicum Regimen abjicere*] yet by governing otherwise then according to the strict Lawes, brought infelicity upon themselves and their people. For this Nation consists of men born and bred up to freedom, and if they see their Prince as milde and vigilant, so just and valiant; they will admire, assist, and obey him, *ὡς τὴν εὐεργεσίαν καὶ φιλανθρωπίαν, &c.* as convinced of his kindeness and good offices to them; as they did in the general excellent temper of the time of Queen Elizabeth, which is observed by the great Minister of our State, *To be full of blessed condescension and resignation of the people then to the Crown, and the awful reverence then they had to the Government, and to the Governours both in Church and State*: so, if they perceive the contrary in the effects of unwarranted actuations of power, they grow sowre and displeas'd, setting themselves to disappoint his deviation, and to own the law and customs of ruling, in which are deposited the Subjects security and the Majesty of the Prince, which amounts to that of the Text, *Non solum in hoc non potuisse nancisci potentiam quam optabant, videlicet, amplioem, sed & sui vexum, similiter & bonum regni sui, per hoc ipsi discrimini exposuissent & periculo grandiori*] For such Princes, not considering what the adversity of popular troubles produces, and what amidst them to do, being deceived by the meretricious suggestions of Parasites, who bewitch them with their delusions, do draw on themselves and their Confidants those difficulties that ever end in disquiet and sometimes in worse; so befell it to Ed.2. probably one of the Princes intended by our Text-Master, for he being seduced by giddy Gaveston a foreiner, who laboured to bring in such absoluteness as the Lawes of our Kings do not approve of; and that not for the King's profit, but that this favourite and perverter, who ruled him, might thereby rule all, so far inflamed the discontent and jealousies of the Peers and Commons, that this *Butterflie*, that was so gay in the Summer of the King's favour, must be accused and apprehended, to the performance of which they so strenuously and with incessancy applyed themselves, that they put him to death, *As a subverter of the Lawes and a publick Traitor to the Kingdom*, and when he was dispatched, not without the Kings great affliction, the *Despencers* father and son succeeding to the King's favour, mis-steered him likewise, *So that the King led wholly by them, and all things following the counsel and appointment of those Gratio's, neither Earl, Baron, Bishop, or other could do any thing with the King but by their favour and mediation*, they became so execrable that they were forced to fly; and the King himself that had lost his Subjects hearts for their unhappy sakes, becomes a Prisoner at *Kennelworth Castle*, and was ever after unhappy: which I observe not as a virtue, but the sin of the Nation (so *bonum bene*) good Lawes may be evilly stood for; and evil men removed by evil means become the sin of a Land) but to clear the truth of the Text, and to applaud the prudence as well as piety of our well-advised Princes, who do nothing of importance without their Councils advice, and declare no binding pleasure but either by matter of Record (*Lex precipit & Rex precipit* being convertible) or by some Declaration in

Δὲ δ' αὐτῶν, ἐκείν καὶ ἀγαθὸν τὸ καὶ ἡμετέροις ἔουσι. Plato lib. 5. De Rep. p. 663.  
Hoc enim vinculum est hujus dignitatis qua fruimur in Republ. Hoc fundamentum libertatis, hic fons iniquitatis. Cic. Orat. pro Cluentio.

Polybius lib. 5. p. 301.

L. Chancellour's Speech at the Prorogation of the Parl. May 19. 1662. p. 11.

Ἐνδοξα καὶ λυσιτελή συνεχῆς λαμβάνουσι τὸ τὴν ὄψιν, &c. Polyb. lib. 11. p. 624.

Tanquam legum subversor & publicus Regni proditor. Wallingham in E. 2 p. 76.  
Quos odio inexorabili perstringebant, eo maxime quia regem ducebant pro sua voluntatis arbitrio, in tantum quod nec Comes, nec Baro, nec Episcopus quicquam valuit expedire in Curia sine horum consilio et favore. Idem eodem loco.

Sir Ed. Turner  
Speaker of the  
Commons House  
in Parliament, in  
his Speech to his  
Majesty at the  
Prorogation of  
the Parliament  
in May 1662.

affirmance of known and undoubted Lawes, which considered, the Subjects of this Land have echoed back the filial duty that this paternal obligation merits of them, *As knowing* ( to use the words of a most noble and eminently accomplished Gentleman, who now is deservedly honoured publicly by this Nation ) *that the strongest building must fall, if the coupling pinnas be pulled out; and therefore our care* (saith he) *has been to prepare such constitutions, that the Prerogative of the Crown and the Propriety of the People may, like squared stones in a well-built Arch, each support the other, and grow the closer and stronger for any weights or force that shall be laid upon them.*

*Tamen hac qua jam de experientia effectum practicata, potentiam Regis regaliter tantum Presidentis exprobrare videntur, non ex Legis sua defectu processerunt, sed ex incuria, negligentiaque taliter principantis.*

This is added to shew that the absolute power of Kings, if just, is much more tolerable and to be admired, then that, which under the pretext of it, is practiced by some that rule by it; for if there were a consideration of Subjects as the Mines and Quarries out of which the gold and silver of Princes incomes must be fetched, and they were by Princes studied and secured, that so they might the more safely bring their rich ladings to the Port of their Princes Exchequer, and having paid their duty there, make the most ( with their Prince's blessing and good will ) of what is theirs neat and clear, as by the rules of Justice under the absolutest Monarch in the world they ought, then would they have encouragement to blesse God and their Prince for the mercy of a Government, which did thus permit them to be happy under the Allegiance and Justice of it. For it is not the strictness of Government associated with Justice, that makes Subjects grieved and discontented, ( no more then the vigilant eye of a prudent husband over his beloved wife makes her discomposed, for this being an argument of a wise minde to keep her to himself, and to prevent all bold attempts upon her ( in the negation of which chiefly lyes that sexes security ) is the great argument of her virtuous gratitude and resolved loyalty to him ) but that which offends Subjects, and makes them entertainers of fears and cross humours, is not *ex Legis defectu* ] want of a right rule to walk by, ( for that the Law of Nature and Nations prescribes to every man,

*Ubi jam sunt ista regula, ubi quid sit justum ab injustis cognoscitur; ubi descripta sunt, nisi in libris illius lucis qua veritas dicitur, ubi lex omnis justa describitur, & in cor hominis qui operatur justitiam: non migrando sed tanquam imprimendo transferuntur, sicut imago annuli ex annulo. Sanctus Augustin. lib. 14. De Civitate Dei. c. 15.*

*Quid interest inter Tyrannum & Regem; specie enim ipsa, fortuna, ac licentia par est, nisi quod Tyranni voluptate saviunt, Reges non nisi ex causa & necessitate, lib. 1. De Clementia, p. 624.*

Rosellius in Py-  
mand. Trismig.  
lib. 1. c. 1. quaest.  
9. p. 164. vol. 1.  
Orat. 1. contra  
Aristogiton. Di-  
gest. lib. 1. tit. 3.  
p. 73.

who more or less has the Principles of it legible in his minde) but the grievance is, in the distorted will and the loose affections of the Governour, who, regardless of the main ends of Government, Justice, and National Prosperity, launches out into the Ocean of pleasure, and in the endearings of them ( not onely drenched but drowned ) looses all thoughts of that distributive Regality, which from the intentness of a real greatness and virtuous care of and conscience to Subjects, ought to be manifested; which *Seneca* found true in *Nero*, and thence was bold to tell the World, *That Tyrants and Kings differ not so much in their outward appearance of State, as in their direction of their Power to a proper end, Tyrants being truculent as delighting such to be, but Kings as being forced to the severity they practice by necessity, and as that remedy which they unpleasurably apply.* For since Kings are the Ministers of God, and have credited to them

the conservation of justice and virtue, which they are to propagate by rewards and punishments, and in the distribution of them, not to err into any arbitrary by-path, but to follow the *Commune Præceptum*, which *Demosthenes* calls, *Εὐνομία καὶ δίκαιον Θεῶν*, and on that ground, *Πύρρος ἀνδραγαθὸς ὀργιστὴς*, he sayes, *It bindes all men; to be remiss and cold in propagating that their divine interest, and to permit sovereign balm and prudent medicinality to run at waste, and to effect no purpose of its designment, but the contrary rather, is surely that which provokes God to give people up to their own frowardnesses, and to make them inundate the Mounds and Walls of Religion, Loyalty, and civil love; and not to fear the power of him, whom they see weak by the absence of self-denial, and by the facility of being victor'd by delightfull folly, which captivity being very often ( through the deceit of mans heart and the temptations of *Satan* ) the misfortune of mighty Potentates, who stand on tiptoe of their unlimited Greatness, the Chancellour shews that by reason thereof the condition of politick Princes*

Princes is much more secure, and in the issue and last result of it, not inferiour to it in the point of absoluteness, since by the bonds of love and the convictions of the paternal merit, it challenges as of right, and receives with all readines of good will, the firm and flourishing fidelity and benevolence of Subjects, *By which great seal and affection which they bear to them*, as the words of the Statute are, the Subjects do so meditate on and provide for their Princes security,

*In whom consisteth all the happiness and comfort of the whole State and Subjects of the Realm*, that they are so far from disputing, that they freely concur with them in all their just and regal postulations, and set themselves with all carefull study and zeal, to consider, foresee, and provide for them, as professing, *By the neglecting and passing over whereof with winking eyes, there might happen to grow the subversion and ruine of the quiet and most happy State and present Government of this Realm, which God defend*, so are the words of the Statute aforesaid, which I thus mention to fortifie the Chancellour's position, that Politick Princes become more absolute in conquering their people by kindeness, and convincing them of the benefit their care and vigilancy over them returns upon them, then any severe and rigid administrations in the behalf of absolutely Regal Potentates arrives at, which is the summ of what Saint Thomas in his book of the Government of Princes wrote, and what our Text from it collects, and what in the Notes on the 14. and 15. Chapters I have endeavoured to illustrate, and which here I have been no more copious in then I hope will be profitable to the Reader, whom it may direct to praise God for the blessings we in this Nation enjoy, while we are governed by Lawes, just, holy, usefull, and proper to us, and by a Prince the Guardian of them, whose administration is not regulated by wrath, and written in the terrour of Subjects, but who admonishing his Subjects to beware the penalties and dangers of his Lawes, covets rather their amendment by gentle and mercifull means, then with severe execution of his Lawes to be enriched by their evil deeds and offences, they are the words of the Preamble to the Statute, 8 Eliz. c. 19.

The consideration whereof should be Monitory to us to be dutifull, and to account nothing so much our honour, as to value the mercy we above others are made happy by, and to beleaguer God with earnest prayers, that he would ever preserve amongst us, *The unity of the spirit in the bond of peace*, without which neither Sovereign nor Subject can be solidly happy; concerning which \* *Jacobus Tapia* has excellently discoursed, and in all reason and experience it is so found to be true. And hereupon, as the Chancellour concludes this Chapter with St. Thomas whom he began with, wishing that *Omnia Regna politicè regerentur*, ] so shall I end my Comments on it, with the advice of an Oracle among Kings and men, our late Gracious King Charles the Father, *Nothing can be more happy for all (both King and People) then in fair, grave, and honourable wayes to contribute their counsels in common enacting all things by publick consent without Tyranny or Tumults*, which is, *Politice regere & regi* in St. Thomas his words, and to which as oracular, and that which is the Prayer of every good Englishman, ought to be (in our Holy Mother the Church of England's words) subjoynd, *We beseech thee to hear us good Lord*.

Non consolabimur tam triste ergastulum, non adhortabimur ferre imperia Carnificum, ostendemus in omni servitute apertam libertatis viam. Seneca lib. 3. De Ira p. 592.

Preamble to the 8 Eliz. c. 19.

Preamble to the 13 Eliz. c. 1.

Quia ad hoc ordinatur eorum potestas & ejuslibet domini, ut profint regi, alias non sunt legitimi domini sed Tyranni. Aquinas lib. De Regimine Principum. c. 10.

Remember this.

Perierant omnia ubi quantum suadet ira, fortuna permittit, nec diu potest; quod multorum malo exercetur, potentia flare: periclitantur enim, ubi eos, qui separatim gemunt, communis metus junxit. Seneca lib. 3. De Ira. p. 592.

See the Preamble to the 7 Eliz. c. 14.

\* Lib. 1. c. 9. De triplici bono & vera hominis nobilitate.

Eicon Basilic. p. 249. Edit larg. Octav.

Rare counsel worthy a good King.

In the Letany of the Church of England.

## CHAP. XXXVIII.

*Tunc Princeps. Parce obsecro Cancellarie, &c.*

**T**His Chapter is as other formerly have been, but accommodative to the personation of the Prince, and his proportionable demeanour in the dialogue. All that the Chapter affords is but doctrinal to tender and infant-greatness to be sequacious of grave and learned age, which this our Chancellour having in that sense that age is truest honourable in, attained to, and so abundantly and with matchless sincerity evidencing to him as *that flourishing branch, which though rejected and forsaken of men, and thereby*

thereby made a man of sorrows and acquainted with grief; yet in the breathings and longings of his loyalty, He, He (our Chancellour who loved much, and therefore ought to have much forgiven him) hoped and expected (though God knows it was otherwise) would come to pass. I say the Chancellour in all his pourtraying a most intense loyalty to his Prince, whose Interest (as he conceived it) he was a sufferer for, and after was with it civilly interred) I say this long robed Heroick thus approving himself, is deservedly courted with a *Parce obsecro Cancellarie*] and intreated to a further Information to his profit, which he professing the particulars of it were, as in these words, *mibi namque perutilia sunt*] the Chancellour is engaged to pursue his own promise in the method of the personated Princes recitall, *primo ut aliquos alios casus, &c.*] in producing some such Cases as the two Lawes do disagree in, that in consideration of them he may the clearer judge which of the two he does most incline to study and approve as best for the Government of the Kingdom and people of *England*: This is the sum of this Chapter.

## CHAP. XXXIX.

*Cancellarius. Quosdam casus alios in quibus dissentiunt leges predictæ, ut petis Princeps, detegere conabor.*

HERE the Chancellour answers the personated Prince his expectation, which being to be from him satisfied wherein the Lawes agree and disagree, and the reason of both will better clear up to his understanding the way of his choice. This then being the scope of this Chapter, as it is appendicious to those other foregoing instances\* of their dissonancy; though the Chancellour writes with much judgment, yet presses he not his authority further then the reason of his arguments seizing on his judgment, sways his affection and practice; For so the modest words of our Text are, *Sed tamen qua legum earum præstantior sit in judiciis suis, non meo, sed arbitratus tuo relinquam.*] This for the Introduction.

The words of the Chapter most material follow. *Prolem ante matrimonium natam, ita ut post legitimam, lex civilis & succedere facit in hereditate parentum, sed prolem quam matrimonium non parit succedere non sinit lex Anglorum.*]

*Prolem.*] This is a word of largeness, importing the issue of any creature or thing used by Orators and Poets for that which the Greeks call *ἀπόγονοι*, thus *Ovid* mentions, *volucrum proles*, and *Virgil*, *Oliva proles; felix urbs prole virum, proles ignara parentum*, *Tully* has also *Ferrea proles*, and \* *Columella* writing of the Goat, calls his young *Generosa proles*; in this diminutive sense of *proles*, *Budaus* uses *proletarius sermo* for *plebeius*, such as is *nulla animi dote*; and the poor in *Rome* were from this called *Proletarii*, whence perhaps our word to *prole up and down*, as much as to *shark*, the *Act of necessity*. To those that are the refuse and ignoblest of Families, the Law shews no countenance, in honour to marriage Gods Institution, and that which he has inlay'd with honour amongst all Nations, so saith *St. Paul*, and to confirm this which is so clear, were to question the universal embracement of it; now Matrimony being the

chast limitation of the loves of one man and one woman each to other at one time, the Chancellours phrase of *proles*, and not *natus*, nor *filius quod omnium constantissimus sit amor parentum in filios*, saith *Sipontinus*, nor *Liberi* which extended not onely to the legitimate children of the body, but to the *nepotes & pronepotes*, to which \* *Glanvil* assents, when he calls these *Heredes*; I say the Text naming those he writes of, not by these names of credit, but by that of *Proles* which is a common title of the proceed of any creature, does thence insinuate that illegitimate children are as no children, being absconded from the descents of the Families of those that got them, and that because they are *ante matrimonium nate.*] For though in the Court of Heaven they may be legitimate, their parents consent-

ing

\* In Chapters 21, 22, 23, 34, 35, 36, 38.

1. Pastorum.

*Ferrea tam vera proles exorta repente est.* lib. 2. de Nat. eorum. \* *Facit autem si est generosa proles frequenter duos, nonnunquam trigeminos* lib. 7. *Tholoff* *Syn-tagm. Juris.* lib. 9. c. 6. ff. 1.

*Uxorem duxi, natum sustuli, filium educa-vi.* *Quintil.* lib. 4. c. 2.

*Charitas qua est inter natos & parentes dirimi nisi detestabili scelere non potest.* *Cic.* lib. de Amicit.

\* Lib. 7. c. 3.

*Tholoff.* lib. 10. c. 3.

*Consensus præponderat concubitu.* *Tholoff.* lib. 9. c. 3. ff. 3. *Consensus solus facit conjugium.* *Regul. Juris.*

ing conjugally each to other before they coupled, and continuing loyal each to other after, yet *in foro seculi* the *Proles ante Matrimonium natae*, are *Proles ignara Parentum, incerta*, and so have no right *jure divino aut naturali*, as *Covarruvias* notably determines notwithstanding the Declaration of Pope *Alexander*, which sayes, *Tanta est enim vis Sacramenti, ut qui antea sunt geniti post contractam Matrimonium habeantur legitimi*. Now *Proles ante Matrimonium natae* they are, who are born before the Parents of them are lawfully married, that is not married as the Pope by his Canons and Dispensations indulges, for that sometimes has made that lawfull which God's Law has made unlawfull, and on the contrary, as the Statute of 32 H. 8. c. 38, declares; but according to the appointment of the Law of England, Solemized in the face of the Church, and by lawfull Authority, the truth and loyalty of which the Bishop onely must certifie, which these *Nata ante Matrimonium proles* not being capable to be, they by our Law come to be infamous, *Ita ut post legitimam Lex Civilis & succedere facit in hereditate Parentum.* ] Mr. Selden quotes *Justinian* for this, though the Canon rather than the Civil Law makes them inheritable, if their Parents marry after, and there be no other issue born after Marriage, This, (a) *Covarruvias* sayes, is *Favor jure Pontificio Matrimonio impensus*. I confesse the Civil Law has, a way of legitimation of them, as our Law has by Act of Parliament.

*Sed Prolem, quam Matrimonium non parit, succedere non sinit Lex Anglorum.*

So great a reverence has the Common and Statute-Law to Marriage, that though *natus intra Matrimonium* shall be the childe of the Marriage, the father by Marriage being presumed apt for generation, as *natus ultra mare* within the 25 E. 3. & 42 E. 3. c. 10. shall be the Kings Subject though it be born *extra limites*, if *infra libertatem Regis Angliae*, yet *natus extra*, that is, *ante Matrimonium* shall be a Bastard; for that the Law repudiates all vage lust, the affront of Marriage, and dishonours the procees of it. I know Pope *Alex. 3.* in 6 H. 2. made a Decree to legitimate *ante-nate* Children upon subsequent Marriage between their Parents; but this was never allowed here for Law, but the contrary asserted, so *Glanvil*, who wrote in *Henry the Second's* time, sayes, *Orta est questio, si quis, antequam pater matrem suam desponsaverat, fuerit genitus vel natus, utrum filius talis sit legitimus heres cum postea matrem suam desponsaverit. Et quidem licet secundum Canones & Leges Romanas talis filius sit legitimus heres, tamen secundum jus & consuetudinem Regni, nullo modo tanquam heres in hereditate sustinetur, vel hereditatem de jure Regni petere potest.* So such, *Bracton* also, who wrote in *Henry the Third's* time, sayes are not inheritable, and that *per consuetudinem Regni*; for though he would write favourably of the Ecclesiastical Constitution, which all the Bishops of England did in the Parliament of 20 H. 3. promote, yet all the Earls and Barons with one voice answered, That they would not change the Lawes of the Realm which hitherto have been used and approved; which *Bracton* I say considering, though he sayes the natural sons of men *ad omnes actus legitimos idonei reputantur*, yet restrains it non nisi ad ea quae pertinent ad sacerdotium: for as to secular things they are not lawfull, which *Sir Edward Cook* takes notice of in the 8 Report in *Lechford's Case*; and (a) *Doctor Zouch* shews this to be the Custom of *Normandy*, and *Tholosanus* makes the Law of all France, as others do generally of all the world; for even amongst the *Athenians* if a man had a base son he had some portion allowed him, but the inheritance went unto his lawfull daughter, so sayes (b) *Suidas*: and so strictly did our Law ever adhere to it, that in times of Popery, when the Canons of the Pope were most adhered to, yet the Bishops in case of general Bastardy, when the King wrote to them to certifie who was lawfull Heir to any Lands

*Promissio de futuro Matrimonio, sequente copula, facit Matrimonium presumpsum, contra quod non habet locum probatio.* Regul. Juris apud Tholos. lib. 10. c. 4. ff. 3.  
Discurs de Matrimonio. part. 2. c. 8. ff. 2. a p. 244. ad p. 248.  
In Epist. ad Exoniens. Episcopum Concil. Tom 7. part. 2. p. 739

which God's Law  
2 & 3 E. 6. c. 12.  
Glanvil. lib. 7.  
c. 12. & 14.

Selden's Notes on this 39 Chap.  
Ubi non est copia aliorum, bene assumuntur minus legitimi. Gratian. Decret. part. 1. dist. 55 fol. 66.  
(a) Loco praeiudic.  
Lex enim huic iustis filiis aequiparat, nihilque a legitimis legitimatos differre jubet, nec hi invicem dissimiles a legitimis & naturalibus censentur. Aiciat. lib. 1. de verb. signific. p. 366.  
Tholos. lib. 10. c. 4. 5, 6. & lib. 6. c. 11, 12, 13.

*Matrimonii honestas naturalis est.* Tholos. lib. 8. c. 1. 15.  
*De Privilegio Matrimonii lege Cassanum ad consuetudinem Burgundiae ad tit. de droit appartenans a gens mariez.*  
2 Instit. p. 97. on c. 9. of the Stat. of Merton.

*Non potest de facili prater consensum heredis sui filio suo post-nato de hereditate sua quamlibet partem donare.* lib. 7. c. 1.

Glanvil. lib. 7. c. 15.  
Heres autem legitimus nullus Bastardus, nec aliquis qui ex legitimo Matrimonio non est, procreatus esse potest. lib. 2. c. 29. fol. 63.  
20 H. 3. c. 9.

*Nec heredes judicabuntur quod Parentibus succedere possunt, propter consuetudinem regni quae se habet in contrarium.* lib. 2. c. 29  
(a) In Descript. Juris Feudal. p. 21.  
*Spiritus autem non succedunt etiam in Gallia Patribus vel eorum agnatis. & ita conveniunt omnes, quia non habent iura sanguinis.* lib. 45. c. 6.  
(b) In verbo *Emancipatio*.

Insit. p. 97. on  
ch. 9. Merton.

Lands or other Inheritance, ought to certifie according to the Law and Custome of England, and not according to the Roman Canons and Constitutions, which were contrary to the Law and Custome of England, and this was the reason they loving the Canons and fearing the Pope who laded them with such chain-shot, desired in the Parliament of 20 H. 3. to be relieved, but in vain alas; for the Nation would not stirr from adhering to

Lib. 6. c. 38. Capite de exceptionibus contra personam quarentis. &c. Fitz. Herbert. Title Bastardy 21. 22. 25. 27. 28. 30. 33. 39. and the year books 1 H. 6. fol. 3. 11 H. 4. fol. 84. 39 E. 3. fol. 14. 44 E. 3. fol. 12

\* Deum ista conjugia semper prohibuisse & nunquam placuisse, & praeipue temporibus Christianis Concubinas habere nunquam licuit, nunquam licet, nunquam licet excerptio Eglredi. Ad Ann. 750. Canon 125. Spelman in Concil. p. 271. sic in Canonib. sub Edgato. p. 442. sic inter Leges Canuti. p. 558. 501. 516. 234. 787. 298.

Marriage, and the issue lawfull of it; and that Bastardy is an exception against inheriting, *Fleta* not onely makes good, but all later Authorities. And to help this in a particular case, which otherwise would have ended in disherison, was the Statute of 9 H. 6. c. 11. made, For Bastards begotten and born out of lawfull Matrimony (an offence against God's and man's law) as the words of the 18 Eliz. c. 3. are, has ever been not onely disfavoured by the Laity in Parliaments, but by our Clergy in their \* Convocations; for although the Pope gave liberty, and some of the Clergy of old took liberty to enjoy Concubines, yet the Church in her Councils decayed and execrated it as abominable, and made the Issue of it un-inheritable, *Non legitimam proclamans*, saith our Text.

*Civilista in casu hoc Legem suam extollunt, qui incitamentum eam esse dicunt, quo Matrimonii Sacramento cesset peccatum.*

Here the Text terms those learned Gentlemen of the Gown, which in other places it names *Jurista*, *Advocati*, *Jurisperiti* by *Civilista*, A name of art and dignity given to those that are Graduates in the profound study of the Lawes, the termination *ista* referring to the person, as *ius* does to the office, thus *Sacrista*, *Exorcista*, *Lanista*, *Jurista*, *Canonista*, all appropriated to men so and so qualified; for these are not Oratours or Historians words, so much as terms of art and private invention. That which the Text sayes of these, is, that they do extoll their Law for this indulgence, that is, they being Professours in both Lawes, the Canon as well as Civil, do as much as in them is, keep up the credit of their Lawes, by evidencing the reason or equity of them. And though this dispensative enactment be the Popes, and so directly their Canon-Lawes rule, yet inasmuch as the rule is with them *In Matrimoniis judicandis, & in his qua ad ea pertinent, praeponimus Sanctiones Pontificias Civilibus*, our Chancelour sayes these Civilians, for that is the title of most eminency, do *Legem eorum extollere*, that is, they judge it prudent and just, and such publicly and with confidence avow it; thus *Extollere armatum in sublime* is by *Hertius* used, *Extollere caput & se erigere*, and *Ad caelum laudibus aliquem extollere* by *Tully*, *Extollere verbis praeclara ingenia* by *Salust*, *Extollere indignationem* by *Pliny*, *Extollere in majus* by *Livy*: all which shew, that our Text by these words *Legem eorum extollunt* intends a Magnification of their Lawes, which is what the Oratour intends by *Extollere se gloriano & praeudicatione*, as *Tully's* words are. This I note, because it is not a vain jactancy that our Text mentions these Civilians guilty of, for that had been not worthy them but to be passed over by his ingenuity; no such extolling is this, but it's such an extolling as is grounded upon reason and conscience, *Quia incitamentum eam esse dicunt, quo Matrimonii Sacramento cesset peccatum*]

Tholoff. lib. 9.  
c. 21. ff. 2.

Lib. 5. Belli A-  
fricani. 510.  
Orat. pro Plancio  
in Jugurth.

In Tarad. 17.

Non enim coitus  
Matrimonium facit,  
sed maritalis  
affectus. Forner.  
ad Leg. 13. ff. 1.  
p. 36. lib. de verb.  
signific.

Qua ratione deprehens in concubitu & adulterii accusati se excusant, si conjugium contraxisse asseverent, eorumque affirmatio verisimilis sit. Alciat. ad Leg. 174. p. 875. lib. de verb. signific.

(a) Field in his Appendix to the third book of the Church. c. 15.

Leges Casandrum in Consultat. cap. De Romano Pontifice. p. 31.

That is, supposing the first act be so strong a fetter to continued lubricity, which is the sin of Incontinency, Marriage limiting & legitimating the vageness and obliquity thereof, turns the sinfull passion into a sinless virtue, such fruitions in the latitude and effects of them becoming, by a not to be blushed at transmutation, noble and creditable, which before such Marriages were culpable and infamous; yea, notwithstanding all the precedent irrectitude, charity may perswade to interpret a dispo-

sitive Marriage in their mindes, who (in their censured familiarity) were thus cordial each to other: yea and the Marriage in being, be but the design their loves tended to, though the completion thereof had for some time and reasons interruption, so are the words, *Presumendam quoque dicunt esse, tales fuisse contrahentium animos, quales esse demonstrat subsequens Sacramentum*]

And therefore the Church of Rome counting Marriage a (a) Holy thing (for that's as much as *Sacramentum* here will amount to) makes the



the issue of it legitimate, which Act of legitimation is but yet the favour of a particular Church, which though some Councils have declared to be *Sacrosancta & Apostolica Ecclesia qua non ab Apostolis sed ab ipso Servatore Dominoque nostro primatum obtinuit*, yet has onely power over its Members and within its limits to establish what it pleases in matters of ritual and circumstantial nature; but in the Doctrinals and Mains of Religion, the Scripture not men ought to be Judge: and therefore if the Church be taken here for the *Roman Church, Pro Presidentibus Ecclesia, pro Ecclesiasticis viris, & pro auctoritate Papa virtualis Ecclesia*, as the *Romanists* generally hold; then that Church *Non habens maculam neque rugas neque aliquid hujusmodi*, as (a) *Baronius* his words are, will not establish any thing which is not according to Scripture and Morality, and so is not the *Ecclesia* here, that does *habere natos ex subsequenti Matrimonio* for legitimate. For then I suppose the Church, which they say, as headed by the Pope, cannot err, must be granted to err; and that in allowing that for ends of Policy and gain, which has an apparent turpitude in it, and from which there is no absolution, but by God's mercy by an humble penitence, which subsequent Marriage does not necessarily nor always imply; so that the *Ecclesia factus hujusmodi habet pro legitimis* ] must onely be meant of a part of the Church-Catholick, that is; *The Roman Church*, which though vitiated in many things, both practices and opinions, yet having the Integrals, I dare not deny a Member of the *Catholick Church*: and I understand the Chancellour onely to intend the *Roman Church* here as it does *factus hujusmodi habere pro legitimis*; for the *Catholick Church* does not so judge, nor as I think has ever so declared.

*Ad qua sic respondent Legis Anglix periti. Primo dicant, quod peccatum primi concubitus in casu proposito, non purgatur per subsequens Matrimonium, licet ejus merito delinquentium quodammodo minuat pena.*

This has several parts of its answer worthy consideration; First, that the *primus concubitus* was a sin, because a violation of chastity and an act of lust and irregular concupiscence; for it being not an observance of the institution of God, nor to the end of procreation, (which though it happeneth unexpectedly to be, yet was not the end of the coition, but merely the effect of brutish sensuality, which titillated the concupiscence to acts of inordinacy, and took the object it first lusted as the creature of its pleasure, not the beloved and solitary object of its adhesion,) there being no end of God in the institution of Marriage designedly promoted thereby, no blessing of God on such conjunction can be expected there-from, though the patience of God forbear punishment of such a sin against his Law; the breach whereof this act was, and does not in the very act destroy the sinner; yet is the sin entered on record in heaven and without repentance is damnable: and therefore the *subsequens Matrimonium* does not purge that, for then the remedy must antedate it self and work before it had a being, then it must be either in its own nature, or in God's acceptance of equivalence with guiltlessness, for else how can it purge from the guilt of sin committed, not that then can it do, but all that it can do is to mitigate scandal and to give restitution in point of fame; as thereby it imports to the world, that there was an inclination and addiction of them to a Marriage completion, and that they were soularly married, and so the subsequent Marriage may be *purgatio*, that is; *declaratio intensionis conjugalís*, and this may *purgare à tanto* though not *à toto*, or as the Text is, *Pœnam delicti minuire*, ] though not *collere*, which is all one with that of our Lord, *Not beaten with many stripes but with few stripes*, by which appears that though the Church of God and the Lawes of men may allow the issue of reputed Marriage to be lawfull, though there were a pre-marriage, provided that the party that was free when married, did not know of the former Marriage, *Quia crimen non contrahitur nisi voluntas nocendi intercedit, & voluntas & propositum distinguunt maleficium*, as the rule of (b) Law is, and the children and one Parent ought not to suffer in this case for the other Parents sin. Though I say there be favour shewed the issues of these Mar-

Tom. 1. Concil.  
Traité de Primat.  
Rom. Ecclesia.  
p. 25. & c.  
Dr. Field of the  
Church lib. 4.  
c. 2. & t. 31.

Tuttrecremata Summa. lib. 2. De Ecclesia.

Doctor Field's 4. Book c. 1. of the Church.

(a) Tom. 6. p. 485.

Nihil proinde aliud credendum, tenendum, aut docendum est, nisi quod sancta Romana tenet & docet Ecclesia, omnium consentientium Ecclesiarum Mater & Magistra; eum vero qui à fide Catholica & Romana Ecclesia recedit, necesse est à veritate & capite deficere. Concil. Trevirensis ad Annum 1549. Tom. 9. Concil. p. 136.

A contrahentibus  
publicata Matrimonia  
olim valida.  
To 9. Concil.  
Gen. p. 670.  
Luke xii. 46. 47.

Bracton. lib. 2. De acquirendo rerum dominio. c. 29. p. 61.

Zouch in Descript. Juris Feudal. p. 21. in Custom de Normandy 27.

(b) Bracton. lib. 3. c. 17. De Corona. p. 136.

Concilior. General.

Tom. 7. c. 2. fol. 1151.

Tom. 9. p. 411.

Tom. 7. c. 2. p. 527.

*Proles tali nata pollutione non solum Parentem accipiat, sed etiam in servitutum ejus Ecclesia de cuius Sacerdotis vel Ministri ignominia nati sunt, jure perenni manebunt. Art. 10. Concil. Tolctan. 9. Tom. 4. Concil. p. 781, 782.*

Cassand. lib. De Officio pii viri. p. 786, 787.

Universalia praecepta Juris naturalis sunt indispensabilia. Durand. lib. 1. dist. 48.

Qu. 4. art. 10.

p. 277. lib. 2.

Dist. 44. qu. 5.

p. 467.

*Pralati Ecclesia non sunt domini sed ministri, nec fundatores sed executores. Idem lib. 4. dist. 22. qu. 1. art. 3. p. 299.*

1 Cor. 7.

Heb. 13. 4.

Philo lib. de Specialibus Legibus. p. 780.

*Dispensatio non potest fieri contra praecepta Juris naturalis communia, sed tantum contra ea qua sunt quasi conclusiones eorum. prim. secunda quest. 97. art. 4. Mal. 2. 25.*

riages, yet generally the Lawes of God and men abhorr them, and allow no respect unto but thunder out Comminations against them, and when satisfactions are given for the very specifick sin, yet the stain of it remains, and the trouble of it in the conscience of the sinner while he lives to remember it. And therefore though our Text saying, *Ecclesia tales habet pro legitimis*, seems to favour the Church of Rome's Primacy, as if whatever she, for politick ends, publishes her pleasure in, must be the doctrine and judgement of the Church; yet so long as the Scriptures give no allowance thereto, nor the

Catholick Church, (of which the Roman is but a part, and God knows as now 'tis gallimaufry'd and made a Cabinet of Civil Interest and State-policy as well as of Church-doctrine and Church-discipline, but an infirm and vitiated part) the noise of the Church makes no great Musick in Catholick ears; for all the Dispensations and Allowances that are given to immoralities and turpitudes do but prostitute the credit of those that take money for them, and render them deservedly censured for *Pilati* rather than *Pralati*, for *Carnifices* not *Pontifices*: God will never approve in Heaven actions evilly done on earth, upon the suggestion of good intents and great good aimed at. I like not the allowance of Stewes to keep chaste women from being tempted, nor of Concubines to help on the singleness of Priests, nor of subsequent Marriage to legitimate issue, though the last be most tolerable of the three.

*Dicunt etiam quod peccati illius conscis, tanto minus inde poenitent, quo Leges transgressoribus illis favere desiderant.*

This is a sure consequence, as impenitency arises from obsecration and sin not discovered: so impudence and confirmation in sin, from sin by Law not censured or disallowed; for the rule being, *Quod non vetat Lex, id mandat*, if there be not a notorious manifest of the Lawes displeasure, the corruption of mortal nature will thence derive an encouragement to commit and justify it. And therefore the Lawes of our Nation having the Lawes of God for their Original and Exemplar, do according to it justify themselves to claim obedience from men, because they enjoyn those moral and just acts that the Law of God does, which is; *That every man shall enjoy his own wife and every woman her own husband, because Whore-mongers and Adulterers God will judge*; And that whatsoever is beside or against the honour and loyalty of Marriage, is a breach of the Divine Law, and a Trespas upon the Civil Magistrate the Keeper of both Tables, by which these Lawes retain their Majesty and worth, *Cum Lex sit sanctio sancta, jubens honesta & prohibens contraria*,] as the Text saith: while they do by no connivance at the sin make the sin either little or none at all, and so tacitely invite to the Commission of it. And this our Chancellour gives as the reason of the Law against Legitimation upon subsequent Marriage, because if this should be allowed, all vageness of fruition would be practised, and unless issue come which they neither expect nor welcome who are lustfully acted, never subsequent Marriage would be. Therefore the Law to honour and establish Marriage, necessitates persons to be in that state, if they would have their issue descendable to estate or blood.

*Nec vallari potest lex ista per hoc, quod Ecclesia factus hujusmodi pro legitimis habet. Pia namque mater illa, in quamplurimis dispensat, qua fieri ipsa non concedit.*

The sense of this clause is, that there is no argument from the dispensation and permission of a thing to the legitimation of it, because many things are suffered upon reason of state, &c. to gratifie emergent necessity which are not otherwise tolerable. *Moses* has gave the Jews for the hardness of their hearts a bill of divorce, which from the beginning was not so. Polygamy was not reproached in the Patriarchs, because the World was to be peopled; yet God made *One man for one woman, and why? Because he sought a godly Seed*. This therefore being our Chancellour's argument, he excludes all subterfuge under the Churches introduction of allowance; *Nec Vallari potest Lex ista*] As much as the Law has no trench or strength about it to shelter the inference from the Church's permission to her justification, (for so *vallare* is in Authors

hours understood, so Pliny mentions *Munire & vallare contra feras*, and *Vallare se-  
pimento* is in Tully, *Monitis vallare aliquem in Silium*, and thereupon though he pro-  
ceeds to own a Power and Prerogative in Greatness to do (in things not *mala per se*)  
as it shall see fit to the carrying on of order and the compliance with the necessity of  
humane affairs, which otherwise it cannot accommodate, yet does he deny that on  
this ground the conclusion of the Churches approbation of Children *ex Matrimonio*  
*subsequente* followeth.

Lil. 10. c. 33. 7.  
Siquæ hæc omnia  
quasi seipmento a-  
liquo vallabit, dis-  
ferendi ratione, ve-  
ri & falsi judican-  
di sententia. Cic. 1.  
de Legib.  
Cic. de Arn.  
sive Ref 4.

*Pia namque Mater*] The Church he calls a Mother, because she bears Believers  
in her womb, unto birth; and being born nourishes and suckles them to further growth  
by the sincere milk of the word professed and taught in her, in which relations though the  
Holy Text call onely *Jerusalem* above (the Church Triumphant) *The Mother of us all*;  
yet it terms the Church on Earth *The Body of Christ*, and *The Spouse of Christ*; and  
these import the office and affection of a Mother to Believers and Professours the Sons  
and Children of Her, which she doth evidence to them more eminently then other  
Mothers can do; for though they being seduced, do unnaturally leave their children  
to the wide World: yet the Church like a *pious Mother*, as she keeps herself close to  
truth, so doth she keep her children close to her in the truth declared by her and de-  
fended from her, for their support. And thus she shews her self a *pious Mother*, who  
more regards the unity and edification of her children, then her own lustre and satis-  
faction, which is the cause that she as pious as she is, does that sometimes *ex plenitu-  
dine affectus*, which she approves not *in examine stricti iudicii*. This the Text calls  
*dispensare*] a relaxation and exemption from the ordinary rule,  
which though the Church of God in all times hath in things indiffe-  
rent used, as St. Paul bore with those of the *Circumcision*, even  
while he preached and pressed the *Circumcision*, not of the flesh and  
the letter, but of the Spirit, and the Church has since done after the  
example of Christ, who though he were the end of the Law, yet  
was present at and affirmed the Pedagogy of the Jews while it was  
the way of the National worship: yet in things of an absolute evil  
nature, the Church never arrogated a power of dispensation; for  
the Church being but the body of Christ, cannot do any thing valid  
against her Head, as the legitimation of what he has damned, must  
and will be. And of this nature I apprehend dispensations in cases  
of legitimation of Children upon subsequent Marriage must be;  
for if it were in its own nature a sin to couple with a woman, which is not ours by Mar-  
riage, then to marry her cannot extinguish the sin, nor admit into an unstained state  
the proceed of it, *Quod enim ab initio temporis non valet, progressu temporis non conva-  
lescit*; and hence supposing the Church of Rome allowing the Pope dispensative power,  
not onely in ordinary things (his Prerogative herein not infringing the Prerogative of  
Christ, who onely can forgive sins) but in higher matters, such as are the licencing of  
Marriage within prohibited degrees, taking and breaking Oaths, Pluralities of Bene-  
fices, Incontinence of living, &c. In these cases, if the Pope shall *honestè accipere que  
in honestè petuntur*, give way to such things to advance his peace, or enrich his Coffers,  
which he seems to make by arguments of subtlety to be *proprie & quarto modo* (as I may  
so say) for the Church's edification, because to maintain his splendour, in which he would  
make the World believe all the Church's good and greatness consists. I say, if the Pope  
shall do this as the viruall Church, yet it is more an argument of his pride to usurp it and  
of his Church's cowardize to suffer it, then any argument that they approve dogmati-  
cally of it, *Quia quedam tolerantur que non approbantur*, of which infinite instances  
might be produced, so some things are permitted which are not commanded in our own  
Laws. *Usury* the Stat. 37 H. 8. c. 9 calls, *A thing unlawfull*, as it was by the Saxon Laws,  
*Utterly prohibited by the word of God as a vice most odious and detestable*, as the words of  
the 5 & 6 E. 6. c. 20. are, though the 13 Eliz. 8. repeal the 5 & 6 E. 6. and re-  
invigorate the 37 H. 8. yet does it onely allow *Usury* at 10. l. per Cent. as the 21 Ja-  
cob. c. 17. does at 8. l. per Cent. for a year to be unpenally taken; *All Usury forbidden  
by the word of God* it expressly calls *Sin and detestable*, but the *Usury* it permits and dis-  
penseth with (not allowing the practice of *Usury* in the point of Conscience and Religion,

Gal. iv. 26.  
1 Coloss. xviii. 24.  
Ecclesia est uxor  
Christi & pro ara-  
pluritudine prolis sua  
mater fidelium.  
Tuncietat lib.  
1. de Ecclesia.  
c. 40.

Non enim aliud est dispensatio quæ  
juris communis quadam in favore  
particularium & relaxatio seu correctio, quæ  
privilegium dici potest. Alciat. lib. 2. de  
signific. verborum. p. 554.  
Nunquam dispensandum est in præ-  
dicium boni communis. Sanctus Thom.  
prim. secund. quæst. 97. art. 4.  
Omnia dispensatio a prælato debet fieri  
ad honorem Christi, & ad utilitatem Ec-  
clesiæ. secund. secunda. quæst. 83. art. 12.  
Pontificia dispensationem quando non  
adeest iusta causa dispensandi valere in Foro  
Fors. sed non in Foro Poli. Bellamini. Te. 7.  
Controv. 6. p. 1987. 1988.  
Tom. 3. Concil. part. 1. p. 125.

Ex dispensatione  
Summi Pontificis  
nuptia contrahi  
possunt licite intra  
gradus seu gene-  
rationes prohibitas.  
Tholoff. Syntag.  
lib. 9. c. 11. B.  
23. C.  
Duatenus lib. 3.  
De Beneficiis. c. 6.  
p. 39.  
Bellamini lib. 2.  
c. 11. De auctori-  
tat. Conciliorum.  
Benzonius. in  
Psal. 86. p. 246.  
Solutus Deus potest  
dispensare in præ-  
ceptis divinis, non  
autem Papa. 1.  
2da. quæst. 94. art. 5.  
Reg. Juris.  
Inter L. S. Ed-  
vardi si quis de  
usura constituit.  
Glanvil. lib. 5.  
c. 16.

Stat. Merton c. 5.  
1 Instit. p. 89.

to are the words of the 21 Jacob. c. 17. confirmed by 3 Car. 4. ) is as to any advantage the Civil Magistrate should take against the takers of it; these Statutes taking away the old Usury, which before the Statute of Merton was practiced here by the Jews, and after till Henry the Seventh's time, when by the Statute of 3 c. 5. it was declared, *Forasmuch as importable damages, loss, and impoverishing of this Realm is had by damnable Bargains grounded in Usury, coloured by the name of new Cheivance; contrary to the Law of Natural Justice, to the common hurt of this Land, and to the great displeasure of God.* I say, the Law though (it taking away these) did permit moderate interest to be taken; yet did but what the Text terms *dispensare* with the taking it, as not looking on it as a matter of conscience, but as a great expedient for trade and correspondence between man and man: and thus Usury at this day standing, the Law may be said *dispensare* rather than *constituere Usuram*. And so in other cases instances might be given, which confirms the Chancellour's position, that the Church in admitting the issue of such after-Marriages for lawfull, does not so much doctrinally conclude, as piously dispense with what thus happens upon presumption of subsequent penance in them, and future satisfaction to be made by them for former scandal, *Per Matrimonium subsequens docetur Ecclesia contrahentes pœnitere de praterito & de futuro per Matrimonium se velle cohibere* ] And then as the Text sayes, if Saint Paul did *Frana virginitatis laxare quod consuleret noluit* ] If he that preferred virginity above Marriage, yet did indulge Marriage to Christians in persecution rather then burning, *Ab sit ut mater tanta?* ] Our Chancellour puts a God forbid upon the denial of the Church to shew lenity to her Children, when they, fallen into sin by aforesaid enjoyments, desire to return from their wandrings by subsequent Marriage, and this is that which he produces in favour of the Church, *Que factus hujusmodi habet pro legitimis*, that is, if the woman, Mother of them, be before *in concubinato, in familia retenta*, so that there be an undoubted affection as in a wife, (saith the learned (a) Bachelour, who makes many Doctours therein to agree with him) in this sense the Church takes *Prolem ante Matrimonium natam pro legitimis*.

1 Cor. 7.

(a) Mr. Selden  
on this Chapter  
and words.

*Sed longè alium in hoc casu Lex Angliæ effectum operatur, dum ipsa non concitat ad peccatum, neque peccantes fovet: sed terret eos, & ne peccent, minatur pœnas.*

This he produces to purge the Law of England from cruelty and unmercifulness in this exclusion; for Marriage being the institution of God, and Lust a *Θεομαχία*, not onely a pugnation with God but with nature, which intentionally by it in her noblest operation is defeated; the Law of England to prevent or correct this sin committed, doth incapacitate the issue of it inheriting, and puts a deserved blemish upon them. And this it does to declare its abhorrence of vage lust and inordinate copulation, the sin much of the Nation, and that which the Law would be interpreted in not punishing to encourage, and in not abhorring to cherish. Therefore is the Law constrained *minare pœnas, not castration and exoculation*, which are since Christianity antiquated, but illegitimation of the issue, and a disherizing of them, as no *Cyons's* from the root and growth of the family; and if children be gotten between two, an offence against God's Law and man's Law, the words of the Statute of 18 Eliz. c. 3. *They shall be provided for by the reputed father and mother*, so is the Statutes direction confirmed by 3 Car. c. 4. yet if any Bastard-child so gotten and born shall be destroyed and made away, which some lewd women do to avoid their shame and escape punishment, the Statute of 21 Jacob. 27. makes it Murther without Clergy. This the Law does to shew, as Bracton layes, *That luxurions and incestuous persons are to God abominable*; and Philo gives it for a reason why Bastards are not to come into the Congregation of God, *Ὅτι καὶ ἀπέρι ἐνι πορναῖ, &c.* *Because these, Archers shooting at Rovers direct their Arrows to no one onely object, but being wilde and of random fancies, imagine not One, God the Creator and Preserver of all things, but many causes and principles of things and creatures, and thence are execrable to God, because Auhours of all monstrous and prodigious tenents and actions, the effects of their vast wits and limitless passions,* thus Philo.

Consules a consu-  
lendo, gladii, id  
est, Ringis, & Rin-  
ga cingunt. Renes  
italium, ut credidi-  
ant se ab incestu  
luxuria; quia lu-  
xuriosi & incestuosi  
Deo sunt abomina-  
biles. Bracton.  
lib. 2. de acqui-  
rend, rerum domi-  
nis. c. 3. fol. 5. B.

Lib. de confusione  
signarum. p. 341.

And therefore since *Carnis illecebra fomento non egent;* ] and that be the Lawes never so strict there will dayly dishonour accrew to God by the infirmity of our nature, and

and the advantages *Satan* takes by our discovery of our selves to tempt us, as the *irritamenta lasciva*, be importunate and incessant, (never expiring menace of us while we are in the body) so are our vigilancies and remedies to be luted thereto, and all little enough to keep under the body, which naturally tends to expend it self in generation rather than on any other way; for every creature naturally desiring being and perpetuation in its kinde, embraces that which thereto tends, which because to generate it's like is the onely means to effect his desire, his actuation will thereto drive: and so man having the common notion of desire with the creature, intently designs the con-ducement thereto, and is kept from it by no restraint but that *ἔξου διασθέντων*, *Vir- tue divinely restraining*, or fear of punishment servilely deterring him, which the wis- dom of God well-knowing, rivetted in humane nature such prudence and conservative Principles, as do answer every requiry of Nature's infirmity, and adjuvate every branch of the interest of God in the circumduction of things to the full point and consistence of his glory, for which he made the World and all creatures in it.

*Necessarium fuit ad quietam & pacificam hominum vitam aliquas ab hominibus Leges imponi, quibus ho- mines improbi me- tu poena a vitiis cohiberentur & virtutem assequi possint.* S. Thom. prim. secund. qu. 95 art. 1. Con- clus.

*Et homo quum individuus perpetuari nequit, perpetuari naturaliter appetit in specie sua; quia omne quod vivit, assimilari cupit cause primæ, quæ perpétua est & æterna.*

This is here introduced to shew the reason of man's dotage on generation-enjoy-ments, 'tis because the good of being ever he cannot obtain, (his body being ele-mentary, mixed, and so dissolvable) his great drift is to contribute to the being of his kinde, though by it he pay the death and determination of his person; for though the life of man be dear to him, *skin for skin*, that is, one part of his substance after ano-ther 'till all be exhaust, *will a man give for his life*: yet to be a benefactour to suc-cession in proliferation is that which preponderates life, and more natural and noble is it for man to carry on the succession of man by generation, then to enjoy individual life if it were possible to a perpetuation, because the one is but a solitary good, the other a diffusive and general one; which *Abraham* no mean Artist in nature as well as in piety apprehending, complains to God, that all he had, did him no good *since he went childless*, as conceiving, he lived not at all to the purpose of nature who had not generative energy, or having it, expressed it not, nor did he seem to himself fa-voured by the God of nature, whose natural endowment orderly expended brought no harvest to succession. Now though I am apt to think there was some sensual instinct that impresses this desire and urges on this impetuosity of man; yet do I not believe but that some ambition of a temporal eternity as pledge of assimilation to the first cause (in a degree and apprehension of perpetuity, and as it were indeterminateness of being) acts man to this: & God having furnished him with soulary powers to it, proportionates corporal Organs to those offices of life and activity, *Unde fit quod plus delectatur homo in sensu tactus, quo servatur species ejus, quam in sensu gustus.*] *The Senses of man are the deficient participations of Intellect*, say the *Scholes*, because they distinguish of objects and things by some di-rective and discriminative property, which is like though not very intellectuality; those senses that are here mentioned are the two keenest and most consequent of all, Taste and Touch, which though they be but one in the true nature of them (Touch comprehending Taste as it is the sense of all the parts, whereas Taste is but the touch of the tongue) yet are distinguished in the order of Senses; and as no man can live without food and taste, so no man can generate this kinde without touch. Therefore the (a) Philosopher makes this in-separable to generation, *ἄνθρωπος μὴ ἔν τῷ τῷ ζῴῳ πικρῷ, &c. Men and all Creatures that do generate have touch.* And man, though he be answered nay exceeded in other senses by the creatures, who have them in transcendency above him; yet in touch and taste he is Lord of them all, none have them in any degree comparable to him. This is his peculiarity and donative of Prerogative, wherein he is more excellent then all the works of God's hand; for this is that without which no other sense were acceptable to, or illustrious in him: for

*Job. 2. 4.*

*Gen. 25. 2.*

*Sensus est quædam deficient participatio Intellectus.* Sanct. Thom. part. 1. qu. 77. art. 7.

*Sensus gustus quædam species tactus quæ est in lingua tantum, non autem distinguitur a tactu in genere, sed a tactu solum ad illas species quæ per totum corpus diffunduntur.* Sanct. Thom. qu. 78. art. 3. ad quartum dicend.

*Quod cum absque aliis sensibus vivere possimus, absque aspectu scilicet, odoratu, auditu, atque complexu, absque gustu & citis impossibile est humanum sustinere corpus.* Sanct. Hieron. tract. 2. c. 8.

(a) Hist. Animal. lib. 4. c. 8.

*Ἐξί ἡ ἀνεβέστων ἀνθρώ- πος ἦ ἀιθίστων τῷ ἀέτι. lib. 1. c. 15.*

Plin lib. 10. 11 ff.  
Animal c. 69  
p. 110.  
Lib. 2. De anima.  
Text. 93.  
Capus de Odore.

Lib. 11. c. 63. De  
gener. Animal.

Note this.

Lib. 3. De anima.  
Fracastorius lib.  
De Sympath. &  
Antipath. c. 14.  
Phavorinus part.  
1. c. 29.  
Plin lib. 7. Ani-  
mal.

in these his soul eminently appearing, does accommodate them with all the energies and subsidies of it, which is the sense of the Philosopher, lib. 2. De Anima. c. 3. and therefore in the third Book and twelfth Chapter, he calls the touches of the tongue and of all the body, *Ἀναγκαῖαι αἰσθήσεις τῶν ζῴων*, *The necessary senses of living creatures*; which touch of man being so excellent, (and as it is more quick in some men than others, so argues more excellent souls and prudent mindes) is the reason why above the ordinary proportion of men, wise and brave men are most addicted to Venerary; not onely upon the account that men generally are, which the Philosopher mentions when he sayes, *There is no time exclusive of their courtesie as there is in other creatures*: but as they are apt to intend an object summarily and to an extasie of degree, and on that object so enamouring them and enamoured by them to expend themselves to a prodigious, luxuriant and boundless proportion, which in some has been not onely to the heightns of constitution and civility, but even to an insaniency, or what's further, exanimation; thus dyed *Cornelius Gallus* and *Quintus Haterius*, two Roman Knights, and *Pontanus* reports one *Beltrand Ferrerius* of *Barcelona* so to have dyed, and multitudes of others. But enough of this, that onely which I drive at is to commend the reason of the Text, that as the sense of *Taste* keeps man by the help of meat and drink to live this bodily life, which is *vivere in individuo*,] so the sense of *Touch* enables him to immortalize his frail body, by generating his like, which is *vivere in specie*: and by the improvement of this, *Plus delectatur homo in sensu tactus, quo servatur species ejus, quam in sensu gustus, quo conservatur individuum.*

*Quare Noe ulciscens in filium qui ejus pudenda revelavit, nepoti suo, filio delinquentis maledixit, ut inde plus cruciaretur reus quam proprio possit incommodo.*

This Quotation is out of *Gen ix. 25.* where *Cham* the second son of *Noah* is cursed for his unnaturalness, in that, when his father was denuded, he did not modestly cover him as his brothers did, but rudely beheld him with a bold and braving glory over his infirmity, which therefore God curses him for, and to shew his abhorrence of such a childeless unnaturalness curses his posterity; for *Canaan* his son for this fact is condemned to be a *Servant of servants*, that is, the meanest of servants, not onely of a servile condition, but more base then servility to men can be thought to be, *Πᾶς δούλος, Servus perpetuus qui nunquam manumittitur ab eo cui servit*, as *Drusus* renders it: though therefore *Cham* was the immediate sinner, yet God to shew

Ὁ μὲν δὲ ἐν περιεργίᾳ ἰδεῖν  
τὴν πατέρα γυμνὸν ἰδελήσους ἢ  
γαλάσαι αὐτὸν, &c. Philo lib.  
de his verbis, respicit Noe. p.  
278.

*Non tantum servilis erit  
conditio sed vulgari servitute  
deterior.* Vatablus in Loc.

*Νοῦς δὲ τῶν ἢ* his Judgement on his sin, punished his son *Canaan*, inasmuch as *Canaan* signifying *Com-  
ἐδοῖς ἐπιήμι-  
motion*, was stirred up by *Cham*, which imports *Heat*; for though the sin were in  
or ἐλεῖν, &c. *Cham's* heart lurking, yet so long as it appeared not in villany of action God decla-  
Philo lib.  
red not the curse against it, but when it did, punished it in his posterity who are to this  
precis. p 280 day, *A Seed of Evil-doers.*

*Quare Lex qua vindicat in progeniem delinquentis, penalius prohibet peccatum, quam  
qua solum delinquentem flagellat.*

This is a good consecratory, and justifies the Law of *England* in that it follows the Method of God in punishing Children for Parents transgressions; for though the punishment of Hell-fire be annexed to the person that sins, according to that, *The Soul that sinneth it shall dye, And the father shall not bear the iniquity of the son nor the son of the father, but every one shall answer to God for their own deeds and not for anothers*; yet in external punishment, as the good of Parents often reaches evil children their posterity, so the evil deeds of Parents often reaches good children their offspring, (and that for the greater solemnity and notoriety of God's Sovereignty both in rewards and punishments: ) Answerable to which, *As God is known by the Judgements he executeth when the wicked are taken in their own snare*; so is the power of God in the distribution of earthly Magistrates to be proportioned as may most encourage to good and deterr from evil. Which because those Lawes do most effectually, that reward the childe for the father's virtue, and punish the childe for the father's sin, as in the case

Ezech. 18.

Psal. 9. 16.

of Bastardy the Law of England doth. The Chancellour's position that the Law of England is *Lex casta*, ] and that *quia facit castos* by its admonition and discovery of the excellencies of continency; or if it works not that effect, yet it does *fortius, firmitusque repellere peccatum*, by declaring the issue of incontinence *Illegitimates*, then do those Lawes that do, *ex Matrimonio subsequente*, allow them. This being the Chancellour's conclusion; He therewith ends and so do I the Notes on this Chapter.

## CHAP. XL.

*Præterea Leges Civiles dicunt filium naturalem tuum, esse filium populi, de quo Meretricius quidam sic ait. Cui pater est populus, pater est sibi nullus & omnis.*

TO the honour of the Civil Lawes be it written; that they do all imaginable Honour to Marriage and all dishonour to the contrary; the rule therefore of the Law is, *That the Marriage proves the Son, and that the son that will have a father and inherit from him, must be the son of his Marriage*, thus *Celsus* peremptorily concludes, and *Ulpian* sayes it is the Law of nature, *That he that is born out of lawfull Marriage, unless there be a particular Law to the contrary, has no relation to his father that begot him, but must relye on his Mother that bore him*: to this agrees *Tholosanus*, who calls these natural sons, *Spurii*, his words are, *Cum naturales tantum procul à patris successione arceantur omni illicito cæteris reprobatò jure divino, & naturales etiam ideo à fendo rejiciuntur paterno, etiam si fuerint legitimi rescripto Principis*, and (a) *Alciat* allows onely legitimate sons to be of their father's family; yea, so doth the Civil Law suppress these as to any thing of splendour, that though they come from the body of a man, yet his Nephews and remoter kindred shall inherit and not they; for they being *Avantopes* are therefore left at large, and by the Law unprovided for as strangers are: answerable hereunto is *Littleton's* rule, A Bastard is *quasi nullius filius*, and therefore can lay claim to no bloud or fortune by descent, but if any he hath it must be by deed or will, by which they often (and God forbid it should be otherwise) have estates given them: for if any man knows a person to be his childe, though sinfully begotten, (the more is his shame and ought to be his sorrow) not for him to give it his estate, if no lawfull children he have; or something of it if such lawfull children he have, is a very great unnaturalness, and that which discovers an horrible ingratitude to nature, and a sensuality in himself which he ought to recompense to the childe which was passive in the act of his generation, and yet is thereby rendred infamous; which One, as I have heard of note, in the Reign of King *James the Wise*, considering, and having a great affection to his natural son, settled his estate upon him, his Kindred endeavouring to make it void by a Bill of Equity, had as much right done to them therein as the eloquence of Sir *Francis Bacon* then a Pleader could afford them; upon the close of Sir *Francis* his elaborate impeachment of the settlement, which he said was done *to make and favour a spurious brood*, the then Judge of the Court of Equity leaning upon his staff, and well attending the strength of his arguments and the vehemence of his expression, notwithstanding them, decreed for the settlement; saying, *Terram dedit filiis hominum*, wherein he did well (if the case was onely thus as I have heard it reported.) For reasonable it is, that he that has the power of an estate should settle it as he pleases, and to those he best judges to deserve, which certainly those must by any reasonable man be judged to be who are his children, though not legitimate, he having none such, yet natural, and such he having. Which I write not in the least degree to apologize for looseness which I hate, or to dishonour Marriage by the benefit of which (I bless God) I have been happy in a serene life and an hopefull issue; but to disallow that execrable oblivion and sordid folly, which too much swayes with wanton and wilde persons, who first sin against God in begetting children in vage lust, and then sin against their own bodies, in disowning such support of the fruit of them, as they are able in point of estate to allow. But of this enough.

*Nuptia probant filium*, Gloss. ad *Notie filium* ] Digest lib. 1. tit. 6. de his qui sui vel alieni juris sunt. p. 98.

*Cum legitima nuptia facta sunt, patrem liberi sequuntur, vulgo quæstus Matrem sequitur*, lib. 29. Digestorum.

*Lex natura hac est*, Sc. *Ulpian*. lib. 17. ad *Sabinum*.

Digest. lib. 1. tit. 5. p. 93.

*Synag. Juris*. lib. 42. c. 23. ff. 23. & lib. 45. c. 6. ff. 1. & 2. & lib. 44. c. 2. ff. 18.

(a) In *Leg. 191. ff. 1. Faminarum*. p. 425.

Cook on *Littleton*. p. 3. 123.  
Dyer. p. 313.  
145.

*Cui pater est populus, pater est sibi nullus & omnis.  
Cui pater est populus, non habet ipse patrem.*

sect. 121. of  
Villenage p. 123.

This is mentioned as the saying of a certain *Metrician*, but whom I know not, nor doth Sir *Edward Cook*, who yet recites it in his Commentary on *Littleton*, mention the Authour of it, possibly 'tis some obscure Monkish Distich, whose Authority being of urgent weight, the authors name may remain a secret without loss to any Reader; the sense of it is but the same with what in other words is fore-cited, and therefore I shall mention it onely as a pass to that absurdity which the Chancellour sayes will follow upon legitimation of issue upon subsequent Marriage, to wit, That when as a natural childe he had no father at his birth, thereby he after gets a father and so becomes a lawfull childe; which in reason no children being possible to get without aid of that Glos, which is diametrically contrary to our Common Law rule, *Quod ab initio non valet, ex postfacto convalescit*, which though it be a good Glos to that of *Ulpian's* in the case of a Senatour, *Ad Legem Juliam & Papiam* there treated on, and a Libertine may by the Prince's indulgence become *justa uxor*; yet in case of issue, *ex postfacto* legitimated, is very hard to yield: nay certainly since the Text sayes, *non novit natura*, how a man can be father after birth that was not father at the birth of a childe. It may be added, *nec admittere debet Justitia*, how from a corrupted fountain of lewd fruition the pure streams of legitimate children should flow.

In Margin.  
Gloss. lib. digest.  
23. tit. 2. de ritu  
Nuptiarum p.  
112.  
Ulpianus lib. 6.  
loco praeit.

*Maxime infra regnum Anglia, ubi filius senior solus succedit in hereditate paterna.*

As marriage is defined by *Philoxenus* to be *συνουσίαν ἀνδρῶν & γυναικῶν*, the cohabitation of man and woman in all conjugal duties, so the fruits of it are by the Law of conjugation to inherit the possessions of the so married couples: And that in *England*, not as they are equally allyed to, and descended from their genitors by equal proportions, but as all the glory and sovereignty of descent is fix'd on the eldest son of the Family, who is the chief in blood, and also in inheritance above his brethren. This the *Jus commune* of *England* allowes, and though particular customs in Mannors rule descents otherwise, as in Gavel-kind and Burrough-english Tenures, yet the *Lex terra* is so, that *solus senior succedit hereditate paterna.*] And this seems to come up to the appointment of God and the dictate of Nature, whereby the eldest being the head of the Family, as every sheaf did homage to his sheaf, so did there such a Majesty reside in him, that he being *πρωτογενεῖς ἀπὸν* did overtop others and took them under his umbrage to defend them from all inconvenience, and to be a kind of divine Oracle to them all. Thus *Reuben* is said by *Jacob* to be *his first born, my might and the beginning of my strength, the excellency of dignity and the excellency of power*. Now this the *Hebrews* write to consist in that the government and authority over his brethren should be his as their common father, and that they should stand before him and give reverence to him as to their father; and *Drusius* adds that by virtue of *primogeniture* he should have two portions of all his fathers estate to any of the rest: Thus *Primogeniture* was accommodated amongst the Jews; with us in *England* 'tis so ordered that wherein the elder brothers reverence is diminished, his estate is advantaged, the younger brothers are not bound to be so submit to their elder, nor are they often so; but the elder brother has the inheritance, and this ties the younger brothers to their respect for fear, if not for love. All the while spurious issues are (as to descents) out of doors. For as the *partus ancillarum & foetus pecudum*, are by *Tryphonius* coupled together as equally disregarded by the Law, so in our Law, *filius ex stupro* cannot *participare cum filio ex legitimo thoro*] that is, the child of adultery or unlawfully coition (for the *Julian Law* uses them both promiscuously) cannot partake the inheritance with the childe of lawful marriage, because the Law looks on issue only lawfully begotten, which none being but those born in wedlock the descent of estates is onely upon them by the Law of *England*.

Et quod pater in  
illo primum ma-  
sculam suam vir-  
tutem exserit, &  
declarat se virum  
esse. Fagius &  
Munsterus in 49.  
Genes.  
Drusius in Ge-  
nes. 89.

Lib. 3. dispus. di-  
gest. lib. 15. tit. 1.  
de penult. 57.  
Stuprum in virgi-  
nem viduamve  
committitur  
quod Graci  
διὰ πρῶτον  
appollani Budzus  
in Pand. Reliq.  
p. 223.  
Fleta lib. 1. c. 14.



*Nam Sanctus Augustinus sic scribit, Abraham omnem censum suum dedit Isaac filio suo, filiis autem concubinarum dedit dationes, ex quo videtur innui quod spuris non debetur hereditas, sed victus necessitas.*

*Lib. 16. De Civitate Dei. c. 25.*

Here is an instance in confirmation of what the Law of *England* does in the case of lawfull issue, and what the men of *England* ought to do in the settlement of their estates amongst their children; and this is out of *Gen. 25. 6.* where *Abraham* a most holy man is storied to have by the permission of his wife (a beautyfull but as yet a barren woman) a Concubine named *Hagar*, by whom he had a son, begot and brought up in the house, and to whom he gave love and portions as a father to his children, but not the Inheritance; for when *Sarah's Isaac* was born; then the Concubine and her brat was to be gone, *Cast out this Bond woman and her son* (said she) *for the son of the Bond woman shall not inherit with my son, even with Isaac*, which words of vehemence *Sarah* spake as the challenge of that right which was due to Marriage, and the son of the wife by the Lawes of nature; for so the *Greek Oratour* sets out the right of Wives above Concubines or vage women of pleasure, which men use as, and when they will; and their lust satisfied, throw them off as debauched Vermine: but Wives men have lawfull and inheriting children by and make them Ladies of their lives and families. And *Musonius*, after he had made a very eloquent and just Encomium of Marriage as no impediment to Philofophy, shewing that *Pythagoras*, *Craies*, and others were furthered in their studies thereby, concludes, *Ὅτι οὐ μὴν οὐ ἀξιωματικόν ἐστὶν γάμος ἔσθ'.* &c. That Marriage must be the most excellent and worthy state of life, because the Gods are particuler tutelars and fantors of it, and do special honour and respect to it. Yea *Hierocles*, when he has written notably of Marriage, concludes thus, *Ὅτι οὐ μὴν οὐ γὰρ ἄνευ γάμου οὐκ ἔστιν οἴκος.* &c. Neither can Cities be without families, nor families without Marriage, for that is no perfect family but maimed which is not such by Marriage. And hereupon Concubines and use of women besides wives, though it has been of old tolerated to some persons and in certain cases, yet it was non ad explendam libidinem, sed ad generandum prolem; and it did not make a man exultans sed obediens conjugii, as the father observes of *Abraham*, whom though it very forely grieved to have *Ismael* thrust forth and disowned, yet it irritated not to brow-beat *Sarah*, or reason down her eagerness, which made the father cry out of him, *O virum viriliter nentem fœminis, conjugē temperanter, ancilla obtemperanter, nulla intemperanter*, but to yield to her; and when his wife that first betrayed him to her Maid, recalled her indulgence and removed the rival of her jealousy, *Hagar* goes from *Abraham* and *Ismael* with her, and though it grieved him to turn them out of doors as rents from him and no parts of him, yet away they went packing with some small pittances, such as after-times termed, *Ad nothos pertinentia bona*, which the *Athenians* called that part of a man's estate that he might give to his By-blows to the value of 1000 Drachmes, with these he packed them away, the inheritance was *Isaac's* the son of Marriage begotten on the wife; and because *Ismael's* insolence was such, that being he was before *Isaac* in time, therefore he strove with him for the inheritance, and was impatient that *Isaac* should have it, contemning him as the younger, therefore the *Hebrews* think *Sarah* was so earnest to remove *Ismael*, and *Abraham*, who knew in *Isaac's* seed the blessing was to reside, consented to and forwarded it, giving them *Censum ejus*, that is, not Lands and Houses, for those fixed things he thought better became his heir, but his portable fortune, Cattel, money, goods, and such like, these being of value are called (a) *Census*; for since *Abraham* being a Prophet, and knowing the minde of God, understood, that one so born as *Ismael* was, ought not to come into the Oeconomy of God, as (b) *Cresolius* had at large discoursed, he thought it best for his son *Isaac's* peace to banish *Ismael* his house, and to leave *Isaac* sole Master therein. *Ex quo videtur innui quod spuris non debetur hereditas, sed victus necessitas*, as the Text is.

*Concubina sicut fœmina cohabitans cum hominibus absque scripto et subarratione & legitimo Ceremoniis.*

*Gen. 21. 11.*

*Τὸς δὲ τὸ ἐταίους ἡδυνῆς ἐνέρω ἐγγυῶν, &c. Demost. Orat. contra Nectam.*

*Musonius in lib. An Philofophiam impediatur nuptia. Stobæus Serm. 186. Hierocles lib. De Nuptiis.*

*Lib. 16. De Civitate Dei. c. 25.*

*Spurinus] à coniugij seminare, quia nihil habet à patre nisi semen. Etymologistæ.*

*Cap. 25. 6.*

*Νόθια ἔσθ' ἡμεῖς. Aristophan.*

*Habent ergo nonnulla munita filii Concubinarum in plaga Orientis, sed non perveniunt ad Regnum promissum. Sanctus Augustin. lib. 16. De Civitate Dei. c. 24. Hebraei sententiâ altercationem inter Ismaelem & Isaacum summatim fuisse de hereditate, quoniam ipsorum potior hæres Abraham futurus esset, itaque Ismaelem confusus prærogativa primogenitura præ se Isaacum contempsisse. Fagius in Gen. 21. 11.*

(a) Budæus in Tandelii, priores p. 54. 55. Edn. Valcof. (b) Cresolius Myllagor. lib. 2. cap. 4. p. 220.

*Sub nomine vero Spurii denotat Augustinus omnem factum illegitimum, qualiter & sapius facit sacra Scriptura quae neminem vocat Bastardam.*

Νόθος παρὰ τὸ πρὸ Σερπικόν,  
 & c. Eustathius p. 1455. l. 40.  
 Edit. Romæ.

Νόθος ἢ ἐν ᾧ ἀγνοεῖται. Suid.  
 in verbo νόθος.

Tholoff. Syntag. Juris lib. 42. c. 17.  
 ff. 6.

(a) In Androm. æt. 3. v. 90.  
 Νόθος ] ἢ μὴ ἐν νομίμῳ γυναι-  
 κὸς ἡυδένταο ἀλλὰ ἐν πολλὰκι-  
 σθι. Schol. in Homer. in 3.  
 Ilyad.

Plutarch in Artaxerxe.  
 In Commens. Grae. Lingu. p. 442. i  
 Platone.

ⲛⲓⲛ ] Qui non est ex pro-  
 pria & legitima uxore, sed ex  
 aliena natus muliere, extraneus  
 de his dicitur, qui est ex urbi-  
 bus vicinis Jerusalem, humilis  
 & contemptibilis. Pagninus in  
 verbo.

(b) Turnebus Advers. lib. 17. c. 15.  
 p. 567. lib. 29. c. 13. lib. 30. c. 31. p. 1190.  
 In Summis Tit. Maximonii. p. 589.

(c) Tholoff. lib. 45. c. 11. ff. 13.

Emittere ex se pro-  
 fundas radices ut  
 faciunt arbores bor-  
 na, hoc est, sobo-  
 lem virtuosam seu  
 vitam laudabilem.  
 Carthus. in loc.

Cassan. Catal.  
 Glor. Mundi.  
 p. 416. 417.

Quia tale statu-  
 tum contra jus di-  
 vinum, ut in Bur-  
 gundia dicitur.  
 Idem eodem loco.

That these base children are no heirs, nor can have the rights of their Parents descend to them, is plain from all authority; for though they that are thus born may have many brave qualities; according to that the learned *Selden* on the Text quotes of *Pelens* out of *Enripides*, Νόθος τε πολλοὶ γνησίων ἀμείβοντες, and *Agamemnon* in (a) *Homer* declares *Teucrus* to be: yea, though in some parts of the world at this day, these natural sons have gentilitial Priviledges, though no where they succeed to the inheritante, yet in all Ages and times νόθος was a word of diminution, and an alloy to any thing it was affixed to; thus νόθος is opposed to γνήσιος, so any feigned foreign and not proper atticism the Greeks termed νόθον, as proper and regular elegancies they called γνήσιον; so *λομοιδις νόθος* *Budaus* renders by *spuria cogitatio*, and *Suidas* explicates νόθος by ξίθος beggarly, trite, mean, next door to stranger that no body knows or owns. Hence the (b) *Latins* use *virginalia* & *spuria*, id est, pro ob-scœna parte; so *Apuleius* calls the parts of our bodies which are covered *spuria* & *fascina*. Though therefore the Holy Ghost in Scripture use not the word Bastard, because 'tis of a later edition and language, yet He uses that which sets it forth, and by spuriousness intends all dishonour to lust, as the contempt of that ordinance of God which he accepteth the issue born from, and which all man-kinde after his example admits to inherit, as *Crespetius* has to my hand made good, and (c) *Tholoffanus* agrees to; and hence our Chancellour in the Text inferrs, *Ecce differentiam non minimam,* &c. Which is purposely subjoined to cast contempt on incontinence, as it is in contradiction and upbraid of Marriage, that though the chil-

dren of them that be such may be valiant, wirty, learned, &c. yet there is somewhat in their very constitution that will corrode the vitals of their consistence and duration. This the Chancellour makes good from the fourth Chapter of *Wisdom*, where the words are, *But the multiplying brood of the ungodly shall not thrive, nor take deep-rooting from Bastard-slips, nor lay any fast foundation;* that is, as *Carthusian's* exposition is, *They shall not shoot out their roots, as thriving and pregnant trees expansively do, their children shall not be virtuous and notable for holyness of life. Non dabunt radices altas,* saith a *Gloss*, though they flourish in the upper boughs of their temporary prosperity, yet they are *intencates soli*, their root withers, and so *non collocabunt stabile fundamentum*; and all because they are not built upon the rock of God's institution and benediction, *Marriage*, but upon the sands and fallacious levity of wantonness, which is the reason that the Doctours say they are *Inhabiles ad ea quae in decoro consistunt, ut ad dignitates*, that is, They (saith *Cassianus*) can be no Counsellours of Princes, no Witnesses, no Doctors of Law, not bear Arms or Ensigns Gentilitial, not claim right in their fathers Wills, not be successible to Inheritances either by Custome or Statute, as the Law of *Burgundy* is.

*Reprehendit & Ecclesia quae eos à sacris repellit Ordinibus*] Such has ever been the account of Holy Orders, that not onely the Church has kept from them persons that were *impares oneri*, as maimed and illiterate, but also sordid and mean born ones, the reason being good, *Rerum divinarum tractatio maxime ad ingenuos pertineat*, therefore the *Philosopher* in his *Politiques* prohibits *Husbandmen* or men of sordid life to be priested, and if so, then much more reason has the Church to prohibit spurious Children to be in (d) *Orders*, because the disparagement of their birth transcends all other incapacities; for their birth being against the Lawes of God, (fornication and adultery being sins against his purity and institution) the issue of it cannot but be

Baron. Tom. 9. ad Annum 723. p. 33.  
 Concilium Pithaviense sub Paschali secundo.  
 Binius 7. Tom. Concil. p. 530. 531.

Cressol Mystag. lib. a. p. 156. 231.  
 262.

ⲛⲉⲡⲣⲟⲛ ⲉⲧⲉ ⲃⲁⲛⲁⲛⲟⲟⲛ ⲛ̅ⲥ̅ ⲓⲉⲣⲓⲁ  
 ⲛⲁⲧⲁⲣⲁⲧⲓⲟⲛ, lib. 7. Politic.

(d) In decretalibus statutum est quod nul-  
 lus Episcopus spurios aut servos, donec à do-  
 minis sunt manumissis, ad sacros Ordines pro-  
 movere praesumat. Glanvil. lib. 5. c. 5.

be odious to him, and so unfit to serve before him; and therefore the Church has ever abhorred men of stained Origins to be in *Orders*, as well as of polluted lives, such as are Keepers of (a) Concubines and loose Immoralists, whom it hath not onely excluded before they took *Orders*, but deprived of them after they in them have lived unworthy of and unsutable to them; for God having appointed those that serve at his Altar, and live on his Altar, to live and be holy as the God of their Altar is. A prophane and lewd, nay a light and jovial Priest, whose crankness at tittle and entertainments of riot and dissolute mirth is a blasphemy to his serious and sacred Calling, ought to be accounted of the number of those, *Quos reprehendit Ecclesia*; for I dare say, (who, as a Gentleman, know the Modes of converse, and the Intrigo's of these fashionable civilities and correspondencies) That Priests, who feed high, study and pray little, frequent womens companies, neglect their watch of the flock of God, over which they are set, give way to passion, affect excessive Pomp, and are drowned in the cares and lures of the World, never do, or shall bless the Church of God; nor will Religion according to Godlyness prosper in their dayes; for these will by their ill lives and putid examples, subvert more then they will by their doctrine convert: and therefore the Church does justly reprehend these, because they are *Beams in the eye of her brightness, Scarrs in the face of her beauty, Spots in her feasts of love, who make the Sacrifice of the Lord to be abhorred, and the way of truth to be evil spoken of.* This I the rather note because men are apt to huddle upon Orders without any consideration what the work of Holyness and Mortification is upon their hearts; alas, 'tis not learning alone that qualifies a man to be a good and gracious Minister of Christ, for many of them shall have cause, notwithstanding abundance of this, to cry out, *Scientia mea me damnat*, as Saint Augustine once did; and at the last day 'twill not be, *Lord, have we not in thy name prophecied, and in thy name done wonders*, that will procure Christ's owning: for notwithstanding all these fruits of great parts he shall say, *I know you not, depart from me yee workers of iniquity.* Not then these extern Prerogatives will be the refrigeraries in that Solstice of his indignation, but the grace of his likeness in the heart and life; the humility, sincerity, and preciseness of the life to the rule of his word; This, This, well understood and well practised is the best learning in the holy Ecclesiastique, and without this, great parts will but make men mad on the World, and venture their eternities rather then not carry the day in it; which has caused the pious and tender-spirited men in all times of the Church to debacchate against secular snares and avocations, so did St. Bernard to Eugenius, so did (a) *Clemangis*, so did Luther, so have, so will all zealous men do to the end of the World; for while passions, which are the tinder for Satan's spark to kindle upon, be keen and quick in men, they will do any thing to andoe themselves and others souls and securities, rather then not prevail in their design. *Cesar Borgia* was known to be the unholy son of that unholy, *Holy Pope Alexander the Sixth*, when his father would Cardinalate him, which he could not, (he being, as spurious, uncapable by Canon) He the Pope found this Villany to evade the obstruction, He suborn'd certain *Knights of the Post*, (as we say they are, who will swear and forswear any thing) who came into Court and deposed, that *Cesar Borgia* was the lawfull son of another man; and so his incapacity was delete, and he admitted: which contrivement between a sensual father, and a most like son, favoured of so high a fallshood and deep-tinctured hypocrisse as suted with no Varlets better then *Herod* and *Judas*, whose interest was onely to rage and get gain, though they prostituted their souls and bodies to the greatest servitude. And therefore no wonder the Church does not onely *Tales reprehendere*, but also *Indignos judicare sacro Ordine, & repellere ab omnia pralatia*, as the words of the Text are.

*Epist. 3. Innocentii. Part. 1. Tom. 2. Conciliarium. p. 755. Tom. 9. p. 555.*

(a) *Cap. 24. Can. Apost. Tom. 1. Concilior. p. 8. & C. m. 60. p. 14. Tom. 7. p. 674.*

*Ridere & Rideri secularibus derelinque; gravitas tuam personam decet. St. Hieron. Epist. 7. Ad Lasam.*

Note this.

*Vestis aspera, zona pellitica, cibus locusta, melique sylvestre, omnia virtuti & continentia preparata. Sanct. Hieron. Ep. 2. ad Rustic. Monachum de Joh. Baptist.*

Matth. 7. 22.

*Plus debet Christi discipulus prestare quam mundi Philosophus, gloria animal & popularis aura atque numerorum venale mancipium; tibi non sufficit opes contemnere nisi Christum sequaris. Sanct. Hieron. Epist. 26. ad Pammachium.*

Lib. 6. de Consideratione.

(a) *Ex Epistol. ad Maketum de Egressu ex Babylone.*

*Aliquid permittitur gratia virtutis, quod alias non permittitur. Glos. in Pandect. lib. 3. tit. 1. p. 331. O virtuti*

Note this.

*Gideon autem virorum fortissimus, septuaginta filios in Matrimonio legitimo procreasse, & non nisi unum solum habuisse ex Concubina; filius tamen ipse Concubine, omnes filios illos legitimos nequiter peremit, excepto uno solo.*

*Saltem per consuetudinem, non per legem. Druſius in loc.*

*Conceſſa fuerunt viris uno tempore plures uxores in ſpem ulterioſis ſobolis. Grot. in loc.*

*Ὁυ δίκαιον τὸ γήματος ἢ ἡγάγετο ἔθ; ἢ δίκαιον τῆ πύλας γυναικὸς πικρῶς. Libanius De-clam. 33. p. 748. Edit. Morrellii, Anno 1606.*

*Mulieres fuiffe aris Caponaria, quarum mariti tum forte abierant negotiati-onis ergo. Vatablus in 1 Reg. 3. 16.*

*Cum Lex hoc nomine vetat con- nubia diverſarum tribuum, ne per- miſſio fiat pradi- orum. Druſius. Munſterus. Cla- rius in loc.*

This ſtory is out of *Judges* viii. 30. where *Gideon* is ſaid to have many Wives, Mothers to thoſe ſeventy ſons, which Polygamy was in ſome degrees ſucceſſive, and in other degrees contemporary; for though he had not all his wives at a time, yet at all times he had more than one, it being then no ſcandal to have many Wives, but rather an honour as thereby there was the greater occaſion to people the world, then but thin of Inhabitants. Now the children of theſe Wives were all Coparceners in the inheritance, the eldeſt onely having the double part, and they entercommoned in affection each to other, and were together in the houſe of their father, loving and tendering each other; but the baſe ſon who was *ſilius meretricis* or *concupine*, (not that ſhe did make mercimony of her body by taking reward for the hire and pleaſure of it as Harlots did; who were wont, when their Huſbands were abroad at Sea or otherwiſe, to expoſe themſelves to the luſt of any Chapman, and if they proved with

childe by it, which was rare and againſt their wills, to kill their childe;) for no ſuch perſon was this *Gideon's* Concubine, but one that probably kept to him onely, and gave him no juſt jealousie that any one came near her carnally but himſelf: but that which is the diſparagement to her and her childe is, that ſhe was *uno viro addita ſupra vinculum Matrimonii*, that ſhe was of another Tribe then *Gilead*, and therefore muſt with her ſon be a ſtranger to inheritance. This is that which brands her and diſables her ſon to inherite, which ſo boyles in the ſtomach of this blazing ſtar of luſt, that he meditates the ruine of all his fathers lawfull ſons.

In which ſtory there are ſundry things observable. Firſt, There is the Baſtards craft, he enters not on the act alone without a ſtrong party, nor craves aid of any that would come in to him, but ſolicits the *Sichemites*, whom he calls *his Kindred, Bone of his bone and fleſh of his fleſh*.

Secondly, The Baſtard's confidence to attack the *Sichemites* and to ſolicit them to ſuch a deſign, and ſo to engage them by his plauſible inſinuations, as not onely they ſhould connive at and underhand approve his project, but give him money to entertain men to effect it, *Chap. ix. 4.*

Thirdly, The Baſtard's cruelty to ſlay ſo near relations, Brethren, ſo many of them, ſixty nine; in that place, their father's houſe; at one time, upon one ſtone, in fight of one another, upon no provocation, but becauſe they were legitimate and muſt inherit, not he, *v. 4.* compared with *v. 2.* and *6.*

Fourthly, Here is the Baſtard's ſubtlety, rage, and cruelty, partly fruſtrated by God, and his fancied Sovereignty diſturbed by the reſervation of *Jotham* one of *Gideon's* ſons unſlain, whom God preſerved to revenge the blood of the ſixty nine ſlain, upon the Baſtard and his *Sichemites*, from the *7.* to the *24. verſ.*

Fifthly, The effectualneſs of ſmall means cunningly carried and ſubtly employed to bring portentuous things to paſſe, ſeen not onely in *Abimelech* his ſin in ſoliciting the *Sichemites*, and murdering the ſixty nine ſons of his father, but in *Jotham's* Parable, who ſet all *Israel* a-gog to revenge the fratricide purely by the cogency of a Parable and the intention of it, which explicates the falſeneſs and ingratitude of the *Sichemites* to *Gideon* their Deliverer, *v. 8.* and prophecies God's vengeance on them for it, *v. 19, 20.* and God's means to unravell the rope of ſand that they twined together to hold their wickedneſs faſt, by ſending an evil ſpirit between *Abimelech* and the men of *Sichem*, *v. 23.*

Laſtly, The commensuration of the puniſhment to the ſin, rule he would who was born to ſerve, ruine his brethren he would who ought to have revered them as his betters, Partizans he would have in the fact, that having begun he may go through with it; but God turned his Confederates into conſpirators againſt him, that the cruelty done to the threeſcore and ten ſons of *Jerubaal* might come, and their blood be layd

layd upon *Abimelech* their brother which slew them, and upon the men of *Sichem* which ayded him in the killing of his brethren, so is it v. 24. Thus may we see how just God is to make the sin men design for their greatness, their shame and diminution, which not opely happened to this Bastard and his misguized Partizans here, but to sundry others to this day; For though it be not an infallible rule that Gods vengeance always meets with sinners in this world, in the punishments that are declarative of their sin, yet often it is so. That Queen of *Hungary* found it so, who being unjustly possessed of *Hungary* against *Ferdinand* the King of the Romans, and after Emperour, and not able to defend it against *Ferdinand*, crav'd ayd of *Solyman*, who came into *Hungary*, and deprived her and her son of the Kingdom; and *Henry* the third of *France* when he designed the murder of the Duke and Cardinal of *Guise*, used Saint *Clement* for the watch-word to the Assassines, and after the same Prince was himself murdered by one *Clement* in the midst of his Army.

Surius Commen-  
tar. ad Annum  
1541.

D. Avila. p. 316.

*Quo in notho uno plus malicia fuisse deprehenditur, quam in filiis legitimis.* 69.

This is subjoynd to set the disgrace of adultery and fornication home in the abhorrence of all good men, who cannot but hate it, not only because it tends to the utter destruction of souls, but is a provocation of the terrible wrath of God, upon the places where such abominations were used and suffered, they are the words of the Stat. 32 H. 8. c. 38.

but also because the sin and obliquity of it, is so thorough vitiative of the production of it, that it according to our Chancellours sense makes them out of measure sinfull, as full of mischief as a toad is of poyson; which though it be too often true (as it also is in the children of lawfull marriage, then which mankind never saw greater villains then some of them are:) so is it not ever true of base children as we call natural sons, for some of them have been in all times men of Courage, Learning, Piety, Prudence, every way accomplished. Hence is it that not onely our Text tells us of a *bonus Bastardus*, but Mr. *Selden* out of *Tiraquella* and *Hutterus* concludes, That most of the brave spirits, and able, of the former times are in the Catalogue of famous Bastards, some of whom have had dubious Mothers: So *Nicias*, *Demosthenes*, *Lamachus*, *Phormio*, *Thrasylbulus*, *Theramenes*, famous Athenians and brave men, and others; if they had any Fathers known, yet those known to be theirs by surrepitious and unchaste raptures and effusions. To omit what (a) *Epiphanius* writes the Jews held, *Melchisedec ideoque nec nomen patris vel matris in sacris literis expressum*, sayes he, I say to omit this, there are presidents of multitudes of the greatest Heroicks of this Tribe, *Scotus*, *Parthenius*, *Theseus*, *Romulus*, *Abimelech*, *Jephtha*, *Jupiter*, *Nepinne*, *Venus*, *Apollo*, *Aneas*, *Homer*, the *Parthenia* amongst the *Lacedemonians*, *Demaratus*, *Themistocles*, *Demades*, *Timotheus*, *Arifonicus*, *Persens*, *Hircanus*, *Remus*, *Brutus*, *Jugurtha*, *Alexander*, *Claudius*, *Constantius*, *Theodoric*, *Carolus*, *Martel*, *Carlomannus* of *Bavaria*, *Manfred*, *Hencius*, Pope *John* the eleventh and twelfth, *Adelstan*, *Amundus* King of *Suevia*, *Pomponius Litus* the great Geographer, *Gratian* the great Decretalist, *Andrea*, *Ferdinand* King of *Naples*, and *Alfonsus* King of *Arragon*, *Comestor*, these and thousand others, have come of that illegitimate race, and yet been renowned in their times, which shews that God has a secret and predominant power over natures not only act but sin, that he can suspend the vigour and vehemence of that Phœontick gallop that makes the genitors of these meet together like torrents, that coupling make a mixture to swallow up all calmness of temper and mediocrity, that this I say is so sweetned, is a mighty mercy to mankind: for else should these, who are *bestæ card* as *Kilian* Etymologizes *Bastard, id est optime indolis sive natura*, and have chearfull and high spirits, sage wits, and mature crafty natures, not be restrained; what prodigies of men would they be? Yea, what terrours would not their vast and various endowments surprized by *Satan*, occasion to the world, but this that is their sin by Nature, God corrects by special favour; not as they are issues from libidinous Rocks, but as

Σπέρμα δὲ τὸ ἐξ ἀμφοτέρων τῶν ἀρχῶν ἔχοντων συνδυαδέντων, lib. 1. Gener. Animal. c. 18. p. 1061.

*Selden* in c. 40. of *Fortescue* *Tiraq. de Nobilitate* c. 15. *Pontus Hutterus de veteri Belgio ad finem.*

Οὐδενος ἐδὲ ἢ μητρὸς ὀνόματος τίτλων. *Plutarchus in Alcibiad. ad Initium* p. 192. edit. *Parif.*

(a) *Lib. 1. Tom. 2. Haresf.* 55.

*Sperma omnibus rebus nascentibus attribuitur pro Principio, Scaliget in Com. ad lib. 10 Animal. Aristotel. fo. 33.*

*Illegitimo enim & furtivo concubitu procreati, animo plurimumque sunt alacri & elato, ingenio sagaci, & judicio exacto. Summetus in Gloss. ad scriptores, Antiq. Angl. Impres. Lond. 1652.*

they

Αρχὴ ἄλλο  
 πεινηκόν τῶ  
 ἐξ αὐτῶ τῶ  
 σπέρμα, φύσι  
 ὅ παύτα φύ-  
 εται γέν ἐκ  
 τῆται. Arist.  
 de Part. A-  
 nimal. lib. I.  
 c. 1. p. 970.  
 Shute p. 167.

Mentioned by  
 the Phoenix  
 Prelate Bi-  
 shop Brownrig.  
 1 Sermon. Inaugu-  
 ration p. 19.

Dion Cassius.  
 lib. 38.

they are passive under that regency of nature. which in the naturall generative expres-  
 sion of her, is his own Implantation, and in which nature viciated by sin is instrumen-  
 tall to the multiplication of mankind, and this is the reason why any of this race are so  
 retrayn'd, and so excellent, as to favour any thing calm and sober, for in nature there is  
 nothing in them but the heights of all passion and excess, in which sense the Text makes  
 them to be more fierce and hot by nature then legitimate children are, which is the reason  
 that they have been ever the Attempters of desperate actions which no spirits but theirs  
 durst cope with. A lively instance whereof is in Frisco the Bastard of Azzom of Este,  
 mentioned in the Venetian story, which duly weighed, the saying mentioned *si bonus est  
 bastardus hoc ei fuerit à casu videlicet gratia speciali, si autem malus ipse fuerit hoc sibi  
 accidit à natura* ] is not onely true as Grace gives the advantage against the corruption  
 of nature in all both good and bad, but also as it does more then ordinarily overcome  
 the evil of nature in these that have their pravity wadded and double dyed by the  
 lewdness of their parents, and the lawfulness and monstrosity of the motives to, and  
 kindlings in their coitions, which the Text not onely expatiates upon, calling it *libido  
 parentum culpabilis, peccatum fornicantium*, and that which in *legitimis castisque  
 amplexibus conjugatorum non solet debacchari*; For thus our Text in sundry parts of  
 the Chapter phrases it, that it concludes them to deserve rather the title of *filios peccati*  
 then *progenitum* ] which brings to my mind that Tradition of the Jews that the cursing  
 Tribes on Mount Ebal were the sons of the Handmaids; and the Tribes of Gerazim were  
 the sons of the Free-women, and they were Tribes of blessing to shew no doubt that children  
 born against the Law of marriage are worse then those according to it; for children begot-  
 ten of unlawfull beds are witnesses of wickedness against their Parents in their Tryall, so  
 saith the Author of the Book of Wisdom c. 4. v. 6. which warrants the Chancellours  
 Eulogy of lawfull progeny in those words, *O quam pulchra est casta generatio cum clari-  
 tate*, for if all the examples of villany in a profuse and debauched rage and wander of  
 choyceless loosness were perished, but onely that of *Messalina* to *Mnestor* the base  
 and sordid Pantomime, whom she dishonoured her self with; That, that, were enough  
 to set forth the horrid and detestable nature of that *impetus*, which as it is kindled by  
 Hell in the members, does tend to Hell in the complement and reward of it.

*Creditur idcirco, cecum illum natum de quo Pharisai. Joh. 9. Dixerunt, tu in pecca-  
 tis natus es totus, fuisse bastardum, qui nascitur totaliter ex peccato.*

That this blindman was of old held a Bastard, was not only the opinion of the Ancients  
 who wrote before our Text, and the beleif of many Christians according to it; but also  
 the consent of *Grotius*, *Pererius* and others, and that because he is said to be *totus  
 natus in peccato*, a *Toting sinner*, as we say, a monstrous great sinner, such an one as has not  
 only the blemish of his genitors naturall sin, in which all the sons of *Adam* are concei-  
 ved and born, but an over and above-sin upon him, not only of the nature, but also of  
 the state which his Parents who begat him were dishonourably in, to wit, not the state  
 of marriage which has the presence and allowance of God with it, and thereupon being  
 a kind of sinless and *Innocent state is honourable among all men*, but a state of contempt  
 and sculkingness, a lucifugous state, which is that of the night, a state of prey and vio-  
 lence, that derives on the proceed of it, the reproach and scorn of a thorough and to-  
 tall turpitude. *Totus natus in peccato* ] so *Tully* ranks *totum & universum, toto corpore at-  
 que omnibus angulis*, as if the vitiation of the prostituted parents incubated all the Mafs,  
 and disflattred it in every limb, article and action of it, *totus natus in peccato*; For though  
 there is in all as I wrote before a defilement of every faculty of the soul of man, and  
 a deformity in the abuse of every member of mans body; yet in one born thus, there  
 seems by this to be a super-superlative impression of sin, which disposes the sinner  
 (subject of it) to be violent, eager, cruel, crafty, and what not which is opposite to learn-  
 ing and judgment of temper, the endowment of chaste and lawfull love. Hence the Pha-  
 risees a *seit of knowing and smart men*, who had notable insights into arts and men,  
 reply so vehemently upon him, *tu doces nos*, as if they intended to tell him he was out  
 of the road of spurious born men to affect to be learned, that they wholly begotten in  
 the sulphure of lust, are more disposed to actions of mettle and violence then to arts,  
 books, and things of coolness and composure. This the Chancellour understanding the

Incomparably  
 Learned Doctor  
 Hammond in his  
 Annotations on  
 this Text 9. John.

Cic. 4. de Finib.  
 2. Tuscul. 2.  
 Totum & partes.  
 Cic. 1. Academ.  
 Totus ego. Totus  
 gaudeo, Plautus.

the sense of them in that place, writes, *Bastardum non ut legitimum in naturalibus esse dispositum ad scientiam & doctrinam.* The summe then of this Chapter being to advocate for the Law of *England* in its exclusion of the issue upon subsequent Marriage from inheritance, having done it, as he conceives, in the former part of the Chapter, he proceeds to such an Epilogue as resolves all the prealleged particulars into one Mass of assertion, that therefore the Law of *England* does not *Parificare Bastardos & Legitimos in hereditate paterna, quia illos dispares judicat Ecclesia in hereditate Dei*; and therefore determines for the *English* Law, because it doing honour to Marriage and punishing its reproach, deserves to have all honour and suffrage from those that are children born in Marriage. And so he concludes this Chapter.

## CHAP. XLI.

*Princeps. Revera eam qua fortius à Regno peccatum eliminat & firmiter in eo virtutem conservat.*

**I**N this Chapter the Prince is introduced complying with the Chancellour's judgment in the Preference of the Laws of *England*, as the rule of Government here, to any exotic Lawes; which though for other Countries they may be convenient, yet to this, other then as assistant Laws, are altogether inidoneous. And that the Chancellours praise of the Lawes may not appear more the effect of custome and use (the Tyranny whereof prevailes often beyond the influence of reason and judgement) then of experience the best Oracle next to that of justice in Government, there is such a Preface precurring it, as will not be denied welcome with all men of science and conscience. For as sin is that which promerits a divine curse and impends it over Kingdoms sure to sink under the weight and terrour of it; so Lawes in Kingdoms which do cast forth the abominable thing that God hates, and preserve the integrity of soul which God accepts and will reward, are certainly the most to be approved and chosen. And this the Law of *England* doing in the Method that in the foregoing Chapter is described, the Chancellour presents the Prince, though in the main satisfied, with some further instances of the variety of the Lawes in their Prescripts and Sentences, which is the Sum of this one and fortyeth Chapter.

## CHAP. XLII.

*Leges Civiles sanciunt, quod Partus semper sequitur ventrem.*

**T**HIS is agreed by all the Doctours, *Partus natura ratione matrem sequitur*, and the reason is because in the Law the *partus* is *pars visceris matris*; the reason of this Law Mr. Selden shews to be, *That where Marriage or Jura Connubii could not be, there alwayes Partus sequebatur ventrem*; to this *Ulpian* assents, *Lex natura est ut qui nascitur sine legitimo Matrimonio matrem sequatur*, on which the *Gloss*, *Quoad libertatem & servitutem quod & verum, &c.* That the *Partus*, (which is the childe out of Marriage, *Partus ancillarum & fœtus pecudum, Paulus* joyning together) is here meant, appears not onely from that of *Ulpian*, *Connubio interveniente liberi semper patrem sequuntur, non interveniente Matrimonio matris conditioni accedunt*, but also by *Celsus, Bartolus, Paulus*, and all the Doctours: to these agree the (a) *Canonists*, and that from the reason which causes the *semper* in our Text; for that is *jure natura & genium* so to have it; for though the father that begets may be uncertain, yet the mother that produces must be certain, and whose

*In liberali causa matris non patris inspicienda est conditio. Tit. de lib. causa L. 28. & L. 40.*

*Tholoff. Syntagm. lib. 20. c. 7. ff. 2.*

*L. 7. c. 2. ff. 10.*

*¶ Notes ad cap. 40. Fortescue.*

*Ulpian. lib. 27. ad Sabinum.*

*Digest. lib. 1. tit. 5. p. 93. De statu hominum.*

*Fornerius ad Leg. 27. p. 76. de verb. signific.*

*Tit. De his qui in potestate sunt.*

*Alciat. ad Leg. 196. p. 425. de verb. signific.*

*Legitime natus quoad conditionem & originem patrem sequitur, matrem vero sequitur non legitime natus. Battol. Digest. lib. 1. tit. 5. p. 93.*

*Celsus lib. 29. Digest.*

*Digest. loco praecitat.*

*(a) Gratianus Decret. part. 2. caus. 15. qu. 8. fol. 246.*

childe

(a) In vita Themistocli.

Mater que legi se subiecerat, non uacillabat natalis, neque ad hereditatem capiendam obstabat. Grotius in Iud. xi. 2.

(b) Advers. lib. 29 c. 13 p. 1113.

1 Kings xiv. 21. c. xv. 2. e. xxii. 42.

2 Kings viii. 26.

(c) Phavorinus lib. de excellent. hominis.

part. 1. c. 16. p. 56.

Τὸ μὲ ἀπὸ τοῦ ὄντος καὶ κινήσεως καὶ τὸ ἑξ ὄντος ἔχει τὴν ἀρχὴν, τὸ δὲ θύλου ὡς ὕλης. Arist. Hist. Animal. lib. 1. c. 3.

Non-observation of this cause of much mischief.

childe soever it is not, hers, it is, (a) *Plutarch* writing of *Hercules* sayes ἐπίγονος ἦν τοῦ δαίμονος, that he was the son of a lewd woman, and because *Jephtha* was the son of an Harlot, id est, extraneæ saith *Grotius*, They thrust him out of his father's house, as being no chip from his block, but his mother's son, and as such disparaged; according to this (b) *Turnebus* writing of the *Spurii* uses these words, *Horum natales non habent obscuram matrem sed patrem appellare non possant*. This the Holy Text regarding is sure to remember the Mothers name as the glory or blemish of her son; for though the father be the motive and active (c) cause of generation, yet the matter of the childe is more from the mother, (the *fœtus* being formed by the *vis plastica* which consists of the nature of the womb as well as of the seed of the father) and by conjunction of them both (as say *Anatomists*) forms all the parts of the body as to their spermatial and solid substance, which compa-

gnation being resident in the belly of the mother, gives the childe a stronger tincture of the mother then father, from whom it passes onely in a whirlwinde; may besides this the mother by a constant act of foevency does in se ipsa generare, as she (does by the umbilique veins unto the *arterias iliacas*, and all the rest of the parts of the body by which air is given to the childe) convey nutriment from her self to it; which is the reason that children do most favour the mother; not onely in visage but in humour, and why wise men do choose brave women to breed upon; for as a course cloath proves an ill ground for a noble design and draught in picture, and as a tough and mishapen logg will deform the art of the noblest Statuary, so will an ill-chosen wife vitiate and alloy the brood of any family: which is the reason why choices by prudence (as they fashionably call their Marriage *fockkyng*, wherein persons bartar away their comforts and conspicuities in a brave and procerous issue, for accommodations of pelf and coyn) are so often repented and digressed from with abhorrence, because there being no true splendour, the disseminations whereof will bud and blossom in posterity, the portions the father acquired with the mother is doubly and trebly expended with the daughters and sons, whose blemishes thereby are fain to be compensated for with great and wasting portions: the like mischief is where brave women marry with absurd men, the incomplacency whereof they often, if not always repent.

Ut si mulier servilis conditionis nubat viro conditionis libera. Proles eorum servus erit, & e converso, servus maritatus libera, non nisi liberos gignit.

Digest. lib. 1. tit. 5. ff. 5. p. 83.  
Florentin. lib. 9. Instit.  
Digest. lib. 1. tit. 5. de statu hominum. p. 87.

Notes on the Text. p. 49-50.

In Legem 184. p. 398. lib. de verb. signific.  
Hercle quid istuc est? Servilis uxor? Servine uxorem dicitur? Plautus Prol. Casus.  
\* Tholoff. Synt. lib. 9. c. 1. ff. 2. 1 Instit. on Instit. p. 123.

This is the instance wherein the *Partus* does *sequi ventrem*. A Lord has a woman that is his vassal, she marryes one that is free, as the childe is *ingenuus qui ex matre natus est libera*, so is the childe of a bond-woman a slave or servile in his condition; now though servitude be against the Law of nature, and this *constitutio Juris gentium* being introduced by saving persons victor'd from death, who having the right of their persons so under their power and kept alive till their manumission, they marrying, though to a free man, do not produce a free childe but a bond one; because the *Partus* does *sequi ventrem*, and the mother being in that condition, the *proles* or *partus* of her must so be; Mr. *Selden* not without warrant thinks this thus to be, Upon presumption that the Marriages with bond persons were alwayes accounted *boni Contubernia* and not *Connubia*, and they were called *Contubernales non Conjuges*, which I finde allowed by *Fornerius*, *Nam quod inter liberos & cives Romanos Matrimonium, id in servorum conjunctione & copula Contubernium Veteres appellarunt*, which *Justinian* calls *servile consortium*; and *Contubernales Ulpian* expounds by *Conjuges servi & ancille*, when as *Connubium* \* He terms *duccenda uxoris jure facultas, nullum cum servis*: so that when the Mother does convey her condition to the childe and not the father, as in this case it should seem to be understood, such are children *Contubernii non Connubii*; yet this I finde currant, that the childe is wrapped up in the mothers condition, and whatever the father be, yet in reputation of the Civil Lawes is as his mother is bond or free.



*Sed Lex Angliæ nunquam Matris, sed semper Patris conditionem imitari partum judicat.*

This is confirm'd by all our Books, *Si une villein prent frank feme a feme, & ad issue enter eux; l' issues seront villeins; mes si neise prent franke home a sa baron, leur issues serra frank*, saith Lutteton, according to all the Books, *Quia semper a patre non a matre generationis ordo texitur*. And though I know Bracton tells us in the County of Cornwall there was a custome in some Mannours, *That if a bond-woman marry to a free-man, and she, by him admitted to his free house and bed, have two children, one shall be free as her husband, the other bond as she*; yet the same Authour sayes in another place the general Law was, *If a bond-woman marry to a free-man, the childe of them shall inherit*, which must be understood of being free as his father, for else he could not inherit, the rule being, *Quicquid acquiritur servo, acquiritur domino illius servi*, supposing them the Partus not to be *Monstrosi*, (for then they are non *Legitimi* by both Lawes, such as are mentioned by \* *Neirembergius* and *Amnianus Marcellinus*, *Aliquid habens duo capita*, as the *Gloss* on *Paulus* explains *Prodigiosum*.) If the partus be *secundum membrorum humanorum officia* a childe, it shall be reputed and as such, follow the condition of the Father, and be his childe whose the marriage is according to the rule of both Lawes, *Pater est quem nuptia demonstrant*.

*Seff. 137.*  
Cook on him. p. 123.  
*Liber Rub. c. 77.*  
Bracton. lib. 4. fol. 271.  
*Si mulier serva copulata sit libera, partus habebit hereditatem*, lib. 4. fol. 298.  
*Partus monstruosus, id est, contra naturam seu formam hominum, non dicitur esse legitimus*, Bartol. Digest. lib. 1. tit. 5. p. 90.  
\* *Historia natura*, p. 134.  
Amnian. Marcellin lib. 19.

*Qua putas Legum harum melior est in sententiis suis? Crudelis est Lex que liberi prolem sine culpa subdit servituti. Nec minus crudelis censetur, qua libera sobolem sine merito redigit in servitutem.*

Because our Text-Master here is both the Scrupler and the Resolver, and seems to determine hardly against the Civil Law, which in this case he calls *Lex crudelis*, by the same reason the Civilians may call the Common Law so, *ob exclusos nothos ex subsequente Matrimonio*, treated on in the foregoing Chapter. Because (I say) there ought to be a very calm soul and a wary pen in writing any thing to the prejudice of the accord of both Lawes, my humble offer shall be in excuse of the Civil Law for the Continent, thus prescribing. That 'tis *Ratio quia Jus*, and in Lawes of positive Justice, there can no other reason be given, but the pleasure of the Law-maker; which as they allow us for our Law, we must allow them for theirs: For since the Amassers of the Civil Lawes are deservedly to be owned and honoured as men as learned and wise as any either the *Greek*, or our Law-makers have been, that which they, in this case, have constituted, to be the Law of the Empire, is to be thought as fit for that vast body, as our Lawes appointment fit for us to observe. For as he ought to be counted a mad-man, that because there was one *Messalina*, whose wantonness, if it could be coped with an hundred times a day, would rather be wearied then satisfied, cries out against all women as insatiable; so are they to be esteemed little other then mad, who, because there are differences in the manner of exhibiting Justice according to the Common and Civil Lawes, exclaim against the Civil Lawes for this, when as it concerns them rather to applaud the wisdom of Law-makers in framing their Lawes thus variously to answer the varieties of men and manners, which arise from constitutions and accidents attending them. For there is no diversity in either of the Lawes but has Topique arguments very rational allegable for them, and upon scrutiny will appear to be so strenuous, that all circumstance of time, place, and persons considered, they will not easily be overthrown, which gives me the constant monition to be very circumspect in averring any thing on the side of one Law, which may have any unbecoming reflexion on the other Law. All that I have written, or shall write in the case of both Lawes, shall I am resolved favour of no unbumble affectation. I honour both Lawes in their respective Sphears, though ever, as to the Government of *England*, I must, and shall ever say and protest to all men, That the Common and Statute-Lawes are in my mean opinion the only way of wise, milde, and effectual rule of it, that the wit of man can prescribe, or the experience of man discover, alwayes premising the association of the Civil Law in those cases wherein that Law is adopted, and made by use and custome part of the *Lex Terra*. And therefore though the Chancellor here doth marshal the arguments on both

*Ratio non potest reddi in his que sunt de justitia positiva, nisi quod visum fuit Legislatori. Digest. lib. 3. tit. 1. De postulando.*

*Qua est centies in die viro commissuærat, potius delassatam quam satisfactam se predicabat.*

*The Author desires ever to be modest in all his expressions of the Lawes.*

sides, that out of them well considered and discussed, the reason and judgement of the Prince whether to adhere to may be cleared; yet shall I, in the illustration of it, onely modestly point at those things that are material in both their arguments as here they are alledged, and so proceed.

*Legista vero dicunt, Quod non potest arbor mala fructus bonos facere, neque arbor bona fructus malos facere. Ac omnis Legis sententia est, quod plantatio qualibet cedit solo quo inseritur.*

This Sir Ed. Cook mentions on Sect. 127. Littleton. p. 123. Digest. lib. 7. tit. 4. p. 918. Glos. O. & p. 977. lib. 8. Tit. 1. de servitutibus & Digest. p. 1433. Solum vertere, id est, terram. Budæus in Pand. Reliq. p. 166. Cæsar Com.

Gassendus de Plantis. Tom. 2. Physic. lib. 4. c. 5. p. 179. Theophr. Hist. Plant. lib. 1. c. 7.

Grot. in Matth. vii. 18. Arist. 2. Topic. c. 9. Lib. 1. Hist. Animal. c. 2. Nat. Ausculti Tract. 2. c. 3. Gassend. Physic. sect. 1. lib. 4. c. 2.

Clarissus in Matth. vii. 18.

*Quandis quisque malus est, non potest facere bonos fructus; sicut enim potest fieri ut quod fuit, nix non sit, non autem ut nix sit calida: sic autem potest fieri, ut qui malus sit, non sit malus, non tamen potest fieri ut malus benefactor, quia est aliquando utilis est, non hoc ipse facit sed fit de illo, divina providentia procurante. Aquinas in locum.*

*Lex natura est hæc, ut qui nascitur sine legitimo Matrimonio matrem sequatur.* Ulpian. lib. 17. ad Sabinum. Digest. p. 93. præciat.

This is the defence the Civilians make for their making the *Partus matris sequi ventrem*, because every plant partakes of the nature of the soyle in which 'tis set and grows; for the root fixed in the ground and drawing nourishment from the *solum* or *terra* (for it is all one) the Plant is said *cedere solo*, because the soyl or mould wherein it grows, victors and conquers it from its own original nature to somewhat analogous to the nature of the soyl, which is *cedere solo*, as we say, a resignation to become one in nature with the soyl; so *Cedere loco, urbe, patria, domo*, is in Authours to leave ones Country and residence, and *Cedere bonis & possessione* is in this sense used by *Quintilian*, and *Amori turpi cedere* by *Valerius*, *Cedere testibus* by *Ulpian*, and *Vives* when he expresses the desire of one to his wife to give up her interest in her son-in-law to him, writes, *Exorata uxore ut sibi genero cederet*, and some where I have read of *Cedere foro* for *Bankers*, who defraud men of their moneys by non-appearance, which is giving themselves up to obscurity, *playing least in sight*; all which answer the purpose of our Text-Master, rightly phrasing his intention, that *Position has a great influence on action, and nourishment on nature*. Hence argue the Civilians, if a Plant by meer being in the earth, partake of the earth, and is good or bad as the soyl, is in which it is; then the childe being *pars viscerum matris*, and lying long in her and having ablaetation and fovency from her, must needs be according to the ordinary dispensation of nature as the mother is: and therefore if the mother be good or bad, the childe is presumed such as she is to be, since according to nature, *A good tree cannot bring forth evil fruit, nor an evil tree good fruit*. Therefore, say they, just it is that the *partus* which lodges in the belly of the mother and partakes so much of her as to be predominantly in nature hers, should be denominated from the mother and be reputed bond or free, good or evil as she is; which argument of theirs carries much of reason with it, for it is built upon undenyable Premises, *Such as the tree is, such is the fruit*, our Saviour's argument, *Matth. vii. 18.* according to which all mankind conclude, *Menander* has

the same, *Οὐδὲς ποτὲν ἐσθλὴν χερσὶν ἐν πύλῃ*, *Grotius* makes this the principle of nature which all men concurr in; so that supposing God the supreme cause interpose not, nor he by his influence divert not the ordinary course of nature in causes and effects, it stands for a general rule not to be denied, that a good tree, so long as it is good, brings forth good fruit, and an evil tree while it is evil, brings forth bad fruit, *A bonis bona proficiscuntur necesse est, a malis contra*, saith *Clarissus*, which I suppose he borrowed from Saint *Augustine*, as did also *Aquinas*, who to this purpose quotes him; for a surer rule cannot be given, then to judge according to causes of effects: so that the mother being the nourisher of the childe, which she supplies with sustentation from every part of her body according to the capacity of the childe, which without it would never thrive nor make to birth, (since neither the mouth, nor the liver, nor

the heart, say the Physicians, do prepare nourishment for the childe, but the mother from her store and treasury of succulency sustains it,) there seems very high reason that the mother predominating in the nature of the childe, should, where not the Mother in Marriage, denominate the childe, and its external condition follow the nature of the belly of the mother wherein it was so long steeped, and from whence so carelessly produced; and this the Law-Civil so orders, because the mother is more limited and bound to abide with the childe then the father, for which cause 'tis proverbially said, *'Tis a wife childe that knows his own father*, for the mother every one must know that either sees her delivered, or hears it from those that saw her, and thence transmit

mit it to others and so it becomes notorious, but the father of the childe, there is onely the mothers word for, which though it be of great credit, being (in a cause of vehement suspicion) assured in the pains of that condition, yet is not so demonstrably true as the certainty of the mother, from whose belly the childe is taken; which being the reason of the Civil Lawes position, *Partus semper sequitur ventrem*, seems to me not to be without much of reason in the observation of it.

*Qui est in utero pro nato habetur quoad sui commodum. Reg. Juris apud Gajum. lib. 1. Instit. Digest. lib. 1. tit. 5. p. 33.*

*Ad hac legis Angliæ consulti dicunt: quod partus ex legitimo thoro non certius noscit matrem, quam genitorem suum. Nam ambae leges quæ jam contendunt, uniformiter dicunt: quod ipse est pater, quem nuptiæ demonstrant.*

The Law of England looking upon the childe as the *partus legitimi thori*, concludes the childe as well capable to know his father as his mother; for the knowledge here being that of polity and civil enactment, follows the prescript of the Law which appoints and orders it, which is that lawfull procreation be within marriage, so that if a childe born in marriage may know his mother who is the wife of the father, the same childe may by the same rule of marriage know his father, that being concluded on by all hands, *He is the father who is the husband of the mother in marriage*; for as the parturition of the childe by the mother declares who is the mother of the childe, so the marriage of the mother with the father attributes the father-hood of the childe so begotten and born in marriage to the husband in that marriage, and his in reputation of Law it shall be, if no impossibility in him to beget it be maintainable; and as wedlock declareth the mother as to honour, so doth it the father as to legitimation and inheritance; and the man being the head of the wife, and the wife and he but one person in the Law, the Law of England holding up the honour of marriage, and vilifying whatever is honestative thereto, judges it more convenient *ut conditio filii ad patris potius quam ad matris conditionem referatur*] as the Texts words are, and being with us there is a rule which none must depart from, *That no man ought to think himself wiser then the Law*, all argument against this constitution and practice is sacrilegious; for though here be under marriage a discrimination of sex, yet is there an unity of nature and indiscriminate parentage, so is the Text.

*Pater est quem nuptiæ demonstrant. Paulus lib. 4. ad edictum. Digest. lib. 2. tit. 4. De in jus vocando. p. 126.*

*1. Instit. on Licetion. p. 133.*

*Cum de conjugatis dixerat Adam, erunt ipsi duo in carne una, quod dominus exponens in Evangelio ait, Jam non sunt duo, sed una caro.*

This is produced to shew both the antiquity, honour and innocence of marriage (instituted in Paradise, and hence by God sanctified to the ends of his institution) and the intimacy of marriage, which purports a dearness of invisceration beyond that of adhesion, for 'tis not said they shall onely leave father and mother and cleave to one another, but 'tis said that those acts of leaving dear relations, and cleaving to the solitary choice marriage makes; shall be that, whereby they may *be one*, which aphorism uttered by Adam in *Gen. 2. 24.* was (I am apt to think) when he was extatique or seraphique above what he as a meer man was for it is prophetique and prefigurative of what should be the conviction and duty of man and woman in marriage to the end of the world. I take my notion from Saint Augustine and Clarus) I say when Adam was thus abstracted from humane seculencies, and carryed above the perch and sight of the narrow and dwarfe prospect of mortality; Then, then, was it that he said of man and woman in marriage, *erunt caro una*] that is, sayes Vatablus, *unus homo*, for that *ipsi duo in carne una*, is our Lords addition in *Matth. 19. v. 5.* where the word *ἑσονται ἓν* γυναικὶ seems to me to be somewhat lesse then that *ἑσονται ἓν* τὴν γυναικὶ αὐτῆς, *Mark. 10. 7.* For when a thing is joynd to another, as Fletchers do in piecing of arrowes, or Masons in cementing of stones, or Builders in joyning frames, though there be a support and assistance each of other, yet there are flawes and joynts which wind and weather may pierce and make clinques and chops in, but when a bone forced aside, is set in its proper place, and a Cyons inserted the stock, and let into a convitality with it, then it growes to be one invisible punct of kindnes and conjunction, then is that done which this *ἑσονται ἓν* τὴν γυναικὶ seems to me to intend. Thus our Lord sayes, *Adams erunt una caro* is made good in the double *ἓν* which refers to the union of body and mind, by

*Lib. de rella nominum ratione. Eam naturam qua rebus nomina imposuerit celsorem esse hac humana. Clarius in Loc<sup>o</sup> Deus per hominem dixit quod homo prophetando pradixit. Sanctus August. lib. 2. de Nuptiis c. 4. Vatablus in Matth. 19. v. 5.*

Trasim in Loc.  
 Idem Adag. Cent.  
 9. (lib. 2. Adag.  
 23.  
 Grot. in c.  
 19. Gen. v. 5.  
 Neftrirex  
 offibus alter.  
 4. Eneid.  
 2. Politic. 4.  
 Plutarch. in  
 sympos. 652  
 No õvras ãva  
 γερóvραι.

which è duobus fiet unus, not as if the Holy Ghost pointed, saith *Erasmus* to the carnall contents of marriage, which the Greeks termed ἀφ' ἑαυτοῦ ἐν ἀφ' ἑαυτοῦ, or that he commended this union as it was Σαμίω ἀνδρῶν wherein wives had delights of husbands as husbands had of wives (though this is the effect of marriage) but our Lord drives it thus home to represent the dearness of that tye in the virtuous amicitia of it, if it were abstracted from all possibility of sensuall fruitions, and the oblectaments of carnality; and so St. Paul in *Ephes. 5. 30.* applies it to Christ and the Church, which dignification of marriage *Grotius* thinks to be that which declares marriage to be *rem vere sacram, non humanitus sed divinitus repertam*, for 'tis God that can make two in an house to be of one heart, and one minde, that is, to be two in one, which the Heathens made the top of Concord and kindness. Now this the Chancellour applies to the case in point, if, *cum masculinum concipiat femininum, ad masculinum quod dignius est referri debet tota caro sic facta una*] as much as if he had said *Adam* (the first man and husband) under the polysexuall word, *Man*, couches *Woman* part of him, and imports the nobility of humane nature to reside in the man as being the first *tempore* and *dignitate*, which I write not to advance the huffs and prides of men over their companions, who are bone of their bone, and flesh of their flesh, the best, onely, excellent, and rational comforts of life, but to assert the rights of man-hood, and to excite men to live and love,

Digest. lib. 21. tit. 1. p. 1997. 1998.  
 de edictio edicto.  
 Theophilus Antecess. Insti. lib. 3. tit. 3.  
 de senatus consult.  
 Tettul. p. 492.  
 Semper senioem juniore & amplioris honoris inferiori, & marem farina & ingenuum libertino prafereamus Ulpian. lib. 54. ad edict.  
 Digest. lib. 22. tit. 4. p. 2084.  
 Digest lib. 1. tit. 9. p. 119.  
 Alian. hist. animal. lib. 9. c. 5.

worthy the majesty and merit of their divine Endowment, for in that man is called *creaturarum pretiosissima & dignissima*, and is preferred above the woman, as *Theophilus Antecessor* makes good, and *Fabrotus* observes on him to be according to the Lawes of nature; and to what God declares *Gen. 3. 16.* where he sayes to the woman *Thy desire shall be to thy husband, which Aben-Ezra* reads by *obedientia tua eris viro*, it is to be understood, not as if the dominion of man were a tyrannous and violent one, but to shew there is a certain naturall and affectionate virtue implanted by God in the woman, disposing her with complacential delight to submit to her husbands milde and civilly-obliging Government, as that which she is made free by, & rests happy in. Now though *Grotius* according to the ballast of his Incomparable judgment makes the subjection mentioned in *1 Tim. c. 2. v. 11.* to be a branch of servitude penal on the woman being deceived, and so first in the transgression; yet surely it is that wh<sup>ch</sup> by the Institution of God is very comely in them to submit to, & very contributive to the order and propagation of mankind, and therefore the glory of modest and virtuous women to own in all the latitude of a marriage loyalty and sweetness; for no wife recalcitrates the government of her husband whom she is presumed to have chosen and voluntarily to have pledged her faith to and reverence of; but she that is fickle in order to dishonour, and weary in preparation to a desire of change: for man being in his nature so excellent that he has the perfection of all creatures in him, the lustre of Jewels, the flourish and increase of Plants, the activity of Animals, the intellect of Angels which made him be accounted by the Ancients *quoddam*

Observe this.  
 Non semper cum mulieribus mariti agunt amice & ut' ἀνυγὰς ἄνδρῶν. *Grotius* in *1 Tim. c. 2. 11.*

omne, mortalis Deus, Eccelsior caelo, profundior inferno, longior terra, latior mari, as *Phavorinus* his words are, (for which cause the Ancients have attributed so much to him that they have made all things nothing in compare with him) I say, as woman is blessed rather then burthened with his superiority, so are their children begotten by him, dignified by bearing his name, and becoming him in the continuity of a succession, which is the reason that our Common Law considering that the greater is more worthy then the less (because it implies the less in it, and has prelation from the super-addition it hath) appoints the childe to follow the condition of the father and not of the mother.

Tholoff. l. 11. c. 4.  
 Prius diligendum esse uxorem quam ducendam, cognoscendam quam amandam; & sapim malitia & contemptus uxoris causam, esse stultitiam & fatuitatem maritorum qui non novimus cum uxoria opera auctoritatem vitare. Tholoff lib. 9. c. 6. ff. 17.

Phavorinus lib. 17. & 18. de Excellentia hominis. p. 134.  
 Principium juve tribuitur homini, cujus causa videtur cuncta alia genuisse natura.  
 Plin. in Praemio ante lib. 2. Hist. Natur.  
 Tholoff. lib. 9. c. 4. ff. 10. 11.  
 Uxores coruscant radius maritorum & eorum dignitate & privilegii gaudent. Lib. 6 Fidei Commissi. Digest. lib. 1. tit. 9. p. 122.

*Ipse quoque civiles leges dicunt, quod mulieres semper coruscant radiis maritorum suorum.*

This *Tholoffanus* confirms from *Justinian* and the Authentique, and *Ulpian* concludes, *Femina nupta clarissimis personis, clarissimarum personarum appellatione continentur*; and *Acursius* gives this in our Text for the reason, *Quia uxor fulget radiis maritorum.*

Hence

Hence is it that the \* Lawes say, *Uxores domicilium & forum maritorum sequuntur*, for since they are *one flesh with their husbands*, good reason is there they should have the same respect their husbands had while they continue their husbands relicts, or marry in his degree; for though if they marry above, they mend their lustre as their Marriage is more illustrious, or equally, they are no losers, but still do *coruscare radiis mariti*; yet if they take husbands beneath it, the courtesie of England is, they retain their best title, and this women have to preserve their Matronage, or if not that, to compensate the subjection they are under; not that which of old was executed in case of disloyalty, but that affectation of shew and pomp which is naturally in them, and which if they are abated in or deprived of, they grow discontented and unpleasant. For though the Lawes of Nations do abhor a *γυναικονεγνία*, and he deservedly be reproachable, *That being enthroned by God does consent to his abasement and vility, as that unworthy husband deserves to be accounted to do, who is shrivelled up to nothing by the parch and sharpness of his Salsianish wife*, as *Budeus* complains many henn-peck'd men are deservedly accounted; yet does civility, religion, and good breeding commend to, and command from men love, respect, yea, high kindness and courtship of endearment to the wife, as the flower and fineness of all domestick contents. And since the wife has no greater, nor at all any nobler portion of the felicities of life then what she has devolved from and imparted to her by her husband, worthy and wise wives, or those that such women would be accounted, should be very exact and choice in the fixation of their Marriage-loves, for surely the aberrations and straggles from pudicity, and the intoxicating Labyrinths of stolne and defaming pleasures, commence from the violencies that either parental commands, or ambition, or covetousness gratified, surprise women of rare parts and persons by to unequall matches, from the husbands of w<sup>ch</sup> these wives having no coruscation, but rather a total Eclipse through the fogg and dead night of their dismal and inorient appearances, these Sparks, enraged by the loss and diminution of their names and reputations, turn Apostates to their plighted troth, and seek abroad what they have not at home; to prevent which, as the great botch and plague-fore of womanhood, and that which is *the dead flye in the precious oymntment of their reputation*, it were to be wished they would resolve on such husbands as have coruscancy, and those had, and that had from them, be satisfied with them. For surely, next the grace of God, nothing is so certain and effectual a muniment of feminine modesty as a compleat and suitable husband, which does not onely make *all eggs* of attempts on her, *addle*, but gives her a *serenato* in her minde, and disposes her to the most noble and notable endeavours and performances of her Sex, which *Livia* the Empreffe, wife to *Augustus*, so made true, that she, from the example and ambition of congruity to her husband, grew the mirrour of mortals, not onely loving and observing him while alive, but rewarding even the news of his being in heaven brought her by *Numerius*, who not onely said, but swore he saw his soul fly into heaven; which felicity of his she no doubt would have thought her self little concerned to reward, had she not had a vigorous affection from him, as the He, from whom she had the *Cataracts* and full streams of glory descending on her. For womens passions are the signs of the Heaven, and points of the Compass they steer by; and therefore to keep those influences of theirs within Compass, that they portentuously inundate none of the fair grounds of Religion, which they are the greatest Pretenders of Neighbourhood to, Policy and Lawes of Nations have allowed them many reserves to blunt and break the ferocity of such passions in them, which to men are denied, *Mulieres honore Maritorum erigimus, & genere nobilitamus*] sayes our Text. For though that be a true rule, *Ceo que est gaine per Marriage poet auxi estre perde per Marriage*; yet if a Queen-Dowager marry any of the Nobility, or under that degree, she loses not her dignity. *Katharine Dowager* married to *Owen ap Theodore* Esquire, and maintained her action as Queen of *England*, and the Queen of *Navarr* marrying with the Brother of *Edward the First*, sued for her Dowry by the name of Queen of *Navarr* and recovered it. But *si minoris ordinis virum postea sortita, &c.*] If she marry in the same order with the first husband, she goes as the rate of the second husband is, so is the rule

\* Tholoff. lib. 18. c. 13. ff. 25.

Apud veteres Romanos nulla fuit Lex, neque institutum divortii faciendi, & licebat maritis uxores adulteras occidere, aut vinum si bibissent. Brechtius ad Legem 191. p. 411. lib. De significatione verborum.

Unde eorum more qui usque adeo uxoris sunt, ne dicam ignavi, ut domi sua privati sint & uxoria potestate parent, cum foris Magistratus gerant, & viris imperare se dignos esse censent. Budeus in Pandect. p. 16. Edition. Valcof.

Note this well.

\* On ἡ Αἰγύπτου ἐς ἡ ἕγυδι, &c. Dion. p. 600. ad finem vite Augusti.

Hollinghed. p. 562. 626. 627. 659.

Selden's Titles Honor p. 879. 6 Rep. p. 53.

Rot. Parl. 26. E. 1. Rot. 1.

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*Quando mulier nobilis nupsit ignobili, desinit esse nobilis.* 4 Rep. p. 12.

*Mes si femme soit noble, &c. per descent comment que el marrie ou un desouch le degre de Nobilitie vncore son hirtbright remaine, car ceo est annexé a son sank & est caractere indelebilis.* 4 Rep. p. 128. Countess's Reil. Case. 6 Rep.

See Selden's Titles Honor. p. 379.

*Nupta prius consulari viro, impetrare solent à Principo quamvis perraro, ut nupta iteram minoris dignitatis viro, nihilominus in consulari maneat dignitate.* Ulpian. lib. 2. De Coniugibus 12. p. 124.

Digest. lib. 1. tit. 10:

Which is the Common Law of England saith Sir Edw. Cook 1 Instit. on Littleton. p. 123.

age) is said *honore & conditione resplendere*] the Son who is born to the Father will by the same consequence be resplendent by his Father's state to which he succeeds; for the Father being the predominant in Marriage, the denomination of the child as to freedom or bondage is by our Law to follow him, *Si uisfe prent frank home, lour issues serra franke*, is Littleton's rule.

*Crudelis etiam necessario judicabitur Lex, qua servitutem augmentat & minuit libertatem. Nam pro ea natura semper implorat humana. Quia ab homine & pro vicio introducta est servitus.*

This our Chancellour writes to disable Principles of absolute Government introductory of will for Law, and of slavery instead of liberty, from prevalence with the Prince, whom he endeavours in this discourse to make a Mirror of goodness and Regal temper; and the better to press on the prevalence of his loyal project, to all the precedent insinuations in behalf of Lawes, as the rule of manners in men, and administrations in Princes, he adds this of inveighing against cruel legality, which the Scripture calls, *Setting up mischief by a Law*, as well knowing that nothing is more common with Politicians than *sub gravitatis purpura nepotari*, to pretend Law and Justice for Will and oppression; which abuse of God's trust, and mens confidences evidencing it self in the fruits of hard conditions on willing and ready obedience, he terms a cruelty because an approbation of that which is the abridgement of natural freedom; and a stablition of that in the room of it, which is displeasing to and regretted by the humane nature; for though servitude was brought

Tholosan. Syntag. Juris lib. 1. c. 1. *Jure Gentium introducta fuit servitus.* Tholosan. Syntagm. Juris lib. 11. c. 1.

*Servitus est constitutio Juris Gentium qua quis dominio alieno contra naturam subjicitur.* Florentinus.

Digest. lib. 1. tit. 5. fol. 88. *De Statu hominum.*

Id *ἔνδρα πῶς βύλαςαι.* Arist. Politic. lib. 6. c. 2.

*Bestia quas delectationis causa concludimus, cum copiosius aluntur quam si essent libera, non facile tamen patiuntur se contineri.* Cic. 5. De Finibus.

Cic. 10. Philipp. 1 Offic.

Tholoss. Syntagma. lib. 11. c. 12. 13. 14. &c.

in upon necessity, and reason it is that those that reserve them whom they could slay, should after saving of them have their service: yet is it not to be promoted to such high degrees of diminution of man's natural freedom, as shall extirpate all remains and foot-steps of the primæve sanction, which, as the Law of nature, is immutable. For servitude is the result of that defection from God and nature's innocence, which lust and corruption occasioned; and as the longer it wanders, from its first station, the more contumacious it is against the rule of its censure and restraint: so the more adverse to a return of regulation it is, the more pugnacious with that justice and lenity that should associate power and magnanimity. And therefore since liberty is the instinct of all creatures, who are not brought into the power of man but against their wills, and who no longer rest under it then that power has a menace and dread in it; which liberty in men is that jewel and darling that they will venture life and soul to preserve it from losing, or else recover it when lost, as we see in the combustions of all the World, which chiefly are to contend for it. I say, this natural liberty over-powered and become servitude is so much the abomination and distast of humane nature, that the

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Chancellor says, It is a cruel Law that exacts against the Law of Nature and the God of it, who being himself a free Agent, created his creature to a freedom. Now though the Lawes of men have profitably introduced restraints of freedom in the sinfull excesses of it, and reduced the power of multitudes into few, and the Dictates of licentious will to the Empire of religious Justice and moral order; yet is this no violence or rape upon the natural freedom in the main design of its position and donation, but a preservation and improvement thereof to those principal ends, that the mercy and wisdom of the endower thereof indulged it for, which, if not flinted in the excursions of it, (as sin by defacing the soul has sensualized it) would be a more intolerable evil in men than in beasts. And therefore Lawes and Law-makers are Patrons to common preservations, and to be honoured as *Secundi Dii*, who do *favere libertati* where they may do it *salvo ordine & regiminis pace*, and yet propitiate it no otherwise than it is favourable to its self in a regularity of action and a virtuosity of order, which so far is accommodated to multitudes, as they, by the prevalence of virtue conquered to the will and Empire of prudence, are fitted for the entertainment of it: which because the people of *England* are in the Mass of them more civilized than most Nations are, the Lawes of *England* are said by our Text, *In omni casu libertati dare favorem*.

*Hac considerantia Jura Angliæ, in omni casu libertati dant favorem.*

That is *in omni casu legali dant libertati legalem favorem*; for the Chancellor's drift is not to assert an incircumscription of favour in the Law to licentious and ill-constituted liberty, (for then he had made the Lawes of *England* Patrocines to every extravagance; nor would any virtue or order be promoted here, did the Law in the latitude of this notion favour liberty.) But this *In omni casu libertati dant favorem*, is so to be understood of the Law, as it makes good the definition of *ars æqui & boni*, which a Law ought to be, and then the sense will be, That the Lawes of *England* in all cases wherein freedom consists with virtue and peace, favours the freedom of Lord and Vassal, that the rights of both may be properly conveyed to them; and hence the learned know that the Lawes of *England* are called *Libertates Angliæ, quia liberos homines faciunt*; and therefore the first Chapter of *Magna Charta* is *Concessimus etiam & dedimus omnibus liberis hominibus Regni nostri*, which words Sir *Ed. Cook* says extend, *To all Persons Ecclesiastical and Temporal, yea to Villains*, for they are accounted free-men saving against their Lords, yea against their Lords when they unlordly abuse their Villains; for though Villainage did draw service, and the Lord might command his Villain or Neif to any service that was painfull if honest, yet to that which had turpitude in it, or was above the nature and ability of man to do, and was onely fit for a beast, the Lord *jure dominii* could never force the Villain to perform; for as the rule is *Lex non cogit ad turpia*, so is it also *Lex non cogit ad impossibilia*. And the Law of *England* being grounded upon the Law of God and upon Reason and Religion, defends the Villain from the unlawfull tyranny though not the just service of his Lord; for though a Villain shall not have an appeal of Robbery against his Lord, for that the Lord may lawfully take the goods of his Villain as his own, yet in an appeal of Murder, *Poet aver envers son Seigneur une action d' appeal de mort son pere ou d' autres de les Ancesters que heire il est*, saith *Littleten*; for the Law, says *Fleta*, does not as of old reach *ad vitam & mortem, sed hodie coarctata hujusmodi potestas, qui enim servum suum occiderit, non minus puniri jabetur quam si alienum interfecerit*; and to this *Littleten* gives many instances of the Lord's accountableness if he do exceed, as appears in him in the title of Villainage, which declares the Law of *England*, *dare libertati favorem*. For the Law was not made to shelter oppression and injury, but to succour innocence and passivity against it; and if the Lord upon presumption that his Neif is his, shall ravish her, notwithstanding his propriety in her as to his honest service, yet his injury to her chastity, which is her jewel, by the Lawes of God and men, shall bring on him loss of his eyes, *propter aspectum decoris quibus virginem concupivit*, and loss of his testicles whereby he

*Quæ sit libertas queris? nulli rei servire, nulli necessitati, nullis castibus, fortunam in æquum deducere. Senec. Epist. 75. & 76.*

*Hanc quam dico societatem conjunctionis humana munificæ & æquetuens, justitia dicitur, cui sunt adjuncta pietas, bonitas, liberalitas, benignitas, comitas, quæque sunt generis ejusdem, atque hæc ita justitia propria sunt, ut sint virtutum reliquarum communia; nam cum sic hominis natura generata sit, ut habeat quiddam unatum quasi civile atque populare, quiddam æget quæque virtus, id a communitate, & ea quæ exposui charitate atque societate humana non abhorrebit. Budæus in Pandect. p. 13. Edit. Vascos.*

2 Instit. p. 3.

Reg. 4.

Self. 129. 190.  
191.  
Cook on it p. 123.  
B. 1 Instit.  
Fleta lib. 1. c. 5.

Self. 129. ad  
194.  
Libertas Legibus  
& Magistratibus  
suis constat & Imperii  
certa forma.  
Lipius in lib. 2.  
Taciti p. 43.

was excited *ad calorem stupri*; and if this will not secure the unviolated chastity of a woman, but her Lord will ryot on her, as was the sin of some in *Edward the First's* time to do, then by the Statute *Westm. 1. c. 13. 34 E. 1.* 'tis declared Felony, which the Leet being in the L. Mannour, cannot (saith Sir *Edward Cook*) enquire of but the Courts of Law, because 'tis a felony by Statute not by Common Law. Yet here is to be remembered, that though Marriage with a freeman enfranchised a Neif, yet even then, though the Lord could not recover his Neif from the freeman that had enfranchised her during coverture; yet the Lord for this should have recovered a reasonable recompense for the service of his Neif: and so if a Villain be made Knight, though there be no reduction of him to his service, yet there is a *rationabilis valor* to be recovered, for the Law though it cannot recall what is once done and cannot be undone, yet does it preserve as well to the Lord his liberty as to the Villain or Neif their freedom, and so the Lawes of *England* are justly said *libertati dare favorem*.

*Et licet jura illa judicent eum servum, quem servus in conjugio ex libera procreavit, non per hoc jura illa rigida, crudeliter sentiri poterant.*

The Lawes of *England* adjudge the childe to that state which the father is in, for the Mother does *nihil conferre* to the childe but onely nourishment and production, Such as the father is, such is the childe, so saith *Littleton* and Sir *Edward Cook* on him, and that because the husband and wife being one person in Law, the condition of the man shall determine the condition of the childe begotten on his wife; for as a Neif marrying a freeman during coverture is enfranchised, so a free-woman that marryes a bondman is during her coverture a bondwoman, and cannot *redire in pristinum statum* till she be released from the coverture, since such as the husband is, must by the Law the wife be. For though in case of Crowns husbands may be Subjects where wives are Sovereigns, as King *Philip* was to Queen *Mary*, yet between Subjects the Lawes of Matrimony are such as devolve the Prerogative on the husband, and subjects the wife to his condition, which the Queen of *France* sister to *Henry the Eight* made good to *Charles Brandon*, and Queen *Katharine Parr*, who after the death of *Hen. 8.* marryed the Lord *Seymour*, and was a very respectfull wife to him; and *Lipsius* on *Tacitus* shews this to be the nature of Marriage in all times and amongst all people, and so is not a violence or fraud by which women are either forced to and beguiled

into a degradation, but an act of will and choice, *proprio arbitrio se fecit ancillam*] that is, not onely to do that which the (a) *Ancilla usuaria* did, if her husbands fortune will not support her without it; but also that which the *Ancilla usuaria* was not bound *virtute ancillatus* to do, that is, to bear children, which though the bondwoman might not be (b) bought to that end, yet the wife is marryed so to do; and when she knows this is the Law of her Marriage, and is carried by that motion of nature which is rational to put her self into the conjugal Chariot, and to be hurried up and down with the vicissitudes of it, and to submit to the conduct of her husband, the guider of it; when, I say, this is soberly and with consideration entered into and accepted, the woman is bound so long as her husband lives to be conformable to him, and the proceed of their ventures must be in condition as He that is of them the father: which no doubt the Heroique *Constantia* the Relict of *Raymond* Prince of *Antioch* was contented with, who after she had lived a good while a widdow, refusing the affections which many Princely Suitors proffered unto her, yet at last descending beneath her self marryed a plain man *Reynold* of *Castile*, yet was contented with the choice she had made, and the reason was because there was a free choite of her own, which to repent of would argue her light, and continue on her an impossibility to be remedied, which contradicted the merit of generous patience and contented freedness. For though God has left to man the Vice-Regency of all creatures under him, and as the great (c) Master of reason, has subjected the woman to him, and

Cook on *Westm.*  
c. 13. p. 131. 2  
Instit.

Fleta lib. 2. c. 54.  
1 Instit. p. 116.  
Nullam vilem personam natione spuriam vel servilis conditionis admittit strenuam ordinem promovere licebit. Fleta loco præcitato.

Cook 1 Instit.  
sect. 137. p. 123.  
Britton. fol. 78. B.  
Bridton. lib. 4.  
fol. 298.

Stat. 1 Mar. c. 2.

Fuller in Westm. morl. p. 136.  
In lib. 3. Annalium. p. 514.  
515.

Ἡ δὲ βέλαισι δόλοι ἀγαθόν, τὸ δὲ νότιν ἀληθῶς ἐστὶν ἐν τῷ ἀγαθῷ. Plotinus *Ennead.* 6. lib. 8. p. 740.

(a) Digest. lib. 7. tit. 8. de usu & habitatione. p. 954.

(b) *Ancilla non emanatur ut pariant.* Gloss. T. venit, Digest. lib. 19. tit. 1.

Lib. 5. tit. 3. ex Ulp. lib. 15. ad edict. ff. 27.

Λογικὴ δὲ ζωὴ φύσει ἔχει παρ' ἐαυτῆς ἢ ὑποχρῶν, &c. Plotin. *Ennead.* 2. lib. 3. p. 144.

Fuller's Holy Warr. c. 32. p. 85.

Τὸ δὲ ἐνδεὲς Ἐνανάγκης πλεονεξίας ἀρετῶμενον ἢ ἄρ' αὐτῆς ἢ ἐφ' ὃ παντελῶς ἀρκῶ. Plotin. *Ennead.* 6. lib. 8. p. 736.

(c) Major ratio in hominibus quam in Angelis. Rosellius in Trismegist. vol. 1. lib. 6. com. 2. c. 2. p. 284. & vol. 2. lib. 4. c. 16. p. 444.



and endowed her onely with such proportions of courage and art, as may make her know good and evil, and submit to her husband as her head, and have desire to him as to her boundary, which when she does and shews her self to doe, she does her duty; for the wife is *sub potestate viri, & ipse dominabitur tibi*] saith the Scripture, which being the *Magna Charta* of man's superiority, the woman is hence bound to her good behaviour, which many of that noble sex delight with so great readines to own, that they sometimes steal the hearts of men from them, and with it their Empire, which while they abuse not they deserve to keep, and have sooner from wife men then fools. By all which it appears that Marriage is favoured, and the children of it succeed to the state of their father either bond or free; and that the wife (if she be not Sovereign) is under the Common Law of Marriage in all the precise determinations of it, and that the wife so being, can expect no better a reputation then reflects on her from her husband, whom though she is free to chuse before she marry, yet she is bound to cohabit with and submit to when married: for a wife being *A name of honour and not pleasure*, as the husband that duely considers the friendship and beauty of his Coniunct ought, so will he kindly and with tenderness and respect apply himself to her, and so work upon her love that she shall think her *yoke easie and her burthen light*, while she is with fidelity and courtesie thus victored. This is the *Summa & forma Legis Anglia* in this case, which gives some in-let to the judgement of both Lawes, in the wife constitutions of them for the respective places of their Regency; my conclusion being in this case as in the former, *For England the Law of England is the best, Pater est quem nuptie demonstrant, & nunquam matris sed semper patris conditionem imitari partem iudicat.*]

*Nisi to Marcia  
vivere tam longo  
ab infirmitate mu-  
liebris admquam  
a ceteris vitiis re-  
cessisse, & mores  
tuos velut anti-  
quam aliquod ex-  
emplum aspici.*  
Senec. lib. de con-  
sol. ad Marciam.

*Uxor nomen est  
dignitatis, non vo-  
luptatis. Digest.  
lib. 24. tit. 1. p.  
2203.*

## CHAP. XLIII.

*Principes. Anglorum Legi in hoc casu, &c.*

THIS whole Chapter, as the 41. is onely serviceable to the compleatness of the Dialogue, and to the vehiculation of the Chancellour's design to that perfection, which his aim (through the mediation of providential advantages well observed and improved) promised him to arrive at; for though many men and things properly fitted and industriously followed do not attain what, in the enterprises of their actours mindes, they are studious to dispose themselves and their endeavours towards: yet so long as reason, which *Seneca* calls, *A portion of divinity, sunk and lodged in us, and that which leads the creatures and follows the Gods in the wisdom and conduct of it*, so long, I say, as reason swayes men, they are well guided, and probable to arrive at the lawfull issue they expect. This being the Chancellour's argument in the perfonated Prince, that he makes it *omnis honesti comes*, and thence concludes on the Law of *England's* side, is but what he has throughout this Treatise done, and which he thinks the *Lawes of England* deserve: and that because they do not onely shew themselves just to give to every one their due, that will sue to them for right, but establish right to innocent and impotent babes that are not able to help themselves. And hereupon the rule of reason and Law is, as here quoted, *Odia perstringi & favores convenit ampliari*] which is the rule of the Civilians, and *Accursus* applauds it, so also does our Lawes; for where any case is equilibrious and is capable of two senses, the best and most beneficial one is put upon it, and it made to intend what is most in favour of justice and mercy, and in prevention of discontent and hatred. *Seneca* tells us that the old rule of wisdom was to avoid three evils, *Hatred, Envy, Contempt*; the way to do which, wisdom onely can discover; and that being in the Law which is *sapientia temporis*, it in all cases prefers justice and mercy before oppression and violence: and this not onely in exposition of Regal Grants, and in cases that concern the estates and liberties of men, but their lives also, and most chiefly, witnesses that of Mr. *Stamford*, where it is said, that though by the strict rule of the Common Law, he is not to have benefit of the Clergy who cannot

*In corpus huma-  
num pars divini  
spiritus versa. Se-  
nec. Ep. 66. ar-  
bitria honorum &  
malorum Ep. 76.  
Ep. 92. lib. 2. De  
Benefic. c. 8. &  
4. De Ben. c. 10.*

*Digest. lib. 4. tit. 4. Gloss. p. 534. de  
minoribus 25 annis.*

*Lib. 14. tit. 6. de Senatus consult. Mace-  
doniano, p. 1502.*

*Nullum bonum putamus esse quod ex di-  
stantibus constat, Senec. Ep. 103.*

*Tria ex praeceptione veteri praestanda sunt  
ut vitentur Odium, Invidia, Contemptus;  
quomodo hoc fiat, sapientia sola monstrabit.  
Epist. 14.*

*Pleas Crown.  
p. 133.*

2 Instit. p. 164.

Mercy the true property of a Judge.

See Statute of 3 Ed. 1. c. 32, 33.

Note this.

Eicon Basil. c. 27. To the then Pr. of Wales now our most gracious Sovereign.

The Lord Chancellor in his Speech. May 8. 1661.

read any where in the book offered to him; yet in judgement of Law, and for favour of life, he that can read but a word or two, or spell letters, and after put them together, shall be allowed *clericè legere*; so whereas a Prisoner in Felony was in a bad case, because he lost his challenges to the Inquest that found him guilty, and yet upon the Inquest of office formerly used, *ut sciatur qualis ordinatio liberari debet*, he forfeited all his goods and chattles and the profits of his Land, until he had made his purgation; The thrice Reverend and Learned Sage Sir John Prisot studying how to relieve the poor prisoners that were destitute of counsel, with the advice of the rest of the Judges in Hen. 6. (our Chancellour's) time, for the safety of the innocent, would not allow the prisoner the benefit of Clergy before he had pleaded to the felony, and having had the benefit of his challenges and other advantages had been convicted thereof, which just and charitable course hath been generally observed ever since; which is an argument of the *favores convenit ampliari* in the Text; and that it may carry on the Majesty of Government in a due circulation of Inferiority and Superiority. *Odia perstringi* is also the care of our Law, for all feuds and animosities it discountenances, and as they appear punishes as breaches of the peace, or by actions of recovery against the damage of them if just cause be; for our Law being *Lex pacis & concordie*, promotes every adjument to quiet, and prosecutes every *remora* thereunto, and therefore declares, *That it conceives jealousies and distances in names and ways of contradiction each to other, to be a not onely feaver but plague-sore to a Nation*; to cure which there is a rare Prescript by one of the best State-Physicians (if the phrensie of the Nation would have hearkened to him) that ever this or any other Nation had, given in these words, *Beware of exasperating any faction by the crossness and asperity of some mens passions, humours, or private opinions, employed by you, grounded onely upon the differences in lesser matters, which are but the skirts and suburbs of Religion, wherein a charitable connivance and Christian toleration often dissipates their strength, whom rougher opposition fortifies, and puts the despised and oppressed party into such combinations as may most enable them to get a full revenge on those they count their Persecntours; who are commonly assisted by the vulgar commiseration, which attends all that are said to suffer under the notion of Religion; thus that wife King; and to this purpose speaks a Right Noble and well-advised Sage and Grandee after him, who minding the wisdom of the Nation, what, as wise Physicians, they are to doe, divinely counfels them, Be not (saith he) too severe and rough towards your Patients in prescribing remedies, how well compounded soever, too nauuseous and offensive to their stomachs and appetite, or to their very fancy, allay and correct those humours which corrupt their stomachs and their appetites. If the good old known tryed Lawes be for the present too heavy for their necks, which have been so many years without any yoke at all, make a temporary provision of an easier and a lighter yoke, till by living in a wholesome air, by the benefit of a soberer conversation, by keeping a better dyes, by the experience of a good and just Government, they recover strength enough to bear, and discretion enough to discern the benefit and the ease of those Lawes they disliked, thus the Grave Chancellour and Counsellour of England, whose divine and ponderous counsell in these words, confirm the wisdom of the Law alledged in our Text, *Odia restringendo & favores ampliando.*] For surely if any thing carry a Law with credit to its noblest end, The glory of God in the orderly Government of men according to the rules of justice and the dictates of kindeness, it must be that participation which that Law, in the soul and design of it, aptly expressed in administration, hath of that divine wisdom and goodness by which the world and all in it is governed by God, whose ways are all mercy and truth as well as judgement and power. And these being the scope and practice of both Lawes in their respective Sphears to promote, though there be a variation in the method, yet the union in the end makes them happy conduements to multitudes felicities; which considered, the Chancellour is to be understood not to alledge his arguments for the Common Law out of design to reproach any other Law, but onely to winn the Prince to a love of the *English Lawes*, upon consideration that of all others they are the most sutable to the nature of *England* and *Englishmen*. And so he proceeds to the fourth case wherein the Lawes vary, contained in the following Chapter.*

CHAP. XLIV.

*Leges Civiles impuberum tutelam proximis de eorum sanguine committunt.*

THIS is the fourth Case wherein the two Lawes do vary in their Judgements, to wit, *The tuition of Orphans*; for though the Lawes agree to supply the impotency of them by substitution of some persons meet to rule and order them and theirs in that necessary trust, yet the Common Law and the Civil Lawes do place their confidence of the due execution of this honest and parental charity diversly. The Civil Law does commit *Impuberum tutelam* to the next of their whole blood, saith the Text. This act of the Law is according to the law of nature, and the provident wisdom of Nations; for impuberty being the novicism of manhood, and that vacation wherein the first dawns of virility are not, but persons (Males under 14. and females under 12.) have no sign of the spring of perfection and adulthood in them, the inability of the childe thus infirmed was ever in all times and Nations made good by the addition of some person of years, integrity, and worth; who during the child's incapacity to order himself and his affairs, should dispose them to his advantage for him. This is evident not onely in the times of the *Jews*, but also of the *Heathens*; for *Laertius* tells us *Aristotle* appointed by his Will *Antipater* Guardian of his son *Nicanor* and of all he had, till *Nicanor* should come of age to take care of himself. From this common observation of Nations *Saint Paul* mentions this Law in *Gal. iv. 1.* where he tells us, *The Son is under Tutors and Governours untill the time appointed of the father*; for as the Master or Lord had the power of the Servant or Villain *jure Gentium*, and could manumit him when he pleased: so had the father *jure Civili*, power of the childe to dispose his estate to him when he pleased, which is the reason why 'tis said, *Till the time appointed of the father*. For these *Impuberes* were ever *alieni non sui juris*, and till they were seventeen years of age or eighteen, as some say, they were by the *Athenians* not admitted, *Ἀρχὴν λήξεως ἡ ἡσίας*, as *Hypocrasion* testifies, but were under tutors who answered for them upon all occasions; so that according to this account, Impuberty, which the *Greeks* called *Ἀνύβημεια*, and which we account the whole time of childhood to 14 years of age in males and 12 in females, is therefore under tutelage, because till then there is not probable discretion to guide themselves in any commendable convenient measure, but apt they are to be deceived and abused through the levity of their nature, and their unexperience in the quality and temper of good and evil. And though in some children there may be monstrous pregnancy not onely of wit but also of body before this age, as was in that *Boy* which (a) *St. Jerome* mentions, and in those that (b) *Brechtius* out of *Hostiensis* reports of; yet for the most part, and not without somewhat wonderful, 'tis otherwise: for *Seneca* tells us, *ante pubertatem non testantur*, and the Lawes think adultery incredible *ante decimum quartum annum*. And though Puberty being the inclination to the vigorous time of life; and that in which every thing flourished and appeared gay, was accounted lovely and acceptable; in allusion whereto *pubes* and *pubescere* and *pubentia* are ascribed to all things of appearing perfection, as *pubescentes herba*, and *Genae pubentes* we read of in *Virgil*, and *Rosa pubentes* in *Stattius*, *Ora pubentia* and *virgulta pubentia factu* in *Claudian*; and in *Turnebus* nothing is more frequent then to have *pubes* and *pubertas* expressed in this sense, as *impubes* and *impubertas* is in the contrary.

*Pubes*] lanugo qua maribus decimo quarto, feminis duodecimo anno circa pendenda oriri incipit, quod quia maturitatis est signum, factum est ut mas pubes sive puer vocatur, quamprimum ad generandum aptus est, & femina ad concipiendum. Theophil. Antecessor. lib. 2. Instit. Tit. 116. p. 344. De Pupillari Substitutione. Edit. Fabriotti.

Ἐπίτροπον μὲν εἶναι πάντων, ἡ διαπαντὸς Ἀντίπατρον ἕως δ' ἂν Νικάνωρ καταλάβῃ ἑπιμηλείας, &c. Laertius in vita Aristot. p. 116. Edit. Romæ.

Pueris pupillis dabantur Tutores, surrogati & adolescentibus Curatores qui res suas administrabant. Etalim. in loc.

Theophilus Antecessor. lib. 1. Instit. tit. 10. p. 67. De patria potestate.

Impubes constitutus in patris potestate, citari non potest verbaliter nec etiam realiter, id est, capiendo personam. Bartolus Digest. lib. 2. tit. 4. p. 193.

Gajus lib. 1. ad L. 13. Tabul. Digest. lib. 2. tit. 4. p. 193.

Theophilus Antecessor. Instit. lib. 1. tit. 21. p. 138. De Auctoritate Tutorum.

Brechtius ad legem 204. lib. De verb. signis. p. 447.

(a) Sanctus Hieronym. Ep. ad Vitalem Presbyterum.

(b) Brechtius in Leg. 204. loco præcitato.

Fornerius loc. præcit. p. 448.

Pubescentes herba non mihi videntur adulta, sed lanosa, lanuginosa; nam in vestigio quo viri qui pubent & barbati sunt, petuntur & incantantur, majorem vim habere, plinque pollere quam leves & impubescentes censentur. Turneb. Advers. lib. 26. c. 26. p. 952.

Advers. lib. 5. c. 3. p. 141. lib. 26. c. 26. p. 952. lib. 21. c. 7. lib. 30. c. 9. p. 1160.

All which I instance to illustrate the wisdom of Nations, who did hold the infancies of

οὐδέποτε συγγράειν) δὲ τὴν ἡλικίαν ἢ πτωχίαν τῶ ἀμαρτήμα-  
79, &c. Basilic. lib. 60. tit.  
51. c. 44.

Quod illum ubi adolevisset multo fore crudeliorem existimarent, ubi mens adhuc tenera malis cupiditatum imbuta venenis, sese jam prodit, sup-  
plente aetate malicia. Fornerius ad Legem 204. p. 449. de verb. signific.

Ὡς ἀνδρες ἡρώδης χήσων-  
7α. Aristippus apud Laetium lib. 2. p. 52. Edit. Romæ.

men and women, excused from all care of and prudence in business; yea almost from all punishments except in notable wickednesses, as in that case wherein the *Arcopagi* censured the Lad who picked out the eyes of a young Crow, which those Judges thought to be so ominous of a future wickedness in him, that, *They punished him severely for it, to nipp the fruit of his growing folly in the bud of its first appearance*; which well ruminated, directs to pitch well in the assignment of children to Trustees or Tutours. For as good or bad Matters ordinarily make good or bad men, institution being a second nature, and rendring youth such as they probably become men; (which was the reason that *Socrates* made grave men, when *Dionysius* made light ones;) so good or bad Tutours and Guardians produce Pupils or Orphans rich or poor, well or ill-bred, according as they do carefully improve or carelessly neglect the trust reposed in them: which trust that they should be engaged to minde more from the stimulation that nearness of blood presuming dearness of affection proclives to, the Text sayes the *Impuberum Tutelas* is committed, as followeth.

*Proximis de eorum sanguine.* ] The Grammarians deriving *proximus* from *propè* make this person here mentioned to have the priority, to be of the nearest of the whole blood of the Pupil; for though *Proximus* be a general word, (in which sense 'tis no more then *Vicinus* and *Amicus*, there being a Neighbourhood and cognation of manhood, habitation, profession, friendship, in all which proximity is allowed, yea brotherhood.) Yet

Alciat. ad Leg. 157. p. 344. de verb. signific.

Lib. 1. Eleganti. c. 17.  
Brechtus ad Legem 157. loco praecitato.

*Proximus est quem nemo antecedit, ut supremus quem nemo sequitur.* Fornerius in Legem eandem.

(a) *Gentilis vero & agnationem & cognationem complectitur.* Paulus de Grad. & Affinit. lib. 32.

(b) Lib. 11. c. 53.

(c) Lib. 11. c. 39.

Tholoff. lib. 11. c. 9. ff. 6. lib. 48. c. 12. ff. 1. lib. 45. c. 13. ff. 6.

Seldæ on this Chap. p. 50.

Tholoffian. Syntagm. Juris. lib. 9. c. 9. ff. 12.

Alciat. lib. 2. de verborum significat. p. 559.

*Agnati sunt eodem sanguine procreati, sed proximiores.* Forner. ad legem 53. lib. de verb. signific. p. 142.

*Si furiosus est, agnatorum gentiumque in eo pecunieque ejus potestas esto.* Cic. 1. De Invent. 133.

Varro lib. 1. de Re Rustic. c. 2.

(d) Budæus in Pandect. p. 90.

☞ *Ephes. 5. 29.*

*Jura generis non possunt dirimi.* Bartolus Digest. lib. 2. tit. 14. de pactis p. 294. D.

*Jus agnationis non posse pacto repudiari non magis quam qui dicat nolle suum esse.* Modestinus lib. 5. Regula-  
rum.

in the Lawyer's sense, *cum transferretur ad sanguinis jura*, then the *Proximi* are such as not onely doe *positivi vim habere*, and are *primi, proximi, & intimi*, as *Valla* writes, but also such as are *soli in relatione*, that is, *supremi*, such as have no fellows to them in nearness of blood and perpendicularity of descent, these the Law terms *Agnati seu Cognati* ] which terms are (a) *Gentilitatis nomina*, and are not to be understood in *Pliny's* sense, who makes *agnatus* to amount to *abundans*; so he calls the supernumerary Members of man's body, which are useles and monstrous, (b) *Membra animalibus agnata*, and (c) *Pili agnati* for abundant hairynefs: but by *Agnati* the Lawes intend those that are of the Male-blood from the line of the father, as *Cognati* are of the Female; and these *Agnati* are the first in preference, for the *Cognati* are comprehended in the *Agnati*, but not the *Agnati* in the *Cognati*, since they are further off & are not inheritable, nor can have the custody of them while the *Agnati* are in being, for *Agnatio* does in the Lawe comprehend all right of alliance: and therefore in all disabilities, whether of nonage or lack of reason by madness, the custody of the impotent Kinsman was to be in the *Agnatus* the next of his fathers blood; so *Tully* and *Varro* mention the Law, and (d) *Budæus* tells us the Proverb hence grew, *Carry madmen to their Kindred*, not that they are sure ever to be most taken care for, and most made of by them, but because the Lawes of Nations in preferring them, follow the rule of nature, which is, that we love our own; which *Saint Paul* had regard to when he sayes, ☞ *Never man hated his own flesh but nourished and cherished it*: and that Cousins of the whole blood are one flesh and so ought to be as to the title of love and dearness cannot but be granted, which is the reason that this commitment of either children or madmen to the nearest of their blood, is by the Lawyers said to be a Law that cannot be receded from, a nearness that *all the water in the Sea will not wash off*, as we proverbially speak; and *Vivian* after he has glossed upon the Texts of the Doctors, who all agree the latitude and fixation of the right of Agnation, concludes, *Id est jus quod habet quis, ideo*

ideo quod est agnatus ut in hereditatibus & tutelis; whereas then the Chancellour sayes agnati fuerint sen cognati, he thus joyns them, because the same priviledge in this case is to the cognates as to the agnates, though the preference be to the agnates if such there be; For what Budens sayes of gentilitas & agnati that the ancients alwayes joyned these words together, is true of the cognati & agnati, they differ little or nothing but in priority, where they are competitours. For so great is the indulgence of the Law to the agnati, that in some cases they are exempted from what the Son as heir was bound to, as Tholoffanus who is my Authority for it, makes good, and therefore as God appointed in the 27 of Numbers and the 11 verse, that the Father having no brethren, the inheritance was to be to the inheritance that was next to him of his family, who was counted residuum, a part, and the remaining part of himself, so the Civil Laws do in case of infancy or incomposure of minde appoint the care of the disabled person to his next kinsman, who is, as it were, sui residuum; and this being ordo juris, ought to be accounted antiqua solennitas.

Idem dico si est cognatus. Vivianus in Gloss. T. Jus digesti. lib. 2. tit. 14. p. 294. Cognati omnes dicuntur equalis juris. Synag. juris lib. 6 c. 13. ff. 12. Coniunguntur una massa, quilibet autem eorum residuum dicitur a massa. Grotius in locum. Lorinus in locum Digesti, lib. 3. tit. 5. p. 464. Gl. c.

Et ratio huius legis est, quia nullus tenerius, favorabiliusve alere infantem sataget, quam proximus de sanguine ejus.

This is the reason of the Law in custody of persons, as well as in conservation of goods. For as to goods preservation the Laws Civil commits the care and power to the next of kinn, because it will be thought they will best look to them that they be not wasted whose they are to be, in case of death or misfortune; so the person none are presumed more faithfully to love and keep then those that are of their blood and allyance, this surely is a rational conclusion, which from the beginning was as true as true could be; for in the simpler and less subdalous ages, as there were no vices so frequent and prodigious as now there are, so were there no deceits of trusts occasioned by them as now there are, such being culpa vitia, non natura, This is made good from that speech of Abraham to Lot, Let there be no difference between me and thee, and between my herdsmen and thy herdsmen, for we are brethren. Abraham as I believe referring to the Law of Nature, which forbade depredation on friends and neighbours, much more on brethren, who are one in blood and solicitous fidelity each to other; Yea, I am apt to think, that Cain making that reply to God, Am I my brothers keeper? had some self-accusation that overtook him and impeached him to his Conscience of sinning against that Law of love to and of a brother, which the strict ligament of that relation implyes. And certainly those passages in Saint Paul, Love the brotherhood, offend not thy brother for whom Christ died, cause not the weak brother to stumble, and those of Saint John, wherein he laies the law of love to the brother, do all lay load on this his obligation of tenderness to relations in the preservation of them and theirs from injury;

Ad proximiores primum deferuntur tutela a lege, quod bona tutius administrari nec melius conservari posse lex crediderit, quia ab eo qui, eadem ad se, suosque perventura aliquando speret. Tholoff. syntag. Juris lib. 12. cap. 6. ff. 9. Gen. 13. 8.

Gen. 4. 9.

Rom. 14. 1 Joh. c. 2. 3, & 4.

Tamen longe aliter de impuberum custodia statuunt leges Angliæ. Nam ibidem, si hereditas qua tenetur in socagio descendat impuberi ab aliquo agnatorum suorum, non erit impubes ille sub custodia alicujus agnatorum ejus, sed per ipsius cognatos, videlicet consanguineos ex parte matris, ipse regetur.

Because there was not as I conceive, when our Chancellour wrote, any villainage in England, nor any estates held in base tenure, except copyholds of inheritance be accounted such but much of the meane states in socage, that is, the service of the plough, therefore our Chancellour begins to shew how the Children of such being infants or otherwise incapable to order themselves and their estates, are by the Law cared for, to wit, the Lord of whom they hold such their estates, does grant over the custody of the body of the heir of the deceased socager, to his next of kinn that cannot inherit. For all lands being derived from the Crown, as the great Tenures called Tainlands, were in the hands of the Nobles and Gentry, who held them in escuage or other military tenures, and attended the Kings in their Warrs; so the lesser ones named Reevelands were held in socage; And the heirs of them when impuberis, that is, within fourteen years if male, or twelve if female, if they be not given by will of their father, or delivered by him in his life time to any particular person

Cook 1. Instit. p. 86. Bracton lib. 2. c. 77. Glanvil lib. 7. c. 9 & 11. lib. 9. c. 4. Fleta lib. 1. c. 8. lib. 3. c. 14. 16. 4. & 5. Phil. & Mary c. 8. Pre. amble.

1. I. lit. on Lictet in. p. 86.

P. 88.

*Nunquam remanebit aliquis in custodia alicujus de quo haberi possit suspicio, quod velit jus clamare in ipsa hereditate*  
Bracton lib. 2.

p. 87.  
Fleta lib. 1. c. 9.  
Glanvil. lib. 7.  
c. 11.

*A friend that is near, is better than a brother that is far off*

*Theatr. vita humana p. 1646.*

*Idem p. 2374.  
2375. 3406.  
Josephus Antiq. lib. 15. c. 15.*

*In Hist. R. 3.  
Impress. Lovanii.*

*Sive id inscitia saltum sine fato, agnus certe consul- to in lupi fidem creditus est. Idem p. 403.*

son whom the Father selects to that trust, shall be in the custody of the *prochein amy a que le heritage ne poet descendre* saith *Littleton*. For the Law intending the preservation and good nurture of the Child, commits it to them that have great interest of love, though none of estate, in case of the failure of the Child, well knowing, that occasion often makes the thief, and that many an one had not been so bad as he was, had he not been trusted farther then he ought. To prevent which danger of treachery for advantage, the Law concludes, *That no heir shall remain in the custody of him, that there is any suspicion of his claims to the heirs estate*, which they of the Mothers side not being, the commitment shall be to the next of kinn on the Mothers side, to whom the inheritance cannot descend. And our text adds the reason, which is the reason of all ancient books; To commit the custody of a Child to him that is next to succeed to the inheritance after him, is to commit the *sheepe to the wolf* who is readier to worry then cherish it, and who secures no further then he may preserve it; from others to make it become a prey for himself. Now the law in this is not more jealous then wise, nor more vigilant then rational; for there no greater villainies have been acted in the world then those who from hopes to gain by their successes have been encouraged to act them, *This is the heir less kil him that the inheritance may be ours*, was the cursed combination of the evil terre-tenants in the Gospel parable, nor are any acts of truculency more transcendently horrible then those that have been acted by, or connived at by relations of blood and kindred; Were not *Cain* and *Abel* brothers, yet *Cain* who should have been his brothers keeper was his butcher? So *Esau* and *Jacob* were uterine brothers, yet none more malicious against plain and downright *Jacob* then his surly brother *Esau*, The brethren of *Joseph* were *Josephs* sellers to strange Merchants, which was intentional murder in them; because they would have *Joseph* out of the way, who was more beloved of their common father then they were. And who considers that not only falsehoods in friendships but even in brother-hoods are frequent, and that it was *Reuben* who vitiated his Fathers Concubines, and *Absalom* that intruded his Fathers Throne, and *Amnon* that stuprated his own Sister, and *Zimri* that slew his Master, will conclude, *that mens enemies are often those of their own house*; nor shall men readilyer finde greater fallacies, and more real ruines from any then from false Brothers, and perfidious Uncles, the confirmation of which *Zuinger* has collected in the instances of *Danau* to his brother *Egyptus*, *Xerxes* to *Mastises*, *Horatius Romanus* to *Curatius*, *Atila* to *Buda*, *Vitiosa* to *Theofred*, *Gondebald* to *Childeric*, *Perinus Fregose* to his brother *Nicholas* with many others, but above all, the enmity of *Zaringensis* Prince of *Carinthia* to his kindred, is notable, which he dying expressed by *willing that all his plate, jewels, and utensils of worth might be gathered together to provoke his Kindred to fight, and slay one another about the obtaining of it*, to which *Josephus* adds the story of *Ptolomy* Governour of *Jericho*, who that he might reign, slew his brother-in-law with his two sons; I could instance in many more, but none of them are more pregnant to confirm the rational and prudent severity of our Law in committing the custody of heires to those that after them cannot inherit, then the examples of perfidie, that first occasioned the Law so to be; for undoubtedly there were presidents of this mischief before this remedy of it was found out and prescribed, since *ex malis moribus bona leges nascuntur*, and the Law willing to provide safety for those that cannot provide for themselves, nor ought to be sacrifices to their keepers voracity, established this prudent reserve, to prevent that effect of ambition and covetousness which ends in murder of innocence and intrusion into their rights, witness that bloody *Richard* the third, whom, *Sir Thomas Moor* anatomizes to be *versipellis, iracundus, invidus, semperque etiam ante partum pravus*, This Uncle, who could be light and grave, pensive and pleasant, *rageful and milde, religious and prophane, as he saw his projects were best accomodated by his ambidextrallity*, This monster of Guardians, whose very exsecration from his Mothers belly portended that somewhat he would prodigiously act in his life. This, This crafty and bloody Uncle cogs his two Nephews into his custody, as one that had a parents love for them, when God knows he all the while intended their murder and his own enthronization, which, though the mother of those royal babes foresaw, and did as much as a prudent foresight, and a motherly affection could do to prevent, yet was not prevalent to effect it; but the Protectour (for so the Uncle was) first got possession of them, then slayes them, then secures all their loyal friends, from whom he

he dreaded trouble, and at last ascends the Throne; Which nefarious fact ratifies the reason of the Law, to commit the heir to none that by the miscarriage of it can possibly inherit, but to the next kindred of the contrary side, who may be presumed to have affection enough to perform a trust, and not any temptation from advantage arising to him to forfeit and betray it.

*Sed si hereditas illa non in focagio, sed teneatur per servitium militare, tunc per leges terra illius, infans ipse & hereditas ejus, non per agnatos neque per cognatos, sed per dominum feodi illius custodientur, quousque ipse fuerit aetatis viginti & unius annorum.*

This is added to shew, that as there are men of arts and arms in every Nation, so there are tenures and services by which these men hold lands in order to peace and warr, arts and arms; having therefore in the former clause declared, how the infants of focagers, which are men of the plough and plain, are secured during their minority, he proceeds to evidence, how the infants of the more noble Tenurers, who hold by military service are provided for, and those he sayes are to be kept by the Lords of the fees, of whom they hold their estates, and to whose persons they in warr, when able, are to do service.

*Per servitium militare* ] Here the Chancellour passes over lands held by Homage Ancestrel, because, though the custody is the same with those in Escuage and Serjeantry, which are the military services here, yet perhaps there was at the time of our Chancellours writing little land held by Homage Ancestrel, both Lords and Tenants altering and changing, and the land not continuing in the blood of Lords and Tenants as by the precise nature and rule of that tenure ought. And thereupon the Chancellour takes notice onely of such tenures as were in being, concerning the custody of the infants of which, is most pertinent to his purpose, and those are Escuage and Grand-serjeantry, or Knight service, this *Littleton* defines thus. *Tenure per grand serjeantie est lou an home tient ses terres ou tenements de nostre Seignieur le Roy, &c.* On this Sir *Edward Cook* has largely written, and made good in himself, what in another place he writ of Sir *William Herle*, Chief Justice to E. 3. the words are, *This our student shall observe that the knowledge of the Law is like a deep well, out of whichevery man draweth according to the strength of his understanding, He that reacheth deepest, he seeth the amiable and admirable secrets of the Law*, Thus he, which truly I think he himself made good in his Commentary on the 95 sect. of *Littleton*, therefore to him I shall refer the Reader, and to the *Stat. of 9 H. 3. c. 27. 28. E. 1. 17. E. 2. c. 2. 3 Instit. p. 44.* To these *militaria servitia* then as attendancies on the King in his wars, the Text sayes, the heir of the tenants shall be committed *domino feodi* ] till he be 21 years old, which is the age of livery and manhood, or full age, so *9. H. 3. c. 4. 52. H. 3. c. 6. 3. E. 1. c. 21, 22; 47. 13. E. 1. c. 7. 14. E. 3. c. 13.* direct, and so has been the Law I think till of late the Court of *Wards*, and all the priviledges and effects of it was by our now gracious Sovereign taken (a) away, so that now all the military tenures as to marriage and relief are void; and the custody now I suppose is to follow the course of focage tenures *proximis de eorum sanguine* ] unless the ancestour shall otherwise will or deliver in his life time his heir to any person he has a great trust in; for then I think, the Lord of the fee upon petition is to grant it to that person, none being more prudent, in the presumption of reason, to judge of the fitness of a Guardian for a childe, then the father of the childe. And thus wardships, which Mr. *Selden* sayes, were before the Conquest, or at least contemporary with it, as appears by the authority he quotes against *Higdens* supposed contrary assertion, determine, notwithstanding they were instituted *ut clientes perpetua patronorum protectione defenderentur, ac vicissim eos omni obsequio colerent*, as *Oldendorpius, Craig, Cujacius*, and all the feudists agree, and hereupon though I might take occasion to pass over this Chapter, because the Law and usage in it is by the late Act of Parliament in a great measure, if not wholly obsoleted, yet I shall shortly descant on it, because somewhat not unworthy the Readers entertainment may perhaps be culled from it.

*Escuagia a scuto quo militare dicuntur, Bracton lib. 2. c. 36. feutagium dicitur quod talis praestatio pertinet ad scutum quod assumitur, & servitium militare dicitur, lib. 1. c. 14. Littleton sect. 153. Cook l. 1. c. 8. p. 68, 69. Entitled the Statute of Wards and reliefs.*

(a) Statute of 12. Car. 2. c. 24.

*Notes on c. 44. p. 51. Titles honours p. 692, 693.*

Tholoff. Syntag.  
Juris, lib. 15 c.  
28. ff. 5.  
Brechtius & For-  
net. ad Leg. 217.  
p. 472 de verb. sig.  
Cic. 1. De In-  
vent. 5.  
Ipsam Scipionem  
accepimus non in-  
fantem fuisse Cic.  
de claris. Orat. 38.  
Ennead. 1. lib. 6.  
p. 52.

Neminem excelsi ingenii virum sordida  
delectant & humilia, magnarum rerum spe-  
cies ad se vocat & extollit, noster animus  
in motu est, eo mobilior & actuosior, quo  
vehementior fuerit. Senec. Ep. 39.

Desperxit illum, quod non bellicosus vir,  
& pugnis assuetus; nam cernebat illum  
juvenem rubicundum & pulchro aspectu,  
quales martiales homines esse non solent,  
quales radii solares & assidua defatigatio  
deformis reddunt. Clarius in 1 Sam. 17.  
v. 33.

Romana Militia mos suis puberes primo  
exerceri armis, nam decimo sexto anno  
militabant, quo etiam solo sub custodiis  
agebant. Servius in 5 Aeneid.

Turnebus Advers. lib. 26. cap. 22. p.  
984.

[*Quis putas Infantem talem.*] Therefore the Law committed the Heir to custody, because he was *Infans*, a state of helplessness, *ab In*, *επρηκνῶ*, & *fando*, one unable to tell its own wants, or judge what is good for its self. This is not onely *tempus cum fari possit*, which is about the seventh year, but also by our Lawes to a greater proportion, and that not in inheritances onely, but in other cases; therefore *Infantes* and *Inspicientes* are ranked together and opposed *magnis & disertis viris*, and *Infans* in the Orator is taken *pro non facundo*, *Orationis facultate destituito*: consideration then being had to Infancy as *Ἀνοσοῦ το προυνός*, &c. A kinde of *informing* capable to take *whatever art and use impresses on it and fits it to*, as Plotinus his words are, there was good reason that *infans talis*, who was *ratione tenure* to do military service, should be educated in *actibus bellicis* ]

Indeed naturally in masculine children there is an inclination to many things, which is the reason that whereas females delight in babies, clouts, and such like toys, boyes are pleased with Drums and Daggers, Swords and Pikes, with Tops and Balls, with running and swimming, all manly exercises, yea and the horse youths mightily delight in; now if this proclivity be furthered by custome and education, it by the assuescency to, causes a delight in and an attainment of the skill of it to perfection. For Souldiers are not expected to be neat and clear-skin'd, but robust and hardy, such as are harrassed and adusted by continual hardships; which *David* not being, but seeming to *Goliath* to be a youth tenderly and delicately to be brought up, was contemned by him: to prevent which the *Romans* took a care to educate their *Puberes* martially, and to place them under Tutours to be disciplined accordingly, which *Servius* and *Turnebus* specially remember us of, so did the *Germans*, and so did we ever; which because the Gentry were best able to instruct men in, as being men not onely *gladio cincti*, but *gladio dediti*, there-

fore had they the education of their young Tenants, as those that could and would *melius instruere eos* ] because as they were *hardy, valiant, and loyal*, so were their Lords whom they attended in warr better defended, and brought off with honour and safety. Which brings to my memory that story of the Lord *Audley's* four Esquires, who attending their Lord in the black Prince his Warrs in *France*, were rewarded with the 400. Mark a year, which the *Black Prince* rewarded the Lord *Audley* with, and that with this further testimony from him, *That they having right-valiantly defended him, deserved, what he had presented him, so have given them.*

[*Et qui majoris potentie & honoris astimatur.*] This is written to shew that the Law judged the Lord meetest to have the custody and education of his servants; who must when he is able personally attend him, because his Lord best knows how to breed him, and is probable least to injure him; for his Lord having a great estate has not the temptation thereto, as in a minuter fortune is more urgent: yet this rule is not so general but there are many flaws to be found in it, and so notorious have the abuses of Wardships and Marriages been, that our Gracious King, as I said before, has quitted them by an Act of 12. c. 24.

*Et quid utilius est infanti, qui vitam & omnia sua periculis bellicis exponet, quam in militia, arcubusque bellicis imbui.*

Digest. lib. 13. tit. 4. p. 1383. & lib. 8.  
tit. 6. p. 1030.

Lib. 20. tit. 1. p. 1508.

Egregium virtutis apud vos officium est.  
voluptates praeferre. lib. De beata vita.

Inbebat eos qui audiebant pillam in Ta-  
bula voluptatem pulcherrimo vestitu & or-  
natu regali in solo sedentem, &c. Cic. 2.  
De Finibus. De Cleanthe.

'Tis true there is nothing more *profitable and efficacious*, for so the learned explain and joyn them, then for any childe to be trained up in his youth to that which in manhood he must practise; for that being facile and habitual to him, causes with his delight, an acquirement of excellency in it. Hence proceeds that which *Seneca* sayes of the *Epirazans*, *Whose discipline made them virtuous by a pregustration and fore-contemplation of the pleasure of it*, for when they intend their mindes on Warr, *They do, as Cleanthes sayes, fancy victory in all the angustness of it coming towards them, and discard fear, as beneath the aspiration of their courage and constancy, and sedate*  
and



and exterminate those pests of youth (*vanitas, aegrotia, superbia, &c.*) vice, unsettledness, mildness, which are in the (a) Philosophers opinion, the murr and cancrs of all their hoped for improvement; for, since youth is the time of desire, and is spent most in travel and observation, what is then treasured up, grows dear and natural to men; for the Philosopher observes well, that Experience makes wisdom, which youth wanting (for *μηδ' οὐδ' ἄνθρωπος ποιεῖται τὴν ἐμπειρίαν*, as his words are) use teaching perfection, and use being learned by time to accustom a child to manly things, is the onely way to make him manly when a man. And this, had it been more the method of those to whom Wards were granted, that they had done as they ought, (brought up young Wards to Heroique and Brave Sports, and Feats of Arms, by which their mindes employed, would have been more fixed on manly things, and more averse to vice and effeminacies, which are the Hell of youth, and disarray them of all hopes of future perfection) there would never have been such a Party in the Nation, and those of the Gentry, against Wardships, but still they might have continued; but when favourites coveted them, not to breed them up bravely and martially, and to make them as *Arminius in Paternulus, Noble in minde, valiant in person, quick in action, prompt in design*, but to get their estates, and marry their persons to their disparagement, or at least contrary to their fancies and delights, what could be more the abuse of a brave institution then this was? For though I know there is nothing but is abusable, and if abuses in things should alwayes occasion the amotion of them, nothing, though never so good, would continue, as *Gassendus* has learnedly observed in the life of *Epicurus*: yet I cannot but confesse, abuse in this, which so often ruined noble youth both fortunarily and personally, is upon occasion just enough punished by determination.

(a) *Ethic. c. 1.*

*Οὐ περὶ τὰ ἄνθρωποι ἐπιθυμοῦσι πικρῶς, lib. 2. Rhetoric. c. 12.*

6 *Ethic. c. 10.*

*Ἐπιπορῆς γὰρ ἐπιθυμοῦμεν, ὁ νεότης, ἢ δευτέρως ἐπιπορῆς πικρῶς lib. 2. Rhetor. c. 12.*

*Alexus & Phyliscus Pseudo-Epicurai Roma pulsi, quod essent turpium voluptatum adolescentibus Antores. Alian. lib. 9. c. 21.*

*Gassendus lib. 3. c. 4. De vita & moribus Epicuri. Tom. 5. Oper.*

*Juvenis genere nobilis, manu fortis, sensu celer, ultra Barbarum promptus ingenio. Paternulus Hist. lib. 2. p. 72. Edit. Lipsii.*

*Tom. 5. Oper. lib. 8. c. 5. De vita Epicuri.*

*Et revera non minime erit Regno accommodum, ut incola ejus sint in armis experti.*

This is not to be denied, the Common Lawes enjoin this: for in the Confessor's Lawes 'tis thus said, *All free men ought to have Arms according to their condition and tenure, and to keep them alwayes in Kelter and ready to defend their King and his Kingdom at the service of the Lords, to whom they are to attend in the Warrs, when the King shall summon them, and so in the Lawes of the Conquerour 'tis said, We enact and establish, That every Earl, Baron, Knight, Esquire, and all other Freemen of our Kingdom, have and keep in readyness their Horses and Arms, as becomes their quality and degree; and that they be alwayes ready to serve us whenever our necessities shall put us upon commanding their assistance and service: so have later Statutes declared and enjoyned, viz. 7 E. 1. 13. E. 1. c. 6. 1 E. 3. c. 6. And the custom of the Nation to train the free-holders and them to discipline, declares it, that it has ever been held *accommodum Regno*, that the *Incola Regni* should be in *Armis experti*.] And thus they ever have been, and ever I hope will be to defend their King and his Lawes, which they will boldlyest and best doe, when they do not fight at random and in confusion, but according to method; for that is true Philosophy which our Text here quotes, *Quilibet facit audacter, quod se scire ipse non diffidit*, which though some practices confute, yet the rule in the main abides, and so the Chancellour concludes this Chapter.*

*Debet enim universi liberi homines, &c. secundum secundum suum & secundum tenementa sua arma habere, & illa semper prompta conservare ad tuitionem Regni & servitium Domini Regis juxta preceptum Domini Regis explendum & peragendum. Lambard. p. 135. E Saxoni.*

*Statuimus & firmiter precipimus, ut omnes Comites & Barones & Milites & Servientes & universi liberi homines totius Regni nostri predicti, habeant & teneant se semper in armis & in equis, ut deceat & oportet. Sec Inter Leges Will. 1. Edit. Twiss.*

*Gassend. Tom. 3. lib. 1. Exercit. Paradoxorum.*

## CHAP. XLV.

Princeps ] Immo Cancellarie Legem hanc, &c.

HERE the Chancellour obtains from the personated Prince, a concession in behalf of the Laws of England, that they do wisely provide for the care and custody of Orphans and their fortunes, and especially of that *nobilium progenies* whom he terms so provided for, that *de facili degenerari non potest*. Now though the prime and efficacious prevention of degeneration, is the merciful act of omnipotence, w<sup>ch</sup> onely can put bounds to natures insolence, and w<sup>ch</sup> alone can shore up its declension from its central rectitude; yet wise and wary lawes are great helps and advantages thereto, not onely as they discover the turpitudes of straying from the good old way, but as they punish such strayings with disfavour & terrour. Therefore the law & custome of England, looks up-

Legē Theodorici in Orationibus de Provident. Tom. 4. Operum

*Non a mens omnibus patet, omnes ad hoc sumus nobiles, animus facit nobilem, cui ex quacunque conditione supra fortunam licet surgere. Seneca Ep. 44.*

*Neminem despexeris, etiamsi circa illum obsoleta sunt nomina. & parum indulgentē adpui fortunā, siue libertini apud vos habitur siue serui siue calcearum gentium homines. Ergo te audacter animas, & quicquid in medio stratis jacet, transilite: expectat vos in summa magna nobilitas. Lib. 3. de beneficiis.*

(a) Cicaricum autē deformitatis nullā firāstīmatio lib. 6. ad Edict. Provinc. c. 7.

Digest. lib. 9. tit. 3. de noxalibus actionibus p. 1098.

(b) Degener est qui patrii vel majorum suorum moribus non respondit, in 2. Æneid. Juvenis patrii non degener eris Ovid. 3. de Ponto.

Cic. lib. de Provid. Pro Flacco. Cic. 1. Divinat.

Plin. lib. 5. c. 8. Proles non degener Senec. Agamem. 5. 15

on the *nobilium progenies*, as the young nobility, not only in the sense Seneca writes of; *A brave minde becomes every one, and by this we are all noble, the minde makes the Nobleman, by which a virtuous soul will be great in meanness, and free in restraint and bondage*; but as they are successours of the Peerage of England, and so presumed to be *ad virtutem bene à natura compositi*. These that have from the examples of their ancestours, and the rewards thereof, such excitations; cannot but be roused up to great actions, at least, *non facile degenerari possunt*; for degeneration is *à genere decedere*, to become mungrel and rascal; and as there is *no value to be made of excrements and deformity*, according to that rule of Gajus, (a) so is there no honour due upon any account to degeneration *quā* such, and therefore, as the Countrey-man is said to degenerate, who doth *deponere rastro ut sequetur castra*, and the childe to degenerate, when according to Servius (b) *he doth not appear like to, and worthy of his parents* so is the Nobleman said to degenerate, when he does not take in noble principles, and evidence them in noble practices. Hence is it that all defects from notable originals proposed, after which generous copies should be taken, are termed *degeneratione*. Statius tells us of *degener alta virtutis patrum*, and Tacitus of *insidia degeneres*; and Pliny of *degener humani ritus*; and *degenerare in feritatem*; and Tully of *degenerare à gravitate paterna, à perenni constitutaque virtute morum, à secta vel Doctore aliquo degenerare*. All which confirm, that where so notable helps to virtue are, to accept and improve them is *non facile degenerari potest nobilium progenies*. ]

*Sed probitate potius, strenuitate, & morum honestate antecessores suos ipsa transcendes,*

Of Probity, see the notes on the two and twentieth Chapter, to which I add (\*) *Ficinus his note, That Probity consists in likeness to God the onely rule of excellency, and in conforming the life to that intellect that he has endowed man with, as the conduct of him in all his worthy and wise actions, which God onely wil reward and accept; for this, Hee, that is, one simple being, looks upon, as a sincere act of the intellect, leading to a plain and uncompounded action of virtue and integrity, which being delightful to God, to whose pure nature it is a present, he rewards with approbation and credit with men, in regard of which 'tis termed probity* ] which is such a tincture of the whole man with goodness; that it will stir a man up to doe, as *Probus* is reported to doe, *excellent things with pleasure*

(\*) *Illud esse præcipue probum in quo vires imaginationis rationisque prorsus intellectum formata sunt, adeo ut tota vita secundum intelligentiam peragatur, ubi non vita præstet Damon aliquis, sed ipse Deus, & scilicet divinus intellectus, cum intellectualis unitas qua est intelligentia quasi auriga caput &c. In 3. Enchirid. Plot. lib. 4. c. 5. p. 282.*

and

and delight, as he is said to build 70 Cities and dispose of the Empire wisely, that little time he reigned, which was but 7 years, and therefore to be favoured of the Gods, whom though they suffered to be afflicted, yet they so far succoured that they made all his Traitors miserable. So that this Probity, is that ballast and temper of the minde, which keeps a man from evil, by a propitiousness of mediocrity, which it insinuates, and thereby guards from all engagement in; or pursuit of unreasonable and licentious things, which Seneca calls a sempiternal happiness, and a transgression of life without any snare or discomposure, so that a man knows not what the black & passionate misery of nature and life means. 'Tis a rare attainment to be thus adorn'd, the merchandise of this virtue is better then the merchandise of gold; for it makes us active non malitia, sed virtutis impulsu & imperio, and swaves us to follow what is good purely for that goodsake which is an ample Theatre to it self, and a sufficient reward to its practicer. Which, though debauched mindes, as Messalina's was, think silly and madness of pusillity of spirit; yet will be honourably monumental to its patrons and clients, when their turpitude will render them infamous. Therefore Numerianus though but a scholemaster by profession, yet sent by Severus, General into France, deserved, and obtained great honour from Severus; for he did not onely διαμασα, sending the Emperour great sums of money, but also did like a just and a worthy servant, impart honest and prudent counsel to him, and when his Master would have given him ample honours, he refused them, and betook himself to a mean country domicil, and smal pittance, which Severus day by day allowed him. Here's probity tuitive of innocence, wch will make a man not only not covet great things for himself, with the injury of others, but perform all his actions in aspero & probo as I may so say, that is, spotlessly and without blemish, pay the age and time a man lives in, the debt of his parts and talents which God has lent him to serve his glory and their good with, ἐν δειραίοις ἰδύοις, in aspers, not in reviles, but in currant and beautious coyn, not onely in that which is intrinsiquely valuable, but that also which is outwardly grateful, probato opere & approbato, that is, recte & probe consummatum se prabere, as Budæus appositely out of Tully: So that by probitate, Our Text means, a rectitude of inclination, disposing a man to do every thing squarely and above-board as if all the eyes of Men and Angels were upon him.

Ἐδεδυκόμην πόλεως ἀναστάσεως ἐν ἑσθέραις ἐν ταυτοῖς ἐπιπέδῳ, καὶ πολλὰ πᾶν σωφρονέως διοκονομῶν. Juliani Aug. Cæsius in Probo. Edit. Cantocleri Tom. 3. Rom. Aug. script. Græc. minorum p. 837.

Semper esse felicem; & sine morsu animi velle transire vitam, ignorare est rerum nature alteram partem. 4. de Providentia.

Honestum propter nullam aliam causam quam propter usum sequimur. Seneca 4. Benefic. c. 9.

Ἦδη γὰρ καὶ ἐπὶ οὐκίμῳ ἐν τῷ παλατίῳ αὐτῆς τε ἐκαστίζετο, καὶ τὰς ἀλλὰς τὰς πρώτας ἐκαστίζεν. Dion Cass. lib. 60. p. 686.

Οὐκ ἠδέλησεν, ἀλλὰ ἐν ἀρχῇ πνευματικῶν, ἐφ' ἡμέραν λαμβάνων παρ' αὐτῆς δεξίῳ; Idem in Severo p. 851.

Ἀσπίζων, idem quod τὸ λυκαί- vesq; Lipsius in 19. Epist. Sever. In Pandect. reliq. p. 234. Edit. Vascof.

Est enim approbare, efficere ut probum, rectumque judicetur, id quod quis facit vel dicit. Cic. in Verrem.

**Strenuitate** ] This points out to that specific endowment which God gives virtue, Boldness and undauntedness in pursuit of that which is good, and this seems to be the native honour of every thing that's English, that it it is not discouraged by repulses; but persues its end, aut vincere aut mori. For, as our horses will not faint at a tug, but draw many and many repeated pulls at a living tree, which they cannot stir, and loose their eyes rather than discover coole mettle; and our dogs are so bold and braving, that they will fasten upon a Lyon once and again, and never be drawn off but by violence, nor yet easily by that, but will come on a fresh, as often as they are let loose; witness that dog of the Lord Buckhursts, who, before the French King in one day, alone, without any help, first pulled down a huge Bear; then a Pard, and last of all a Lyon: so our souldiers are no viri cervini, but strenuous and daring beyond any others. Fortissimi viri & milites strenuissimi as Plinius words are; not onely strenuous, as strenuus is accompanied with acer and dirus, but as it is explained by cita and celeris; as they are resolved, and dispute not of the danger; but conclude the action, be the hazard what it will, δραστήριοι ἐς τὰ πάντα. Prompt to all performancies, as the Historian says of some, when he opposes τὸ δραστήριον, τὸ τῶν πραγμάτων, vigorous alliveness; to supine lazyness. This strenuity then is the proof of souldiers, and as the Lawes Civil gives to fruitful matrons more priviledges, both alive and dead, then they did to barren ones (cujus honoratis ossa ve-

Fowels de- script. of England. p. 231 Adag. Chil. 2. Cent. 7. p. 635. Lib. 10. c. 5. Lib. 4. Thecydes. Idem lib. 2. Ἐστρατιῶν ἀθ- λῶν, pro- latio as acciperentur vel accuserentur. Turneb. ad- vers. lib. 16. c. 12. p. 533.

hantur Equis) so did they attribute more to strenuous souldiers then to spiritless ones; for though I know strenuity as an influence of the stars, which are boasted by Astrologers to convey to men fortitude of minde and *Herculean* efficacy, be but fabulous and nugatory, I mean, as to the necessary influence of them, which *Picus Mirandula* makes good against them: yet do I confess, that strenuity (arising from a natural vigour, alloyed and debased by no guilt or vice) is a very great virtue in a Souldier. And this our Text sayes the breeding of young Heirs under their Lords, the Nobles, did arrive them at.

In Apol. lib. 4.  
c. 9. p. 364. &  
lib. 3. c. 13.

Ποῖον τὸ αἰ-  
ρεσι μὴ μίμ-  
νεῖ. Plato in  
Protagor. p.  
240.

Ἄλλὰ μοι ἕξ-  
αρκοῖ ἀνὴρ ἢ μί-  
σος ἢ μισθὸν  
κακῶν πρῶτον.

Idem.

1 Rhetoric. c. 9.  
1 Moral. c. 19.  
Non quicquid  
mortale est, bonis  
mores facit. Sc-  
nec. Ep. 122.  
Ad Attic. lib. 7.  
1 Offic.  
Pro Muzana.

1 Offic. c. 8.  
Lib. 3. c. 4. 19.  
Ἐλπίεις αἰ-  
μὴ καὶ φίλος πρὸς  
Θεῶν, &c. En-  
chyrid. lib. 4.  
c. 2. p. 380.

Philostratus in  
vita Apollonii.  
lib. 4. c. 10. p.  
190.

*Honestate morum*] By this I think the Chancellour intends *Fair condition and civil deportment*, that kindeness and truth of conversation which excludes all elation and falsehood, and abhors mixtures of fraud and levity with that which seems amiable and worthy in men. This *Plato* is so precise in, *That though he expects not men should be irreprehensible, yet he would have them that would be accounted honest to do no evil premeditatedly, and for the once as we say.* This *Honesty* the *Philosopher* calls, τὸ δίκαιον καλόν, the good of justice, καὶ νίκην καὶ τιμὴν τῶν καλῶν, the victory and honour of all good men and good things, ὑπερβολὴ ἀρετῆς, the utmost procedure of virtue, beyond which nothing by man can be acted here on earth. This *Pleonasm* to the honour of *Honesty*, the *Moralist* gives the reason of, 'Tis no mortal Principle that moves to *Honesty* of manners, but a consideration of God above, and conscience within and men without, all Supervisors or Judges of our Behaviours. Upon this ground the Ancients mate the most noble virtues and rewards with *Honestas*, *Tully* joyns *Dignitas* with *Honestas*, and writes of *Honestatem & decus conservare*, and *Honestatibus partis & omni dignitate privare*; thus *Honestas dicta, honestus dies, honesta virgo, honesta forma, honesto loco natus, honesta arma, honesti exitus, nomen honestum, mors honesta*, are so frequent to express the best of excellencies by, that there is no doubt but our Chancellour by *morum honestate*] means the best and most unspotted accomplishments of generousness, blamelessness of life, and exemplarity of conversation, *Honestas turpitudini vita contraria*, as *Tully* and *Quintilian* often mention them. This *Saint Paul* calls *walking circumspectly and inoffensively*, and *Epietetus*, *A freedom and friendship with God, which (saith he) God expects I should walk worthy of; for he has not given me in charge adorning my body, or getting a great estate, or an honourable fame, but he has commanded me upon the penalty of his disfavour and his abhorrence and rejection of me, to be sober and solid, to live orderly and conform to the moral Dictates of reason, avoiding all turpitude as the disluster of his image in me.* Indeed, next to that we *Christians* call *Grace*, this *Honesty* of manners is to be valued and endeavoured; for it not onely keeps from every extreme, but carries on and continues in such a direct line of mediocrity, as is glorious to behold and imitate: and therefore is so much the more to be pressed on great men, because they are so apt to love and practise licentiousness, and are by it so influential to mislead the meaner sort, that without it prevail over them, all good Virtue and Order is like to be discarded the World. For my part, I think sobriety and civility of Manners and Garb the great Ornament of Nobility and Gentry, and conclude, as *Apollonius Tyanus* did of *Sparta*, *They doe, ἐργουμένην δεξάου, &c. extend their glory to the Heavens by it, and in the failer of it, Eclipse and drown them, ἢ ἐν τῇ θαλάττῃ μόνον ἀλλὰ καὶ ἐν τῇ γῆ, not onely in the Sea but on the Land.* The consideration of which made *Pliny*, that grave Author, brand the *Aedility* of *Marcus Scaurus*, with mischief to the Commonwealth, because it introduced new toys into it, to the dishonour and abolition of the old fashions and manners. This evil to avoid, *Probity*, *Strenuity*, and *Honesty* of Manners will instruct, while it prefers to men of bloud and honour self-denial of vicious appetites, courage in virtuous undertakings, and exactness and veracity in demeanours and dealings. This is to become *A man without welt or gard, the same he seems to be*, and this is the noblest end of generous education. And this our Chancellour sayes young Lords and Gentlemen are probabler to have abroad then at home, and in the Lord's Houses rather then in their father's house, because 'tis *Alior nobiliorque Curia, &c.*

*Antecessores suos ipsa transcendet, dum in altiori, nobiliorique Curia quam in domo parentum illa sit imbuta, &c.*

The sense of these words is, That as every youth is presumed to excell as his opportunities to excellency are more and meetter to that end, so every age and succession of education gives being to somewhat of additional accomplishment which precedent times and breedings did not; for as the World grows older in time, so the men of it grow quicker in invention and more dextrous in action, and thence facilitate more and more that, which but for their discoveries, would be difficult and immethodique. This is the sense, as I conceive, of this clause, upon the ground-work of which the Chancellour raises a lofty rooff of prospect upon the houses of Noblemen in his time, which as they were *Curia* for the multitudes of frequenters to them, so were *Nobiles altioresque* by the great entertainments both for activity, fashion, and feasting in them beyond what was in the houses of the Gentry; for of old, before and in *Hen. 6.* time, the state of the Baronage was great, and *They were attended not with few but many, not airy and pigmy, but sad and proper servants, well-clad, well-manur'd, well-fortun'd, well-treated. The Majesty of England was seen in every appearance of Nobility, in the Garb, in the Train, in the Table, in the Solemnities, in the Officers, in the Recreations of their Houses, all Arts, Arms, Exercises, Pleasures being there so ordered, that the young fry of both Sexes, thither sent and there accepted to be bred, came away made-Persons as to all their after-lustre, and owed all the after-eminency of their lives to the acquirements of those Houses, which the Text calls, Nobiliores altioresque Curia* then their fathers houses were. But the times being altered and the Methods of Houses transformed, the Gentry's children now find their fathers houses their best and safest residence, and from it obtain the best and onely preferment.

*Actiones nostras, nec parva sine nec audaces nec improba, lib. 3. de Ira. Hinc Lipsius, Nec viles minutasque esse actiones nostras vult, incultas nimis, & audaces, media sequamur. In Comment. 64. sect. c. 7. p. 601.*

*Note this. Sequuntur à conversantibus mores & ut quadam in conspectu corporis vitia transilunt, ita animus malis suis proximum tradit. Senec. lib. 3. de Ira. p. 590.*

*Principes quoque Regni sub hac Lege regulati, similiter & Domini alii à Rege immediatè tenentes, non possunt de levi in ruditatem lasciviamque labi.*

As the mean Lords hold of the Chief Lord, so the Chief of *their Chief the King*; and as the heirs of these were during their impuberty, educated in the houses of their Lords, and thereby taught to love and serve them according to the condition of their Tenures and their native degree: so the Noble youth, *Principes Regni*, the young Lords and Barons, during their Minority, were trained up in the King's Court, as the properest Schoole of Virtue, Prowess, and Heroique demeanour; for as soft rayment is for Princes Courts, so are all noble qualities best becoming it, and best learned from the virtue and variety of the displayes of them in it. For suppose a Court (such as *The Solomon of Kings, the First of his Name over England*, sets it forth) lustrous in a Prince and Chief, who doth, as he adviseth, *Remember, that as in dignity he hath erected you above others, so ought ye in thankfulness towards him go as farr beyond all others. A moate in anothers eye is a beam into yours, a blemish in another is a leprous bile into you, and a venial sin (as the Papists call it) in another is a great crime into you.* Suppose a Prince such therein as to use his words, *Let your own life be a Law-book and a Mirrour to your people, that therein they may read the practice of their own Lawes, and therein they may see by your Image what life they may lead, in the Government of your Court and Followers in all Godlyness and Virtue, in having your own minde decked so with all virtuous qualities, that therewith you may worthily rule your People.* And a little after, *As to the Government of your Court and Followers, King David sets down the best Precepts that any wise and Christian King can practise in that point; for as ye ought to have a great care for the ruling well of all your Subjects, so ought you to have a double care for the ruling well of your own Servants: Choose (for your service) those within age that are come of a good and virtuous Kinn, such as are come of a true and honest Race, and have not had the house, whereof they are descended, infected with falshood and treason. Delight to be served with men of the noblest blood that may*

*Ego autem (inquit Cicero) Nobilitatis vita vitæque mutato mores mutari civitatum puto, quo perniciosius de Republica merentur vitiosi summi in Civitatibus viri, quod non solum vitia concipiunt sed et infundunt in Civitatem; neque solum olunt, quod ipsi corrumpuntur, sed etiam quod corrumpunt, plusque exemplo quam peccatis nocent. Cic. lib. 3. de Legibus.*

*Budæus in Tandell. p. 97. B. Edit. Valscof. Sarisburiensis de Nugis Curialium, lib. 4. c. 4. 5. 9. 7. &c.*

*Basilic. Doron. 1. Book p. 148. of his works in fol.*

*2 Book. p. 166. 167.*

Book p. 169.

pag. 170.

\* Tom. 12. Bibliotheca Magnæ part. 2. p. 712. Epist. 14.

Chil. 4. Cent. 5. p. 1090.

Gaffendus To. 5. p. 478.

ἮΟΥΤῆ δὲ οὐκ ἔστιν ἄριστος ἢ τῆς ἡμετέρας. Aristophan. in Pluto.

Dion. Hist. lib. 48. p. 382, 507, 556.

Chil. 2. Cent. 6. p. 610.

Dion. lib. 48. p. 382.

13 Rich. 2. c. 3. Stamford's Pleas Crown. p. 38.

Vowels Descript. England. p. 197.

Magna Bibliotheca Patrum. Tom. 11. p. 101.

Alex. ab Alexan. lib. 2. c. 6. Zuinget Theatr. vit. hum. p. 1319. Luitprand Ticinensis lib. 6. c. 2.

may behad; for besides that their service shall breed you great good will and least envy, contrary to that of Start-ups, ye shall often finde virtine follow noble Races. And again, , Make your Court and Company to be a patern of Godlyness and all honest virtines to all the rest of the people, Be a dayly Watchman over your Servants that they obey your Lawes precisely; for how can your Lawes be kept in the Country, if they be broken at your ear, punishing the breach thereof in a Courtier more severely then in the person of any other of your Subjects, and above all, suffer none of them (by abusing their credit with you) to oppress or wrong any of your Subjects, &c. And shortly, maintain peace in your Court, banish envy, cherish modesty, banish debauched insolence, fester humility and repress pride; setting down such a comely and honourable Order in all points of your service, that when Strangers shall visit your Court, they may, with the Queen of Sheba, admire your wisdom in the glory of your House and comely order amongst your Servants. I say, imagine a Prince's Court, not like that Cornelius Agrippa mentions to his friend in those sarcastique and prophane words, *an non in Inferno es, amice, qui es in Aula ubi Damonum habitatio*, nor like that \* *Petrus Blefensis* writes of; but thus exemplary, thus resert with rare persons and religious practices, as this King proposed his Sons Court to be when he should come to it; Conclude this not an Utopia, or a display of Kingly wit and politique sagacity, but what really and truely his wisdom found out to be the Interest of Kings to make, and the Religion of Kings to keep their Courts such. What (when a Court is such and so ordered) can be a readier and more notable means to ingenerate and preserve virtue in youth then Education there, where they shall not take in good and grave Principles as they do, who do *Vappam biberere è lagenis*, but ingurgitate them freely as they do, who do *E dolio haurire*, who are (as we say) at the Well-head, ἐν θεῶν ἀρχῇ, encircled with every thing that is magnificent. I say, in a Court that is thus raryfied and sublimated, (that by the Elixar of Imperial Prudence is turned from tinn and course metal into pure gold, as *Frederic the Third*, King of *Denmark*, is reported to have made his Court) no miscarriage almost because no degeneration can be in *lasciviam rudisatemve de levi*] For the sobriety of such a Court keeps youth from luxury, and the state and fashion of it from rudeness. For though *Athens* were a place wherein there was so many Artists, that no one Artist was valued, which made him in the Tragedy cry out, *That there was no Reward in her, nor any Art flourished there*: Yet this *Domus Regia*] in the Text, called in other names, τὸ Βασιλείου and Παλάτιον, has Rewards and Encouragements for every conspicuity in its Courtiers, and they that compare any places to them, where nobly (and as of old) they were composed, does *Rosam cum anemona conferre*. For as Princes have no fellows in their Dominions, so have their Courts no fellows in the Priviledge and Magnificence of them; for besides that *κελευσία* that is given them abroad, our Lawes make them exempt from ordinary Jurisdiction, and offences done in them contrary to the sacredness of them highly punishable. If a man fight in the King's Court, the King being then and there present, he shall lose his right hand, and be for ever, during his life, imprisoned, and pay fine and ransom at the King's pleasure, which was like to have been the doom of *Sir Edmund Knevet* in Anno 1541, but that the King remitted it upon his humble submission and entreaty; for these Residencies of the King are accounted Honours by the Statute of 37 H. 8. c. 18. and it being against the Honour of the Sovereign of the Law to have his Lawes violated in his presence, the penalty of such Insolence is very severe: and those that make bold to brave and dishonour the order and sacredness of them, are wellcomed with a punishment remarkable. *Fulbertus* reads those words of *Psal. xxviii. Adorate Dominum in atrio sancto*, by *Colite eum in conscientia vestra mundissima*, and he gives the reason, *ipsa est enim Aula Regalis & habitatio Spiritus sancti*. And therefore all persons that approach the King's Court, as they are to be trimly habited, and to the elegantest proportion of their degree; so ought they there to demean themselves soberly and with civility, since Princes Courts are Paradises of pleasure and state, as might at large (if need were) be made good out of great and grave Authours: which is the reason the Chancellour here in the Text sayes, *Opulentiam, magnitudinemque illius collaudare*.

*Dum in ea Gymnasium supremum sit nobilitatis*] The Court of the King according to our Text, is not onely the sphere of riches and lustre, but the Academy of and

activity and manlines *Gymnasium nobilitatis*, sayes our Maller. Now *Gymnasium* was the place where the *Actors of old*, striped themselves naked, that they might shew themselves active, without hinderance. (a) Seneca termes *Pyrrhus* (the institutor of these) *maximum præceptorem certaminis Gymnici*, and the caution he chiefly gave his youngsters was, that they should not be passionate and cholerick, but do as wise Courtiers ought; *accipere injurias & referre gratias*. Lipsius his Commentator tells us not what *Pyrrhus* this was, but *Pyrrhus* probably it was the *Epyrean King* that brought in dancing, called afterwards *Pyrrhica saltatio*. These corporal exercises of running, vaulting, justing, wrestling, tilting, and torneaments, though under other names, together with the liberal learned sciences, were alwayes judged so proper for Courts, that nothing was judged more peculiar to them then they; because they took youth off from effeminacy, and intended them on expressions of manlines. *Budæus* asserts *Lycaon the Arcadian*, to have delivered them to the *Greeks*, who had their *Lycaum, Academia, Gynsarges*, to further the education of youth, and in all these, erudited them according to *παιδευμοι*, or laws of instituting youth by their *Γυμνασιάρχαι*, who were purposely designed to attend them. And how diligent the young Irie there were, that they might be notable gamesters, and renowned for their victories. *Plartus* mindes us in those words, *Ante solem exorientem, nisi in Palastram veneras, &c.* If one came not into the pit before Sunrise, he was sorely punished: There by running, striving, activity of spear, quaiting or throwing up in the ayre, fighting at Cuffs, playing at ball, dancing, they exercised themselves rather then with Whoring and Kissing, thus hee. And surely had not the wisdom of humane nature found it necessary to divert youth from sinful pleasures which engage the minde, they would never have done such honour to these corporal exercises, and the excellers in them as they have done; nor would Historians have taken the paines to write of their ancients *Athleta*, and *Palastrita*, their *cursores in stadio*, their *saltationes & pugilum certamina*, their *Hyploxiachi gladiatores*, their *equestres concursus & pugna*, as *Calins Rhodiginus, Plato, Sabellicus, Athenaus, Pausanias, Alexander ab Alexandro, Plutarch, Scaliger, Diodorus Siculus, Faber*, have done; and therefore I conclude that they are necessary and advantageous to draw out and keep up the manhood of the minde, and to enable men to serve their Countryes, with their bodies against their enemies, and justifie the Courts of Princes to have exercises of activity. Not onely the *Pyrrhica saltatio*, which, though on foot was somewhat like Tiltting, wherein the engagers were armed Cap a-pee, and the *Sicinnis*, which was satyrick, wherein the dancers clad as satyrs, by the variety and agility of their motions, did provoke by the rarenesse of their singing, delight: but also that *εὐμελία*, or civil exercise of dancing, which *Plato* calls very honest and harmeless dancing, And we may call *French and Countrey dancing*, or dancing in *Masks*, which truly is in its self I suppose so harmeless a repast, as nothing can be more harmeless, (evil be to them that evil thinks the jollity no doubt is lawful, if it be used lawfully.) And much (in things not mala per se) is allowable to the Courts of Princes, which is not fit to be practised elsewhere, wch if some would rightly consider, they would not be so imprudently rigid in their censures, as they, more to their own disgrace then to others disadvantage, impudently are.

Asthen to the *suprema Gymnasia* of our Text, and the *schola quoque strennitatis, probitatis & morum* ] which the Kings Court is called, I can write nothing punctually as concerning the teaching of Martial feats and activities therein; but near and in the verge of the Kings Court, all these exercises have been and yet are taught, though now the young Lords more addicted to travaile then heretofore, learn them abroad, whether they go very young, and so these places and masters are not so much taken notice of as then they were. But that practices of activity have been ever here performed, is plain in our stories, in 18. & 19. E. 3. these were performed at *Windsor*, in 14. & 15. R. 2. the King kept his Court at the Bishop of *London's* house in *London*, and there were juffs in *Smithfield*, and after, dancing and revelling after the Court manner in *Henry the 6.* time at the *Tower*, and at *Greenwich*, so in *Henry the 7.* time, at *Sheen* for a moneth together, within and without the Kings Pallace: so at *Westminster* 1. H. 8, 4. H. 8. at *Greenwich*, and 14. of the same King, there before *Charles* the

*Anudis dila Gymnasia Scalig. lib. 1. c. 22.*  
*Budæus in Pandect. p. 93. Edit. Vascos.*

(a) *Lib. 2. de Ira.*  
*Nutritus in palatio contumelialis & condiscipulus Augustorum, non est vultus superbia, nec alteros homines adducta fronte contempnit se cunctis anabalus ipsos principes amabat ut fratres, veneratur ut dominos; vultus autem eorum & reversum in diem palatu, se sibi caritate sociarat, ut qui merito inferiores erant officii, se pares arbitrarerunt. Sanctus Hieronymus de Nebridio ep. ad Salvinam viduam ejus.*

P. 95. B. in Pandect. Edit. Vascos.

Bacchell. Art. 3. Sec. 3.

Zuinger in Thes. 170 p. 2317.

*Saltationem armatam Curetes docere, Pyrrichen. Pyrrhus. Sueron. in Ver. c. 12.*

*Ὁρχήστρον ἢ καλῶν ἄ-δῶν, &c Lib. sept. de legibus.*

Hollingshed p. 360.  
P. 474.  
T. 646. 774.  
T. 807.  
T. 815.  
T. 873.  
P. 807, 806, 816

the

the fifth, and ever since almost, though of late years Tiltting has been disused, yet still other exercises are continued,

So that when our Text sayes, it is *schola strenuitatis, probitatis & morum*, it intends such a collection of men of *arts and arms, of valour and courttery* in it, that every young nobleman that thereunto comes, may (if he have ambition to appear, *ἐν Δίδε ἔργῳ*, a prognate of Jupiter's, be excellently adorned with all complements of honour) and not be *ὄφρις ἐν τῶν ὄφριων*, not one that has no evidence of his nobility, but his bare descent; for, as it is not bulk that declares the man, but spirit and valour, so is it not name and equipage that publishes a nobleman, but a brave minde and a brave courage, a stanch virtue, and a not to be impeached fidelity: these are *vera nobilitatis insignia*, and therefore are by our Chancellour annumerated as those things which doe honour and illustrate a Kingdom.

Adag. Chil. 4.  
Cent. 10. p. 1193.  
Chil. 4. Cent. 8.  
p. 1151.

True Nobility, whence.

See Sir Edward  
Waverhouse, my  
Uncle's Epistle  
to the Earl of  
Essex, in Holing-  
shed, p. 1266.

*Quibus honoratur regnum & floret*] This is a great truth which all experience subscribes to, that strenuity of action, probity in minde, and honesty of manners is the chief glory of any Kingdom. This I think, *Moses* according to our Texts sense intimated that 4 *Deut. 6.* where he charges *Israel* to keep all his enactions, which God, who had so highly deserved of them, had enjoyned them observance of; For this sayes he, *is your wisdom and your understanding in the sight of the nations, which shall hear all these statutes, & say surely this great nation is a wise and understanding people.* For virtue being the corner stone of Governments, and the firmament of its lustre, no honour is to be had or kept without her, nor is she truly any where, but where she shews her self in the fruits of courage, abstinence from turpitude, and zeal for propagation of order, which three are the leures of greatness to any people, for valour gaines ground, and makes the purchase, & prudence orders acquisitions by equity of administration, whereby it cements mindes so together, that they as one man joyn in propagation of common interest, raising by the art of loyalty, such a rampire and defence about them, as no art or assault of their enemies shall subvert, and darts such rayes of conviction on beholders, that they cannot but admire and desire to be under the rooffe of such politique artificers, as build both stately and securely, yea, and makes the way open for merit to be rewarded, when servility and abjectness of condition makes uncheerful subjects, and such as, though they are bound *χρυσῶν ἰσθμῶν*, with golden fetters, yet would think themselves more happy to be free: not as to dependance on and loyalty to their Prince (for that is the best Charter and evidence for orderly political freedome) but as to that Vassalage which is the effect of absolute and unlimited will, which being no method of our Princes to their subjects, produces in the subjects, thus paternally treated, *Strenuity, Probity and honesty of manners*, to such a degree as makes the Kingdome in which they are, *honorari & florere, flourish in its self, and be honoured abroad by others*; for there is nothing, acquires such benediction of God, on men studious to thrive by just and good endeavours, as justice, honesty, and persistence in their well and judiciously chosen way, which as they are first commended to the affections and made connatural by good breeding and right principling in youth, so are often visible in those enlargements, which manhood in the ripe and prudent experience of it, occasions men to evidence, and by it to be renowned. For *since wisdom makes a mans face to shine*, and education is the stirrup to help up into that saddle, where, well seated, we sit notwithstanding all the menaces of dismount, that the various and cross accidents of life suggest to us, it is the readiest course to attain that, by such company and conversation, as are greatest masters of it, and this being to be observed in the houses of Lords for young gentlemen, and the Court of the King for young Lords, as therein to breed them was the custome in our Chancellours time, the Conclusion of our Text is as in all other Chapters, that this method of *England* in this as in other parts of it, was best for *England*, while it was the use so to doe. And what the disuse or other appointment of their custody and education will better to after ages produce, then that did to our times let after ages tell when they know, *Wee that know but in part, can but prophecy in part.* To God to whom the event of all things is known, and by whom over-ruled I refer it, and so I conclude this Chapter.

Sarisburiensis  
lib. 4. de nugis  
curialium c. 1. 2.  
3. 4.

Quanto quisque  
promptius obsequio,  
tanto citius hono-  
ribus & opibus  
extollitur. Tacit.  
tus.

Flovere authorita-  
te & gloria. Cic.  
Ep. ad Nigidium.  
Flovere existimati-  
one Cic. pro Fron-  
teio.

Μελέτη πάντα  
δύναται δι-  
εξέναι. Pery-  
andri Eras.

Adag. Chil.  
2. Cent. 2.  
p. 473.



## CHAP. XLVI.

*Tunc Cancellarius. Sunt & alii casus nonnulli in quibus differunt Leges antedicta, &c.*

TO the prementioned cases, wherein the two Lawes in the manner of their administration differ, our Chancellour subjoyns that of manifest Theft and of ingratefull Libertines; in both which Cases the Civil and Common Lawes give different judgements.

*Leges Civiles judicant Furtum manifestum per redditionem quadrupli.*

*Furtum* ] the Lawyers derive from *κρῆεν*, id est, auferendo *con-*  
*trahendoque*; hence they define it, *Contrahatio rei aliena mobilis &*  
*corporalis, fraudulenta, invito Domino, gratia lucrandi rem ipsam vel*  
*usum ejus vel possessionem.* It must be *Contrahatio*, for the *animus*  
*intercipiendi* is nothing as to men, if *contrahatio* be not; so is the  
Gloss, *sine contrahatione furtum fieri non potest*, And *rei aliena*; for  
*in propria non committitur furtum*. Therefore the matter of the  
Theft must be the right of another; and *mobilis & corporalis* it must  
be, *quia haec capi, ferri & moveri possunt*; for although *Aulus Gellius*  
tells us *Sabinus* delivered it, *Non hominum tantum, neque rerum mo-*  
*ventium qua auferri occulte & surripi possunt, sed fundi quoque &*  
*adium fieri furtum*: yet the more currant judgement is, that Thefts  
must be *de re mobili & corporali*, and then it must be *fraudulenta*, for  
*animus fraudandi maxime inspicitur, & non sit furtum sine affectu fu-*  
*randi*, as also it must be *invito Domino*, not onely when first taken,  
but when it is kept longer then his time prefixed; so also if it be  
taken or kept with his privity and consent, it is no theft, but a theft  
it is if otherwise, because it's done *animo lucrandi rem ipsam, vel*  
*usum ejus, vel possessionem, Furtum facit, scienter accipiens indebitum*;  
and no man that takes what is not his own, but knows it to be ano-  
thers, and takes and keeps it to the injury of the right owner, but  
is a thief, and this makes the Theft: for Theft is not computed in-  
ter *casus fortuitos*, but it supposes a premeditation and an ill minde  
to the owner of it, which they call not onely *damnum cum corrupti-*  
*one rei*; but *furtum cum amotione rei*.

Now these *Furta* were either *Manifesta*, such as are in the very  
fact, in which the thief is termed *κλέπτης ἐπουπόρευς*, hoc est, *εὐλη-  
μῆν & ἐπουπόρευον*, with the thing stoln about him, or he that is appre-  
hended within the bounds of the place whence it was stoln; or else  
not manifest ones, that is, such as though they are proved, yet they  
came cleaverly off, and went smoothly away with, as we use to say:  
thus *Tully* expresses *manifestum furtum* by *clarum & apertum*, and  
he calls it, *Manifesto comprehensum & deprehensum facinus*. Hence  
because Manifestation is the act of light, Authors express every thing of palpability and  
obviousness by *Manifestum*; *Manifestus Amator*, *libido manifesta*, *pietas manifesta*,  
*signa manifesta*, *manifesta cades*, &c. These Thefts were (sayes our Text) different-  
ly punished, in old time, amongst the Nations, I suppose with death in the party steal-  
ing, and with the bondage of his Companions, to which the brethren of *Joseph* had  
probably an eye when they willingly proposed to the Lord of *Egypt*, that *with whom-*  
*soever of them the money for the Corn be found, both let him dye, and we also will be my*  
*Lords bond-men*. I know there are learned men that make this onely a bold offer of  
innocence, which knowing it self free, condescends to the hardest terms to vindicate  
it self; and hereupon they rank it amongst the follies and vapours of these sons of  
*Jacob*, who, as *Israelites*, would seem to be more abstemious, and not so temptable

*Alciat. ad Legem 183. p. 392. de verb. signific.*

*Paulus Jurisconsult.*

*Alciat. Dispnt. lib. 1. c. 10.*

*Tholos. Syntagm. lib. 37. c. 1.*

*Digest. lib. 17. tit. 1.*

*Mandati vel contra Gloss. non reddidit.*

*P. 1674.*

*Tholos. lib. 37. c. 1. & 6. & 12. lib.*

*11. c. 28.*

*Digest. lib. 17. tit. 1. Mandati p. 1674.*

*Digest. lib. 18. tit. 1. H. Dubitatio in*

*Gloss.*

*Tholos. lib. 37. c. 6. & 12. & lib. 11.*

*c. 28.*

*Qui, ultra modum, tempus vel locum à*

*Domino constitutum utitur, furtum facit*

*quia invito Domino facit. Tholos. lib.*

*pranotat.*

*Furtivum non est quod sciente Domino*

*inclusum est. Paulus lib. 3. ad Nerati-*

*um.*

*Digest. lib. 24. tit. 1. 63. p. 2217.*

*Digest. lib. 4. tit. 9.*

*Baldus Digest. lib. 9. tit. 2. ad Legem*

*Aquilianam.*

*Manifestus fur est, qui in faciendo de-*

*prehensus est, & juxta terminos ejus loci*

*unde furatus est, comprehensus est, vel*

*antequam ad eum locum quo destinaret*

*pervenire. Paulus lib. Sentent. De Fu-*

*ribus.*

*Quasi ad manus foris stans. Cic. pro*

*Roicio.*

*Pro Cluentio.*

*Budeus in Pand.*

*Reliq. p. 210.*

*Gen. 44. 9.*

*Siliter furti coarguatur, servire cogitur.*  
*Lex Lyciorum apud Nicolaum. lib. de*  
*Mortuis Gentium.*

*Alciat. in Legem 42. p. 121.*

*Plato lib. 9. de Legibus lib. 936.*

*Gajus lib. 7. ad Edit. Provin.*

*Digest. lib. 9. tit. 2. p. 106.*

*Lance & licio dicebatur apud antiquos, quia*  
*qui furtum ibat querere, in domum alie-*  
*nam licio cinctus intrabat, lancemque ante*  
*oculos tenebat, propter matrem familia aut*  
*virginum presentiam. Turneb. advers. lib.*  
*30. c. 23.*

*(a). Tholoff. Syntag. Juris lib. 37. c. 1.*  
*ff. 23.*

*Alciat in Legem 9. De verbor. signifi.*  
*p. 27.*

*Luca 19. 8.*  
*Joseph. lib. 16*  
*Antiq. Judaica-*  
*rum. c. 1.*

*Grotius in Luca 19. 8*

*Manifestum furtum, quod nulla alia pro-*  
*batione indiget. Tholoff. loco praecitato,*  
*ff. 13.*

*Verbum reddendi, pro dare.*  
*Digest. lib. 3. tit. 1. p. 707*

*Manura justa, coacta, succussata, super-*  
*flans. Grot. in locum.*

*Digest. lib. 3. tit. 1. p. 707*

*Et furtum non manifestum per dupli compensationem expiari ]*

*Gajus lib. 1. ad edictum Aedilium Curu-*  
*lium c. 45.*

*Digest. lib. 21. tit. 1.*

*In duplum condemnatur. Spelman Con-*  
*cil p. 358. 367. 372*

*Artif. Problem. scil. 30. c. 14*

*Plato lib. 9. De Legibus.*

*A. Gellius lib. 11. c. 18.*

as other men, but saving their greater judgements I humbly conceive it to have respect to the Custome of the Nations, perhaps *Egypt*, thus to punish theft, which punishment, though they were strangers they willingly condescend to, nor was it strange they should, who knew theft was a notable sin against the Moral Law, and that justice which God has implanted in every man, and when it was so manifest as their's was, could not but expect the punishment of manifest theft, which was death, especially, if in the night the thief were taken in the house; so *Plato* appointed, and the Law of the twelve tables, and so the theft *per lancem & licium*, (like our night-robbers, who come in Vizards and with cords to binde men, while they ransack the house,) was punished as manifest theft; now, because theft is often in small things, in which, *Acursius* thinkes, it ought to be prosecuted, *modice puniendo*, and not *capitaliter*; therefore the Law (a) appoints this four-fold restitution of the thing stolne. Indeed God himself appointed restitution in case of theft, so in the 22 of *Exodus* and the first verse, Five oxen are to be restored for one Ox stolne, and four sheep for a sheep; and the principal with a fifth part of the value in a trespass, *Levit. 5. 26. & c. 6. v. 5. Numb. 5. 7*, but in cases of

small things stolne, manifest theft was to have a four-fold restitution, so King *David* determined against himself, that *Uriah's* lamb taken from him by violence, should be restored four-fold, *2 Sam. 12. 6*, which was according to the Law in *Exodus*; answerable to this was *Zachens* his protestation, *If I have taken from any man by forged Cavillation, I restore him four-fold*. This Law continued amongst the *Jewes* till *Herods* time, when *Josephus* tells us, he altered it, and appointed the thief absolutely to be sold.

*Grotius* sayes, from this Law of *Exod. c. 22* the Greek and Roman Law took their prescripts; and, that if a thief before he had made away the Matter of his theft did before arraignment repent of it, and restore it entire, and a fifth part more with it, he was absolved according to the text of *Numb. 5. 7*. but if the thing stolne were alienated, then he was to restore four-fold, that is, to give him four times more satisfaction then the injury done him comes to. To this quadruple, I think our Lord alludes in the *Luca 6. 38*. *Good measure shall men return into your bosome, pressed down, shaken together, and running over*; four degrees of measure alluding to the four-fold restitution that the directed manifest theft was to have.

*Non manifestum est quod manifestum non est*, say the Lawyers, that is where the thing does not prove it self, but needs some other proofs; for this being capable of evasion and excuse or something in mitigation, is allowed but a two-fold compensation. Thus I finde it among the Lawes of King *Alfred*, and so it was ever among the Ancients, *Aristotle* gives the Law *ἴαν μὲν τις ἐν θαλασσῶν καὶ ἴν, &c.* *If any one stole out of the baths or theatre, or the Forum, he was to be put to death, but if from a private house, he was to restore onely twice the value*, so also *Plato*, and *Agelius* confirme the law to be.

*Sed Leges Angliæ, neutrum facinorum illorum mitius quam committentis morte puniri permittunt, dummodo ablati valor duodecim denariorum valorem excedat.*

*Cestavaoir que nul ad judgment de la*  
*mort, si non larceny, &c. ne passons 12 deni-*  
*ers de Herting. Murr. Justic. c. 4. ff.*  
*Fleta lib. 1. c. 38 De Furtis*

This I suppose was the law before the Conquest, that Felonies exceeding the value of 12. pence should be punished with death, for this is *grand larceny oustre le value de 12 pence*, sayes the *3. E. 1. c. 15*. Answerable hereto is *Fleta*, who adds, that *pro modicis delictis petty felonies*,

felonies, pillories, loss of the ears, and brandings with a red hot Iron were invented; for though every little may make a mickle, or in *Fleta's* words, many small larceny's may make a great and capital one: yet for one single theft if not exceeding the value of 12 pence no death of man can be. Sir *Edward Cook* gives us much learning concerning this, so does Master *Stamford*, which I have enlarged upon in the notes on the twenty seventh Chapter; for since the Law of *England* is a Law of justice, and justice requires defence of property and order, which theft violating, and thieves growing so loose, that they make a mock of sin, and delight themselves *tabulis luforiis*, with which they trifle out the day till the night come, wherein they act their villany, and *Bulas* like, are so *Preteus'd*, that they by their deluding ingenuity, goe invisibly, and care not what mischief they engage in, I say, this, so pestiferous to the property and possession of rightful owners, the law is most severe against, whether it be manifest theft, that is, the thief taken in the fact, or not manifest, that is, proved by witnesses against the accused person, if it doe exceed 12 pence 'tis death. For though many offences are clergyable, yet not felonies of theft; I or where people are wa. like in nature, and given to theft, not to punish it capitally, is to favour it more then in relation to order ought, which the *Saxons* our Ancestours considering, were so rigid against theft, that to be even accused of it was decreed capital; and that by hanging the thief, which (a) *Vives* sayes, the Emperour *Frederick the third* first exempl'd Christendome to. Nor is the Law of *England* to be accounted cruel herein, for that it does but what the wisdom of Legislation suggests necessary to obviate national impieties, and to secure the order of national justice, which other Nations as well as ours, have in the very case of theft, so also doomed. For though great and victorious thieves, that with the Emperour *Constantine the third*, ransack *Rome* of all its bravery more in seven dayes, then the barbarous nations had, or could doe in 258 years, goe off with the prizes of *Rately Capitols*, renowned *Arsenals*, well arrayed *Wardrobes*, vast *Treasuries*, and are flattered, when so they doe, by the Oratorious Panegyricks of adulating admirers; yet, the thieves that are masterable by justice, are fatally accounted with: so among the *Indians*, *Phrygians*, *Scythians*, so (b) *Draco* punished theft, and for it (c) *Fabius* adjudg'd his Son to die, so did *Sertorius* put to the sword a whole plundering Cohort, and (d) *Mark Antony* put to death the thief that stripped *Brutus* his body, and *Pescentius Niger*, a fouldier but for taking away a henn from a woman, and gave her ten henns for it. Sundry other examples of severe inflictions on theft, *Johannes Magnus*, *Ludovicus Vives*, *Jovius*, *Fulgosus*, and others, furnish us with, all which shew, that theft is an odious sin, and the Law of *England* in punishing it with death, doth but what other wise law-makers have in the like kinde done. For since perhaps, our Nation has ever been addicted to theft, and as amongst the *Isaurians*, so with us, Lawes against theft, as the reigning sin ought to be tart and fatal, the Lawes so made and executed, are worthily magnified; for as much as theft does not onely rob the living, but even the dead, not of their sheetes of worth and wit, in which; if their mortal lives had their due, they would be in a sort immortalized (as *Thestorides* did *Homer's* verses, whilest hee bribed *Homer* to be silent in his arrogation of them to be his, and *Chryssippus*, when from *Eurypides* he stole those notions that *Apoledorus* sayes he got his name by, and *Menander*, whom *Eusebius* and *Porphyrinus* charge to be the thief of the an-

Ex pluralitate tamen, & cumulo maledictorum delictorum potest capitalis sententia generari. Idem lib. pravor.

2 Instit. p. 190 Exposit. of c. 15. of the 1 West. and 3 Institur. pleas of the Crown c. 17

See the Statut. 23. H. 8. c. 1. 30 H. 8. c. 3. 1 E. 6. c. 12.

De Tabula Luforia, & lusu latronum lege Tutnebum adversi. lib. 27. c. 3. p. 1007.

Ουτα δ' ἐρωᾶτο δρόμου ἔτε δ' ἀρίστου ἀριστοδρόμου, ἔτε καπιλαμβύνατο ἀλισκομενῶ, Dion. lib. 76. p. 865.

Stamford lib. 2. c. 42

Cives furibus non parcunt; qui furti fuerit accusatus, vel levem suspicionem habuerit, inardius suspenditur, nec purgandi sui tempus datur, &c. Ro'ellius in Pyman. De Oppidis, Castris, & Villis, Aulix, lib. 5. com. 11. dial. 5. p. 330

(a) Furtis suspensum addidit, quia pena nunc per Europam nititur. Lud. Vives lib. 7. De causis corruptarum artium.

Quicquid antiqui operis ex are & marmore fuit, qui quid oculis potuit delere, furtum aut vs reuulsim ad naves deferri iussit, ut plus ornamentorum unius septem dierum spacio urbi detraxerit quam Barbari 258. annorum spacio. Sabellicus lib. 4. Ennead. 8.

lib. 6. c. 10. Et lib. 3. c. 5. Nicolaus de moribus Gentium apud Stobzum ferm. 42. Bonifolius

- (b) A. Gellius lib. 11. c. 18
- (c) Alex ab Alexand. lib. 3. c. 18
- (d) Sabellic. lib. 8. Ennead. 6

Fulgosus lib. 2 Capite de re militari

Is latrociniiis infamis esse, Strabo lib. 1. Latrocinari & raptu vivere solitos, sed & fortassis gentis vitium hoc fuit. Alciat. disput. lib. 3. c. 20. p. 189.

Si quis tollat de Chryssippi libris que aliena sunt, vacua illa charta relinquetur. Zuingeri Theatr. vite human. vol. 16. lib. 2. p. 2389.

(a) Cook Pleas  
Crown. 3 Instit.  
p. 110.  
Bree. wood. lib de  
Nominis Judao-  
rum c. 1. De ver-  
p. 107.  
Walerus lib 2.  
de Nominis He-  
braorum c. 16.

cient Poets; and *Flavius* the Libertine of *Appius Claudius*, by purloining his Masters Works, insinuated into the people so farr by it, that they made him an *Edile* and *Tribune*.) I say, these and others by theft do not onely rob the dead of their sheets of learning, but even of their winding-sheets, as that miscreant (a) *Haynes* did (*furto inaudito*) in the 10 of King *James*: good reason is there that such Villany should doom to death the Actors of it, *Dummodo abluti valor duodecim denariorum valorem excedat.*

*Item Libertinum ingratum Leges Civiles in pristinam redigunt servitutem; sed Leges Anglia semel manumissum, semper liberum judicant, gratum vel ingratum.*

*Libertini sunt qui ex justa servitute manumissi sunt.*  
Gajus lib. 1. Instit.  
Marcianus lib. 1. Instit.  
Digest. lib. 1. m. 5. p. 88.  
Tholoff. Syntag. lib. 14. c. 7. ff. 8.

This is the last instance wherein the Lawes do vary in their sentence, that of an *ingrate Libertine*. Now a *Libertine* was such an one as after just service was manumitted; so *Gajus* defines him: *Marcianus* makes *Libertines* to be one of the degrees of free-men, as *Ingennum* men are the other. Three sorts of *Libertines* the Lawes of old mention, as there were three degrees of Liberty or Manumission: 1. The *Plena Libertas*, which was in their being enfranchised Citizens of *Rome*. 2. *Latine Libertines*, ex *Lege Junia Norbana*, which after was taken away. 3. The *Dedititia Libertas*, which was ex *Lege Alia Sentia*, which also was taken away: which way soever then they became *Libertines*, the Law looked upon ingratitude in them as monstrous and pernicious. This should seem to be one of the Lawes of the twelve Tables, for *Schottus* writing on that Law, *That every man might dispose of his own*, mentions this exception, *nisi sit nequam & prodigus, & decoctor hares est futurus, aut parentibus non obediens, aut denique ingratus; cum & servus manumissus ob ingrati crimen in servitutem retrahatur*, so He. Sutable to this are all the Instances of punishment on

In *Novis ad lib. 6. Contru. Seneca. p. 253.*

Tholoff. lib. 6. c. 119. p. 21. De rebus & feudis. & lib. 12. c. 6. ff. 5. lib. 28. c. 15. ff. 7. lib. 34. c. 3. ff. 4. 5. lib. 32. c. 16. ff. 5. lib. 11. c. 6. ff. 2.

*Superfedito, inquit, te habere Civem tanti numerus impium estimatorem, nec adduci possem ut credam urbi nillem quem domi scelerum cerno. Ahi igitur & ego servus, quoniam liber esse nescis. Valet. Max. lib. 2. c. 1.*

Τὴν φιλανθρωπίαν ὅς εὐεργίτη ἀφορμὴ ἀχαιεσίας ποιεῖται.  
Sanct. Chrylost. apud Stobæum  
Serm. 59. p. 230.

*Ipsa Respubl. quam ingrata in optimis, & devotissimos sibi fuerit; Camillum in exitium misit, Scipionem dimisit, exulavit post Cautinam Cicero, dirmit ejus penates, bona direpta, saluum quicquid vultor Catilina fecisset. Senec. lib. 5. De Benefic. p. 95.*

Καὶ μετὶ Θεῶν ἀν μάλιστα ἀμελῶς ἔχειν, καὶ περὶ γονέας, καὶ πατέρας, καὶ φίλους ἐπιπέσει δολοί.  
Xenophon. lib. 1. de Instit.  
Cyri, p. 4. & 5.

Yet the Law of *England* is otherwise, for though it hate Ingratitude, ranking it amongst those sins which are in the very forlorn and main *Battalia* of Hell; yet when servitude was in being with us, it punished it not with reduction to servitude, because that is an undoing what the Law has done, and a playing fast and loose with the states and conditions of men, which are bond while manumission, and after that continue free. And perhaps our Law is so consistent in this, from the apprehension it has

of God's abhorrence, of the Jews cruelty and hypocrisie in *Jeremiah's* time; for God having commanded them that every man should let his man-servant, and every man his maid servant go free, that none should serve themselves of them any more, which they obeyed, and let them goe: But afterwards (sayes the Text) they turned, and caused the servants and the handmaids, whom they had let goe free, to return, and brought them into subjection for servants and for hand-maids; which act of recess from their lenity and justice to their servants, God took so ill, that he for it, Proclaimed Liberty for them, to the Sword, to the Pestilence, and to the Famine, and I will make you to be removed into all the Kingdoms of the earth, *vers. 17.* By which sad return of their cruelty and unmercifulness, we are told that God loves no double dealing, but delights in righteousness perfited in, and mercy thoroughly extended. And this I suppose may be some ground of the reason of the Law, which manumits once for all; for if the Lord does enfranchise his Villain, he must be free, revillain'd he cannot be, *Because the Lord's act shall be construed most forcibly against himself:* and no new Villainage can be made, *licet gratus vel ingratus sit Libertinus,* saith our Text. For as when Villainage was in *England*, Villains could not out their Lords of their rights in them by a Writ of *Libertas probanda*, but that their Lords, notwithstanding such Writs, might seise the bodies of such Villains, *Stat. 25 E. 3. c. 18.* and obtain their servage, *1 R. 2. c. 6. o R. 2. 2.* so when Villains are libertin'd to, reduce them by a retrospection to their Vassalage, was (I suppose) utterly against the Law, which accounts *once well done ever done*, and forfeits freedom upon no account but disloyalty.

Jer. 34. 10.

Stat. 172. e. 11.

*Alii quoque sunt hujusmodi casus, &c.*] These and sundry other cases there are wherein the variation of the Lawes do evidence themselves; but the Quotation of these, as the Chancellour, so his humble Commentator enlarges not upon, because they are not of very great moment, nor require any elaboration in the treaty of them, but onely serve to the compleatness of the Dialogue, in which the Prince is introduced by our Text-Master in the following words.

## CHAP. XLVII.

*Princeps. Nec expedit, Cancellarie, in his multum sudare, &c.*

THIS Chapter is but as some others before, transitional to what is subsequent; for the Chancellour having in the 46. Chapter shewed the discrepancy of the Civil and Common Lawes in determination of Theft and Enfranchisement, in which he conceives the Common Lawes to be more terrible to Theft and more indulgent to freedom than the Civil Lawes are. The perforated Prince, satisfied with the main of his assertion, requests his preterition of what might further be alledged in this case; and to proceed to satisfie him why the Lawes of *England*, *tam bone*, because so just, *tam frugi*, because so temperate and sutable, *tam optabiles*, because so tuitive of freedom, which every man naturally loves, are not taught in Universities as Civil and Canon Law *21 H. 8. c. 13.* is. This is the summe of this Chapter.

## CHAP. XLVIII.

*Cancellarius. In Universitatibus Anglia non docentur Scientie, nisi in Lingua Latina.*

AS Mechaniques and Societies of trading-men had among the *Greeks* and *Romans* their *Corpora*, or *Guilds*, or *Halls*, where to they resorted, and in which they met for consultation about their Art; so have the Liberal Sciences had their places of Convention, called by some *Academies*, by others *Scholes*, and here Uni-

*Corpora omnium constituit Uniariorum, Lupinariorum, Caligariorum, &c. omnino omnium artium, hisque ex sese Defensores dedit Aelius Lamprid, in Severo, p. 215.*

versities;

Tandem in hoc convenerunt communiter, ut Renunciaretur ex parte Universitatis quod negotium dilationem caperet. M. Paris in H. 3 p. 205

Tholoff. lib. 35. c. 1. ff. 18. lib. 1. c. 13. ff. 8. lib. 3. c. 1. ff. 2. lib. 23. c. 16. ff. 7. lib. 17. c. 6. ff. 48.

Digest. lib. 3. tit. 4. ff. 7. p. 409. lib. 1. tit. 21. p. 55.

Bartholus Digest. lib. 4. tit. 3. p. 517.

Digest. lib. 3. tit. 4. p. 405.

Lib. 6. tit. 1. p. 823. & lib. 18. tit. 1. p. 1732 in Marg.

Foerner. in Legem 15. p. 45. & in Legem 145. p. 332.

(A) Choppinus lib. 1. De Domano Fran- cia. p. 586.

Meritoria Artificia sunt hactenus uti- lia, si preparant ingenium, non detinent. Ep. 88.

Aut tu quicquam in istis credis boni, quorum Professores turpissimos omnes ac flagitiosissimos cernis. Idem eodem loco.

Ἔστι ἀποδεικτικὴ, lib. 6. de Moribus c. 3.

Περὶ τὸ μέσον βλάπτουσα, καὶ οἷς ὄντο ἀγνοῦσα τὰ ἔργα. Lib. 2. cap. 5.

Ἡ δὲ ἰμπειρία τεχνῶν ἐπι- νεν, lib. 1. Metaph. c. 1.

Tandem enim istis immorandum est, quam- diu nihil animus agere majus potest. Re- dicenda sunt nostra non Opera. Quare Li- beralia Studia dicta sunt vitia, quia ho- mine libero digna sunt; Ceterum unum Studium vere Liberale est quod literum facit, hoc sapientia, sublime, forte, magna- nimum; cetera pusilla & puerilia sunt. Se- nec. Ep. 88.

\* In Musici usu, p. 401.

Lege Muretum in Ep. 88.

Senec. p. 390.

Edit. Mag.

(a) I. Satisbuti- enis lib. 1. c. 6. de nugis Curiati- um, & lib. 2. c. 18.

versities; so Stat. 3. H. 8. c. 11. 14, 15 H. 8. c. 5. 13 Eliz. c. 12. 18 Eliz. c. 6. 2 & 3. Phil & Mary c. 15. 13 Eliz. c. 20. in which mention is made of Universities, as a name, not onely of number and multitude, but of that which is *unum totum*; so Matthew Paris mentions *Universitas*, and so the Civilians take it *sensu complexo & capaci*, for Tholoffanus his words are, *Universitatis dicitur ea tantum qua Communia sunt municipibus ejus loci, vel Civitatis, ut Stadia, Theatra, Pascha, Nemora, & id genus similia*: so that Universities, in our Texts sense, are places set apart and priviledged for learning and learned men, there to reside and study for the service of the Nation in Church and State. And as Universities in general are designed for this use by the bounty of Kings and sovereign Princes (*vere earum Parentes & conditores*, saith (a) Choppinus) so have the *Universitates Angliae* been, and accordingly have proved *Feraces Ingeniorum & Artium*, not onely to a proportion with, but to degrees beyond any other Universities (I think) in any Nation of the World. In these, saith our Text, *Docentur Scientia Liberales*] These Liberal Sciences the Ancients had a great value of: Seneca calls them *Meritorious Artifices*, *very profitable if they serve for preparation to greater things, and do not intangle and detain the mind in them, prejudicating it against all other necessary acquirements*; for though he were a very great Admirer of and proficient in these Liberal Sciences, yet he forbears not to avocate men from doting on them further then is convenient, *Because they are subject to abuse, and are often inoperative in their greatest Masters as to those ends of virtue which they were primarily intended to promote*. For since the Philosopher calls them, *Habits and means to demonstrate things*, and sayes, *The chief end and noblest perfection of them, consists in their conduct of men to a wisdom of mediocrity in all their actions*, they are to be cherished as the fruits of practical experience, by which a right judgement is made of things, and a right method prosecuted to the obtaining of what is excellent in them, or what excellence may be wrought in us by them: for this is the reason why the Arts profes- sed in them are called Liberal Sciences, because they rightly under- stood and improved, deliver the minde from the bondage of igno- rance and the villainage of passion and error, and make it wise, sublime, courageous, generous, and what not, which is excellent and unvulgar.

Concerning the number of these, some variation there is between the calculate of An- tiquity and later times; nay even in the later computation, \* *Claudius Clemens* reckons among the Liberal Arts and Sciences *Architect, Hunting, Hawking, Printing, Graving, Painting, &c.* which I think are not admitted but under other heads by most of the Learned besides himself. The Ancients by the Liberal Arts understood *Gymnastica*, cor- poral exercises preparatory to soullary ones; *Rhetorique*, which made men expresse their mindes aptly; *Poetry*, which excited and magnified the fancy to all height of concep- tion and variety of fancy; *Arithmetique*, which taught the use of Numbers; *Geometry*, which treated of the position and circumference of the Earth; (a) *Musique*, which taught the use of Notes and Sound; *Philosophy*, which treated of the whole latitude of Nature, *Morality, Ethiques, Politiques, Oeconomiques*; these were the liberal Sci- ences which in them we read of. But these I think, though in effect what our Text sayes, *Docentur in Universitatibus*] are yet not set down in the very method they are mentioned, there professed; for the Liberal Sciences therein are, Divinity, Physick, the Civil and Canon Law, Philosophy, History, the Mathematicques, Musique, which, to- gether with all the Appendixes to them, are professed there and taught therein.

• *Nonnisi Lingua Latina*] That is, The *Latine Tongue* is the most general language in which their Lectures and Authours are read and written; for though *Hebrew* was the language in which all the *Arcana* of wisdom was written, as after the *Greek* tongue

tongue, when its Empire flourished, was the most admired: yet in the Triumph of the *Latine Empire*, and its prevalence over Nations, all applications were in the Victors language, and all the Sacrifices of Servility to the Idol of Success, though it were really short of that which gave way to it. *Seneca* seems to avouch this, who, though a pure *Latinist*, and one whom partiality would have enclined, if ingenuity were consistent therewith, to admire the *Latine* tongue, which was in a sort his Mother-tongue; yet heroiquely professes, *That it was but narrow and short, not capacious enough to admit the expression of his mind in.* But alas the *Latine* tongue is since advanced, for to that *prisca & condita Latina* which the *Aberigines* and eldest *Latines* under *Juno* and *Saturn* used, and that which the *Italians* used from *Latinus* and the other *Tuscan Kings*, in which *Latine* the Law of the twelve Tables was wrote, and the *Roman Latine*, which after the determination of their Kings, they used under their *Aristocracy*, to all these, mixed *Latines* (which came in, when the Empire had many Nations admitted into it, who brought their Idioms into use with them) made addition by which though the language may be decocted and somewhat abated in the strenuity and elegancy of it, yet is it more capacious and large as those additions have been contributions to it: and though the generalness of speech be not so elegant, yet the *Latine* of learned mens writing and speaking is yet polite and truly *Roman*. I know *Tully*, that *Eloquentia humana flumen*, is no friend to the opinion that the *Greek* tongue is more copious then the *Latine*, but calls it a vulgar opinion, asserting the *Latine* more copious, which whether it be or no I leave to the learned to judge, concluding it in our Chancellour's sense, excellent as it is in the general the learned University-language, *In quibus docentur Scientia.*

*Quanta verborum nobis paupertas, inno egestas, nunquam magis quam hodierno die intellexi, Ep. 58. Cassianus Catal. Gl. Mundi, p. 508.*

*Ita sentio & saepe disserui Latinam linguam non modo non inopem ut vulgo putarent, sed loquacitorem etiam esse quam Graecam, 3 de Fin. 134*

*Et Leges Terrae illius in triplici lingua addiscuntur, viz. Anglica, Gallica, & Latina.*

These *Leges Terrae* what they are, I have shewed in the Notes on the ninth Chapter. In that they are said to be taught and learned in three Tongues, it shews the mutations States are subject to, and the different Methods they take in different times; for the old *Saxon Lawes* were written in the *Saxon* tongue, and probably the Customs of *England*, called our Common Lawes, being contemporary therewith were recorded in *Saxon*: but when the Conquerour came and prevailed, then in came the *French*, with a powder as we say, and every thing was done and said *a la mode de France*, *Non permisserunt ipsi eorum Advocatos placitare causas suas, nisi in lingua quam ipsi noverunt*] that is, in *French*; and this he did to declare his Conquest, since change of Lawes and Language are tokens of plenary Conquest. For though I know the Conquerour retained and confirmed the major part of the Common Lawes, waving those parts of them onely wherein they put any thing of his absoluteness in danger; yet in as much as he had them all under his power and they were new christened and had a *French* name given, whereas they were written in *Greek*, *Saxon*, or *Latine* before, they may well be said to be in this sense changed as to the declaring him a Prevaileur over the Nation, and as to the introduction of the *French* Idiom put upon the Lawes, not onely in the books, but from the mouths of the Advocates pleading: so that *France* being brought into *England*, and the customs of *Normandy*, which were said to be originally but transcripts from our old *Greek*, *British*, *Latine*, and *Saxon* Entries, become currant here, and pleaded as in *France* in the *French* tongue, there was a great progress made to the funeral of the *English* language.

*Sir Ed. Cook Preface to the 3<sup>d</sup> Rep*

*Consimiliter Gallici post eorum adventum in Angliam, ratiocinia de eorum Proventibus non receperunt, nisi in proprio Idiomatico.*

As the Pleas in Courts, so the accounts of their Lands and Offices they would not take or admit but in *French*; not that they understood not *English*, for 'tis probable in a short time they did that: but because they would retain the memory of their title to *England*, and by the old language discarded and a new one introduced, tell the Natives they were Tenants at will, and would reduce their proud stomach to the pleyableness of the *French* Peasant. For though probably they had *English* Drudg-Bay-

liffs

liffs, who did gather in from the severall Farmers their rents and incomes, and who conversed with the renters of them in the *English* tongue; yet before the *French-Monsieur*, who was all agog on his native speech, the accounts must be in *French* termes and in a *French* method, which had it been because the *French* understood not whether they had right done them or not, would have been excusable, but when it was purely out of design to dishonour our nation & language would never have been borne but that necessity had no Law. For men being born, must be kept, and living under the regency of providence which circumacts Governments and things as most discovers the absoluteness of God, (who permits their variation as far as he pleases and when he will restrains them,) having a strong and not to be denied invitation thereto, not to doe it were to undoe themselves, and to disserve as much as lyes in them the future revolutions of good that God had decreed, emergent in their proper season, which considered, the *French* Masters not willing to receive their rentals but in *French* termes, their then *English* Vassals did well to observe them, and thereby to make a virtue of necessity.

*Venari etiam & jocos alios exercere ut talorum & pilaram ludos non nisi in propria lingua delectabantur.*

As military action in time of Warr, so hunting in peace is a generous exercise, if it be used generously; for though the *venatio oppressiva hominum*, which *Nimrod* used, be tyrannous and execrable, and *Maximinus* that exercised whole legions in it, that

*Solis venationibus Legiones frequenter exercebat. Senatus eum tantum timuit, ut vota in Templis publice, privatimque, mulieres etiam cum suis liberis facerent, ne ille unquam urbem Romanam videret; erat enim ei persuasum, nisi crudelitate imperium non teneri. Julius Capitolinus in vita Maximini p. 226*

*Unde mos tractus sit, ut proficiscentes ad bellum Imperatores, munus gladiatorum & venatus darent. Idem in Maximo & Balbinop. 242*

(a) *Lib. 1, c. 4. De nugis Curial.*

*Quomodo ergo dignus est vita, qui nihil aliud novit in vita, nisi vanitatis studio favere in bestias. Sarsbur. lib. 1, c. 4. De nugis Curialium.*

*Nec canes nec aves ad venandum debent habere agricola, ne ab agricultura avocentur aut divertantur. Joh. de Platea in I domin. cap. de agricolis lib. 1, 1.*

*Cass. Catalog. Gl. M. p. 446.*

*Legge constitutiones Canuti Regis De Foresta.*

23. Eliz. c. 10

thereby they might be most accurate executioners of torments on his subjects, who by them did so terrifie the people, that they prayed he might never return safe to Rome, who thought the Empire could not be held but by cruelty. To use hunting as a hardning of the heart, and an induction to act merciflesness on men by the assuescency of it to the actors of it on beasts, as *Capitolinus* reports the custome to be, before chieftaines went to the wars is justly to be condemned. I say though this kinde of cruel and vild hunting has many pretenses of plausible advantage in it, w<sup>ch</sup> *Sarisburienensis* (a) mentions, and though men of good consciences cannot use or delight in it; yet, that hunting which is *salsuosa*, either of beasts of prey, or birds of wing, *sive fiat propter necessitatem indigentia*, as a way of livelyhood; *sive propter necessitatem violentia*, or to destroy those that would destroy cattle and fruits, or *propter utilitatem* for food to eat, as in those Countreyes where no butcheries are, but every man kills for his own use, they are all lawful unless immoderately used, and unless municipally prohibited, as in *France* they wholly are to the peasant, who dare not keep a Gray-hound, or mungrel, but must manicle and mutilate them, as in the verge of the Forrest has here often been. Though therefore the husbandman is, as before I have shewed, kept short, yet the nobleffe is left free, *venari* he may, where and when he will, so he observe bounds, and doe no wilful trespass; for as no man of what degree soever, may

hunt, when the corn is upon the ground, and the feilds closed up, unless in his own ground, or in Chafes and Parks by leave of the owner of them: so no man can be (as I conceive) denied to hunt (except within the verge of the Kings house, and in destruction of his game, who is the high Lord of the Nation) unless he be of base condition, and not able to live in the state of a worshipful man, for whom onely this recreation of hunting is proper, so is as I humbly conceive the intent of the statute of 13 R. 2. c. 13. 3. E. 6. c. 17. 1. H. 7. c. 7. 19. H. 7. c. 11. 31. H. 8. c. 12. 32. H. 8c. 11. when ever then Lords and Gentlemen hunted, either with kennel hounds, Fox dogs, or coursing hounds, whether buck or hare (For wilde beasts we never had in *England*, at least not in our *Chancellours* time, our Text tells us, they did (before *E. the third's* time at least) use all venatory phrases in *French*, and this they did to bring their exercises into a *French* method, and I wish, that now-a-dayes, though the *French* terms be obsoleted, yet forein humours did not too much possess many of our young Gentlemen, who think, nothing so generous a quality in them, as to be fierce and indefatigable



fatigable in the chase of beasts, and I would to God they would consider, that as they are by their sublimity of blood and plentiful fortunes, advanced above others, so in *Sarisburyensis* his words, *They would prefer the solid good of the publick, before their pleasurable toys; and lay aside follies, to promote the great consequences of peace and warr.*

*Et jocos alios exercere* ] As their bodily exercise was *Frenchly*, so their wits activity was also; for they used to be pleasant and facetious in *French*. *Jocus* ] is by *Tully* opposed to *serium*, and therefore all nugatory behaviour, expressed in words, is expressed by *illiberalis jocus*; hence *insanus jocus* in *Claudian*, *lascivus jocus*, *sevus jocus* in *Horace*, *Jocus venenatus & turpis* in *Ovid*, yea the holy text seems to brand this sinful airyness, as arguing some effrontery and settling upon the lees of sin, with delight and contentment. *Fooles* saith the *Wiseman*, *make a mock of sin*. Yea, I am apt to think, that because *Jerusalem* did not put on mourning thoughts, and had not an humbled sense of Gods visitation, but in the day of her affliction and of her misery remembered all her pleasant things that she had in the dayes of old, therefore God not onely obdurated her. enemies hearts against her, but suffered them to mock at her *Sabbaoths*. Though therefore there be much folly in this mirth, yet is it that pleasantness of humour which many delight in, and for their excellency in smart and facetious speeches are highly valued: This also the text saies was uttered in *French*, that both earnest and jest might be in that language.

*Et Talorum & Pilarum ludo non nisi in propria lingua delectabantur* ]

The mind of man being restless, and chosing rather employment, then musing, antiquity invented the disports of Dice and Ball. These dice are by the *Latines* termed *Tali*, from *Talus* the ankle bone of the foot, or the postern bone of a beast, of which, they were wont to make these Dice; whence our Proverb, when one will act cruelty on a man, they are said, *to make Dice of his bones*: this is near of kin, in the nature of the word to that game of Cock-all, which boyes use amongst us, which Cock-all, is as much as *win and take all*, as a Cock does who victorying, has not onely the praise of all, but wins all thats laied on the match by the Abettors against him. This is Cock-all; hence *Talorum ludi*, is that cast of the dice that carries the game and wager. Now these *Talorum ludi* are things of factive, as the other were of verbal recreation, and *Tully* commends them, *when moderately and without injurie to grave things*, and surely though 'tis good to keep the minde alwayes well employed; and the less levities doe avocate men from serious thoughts the better is the heart made; yet harmeles and decent recreations, whereby release is given to those austerities, is very necessary and lawful, and not to doe it, is a kinde of homicide and self-felony. For as God in point of duty commands us no more, then we (if we will put our selves out to the utmost) are enabled to doe, nor in point of suffering, layes no more upon us then we are able to beare; so men ought not to be more vexatious to themselves, and put greater burthens and harder lawes of restraint on themselves, then may consist with the hilarity, as well as sincerity of piety. And therefore, though I am no delighter in these lufory recreations, but notwithstanding my general and long converse with men of all Ages, fashions, addictions, sciences, am yet designedly and in prosecution of a long determined resolution, a novice in, and stranger to all play, being wholly ignorant of the termes, method and delight of it, and i hope as happy in, and as contented with the ignorance and unsurprisedness of it as any Infant is, or as the most captivated lover of it is with the witchery of it, yet doe I not disapprove the recreation that persons of worth and wisdom take in it, but rather believe it as wisely and worthily by them used, to be harmeles and practicable. Whereas then the lawes doe forbid play that depends on chance, such as are Dice, Tables, Cards, which are all *ceux d' hazard*, yet doe they so doe, upon the account of the abuse of them, and the dreadful events that they have had such as are *vain expence of time, and prodigality of fortune, Oaths and blaspheming of God, passions and quarrels amongst men, prostitution of the pudicity of Ladies*, who, by too much familiarity contracted thereby, give occasion to their affections and persons surprisal; and voluptuous engagement, which, I the rather note, because I have known much inconvenience really issu-

*Utinam audiretur a nostris, ut saltem in proventus aetate nugis suis reciperent. seria anteponerent. lib. 1. cap. 4. ad finem.*

*Joca & seria contraria. Cic. 2. De Finibus. In Praef. lib. 2. in Eutrop. 2 Trist. 113, 89*

*Prov. 14. v. 6.*

*Lam. 1 v. 7*

*Proprie ludus in facto, ut jocus in verbis non serius. Laur. Valla lib. 4 Eleg. c. 16 Ludo & joco uti quidem licet ut somno & ceteris quietibus. Ita si gravibus ceterisq; rebus satisfecerimus, lib. 1 Offic. Pessimus est genus homicidis, sibi manus injicere, quod is facere videtur qui existimat perpetuo animi & corporis motu affligere debere. Tholosi. Syntag. Juris lib. 39. c. 2. ff. 4*

*Si jocus est ludus honestus a rebus seriis, qua animus intendunt, requies est, & velut inducia, a quibus nunquam graves & cordati viri loco & tempore commode abhorruerunt. Tholosi. Syntag. Juris loco praetato.*

*Idem lib. 39. c. 3. De Alea lusu vel ludo.*

Nemo satis improbatum est cuiusque artis exercitatio, quis quantum quisque doctus, tanto nequior aleator quidem orationis hic est. Mandaciorum liquidum & perjuriarum mater est alea, & aliena concupiscentia sua prodigit & nullam habens patrimonii reverentiam; cum illud effuderit, sensim in furta dilabitur & rapinas. 1. Satisburienfis lib. 1. c. 5.

Inter Seria fabri Germani aleam exercent tanta lucrandi perdendique temeritate, ut cum omnia defecerunt, extremo ac novissimo saltu, de libertate ac de corpore contendunt. De Meritis Germanorum.

Quoniam usu comperitum est, ut alea ludo, saepe furta, rapinas, fraudes, blasphemias, aliaque id generis flagitia proficisci perhibeat taxillis aut alea ludi, Tom. 9. in Mediolan. Concilio primo. p. 481.

Sarisburienf. De Nugis Curialium. lib. 1. c. 4. & 5.

C. 41. Vel. 1. Concil. Gener.

Tholoff. lib. 39. c. 1.

Tom. 5. Concil. p. 337

50. Canon 6. Synod.

Tom. 9. Concil. Mediolanense 1.

p. 481. Concil. Aquileienf. 1. Tom. 9. p. 706

(a) Tom. 9. p. 270.

voidance of scandal, and confirming of those in it, that from the example of divine men using it, would be prone undivinely to abuse it. And by the stat. 33. H. 8. c. 9. Order is taken for unlawful games, such as there are named Dice, Cards, &c. out of Christmas, which the Law does not to deprive men of fashion of their recreations, for that is saved by the Statute, but to disharbour the lodges of these Gamesters in houses of expence and riot, in which, estate, time, reputation, is befotted to, and wasted by these sports; which therefore the Statute calls unlawful, because they are unlawfully used: and by them so abused, the Magistrate becomes blemished through the insolence of them, whereupon they are

Turnebus Advers. lib. 5. c. 6. & lib. 9. c. 7. & c. 23. lib. 18. c. 12.

1. Pollux lib. 9. c. 7.

Sarisburienf. Polycratic. lib. 1.

c. 4. & 5.

Ad pilam se, aut ad talos, aut ad reseras se conferens, homines labore assiduo & quosidiano affueti cum tempestatis causa opere prohibentur. Lib. 3. De Oratore

(a) Sipontinus & Tholoff. Lib. 39. c. 4.

Lib. 3. Pædagog. c. 10.

Pila proprietas est cum aequalitate, aequalitatem hanc accipe quam vides in lusoria pila. Senec. Nat. Quæst. lib. 4. p. 889.

(b) De Benefic. c. 12.

Turneb. advers. lib. 7. c. 22.

The terme Hurly-Burly, whence probably originated.

and is thrown up for those that bring it away from the many contenders, to keep as their own, and to present to whom they please. One of them I have my self had at

my

ing from hence, which, those that have by occasion thereof suffered, have never had the happiness to be compensated by, with any thing of honourable ballance to it, but have been for the ever of their lives injured thereby, so true is that of some in our dayes which Tacitus reports of the Germans, that they loved play so intently, and were so befotted to it, that they would not onely loose all their money at it, but lay even their clothes and bodies at stake, rather then be disgamestred. I am therefore in earnest against, not the use but the abuse of play, though I think the less any one playes, the less they are in danger to be in love with it, and to be withdrawn from serioufer things by it; yet I dare, and doe say, very wise and good persons of both sexes use it, and that with greater grace and honour to it, then I wish did thereby accrew to the encouragement of others, who, under pretext of their using it, doe themselves abuse it, but enough of that, onely let the Lawes of Nations be ever understood to abhor and decry Dice and Cards, or other Gaming. Themistocles made a Law, that Magistrates should not game, ne republica ludere videretur, defectum sui relicta gravitate pronunciet; so amongst the Canons of the Apostles, ἐπισημασθησὶν τῷ Πρεσβυτέρῳ; &c. A Bishop, or Priest, or Deacon, that is intent on drunkenness, or gaming, either let him lay aside his Coat, or be degraded; so 6 Synod Constantinople, Μὴδὲ τὸ πλῆθος ἀμαρτῶν, &c. No man whether lay or Clergy, must from henceforth (scandalously) play at Cards, if he doe, being a Clergy-man, let him be deposed; and a lay man excommunicated: and the Synod of Augusta thought constant Gamesters so profane, that they decreed them denial of the Sacrament (a) by which exactness, the Church did not so much declare them unlawful because sinful, as intend the

avoydance of scandal, and confirming of those in it, that from the example of divine men using it, would be prone undivinely to abuse it. And by the stat. 33. H. 8. c. 9. Order is taken for unlawful games, such as there are named Dice, Cards, &c. out of Christmas, which the Law does not to deprive men of fashion of their recreations, for that is saved by the Statute, but to disharbour the lodges of these Gamesters in houses of expence and riot, in which, estate, time, reputation, is befotted to, and wasted by these sports; which therefore the Statute calls unlawful, because they are unlawfully used: and by them so abused, the Magistrate becomes blemished through the insolence of them, whereupon they are declared unlawful and made penal, and all licenses to keep houses of Game made void by Stat. 2. & 3. P. & M. c. 9. Concerning these Tali read Turnebus, Julius Pollux, Johannes Sarisburienfis, Master Gataker, and sundry others.

Pilarum ludis] This was one of the repasts, which, within or without doores, the Ancients used their youth to; though it be ranked by Tully with Dice and Tables, yet is thought of a more allowed nature then they, and is one of those quinque-games that Justinian allowes, and which at this day we use, whether Foot-ball or Hand-ball, called Stool-ball. Four sorts of these the Doctors mention, Paganicam, Arctam, Trigonalem, Follem; Clemens Alexandrinus, (a) tells us, the gamesters at it did play stripped, and with all earnestness retorted the ball they received either by hand or foot, and were accounted good or bad gamesters as they did it nimbly and effectually, which Seneca (b) phrases pilam scite & diligenter accipere, adding, sed non dicitur bonus lusor nisi qui apte & expedite remisit quam acceperat; the Greeks called this Ball σφαῖρα, from its spherical figure, as the Latines pila from πῆλα aquo, because its on all sides alike. Methinks this sport is kept up liveliest in Cornwall, in their hurlings, which is by a round ball plated with silver,

my being in that Country, presented to me, accompanied with a mighty concourse of young persons, whose congress may well be called a *Hurly Burly*.

These and other sports managed in some method and with some words, our Chancellour sayes, were passed in the *French* tongue, in which the *French* (flushed with their victory and heightened by the favour of greatness (for our Chancellour has respect to the times in and near the Conquest) gloryed to propagate their Nations honour, and to enervate and worm out all memory of the *English* language and manners.

*Quo & Anglici ex frequenti eorum in talibus comitiis, habitum talem contraxerunt, quod hucusque ipsi in ludis hujusmodi & compotis linguam loquuntur Gallicanam.*

This is added to shew the force and influence of use and habituation, in that it works another nature in men, which is the reason wise Law-givers have cautioned against ill customs and habits, as the great *Apollyons* of grave and good manners. For the nature of man being prone to evil, and endeared to the object of its familiar intuition and converse, does not onely at first civilly bear, and friendly affect what it so familiarly meets with, but at last passionately dotes on even to a delight of surprise by that it so is acquainted with and accustomed to. Which God, who knew the heart of *Israel* better then they did their own, foreseeing to be the sin of them under their captivity to the Nations, to whom their sins were penally to bring them, forewarns them not to follow the Statutes of abomination which were set before them: God has told them, that because of the evil customs and practices of the Nations, he had made their Land *spew them out*, *vers. 26, 27.* and because *Israel* that came into their Land, and with whom some of the Inhabitants would be left, whom they mingling and treating with, might be intangled in the love of their Idolatry and Immorality; therefore does he forewarn them to keep close to their directory, his Law, and not to observe the *Statutes of Abominations*, that is, such customs as by continuance has obtained the reputation and authority of a Law, and therefore were *אבונות*, *Abominations to God*, because practices against his Law and the Prescripts of nature, which he calls *vain*, *Jer. 10. 3.* because they entertain men in their appearances without any reall satisfaction of or reward to them for their confidence. This then, as odious to God and deceptive to men, the Lord cautions *Israel* against, *Deut. 18. 9, 12.* and that because they have a nature of insinuation into man, and thereupon drew God's abomination of man. Of this sort besides many others were those customs of *Rome* to sanctuary Thieves and promulgate lewdness, which *Socrates* sayes were used many hundred years till *Theodosius* exploded them. Hereupon as all Law-givers have enjoyed severity of manners, so have they looked upon avoidance of converse with and neighbourhood to evil, as the best means to preservation of good manners; for vices come into credit by use, and fashions into request by example and practice: so did the *Ambitus* for Magistracy among the *Romans*, for though begging of Votes made servile Magistrates, who did fordid and wicked things, yet when the *Lex Ambitus* came to reform this ill use, it found notable opposition and was decryed, many Factions appearing for it because it had long been in use. So is it in the most enormous things Storyes acquaint us with, and therefore more probable it is in things of indifferent nature, as playing for recreation is; yet by them sayes the Text is the *French* terms of play and account kept to our Chancellours, and to this day.

*Lev. 18. 30.*

Τοιούτων ἔργων  
καυλοτάτων  
καὶ ἰφουβείων  
διὰ πρᾶξιμά-  
των τῆς βασιλείας  
Θεοδοσίου ἡ  
Ρωμαίων πό-  
λιν ἐλάδισεν  
παισίννα.  
*Hist. Eccles.*  
*lib. 5. c. 18.*  
*Dion. lib. 36. p.*  
*18. & 19.*

*Et placitare in eadem lingua soliti fuerunt quousque mos ille vigore cuiusdem statuti quamplurimum restrictus est.*

Though Play was not fit or worthy for the States notice or regulation, I mean, as to the terms and method of it, it being reducible to those things that are rather tolerated then commanded; yet Pleas in publick Courts are, because they concern multitudes of people, and are the defences of learned Advocates in Law-cafes, which because the people concerned in them should understand, which they could not when pleaded in *French*, the Statute of *36 E. 3. c. 15.* appointed that all Pleas which be to be pleaded

See the Preamble to the Stat. *36 E. 3. c. 15.*

in any of his Courts before any of his Justices or before any of his other Ministers, or in the Courts and places of any other borders within this Realm, shall be pleaded, shewed, defended, answered, debated, and judged in the English tongue, and that they be entred and enrolled in Latine, so that Statute; by which the judgement of the Nation appeared against admitting forein language into common use, to the dishonour and eclipse of the national one: for it having ever a great respect to pleadings, (which are chief parts of our Law art, and wherein the Lawyer as much evidences his skill as in any or all other parts of his profession, and since to the obtainment of right *placitare* was necessary, because else the cause could never be tryed) the wisdom of the King and Parliament ordered Pleadings should no longer be in the *French* but *English* language. Concerning Pleadings and Pleas read the Authorities cited in 2 *Instit.* p. 22. and my Notes on the six and twentieth Chapter,

*Ordine placitandi servato servatur* Jus. Cook on Littleton, p. 393. sect. 534. Little.

Cook on c. 11. Magna Charta.

*Tamen in toto huc usque aboleri non potuit* ] Though the Statute took effect as to the language of pleadings, yet not as to all terms of Art; for they having been purposely formed to accommodate the Science of the Law, the abolition of that would occasion a new invention besides that of time and use, and make some rudeness and defect in speech, which men of art delight not to be encumbered with. Therefore, since long custome had rivetted *French* terms and forms into use in forming of Writs and Entryes of books concerning them, the Statute not directing its inhibition to work on those, men and time conspired to continue them as to this day they are, and that I think to keep the Law more secret from the insolence and arrogance of the illiterate and vulgar, who, did they understand these terms of art, or were they so explicated to them as use and business renders them to the learned, they would take upon them to value the Law less, or to understand more then they do, or then consists with their subjection to it, or their charity with their Neighbours; which I think is the reason why that Declaration of November 1650. *That all Report-books of the Resolution of Judges, and other books of the Law of England shall be translated into the English tongue; and that all Writs, Processes, Returns, &c. shall be in the English tongue, and not in the Latine or French, being not more Majorum, is obsoleted by the introduction of the old Method, of which our Text sayes, Plus proprie placitantur in Gallico quam in Anglico; and the Declarations upon Original Writs, tam convenienter ad naturam illorum pronunciare nequeunt.* ]

Scobells Collections, p. 148, 149.

*Reportantur etiam ea quae in Curia Regis placitantur, disputantur, & judicantur, ac in libros ad futurorum eruditionem rediguntur, in sermone semper Gallico.*

This relates to the *Year-books* called the *Old Reports*, which contain the collection of four or more learned men, who (particularly chosen to, and (as I suppose) seced for their attendance on the Kings Courts, in which they had a particular station, & therein abode all the sitting of the Courts) did observe and take notes of all the Pleas, Arguments, and Judgements that in them occur'd, which notes they at the least at the end of every Term did communicate with the Judges about, and rectified them by the Judges advices, and compared them with the Entryes of the Courts, by which they being confirmed were booked; and of these Entryes are the old Reports of the Judgements in the Reigns of E. 3. H. 4. H. 5. H. 6. E. 4. R. 3. H. 7. made up and written *sermone semper Gallico*, that is, not in quaint *French*, nor in the *French* that is vulgarly spoken in France, but in good old *Norman French*, this is *Littleton's French*, and the *French* of the old *Year-books*; and this we read the Conquerour wrote the Lawes in. The intent of which laudible design was to transferr the notion of wisdom to after-ages, and to perennate to after-ages, the memory of venerable Sages, famous for knowledge and justice in their Generation, and to them to bequeath the fair Legacy of honour and uprightnes, according to the national Lawes, to all that should succeed them in place, and thereby have the opportunity (if they walk worthy of the mercy God vouchsafeth them) to exceed them in profound judgement and dexterity of determination; which happy end truly I think succession has been blessed with arrival at, in the matchless continuation of our Reverend and Learned Masters the Judges in all the Ages since: and may they ever continue so to be, that the Law may flourish, and

Sir Ed Cook Preface to the 3 Report. Hollingshed p. 8.

and the Subjects be secure and happy by the protection and favour of it. For though it liſps out *French*, and ſome Acts of Parliament are recorded in *French*, as 1 *Westmiſt.* 3 *E. 1. Stat. Gloſter. Stat. De Judaismo. 18. E. 1. & Stat. Mod. levendi fines* of the ſame year, *Confirmat. Chartarum 20 E. 1. Articuli ſuper Chartas 28 E. 1.* and many others, as a Remembrance of what occaſioned its ſurvey and mutilation by the Conquerour, whoſe *Engliſh* Iſſue ſoon reſtored it to its ancient Demefnes, as I may ſo ſay; yet its full notes are to purpoſes of *Engliſh* freedom, and in abhorrence of ſymbolization with ought that is *French*, and not naturalized by act of Parliament. And therefore though our new Reports, *Dyer, Plowden, Ceok, Crook, Moor,* and others be in *French*, as fit they ſhould be, as well as the Authours of any other Art in their learned language are; yet the Acts of our Parliament are publiſhed in *Engliſh*, that all may know that every thing that is purely *Engliſh* is the love and ſtudy of the *Engliſh* Nation, and of the wiſdom, ſtrength, and majeſty of it: which ſurely I am ſo farr in love with, and ſo profeſſedly a votary to, that ſhould I be in place, when the *Engliſh* language ſhould be diſparaged in compare with the *French*, I ſhould take the confidence to do as thoſe learned Judges did when a Caſe of *Littleton's, Whether a releaſe to one trefpaſſer ſhould be available to his fellow-trefpaſſers,* came before them, who gave judgement according to *Littleton*, ſaying, *That they owed ſo great reverence to him, that they would not have his Caſe be diſputed or queſtioned;* after whom I ſhould be very poſitive not to have any thing that is *Engliſh* ſubjected to the *French*, whoſe ingenuity and valour, whoſe language and lawes I honour in all things, but wherein they are Competitors with and derogatory from the ſplendour of theſe Excellencies of my native Country, *Whoſe proſperity God continue, whoſe Religion God propagate, whoſe Sovereign God preſerve, God grace, and God glorifie, whoſe Lawes God maintain, whoſe Rights God defend, the wealth of whoſe Subjects God encrease, and the looſeneſs of whoſe manners God reform,* but I proceed to the Text.

Sir Henry Hobart and his Companions 13 Jac. in Banco Regis. See Preface to 1 In. fit. on Littleton.

Note this well.

Concordes ſermo tuus cum vita, ille promiſſum ſuum implevit, qui & cum videris illum & cum audias, idem eſt; non deſſent verba noſtra ſed profunt. Sen. lib. 1. de Ira.

*Sub tertia verolinguarum pradiclarum, videlicet, ſub Latina, omnia Brevia, Originalia, & Judicialia, ſimiliter & omnia Recorda Placitorum in Curia Regis, etiam & quedam Statuta ſcribuntur.*

The uſe of *Latine* was probably introduced by the Clergy, when ſundry of the Biſhops and others of the Spirituality were Judges and chief Officers in the Kings Courts of Law, as from after the Conqueſt to the middle of *Edw. 3.* time they in a good meaſure were. And they knowing that whatever the alteration of national languages were, & however the Entryes of judicial matters in them differed according to the language in or out of uſe, as befell the *Britiſh, Saxon, Daniſh, Norman Tongues, Latine* would reſt currant and be univerſally underſtood, cauſed Entryes of the Courts of Law, and the Inſtruments to bring cauſes and perſons to appear and ſtand Judgement to be in *Latine*. Now thoſe things that the Text here refers to, are *Original* and *Judicial Writts*; concerning Writts ſee my Notes on the 25. Chapter. By *Originalia* I am apt to think our Text means Writts to call men to answer for violation of ſome Original Law, whence becauſe they are *Formata ad ſimilitudinem Regula Juris*, they may be called original Writts, becauſe they do (as I conceive, yet ever with ſubmiſſion to the Learned) *Originem dare Secta*, as the original Law violated does *Originem dare Brevi*; for the rule in *Fleta* is, *Tot erunt formule Brevium quot ſunt genera actionum, quia non po- teſt quis ſine Brevis agere.* Theſe original Writts being grounded upon original Laws, that is, either the Common Law or ſome Statute, cannot be altered or digreſſed from, but when the Lawes themſelves can be altered, that is, by Parliament, the common Conſent of the Nation, ſo ſayes *Fleta*, and Sir *Ed. Cook* alter him.

1 Inſtit. p. 304.

Braſton. lib. 3. fol. 413.  
Fleta lib. 2. c. 13.  
Qua conſilia totius Regni ſunt appro- bata, ea quidem mutari non pote- rint abſque conſen- ſu contraria vo- luntate. Fleta lib. 2. c. 13.  
Cook on Little- ton. ſect. 101. p. 73. B. lib. 2. c. 3.  
Of Eſcuage.  
Preface to the 3 Report.

*Judicialia*] So called becauſe they are to bring the party that offends to judgement of Law. Theſe are, if I miſtake not, varied according to ſeveral occaſions being framed by the *Cuſtors* who are the Maſters of the Office whence they iſſue, and thereupon called *Magiſtralia*. Both theſe are by our Text ſaid to be *Lingua Latina*: ſo are the Records or Rolls of the Courts of Chancery, Kings Bench, Common Pleas, Exchequer, and the ſeveral Appendixes of them are all in *Latine*.

Etians

See them in the  
2 Infit.

*Etiam & quaedam Statuta*] To wit, *Magna Charta*, Stat. *Marlbridg*, the Statute *de Bigamis*, *Westminst.* 2. the Statute of *Circumspelle agatis*, the Stat. 3 *Westmin.* 18 E. 1. *De Tallagio non concedendo*, 34 E. 1. *De Asportatis Religios.* 35 E. 1. *De Frangentibus Prisonam*, 1 E. 2, *De Militibus*, *Articuli Cleri* 9 E. 2. and the rest.

*Quare dum Leges Anglix in his tribus addiscuntur linguis, ipsa in Universitatibus, ubi solum exercetur lingua Latina, convenienter erudiri non poterunt aut studeri.*

This clause recollects the force of all the Premises, and answers the Quare, *Why the Lawes of England were not taught in the Universities of England as well as the Lawes Civil are*, to wit, because the Civil Lawes are originally writ in the learned Languages, which are common to all Scholes and Scholars, and without which the Arts cannot be attained; and the *Latine* tongue being there publickly spoken, (for the *solum* refers to the place not to the tongue, as if onely *Latine* were there spoken and exercised and no other learned language, for *Greek*, *Hebrew*, and other languages are, in the same sense the *Latine* is, exercised therein:) but therefore it is said *solum lingua Latina*, because the *Latine* tongue is therein more used in discourse and exercise than any other tongue there, or in any other place of the Nation is, Exercises in *Latine* being as it were entailed to the Scholes, and fixed to the Freehold of the Universities, for thither all persons of learning repairing, and there staying to study, thereby merit their degrees. And as all wits and perfections of promptness are there presumed to be; so all Exercises, Authors, and Dexterities in Art are also, which is the reason that the Universities have the onely opportunities to institute youth in matters of speculation into Arts and Languages. And therefore the Lawes of Nations, *The Civil Law*, being in the *Latine* tongue, and being the Law of the Continent, which a Professor of it may practise and own in any part of the *Christian* and civilized World, (when as the Common Law is but a *Topique* Law, and serves onely for a municipe purpose, being thereupon writ in a municipe language) is proper to be taught in the Universities, and has degrees and honours therein, when our Common and Statute-Lawes have none there.

*Leges tamen illa, in quodam studio publico, pro illarum apprehensione omni Universitate convenientiore & proniore docentur & addiscuntur.*

This Clause introduces the discourse of the famous Societies of the Law, called *The Inns of Court*. Of which to write to the proportion of their Augustness is altogether impossible for any man, who has so little help to their illustration, as (for ought I see) the learned and generous Professors of them are enabled to communicate to him that has a desire to blazon the Beauty, Antiquity, and Accommodation of them. I confess my hopes and expectations were to have found much assistance herein from my friends of the Long-Robe; but truly, save that the learned and most civil Gentleman Sir *Thomas Witherington*, Serjeant at Law imparted a discourse, which in the conclusion of this Chapter I mean to print *verbatim*, nothing has been communicated from any of them to me. It is probable at first men that studied the Common Laws dwelt & lodged in diffusion, where being far from the Courts of *Westminster*, and uncertain to be found by those that desired their skill and advice, they to avoid that trouble to themselves and their Clyents, did associate and joyn their studies and lodgings each to other, which in time came to be accounted *Studium publicum*; all of the Profession resorting to the common residence, and so making one publick presence of Law and Lawyers. After as they increased, men of name withdrawing themselves for convenience of more room and better air, as their Clyents followed them, so also young Students, admirers of them, joyned themselves to them; till at last by time and agreement they grew into some proportion of a body, which had so much of Head and Members, Lawes and Servants, as are necessary to a subsistence of Honour, and a perpetuation of Being: Study being best carried on in a place of repose, and by numbers that are ambitious to search that they may know, to know that they may professe, to professe that they may gain, to gain that they may enrich their Heirs and Families, and by these riches acquired by the Law, encourage a Continuation of Students in the Law. Thus

How probably the Inns of Court first began.

as I conceive, rose the Inns of Courts about Edward the thirds time, for before that though the Law of England was ever in high honour, yet was it less celebrious in its publique professours and profession then after it became. For when by the influence of the renowned Judges Vere, Glauvil, Lucy, & others, Gentlemen of great families & interest in the Nation, the scholes of Canon and Civil before and in that time publicquely kept in London and elfewhere, were put down as about the year 1234. 19. H. 3. they according to Master Selden were, then I conceive these publica studia of the Law took root, and sprouted out more in a few yeares then before they had done; And these publica studia, as to the rudimenting and practice of the Law, are (sayes the Text) *Omni uniuersitate convenientiora & promiora.*

*Quamquam partem rerum diuinarum, humanarumque comprehendens, in ingenti copia gerendum, diligenterque fatigaberis. Hoc tam multa, tam uulgna ut habere possint, liberum hominum, non dabit se in ha: angustias uirtus, laxiore spaciū res magna desiderat. Epist. 68. P. 187.*

*Ad Eietam discretio. c. 8. P. 525.*

*Stadium namque illud situm est prope Curiam Regis, ubi leges illa placitantur, disputantur & iudicantur.*

Though time has enlarged the one onely society of Law, which our Text calls *studium illud* into many, yet those many are by our Text called but one study; because though they are lodges of several students, yet tend to one end, the propagation of National Justice according to National Law: which because it is determined in the Kings Court (not that of his personal but politique residence, therefore Inns of Court seated so near Westminster, where the Courts of Law are, are said to be *prope Curiam Regis*. For as in the sense of the Text, all the Inns of Court make but one publick study, so all the Courts of Westminster-Hall make but one Curiam Regis, it being the same Great KING whose Lawes are administred in every bench of his Court to one and the same purpose of order and justice; to doe which (so symmetricious to the administration of God himself, who is the Archetype Justicer) our Chancellour sayes, the Laws that all persons must submit to and be adjudged by, are opened, debated and judged there, and there onely *ubi leges illa placitantur, disputantur & iudicantur*, sayes the Text; *Placitantur* by the parties, *disputantur* by the advocates, *iudicantur* by the Judges; *Placitantur*, that they may come to tryal, *disputantur*, that they may appear what they truly are in trial, *iudicantur*, that they may be sentenced as they appear to be upon and after trial; *Placitantur*, that every grief may have a remedy, *disputantur*, that the remedies may be rational and according to legal justice and Circumstances of fact, *iudicantur*, that the determination of learning and justice may be subsequnt to the matter, *pro* and *con*; this gradation shewes the Law not to proceed furiously, nor to delay slothfully: but to hear, consider, and determine, as the weight of the matter in controversie requires, and that judgement to deliver from, and enroll in, the Kings Court, according to Justice and good Conscience.

*Inter se, ita miscenda sunt, & quiescenti agendum & agenti quiescendum est; cum rerum natura delibera, illa dicat tibi se & ditem seisse & notem, Seneca Ep. 3.*

*Per Iudices, viros graves, Senes, in legibus illis peritos & graduatos*

As the pleading, opening, and arguing of Cases belong to the Students of the Law, who being Barristers or Serjeants, are incipient and perfect graduates in the Law: so the decisive act of the Law, is from the venerable and prudent mouthes of the Judges, whom the Text, to the Honour of the Kings and Laws of England, terming *Viros graves*, who, though men by nature, and graduates by their proficiency in the knowledg: and apprehension of the Law in all the attainable latitude of its profession, it raises to all veneration as Heroiques and Divine Sages, from the consideration that they are *Graves mente, Senes corpore*, Fathers of experience, whose youths abus'd not the Inns of Court by making them *stii diversoria*, and by trifling out their time in them, but were taken up with incessant studies, profitable conferences, diligent exercises in the houses, constant attendances on the Courts, laborious transcribing of Reports, yea and who when they were called to the Barr, (which they never or rarely importun'd) did forbear practice, till they had ruminated well, what the duty of, the requisites to, and abilities for it, were; These Oracles thus ascended to, and the virtue in them thus graduated, have by the wisdom of the Kings of England in their respective reigns been advanced, and by the people of England been accepted, as the ordinary living and speaking Law, that is, Those learned, pious, and impartial dispensers of Justice in all causes, and to all persons, *Who*

*Nuquam hanc auditorum partem uidelis, cui Philo- sphi schola diuersoriam aut est. Seneca. Ep. 108. Ego quidem priora illa ago ac tracto quibus paratur animus, et me prius seruior, deinde hunc mundum. Epist. 65.*

*are*

*Sola sublimis & excessiva virtus est, nec quicquam magnum est, nisi quod simul & placidum.*  
Seneca lib. 1. De Ira.

Cook Preface to Littleton.

Note this.

are able men, fearing God, loving truth and bating covetousness. But of these, because I have written in the notes on the 24. and 25. Chapters, and shall further, on the 51. Chapter, when I come to it, I forbear to write more; onely let me ever remember the Nation of that due gratitude they are to perform to God and the King, for the mercy and favour of furnishing the Courts of equity and Law, with such learned men, and sincere Judges as now sit in them, of whom I must ever profess my thoughts, *That I believe they are in all respects of learning and integrity, inferiour to no age of their predecessors; nor were the people of England ever better satisfied with the Judges of their times, then now the people are with the present Judges, who are (for I am above flattery, and despise to prostitute my name and pen by any ungentleman-like meanness) as the Text (written by one of them in every regard) describes them to be Viri Graves, Senes, in legibus illis periti, & graduati.*] And as Sir Edward Cook sayes, *Littleton had great furtherance in composing his work, in that he flourished in the times of many famous and expert Sages of the Law; and He himself accounts it of all earthly blessings not the least, that in the beginning of his study of the Lawes of this Realm, the Courts of Justice, both of Equity and of Law, were furnished with men of excellent judgements, gravity, and wisdom, from whom he confesses to have learned many things which he published in his Institutes.* So may the hereafter-writers as well as the present ones attribute much of their happiness and encouragement to the great parts and virtues of these excellent Sages, who yet (blessed be God) live the life of nature, and ever will live that better and more desirable life of fame: *For when the name of the wicked shall rot, the upright shall be had in everlasting remembrance,* but I proceed.

*Quo in curiis illis ad quas omni die placitabili confluunt studentes in legibus illis, quasi in scholis publicis leges illa leguntur & docentur.*

11. Chap. Mag. Charta. p. 21. Institutes 2. part.

*Altor vel reus in iudicio contentiosus, non admittuntur, ut si feria sacra & solennes sint, quibus iura edicuntur silere lites.*  
Tholoff. Syntag. lib. 49. c. 2. ff. 10  
1 Instit. on Littleton.  
Lib. 7. Belli Gallici 177.  
2. Tulcul. 9.  
2. De Legibus 11.  
Cic. pro Plancio 68.  
Cic. 1. De Inventione.  
Cic. in Salust. 10

*In curiis illis*] That's in *Westminster-Hall* for there the Courts are fixed when as before they followed the Kings Court, and were removable at the Kings will, the returns being *ubicunque fuerimus*; therefore the Courts wherein law is debated, considered, and adjudged, being at *Westminster*, the publick lodges of the students so near it, advantage the students to repair more readily to them: and that they that intend to be Lawyers, and make a progression of their study, doe, *omni die placitabili*] that is, every Hall-day in the Terme; for they I conceive are only *dies placitabiles*, when the Courts sit wherein Causes are pleaded. For though in Terme times some Holydayes are *dies non placitabiles*, and *non juridici*, as the common Lawyers call them, of which sort in every Terme, there are some to be named besides Sunday in every week, which is *dies non juridicus*; yet every ordinary day in Terme is reputed *dies placitabilis* or *juridicus*] And thereupon pleas are held in the Courts, and thither upon such dayes the Clerks and the Attorneys of the Courts, together with the Pleaders and Students doe *confluere*] that is, not barely repair to, but meet and conjoyn in, as many waters doe refund themselves into one common Panch. Thus *Cæsar* sayes, *confluebat ad eum magnus numerus*; and *Tully* has *confluere ad aliqua studia, In unum locum confluere, Ad nos pleraque causa confluunt*; and when he is *Seraphique* in the praise of one, he sayes, *Laus, Honor, Dignitas, ad aliquem confluit, and Sentina Reipubl. confluit aliqua*. And this the Students doe, that they may from the arguments of the Advocates, and the distinctions and declarations of the Judges, hear and understand what the Law is, and by this are the students as much instructed as they are, *in scholis publicis leges illa leguntur & docentur.*

*Situatur autem studium illud inter locum Curiarum illarum & civitatem London, que de omnibus necessariis opulentissima est omnium Civitatum & Oppidorum regni illius;*

This *studium* here intended, is (as I said before) not referrable to one *Inns of Court*, but to all thoses severalties of that one study, all which he calls the *Inns of Law*. For though I know *Master Stow* tells us, that the *Temples* were granted to be houses of Law in the time of *Edward the third*, when probably other *Inns of Court* were not so destinated; yet that our Text means these, excluding the other, is not likely. For our  
Chancellor



Chancellor was a Member of *Lincoln's-Inn*, which house of his study and breeding; he cannot be thought to leave out of his *Stadium* in the Text; for though before *H. 8.* time (when *Sir Tho. Lovel* is said to be a great Benefactor to and enlarger of it) it was not an Inn of that magnitude it now is: yet a most ancient house has it been of the Earls of *Lincoln*, one of which dyed there *Anno 1310.* But rather that he looking on them all as in the Suburbs of *London* and Confines of *Westminster*, makes them lye pat for receiving Clyents from the City the seat of Trade, applying themselves to *Westminster* where the Courts the Sphear of Justices are; where all controversies depending on Contract (which brings more sacks to the Lawyers Mill then any thing else, because it is the general commodity of the Nation) are to be determined. Now this opportuneness to *London* as it is the Mother-City of *England*, *Opulentissima omnium Civitatum & Oppidorum Regni illius*, declares the wisdom of the men in seating themselves so near the greatest, richest, and most populous City of *England*; concerning which I have, as in duty and gratitude I am bound as it is the place of my birth, written somewhat testimonial of it in the Notes on the 24. Chapter and elsewhere: so should I add somewhat here in admiration of her, but that the Text prevents me when it terms her *De omnibus necessariis opulentissima omnium Civitatum & Oppidorum Regni.* ] Notwithstanding which, many reproaches and detractions dayly pass from the mouths of envious and ingrate men against her, which are so farr from effecting any real evil to her, that they do but intend the industry of her Citizens the more to trust to God and their diligence, and by the blessings of them to make themselves and their families happy, which they would soon do to the disappointment of their reproachers, would they march within themselves, and give in Trade not so large credit; for so long as God sets not his face against *London*, and the River of *Thames* flows up to *London*, *London* will be *London* when all its contemners are in dust, and will be honourably remembred when they and their names shall be forgotten. For its immortal Genius has so much of an indefinite felicity in it, that as it has hitherto in all Ages been the glory of this Empire, so will it for the future I trust continue to be; for it is *Urbs per cuncta Maria Genitrix*, as *Seneca* wrote of *Miletum*; 'tis *Civitas Literarum*, as *Cassiodore* termed *Rome*; 'tis *Domicilium Legum & Gymnasium Literarum*, and in *Lipsius* his words *Opto sic esse & manere*: and therefore the Text does not Hyperboliquely call it *Opulentissima*, but with relation to the plenty of men, diversities of Callings, abundance of Merchandise, and vastness of wealth, which above and beyond any City in *England* it hath. Furthermore our Text sayes, the *Inns of Court* placed in the Suburbs, *Seorsum parumper, ubi confluentiam turba quietem perturbare non possit,* ] were sitly seated; for had they been in the streets of trade, there had been no conveniency for study which is advantaged by silence; and had they been in the Country, there had been no opportunity to the King's Courts but with much toyl and inconvenience, which this situation so accommodated both to the City, the Magazine of money, food, books, men of all sorts and conditions, and to the Courts of *Westminster* whereunto all men are for Justice to apply themselves, hath prevented. These things, I say, well-weighed, there appears in the situation of them, where they are, much of prudence and convenience. And so I end this 48. Chapter.

*Stow's Survey.*  
p. 448.

¶ In my Defence  
of Armes and  
Armory, printed  
1660.

The Authors  
zeal for  
London.

*Consol. ad Helviam.*  
*Lipsius in Notis*  
*ad Consol. Helviam.* p. 816. in  
Folio.

*Civitas non potest*  
*stare sine Jurispru-*  
*rento, cum Leges*  
*tendant ad confer-*  
*vandam Rempub.*  
*Civitas & homi-*  
*num congregatio-*  
*nem.* *Baldus apud*  
*Cassianum Ca-*  
*tal. Gl. Mundi*  
p. 365.

## CHAP. XLIX.

*Sed ut tibi constet, Princeps, hujus studii forma & imago, illam ut valeo jam describam, &c.*

THIS Chapter is purposely designed to treat of the *Inns of Court*, and of all those circumstances in and about them; which the Chancellor, whose delight and stay was much in them, endeavours to impart to the honour and advantage of them. For since our Chancellor was no heady and desultory Writer, (who passes over the solid parts, and treats onely of the trifles of his undertaking) but a grave and learned Author, which gives every limb and part its due *Emphasis*, proportion, and ingrediency; whereby he makes the whole symmetrical. As he had before in the eighth Chapter

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discoursed

discourfed of the *Forma Juris*, which every good Student fhould embrace and profecute; fo here he does difcourfe of the *Forma & Imago Studii*, of the nature and order of the *Inns of Court*, wherein the Law, which is fo ufeul to Order and Religion, is ftudied. Concerning thefe I muft profefs my unhappinefs not to be able to write as I would, and they deferve; (for that they being no Corporations, but Convents of men who have no fanktion from the Prince to incorporate them, but are what they are by mutual Confeut and an Order of common underftanding, which paffes between the gravity and youth of them, who are for the moft part fo confiderate each of other; that what the Bench and Parliaments in them conclude upon, the reft obferve; or otherwife muft expect not onely the fcandal of being rebellious, but the diffavour of the Judges who will not hear any *Korab's* that are diforderly to the Ancients rules: which lofs of their praftice and reputation makes fome as plyable to the Benchers orders, as the Benchers are obfequious to reafon and juftice in the difpenfation of them to the Youngfters.) I fay, concerning thefe I would more elaborately difcourfe, but that I yet neither finde, nor have communicated to me any thing but what is too narrow to compleat fuch an undertaking. Wherein therefore I am defective herein (as I am in many other parts of this endeavour) as I humbly crave the Learneds pardon for it, fo I promife an hereafter-fupply if God fhall bring this Commentary to a fecond Edition, and betwixt this and then I fhall endeavour fuch Collections as may moft contribute thereto; in the mean time I am to confider thefe Houfes or Lodges of Law as our Text calls them *Hospitia*. Concerning *Hospitia* I have written in the Notes on cap. 36. that which I fhall add here, is, that the Lodges and places of receipt to Souldiers in their advance to or retreat from the Warrs, were of old fo called. For though the Souldiers had among the *Romans* their *Hospitia Campeftria*, which were their Tents in the Field; yet their *Hospitia Militaria* were fixed to fome fettled place or other, from which they departed not; but to which refolutely adhered. Thefe were called *Inns* for their receipt and charitable accommodation, becaufe what receipt they gave was free and in an orderly and futable manner to fuch expectations as ftrangers could hope to receive upon travel. Hence comes it to pafs, that becaufe *Hospitia Militaria* are properly intended to receive Military men; the *Inns* of thefe Military men termed *Templars*, refiding in the Temple, London, gave name to the moft ancient and eminent of the *Inns of Court*, *The Temples*, which became *Inns of Law*, as heretofore I have fhewed.

*Hospitiorum nomina Domini tenentur prabere Hospitiis, qua habitacionis caufa tantum neceffaria funt.*  
Tholofan. lib. 7. 8. 9.

Order of *Lincolns Inn*. fol. 64. 87.  
4 & 5 P & M.  
An. 1557. lib. 4. p. 317.

Lib. 8. *Lincolns Inn*. fol. 64. 87.  
97. 99.

Idem eodem lib.  
p. 48, 49, 142, 227.  
& lib. 4. p. 200.

Carter *Analys*.  
of *Heraldry*.

Stow's *Survey*.  
p. 66.

These *Hospitia*] our Chancellour faves, are either *Minora*, preparatory Lodges of Freshmen; for none were to be admitted of an *Inns of Court*, but fuch as firft have been in an *Inns of Chancery*; and fuch as probably were forced by exigency of fortune to live near: or *Majora*, fuch as received not the Gudgeons and Smelts, but the Polypus's and Leviathans, the Behemoths and the Gyants of the Law. Of the firft fort called the *Inns of Chancery*, fo called poffibly becaufe they contained fuch Clerks as did chiefly ftudy the formation of Writs, which regularly appertain to the Officers of the Chancery (to wit, the *Curftors*;) there were by the Text ten: thefe were as the ten Tribes, that revolting from ignorance to Clerkfhip, became men of prudence, diligence, and fortune. Thofe that of them yet remain are *Thavy's Inn*, reputed the ancienteft *Inn of Chancery*, fo named from one *Thavy* a Citizen of London that therein *Temps E. 3.* lived; but *Temps H. 7.* it is faid to be purchafed by *Lincolns Inn*. *Bernards Inn*, in the occupation of one *Bernard*, who *Temps H. 6.* dwelt in it, and ever fince it has been called fo. *Furnival's Inn*, fo called from Sir *William Furnival*, *Temps E. 2.* in *H. 6.* time it belonged to the Earls of *Shrewsbury*, after purchafed *Temps Q. Eliz.* by the Society of *Lincolns Inn*. *New-Inn*, erected to be an Hoftle for Students *Temps H. 7.* fince purchafed by the Society aforefaid. *Clement's Inn*, fo called becaufe it pertained to the Parifh of *St. Clements Danes*. *Clyfford's Inn*, the houfe of the Lord *Clyfford*. *Staple-Inn*, belonging to the Merchants of the *Staple*. *Lions-Inn*, before *H. 7.* time it was the fign of the *Black-Lion*, whence called *Lions-Inn* to this day. Thefe eight are all now in being. There was a ninth, *Chefter's Inn*, which flood on or near the place where *Somerset-houfe* flood, but it was pulled down *Temps E. 6.* The tenth *Inn of Chancery*, which was ftanding in our Chancellour's time, is wholly loft in the memorial of it; unlefs *St. George's Inn* over againft *St. Sepulchres Church*, which is thought to be the ancienteft *Inn of Chancery*, be it: for

*Scroop's*

*Scroop's Inn* is not to be accounted one, since it has been reputed to be an house of Serjeants. But these eight yet in being are still inhabited by young Attorneys, and Students after the manner of the *Inns of Court*, and are accordingly governed and ordered; for they do all of them appertain to some or other of the *Inns of Court*, and have Readers every year sent from them, who do therein read Law to the young Students after the likeness of the *Inns of Court*: and every one of them, sayes our Text, contained *Centum Studentes ad minus* ] Who though they resided not therein alwayes, nor had Commons in them but in Term-time, when the Attorneys and others Members of them came up to the Term to follow their Clyents busineses; yet were they contributory to the charge, and submissive to the Government of them, and there had their Chambers and were in judgement of Law abiding. And many of them that were young and intended study of the Law, in order to transplantation to the *Inns of Court*, learned here the knowledge of original and judicial Writs, and read the Elements of the Law, to fit them for remove into the greater and more creditable Sphears of Law, *Hospitia Curia* ] so called because they are Receipts of the Children of Nobles and Gentlemen, who onely of old were admittable into them. These our Text reckons as at this day four, *The two Temples*, the House of the *Templars*, wherein they lived in great plenty above an hundred years; *Lincoln's Inn*, the House of *Henry Lacy* Earl of *Lincoln*, afterwards it was the Bishop of *Chichester's* till *Henry the Eighth's* time, when the interest thereof coming to Justice *Sullyard*, Sir *Edward Sullyard* in 22 *Eliz.* sold it to the Benchers and Society of Students therein. Though the *Temples* have ever been famous for good Pleadors, yet this Inn grew up chiefly in *Henry the Sixth's* time, when one of the greatest Glories of it was our Reverend Chancellour; *Gray's Inn*, seated within the Mannour of *Poorpool*, as I conjecture, the Corps of some Prebendary in *Saint Paul's Church*; called *Gray's Inn* from the noble family of the *Grays* inhabiting it in *Edward the Third's* time, near about which it began, inhabited by the Students of the Law, who had it granted to them. All which are Societies of the Cream of the Gallantry of *England*, each of which in our Chancellour's time contained near 200 Students, which is a vast augmentation since *Henry the Fifth's* time, of which Mr. *Fern* sayes he has seen an Alphabet of the Names and Armes of all those that were Members of an *Inns of Court*, exceeding not above the number of sixty: so great an improvement does a few years produce, that in the very next Reign those Inns had near or full out 200. Benchers; Barristers, and single Students, since all these are contained under the Text's *Studentes*, for they do *studere optimis disciplinis & artibus*, as the Oratour sayes; and thereby they do *laudi & dignitati studere*: yea, they do *pecuniis, Imperiis, gloria studere*, and in so doing, arrive at that Greatness no Profession, besides theirs, brings the Proficients in them unto.

See Orders for Inns of Chancery in lib. 8. *Lincolns Inn*, p. 60, 61, 186, 187, 281. &c.

Lib. 7. *Lincolns Inn*, fol. 317.

Glory, Generosity, p. 24.

Cic. 1. *verr.*  
4 *De Finib.*  
1 *De Finib.*

*In his enim majoribus Hospitiis, nequaquam potest studens aliquis sustentari minoribus expensis in anno, quam octoginta Scentorum.*

By this it appears the Honour of being an *Inns of Court* man was great in our Chancellour's time, because none were admitted of them but men as of blood so of fortune; since to live and study there was so chargeable that a thrifty liver there could not come off for less then 80 *Escues*, w<sup>ch</sup> I take not to be as Mr. *Mulcaster* makes it to amount to twenty Marks, but casting the *Escues* into those that are *Escue vieil*, worth 7 s. 6 d. Sterling a piece, comes to near 30 l. a year, which in that time was a good allowance, and this the Chancellour knew to be very competent for a Student that lived in no luxurious pomp, but intended his mindes accomplishment in order to his future profession of the Law. For although most men now repair thither for fashion, and to spend money; yet of old they thither went and there resided to acquire parts of virtue and action, and to compleat themselves as good Christians and stout Gentlemen; and this to doe, nothing contributes more, next God's blessing, then frugality of living and keeping close to study: for large fortunes and allowances make youth preys to vice and baits to seduction. For when in elder Ages there was more severity conveyed to youth by education and frugality of nurture, then were effeminacies anticipated, and luxury was wholly borne down by the prevalence of resolved virtue; the moderation

*Si vis vacare animo, aut pauper esse oportet, aut pauperi similis; non potest Studentem esse salutare sine frugalitatis cura. Frugalitas autem paupertas voluntaria est. Senec. Ep. 17.*

of which as it directed the affections and desires to God and goodness, so did it take away the necessity of a great fortune, which in this deviation from it, is indispensably to concur with the charge and state of immoderate and high living, which is the reason of the change of times in portions and expences; for whereas the portion of *H. the third*, Son to the Conquerour, when he was a younger brother, was but bare 5000 pounds, and that was then thought a good estate, now such a portion is thought but small for an *Aldermans* Son; So much, saith Sir *Henry Wotton*, is either wealth increased, or moderation decreased.

In his Character of some Kings of England. p. 150

*Et si servientem sibi ipse ibidem habuerit, ut eorum habet pluralitas, tanto tunc majores ipse sustinebit expensas.*

In our Chancellours time, men of honour and worship, sent no children to these *Inns of Court*, but such as they could honourably and plentifully treat there, which they not opinionating to be done, other then by adding to their convenient Chamber, decent furniture, rich apparel, different Masters for every science, and a full purse for every pastime, a well apparated servant to attend them, enhaunfed the expence of their stay there, which they very willingly allowed to train their Sons up to generous purposes of recreation and profession, since, as they were the best of the Nation that so placed them, so they having sufficient estates to defray the charge of their conspicuity, expended it on them in their persons and equipage. For as then none but men of estate entred themselves in the *Inns of Court*; so being there entred, none almost lived but with a servant to attend him, when an under-bar student, which was very comely and useful, if the servant were well chosen, and proved well. For though a mean and trifling servant, be but a harpy, and serves onely to promote a debauched Masters vanity, by the instrumentality to which he takes confidence to become a Quarter-Master with his Master, as knowing he must not displease him, least the secrets intrusted with him take ayre by his discovery, the convenience of which servant to carry on his secret as it first assisted the Master in his clancular designs of vice, so the awe of his detection upon discontent, makes him so mean a vassal to his servant, as nothing meaner can be. For nothing is more insolent then a necessary servant, which the Earl of *Essex* found true in Sir *Anthony Bacon*, whom he made use of in all his secrecies in the difference he had with *Cecil*, and thereby did so inflame *Bacons* mercenary soul, that he covetous to dreyn the Earl of some notable reward, gave out that he could mend his fortune under the *Cecilians*, which the Earl of *Northampton* hearing, friendlily discovered to the Earl of *Essex* with this concurring advice, to keep *Bacon* his confident, whatever he gave him, least his discoveries should ruine the Earl in his fortune and honour. The Earl of *Essex* followed the counsel, and gave him *Essex* house, which he was fain after to redeem with 2500 pounds in money, and 1500 pounds he before had upon a like trick, which shews that servants if not well chosen, and warily trusted, are dangerous attendants. That then which the servant is an advantage in, is when he is sober and sincere, when he understands his duty, and makes conscience to perform it, and both will and can serve his Master to honest and worthy purposes, to excite him to worthy actions, to advise him humbly in doubts, this is a servant that deserves to have *patrimonium libertini* as well as he has *ingenium libertini*, as *Seneca* sayes, not as *Lipsius* interprets *ingenium libertini*, *humile, terreum & quod saperet stirpem*, but in that he has a free and virtuous soul, deserves to be suitably rewarded for his service.

*Servus, perpetuus mercenarius est.* Lib. 3. *Senec. De Benefic.* p. 47.

Sir. *Henry Wotton*. tom. p. 14. 15.

*Senec. Ep.* 17.

*Occasione vero sumptuum hujusmodi cum ipsi nobilium filii tantum in hospitibus illis leges addiscunt.*

It should seem by this clause, that none but Gentlemen of the best quality sent their Sons hither; and by Command of King *James*, none was to be admitted to the *Inns of Court*, but a Gentleman by descent, and that not onely because they had keeneft stimulations to liberal studies, wherein being Masters they might best serve the noble ends of justice and order: but also for that the expences of their education to the Law being so chargeable, is best borne by them that have plentiful incomes to defray them by: And these

*Primo Jacobi*, *Lincolns Inn* lib. 6. p. 210.

these by the text are said to be *nobiles*, and their Sons sent thither *nobilium filii*] which is to be understood not of the high Nobility, the Peerage ( though often their Sons were thither sent, and there have professed the Lawes, and been advanced in fortune by them) but the Sons of the lower Nobility, Knights, Esquires, and Gentlemens Sons, who are chiefly the *nobiles* here; for these, as their Fathers have great estates, and generous blood in them, so doe beget and nourish in their children that bravery which may excite them to and confirm them in virtuous emulations, and rouse up their spirits to excellent performances. And this the ancients thought so peculiar to noble birth, that they decried all mean born persons from publick trusts and honours, and that, for that *παραπρος τω αειqual*, For the very servility and meanness of spirit which is impressed on them by their genitor; and also, that *αυλαδιδραν διαγωγην*, that illiberal education that they take by reason of it. I know this is no general rule exempt from all exception, for there is every dayes experience of Gentlemen born, that are sordid and mean in nature, and of Plebeians by birth that are Genteel'd in disposition; but for the most part, and according to the general dispensation of nature it being so, the learned in all times have judged those fittest for great trusts and honours, who are not *αυποχρητοι* (as Mercury in Lucian cries out of extemporary Philosophers, who base in birth, and breeding, couet to doe high things but fail in them.) but *ευγενεις, κ̄ ευπαιδευμενοι*, as Socrates his words are, Well born, and well employed and improved by virtuous education, who thereby will be able and willing to expedite Justice, and to prevent oppression and violence, which as ill Advocates doe promote, so good ones doe prevent. This is the reason D'Argentre in his account of Britanny sayes, that by the Lawes of Britanny, and according to the old constitution of that Dutchy, no man could be an Advocate or pleader of Causes, but he that was of a noble Ancestry of Gentry; because mean spirits doe embase the honour of the Lawes by serving the ignoble ends of those, who being great would be cruel and disorderly against the counsel and enaction of the Laws: which because men of good families may be presumed not to connive at or approve, but to oppose and reject, therefore they have been ever judged meetest to be bred to the knowledge of Lawes that they might be employed in those trusts. And therefore though some despise blood and parentage (and in some it deserves no less, because their lives and minds are so unlike it in any expression worthy it) yet wisdom thinks *την αειοπερικειμενον εν τω γυνη*, the most glorious Temple of the minde onely fit to contain it, and that onely nobility to be, as Philo's words are, the greatest good and causal of the greatest good, which is solely bent upon and conjured to advance goodness and virtue; which ambition, when the minde of man has, he in whom that minde is, deserves the utmost secular honour. Let these be Kings, sayes Seneca, though their Ancestours were none; for in that they preferred Justice before their emolument, and when others tore and rent the Common-wealth with factions, these lay still and encouraged no commotion, nor irritated any party. Let these rule, who could so well overrule their own passions, and so benefit mankind by good precepts and principles. This is true nobility, not tincture of blood, & grandeur of fortune, or honour from Princes, but that honour that appears *πρωξεν ομοιουσι*, &c. in active virtue, when high spirits, put men upon high designs of virtue in deed and truth, and not in word and vapour; For without these, Gentility and Nobility signifie just nothing, nor is it any addition to our student to be *nobilis ortu*, if such he be not *dotibus & studiis*. Whereas then 'tis said in our Text, *ipsi nobilium filii tantum in hospitibus illis leges addiscunt*, 'tis to be understood that as they are most proper to learn and practise the Law, so for the most part they, and they onely do; For *tantum* is not here exclusive, but accumulative, not an onely of impropriation, as if none but such did or might: but an onely of annumeration, as I may so say, more of them then of any other doe, nay the greatest part of those that doe *in hospitibus illis leges addiscere*, are of those *nobilium filii*. For this Philosophy is no *populare artificium*, but those are to study and attain it, who are industrious and not faint hearted, whom no

Lib. 7. Lincolns-  
Inn p. 110.

Agisov ταις  
αρισταις αυστη-  
ροισι. Plato  
lib. 5. De  
Repub.

Euphrades Phi-  
losofus apud  
Cressolium My-  
tag. lib. 2. c. 4.

Lucianus in Dis-  
accusatus.

Generosi animi & magnifici est, juvare  
& professequi dat beneficia, Deos imita-  
turus qui repetit, sanatores, Lib. 3. De  
Benef. p. 47.

Philo Judzus. Lib. De Nobilitate.  
p. 903.

Μεγιστον αγαθον κ̄ μεγαλων  
αγαθων αιτιον. Idem lib.  
praecipit. ad Institutum.

Sint hi Reges, quia majores eorum non  
fuerunt, quia pro summo Imperio habue-  
runt justitiam, abstinentiam, quia non Rem-  
publicam sibi, sed se Republ. dicaverunt;  
Regnent, quia vir bonus, proavus eorum fu-  
it, qui annum supra fortunam gessit. Se-  
nec. lib. 4. De Benefic. p. 72.

Philo. Lib. De Nobilitate, p. 304.

Is hercle posteritatem deserit, qui anti-  
quitati additus nihil sua aetate concedit.  
Petrus Crinitus c. 1. De honesta disci-  
plina.

Non est Philoso-  
phia populare ar-  
tificium, nec orien-  
tationi paratum.  
non in verbis sed  
in rebus est. Se-  
nec. Epist. 16.

labour

*Cujus (Hospitii Juris) cum vestibulum salutastem, reperissetque linguam peregrinam, dialectum barbaram, melodum inconcinnam, molem non ingentem solum, sed perpetuis humeris sustinendam, excidit mihi fateor animus. Spelman in Proemio ad Glasi.*

*Non est quod admireris animum meum, adhuc de alieno liberalis sum. Senec. Ep. 16.*

*Qua, siue conineas nihil tacitam conscientiam juvant, siue proferas non doctior videberis sed molestior. Lib. 1. De Brevis, vita. p. 734.*

labour and toyl of brain will discourage, no voluminousness of Authors will affrighten. For though ingenuity and mother-wit may do much, and may make a great buſtle with it; yet books thoroughly read and understood are the great helps to skill and art: and he that intends them well shall *addiscere*, as our Chancellour's word is, that is, not *operose nihil agere*, & in *literarum inutilium Studiis detineri*, which the *Moralist* accuses the *Greeks* to have corrupted the *Romans* with the love of; but to learn by study what may add to their own ingenuity, *addiscere quasi addere ad quae didicerunt*, to make an improvement by learning to what God has given them in nature.

*Cum Pauperes & vulgares pro filiorum suorum exhibitione tantos sumptus nequeant sufferre, & Mercatores raro cupiunt tantis oneribus annis attenuare Merchandisas suas.*

Here the Chancellour shews how it comes to pass that the Gentry onely do send, and can maintain their sons at the study of the Law which is so chargeable. For there being amongst men poor and vulgar persons who cannot, and men of Trade who will not be at the charge, those that doe and will must be of the Gentry, who are neither of both ranks but a degree above them: and thence are the *Nobilium filii* sent to these *Hospitia* as the *soli* that can and will bear the charge of the breeding to profess the Law. Alas, in our Chancellour's time the Yeomen and Country-Farmers were kept low and needy, the Citizens not so full and landed as since Queen *Elizabeth's* time they have grown; and therefore our Chancellour had good reason to write as he did, that the *Nobilium filii* onely did, because the *Pauperes* and *Vulgares* could not, and Burgers the *Mercatores* here, would not be at that charge, by breaking their stocks and disbursing such summs of money, as in this way of breeding was to be expended. But alas since that time all things are become new: the Peasant grown rich makes his son *par cum Thaino dignitate*, and the Citizen descended out of the best families of Gentry in *England*, having an Elder-brothers fortune for his son, breeds him as high as may be, and yet does not *Merchandisas attenuare*. For he looking upon mens sons that have risen to be great Counsellours to Princes upon the account of good parts well directed and fortunated, hopes by brave education, to see him prove one of them, and thereupon cares not what he spends upon him, so he be sober and diligent: but rather the breeding of a son to this course makes the father more diligent and concerned to get, that he may leave an estate fit for such his sons generous education. So that now not blood is the onely good ingredient to an *Inns of Court* man, but fortune, and Gentlemen in reputation men are according to the latitude or narrowness of their fortune; though truly good breeding and brave qualities with little fortune often works greater wonders by its endeavour to obtain conspicuities of life, then the greatest blood or fortune without them has obtained, witness not onely *Martia's* son, whom *Seneca* terms so rare a lad, that the wisdom and majesty of his demeanour brought him into the Sacerdotal Grandeur, when but a childe, and *Fabius Maximus*, *Cnejus Domitius*, *Sempronius Gracchus*, all which when but very young were highly for their wisdom dignified, and *Tacitus* sayes, *deservedly*; but also in that never to be forgotten but ever to be honoured Sir *Henry Sidney*, a Gentleman, who though he had many Peers to him in fortune, yet had none in his time of almost equal virtue, nor any that I remember of like reputation as he was; for though Queen *Elizabeth's* time, which was so choice in Ministers of State and publick employment, nourished many incomparable Statists and Courtiers, yet did few if any of them overtop Sir *Henry Sidney*, but that he was accounted the glory of them all: being therefore not full one and twenty years of age, he was sent Embassadour to *H. 1. of France*, and that not upon Complement, but matter of great Concernment; which he transacted with so great judgement, that every year after he was on some Embassye or other: and at last was four times Lord-Justice of *Ireland*, three times Deputy of *Ireland* by special Commission, and dyed Knight of the Garter, leaving his son most like him in all renowned qualities, and therefore admired by all the World, learned, eloquent, valiant

*Pauperes a parvo lare.*

No Attorney to be admitted into any Houses of Law. Order of Lintols Inn. 1557 lib 4. fol. 317. 4 P. & Mar.

*Tu si filios sustuleris, poteris habere formosos poteris & deformes; & si fortasse tibi multi nascentur, esse ex illis aliquis tam servator patriam quam proditor poteris. Senec. Consol. ad Marciam. p. 175.*

*Hac sanctitate morum efficit ut puer admodum dignus Sacerdotio videretur. Senec. Consol. ad Marciam. e. 24. p. 179. Lipsius in Senec. Consol. ad Marciam. p. 191. Nobiles adolescentulos avitis ac paternis Sacerdotiis recolunt. Tacitus.*

Holingsh ed. p. 154b.

valiant and courtly Sir Philip Sidney, who yet remains in memory the Darling of the Muses, and the eternal grace of all good Letters: but I proceed.

*Quò fit, ut vix doctus in Legibus illis reperiat in Regno, qui non sit Nobilis, & de Nobilium genere egressus.*

This unavoidably follows upon the Premises truth: If none can be learned in the Lawes but those that study it, and none can to a latitude of learning study it but they that do it *in proprio Studio*, that is, take the water at the Springs head; and attend the Courts in their debates and resolutions; and those that study it must be able and willing to undergoe the charge, which few in Henry the Sixth's time were but the Nobles, that is, the Gentry, who had fair Lands and Offices, by the income whereof they plentifully supported themselves, if by all these Gradations there is ascent to learning in the Law, then the learning that is attained to, must be by the Nobles, that is, the Gentry, who are so *docti in Legibus*,] that they are *Sacrarum opinionum Conditores*, as after they have been double Readers or Serjeants they are accounted. I grant there might be some then, as now there are many more who are learned; yet not of the *Nobilium genere*, which is the reason of the *vix* to qualifie the peremptoriness of the position: but to one that was, twenty were not of any race below that of Gentry by the Father, which is the right line, and so are Nobles within the Text; or by the Mother, who being *de genere Nobilium*, her son may by our Chancellour be said to be *de Nobilium genere egressus*.

*Unde magis aliis consimilis status hominibus, ipsi Nobilitatem curant & conseruationem honoris & fama sua.*

This is added to shew the trust that the Nation puts in men of the Law, and the confidence they have in them from the consideration that they have honours and fortunes to aw them from all sordid and trucking practices. For though every man is, as an honest man, bound to keep himself just and upright, because of God his Judge, and Conscience his accuser or excuser; yet are some seemingly more obliged hereto then others, because they have superadded restraints and favours to those common ones, which the humane nature promiscuously hath, and by which it is circumscribed and confined: and this the Text makes to be Riches and Blood, the two Darlings of all Politics, and those pair of Favourites that accommodate Peace and Warr. Now though no man can endow himself with either of these further then God gives him opportunity thereto, and gives him wisdom to discern and co-operate with his opportunities; yet every man that has the use of reason and the fervour of Justice in him, can chuse whether he will be sordid or not, and can (if he will) resolve to keep himself from a just arraignment of dishonesty and injustice. And therefore men, next to the fear of God, should propound to themselves great examples and great exceedings of any thing in their family before them, as that which might both keep them in aw of lessening their family by doing any thing minute, and put them forth to do somewhat beyond what is almost effectable: my reason is, because where there is not something of merit and unvulgar floridness appearing in men, the disappointments of life will so lessen and abate them, that they shall have nothing able to cope with or prevail against them, but must take down their top-sayls and strike Mast, leaving all that is dear to them to the mercy of those cruel vicissitudes, which often swallow down with more then bestial ferity the most lovely fruits of life, great Parts and great Diligence. That passage of Seneca is enough to bid men beware dependance on mortal levity or popular fame, *So it happens to me as to many* (saith he) *who are not by vice, but by a secret providence brought to poverty; All pity, but none relieve:* Lipsius has a note on those words, which refers his grief to the Court of Nero, which he having spent much time in, bemoans himself for the loss of it, all his attendance there neither bettering the mindes of those he conversed with, nor advancing his fortunes as any compensation to his service. A misery that facetious and generous spirits are so often flattered into and deluded by, that they bemoan themselves too late to be accounted either wise or recompensed. That ingenuous Sir Henry Wotton is one of the liveliest instances of this, for that great

*Sic evenit mihi, quod plerisque non suo vitio ad inopiam redactis; Omnes agnoscentes, nemo succurrit. Sen. Ep. 1. Non suo vitio] sed temporum fortuna judicat callide in aula sibi tempus perire, Lipsius in Not. ad Ep. 1. p. 157. In his life. p. 58. 56.*

foul

In his letter to  
the Duke of  
Buckingham,  
p. 483.

Rhenanus in No-  
tis ad Senec. Lu-  
dum. p. 949.

soul of his which thought the Emperour's jewel given him, but a narrow present for the Countess of *Sabrinah's* short treatment of him, was so eclipsed by the disfavour of greatness, that it was forc'd to publish inability to defray the charge of every day that came upon him; and to bemoan his former greatness, the abridgement of which; caused his face to be wrinkled with care, and on another occasion, to complain that after a 17. yeares publike employment) he is left destitute of all possibility to subsist at home, being much like *Those scale-fishes, which over-sleeping themselves in an ebbing water feel nothing about them but a dry shoare when they awake., which comparison saith he, I am faine to seek amongst those creatures, not knowing among men that have so long served so gracious a master, any one to whom I may resemble my unfortunate bareness.* I forbear the sad eclipse of the most ingenious Chancellour *Bacon*. These things I instance in, to shew the instigation men have from noble births to endeavour their conspiciuities, and to bemoan the defeats of them, which the students of noble families are best thought to endeavour, who seek nothing more in their profession, then to be able to deserve many and good Clyents, and to be great gainers by them, and so becoming honestly and fairly rich, and not shewing themselves like the *Causidici* in *Clandius* his time, *Venale genus hominum*; but keeping close to the Law, and being faithful to their clyents, may be said *Magis aliis consimilis status hominibus nobilitatem curare, &c.*

*In his reuera hospitibus maioribus etiam & minoribus, ultra studium legum, est quasi Gymnasium omnium morum.*

(\*) An old order in *Lincolns-Inn*, none to come to the bar under 10. yeares standing. lib. 4. Temps E. 6. p. 345.

Plin. lib. 10. c. 29. 4.  
*Juris precepta sunt tria, honeste vivere, alterum non ledere, jus suum unicuique tribuere.* Bracton lib. 1. c. 4.

*Habes charissime qua possum tranquillitatem tuam qua restituere, qua subrepentibus vitiis resistant. Illud tamen scito, nihil horum satis esse valdum, rem imbecillam servantibus, nisi intentis & assidua cura circumbeat animum labentem.* Senec. Lib. De Tranquil. ad finem.

*Cantus est modulatio, seu fluxus & transitus vocis a gravi in acutum, & vice versa, per intervalla concinna, qui aptus est ad animi lassitiam, dolorem, aut alium effectum exprimendum vel commovendum.* Mercurius Harmonicorum lib. 7 p. 113. In Tabul. propositis.

(a) *Cantus grandia elate, jucunda dulciter, & moderata leniter.* Quintil. lib. 1. c. 10. 20.

This the Chancellour writes to shew the generous accomplishment of a noble Student, whom, though he knows sent to the *Inns of Court* to be a professed Lawyer; yet he presents here as apt, by the quaintness of his general breeding to comply with all conditions of life, to which God, his genius and his opportunities shall most incline him to. Now though here I have a fair occasion to humbly suggest my apprehensions of excellent perquisites to the study of the Law, as to live soberly and retired, to study moderately and with method, to keep company sparingly and with choice, to frequent exercises both publick and private, to (\*) practice leasurably and not too soon after his call to the Barr, to be not greedy of fees till they be deserved, to counsel in Causes just and lawful, and to discourage prosecution of the contrary, to keep his Chamber, Study, and Courts constantly, to treat his Clyents affably, and to hear them calmly, to stick to their interest if just, resolutely, and to settle himself to the consistence in these by a fit and convenient marriage. Though I say I might

enlarge on all these, which doe account highly to the *studium Legum*, and are in effect but those three precepts of the Law that *Bracton* mentions; yet I pass them over to avoid tediousness, desiring the Student to remember that all these without Gods blessing on, his diligence cannot secundate it: For he that endeavours any thing without God, does but *reti ventos venari*. That then which I pass to, is that which besides the study of the Law is learned in the *Inns of Court*, to wit, Exercises of manhood, of ornament; and delicacy, of Learning and activity: Of the first sort are singing and playing on instruments very great additions to a Gentleman; for though Musique seem to be but of an airy and volatile

nature, yet in the consequence of it it proves to be a very notable furtherer of the minds delight, order, and composure, which is the reason that the ancients prescribed Musique not onely in Civil, but sacred rites; and that not to make those mysteries light and jovial, but to draw up the heart and soul by every occasion of joy, and

expressive agility to actuate it self upon that divine Opificer, whence these powers and art to improve them come, and by whom they are ingenerated in us. This Musique the Text respects both as it is vocal and instrumental, *Cantare ipsi addiscunt*] saith the Text. Now *Cantare*, is not bare modulation, or transition of the voice from grave to acute notes, and so backward, joyning thereto apt intervals and cadencies; Nor is it onely as (a) *Quintilian* sayes, a noting of great things lestily, pleasant things sweetly, and moderate things



things softly, but it is a singing of celebration, and a mirth of grandeur and composedness; *Cantare, quasi incantare & fascinare*, to doe that by the voice which Orators doe by words, surprize and captivate hearers, yea work conquests over their own mindes and passions. This *dulcimer* of the voice, whether it be sacred or civil, is very effectual to excite the minde to all facetious pleasure, and to recruite it of those spirits which are exhaust by intentness and labour; therefore the Holy Ghost by *Moses* excites the people to praise God by singing *Exod. 15. 21.* And in all the book of God, nothing is set forth as a devouter part of worship then vocal Musique, *Sing unto the Lord* is the exhortation of every *Psalm*; yea in the primitive times singing of Holy Anthems and Psalmes, was the peculiar character of Christians, the Heathens from this practice of the *Jews* uttered most of the praises of their Gods and their Heroes by singing, which is so harmeles and tunable a token of soullary joy, that nothing can better testifie internal contentation and rapture then singing.

Whereas then 'tis said, *Cantare ipsi addiscunt* ] it means not rude and artless singing, for that is natural, (being the expression of the air or breath from the lung, which invigorates and sonifies it) but that which they learn is artly, singing by book and rule according to the Gammuth, and the true position and order of sounds, to give every note its heighth and depth, and time its length and breadth: thus to sing, is to divide time into proper portions, and to observe order in the transports of our joyes, and this *Maiphins Veginus* thinks so necessary to good institution, that nothing can be more graceful, nothing more worthy a free-man. For that (a) Nero delighted in singing and jovialty was not his reproach, but in that he expressed it by such leud and vain singings, as savoured of obscenity and immoral lubricity, that was his abuse of singing. And therefore artly singing, as it is a very wholesome thing to keep the breath sweet, and has a taking acceptation with the ear and heart of all auditours; so has it a very useful influence on the content of all actions: For as we are to eat, sleep, recreate, study in proportion; so we are to be merry in due and convenient manner. Nothing more rocks asleep and repofes, nothing more renders entertainments acceptable then singing, which is the reason that all treatments at meales, all festivals of joy are associated with singing, the pleasure of which does not onely in a sort digest the meat, but affablize the nature of the communicants each to other, especially when hereto *instrumental Musique* is added, which the Text calls *genus harmonia*.

*Omnia Cantus certis pthongis, interval-  
lis & temporibus constat.* Merfenius lib. 8.  
Harmonicorum p. 161.

*Musica ad degendum recte in otio vi-  
tam, moderandosque animorum motus, le-  
niendasque perturbaciones ediscitur, qualis  
est maxime qua fortium virorum gesta, di-  
vinaque laudes decantantur; nihil certe co-  
gnitione ejus utilius, nihil homini libero con-  
venientius. Lib. 3. De Educatione libero-  
rum. c. 3. Tom. 15. Biblioth. magna Pa-  
trium. p. 863.*

(a) *Suetonius in Nerone c. 20. & 21.*

*Fortis interepulas Atulicis (ut mos est)  
canentibus. Aurel. Victor c. 5. De Cæ-  
saribus p. 512.*

*In omni genere harmonia* ] This is not so much winde and pipe, as touch and string-musique, not the Musique that is loud, Stentorian, and clamarous, as that which is sweet, silent and undisturbing: Musique which goes so soft that it may sweetly note it in a *Ladies Chamber*, as the *P. overbis*. This musque of the Lute-Viol, and the like, is that which becomes an *Inns of Court*, and an *Inns of Court-man*; nor is there any thing in the World more disposes men to sweet and social temper, then Musique and Voices, these by a pleasing and harmonious witchery, harmelesly sedate and surprize mindes to a delightful comportment with all humours, accidents, companies. Nor are any men more acceptable companions then men of musical addiction; For if *Orpheus* as the Poets sein, surprised trees, & *Arion* fishes by their Harpes, If instruments well tuned, lay evil spirits in *Sauls*; and pacifie the distempers of brainless furies; if this be the effect of Harmony, to incline the eye to kindness, the hand and foot to agility, the ear to attention, the whole man to grace of behaviour, Our *Inns of Court-man* is to be accomplished therewith, and not to stay there, or come away thence without it.

*None hate  
Musique,  
but rude  
mindes.*

*Ibi etiam tripudiarie ac jocos singulos nobilibus convenientes qualiter in domo Regia ex-  
ercerisolent, enutriti.*

As serious things become the manhood of Nobles, so lighter and more active, their youth; for as the year has her season of fruits and weathers, and the sea of ebbs and

flowes, and the Air of windes and rains: so the Ages of men have their peculiar virtues and vices, and accordingly evidence the fruits of them. Therefore as *sedere, flere,*

Cicero 2 de *Divinat.* 110.

Cato 6. 186.

Columella *lib.* 1. c. 6. 14.

*Quia cum pascuntur, necesse est aliquid ex ore cadere & terram pavire.* Bezman in *verbo.*

(a) *Ac per urbem ire canentes carmina tripudiis solennique saltatu iussit.* *Lib.* 1. ab *urbe* 83.

(b) *Sed illum ter jam in funeribus Reipublica exultantem & tripudiantem Legum si pessis laqueis confringeret.* *Pro Seltio* 77.

(c) *Lib.* 25. c. 29.

Turneb. *Advers.* *lib.* 14. c. 12. & *lib.* 27. c. 17.

*Audere,* are the companions of age; so are active recreations the treatments of youth. This the Text alludes to in the word *Tripudiare* ] that is, dancing or vaulting. *Tripudium*, of old *Terripavium*, after, *Terripudium*, then *Tripudium* derived from *Pavio*, which is applyed to birds who are light creatures, and who hop up and down when they are lighted the wing, to pick up viands: hence dancing, which is a quick motion of the body here and there, is called *Tripudium*; so (a) *Livy* and (b) *Tully* both render it by *saltare*. Which dancing perhaps was not as with us, by congees, paces, chaufes, boundings, vaultings, turnings, and other such gracefull demaours as obsequious to the Musique make the merrymment orderly; but such a dancing as does *ter pede in saltando terram ferire*, as (c) *Turnebus* well observes. Of these *Tripudia* there were sundry sorts, *Tripudia solestina* and *Tripudia senivisa*. With us we have onely

*French* dancing and *Country* dancing used by the best rank of people. *Morris-dancing* is an exercise that the loose and vile sort onely use, and that onely in faires and meetings of lewdness: but the *tripudare* in our Text is that decent, harmless, and graceful carriage of the body in all the motions of it, which answers the exactness of perfect Majesty of gate and grace of comportment, for which men are said to be well-bred and well-fashioned, or of good behaviour, *de bonne manere*. This in these places is expressed in part by *Revellings*.

*Ac Jocos singulos Nobilibus convenientes* ] *Jocus* is properly verbal mirth, telling of Romantic Stories, and proposing Riddles, exercising Questions and Commands, acting passions of love, which therefore is called Courtship. These are *Joci* as to the notation of the word, though when the later clause is made to expound it such as doth *Nobilibus convenire*, and as in *domo Regia exerceri solent*, ] then it should be something more manly and dispositive to Arms and Activities, as fencing, leaping, vaulting, riding the great horse, running, these seem to me together with cards, bowls, tennis, and the like, which are exercitial of the minde and body, to be *Joci* within the Text; for these are much the repasts of Nobles, and men that but for them know not how to spend their time, and that not unbeseemingly. For as *Solomon* allows a time for all things, so have wisemen in all Ages mixed with serious, jocose things, as conceiving an amability in the moderate medley of them. *Socrates* the gravest of Mortals, thus condescended to humour youth; *Not blushing to bear his part with boyes in their boyes play*, which was such as was that sport, in *armadine equitando*, (d) *Valerius Maximus* writes of; And *Scipio* is reported to please himself in acting his military and manly body according to the direction of the then Musique, keeping time in his motions, *Not as effeminate persons use*, saith *Seneca*, *to doe, but as of old Athletique and Pugillary men did, that is, on Festivals and great appointments of Recreation, they so manly vaulted, leaped, jumped and danced, that they would have been magnified therefore, had their Enemies been Spectatours and Judges.*

*Socrates cum pueris ludere non erubescit.* *Senec. de Tranquil.*

(d) *Lib.* 8. c. 8.

*Ad numeros Satyri movere Bathylli,* *Petius.*

*Et Scipio triumphale illud & militare corpus movit ad numeros, non molliter se infringens ut nunc mos est etiam incessu ipso ultra mulierum molliem fluentibus; sed ut illi antiqui viri solebant, inter lusus & festa tempora virilem in medium tripudiare, non facturi detrimentum etiam si ab hostibus suis spectarentur.* *Senec. lib. de Tranq.*

*In ferialibus diebus eorum pars major legalis disciplina studio, & in festivalibus sacra Scriptura, & Cronicorum lectioni, post divina obsequia se confert.*

This clause remembers the virtuous and thrifty division of time, which the Law of the *Inns of Court* in our Chancellour's time directed, to wit, that the study of the Law should not eat out God's portion of time, nor the reading and meditation of Scripture, or converse with History; but that though the most time were allowed the Law, yet those other necessary accomplishments were to be duely and in their proper time also intended.

*In ferialibus diebus* ] That is, on common dayes, the six dayes of the week, none of them being Holy dayes, which if they were, so many onely as were not, ought to be employed in the study of the Law. To write of these *Feria* at large were to perplex this Commentary, and to little profit the Reader. That onely that is necessary to insert, is, *That in Antiquity Ferix were such dayes as were vacations from all ordinary labour, and had extraordinary indulgence allowed them, it being a cheif Prerogative of them to be free and brisk in all sports and recreations that are not absolutely flagitious, the wisdom of Legislators appointing them to be the releases of servants and men of toyl from the fowerer practices of life, as the encouragement of them to return to their Drudgery more contentedly: which gave occasion to that saying of Democritus, Βίος ἀνθρώπου, &c. A life without Holy dayes was a long way without an Inn.* Of these *Feria* there were diverse sorts, *stativa, imperativa, conceptiva, nundina*; of which *Tholossanus* writes at large: so also mention is made of them in the (a) *Digest*, and in (b) *Budens*, and (c, d) others. That which the Text is applyable to, is the designation of these *Feria* to reading of the Law: that is, as I humbly conceive, when the Student has laid a good foundation the first three years, and laboured hard at the little Books together with the Register, which I take to be the best pointer out of original Lawes, Writs being the remedies of their violation, and thence importing original Lawes violated, I say, (with submission ever to the learned) when the understanding is accustomed to the Law, and there is in the Student an habituation to the Law; then to repair on Court-dayes to the Courts, and there to take notes and observe the arguments and carriages of persons and causes therein, is very advantageous to the profit of the Student, who there may learn much, and from thence bring it written down to his after-improvement. For to our Student these *Feria* are no releif from study, as to other men they are from corporal labour: but they are diversions of the labour from the Students body in repairing to the Courts and intending the causes pleading in them, to his minde intent on his books in his study. For the Text sayes not, he should by jollity and good fellowship refresh himself, as *Seneca* sayes *Cato* did, and therefore by *Memmius* was railed at for intemperance; but the Text sayes that the greater part of the Students do on Common and Court-dayes devote themselves to the study of the Law, that is, if they cannot hear Law at *Westminster-Hall*, they will read it in their own Chambers; for Law they will have that come and intend to be Lawyers, whatever diligence they express and whatever pleasure they deny: for the very dayes of other mens pleasure is to them a time of great pains and expression of diligence.

*Feria dicuntur dies quibus cessatur ab opere aliquo, sed per extensionem dicuntur feria sex dies post Dominicam, quos nemine Planetarum & Idolorum dicebant Ethnici, Lunæ, Martis, &c. Tholoss. lib. 2. c. 15. De Feriis Festisque.*  
*Feria dicta sunt dies in quibus ab aliquo opere vacui, dabunt homines, vel dare poterunt operam aliis negotiis quales sunt feria nundinarum, &c. Bruno lib. 6. de Ceremon. c. 6.*  
*Lil. Gyrald. lib. De Ann. & Mensibus, p. 593.*  
*Apud Stobæum Sermones de Avaritia.*  
*Lib. 2. Syntagm. Juris. c. 15. lib. 48. c. 8. ff. 13. lib. 49. c. 2. ff. 10.*  
 (a) *Lib. 2. tit. 12. De feriis & dilationibus & diversis temporibus.*  
 (b) *In Pandect. prior. p. 43.*  
 (c) *Sigonius in Fess. & triumph. Remaur. p. 68. 114.*  
 (d) *Suetonius in Claudio. c. 22.*  
*Plurarchus in Moralibus. per totum opus.*

*Legum conditores festes instituerunt dies ut ad hilaritatem homines publice cogentur, tanquam necessarium laboribus inserponentes temperamentum. Seuac. lib. De Tranquil. p. 687.*

*Cato vino laxabat animum publicis curis fatigatum. Eodem loco.*

*Lipius in Notis ad lib. De Tranquil.*

*Feriarum festorumque dierum ratio in libris requiritur habet litium & jurgiorum, in feriis operum & laborum. Cic. 21 De Legibus 47.*

*Festi dies erant in quibus vel sacrificia Diis offerrebantur, vel dies diurnis epulationibus celebrabantur, vel ludi in honorem dierum fiebant, vel feria obseruabantur. Nonius in verbo.*  
*2 De Oratore. 153.*  
*Terence Adel. 2. 3. 8.*  
*Tfend. 22. 7.*  
*Castina 17. 2.*  
 (c) *De Claris Orator. 91.*  
*Cic. 1. De Invent.*  
*1 De Orator. 12. 6.*

*Et in Festivalibus* ] Of these I have written in the Notes on the 35. Chapter. These Festivals were the sacred Portions of time in which *The honour of the Gods*, as the *Heathens* phrase was, took up all the thoughts and actions of men; and wherein they not onely sacrificed in token of Religion, but also feasted and jollited in relation to the sweetening of life, which thence did receive much pleasing entertainment. Hence every thing of delight and plenty they termed *Festivum* and *Festivitas*; so *Tully* calls a man of a pleasant and gay genius and humour, *Homo festivus*, and *Terence* sayes he has *Festivam caput*; and *loci festivi* and *festivi Ludi* are frequent in *Plautus*: when then in the (e) *Orator* we read of *Festivitate igitur & facetiis, Festivitas, Splendor, Concinnitudo in Oratore, festivitate & venustate conjuncta vis dicendi*, it is to remember us that the joy of Festivals is no new thing; but that which prudence in all Ages has ordered to associate the plenty of it. And therefore *Christianity* has allayed the mirth of excess with duties of Devotion in both parts of the day at Prayer-hours; and

the Student of the Law, though he may keep his Chamber *post divina obsequia*, yet after he has been at the publique prayers (wherein his devotion dictates the most humble and un-pharisaical posture to him) yet even his retirement and holy-day recreation must be reading of Scripture and of History, that thereby he may know how as a Christian and a good man, to demean himself. For the word of God being notified to man, as the declared will of his maker, and the Law of his eternal soul, as by reading, understanding, and practising of it, it is able to make him wise unto Salvation; so by reading the Records of past ages, he satisfies himself in the virtues, vices, humours, lawes and reasons of the transactions of them, and is thereby enabled to discourse of, and judge concerning the nature and impulses of the same. For as in order to the grace that leads to, and the glory that is in the triumphant world, the Sacred Scriptures are the surest Oracle, and he that trusts to them shall never be ashamed or deceived, because they are not onely the power of God to salvation, but the light that shines in the darkness of error and infidelity; and discovers those things, that eye hath not seen, nor ear heard, nor hath entred into the heart of man to conceive or think of, which is the reason Our Lord charges his Disciples to search the Scripture, assuring them that therein they have eternal life, and they are they that testifie of him; So in relation to this world so full of sin sorrow and dissatisfaction, the study of Chronicles, in which ages long since past, are presented men as in then being, is the second best expence of time wisdom can possibly prescribe; since conversation with wise mens books and actions are no less instructive in wisdom then personal converse with them: which because men who are not contemporary with, or near liversto, or timelily acquainted with them, cannot have, History and Record of them is onely able to become supplement to those great defeats, which sin on mans, and judgement on Gods part, has incommodated mortality with, and against which there is no compenstation but that of continuation, by which the excellent and immortal penns of heroique men, doe by Histories in a sort eternize men and ages. Which is the reason our Text makes holy dayes spent in reading Scripture before prayers in the morning, and History after prayers in the after-noon (for so I understand *divina obsequia* as referring to the Inns of Court devotion-orders) to be a most notable account of time, and the probablest engine to adorn a Students life with piety and knowledge.

*Nihil earum rerum scire, quae antiquam habuerint facta sunt hoc est, semper esse puerum, cognoscere vero res gestas antiquitatis, exemplorumque memorabilium habere notitiam utile decorum, laudabileque ac prope divinum est. Cic.*

*Ibi quippe disciplina virtutum est, & vitiorum omnium exilium*] This is a notable Character of them, that the Inns of Courts are what luxurious Athens was not, *Matries virtutum, noverca vitiorum*; for none coming thither but with a resolution to submit to the government of them, the government actuated by learned and prudent Gravities, termed Masters of the Bench, is such as is modelled and conforme to virtue; and diametrically opposite to vice: hence is it that as the students were kept close to Chappel, Commons, Exercises, studies; so did they at their leisure, and at their recreation acquire such Genteel qualities, as made their nature manly, their behaviour graceful, their language and writing courtly, and their conversation praiseworthy. To further them in which, by amotion of whatever might add fuel to the fire of vanity in youth, Orders have from time to time been against long hair, hats, great-ruffs and excesses of apparel, against riot in meat or drink, quarelling or fighting in the societies, and against all intemperance, by reason of which these studies of the Law may well be written of, as here they are, *Ibi disciplina virtutum & vitiorum omnium exilium*.

See 5. Book Lincolns Inn. p. 415.

*Ita ut propter virtutis acquisitionem, vitii etiam fugam, Milites, Barones, alii quoque magnates & nobiles regni, in hospitibus illis ponunt filios suos.*

It should seem by this, that the Inns of Court were in high esteem in *H. the 6. time*; for they were then the trains of the flower of our youth, who are termed *nobilium filii*, hence the Statute that mentions, *Prelates, Dukes, Earles, Barons, saies also, and other Nobles and great men of the Realm. 2. R. 2. c. 5.* which Nobles by *22. E. 4. c. 6.* are named *Lords, Knights, Esquires*, and other noblemen of this noble Realm of *England, honourable and noble persons*, so *1. Mar. c. 1.* For when travell was not so frequent as now it is, our gentry and nobility that then were bred at home in these

Inns

*Inns*, were as towardly to all purposes of warr and peace, counsel and conduct, as now travel makes them; nay undoubtedly though some are much accomplished by it, yet many more are so tainted, by the liberty they have in it taken, that they never return to a sobriety of principle and practice, but are confirmed in a lawless latitude of doing and speaking their pleasures, to the Confront of all moral and religious restrictions: hence come the frequent debaucheries and incontinencies of life, the vain disguises and transports of fashion, the prodigal expences and haughtiness of living, the ruining looseness of recreations and gaming, the manless disuse of activities and Tirling, the great decayes of Hospitality and house-keepings, these and other such like mischiefs ensue upon the frequent travels of our great men, who learn that liberty abroad that they never after refrain at home. Indeed travel when men are of yeares, have conduct, and design it an accomplishment to their understanding, and accordingly employ it, is very soveraign to excellent ends; but as it is afforded youth, and they by it are seduced from that gravity and sobriety; that more restrained breeding would acquaint them with, so 'tis dangerously enervative of all future stayedness, which our Ancestors well understanding, chose rather to put their Sons, how well born, honoured and fortun'd soever, to these *Inns of Court* there to learn the mode of living, sutable to their quality, rather then to send them abroad, fearing nothing more, then the infection of forein toies and the tinctures of forein vices. But now the times are such, that the *Inns of Courts* are thought mean lodges for Nobility and the eldest Sons of Gentry, who all goe abroad to travel, leaving the younger brothers or Gentlemens sons of smaller fortune to inhabite them: so that the young *Inns of Court-men* of our age, are such as mostly study to profess the Law, and by it become great and rich, which they well deserve to be who prefer a learned diligence and industry in a profession, before a vain sinful and needy idleness and latitude of life, which is so great a burthen to a noble and actively virtuous humour, as nothing can be more, since that onely answers the end of Gods mercy to our beings, births, and lives, which enables us to glorifie him, benefit men, and serve our own fames, in the opinion of those that either knew us alive; or read us dead, which they will hardly with pleasure delight to do those who studied themselves onely as all persons of vice and vanity doe.

*Nihil enim moribus hujus aetatis publicum, praeter acrem & pluviam censetur.* Budaeus lib. 4. De Affe. p. 172. edit. Valcol.

*Ibi vix unquam seditio, jurgium, aut murmur resonat.*] These *Inns of Court* consisting of so many Gentlemen of different tempers, may reasonably be expected to be variously acted, as the severalties of them in their predominancy, doe incline, but that the ingenuity and gentle submission of them to the government of their society, steers them to a more comely submission and conformity, *vix unquam*] sayes our Text, not *unquam*; for that has many times been. The youth have been (as we may say) in rebellion against the ancients, and the bar against the bench, but this is but seldome, and not durable, 'tis *nubecula cito transitura*, soon up soon down; though it be *a sede itio*, a shew of sedition, and seemingly a departure from the rule of subjection, yet when ever it happens 'tis *seditio levitatis non pravitatis, adolescentia non malitia* 'tis not *seditio malevolentia sed incogitantia*, not such an one, as being complicated with *Tacitus* his *acria jurgia*, and *Seneca's rabiosa jurgia*, with *alta* and *fera murmura* in *Propertius*, *minitantia murmura* in *Lucretius*, these formidable disobediences tending to violence and dissociation, are not the unhappineses of the *Inns of Court*; for our Chancellours words are, *vix seditio, jurgium aut murmur resonat*] that is, there is hardly any whispering or eccho of discontent, not so much as that noise of it, that the musical waters have in their gliding, *vix resonat*] that is, *contra sonantem imperium vix sonat seditio &c.* As much as if the Text had said, there is not so much *hidden displeasure*, as amounts to a mouth open against the orders of the Parliaments & Benchers of the houses, but all obedience is given them; for that the Governours are thought to be wise, and worthy, and to doe nothing but *pro bono societatis*, and the governed are orderly and submissive in demonstration of good *examples*, and civil breeding, which directs them to observe their temporary Governours while they are under Government, as they themselves when Governours would be observed by puiſnes, under government.

*Tacit. lib. 20. Hercul. Fur. 3. 3. Propertius lib. 4. Eleg. 4. Lucret. lib. 1. 114 Cavendum vero ne etiam in graves inimicitias convertant se amicitia, a quibus jurgia, maledicta, contumelia gignuntur.* Cic. De Amicitia 67. 1 Jacob. c. 8.

*Delinquentes*

*Delinquentes non alia pœna, quam solum à communione societatis suæ amotione plectantur.*

This is introduced to shew that these societies are no Corporations, or have any judicial power over their Members, but onely administer prudential cures to emergent grievances, which being submitted to by the society, have (by consent) the honour and effect of Lawes, and work onely upon the contumacious, by way of either discom-moning them for light offences, or expelling them for greater, which way of reproaching and discountenancing irregularity was very primitive in the cohabitations of Christians, in relation to religious and civil life; for as they under persecution were inclined by grace to be of one heart and minde, the better to propagate their profession, and to adorn it with a surable and peaceful conversation: so did they in prudence wholly agree the punishment of enormity within themselves, the Civil Magistrate neither protecting nor affecting them. From this dreadful punishment of excommunication practised amongst the Jews, and from them in use amongst Christians, have the societies of the Law and Colledges in Universities, the course to put out of Commons, which the Apostle remembers in those words, *If any man that is called a brother be a fornicator, or covetous, or an idolater, or a rayler, or a drunkard, or an extortioner, with such a none no not to cate.* And this putting out of Commons, or removing from the table, in the Inns of Court, is often the punishment of unreasonableness playing at Cards and Dice, making disturbances, disrespect to the Seniors, &c. Expulsion is for greater offences, such as are, breach of the peace, and violent assault of members of the society, or for refusal of conformity in payment of Commons, or obedience to orders; This so disgraceful to a Gentleman, to be unworthyworthy company, is so great an awe, that nothing, (no not the fear of death) can be a greater awe almost to those generous spirits, then expulsion is, they well remembering that rule of honour, *Honor & vita a quo passu ambulant,* since to be cut off from a society of men of worship, is to be infamous, and that remedilessly, for so great a harmony is there between the societies of Law, that a Member expelled any one society can have no admission in any other, since the act of one house is (in these Cases) in construction of the rest, their own act, as farr as their cooperation in the allowance of the punishment makes them ratificators of it; so is the Text, *semel ab una societatum illarum expulsus, nunquam ab aliqua ceterarum societatum illarum recipitur in socium.*

*Formam vero qua leges illa in his discuntur Hospitiis, hic exprimere non expedit.*

Concerning the *forma juris & studii*, I have wrote something in the notes on the eight Chapter, though as the Chancellour who knew undoubtedly much of it, discovers it but minutely: so I, (who God knows) know very little in comparison to his great proficiency, dare onely offer at it, as I hope I have here done very modestly. That which in this Chapter I shall add, is only to recollect the Chancellours sense therein, to wit, that the way of study in the Inns of Court, is very ingenious, and profitable to generous accomplishment, and that the Lawes studied in the famous Universities of France, Anjou, Cane, and others (Paris onely excepted) are not entred into, and carried on by such well grown and manly Gentlemen, as the Lawes in the Academies of the Inns of Court are, which that they may further appear to be the noble Nurseries of Probity, Strenuity, Honesty of manners, and Law-learning, this following discourse, which I before thankfully owned to the kindness of Sir Thomas Witherington's impartment to me, will more evince, which *verbatim* followeth.

To

Seld. lib. De Sy-  
nedriis Judzo-  
rum.

Lib. primus minor  
Hosp. Lincolns.  
Inn. p. 148.

Lib. eodem loco  
pravitato.

Lib. 6. p. 309.  
1 Cor. 5. v. 11.

To the most High and Puissant Prince and our most dread Sovereign Lord and King *Henry the Eight* by the grace of God, King of *England* and of *France*, Defender of the faith, Lord of *Ireland*, and on Earth the supreme Head under God of the Church of *England*, *Tho. Denton*, *Nic. Bacon*, and *Robert Cary*, His Highness most humble and faithful Servants, with continuance of health, encrease of his most prosperous felicity, and right fortunate success of his Graces most godly Enterprises and Purposes.

**W**HEREAS, Most dread Sovereign Lord, after that we had, according to Your Graces Commandment, delivered unto your Highness a book of Articles, containing the cheifest exercises of Learning, and Orders now used in the Houses of Court amongst the Students of your Graces Lawes, Your Royal Majesty of a most Princely purpose and Godly zeal minding to erect an House of Students, wherein the knowledge as well of the pure French and Latine tongues, as of Your Graces Lawes of this Your Realm should be attained, whereby Your Grace hereafter might be the better served of Your Graces own Students of the Law as well in forein Countries as within this Your Graces Realm: Your Highness therefore gave us further in Commandment, that we with our most diligent endeavours should set forth, and describe unto Your Highness in writing certain other Rules and Exercises whereby Your said Students might, besides the knowledge of the Lawes, be also expert and learned in the knowledge of the said Tongues. We therefore, according to our most bounden duties, for the satisfying of your Graces expectation in this behalf, have in Articles set forth herein such Orders and Rules both concerning the Corporation of the same Houses, and also the Exercises as we think convenient to be put in use and practice by Your Graces Students. And this our rude and simple Device we here-with offer unto Your Graces hands, most humbly beseeching Your Highness to accept the same in good part. And we further again most humbly beseech Your Majesty not to take it any wise as the doings of them that will presume or attempt to prescribe or appoint unto Your Graces incomparable wisdom and judgement, any Rules or Orders in this Your Graces most Godly purpose: But we most humbly beseech Your Majesty to take it onely as a Testimony or witness of our readines and promptitude, according to our most bounden duties; in the diligent accomplishment of such things as Your Royal Majesty shall will us to attempt or take in hand, submitting the correction and alteration thereof to the censure and most expert judgement of Your Graces most Royal Majesty.

Hereafter followeth in Articles the manner of the Corporation and Elections, and of Exercises of Learning, together with certain Rules to be observed in the King's Graces House.

**F**IRST, The certain number of such as shall be the King's Students, and of his Graces exhibition to be limited by his Highness. The manner of Corporation.

Secondly, One ancient, grave, and learned man, and of no small Authority, which either hath the knowledge, or at the least is a Factor and Furtherer of all such knowledges as are studyed and professed there, to be named of the King's Grace to be Cheif and Head-Governor over them; and his name of Corporation to be appointed by his Highness.

Item,

*Item*, One in his absence to be a Vice-Governour, who also would be one as should procure the furtherance of all the studies indifferently, and be bounden perpetually to be resident, saving every year to have liberty of absence two Moneths, but never passing three weeks together; and that but at certain times when the least exercise of learning is in the House, except the Governour be there.

*Item*, That the Vice-Governour in the time of his absence shall always appoint one of the Company to supply his Room.

*Item*, That of these three, that is to say, the Governour, Vice-governour and Students, or by such other names as shall please the King's Grace, a Corporation to be made by the King's Letters Patents, and for a further and perpetual establishment thereof, that it be confirmed by Act of Parliament.

The Election and Nomination of the Governour, Vice-governour, and Students, to belong to the King's Grace.

*Item*, His Grace shall elect *P.* or as many as his Grace shall think meet, of the most sage, discreet, and learned of all the Students, to whom with the Governour and Vice-governour, the ordering and execution of all the Rules and Ordinances shall pertain, which shall be called the Company, or such like name.

*Item*, That all Ordinances hereafter to be made concerning this House by them, and signed by the King's Grace, shall be as good and effectual as if it had been made upon the foundation and past by Act of Parliament.

*Item*, That all the King's Students be sworn to observe the Rules and Orders of the House.

*Item*, that it shall be lawful for them or any two of them to admit to study, besides the number of the King's Students, as many other young men which shall not have the King's stipend, as to them shall seem meet, undertaking to the Governour or Vice-governour for their good behaviour, so that they may be twenty years of age.

*Item*, That such shall be at a Table and Commons by themselves, and shall be bound to observe all the Rules and Learnings in the House; and also be sworn at their admittance thereunto.

*Item*, That none be admitted the King's Students under the age of two and twenty years.

*Item*, that whensoever the Vice-governour chance to dye or be otherwise removed, the Governour and Company shall choose and appoint three out of the same House, or the other Houses of Court, as men most towards; and the King's Grace of the three to appoint one to be his Student.

*Item*, That all Elections and Ordinances to be made as aforesaid concerning this House, there be present the Governour or Vice-governour, and six of the Company at the least.

*Item*, If any of the ten, which is before called the Company, chance to dye or otherwise to be removed, the Governour and Company to elect another of the King's Students into his room; and he to be ready the next Vacation after his Election, if he be elected one Quarter of a year before the Vacation, or else the next Vacation after.

*Item*, That in all Elections and Ordinances hereafter to be made, the consent of the greater number to binde, and if they be equal, then that part that the Governour taketh, or in his absence the Vice-governour.

*Item*, That it shall be lawfull to the Governour and Vice-governour and five of the Company at the least, to admit any young man of the age of eighteen years and under twenty to be a Student, they being thereunto moved by some singular quality or excellency of knowledge that appeareth in him.

*Item*, That the King's Grace shall appoint every of his Students his Anciency, and after his Anciency to go by continuance.

First, That every week three times, that is to say, on Monday, Wednesday, and Friday, except Festival dayes and their Vigils, a Mote be had in the House.

*Item*, That the inner Barristers shall plead in *Latine*, and the other Barristers reason in *French*; and that either of them shall do what they can to banish the corruption of both tongues.

*Item*, That three by the course of the Company which shall be the most ancient, shall sit at the Motes as Benchers and argue unto them.

The Elections and other Ordinances concerning the same.

The Exercise for the learning of the Law, and first of Moting.

*Item*



*Item,* That every man in Commons shall keep his course in Mote, as well as the King's Students; and this course once appointed by the Governour to continue for ever.

*Item,* That none of the ten, called the Company, shall be bound to mote, but as Benchers to argue in them.

*Item,* That the Mote be alwayes after Supper, as is used in Court.

*Item,* That after dinner every three, as they sit, to have a Case propounded and argued unto, before they rise.

*Item,* That after Supper, if there be no Motes, three Cafes shall be propounded to the Company by the other Learners, and the puisne shall choose which of the three Cafes he will, and argue thereunto, and after him three at the least of the Company.

The first reading Vacation the Vice-governour shall read, and after him every of the rest in his Anciency. *Reading of the Law.*

*Item,* That none be called to be a Reader, but onely the King's Students.

*Item,* That after the ten have read, one after another, then he that read first to read in the Lent-Vacation; and so every Lent, one to read that hath read before: and every Summer-Vacation one that never read.

*Item,* That any Reader during his Vacation shall deliver to them whose course is to mote, such Cafes as shall be moted, new questions or old at his pleasure.

*Item,* If any the King's Students refuse to read being thereunto called, except he have such reasonable excuse as the Governour and Company shall accept, to lose the King's exhibitions.

The Exercises are to be observed in manner and form as they here appear by the space of two years, and after in somethings to be altered in manner as hereafter shall be declared.

In the Term-time and Vacations, every Monday, Tuesday, and Wednesday, (Festival dayes onely excepted) one of the excellent knowledge in the *Latine* and *Greek* tongue to read some Orator or book of Rhetorick, or else some other Authour which treateth of the Government of a Common-wealth, openly to all the Company, and to all other that will come for the knowledg of both the said Languages; and therefore it seemeth convenient that there be two of these. *Exercises for the Latine and French tongue.*

*Item,* That this Lecture be in the After-noon between three and four of the clock.

*Item,* That every Friday and Saturday in the Term, and Vacation at the same hour, one learned in the *French*, read some introduction, to teach the true pronunciation of the *French* tongue.

*Item,* That the first two years past, every Mote that shall be brought in, shall in order go after this sort, that is to say, the first in good *Latine*, and the utter Barristers to argue in good *Latine* so much as they can, and the second in good *French*; and this to continue *alternatim*: and the Benchers to argue in like manner after three years past.

*Item,* That the mean Vacations after two years past, instead of Motes, to have dayly Declamations at the same hour in *Latine*; *Proviso*, that none of the Company shall be bound to be at this.

*Item,* We think it very convenient that they should have some House not farr from the City, where they might lye together and continue their study at such time as the infection of the Pestilence or other contagious sickness shall chance amongst them or nigh their House.

*Item,* That during the Lent-season the *Latine* Lecture to cease, and instead thereof from Thursday after Shrove-Sunday till Palm-Sunday, even the same man to read an open Lecture of Scripture.

First, Keeping of Concubines in the House to be the loss of his stipend: fighting in the House, expulsion of his part beginneth the Quarrel, and finable for the other. *Rules and Orders to be kept in the House.*

If any be known for a notorious whore-hunter or common Quarreller to be expelled: playing at Dice or Cards in the House out of the twelve dayes in *Christmas* to be expulsion.

Absence of any one, one week, at times appointed to be resident, without special Licence to be expulsion, except he have a cause thought and judged reasonable by the Governour, Vice-governour and Company.

*Item*, If any the King's Students convey or steal any books out of the Library, or be privy or consenting thereunto, that he shall be expulsed and lose the King's exhibition.

*Item*, if any other of the House consent or be privy to any such act, to be expulsed and committed to the *Fleet*, there to remain without bayl or mainprize as long as it shall please the Governour and Company.

*Item*, All other offences to be punished by the discretion of the Governour or Vice-governour and Company; and that they shall have power to commit any of the House to the *Fleet*, there to remain during their pleasure.

*Item*, That one of the Butlers every Saturday make clean the Library, and clasp the books, and lay them in their places.

*Item*, That the Governour, or Vice-governour and Company, shall have power to call counsel in the House as oft as they shall think fit for the preferment of good order, and reformation of Offences.

*Item*, Forasmuch as we think it meet, that such as should be the King's Students should be seen expert in all civil things that are requisite to be known to do good and faithful service to the King's Highness in the affairs of his Graces Realms and Dominions; we most humbly desire that it would please the King's Majesty, that when his Grace doth send any Embassadors into any forein Realm, that his Grace would associate or send to wait upon the same Embassadour one or two of his Graces said Students to be assigned by his Highness, to the intent that thereby they may be more expert and meet to serve the King's Majesty in such affairs, when occasion shall serve.

*Item*, Forasmuch as it seemeth no wise convenient, that neither the politick Government of this Imperial Realm, and the noble Acts of the Governours of the same, which undoubtedly are worthy of eternal memory and fame; neither on the other side the detestable and divelish Acts attempted against the Common-wealth contrary to the expresse Lawes of God and nature, and the due and just punishment for the same sustained, should in any wise either by negligence or lack of knowledge be drowned in forgetfulness or buried in ignorance, but that they should be rather chronicled and remain in Histories for ever, whereby our posterity seeing (as it were before their eyes) the goodly accesse of so noble a Government, should better provide for the security of this Realm, We therefore most humbly desire, that it would please the King's most excellent Majesty to appoint two of his greatest Students to put forth in writing the History and Chronicle of this Realm; and they that shall be so appointed, to take an Oath before the Chancellour of *England* and the King's most honourable Council truely and indifferently to do the same without respect of any person, or any other corrupt affection: and also that those two or one of them when any notable arraignment or high Treason shall be, to give openly evidence for the King's Highness by the Councils appointment, whereby they being so made privy to the matter, may the more truely and lively in their Chronicles set forth the same.

And whereas we think it very expedient, that such men should also besides their studies aforesaid, have some knowledge and practice in martial Feats, whereby they may be able to doe the King's Grace and the Realm service both in time of peace and warr also. First therefore, That it shall be lawful for every the King's Students to occupy and exercise at his pleasure shooting in a Cross-bow and Long-bow without Licence and Placard; so that it be not prejudicial to the King's Highness games.

*Item*, That whatsoever Warr shall hereafter chance between any forein Prince, that a certain number of the activest young men, and of no small discretion and soberness, to be appointed by the King's Majesty, which shall amongst others repair into those parts not onely to view themselves the order and fashion of their Camps, and assaulting and defending, but also to set forth in writing all the whole order of the Battel, and this to be registred in their House and to remain there for ever.

To the most High and most Excellent Prince our most Gracious and most Redoubted Sovereign Lord and King *Henry the Eight*, by the grace of God, King of *England* and of *France*, Defender of the faith, Lord of *Ireland*, and Supreme Head on Earth immediately under Christ of the Church of *England*, *Tho. Denton*, *Nic. Bacon*, and *Robert Cary*, His Graces most humble and faithful Servants, with prosperous health and continuance of felicity.

**P**Leaseth it Your most Royal Majesty to understand, that whereas Your most godly disposition and tender zeal impressed in Your most noble heart, both towards the advancement of the Common-wealth of this our Realm, and also towards the furtherance and maintenance of good Learning, and the study thereof hereafter to be used in the same, Your Highness now of late commanded us, to our inestimable comfort and consolation, to assemble our selves together, and upon the diligent search and perusing of all the Orders of the Houses of Court, compendiously to set forth unto Your Grace the best form and order of Study practised therein, and all their Orders and Rules meet to be used and observed amongst them that profess study and learning: We immediately considering the godly effect and intent of this Your meaning, tending onely to the right institution and education of Your Subjects of this Your gracions Realm, whereby they shall be undoubtedly as much unto Your Grace as to these natural Parents, did not onely render hearty thanks to Almighty God the onely Author of this Your Princely purpose, in that it hath pleased him to send us such a King and Head to reign over us, that is not only endued and adorned himself with all kindes and sorts of good learning as well divine as prophane, and exact judgement in the same, but also to send us one that most endeavoureth and purposeth to set forward, and as it were to \* rayne the study and perfect knowledge thereof of long time detested and almost trodden under foot; that this His Realm in short time shall not be equal with other but far excell them, whereby not onely we that are in this present Age, but the whole Realm for ever, and all our Posterities shall be most bound to him therefore. For in times past, yea in our dayes (alas for pity) how many good and gentle wits within this Your Graces Realm have perished, partly for that in their youth (the cheif time to plant or graft good learning in) they have not been conversant nor trained in the study thereof; but cheifly for that the most of them in their tender years, indifferant to receive both good and bad, were so rooted and seasoned as it were in barbarous Authours very Enemies to good learning, that hard it was, yea almost impossible to reduce them to goodnes, but even like a fertile ground overgrown with thorns and bryars produced no good fruit at all. The Redress therefore undoubtedly, most Gracious Sovereign Lord, shall be the noblest and Princelyest Act that ever was enterprised or attempted in this Realm. We therefore according to our most bounden duties have endeavoured our selves with all our wits and power to satisfie Your Highness said desired purpose and expectation. And now having concluded Your Graces Commandment in all things as nigh as we can, we do offer the same here unto Your most Excellent Majesty, most humbly beseeching the same to accept in good part this rude thing, submitting it to the most excellent Wisdom of your Majesty, whereunto we do and shall conform our selves, as to our most bounden duty appertaineth.

\* Revise I suppose it ought to be. but it is rayne in the Copy.

The manner of the Fellowship and their ordinary Charges, besides their Commons.

First it is to be considered, that none of the four houses of Courts have any Corporation, whereby they are enabled to purchase, receive, or take lands or Tenements or any other revenue, nor have any thing towards the maintenance of the house, saving that every one that is admitted fellow, after that he is called to the Masters Commons, payeth yearly 3. shillings 4. pence, which they call the pension money, and in some houses, every man for his admittance, payeth 20. pence, and also besides that yearly for his Chamber 3. shillings 4. all which money is the onely thing they have towards the reparations and rent of their house, and the wages of their Officers.

The whole company and fellowship of Learners, is divided and sorted into three parts and degrees; that is to say, into Benchers, or as they call them in some of the houses, Readers, Utter-Barresters, and Inner-Barresters.

Benchers, or Readers, are called such as before-time have openly read, which form, and kinde of reading shall hereafter be declared, and to them is chiefly committed the government and ordering of the house, as to men meetest, both for their age, discretion, and wisdoms, and of these is one yearly chosen, which is called the Treasurer, or in some house Pensioner, who receiveth yearly the said pension money, and therewith dischargeth such charges as above written; and of the receipt and payment of the same is yearly accountable.

Utter-Barresters are such, that for their learning and continuance, are called by the said Readers to plead and argue in the said house, doubtful Cases and Questions, which amongst them are called Motes, at certain times propounded, and brought in before the said Benchers, as Readers, and are called Utter-Barresters, for that they, when they argue the said Motes, they sit uttermost on the formes, which they call the Barr, and this degree is the chiefest degree for learners in the house next the Benchers; for of these be chosen and made the Readers of all the Inns of Chancery, and also of the most ancient of these is one elected yearly to read amongst them, who after his reading, is called a Bencher, or Reader.

All the residue of learners are called Inner-Barresters, which are the youngest men, that for lack of learning, and continuance, are not able to argue and reason in these Motes, nevertheless whensoever any of the said Motes be brought in before any of the said Benchers, then two of the said Inner-Barresters sitting on the said forme with the Utter-Barresters, doe for their exercises recite by heart the pleading of the same Mote-Cafe, in Law-French, which pleading is the declaration at large of the said Mote-Cafe, the one of them taking the part of the Plaintiff, and the other the part of the Defendant.

The whole year amongst them is divided into three parts; that is to say the learning-Vacation, the Terme-times, and the meane and dead Vacation.

They have yearly two learning-Vacations, that is to say, Lent-Vacation, which begins the first Munday in Lent, and continueth three weeks, and three dayes, the other Vacation is called Summer-Vacation, which beginneth the Munday after Lammas-day, and continueth as the other, in these Vacations are the greatest conferences, and exercises of study that they have in all the year; for in them these are the Orders.

First, The Reader and Ancients appoint the eldest Utter-Barrester in continuance, as one that they think most able for that Roome, to reade amongst them openly in the house, during the Summer-Vacation, and of this appointment he hath alway knowledge about half a year before he shall reade, that in the mean time he may provide therefore, and then the first day after Vacation, about 8. of the Clock, he that is so chosen to reade openly in the Hall before all the Company, shall reade some one such Act, or Statute as shall please him to ground his whole reading on for all that Vacation, and that done, doth declare such inconveniences and mischiefs as were unprovided for, and now by the same Statute be and then reciteth certain doubts, and questions which he hath devised, that may grow upon the said Statute, and declareth his judgement therein, that done, one of the younger Utter-Barresters rehearseth one question propounded by the Reader, and doth by way of argument labour to prove the Readers opinion to be against the Law, and after him the rest of the

*That what sorts and degrees the whole Fellowship and Company of Students of the Law is amongst them divided. Benchers.*

*Utter-Barresters.*

*Inner-Barresters.*

*The Order and Exercises of learning.*

*The Exercises of Learning in the Vacation. The manner of Reading in the Inns of Court.*

the Utter-Barresters and Readers one after another in their ancienties, doe declare their opinions and judgements in the same, and then the Reader who did put the Case, indeavoureth himself to confute Objections laid against him, and to confirme his own opinion, after whom, the Judges and Serjeants, if any be present, declare their opinions, and after they have done, the youngest Utter-Barrester again rehearseth another Case, which is ordered as the other was; thus the reading ends for that day: and this manner of reading and disputations continue daily two houres, or thereabouts.

And besides this, daily in some houses after dinner, one at the Readers board, before they rise, propoundeth another of his Cases to him, put the same day at his reading, which Case, is debated by them all in like forme, as the Cases are used to be argued at his reading, and like order is observed at every messe, at the other Tables, and the same manner alwayes observed at supper, when they have no Motes.

Of those that have read once in the Summer-Vacation, and be Benchers, is chosen alwayes one to reade in *Lent*, who observeth the like forme of reading, as is before expressed in the Summer-Vacation, and of these Readers in these Vacations, for the most part are appointed those that shall be Serjeants.

*Lent-Vacation.*

In these Vacations every night after supper, and every Fasting-day immediately after six of the Clock, boyer ended (Festival-dayes and their evens onely excepted) the Reader, with two Benchers, or one at the least, cometh into the Hall to the Cuboard, and there most commonly one of the Utter-Barresters propoundeth unto them some doubtful Case, the which every of the Benchers in their ancienties argue, and last of all he that moved; this done, the Readers and Benchers sit down on the bench in the end of the Hall, whereof they take their name, and on a forme toward the midst of the Hall sitteth down two Inner-Barresters, and of the other side of them on the same forme, two Utter-Barresters, and the Inner-Barresters doe in *French* openly declare unto the Benchers, (even as the Serjeants doe at the barr in the King's Courts, to the Judges) some kinde of Action, the one being as it were retained with the Plaintiff in the Action, and the other with the Defendant, after which things done, the Utter-Barresters argue such questions as be disputable within the Case (as there must be alwayes one at the least) and this ended, the Benchers doe likewise declare their opinions, how they think the Law to be in the same questions, and this manner of exercise of Moting, is daily used, during the said Vacations.

*The ordering and fashion of Moting.*

This is alwayes observed amongst them, that in all their open disputations, the youngest of continuance argueth first; whether he be Inner-Barrester, or Utter-Barrester, or Benchér, according to the forme used amongst the Judges and Serjeants.

And also that at their Motes, the Inner-Barresters and Utter-Barresters doe plead and reason in *French*, and the Benchers in *English*, and at their reading, the Readers Cases are put in *English*, and so argued unto.

Also in the learning-Vacations, the Utter-Barresters which are Readers in the *Inns of Chancery*, goe to the house whereunto they reade, Either of the said Readers taking with them two learners of the house they are of, and there meet them for the most part two of every house of Court, who sitting as Benchers (doe in Court at their Motes) hear and argue such Motes as are brought in, and pleaded by the Gentlemen of the same houses of *Chancery*, which be nine in number, four being in *Holborn*, which be read of, *Graves-Inn*, and *Lincolns-Inn*, And *Lincolns-Inn* have Motes daily, for the most part before noon, which begin at nine of the Clock, and continue until twelve, or thereabouts, and the other five which are within *Temple-bar*, which are of the two *Temples*, have their Motes at three of the Clock in the afternoon.

*Exercises of motes in the Inns of Chancery, during the Vacation.*

The onely exercises of Learning in the Terme-time, is arguing and debating of Cases after dinner, and the Moting after supper, used and kept in like forme, as is heretofore prescribed in the Vacation-time; and the Reader of the *Inns of Chancery* to reade three times a week, to keep Motes, during all the Terme, to which Motes, none of the other houses of Court come, as they doe in the learning-Vacations, but onely to come with the Reader of the same house.

*The exercises of Learning in the Terme time.*

The whole time out of the Learning-Vacation and Terme, is called the Mean-Vacation, during which time, every day after dinner; Cases are argued, in like manner

*The Exercises of Learning in the Mean-Vacation.*

The

as they be in other times, and after supper Motes are brought in and pleaded by the Inner-Barresters, before the Utter-Barresters, which sit there, and occupy the roome of Benchers, and argued by them in like forme as the Benchers doe in the Terme-time, or Learning-Vacation

The manner of  
Christmas, used  
amongst them.

The Readers and Benchers at a Parliament or Pension held before *Christmas*, if it seeme unto them that there be no dangerous time of sickness, neither dearth of victuals, and that they are furnished of such a Company, as both for their number and appertaines are meet to keep a solemn *Christmas*, then doe they appoint and chose certain of the house to be Officers, and bear certain rules in the house during the said time, which Officers for the most part are such, as are exercised in the King's Highness house, and other Noble men, and this is done onely to the intent, that they should in time to come know how to use themselves. In this *Christmas* time, they have all manner of pastimes, as singing and dancing; and in some of the houses ordinarily they have some interlude or Tragedy played by the Gentlemen of the same house, the ground, and matter whereof, is devised by some of the Gentlemen of the house.

The manner of  
their Parliament,  
or Pension.

Every quarter, once or more if need shall require, the Readers and Benchers cause one of the Officers to summon the whole Company openly in the Hall at dinner, that such a night the Pension, or as some houses call it the Parliament, shall be holden, which Pension, or Parliament in some houses, is nothing else but a conference and Assembly of their Benchers and Utter-Barresters onely, and in some other of the houses, it is an Assembly of Benchers, and such of the Utter-Barresters and other ancient and wise men of the house, as the Benchers have elected to them before time, and these together are named the Sage Company, and meet in a place therefore appointed, and there treat of such matters as shall seem expedient for the good ordering of the house, and the reformation of such things as seeme meet to be reformed. In these are the Readers both for the *Lent* and the Summer-Vacation chosen; and also if the Treasurer of the house leave off his Office, in this is a new chosen. And alwayes at the Parliament holden after *Michaelmas*, two Auditors appointed there, to hear, and take the Accounts for the year, of the Treasurer, and in some house, he accounts before the whole Company at the Pension, and out of these Pensions all misdemeanours and offences done by any Fellow of the house, are reformed and ordered according to the discretion of certain of the most ancient of the house, which are in Commons at the time of the offence done.

The Officers, and  
their wages.

First they have one called the Steward, whose office is to provide the victual of the house, and hath for his wages five mark.

They have three Butlers, whereof the chief Butler hath 40. shillings, every of the other hath for their wages 20 shillings.

They have three Cooks, of which, the chief Cook hath yearly 10 pounds.

The Manciple, or Stewards servant, whose office is to convey the provision of the house home from the market, and hath yearly 26 shillings 8. pence.

The under-Cook hath yearly for his wages 20 shillings.

The Laundes of the Clothes for the Buttery, hath by the year 6 shillings 8 pence.

And besides this wages, the three Butlers have in reward at *Christmas* of every Gentleman of the house 12 pence, and some more.

And at *Easter*, the Cooks and Manciple have in reward, of every Gentleman 12 pence, or more amongst them.

The Diet of the  
House.

The whole Fellowship is divided into two several Commons, the one is called the Masters Commons, and there is the Clerks Commons.

The Masters Commons amounteth yearly to 20 nobles, or thereabouts, which is after the rate of 2 shillings 8 pence the week.

The Clerks Commons amounteth by the year to five pounds six shillings eight pence, which is after the rate of 2 shillings 2 pence a week.

These, most redoubted Sovereign Lord, are the most universal and general things concerning the Orders and Exercises of learning in the houses of Court, which we thought meet to describe, and to present into your Grace's hands; and having regard to other particular or private things, we thought it not convenient to trouble Your Highness with them, partly, because of the multitude of them, and partly, because they are things of no great importance, or weight.

CHAP. L.

*Sed enim tu, Princeps, scire desideres, cur in Legibus Angliæ non dantur Doctoratus & Baccalaureatus gradus, sicut in utroque jure in Universitatibus est dare consuetum, scire te volo quod licet gradus hujusmodi in Legibus Angliæ minime conferuntur, &c.*

THIS Chapter begins with a reference to the conclusion of the 47. Chapter, where according to the order of the Dialogue, the Prince is introduced querying, *why the Lawes of England are not taught in Universities, and why Degrees inchoate and consummate are not conferred in them.* Now the Chancellour being willing to let no Query of the Prince pass unresolved, after he has written of the Academies of the Law, (Inns of Court and Chancery) which are the subjects of the 49. Chapter, proceeds in this, to a replication in satisfaction to him; that though the Lawes of England do differ from the Civil Lawes in the names and kindes of their Degrees: yet in the import and signification of them, they are suitable in every notation of desert and dignity, *Licet gradus hujusmodi, &c.* saith our Chancellour.

*Datur tamen in illis, nedum gradus, sed & status quidam gradu Doctoratus non minus celebris aut solennis, qui gradus servientis ad Legem appellatur.*

*Nedum status sed & gradus*] Concerning this honourable Degree, see my Notes on the 8. Chapter. The Honour of Serjeancy, as it is a state and degree in the Law conferred by the King's Writ or Patent, is not onely (saith the late learned and honourable Chancellour the Lord Coventry) *A very ancient state and degree, so ancient that Books are as silent in it as in the Commencement of the Common Law;* but also a very honourable one, the high reward of profound Learning, spotless integrity, and notable fortune, and what ever tends to a Jurists accomplishment. For besides that it is coupled in the Stat. 1 Mar. Sess. 2. c. 8. with the great men of England, and has place next to Knights; the clause of *Status & Gradus* in the Writ amounts to some honour like that of Knighthood, and conveys an *Addition of Gentility importing Name and Blood:* and this makes it *non minus celebris aut solennis* then the Doctorship of the Law is. For though it has not been said that this Degree has 130 grand priviledges attending it as *Ludovicus Bolegninus* has computed those of a Doctor of the Law, (thanks be to him, who being himself a Doctor has generously amassed and propalated the dignity of his degree.) Which none of the learned Serjeants has ever, that I know, done to the lustre of their Dignity (being more intent on gain by it, then glory from it, which truly I beg their favour to say, is none of their greatest praise and emeritingest commendation,) yet is there much undoubtedly to be said and written in exemplification of the renown and worship that is due to this state and dignity of the learned Long-Robe. Now though I cannot serve them here in to the proportion I would, because to write of it strenuously and to the *non ultra* of the nature of it, would become a distinct work of some largeness, and a noble Compiler of some more then ordinary industry and exactness, learnedly and with judgement to do it; though I say I cannot undertake to write to the amplitude it calls for, yet so far as my tenuity can contribute thereto I readily shall, being a servant to all and a particular friend to some of them that are dignified with this state and degree: in testimony whereof, I shall crave leave according to the method of my Comment, to write what I finde suitable to the matter of our Chancellour's Text, and apposite to be insisted on in the illustration of his language and meaning. The form of which solemnity of Creation he thus describes.

*Capitalis Justitiarius de Communi Banco, de Consilio & Assensu omnium Justitiariorum, eligere solet, quoties sibi videtur opportunum, &c*

This Clause shortly abridges the ancient (and yet in the main practised) form of calling Serjeants, from their travel and retirement in study to their reward and conspicuity; which

Fol. 138, 139, 140.  
Lord Coventry's  
Speech Creation  
of Serjeants 1a  
Carol. 1. Anno  
1636.

Sir Edw. Cook,  
2 Instit. on Stat.  
de Milit. p. 595.

which excellent men in our Chancellours, as in all good times arrived at, not by any meanes less ingenious and worthy, then by the merit and reputation of excellent parts; constant diligence, stanch integrity, approved fidelity, which, because they best appeared to the Judges, who best know and judge of them, therefore is the nomination, approbation, and presentation of such fit persons referred to them (that is) to the Chief Justice of the Common pleas. For that is the peculiar constellation of Serjeants, and therefore the presentation, &c. is by the Chief Justice of that Bench, with the advice and consent of all the Justices, these all so concurring, doe eligere ] That is, the Chief Justice of that Bench in the name of all his company, doth nominate and present such as he accounts meet to be Serjeants; For eligere here has not a notification of fixed designation, but of discreet presentation, upon which, though acceptance be usual, yet I take it as in the Case of the Speaker of the house of Commons, to be gratia not debiti, ordinis, non juris; for the eligere solet here ] seemes to me (but I ever beg pardon for, and shall recal, when I know my mistakes, which without Gods mercy and mens pardon, will be many and injurious to me) to be rather Optionem alicui facere, ut eligat utrum velit, as Tully's words are, then any necessary cause of call thereunto, since I think persons so presented may be refused to be called, which they could not be, were the eligere solet unavoidably to be answered with acceptance. This then eligere solet (as in the Text referred to the Chief Justice) is to be qualified with a quantum in se, juxta posse officii, and salvis prerogativis Regii beneplaciti, and argues rather a favour, that accepts for orders sake the persons presented, then right and necessity of Law and usage so to doe.

The Author  
not ashamed  
to acknow-  
ledge his de-  
fects.  
1 Verr. 24.

Quoties sibi videtur opportunum ] This is to be understood when the degree of Serjeants growes thinn by death, or other disablement, when there are not enough to serve the King and his people in the great affaires of Law; For Serjeants of old (saith the Lord Chancellour Coventry) were men of Learning and great cunning, who did love the Law for the Law's sake, and intended their Clyents Cases for God, and a good Conscience sake, in order to which heretofore Counts and Pleadings were received at the Barr, and every little doubt was prepared and cleared by a debate there openly before either Demurrer or Issue were joyned, such was the care of the Serjeants not to disadvantage their clyents cause, by any suddain or indigested conceptions, or by omissions or neglect, and then the Prothonotary entred it on record, thus that Sage. Whence I conclude that Serjeants being so judicious and careful of mens Causes, no Causes were well handled without them; and so there was a necessity of them in their number sutable to their consequence, to be continued: and therefore quoties sibi videtur opportunum refers to the discretion of the Court where they plead, to certifie the decay, and present a supplement of it, which succession (though it may be in the numerical persons declined) yet in the intent of it, to furnish the Courts with able practicers, and the people with learned Advocates is never departed from, but for the most part those very men called by writ, who are presented by the Court, as fit for that state and degree.

Lord Coventry's  
Speech in Chan-  
cery. 12. Car. 1.  
Anno 1636. at  
the creation of  
Serjeants.

Hollinghed p. 667  
I. Stow p. 716.  
(b) Idem p. 779.  
(c) Hollinghed.  
p. 791.  
(d) Stowes Sur.  
vey p. 426.  
(e) Hollinghed.  
p. 1210.  
(f) Idem p. 1314

Lib. 4. Hospitii  
Lincolns Inn.  
p. 178, 179, 180.

Septem vel octo de maturioribus personis ] Here I conceive is a definite number put for an indefinite, 7. or 8. for so many as shall be wanting, and shall be necessary to be supplied, to the furnishing of the Barr with Serjeants; for in the call of 4. E. 4. there were but eight, In Anno (b) 1494. Temps 10, 11. H. 7. 9. In Anno (c) 1503 20. H. 7. 10. In the (d) 23. H. 8. Eleaven, in the 1. E. 6. six. (e) In the 9. Eliz. onely 7, (f) In the 23. Eliz. eight, so all King James, and King Charles the first's time, and so in the late call, All which shewes, that the number of them was not onely 7. or 8. but as many more or less, as the King pleased; for there being calls of grace as well as of necessity, the number purely at the pleasure of the King, for He it is that is the fountain of this, as of all other honour, and by His writ onely it is that the Serjeants are called ad statum & gradum.

De Maturioribus ] As the duty of Serjeants is, to counsel the King and people aright, as heretofore I have shewne; so are their abilities to be sutable to this great trust and confidence the King and his people have in them, which that they may well discharge, the Text sayes, the persons presented to be called, are de

Maturio-



*Maturioribus*, ] that is, those that by being *docti & periti*, as otherwhere he calls them, are able and willing to counsel according to Law and good Conscience; for though *Maturus* in Authours sometimes signifies *festinus* and *repentinus*, *Maturè*, *citò & ante tempus*, saith *Donatus*, *Soon ripe (as we say) and soon rotten*: yet here *de Maturioribus*] denotes that settlement of judgement and ballast of solidity that poyses a man against every extreme, that which full-ripeness and taking in time is in fruit; thus *Maturitas Senectutis* as *Tully* calls it, which is as much of perfection as nature can bear or arrive at: which is so much the glory of every thing in the apprehension of wisdom, that whatever is *omnibus numeris absoluta* is phrased by *Maturitas*, thus (a) *Maturitas atatis*, (b) *Orationis*, (c) *Virtutis*, (d) *Sceleris*, is used by *Tully*. This *Maturity* applyed to time is called a *proper season*, or a *fit time*; and it is that virtue in men by which they do every action in weight and measure, so as neither too much haste, nor too great sloath dulls the visage and flats the edge of its design and success, but that it is carryed on in an orderly and advifive way, and has all the advantages that art, nature, and experience can contribute to its production. This is the sense of *de Maturioribus*] when as a mans ascent to honour is expressed by *maturè extollere aliquem ad summum Imperium per omnes honorum gradus*, so this learning of Intellect in the Law is the result of many years study and practice, whereby the student is perfected to become a judicious and well-advifed Advocate in all points of Law-learning and right Judicature, which the Lord Chancellour *Cowentry* terms *The approved and best-worthy in every Inn of Court*; and our Chancellour by *Qui in predicto generali studio majus in Legibus profecerunt*.

Cic. 7. Verr.  
 Celsus lib. 5. c. 25.  
 Agellius lib. 3. c. 7.  
 Ut enim infirmitas est puerorum, & ferocitas juvenum, & gravitas jam constantis atatis, sic senectutis maturitas naturale quiddam habet quod suo tempore percipi debeat. Cic. de Senect. 30.  
 (A) Cic. Sulpitio. lib. 4. 4. 14.  
 (b) De clar. Oratorib. 4.  
 (c) Pro Cælio. 60.  
 (d) C. 1. in Caecil. 22.  
*Maturare, accelerare, ita ut adhibeatur industria celeritas, & diligentia tarditas ex quibus duobus contrariis fit maturitas, ut neque aliquid citius, neque serius fiat.*

Cic. 1. in Caecil. 20:  
 Speech at the Call. 12 Car. 1. Anno 1636.

*Et qui eisdem Justitiariis optima dispositionis esse videtur*] This *eisdem Justitiariis* explains the former clause, *Capitalis Justitiarius de consilio & assensu omnium Justitiariorum*] For because the Chief-Justice is the first and most eminent Justice, therefore his act, when he delivers what he does with their consent and privity, is the act of them all; which the Law and Custom of *England* purposely does to avoid error and iniquity in Judgement, and to transact judicial things with all their appurtenances by consent and concurrence of all those that are concerned in and entrusted with it. For since a Serjeant is a person publick, and his qualifications, if such as they ought, are extensive in the good or evil of them, good reason many wise and worthy men should consider and report his fitness that is to that *state and degree* to be promoted, and that fitness in his government over his passions and his severeness of virtue and sobriety of life, which is *optima dispositionis videri* within the Text, and *to be most worthy* in the Stat. 42 E. 3. c. 4. see my Notes further on this in the 24. Chapter.

Cook 2 Instit. p. 422. upon the Stat. 2 West. c. 30.

*Et Nomina eorum ille deliberare solet Cancellario Angliæ in scriptis, qui illico mandabit per Brevia Regis cuilibet Electorum illorum, quod sit coram Rege ad diem per ipsam assignatum ad suscipiendum statum & gradum servientis ad Legem, &c.*

A convenient number of grave and learned Apprentices or their Fellows chosen by the Justices out of the *Inns of Court*, the *Studium Juris*, ] the names of them are to be presented to the Chancellour; who being the *Primum Mobile* of a Subject, is the *sine qua non* to all good warrant and dispatch. Therefore since all things that pass by the Great-seal, are passed by this High Officer of Estate, all Acts of Parliament mention him the first in Commissions; and when any thing is to pass by the Broad-seal, application is to him, who, under the King, has the power and custody of it; and as the He, that according to his great and grave judgement, can either pass or stop it, as it seems good or evil to him: which considered, the usage upon Creation of Serjeants, to present the Lord Chancellour with the names of such in all or most of the *Inns of Court* as are *de Maturioribus*, and can best perform the office of counselling the King and his people *in gravioribus Legis*, is well declared by our Text to be *Cancellario Angliæ*; for as he onely can, so he readily will (no cause of the contrary appearing to him more then discovered it self to the Judges that present them) send

Officium Cancellarii est sigillam Regis custodire simul cum controrotulis suis de presencio Regni. Fleta lib. 2. c. 29.

See Sir. Ed. Cook 4 Instit. c. 8. Or the Court of Chancery.

forth Writs to summon them to appear at a certain day, to take the State and Degree of a Serjeant at Law.

*Mandavit per Brevia* ] This shews how the persons presented as fit for Serjeants, are summoned to appear to take their State and Degree, to wit, by Writ: not by paper-order, or word of mouth, or Message; but *Mandato Brevis*, that by a legal Command, see the Notes on the 36, and 37. Chapters. Which summons is not general to them all, as in case of witnesses many are put into a Writ; but for the greater publication of the King's regard to them, as to men of value and learning, a Writ is sent *cuiilibet Electorum*: concerning this also see the Notes on the 8. Chapter. That which I add thereto is, that so publick does the Law and usage of *England* account the honour of Serjeanting, that the duty and solemnity of it is in no sort to be clancular and in higger migger, but openly at the Court, and that in the due Solemnities; which when the Serjeants of 3 *Caroli* did not observe, but whereas they ought to have presented themselves to the Justices in Robes of *Brown-blew*, al. *Black-coloured*, they came in their party-coloured Robes, for which cause they were sent back again; also they came into the Hall, each of them having his Servant bearing his Scarlet Hood, his Coyff and Cap before him: but that also being against course, (for every Servant ought immediately to follow and not precede his Serjeant) they were directed to go back again and return in their Gowns of *Brown-blew*, and then they recited their Count, and had their Writs read in Term-time, by solemn procession of the *Inns of Court* with them: so I read the resolution of all the Judges was 1 *Caroli*. For as they are to take Oath publickly, and Count, and have their Robes and Coyff publickly put on; so are they to keep their Feast publickly, that all men may be witnesses of the King's grace to them, and their fitness for and resolution to discharge their place, *Remembering the modesty, fear, care, and conscience of those excellent men that were their Predecessors*, and endeavouring if possible to succeed them.

Termin. Pascha  
in Com. Banco  
Crook 3 part.  
Reports p. 67, 85.

Part 3. Crook's  
Reports p. 2, 3,  
4, 5, 6.

Lord Coventry's  
Speech Creation  
Serjeants. 12  
Car. 1636.

*Et quod ipse in die illo dabit aurum secundum consuetudinem Regni.*

As Kings at their Coronations give Medals in token of their Entrance on their Government, and in memory of the lustre of their triumphs; so have they indulged men of worth in favour with them to symbolize with them in such partial imitations of greatness, as are competible with their being Subjects. Thus did *Antoninus Philosophus* out of his great respect to learned and brave men; so probably did *Alexander*, who loving *Ulpian* and other learned men at his meals, and being pleased with the Musick of their wisdom and science, thought no donary too magnificent for them. From this use of good Kings and Cheifs so to do, probably grew the example of our Ancestours, and the use to our Chancellour's time (as I think) for Serjeants upon

Creation-dayes, to bestow peices of gold, artlyly form'd and inscrib'd, in token of their admission to honour by the King's favour, which I ground upon the former insinuations, and that which is additional to it in the Text; for notwithstanding there is mention of Rings after in this Chapter, yet here 'tis said, *Dabit aurum secundum consuetudinem*. But of this, as of all other the Solemnities of Serjeants, because our Chancellour who was long an Ancient of *Lincolns Inn*, under the name of *Fortescue senior*, and I take to be serjeanted about the 12. of *H. 6.* thinks it too tedious to discourse, *Cum Scripturam majorem illa exigant*, as his words are; I thereupon restrain my pen the labour to enlarge, referring the plenary satisfaction in it to such discourses as are purposely intended for illustration of it. One of the most punctual accounts whereof, that I have seen, is that of the manner of proclaiming *Edward the Sixth*, and making Judges and Serjeants, with the proceeding of the Serjeants Feast kept in *Lincolns Inn Hall* 1 *E. 6.*

Lib. 4. Hospitii  
Lincolns Inn  
p. 178, 179, 180,  
& seq.

*Scire tamen te cupio, quod adveniente die sic statuto electi illi inter alias solemnitates festum celebrant & convivium, ad instar Coronationis Regis.*

Though our Chancelour waves the less material Solemnities, yet the main and most

most conspicuous he here describes, as first, the punctuality of the day of their appearance being the return of the Writ, which is called *dies statutus*; for as God did set apart *Diem statutum*, his Holy day, as that sacred time of his especial Worship, which was in the end and mystery of it moral, and after by positive Lawes directed other times for other services, yea as *Solomon* from the light of nature tells us, there is a time appointed for all things under the Sun: so all Lawgivers in all ages, have consecrated set times to particular occasions, and from them not receded but upon grounds equivalent to the reason of their first appointment. In order to which our Lawes have Set dayes for Set purposes: *Dayes of Lent*, rather *Leanth*, *When men ought to intend devotion, and other Works of Charity, for remedy of their soules*, as the words of the statute 31. E. 3. c. 15 And the keeping whereof is rather *in ceasing from sin, and abstaining from fleshy lusts, which fight against the soul*, then in bare abstinence from flesh, and so is expounded in the statute of 2. & 3, E. 6. c. 19. *Holy dayes*, for calling men off corporal labour, and recreating them by the service of God, and pleasure of recreation 5. & 6. E. 6. c. 3. *Set dayes for Rent* those mentioned 32. H. 8. c. 48. For keeping Courts 9. H. 3. c. 35. 31. E. 3. c. 15. 2. E. 6. c. 25. For the Assises of *novel disseisin*, *Mortdauncester* and *Darreyn presentment* 3. E. 1. c. 48. These together with dayes limited for payment of bonds, election of Officers, determination of nonage, as the Law precisely looks upon the observation of: so also of appearances to answer suites, give evidence, and accept dignity, *which daye* statuted by the return of the Writ, the summoned doe observe and appear at, and then and there after Oath taken, Robes and Coyf put on, and Count rehearled *more consulto & solenni*, they return to some place of receipt and convenience, *Festum celebrant & Convivium*] That is, as we say, they make Holy day, and give up their study in sacrifice to the disports and entertainments of their friends; they feast, and that *convivando*, as a testimony of their friendly amity, respects, and civility each to other, as common slips from one and the same stock, the Humane nature. For though *Convivium*, in the latitude of it be any familiar meeting, suppose for service of the Gods, (in which sense *Athenens* tells us, *πρω συμποσιε αναγογη*), &c. *Every Convivation was of old in honour to the Gods, and was celebrated with Songs and Hymnes, sacred to them*: and *Tully* tells us of *Gladiatorum Convivia*, which *Loki*ns was placed in.) Though I say, *Convivia* signifie this at large, yet here in the Text it imports meeting onely for eating, drinking, and friendly delight each of other, and thus 'tis applied to the Serjeants Feast. Which Hospitable reception of the Serjeants friends, and the great states of the Nation called Serjeants-Feast, is a solemnity answerable to antiquity in all Nations upon great occasions, whether particular or publique. Thus we read of (a) *Lots* feasting the Angels, and (b) *Abraham's* feasting at *Isaac's* weaning, Of *Labans* at his Daughters Marriage, and (c) *Pharaoh's* on his birth day, of (d) *Sampson*, when he went to his wife, and *feroboam's* feast, of *Solomon's* Feast at the Dedication, and of *Ahasuerus* his feast, of these feasts the Holy story tells us. *Prophane* Authors also tell us of Feasts, *Τῆς δαΐς, τῆς ὄμυλῃ* is mentioned in *Homer*, which *Turnebus* comments upon, *Credo quod feris hominum conventus celebris epulantium letitia coire soleat*. *Grave* and Great *Plutarch* confirms this, *Κοινωνία δὲ ἔστι καὶ ἀειδῆς, καὶ παιδίας, καὶ λόγων, καὶ πρᾶξεων τὸ συμποσιον*, &c. *Feasts are the communions of serious and merry words and actions, and therefore not all are admitted thereunto, but onely friends, who pleasingly and pleasantly eat, drink, and talk over their good Viands*. The same Authour recites to us Feasts that they had upon all great occasions; as their *Agrionia & Amatoria festa*, their *Bacchanalia, Carina, Carila, Charmosyna, Consalia*, and almost twenty others of like nature; and he brings in one rarely marshalling Feasts, that is, not placing young and old, rich and poor by themselves, but so placing them, that those that abound may give to those that want, and they that want may be filled with the plenty of those that have more then they know well how to want or how to have. The *Latines* also had their *Convivia* upon great occasions, & those opiparous, and extravagant; thus *Suetonius* mentions *Claudius* his Feasts, not onely copious to the capacity of 600 guests at a time, but very often and very publicquely, so (e) *Augustus*, (f) *Heliogabalus*, (g) *Ca-*

*Die quidem Dominico mercato celebrari, populi que conventus agi, nisi flagitante necessitate planissima vetamus; ipso praeterea die Sacrosancto a venatione & opere terrene profusis omnino quisque abstinere. Inter leges Eccles. Canuri c. 22. Spelm. Concil. p. 546. See the Statute 3. Car. c. 1.*

*Deipnos. lib. 5. p. 192. 5. In Vect. Lilius Gyraldus lib. De Annis & Mensibus p. 601. Festum quicquid latum & feriatum. Nonius. Lavantur & tondentur & convivimus ex consuetudine. Quintil. lib. 1. c. 12. (a) Gen. 19. 3. (b) Gen. 21. 8. c. 29. v. 22. (c) 40. v. 20. (d) Jud. 14. 10. 1 Kings 12. 32. 1 King. 8. 65. Hester. 1. 3. Advell. lib. 27. c. 7. Symposiacion. lib. 7. p. 708. Edit. Paris.*

*Moral. p. 748. 527. 715. 717. 293. 362. 276. 671. 310. 280. 446. 355. 635. 334. 715. 293. 280. 715. 275.*

*"Ἐν ᾧ ὄμαρ ἐκ πλῆθους χωρικῶς εἰς κενῶ ἀποδοῦ τις γυνῆσαι. Symposiacion lib. 1. p. 618. Edit. Paris. Convivia agitant & ampla & assidua ita fere patentissimis locis ut sex centeni simul disjumberent. In Claudio c. 12.*

(e) *Sueton in Augusto c. 11*  
(f) *Lamprid. p. 203. Edit.*  
(g) *Vopiscus p. 301. Sylburg.*

(h) Jul. Capitol. 145. c. 65.

(i) Lamprid. In Severo. p. 215.

(k) J. Capitol. p. 151.

(l) Genial. Dierum. lib. 5. c. 21. p. 763.

rius, (h) *Pertinax*, (i) *Severus* (k) *Marcus*, and the rest, abounded in feasting, yea that famous or infamous feast in *Vitellius* his time, in which there was (as (l) *Alex. ab Alex.* tells us) 2000 dishes of choice fishes, and 7000 of fowle.

From these, Feasting came in use among the  *Germans*  and Us, who celebrated all Solemnities with feasting, yea not onely the Coronations of Princes, Installations of  *St. George's Knights*  Deliverances from evils, and victories over them, Commemorations of Ma-

gistrates anniversaries, Consecrations of Bishops, Calls of Serjeants, and such like Great things are celebrated with feasting; but even Marriages of Children, choice of Officers in Corporations, and every thing that is of a more then ordinary nature, is accompanied with feasting: And that not without much advantage to love, and riches moving to and fro in the Nation by reason of it. Amongst these notable feasts our stories remember us of that of  *H. 3. Anno 1236.*  kept in  *Westminster-Hall,*  for entertainment of the Emperours  *Ambassadors,*  who came for  *Isabel*  the Kings Sister, and at

*Christmas*  the same year, the Treasurer  *Havershill,*  by Command of the King, caused on the Circumcision day 6000 poor people to be fed at the same place But above all feasts, famous is that Marriage-feast of  *Richard*  Earl of  *Cornwall,*  King  *H. 3.*  brother, with the Countess of  *Provence*  her daughter, where there were told (saith  *Stow* ) thirty thousand dishes of meate. Add to these the feast of  *Pentecost*  held by  *E. 2. Anno 1326.*  and that notable  *Christmas*  one  *Temps R. 2.*  at which there was spent 26. or 27. oxen, 300. sheep every day, besides Fowle and other provision without number. So at the Coronation of the Lady  *Katharine, Temps H. 5.*

These and the like of later times have been great Feasts. Also of Lord Maiors Feasts, not onely the yearly ones, of his as it were Coronation, but that famous one of Sir  *Henry Piccard,*  in  *Anno 1363.*  is honourably remembered. So are the Serjeants feasts (the discourse of which occasions the mention of all the rest) those of 4,  *E. 4. 10, & 11,*  and 20  *H. 7. 23. H. 8. 1 E. 6. 9 Eliz. 23 Eliz.*  and these latter in King  *James*  and King  *Charles,*  the blessed Father, and King  *Charles*  our now beloved Sovereign's reign, are not beneath any of the former, being full of the Noblest persons of the Nation, furnished with the best cheer, graced with the best order that wit, art, and cost could set them out by. For as on feast-dayes, men have ever been cheery, recreative, and gay, wholly giving up themselves to pleasure and pastime, so at Meales of these dayes they have had all recreation imaginable, not onely that  *Rodomondo prittle prattle*  (as I may call that chat which comes to nothing) making onely noyse,

which  *Seneca*  describes, but also sundry other, more pleasing and jovial freedoms,  *They eat freely,*  being entertained by those that did (m)  *facere tanta convivio,*  yea and those  *plena mensa,*   *They drank freely,*  taking it for granted that it was a rite due to feasts  *Hilarare convivio Baccho,*  they had Singing and Musique in their feasts. And though gravity ever discountenanced obscene Cantings, and such loose sport as did  *obscenitate convivium obstrepere,*  as  *Quintilian's*  phrase is; yet joviality and mirth that was not purely vicious, all ages allowed, as that which  *repetita convivii latitia*  does  *ornare & apparare convivium,*  as  *Tacitus*  expresses it. I know the Gymnosophists declined this, for they, as  *Alexander ab Alexandro*  tells us, appointed at feasts, that every one should make forth some action of theirs, advantageous to mankind; and he that could not, went away unfeasted, and the  *Persians*  before meales did discourse of modesty, the  *Gracians*  proposed riddles, and he that best unfolded them had the reward, the  *Spartans*  sang and played on the Harp the praises of brave and dispraises of base men, the  *Sybarites*  brought in horses so musically trained, that they would keep time with the instrument, and the  *Indians*  and  *Samnites*  were wont to fence and try skil and valour at sharps, Yet the  *Romans*  bringing in Jestes and Actors of mirth and abuse, probably occasioned our custom of having Musique, Singing, Justing, Tilting, Interludes and Mis-rule at and after feasts. Thus publicly as during their eating our great feasts have ever Musique and Singing; so after, Dancing and Exercises. So our Stories tell us 34  *E. 3.*  the Maior and Aldermen of  *London,*  Justed against all comers in

*Rogation-week,*  so 36  *H. 6.*  in  *Whitsunday*  week, at the  *Tower,*  so 12  *H. 3.*  at the Marriage of  *Q. Eleanor,*  so at  *Richmond, 7\* H. 7.*  the like, 8 (n) 14, 18  *H. 8.*  and (o) 23  *Elizabeth,*  to welcome the  *French*  Lords, Tilting and oiber

Exercise,

Hollingshed p. 219.

Stow's Survey

p. 520.

*E. Royal Turris*

London.

*Loco eodem.*

*M. Paris. p. 606.*

Stow's Survey,

p. 521.

Hollingshed p.

579.

Stow's Survey

p. 426. 427.

*Legum conditores*   
 *festos instituerunt*   
 *dies ut ad hilarit.*   
 *homines invitarent*   
 *Varius nobis sermo*   
 *fuit, ut in convivio*   
 *nullam rem usque*   
 *ad exitum addu-*   
 *cens, sed alii aliunde*   
 *transiens. Ep. 64.*   
 *(m) Tibullus lib.*   
 *1. Eleg. 9.*   
 *Propertius E-*   
 *pigram. 44.*   
 *Lib. 1. c. 7.*

Lib. 13.

Cic. 6. Verr. 39.

Lib. 5. c. 21.

Hollingshed p.

392. 646. 219.

\* 774.

(n) p. 838. 873.

892.

(o) P. 1316.

1317. 1318.

exercifes were; and to this day upon grand dayes, Musique, Masques, and Comedies are: and all this to exprefs the fulness of the joy and the liberality of the welcome, which is further advanced by what follows.

*Quod & continuabitur per dies septem* ] This shews that Serjeants Feasts are not Misers ones, one meal and have done; but as noble in their nature and plenty, so in their repetition and continuation, for a whole week, *per dies septem* ] Concerning the sacredness of numbers I have discoursed in the Notes on the 25, & 26. Chapters. The number 7 of all other is most sacred, not onely (as before I have shewed) from God's sanctification of the seventh portion of time to himself, which occasioned the Jews to put a great value on the seventh Moneth and seventh year; but also for that this number was in their opinion a most compleat number, having a double three (*& tria sunt omnia*) and one over and above in it, and so seeming to be the peculiar number of excellency and weight, a number of capacity and emphasis. Thus in solemn Oaths they obliged each other by 7. so Abraham said to Abimelech, *These seven Ewe-lambs shalt thou take at my hand, that they may be a witness unto me that I digged the Well, wherefore he called that place Beersheba, because there they sware both of them*: thus in reverences, *Seven times Jacob bowed to Esau*: thus in Mourning, *So Joseph made a mourning for his father seven dayes*: thus in eating of unleavened bread seven dayes, the last of which shall be a feast to the Lord: so in sundry other things which are quoted in the Margent. From this opinion of the number 7, the Jews kept their great Feasts for 7. dayes; so did Solomon the Feast of Dedication mentioned 1 King. 8. 65. which 'tis said he kept 7. dayes and 7. dayes, that is but 7. dayes in time, though 14 in the Solemnity, because as much bounty and great entertainment was shewn in that short time, as would have taken up twice the time had it not been extraordinarily improved; this I collect from v. 66. where 'tis said, *The eighth day he sent the people away*: which he could not have done had he kept the feast longer then seven dayes. And the Nations hence observed 7. dayes to betoken the Grandeur of Feasts; so *Abasuerosh* his Feast was for 7. dayes, *Esther* and the Eunuchs that stood before him being 7 *ἑπτὰ ἡμέρας*, as *Josephus* phrases them, were in number seven, with whose counsel the King feasted himself: which with other such things considered, the Serjeants feast continuing for a week, which is 7. dayes, is in the nature of it very sumptuous and costly. So it followeth.

Fulgentius lib. 3.  
Mythologia.  
Turneb. Advers.  
lib. 19. c. 31.

Gen. 21. 28.

Gen. 33. 3.  
Gen. 50. 10.  
Exod. 13. 6.  
Exod. 29. 30. Lev.  
8. 11. c. 12. 2. c.  
c. 13. 5. c. 23. 39.  
c. 25. 8. c. 26. 28.  
Numb. 8. 2. c. 28.  
11. c. 31. 19.  
Deut. 16. 3. &c.

Heptas, celebrat.  
pud Persas numerus.  
Grot. in loc.  
Drusius in cap. 2.  
v. 12.  
Ezr. 7. 14.

*Nec quilibet Electorum illorum sumptus sibi contingentes circa Solennitatem Creationis sue, minoribus expensis perficiet, quam mille & sexcentorum Scutorum, quo expensa quas octo sic electi tunc refundent, excedent summam duodecim millium & octingentorum Scutorum.*

Herein the account of the whole, and every particular's expence at his call to be Serjeant, is set down, 1600 *Scuta*, which here if he means half-rose Nobles at 3. s. 4. d. a piece, comes to 266. l. 13. s. 4. d. to each of them, which being multiplied by 8. the number in the Text mentioned to be called, it makes up the 3200. Marks here in the Text; which summe being in pounds 2133. 6. 8. at 20 s. to the pound, makes a great summe of money, especially in our Chancellour's time, when though things were risen higher then in H. 2. time they were, (when a Measure of wheat for bread for 100 men was by the King's Officers valued but at one shilling, the carcase of a fat Ox, 1. s. of a Sheep, 4. d. and for Provender for 20 horses but 4. d.) I say, though in H. 6. time things were raised above this proportion; yet were things then so cheap that this summe amounts to near as much as 7000. l. now, and declares the state and degree neither cheaply come by, nor cheaply to be maintained, and therefore to become onely those who have Law in abundance to answer the learning and duty, and estate enough to support the dignity and equipage of it. And therefore if it so happened that some were returned to be *Mature* men, fit for their skill and integrity to be Serjeanted, if fortune they had not, they could upon refusal but be fined, and that but once, which they were better to submit to, then take a degree to impoverish their family. For as Honour is a beauty when it has fortune suitable thereunto; so in the absence of it, is it a great burthen, which did men well consider, they would not

Spelman in Gloss.  
ad vocem *Firma*.

Cook on Stat. de  
Militibus.  
2 Instit. p. 597.

when

when they have Honour, squander away their Estates the support of it : or when they have it not, desire Honours to dishonour those Honours and themselves by want of perquisites thereto.

Expence then they must be at, and a great one too, rather more then now-a-dayes ; for then Serjeants (as all other Honours) were fewer then now, and those onely had calls to them who were men of great estates, able to live like themselves in all points of greatness suitable to their Degree, which was expensive not onely as to the quantity pre-described, (which I take to be the charge of their Robes, Attendants, Dyet, and Equipage : ) but also further in Donaries of Rings which they are to give : so the Text proceeds.

*Quilibet eorum dabit Annulos de auro ad valentiam in toto quadraginta librarum ad minus moneta Anglicana.*

This ( as I said before ) is to shew that publick inaugurations into Honour, as it is accompanied with feasting friends ; so those feasting are attended with Donaries, probably peices of gold to some, and certainly Rings to others. For as Sovereign Princes gave gifts at their Coronations, as 'tis said of *Ahasuerus*, *That at his Feast he gave gifts according to the State of a King* ; so he gave to his Queen *Avasavvneia*, a City *Regis Persarum uxoris in Calceamentum data*, as *Grotius* notes, that is, to buy her shoes and shoe-strings, like our saying, *To buy pins with*. And as Princes to this day do give Medals and other money, and equivalent rewards at their Coronations ; so do they indulge Subjects honoured by them to bestow some such rayes of bounty as testifie their admission into Greatness, and their mindes prepared for and fitted to it.

*Esther* 2. 18.

*Grot. in loc. ex Herod. lib. 2.*

*Plutarchus in Questionibus Romanis. p. 269.*

*Eutrop. lib. 1. Trevirani. p. 559. ad Initium.*

*Messala Corvinus, lib. de Augusti Progenie p. 337.*

*Dedit Annulum in signum potestatis quam ei faciebat, cujus moris exemplum habes. Gen. 41. 42.*

*Grot. in loc. Esther. 3. 10.*

(a) *Sueton in J. Cesare. p. 7. Budzus in Pandect. p. 52. 53. 54. Edit. Valesol.*

(b) *Fl. Vespisc. in Aurelian. ad finem vita.*

(c) *Lib. 29. in Valentin. p. 481.*

(d) *Turneb. Advers. lib. 20. c. 2. p. 678.*

*Lib. 33. c. 1. & lib. 20. c. 2.*

(e) *Sic Annulus tuus signatorius non ut vas aliquod, sed tanquam s' se tu. Cic. In qua verba Turnebus, Ne passim sinat Annulum suum signatorium a quovis, ut domestica vasa tractari, sed eo solus utatur. Advers. lib. 27. c. 1. p. 1005.*

*Alciar ad Legem 74. p. 180.*

*Brechezus loco eodem.*

*Turneb. Advers. lib. 6. c. 22.*

*Majores nostri Imperatores superatis hostibus, optime Republ. gesta, scribas suos Annulis aureis in Concione donarunt. Cic. 5. verr.*

These gifts our Text names proper for the Serjeants feast to be Rings. *Annulus* from *Annus* the computation of time consisting anciently of ten Moneths, whereof *March* was the first ; whence perhaps it follows that the Reigns of Princes, whose Governments depend much on Martialness, are computed from *March* the Moneth of *Mars* : or twelve Moneths, as after the *Romans* concluded it, making *January* the entrance into them. I say this *Annulus* the diminutive of *Annus* being round as time in its motion is, is the Emblem of amity, acceptation and honour. In this sense the giving of Rings is not, but it is understood as a remembrance and token of friendship and love, (a) *Jure Annulorum*, a letting them into relation, and into a kinde of participation of honour with them. In *Aurelian* I read of many Rings, the (b) *Annulus sigillarius* which *Aurelian* made for himself and his daughter ; the *Annulus fatidicus* and the *Annulus pensilis fatidicus* in (c) *Marcellinus* ; their (d) *Annuli aestivi & hyberni*, which were heavier or lighter as the season of the year was hot or cold ; and their *Annuli Samothracii*, which were of Iron inlayed or welted with gold ; the *Annulus signatorius*, which (e) *Tully* relates to when he gives the charge it should not be made common, but be trusted in no hauds but either our own or those we know to be faithful, and as such, love them as our selves. These were of old engraven with the device of figures in appropriation to families, like *Armes* at this day ; and they were of Iron to Servants, of Silver to Libertines, and of Gold to Free-men Hence was it that the cheif Servants of Conquerours had from them gifts of golden Rings ; and Embassadors from the *Romans*, though they wore Iron-Rings at home, yet abroad wore Gold-ones. By which

appears, that as Rings were tokens of Relation, and Rings of Gold of Nobilitation ; so these Rings of Serjeants import love, bounty, and freedom to all those they are sent to : nay, they imply an expectation from them to witness his Marriage to the Law, and his disposal of Rings as his wedding-favour. For as women are wedded to their Husbands by Rings, and Doctors to their Profession by Rings ; so is the Serjeant evidenced to be wedded to the Law by his donation of Rings, as the Ensign of his Creation in the state and dignity of a Serjeant. And these our Text sayes cost the

Serjeant

Serjeant at least forty pounds sterling, which is as much as near 200. pounds now, And no less doe I think the Serjeants at this day doe spend *annulis aureis*, in their old-fashioned joynt rings.

*Et bene recollit Cancellarius ipse, quod dum ille statum & gradum hujusmodi receperat, ipse solvit pro annulis quos tunc distribuit quinquaginta libras; qua sunt trecenta scuta.*

This the Chancellour introduces to shew that as he was not made a Judge without the feast and charge of giving Rings, when he was made a Serjeant; so he did not sparingly, but to the full proportion of his degree bestow those his Serjeants Rings: For though, when he was Serjeanted, I yet cannot finde, yet I guesse it about the 12 H. 6. which was 8. yeares before the 20 year of that King, when I finde him by Writ of the five and twentieth of January, constituted Chief Justice, and so summoned 25, 27, 28, 29, 31, 32, 33, 38 yeares of that King, yet that he was Serjeanted is plain from this *bene recollit Cancellarius ipse*, and from this charge he was at in it, which though it were great, coyn not being above  $\frac{1}{3}$  value of that now it is, yet may easily arise to the mentioned summ, when presentment of rings are as followeth.

*Solet namque unusquisque servientium hujusmodi tempore Creationis suae, dare cuilibet Principi, Duci, & Archiepiscopo in solennitate illa presenti, ac Cancellario & Thesaurario Angliæ, annulum ad valorem octo scutorum.*

Pat. 20. H. 6.  
parte prima memb.  
10. in Turri.  
25. Lond. part. 1.  
M. 12.  
31. M. 9.  
Clauf. 23 M. 21.  
25 M. 24. 27  
M. 24. 28 M.  
26. 29 M. 31.  
31 M. 31. 33  
M. 31. 38 M.  
30. 38 M. 29.

This Clause shewes the orderly distribution of the rings, made by the Serjeants, according to the nature and quality of the personages they have to invite, and entertain. For the ancients, and we when we doe wisely and well after them, do not account our entertainment good, unless it be every way compleat, *tempestivum convivium*; and Varro as (a) *A. Gellius* quotes him, makes four things to goe to the perfection of a right entertainment, good company, a fit place, a fit time, and order and plenty of every thing, all these are notably met at our Serjeants Feast; for here are *lecti homines, non homunculi*, but *hominum magnates, primaria capita*, *Cuilibet Principi* saith the Text. ] That's of the Kings family, either Sons in descent or Cosens, and of the Bloud Royal, who are all in the Text intended; For *Principes* intends somewhat more then *Duces*, or *Archiepiscopi*, which none are in England, but those of the Bloud, unless we'll understand *Dux & Archiepiscopus* to be the species of Princeps in our Chancellours sense, which may and may not be; yet I confesse the Arch-Bishop of *Canterbury* his Grace, as he has the title and place of a Prince, so, as first after the King's Children and his Vicegerent has the Chief place, and so in the Statute 21. H. 8. c. 13. 'Tis every Arch-Bishop and Duke, which precedency the Religion of the Nation has ever given, *in ordine ad sacra*. To minde them no doubt that as the Nation honours them for God's sake, so they should love, watch over, and instruct the Nation by holy life and sound doctrine for God's sake and the peoples salvation; which while they doe, they will be worthy double honour for their Callings sake.

(a) Lib. 13. c. 11.  
1. Si belli homunculi collecti.  
2. Si lectus locus  
3. Si tempus lecti  
Ann. 4. apparatus non neglectus.  
Turneb. Advers. lib. 6. c. 16.  
24. H. 8. c. 13  
31. H. 8. c. 15

*Cancellario & Thesaurario Angliæ* ] These are the high Officers of England, those that have custody of the seale by which Charters, Patents, and Offices pass, and of the rents, incomes and profits of the Crown, by which the expences of the Kingly office is defrayed, These the Statute of 31. H. 8. c. 16. sayes, being of the degree of Barons, shall sit and be placed on the hether part of the forme on the same side, above all Dukes, except onely such as shall happen to be the Kings Son, the Kings Brother, the Kings Uncle, the Kings Nephew, or the Kings Brothers or Sisters Sons. As they are of the great Officers of England, and have preheminance and place accordingly, so are by our Text, if at the feast they be present, but if not 'tis sent them, (and happy the Serjeant whom they are pleased to accept it from) a Ring of 26. shillings 8. pence according to the value of our Chancellour's age.

*Et cuilibet Comiti & Episcopo* ] Earles, Barons and Bishops are ranked here together, and their Rings are according to the abatement of their degree, a noble abated

abated in their value, which is done for orders sake, that the Presents may sute with the persons, and to reduce the charge into reasonable bounds; for of the former rank there are but few in number, possibly ten may be the most in any time, not so many in most reigns, but of Earles, Bishops and Barons many are, and therefore *those present*, or whom of them the Serjeants please, have their Rings sent them, to the value of twenty shillings.

*Custodi privati Sigilli, Capitalibus Justitiariis, Baroni de scaccario, ad valorem sex scutorum.*

These, though no Barons, yet are of Chief note and high honour in the nation, and brought in under equality of Present with the former, and that for the height of the honour and trust they have in the transaction of judicial things. Hence the prementioned Statute 31 H. 8. c. 10, ranks the Lord Privy Seal (whom I take to be the *Custos privati Sigilli* here, amongst the great Officers next after the high Chancellour, and high Treasourer; And the Chief Justices, and Chief Baron, being the *Proto-Judges* of the High Courts at Westminster, deserve accounts with the best of subjects, no Barons, and so are in all publique Instruments of state declared; and therefore when as in the Statute of the 21 H. 8. c. 13. omission was made of some of them, as to a Chaplin, supplement was made by the 25. c. 16. and they allowed a Chaplin to attend them in their house.

35 H. 8. c. 16.

*Omni Domino Baroni Parliamenti, & omni Abbati & notabili Pralato ac magno Militi tunc presenti, custodi etiam Rotulorum Cancellaria Regis & cuilibet Justitiario, annulum ad valentiam unius marca.*

Because differences there must be in Rings, as there are in the quality of the persons to whom they are presented, and that Rings of that breadth as Serjeants Rings are, cannot be in weight less then a mark; therefore are all these particular persons here nominated, *Omni Domino Baroni Parliamenti*] that is, to every Member of the Upper-House, under the degree of an Earl, and that sits there *en son proper droit*, and is thither summoned, there to sit as one of the Peerage, *Omni Abbati*] which intends not onely Abbots Sovereigns, (as they were called who were subject to no Bishops but were within their Monastery absolute, and were Lords of Parliament, and thither came as Bishops did and doe) Of this rank in the Parliament 49 H. 3. there were 102. in E. 2. time onely 56. in E. 3. time, *decrefcente Cleri potentia & estimati- one*, onely 33. so they continued under 40 from E. 3. time to the dissolution of Monasteries; For though there were in 6 E. 3. 23 more then the old 33. yet the Roll of 23. sayes, *Istis Abbatibus & prioribus subscriptis non solebat scribi in aliis Parliamentis.*

16 R. 2. c. 6.

Spelm. Gloss. p. 4

13 E. 1. c. 41.

*Et notabili Pralato*] This terme might take in some remarkable person that is comprehensible under none of the former notions, *other Prelates* stat. 14 R. 2. c. 4. perhaps some *Deanes* that had government, such as were those five, called by Writ to Parliament in 49 H. 3. These or such like Governours of some Royal Hospitals, being in a remote sense *Pralati notabiles*, may be within the intent of our Chancellour, as *magno Militi*] may be either a Knight of great office in Court, such as the honourable offices of the Court were fitted with *temps H. 6.* (For then Lords and Knights were rare and unordinary) or else such as were *magni opibus & proficuis*, men of great fortunes, families, and revenues; *Custodi etiam Rotulorum Cancellaria Regis*] See the notes on c. 24. fol. 331. whereby it appeares how great an Officer this is, when as in the absence of the Lord High Chancellour, he is the first President (as I may so say) in the high Court of Chancery, and in the Rolls in afternoons, orders causes that in Court are not dispatched by reason of multitude of busineses, and interposition of circumstances of delay.

*Similiter & omni Baroni de scaccario*] These are the Kings Justices or Judges, though otherwise named then those of either Bench are; for that the *Normans*, who



who introduced that Court into England, do call their Judges and Magistrates, Barons, as we in England called them Judges and Justices; which Sir Henry Spelman instructs me in, not without great probability of truth: for the word Baron signifies freedom and power to judge and determine matters within themselves, as it is understood in the Title of Court-Barons, Barons of London and the Cinque-Ports. These Barons then of the Exchequer are the same in power and honour with other \* Judges, and hold their places *quamdiu se bene gesserint*, which Chief-Baron Walter, that prudent and learned Judge held his place by to his death, though he were under displeasure, which if he had been patented *durante bene placito*, he could not have done. The Chief-Baron of this Court was in Edward the Third's time a great Peer, which is the reason that by the 14 E. 3. c. 7. he is named next after the Chancellour and Treasurer, before the Chief-Justices of either Bench: but when he became a Lawyer, as in our Chancellour's time he was, then he comes, as in the Statute of 33 H. 6. c. 1, next after the Chief-Justices of either Bench.

*Regis Camerariis*] This I take not to be so much the Great Officers of the King's Household, the High-Chamberlain or Vice-Chamberlain mentioned in the Statute 13 E. 1. c. 41. 16 R. 2. c. 6. as the Chamberlains of the Exchequer mentioned in the Statute 7 E. 6. c. 1. 51 H. 3. called now Receivers, anciently Chamberlains; Flea intends these in those words, *Habetis per hoc Statutum de servientibus Ballivis Camerariis, & aliis quibuscumque Receptoribus*; these giving dayly attendance on the King's Revenue-affairs, are taken notice of by the Serjeants, and presented Rings to, as all other notable Officers and men are in the King's Courts, as Registers, Clerks of the Crown, Protonotaries, Philizers, and eminent Attorneys; who if they do not all come under the notion of *Officiarii in Curia Regis ministrant*, yet are introduced under those words *Notabiles viri*, and have Rings according to their quality presented them.

*Et ultra hos ipsi dant Annalos aliis amicis suis*] Still this augments the charge, for because the Serjeant cannot invite all to their Feast; and there present them with Rings; therefore he supplies the omission of one part of his friendyness by addition of the other part, presentation of Rings, which they make to those of their acquaintance, Clyents and others as they call and treat as friends; these, if any, are the true merites of Rings and hearts too; if truly friends they be. Which our Text intends not of that severe and solid friendship, which the *Moralist* calls *A most matchless good which works prepared hearts in each other to gratifie with all their might and main those they love, and to be wanting in no kindeness and representation their power reaches to, whose truth is so intense and conscience so upright, that a friend has cause to mistrust himself rather then them*, I say, our Text by *Amicis* does not intend these, for these are none *Such's*; should Rings be restrained to these, our Serjeants would present but few: for I presume they, as other men, may say over Seneca's words of Gracchus and Livius Drusus, *They have many great and rich friends but few true ones*: But *Amicis suis*] imports acquaintance by ordinary civility and treatment of courtesie, friends of breeding and study with them, of kindeness and respect towards them. These friends (as common notions of friendship pass and are understood) are they for whom, besides what is *ex debito* as it were, (as to the prementioned are to be given) supernumerary Rings are provided, and that according to their dignity and degree. Which brings to my minde the Analogy of the use in London, where the Liveries of the Societies feasted by the Lord Mayor & Sheriffs (whom they present *more Civitatis* with gold, some more, some less, but the least to the proportion of two pieces a Head) have in the end of their year returned them a Donary of a gilt spoon, either an ordinary one or a 3*l.* one, or more, according to the magnitude of the present in re-

*Solum Judices Scaccarii vocamus Barones ex prisca Gallorum usu, qui Judices & Magistratus quoslibet Barones appellabant; & hoc quidem in causa est, quod ceteri apud nos Judices non sunt dicti Barones quia sula hac Curia & Gallia scilicet Normannia suum ad nostra duxit specimen. Spelman. Glosi p. 85.*

3 Infit. p. 147.

\* Infitiario: suos in Scaccario.

Flea lib. 2. c. 25.

Crook 3 part. Report. 6 Carol. Term. Mich. p. 203.

*Barones] eo quod suis locis Barones sedere solebant. Flea lib. 2. c. 26.*

*Capitalis Baro Scaccarii locum illic obtinet Capitalis Justitarii Angliæ, cujus olim in hac Curia sedes erat Primaria, maximus hic utique Baro, & ex potentioribus Regni magnatibus. Spelman in Glosi. ad vocem Baro.*

2 Infit. p. 332.

1 Infit. scilicet 1331

2 Infit. p. 380.

Lib. 2. c. 70.

Edis. Seld.

*Officium Camerariorum in recepta consistit in tribus; claves arcanum bajulant, pecuniam numeratam ponderant, & per centenarum libras in forulas mittunt. Ockam cap. quid sit Scaccarium.*

*Nihil tamen aque ollectaverit animum quam amicitia fidelis & dulcis; quantum bonum est. ubi sunt preparata pectora in qua imo secretum omne descendat, quorum conscientiam minus quam tuam timeas, quorum sermo sollicitudinem leniat, sententia consilium expediat, inlariat tristitiam dissipet. conspectus ipse delectet. Lib. de Tranquil. p. 681.*

*Amici primos habuerunt & secundos nunquam veros. Lib. 6. De Benefic. p. 116.*

turn whereof it is. From whence, as well as from the Serjeants Feasts and Presents, I collect, that feasts were anciently accompanied with gifts, and those gifts of gold or gilt, as most pure, rich, and orient, betokening the wealth, integrity, and good will of the Presenter. And in the Serjeant's case surely the Ring bestowed by him on his friends being of gold for the matter, and of orbicular forme, which is the figure of perfection, imports constancy and uninterruptedness in the study of the Law; to enable themselves whereunto, *They should not only content themselves to have read the Year-books, but to read them again, that they may learn them better: and as they attend the Kings Courts for their practice, so to attend them for their learning, remembering still that the degree they have is the highest in their Profession, and their learning ought to be suitable and proportionable to their Degree, which is superlative.* They are the words of a Dictator in their study and learning, whose advice is apposite and serious.

Lord Country's  
Speech at Crea-  
tion of Serjeants  
12 Car. 1. Anno  
1636.

*Similiter & liberatam magnam panni unius secta, quam ipsi tunc distribuent in magna abundantia, nedum familiaribus suis, sed & amicis aliis & notis, qui eis attendent & ministrabunt tempore solennitatis predicta, &c.*

As they please the eyes of some with the shew of their proceeding, and the ears of others with the gravity and learning of their Counts and Speeches, the Fingers of some with Rings, and the bellies of others with good chear; so do they cloath the backs of sundry with good and grave Liveries. Which *Liberata*, though they are not displays of Enfranchisement and Independance, as *Livery* is, which is frequent in the Law; yet are badges of such graceful service, as men of great and good rank that are Masters of themselves and of others too, notwithstanding submit to. And therefore though in the Statutes 1 R. 2. c. 7. 16 R. 2. c. 4. 20 R. 2. c. 1. 1 H. 4. c. 7. 8 H. 6. c. 4. 8 E. 4. c. 3. 11. H. 7. c. 3. 19 H. 7. c. 14. 2 E. 6. c. 2. Liveries are Badges of service, when we call a servant's coat his *Livery*. Yet in regard that in the Statute of 2 H. 4. c. 21. mention is made of the King's honourable Livery to the Lords Temporal, and to Knights and Esquires, and in the 13 of the same King, c. 1. mention is made of Liveries to men of Law. And in as much as at St. *Georg's* Feast, the Lord Mayor's Show, and Sheriffs appearances at Assises to attend the King's Judges and deliver the Goal, men of very good quality do put themselves for the Honour of the persons they pretend to, in their Liveries; yea even Princes themselves when at Marriages and in Camps they wear the Bridegrooms favours or Generals colours, are in a fort in their Livery, as part of their train. And as it is part of the honour of the created Serjeants, so no dishonour to their Attendants, to attend them at this Solemnity; which is so much the more lustrous and compleat, by how much the more numerous and well-instructed the Attendants be, because accordingly is the shew and glittering of the pomp; for according to the old *English* Calculate, nothing became a great Entertainment better then capacity of Room, choice of Guests, plenty and good Cookery of Dyet, neatness of Linnen, grace and agility of Attendants, orderly service of Tables, mirth and repast at them, kindness and sobriety after them, and a free and open welcome from the Master of the Feast. These are the gradations of pleasing Feasts, to which if a great train of Attendants upon motion of the Master be added, All's Noble.

Δύλαθ' ἰδὼς  
τὴν διακονήσων  
Athenæus  
lib. 5. Deip-  
nos. p. 192.  
The grace  
of Feasts.

As then it is *Liberata* and *unius secta*, that is, as it is a Livery of one colour and kinde, to shew the state and degree of the Master of them that wear it; so *'tis Panni*, to signifie not onely that wisdom favours and promotes native Commodities, as wollen cloath is: but *Panni*, to continue the memory of it for some time, and for some benefit to the wearer. For the Serjeant looks not onely to his seven dayes wonder, and that done, cares not how few and small Penny-worths the wearer has afterwards out of it; but desires it may reside with and rest by him, as a monument of his Creation. Therefore it has been known that Liveries given upon this occasion have staid by the meaner sort of men many years, though the better, after the Solemnity, give them away; for when their service (by the expiration of the Solemnity) determines, then also their Liveries grow with them out of season.

*Quare licet in Universitatibus, &c.*] This is written to shew the Charge, Worship, and

and Solemnity of a Serjeant, which though it be answered by the solemnities of a Doctor of the Lawes, who has a Creation as the Serjeant has, and who makes a Feast, and of old might give bonnets [*birreta*] round like his own, in token of sanctity and truth, as those virtues he is by his degree remembred of and required to express, and wears scarlet, &c. yet our Chancellour sayes, He does not give gold and other presents as Serjeants give. Which though it be most true, and declares a greater and more popular splendor in his Creation, then that of a Doctor hath; yet is the Doctors Creation to his degree very significant and solemn in every Circumstance of it, as First, He is as it were crowned, with a round Cap *in signum sanctitatis & veritatis*, by the figure of which he is taught to be sincere and unfordid, generous and scientific; Then he has the books of the Law delivered him, that he should remember to read, observe, and practise according to the Wisdome and Justice of it: and this the Doctors generally agree so necessary after the example of Scripture 2 *Chro. c. 23. 11.* where 'tis said, *They brought out the King's Son, and put upon him the Crown, and gave him the Testimony*, which refers as by the marginal note appears to *Dent. 17. 18.* where 'tis said, *When he sitteth upon the Throne of his Kingdom, that he shall write him a Copy of the Law in a Book or out of that which is before the Priests, &c.* I say, the Doctors agree this so consequential, that without the delivery of a book of the Lawes to him, he can be no Doctor, *quia in librorum lectione consistit Doctoratus*; Then he has a ring put on his finger, implying that by his degree he is *sponsus factus vera Philosophia & scientia quam proficetur*. For as by a Ring given and taken, betokening faith and troth plighted each to other, Marriage is solemnized between man and wife; so by a Ring at Creation, the Marriage of a Doctor to his art is intimated: onely there is a difference of fingers between these two wearings of their Marriage Rings, the woman wears her Ring on the fourth finger of the left hand, in which there is *quedam vena sanguinis, qua ad cor hominis usque pervenit*, but the Doctor wears it on the thumb, *ut facilius testificari possunt sub suo sigillo*, Then the Doctor is set in a chair, and has his duty represented to him in Pathetique words, *Proceed and goe out worthy and virtuous men, sit yee in the seat of virtue and science, not of vice and pestilence*, And the chair he is created in has many notable depictions in it, all significant, In the inward part of it two young men, referring to *Love and Labour*, In the latter part of it, two Virgins representing *Care and Watching*, In one of the sides thereof a young man girded about the loynes, carrying little ordinary things, intimating poverty or contentation with a little, as if humility were the onely way to seek and finde wisdom of science, In the other side is the portraicture of a man presenting a figure that flies away, noting, that life is short, and art long, and that if we would attain learning, we must banish all diversion and pursue it eagerly, then there is presented him a girdle of gold, and he is bid to gird his loynes with the girdle of faith, that is, to be faithful to the Lawes, and to his Clyent, and not to betray his trust, no more then a souldier should *solvere militia cingulum*, which he cannot honourably doe *Quia indecens omnino probatur, prius solvere militia cingulum quam cedere victori adversitas praliorum*, Then he is kissed on the cheek with a kiss of Love, to minde him *foedus pacis in facultatibus Jurium servare perpetuum*, These and such like rites and attendants there are to the investiture of a Doctor of the Lawes, which shew him in his degree not to be inconspicuous, but the contrary in all the degrees of Scholastique lustre; for of this rank and breeding of men, are the great Counsellours, Ambassadors, and Ministers of state, almost of the World, and to these doe the names of *Grotius, Budens, Tholosanus*, and others, famous for all good learning contribute honour, the Doctors of the Civil and Canon-Law, being as great masters of learning, as any or all other besides them have been, or are, which I mention as heretofore I have, not to claw them (For that is odious to me, who proposing to write the words of truth and soberness, need not fear the brow, or, by any soft and adulating precarinesses, beg the smile of any men) but to clear to the World, that I prosequute nothing but integrity to all men, and all things of worth, and to own my Collections in this and other my studies, from many Authours, Civil-Lawyers; By reason whereof I cannot but averr the Doctors of the Lawes, most eminent

*Biretum quasi bis rectum, quia bis rectum decet esse Philosophum & Doctorem, scilicet, in docendo & operando. Luc. De Penna Muriles, lib. 12.*

Cassianus Catal. Gl. Mundi. p. 387. 388, 389.

Salmasius in notis ad Tertull. Lib. De Pallio. p. 22. 23.

*In signum carentia sordium, quia ubi angulus est, ibi sordis esse dicuntur. Cass. Catal. Gl. Mundi. p. 388, 389.*

Luc. De Penna lib. 12. cap. De Professoribus. Cass. loco praesentato.

Cass. loco praesentato. p. 283.

Note this well.

Graduates and great Masters, although that of the Text here cannot be denied.

*Nec est Advocatus in universo mundo qui ratione Officii sui tantum lucratur ut serviens hujusmodi.*

Digest. lib. 3. tit. 1. gl. B. contra. dicitur p. 329. lib. 12. c. 8. lib. 4. tit. 6. ex quibus causis lib. 10. tit. 6

Remember this O My Soul, and be thankful.

Advocati salari- um debet dari pro facultate ejus & fori consuetudine. Digest. lib. 3. tit. 1. De Postulando A. 330. & lib. 2. tit. 14. De Pactis. p. 307.

Nunquam tuta est humana fragilitas; & quando virtutibus crescimus, tanto magis time- re debemus ne de sua limite corrua- mus. Sanctus Hieron. in c. 2. Joelis.

Lord Coventry's Speech Creation Serjeants. 12 Car. 1. Anno 1636.

Though *Serviens ad Legem* be a terme of *State and Degree*, yet *Advocatus* is of office and employment, concerning this see the Notes on the eighth Chapter, where- in the nature and honour of advocacy is set forth. Whereas then the Chancelour here magnifies the Serjeant at Law, he is to be understood not to doe it in relation to himself, (He being one of that degree, and a very learned one, I believe, as ever was be- fore or since him,) nor as vituperating and lessening the degrees of Doctors, in which there are and ever have been as renowned Wits, as serious Judgements, as Heroic minded men, as in any profession in the World; no such pedanteriness is our Great and Grave Chancelour herein guilty of: but he sets out the orieny of the dignity, thus to advance the reputation of the Law and the Love of the Nation to it, evidenced in that it has instituted, continued, and augmented, such an honour for men of great worth in the National and Country Lawes as is no where in the World, *neque in re- gno aliquo orbis terrarum datur gradus specialis in legibus regni illius praterquam solum in regno Angliæ*] As if he had said, as *England* is by it self in its National Law, which is favourable to freedom, tuitive of Government, promotive of ingenuity, more then other Lawes are, so has it a peculiar honour for those that excell in the knowledge of it, above other Nations, and futable to the honour, indulges it a support, paramount, to that of any Advocate in the World below. For though the *Advocate with the Father, Our Glorious Lord JESUS*, (whom all the Angels of God worship and to whom my Heart in all humility ascribeth all the Grace and Glory it has or hopes for) hath this Name above every Name, his Advocacion transcending all Advocacions, though He is ascended above the Principalities and Powers of Mortal Merit, and Mortal Glory, and has gained by his Advocacion, all Power both in Hea- ven and Earth, all Praise from Men and Angells, Though He, that Onely Precious and Prevailing Advocate, *Who is at the right hand of God*, comes with- in the *tantum lucratur*, which no eye can see, no tongue language, no pen discourse, no thought conceive, Though He be in nature, perfection and exaltation, as farr above all the gainers in the World, as Heaven is beyond Earth, and no Mortal is to be mentioned in compare with him, *the Immortal, Invisible and Onely Wise Advocate*; yet in all other respects, wherein Mortal Advocates have the greatest encouragements, this Serjeant at Law is not matchable, *nec est Advocatus in universo mundo, qui ratio- ne Officii sui tantum lucratur*] For as He is the onely pleader at the Common Bench, and the onely requested one in great pleadings elsewhere, in Chamber-Counsels, and Cir- cuits, which makes his cunning as a fountain ever full of *the water of Life, Silver and Gold fees*, so that the Circuits of some one of them have been more profitably valuable, then the practice of a great Civilian all the year long, so have they by custome of the Nation great fees, that their proficiency in learning and procedure in integrity may be encouraged; and the best love they can expres to their present renown and future peace, is to be earnest in prayer to God not to permit, and stedfast in resolution, not to take any temptation to the contrary, but to fear the blinde of a gift, and the terrour of a frown, as that which God hates, and men execrate, and alwayes to remember the tragical ends, and amazing death-beds of covetous Caytiffs, who having not the fear of God, bog- gled at no villany that was gainful. While *Achan's* wedge, and *Balaam's* reward, *Ha- man's* honour, and *Abolon's* rule, *Judas* his treachery, and *Simon Magus* his pro- phanness are upon record, there will never want monitors to great gainers to be wary. That onely is sweet and sound gain that is Godly gain, and hath the promise of a Gods blessing in a life of repute, and a death of hope. And to that end, the Serjeant best endeavours that most follows the wise counsel of a Chancelour, who to the Serjeants gave this in charge; *Strive and study to be more and more learned unto your degree, your Advocate ship is inseparably united, and that for whom and for whose use? but for all the King's people, many millions of men: and for what? For all their inheritances, their pro- perties and their interests: and then what exactness and multiplicity of learning ought to be for the conscionable discharge of so great a duty? Thus that wise Sage, which well observed*  
by

by the Serjeants, is the best way to preserve them well worthy of the great gains their care, skill, and fidelity accumulate to them above any other Advocates in the World.

*Nullus etiam, nisi in Legibus Regni illius scientissimus fuerit, assumitur ad Officium & Dignitatem Justitiarum in Curia Placitorum coram ipso Rege & Communi Banco, qua sunt suprema Curia ejusdem Regni Ordinaria, nisi ipse Primitus statim & gradu Servientis ad Legem fuerit insignitus.*

As no man ordinarily is Serjeanted till he be *de Maturioribus*, that is, above sixteen years standing, or rather has read, ( I write according to the wonted course and the usual rate of men, allowing *Provisō's* for extraordinary præcocious wits, or men of great birth, fortune and favour ; ) so no man, though he be *de Maturioribus*, can be a Justice in the King's Courts till he be Serjeanted : for Serjeancy is the *sine qua non* to Justiceship, upon the presumption that that degree obtained, learning, gravity, and integrity is *sans dispute*. This the Kings of England have pleased to method themselves in, as the onely probable means to produce Justices, *Justitia Satellites, & Judiciorum optimi tam Athleta quam Gubernatores*, that is saith the *Gloss, Athleta in advocando, Gubernatores in judicando*, that is, every way compleat, both to a solid conception, a ready delivery and a sincere Judgment. Concerning *Justices* I have written in the Notes on the 25 Chapter, & in fol. 523. also of their Courts which are called here by our Text *Suprema Curia Ordinaria*, as they are by the Act of 25 H. 8. c. 16. I have discoursed in the same Chapter. That which the Text gives occasion to add is from the word *Insignitus*, which being a clarissimation or an illustriating of him that has soulerly virtue and professional merit, renders the Serjeant, as step to a Justicer, a most eminent person, especially when consideration is had that he and none but he, is admitted to practise and plead in that Court, which one calls *the Lock and Key of the Common Law, Ubi omnia realia placita placitantur*, saith our Text, when all Pleas therein flow from those *nigri, purpurati, & coccinei Seniores*, who are no Puisnes, but have exceeded two Apprenticeships at the Law, *sexdecim annos ad minus complevit.*] Not but that great learning may bring a man to the Degree before that standing ( as it did *Scaliger* in not much above ten years after his entrance at *Leyden* to be a Professor ; ) but *nullus huc usque* to our Chancellor's time has bin called, but he that has intended so long the general study of the Law : and that because as the duty requires learning, so the *Degree and State* gravity and poise, which is seldom in youth how towardly soever. For surely if any one deserved to be Serjeanted before this standing, 'twas famous *Littleton* ; yet he was not called before he had read, but some time after, and so was no President for being Serjeanted before sixteen years standing in study : though he was a man of ancient blood, great fortune, noble parts, and general approbation, and therefore in 15 E. 4. *With the Prince and other Nobles he was made Knight of the Bath* ; yet notwithstanding all these excellencies, he was not called to be Serjeant till he had fulfilled and passed his sixteen years.

4 Instit. c. 7. Of the King's Bench. p. 75.

In Treatise Digest. p. 50.

2 Instit. p. 22, 23.

Preface to the 1 Instit.

*Et in signum quod omnes Justitiarum illi taliter extant graduati, quilibet eorum semper utitur, dum in Curia Regis sedet, Birreto albo de serico quod primum & precipuum est de insignibus habitus quo servientes ad Legem in eorum oratione decorantur.*

Herein the Serjeants degree is to the office of a Justice necessarily precursive above that of a Doctor to a Bishop ; for he that is a Graduate in the Universities may be a Bishop, though a Doctor he be not : but no man how learned soever he be can be a Justice, but he that is already a Serjeant ; nor can he sit in the King's Courts but with that particular habiliment of a Serjeant, which ( with reverence to that noble Dignity ) is in a kinde *nayled to his head*, I mean so fixed that thence it is not to be removed, no not ( I beg the boldness to say ) in the King's presence, this is the Caul on his head called the *Coff*. The Chancellour words it by *Birretum*, others by *Birrus* or *Birreta, tegmen capitis*, *Pileus* saith the *Codex Theodos*. It was permitted servants of old as a token their servility was *On its last leggs*, as we proverbially call service that is determining, after-times adopting the use of these Night-caps or *Womens gear*, as we may

De habitu quo tibi operiet extra urbem.

Epist. 74:

Spelm. Gloss in  
vocem Birretum.Capital quod Sacerdotula nunc in ca-  
pitis solent habere. Varro lib. de Lingua  
Latina.

Advers. lib. 22. c. 30.

Ut rasuras sive coronas capitis hujus-  
modi Cappis defenderent.Clerici non nisi in itinere constituti un-  
quam aut in Ecclesiis, aut coram Prela-  
tis suis, aut in conspectu communi homi-  
num publice insulas suas, vulgo Coyffos vo-  
cant, portare aliquatenus audeant vel pra-  
sumant. Lindwood. p. 68. B. 11.

Matth. Paris. p. 985. in H. 3.

Fagnio. in verbo  
p. 2828.Primum est quod  
ante se aliud ha-  
bere non potest.  
Reg. Jutis Civil.  
Digest. p. 46.

may call them, into credit. These Coyffs or Caps became Emblems of Mastership, to which *Clemangis* alludes in these words, *Non Cappa ut in Proverbio Monachum efficit, nec Cappa etiam aut Cathedra birretive impositio, Magisterium*. In after-times they grew vary-coloured, Cardinals had *Birreta coccinea*, scarlet or purple Bonnets or Caps, Bishops black, but Serjeants at Law these white ones: which though they now have impropriated to them, as one of the *Insignia* of their *Degree*, was of old purely *Sacerdotal*: *Varro* pedigrees it from the Women-Priests, who amongst the *Romans* used it to cover their heads in Sacrifice, so *Pompeius*; and *Turnebus* makes it to be that *Coyff* or *Caul* that women do to this day tye up their hair in, their night-linnen called a *Coyff*. The Priests taken with these, used at nights to lye in them, or on travel to cover their rasure, and protect their heads from cold; other then in these cases, by the Constitution of *Othobon*, our Priests might not wear them: but that they did wear them, and that to cover their rasure was plain from that which *M. Paris* writes of *W. de Bussey*, the evil Counsellour of *W. de Valence*, who when he was apprehended, and brought to make answer to the accusations against him, when his guilt made him answerless, and his impieties were not to be defended, *Voluit ligamenta sua Coyffa solvere* (saith *Paris*) *ut palam monstraret consuram se habere Clericalem*. From Priestly men Judges in Courts of Law about *Edward the Third's* time

this *Coyff* descended with Justiceship to Lay-men, and from being made of open Cancell-work, Cut-work, (such as in my memory women wore *Coyffs* of, which in regard of the bars and net-work of them, were what the *Hebrews* call by  $\text{קֶפֶט}$ ) it was made of silk *Birreto albo de serico* in our Chancellour's time; but after, it became to be of Cambrick the next to it in transparency, and thus to this day it continues. From which covering, white in colour, and pervious in the nature of it, we may conjecture the scope of it to signifie protection of the head to purposes of sanctity and sincerity, minding the Serjeant to not onely fill his head with learning, but employ that learning to the establishment of Justice, and the support of Innocence against powerfull oppression and fraudulent subversion; and it calls them to own themselves Free-men from the frowns of Judges, who sometimes brow-beat Puiſnes, and gives them liberty, as Brothers of the Long-robe, to speak boldly because weightily in a good matter. And this is the reason why the *Coyff* being such an instance of sacredness and authority is called by our Text, *Primum & precipuum de insignibus habitus*.

*Nec Birretum istud Justitarius sicut nec serviens ad Legem, unquam deponet, quo caput suum in toto discooperiet, etiam in presentia Regis, licet cum Celstidine sua ipse loquatur.*

This is subjoined as a notable instance of this Serjeants dignity, to wit, that whereas of old no man might come capp'd into Princes or Great mens presences, without a particular grant so to doe, which I collect from the use till *Henry the Eighth's* time, when I read one *Mr. Brown* had Letters Patents, confirmed by Act of Parliament; to enable him to put on his Cap in the presence of the King or his Heirs, or any Lord Spiritual or Temporal in the Land, Whereas I say no man might come capp'd into the King's presence without special leave, the Serjeant *Privilegio status & gradus* might; and the reason perhaps might be, for that the head of a Serjeant, so full of law and learning useful to the King and his people, should suffer no injury by cold, nor appear not with the defects of old age, or other accident, which might injure or diminish his reputation: but that he may retain that reverence that becomes so venerable a Profession as the Law is, and so grave a Sage as He the Serjeant is presumed to be. This may be one reason why Princes permits these worthy Persons to wear that in their presence to which they thereby command reverence from others, who are much ruled by the practice of their betters, especially of their Prince, who not onely suffers these to appear before him *Coyff'd*, but often speaks with them and is counselled by them in matters that concern his Crown and Dignity; and even then when they are nearest him, *Licet cum Celstidine sua ipse loquatur*] they do stand capp'd and coyff'd

Which

Fuller Church  
History. part. 2.  
p. 167.

Which Considered, and the Lawes of *England* (so conforme to the Law of God, the Law of nature, and the condition of *England* and the nature of the people of it, so prosperous in the peace, plenty, honour, riches, and univerfal advantage that it has in all ages produced) while it is studied by brave men of parts and parentage, pleaded and distributed by learned and aged Sages, and judicially declared by the upright and well advised Masters of it, the Reverend Justices of the King's Courts. All this I say premised, the Chancellour humbly not onely conjures the Prince *non habere* which of the Lawes to love and chuse, but from the result of what the premises discoursed upon produce, to conclude, That for the Piety of them they are *pretiosa*, being as the *Queen's daughter*, *all glorions within*; and for the reason, judgement and gravity of them *Nobiles, sublimes ac magna prestantia*, and in the effect of them to the Glory of God, Honour of the King, and comfort of the people. *Maximaque scientia & virtutis*, So He; and I after him humbly conclude this Chapter.

CHAP. LI.

*Sed ut Justitiariorum sicut & servientium ad legem status tibi innotescat, eorum formam officiumque ut potero jam describam.*

HAVING shortly described the material parts of the manner of Creating Serjeants; He proceeds from the Step to the Throne, the Investiture of Justiceship, which though it be *no State and Degree*, but an express of *State and Degree* in an office judicial, yet is so farr an advance of dignity, as in worship and honour is not in the Law to be exceeded: and therefore to what of it I have under favour of my Lords the Justices written of their dignity in the five and twentieth Chapter, and in fol. 523 I shall add onely that which the Chancellour here gives me the invitation in the Comment on him to doe, reserving the more plenary treating of them to some discourse purposely on that subject. In the mean time I follow my Text.

*Justitiaris regis jurati sunt omni exceptione majori. Leges Cook 2. Instr. p. 422. 449. Ficia lib. 2. c. 34*

*Solent namque in Communi Banco*] Here the Chancellour begins by a modest condescension with the Court of *Common Pleas*, so called because of the *Common-Pleas* there holden; Now though this Court he presided not in, (being Chief Justice of, and so placed in, the *King's Bench*, which according to the learning of time and usage has the priority) yet to evidence how little his merit stands upon punctilio's, and how trite he accounts rivalry between those paire of Sisters that are to serve the King and his people in decisions of Law and Justice (I would to God the same were the ingenuity of the members of both Universities, and then they would honour not derogate from one another) He writes first of the *Common-Bench*, which undoubtedly is not onely a most ancient Court, not onely before *Henry the third's* time, but before *R. the first*, or even the *Conquerour's* time. And as in the *King's Bench*, pleas of the Crown, and things concerning the King and Subjects were and are tryed; so in the *Common-Bench* *real actions by original Writs, are to be determined, and also Common-Pleas mixed and personal*: And therefore as there being the high matters of Law judged in it, so are the pleadings to be performed onely by Serjeants. There is usually in this Court, for the greater weight and more substantial carrying on of right judgement, *Quinque Justitiaris vel sex ad majus* sayes the Text] *Many*, for in the multitude of *Counsellours* there is safety, and five an uneven number, that the ballance may be preponderated by the odd voice, and so decision of the Courts judgement be. Of old it should seem by our Text there may have been six, which Master *Cambden* does not deny in those words, *The Judges there, are the Lord Chief Justice of the Common-Pleas, with four Justices assistants or more, as the King shall think good*; but that there have been in late reigns any more then five with the *Chief Justice*, I cannot finde, but sometimes there have been fewer.

*4 Instr. c. 7. of the Kings bench p. 72. 73.*

*4. Instr. Jurisdiction of Common Pleas c. 10. p. 29. Britania p 173. of the Courts of England. 1 & 4 Carol. 5. Justitiaris 3 Reg. Cook 10mp. Car. 1.*

*Et in Banco regis quatuor vel quinque*] This Court is the first of the high Courts Ordinary of Law, called the *King's Bench*, because the Kings of *England* have there sat

Cambden's *Tri-*  
*tanica* of the  
Courts of En-  
gland, p. 178.  
P. 177.

Cook 4 Infit.  
P. 71.  
P. 73.  
9 *Rep.* p. 118.  
119.  
*Tat.* 20 H. 6.  
*parte prima* M. 10  
25 H. 6. *parte pri-*  
*ma* M. 12. 32 H.  
6. M. 9.

Spelm. *Gloss.*  
in verbo *Justitia*  
vii.

Cook 4 Infit.  
P. 74.  
P. 75.  
5 E. 4. fol. 137.  
Of the Court of  
King's Bench.

2 Infit. p. 267.  
Resolut. Judges  
3 *Jacob.* upon  
the Stat. *Arti-*  
*culi Cleri.* 2 In-  
fit. p. 601.

2 Infit. p. 447.  
4 Infit. c. 7. of  
the Kings bench  
fol. 75.  
(a) *Lib.* 5. E. 4.  
fol. 137.  
Preface to his  
3. *part. Rep.* temp  
Car. 1. p. 52. 375

Cook on Little-  
ton *feff.* 164.  
P. 110.

4 Infit. c. 10.  
P. 100.

as Presidents in proper Person, which is the reason the returns in it are *coram meipso*, and because also it peculiarly holdeth pleas of the Crown and such other Matters which pertain to the King and the Weal-publique, and withall (saith Master Cambden) it sifteth and examineth the Errors of the Common-Pleas. Anciently this Court followed the King's Court, for it was kept in *Aula regia*, whence the prementioned Cambden tells us, they were called Lawyers of the Palace, and Justices of the Court, and *Justices assignes de nous fuer*: The Justices of this Court Sir Edward Cook calls the Sovereign Justices of the Oyer, and Terminer, Goale-delivery and conservation of the peace in the Realm, so was the resolution of the Judges in the Lord *Sanchars* Case, and the Chief Justice of it called by the Patents of Kings *Capitalis Justitiarius Regis, & Capitalis Justitiarius ad placit. coram Rege tenend.* the King's Chief Justice of England; so in the Statute of 34 & 35 H. 8. c. 26. 37 H. 8. c. 12. But the stile and authority which this high Officer, called *Justitia Anglia* in H. the third's time had, was altered *temps E. 1.* not onely in the power, but in the name and ground of his power from *Justitia Anglia*, to *Capital. Justit. Regis*, and from Patent to Writ, so that though the rest of the Judges of the King's Bench have their offices by patent, the Chief Justice is constituted by Writ, and therefore when in 5 E. 4. 'tis said, that a man cannot be Justice by Writ, but by Patent and Commission, it is to be understood of all the Judges, saving the Chief Justice of this Court, see more of this in the 4 Infit. c. 7. Now in this Court there has been, sayes our Text, Justices *quatuor vel quinque*] So has the number mostly been 3 besides the Chief Justice, both in the Reigns of King James, the last King, and such the number now is; Which Justices of the King are of so great sway with the Nation, that they not onely settle all suits and causes in their Benches and Circuits, but their resolutions are of high authority, not onely Inducements to Parliamentary declarations, as in the Stat. *De Bigamiis* 4 E. 1. but also in arduous scruples upon Lawes, and the interpretations of them, which appears in the quotations of them every day as Law, and in the allowances of our Kings in all times, that their resolutions are Law. Which lessons all men to honour the Judges, and all Pleaders before them to demean themselves with judgement, sobriety, and Law-learning; Forasmuch as they are the Ordinary *Lex loquens*, and next to the Books, according to which they (*having the morning light, which is the defecate light of knowledge*) doe speak, and therefore are to be diligently heard, and reverently observed.

*Ac quoties eorum aliquis per mortem vel aliter cessaverit, Rex de avisamento concilii sui eligere solet unum de servientibus ad Legem, & eum per literas suas Patentes constituere Justitiarium in loco Judicis sic cessantis.*

As life, merit and choice makes a Justice, so death, demerit and disfavour discharges him. When therefore any of the King's Justices doe die by age or sickness, being *perpetuo languidi*, or otherwise are superseded, as by Writ under the great Seale, I suppose they may, though made Justices, they are (a) said not to be by Writ, but by Patent or Commission; and as that learned and upright Judge, Sir George Crook upon his humble Petition, by reason of his very great age honourably was, and as Sir Randal Crew 2 Car. 1. Sir Robert Heath, and Sir Edward Cook 10 Car. and others have upon sundry reasons been, which is *per mortem vel aliter cessare*] Then the King, whose the Justices places are, and in whose place, and by whose power they administer Justice to his people doth elect new ones *cum avisamento concilii*] For the King having divers Councils his *Commune Concilium*, his *Magnum Concilium*, his *Privatum Concilium*, his *Judiciale Concilium*, is said to doe what ever he does *ex avisamento Concilii*, that is, by advice of his Council, *secundum subjectam materiam*, as in state matters out of Parliament of his Privy Council so in Law-matters by counsel of his Judges. Now this *avisamentum concilii sui* being referable to the choice of a Judge, who is a person of Law, and proper to be scanned by men of Law, though the Councils of the King in the former notions are not excluded; yet *avisamentum concilii* seems to me chiefly to respect the Judges, from whom the King understands the fitness of persons in that office to serve him, so as he be (and other then such, they will not nominate) *unus de Servientibus ad Legem*. For though I know the Patent or Writ to make them, does not term them Serjeants that are so,  
Or



Or make them Serjeants if they be not such; yet no man can be a Judge unless he be a Serjeant of the degree of the Coyff, *Unum e Servientibus*] if not a Serjeant long before, as of old the Senior-Serjeants in regard of their great experience were (I presume) advanced; yet a Serjeant when advanced, though but so created the day before advancement. *Et cum per Literas Patentes constituerentur*] These Letters Patents are Writs under the Great-seal, directed to him or commanding him to attend the office of Chief-Justice, or Justice; and they are called Letters Patents, because the King's pleasure and judicial Command and Power is patefyed in them: and they issue forth from the Chancellour who is termed *Secundus a Rege in Regno*, and according to Fitz-Stephen, is enabled, *Ut altera parte Sigilli Regis, quod & ad ejus pertinet custodiam propria signet Mandata*, they are the words quoted by Sir Edward Cook. And this being done *More Solemni*, and to preserve the King's Power in a due exercise of it towards his people, is a very provident Supplement to Death, Decay, or Discharge.

*Et tunc Cancellarius Angliæ adibit Curiam*] What the Chancellour has sealed privately he owns publickly. And that the Justice to be made may more seriously consider the King's Grace, and the people more respectfully reverence the King's Justice; the Great Chancellour, who is Keeper of his Seals (for in H. 6. time there were three Seals in the custody of the Chancellour who is) The Signer of his Grants, the Presenter to his Promotions, the Judge of his Equity, the general Oracle to all Orders of men condescends to come from his High Court the Chancery, which is alwayes open when other Courts are shut, out of Term, to the Court where the Justice is to be placed, *adibit Curiam ubi Justitarius sic deest.*] *Et sedens in medio Justitiariorum*] 'Tis not *stans* for that's a posture of ministratation and request, but *sedens*; for as that is the station of Pleaders, so this of Judges: Advocates stand at the barr to plead, but Judges set on the Bench to judge, *Sedere, quasi seorsum erectè cæteris seperari*, so Tully uses the phrase. Sitting is a posture of consideration and intentness, hence *Servius* renders that of *Celsa sedet Eolus arce* by *id est curat*; and *Plautus* when he brings in the servant saying to his Master, *Sine ut juxta Aram sedeam, & meliora consilia dabo*, hints to us, that sitting is a posture of solidity and judgement, *post designata Cæli partes a sedentibus captantur auguria*. Hence is it that in Scripture God is phrased to set upon his Throne, *Is. 6. 29. Jer. 17, 25, &c.* and Christ Jesus is said *To sit at the right hand of God*, and his Apostles and Martyrs are promised *To set upon Thrones judging the twelve Tribes of Israel*. So that the Texts *Sedens*] imports possession by a kinde of temporary right: as the King's high Delegate *He Sitts*, to betoken judicial Prerogative; and *in medio Justitiariorum* because of official excellence. For as if there be but two, the right hand is the place; so when there are three or more, the middle or centre is the place of dignity: because it is that whence, as from the centre, the lines of circumvallation move, and wherein they are united. Therefore the *Latines* oppose *in medio esse* to *obscurum*; so Tully, *dicendi omnis ratio in medio posita*, and *Ponam in medio sententiam Philosophorum*. And surely when the *Moralist* has written much of placing at meetings, and determines the propriety of Primacy, *Ἀπελὴν ἔσ' ὑψηλῆς, To virtue and dignity*; yet in that he brings in *Democritus* chusing the middle place, he intends the notification, that the middle being his choice was by him accounted the best, *quia virtus in medio*. From the consideration of this dignity of the *Middle*, as the most conspicuous, we read that God is often in Scripture expressed to appear in the *midst*, so *Out of the Bush*, *Exod. 3. 4, 20. &c. 24. 16.* so *In the midst of the Camp*, *Numb. 5. 3.* *Out of the midst of the fire*, *Deut. 4. 12.* *Out of the midst of the darkness*, *Deut. 5. 22.* *God is in the midst of her*, *Psal. 46. 5.* *Thou O Lord art in the midst of us*, *Jer. 14. 9.* *The Holy one in the midst of thee*, *Hosea 11. 9.* When our Lord Jesus; the Judge of quick and dead, is said to be *In the midst of them that are gathered together in his name*, *Matth. 18. 20.* and *In the midst of the two Thieves on the Cross*, *John. 19. 18.* and when he appeared to his Disciples after his resurrection, *He stood in the midst of them*, *John. 20. 19.* when he is said *to stand, and walk, and set his Throne in the midst of the seven golden Candlesticks*: sure all these signifie not onely special and eminent presence, but also Authority, Majesty and every thing that is transcendent. And therefore *sedens in medio Justitiariorum*] here, is enunciative of the Chancellour's dignity; in that he sets in the Courts

4 Instit. p. 75. c. 7.  
Of the King's Bench.  
7 Car. Sir R. H. Serjeanted Octob. 24. & Octob. 25. advanced. Crook 3 Rep.  
So Idem p. 65.  
Idem. p. 215, 403.

4 Instit. c. 8.  
Court of Chancery.

Cambden. Brit. p. 181.  
What the Chancellour is.

4 Instit. c. 8. Of the Court of Chancery. p. 81.  
*Ad gubernacula Repub. sedere.*  
Cic. pro Roscio. *Persarum Satrapa pro dignitate cujusque sedes habebant apud Regem, idque ex Cyrii instituto.* Druis in c. 1. Ephor. Jer. 22. 4, 30.

*Ille ergo possidet qui sedere, id est, sedem ponere potis est a seditando.*  
Alciat. ad Legem 203. p. 441. *De verb. signific.*  
1 De Orat. 7.  
Cic. 1 De nat. Deorum.  
Plutarchus lib. 1. Sympos. p. 617. *Edu. Paris.*  
*Ἐν τῷ δαυτηρῆς ἱερῶν ἑστῶς ἡ κριτικὴ βασιλευσῶν ἐστὶν ἡ μὴ οὐσ.* Idem p. 616.  
1oel 2. 27.  
Zeph. 3. 5.

Rev. i. 13. c. 2. c. 4. 2. & 3.

4 Instit. c. 10. p.  
99.

of Law not as a stranger, who by the courtesie of the Court has the best Seat ; or as *Parning* Chancellour to *E. 3.* did, to debate matters of Law : but as the King's chief Minister of State to dispense the King's Grace in a graceful and majestique manner ; that from the Solemnity people see in the constitution of a Judge, they may learn to reverence him : and the Students of the Law may be excited to diligence and virtue, that they may be in due time honoured with the Bench, as well as fitted for it by the Barr. But it follows.

*Introducitur facit Servientem sic electum, cui in plena Curia ipse notificabit voluntatem Regis de officio Judicario sic vacante.*

*Voluntas Regis per  
Iustitiarum suos  
& Legem suam.  
2 R. 3. fol. 11.  
3 Instit. p. 146.*

*M. Paris p. 641.  
744.*

*pag. 994.*

Till the Chancellour be sat in the Court, the Serjeant appears not ; for the intent of the Solemnity being to magnifie the grace of the King and the office of the Judge, the best means thereto is to do it *plena Curia*, when there is the greatest appearance both of Judges, Officers, and Auditors, which then being, when the Chancellour is sat, the to be promoted Serjeant appears, and then the Chancellour, who is always a man of learning and oratory, declares the King's favour to his people in supplying them with Seats of Judgement, and with judicious and just Sitters on them : and that in such a number as sutes best with the expedition of justice, and the prevention of delay, error, or iniquity ; yea, who continually provides against the superfedals of death, impotency or demerit, by additional Justices to compleat the necessary and usual number. And this as an act not more of policy then good will, for 'tis *Voluntas Regis* that determines the office and alters the persons officiating as Judges in the Courts ; and that because the Courts are *Curia Regis*, and the Lawes are *Leges Regis*, and the Justices being *Iustitiiarii Regis* nothing is more reasonable and just, then that the King should do, as to this, what he will with his own, that is, what he Kinglyly and legally by matter of Record ( his legal will ) pleases to do with his own. Which though it be in this case contrary to the Tenents of disorderly times and tempers, such as were those *Tempus H. 3.* where the *Provisio Magnatum* sayes contrary to this Text, ravelling out the good pleasure of the King into the pleasure of the Subjects ; yet the very Authour that relates this, adds a notable censure of it, as usurpation upon and injury to his Sovereign Grandeur and Propriety, *Tot enim in Anglia Reguli, ut videantur in Anglia antiqua tempora renovari* : but enough of this. The language of the Text is more Law and reason when it tells us, the Chancellour does *Notificare voluntatem Regis de officio Judicario sic vacante.*

*Crook 3 Rep.  
Regni Carol. 1.  
p. 403.*

*Et legi faciet in publico Literas pradictas* ] This is done to shew the reason of his coming to the Court, and the warrant for this his performance in the Court ; for as the King calls a man of worth to a publick charge ; so he signifies this pleasure of his by a publick Instrument, publickly read, that all may witness the lawfulness of his Title, that being sworn and placed, Sitts and Judges. For as the Patent read declares what the King's will is ; so the Oath read and admistrred which is that of *18 E. 3.* shews him what he is to perform in duty to the King and his people, To the King he takes the Oath of Allegiance kneeling, according to the Stat. 3 *fac.* To the King he takes the Oath of Justice standing : which done, *Cancellarius sibi tradet Literas Patentes* ] Before he be qualified by taking the Oaths previous to his trust, he has not his Patent delivered, and so no admission to his judicial office. For though the sealing of the Patent seems to give him *jus ad rem*, that is, an inchoate right as it is explanatory of the King's favour, and an allowance of his conceived fitness ; yet till he have testified his subjection to the King and the Law, and bound himself by the Oath of God to be true to his trust in all the particulars of it, the *jus in re* commences not, for that is perfected by the delivery of the Patent to him : but when he has to his submission to the terms of his acceptance and duty, satisfied the Chancellour and the Court, that he is the man he is taken for, then his Title is delivered him, and he enters on his Charge.

*Et Capitalis Iustitarius Curia assignabit sibi locum in eadem, ubi deinceps ipse sedebit.*

When the King's Chancellour has performed what for the King's Honour and his peoples

peoples good is, to be as farr as prudence and piety can secure and render them in their honest performance undoubted, then he recedes leaving the formalities that are purely local to the order of the Court; the Chief Justice, who is the chief actor in the Court, then places the new Judge (but here is nothing preposterous, but every *Iota* appointed in the solemnities) in the place where he must sit, which being according to the seniority, for I take it, the vacancy ordinarily advances the next to it, the Judge is to sit there till he have room made higher for him, by which, emulation is prevented, and love between the Justices of the Court preserved.

*Sciendum tibi est, Princeps, quod Justitiarius iste inter cetera tunc jurabit, &c.*

This is a summary of the *juramentum Justitiariorum* 18 E. 3. and it consists of those heads, which comprehend the pious and plenary dispatch of Justice, *freely without sale, fully without denial, speedily without delay*, which though it were declared in those words, *Nulli vendemus, nulli negabimus aut differemus Justitiam vel rectum*, yet is more fully here charged on the Judges, who as the King's distributors of it to the people, by the force of their Oath are to doe as followeth *Well and lawfully to serve the King and his people in the office of Justice, to warn the King of any damage, to doe equal Law to all his Subjects, to take no reward of gold, silver, or any other profitable thing, (meat and drink onely excepted) To give no counsel where the King is party, to suppress breakers of the peace and contemners of the Law, to maintain no suite or quarrel, to hearken to no letters or commands to delay or deny Justice, to procure the profit of the King and his Crown, with all things where they may reasonably doe the same.* This is the sum of the Oath which our Text insists on, as that which must not onely be the bridle of restraint to Judges; but the confidence of the people, that they shall live under a Law so dispensed in all Godliness and Honesty. For therefore is the subject of *England* rich, free, secure, and what not that is emulable; because his Prince pleases to rule by the Lawes, which Lawes are distributed by such Justices as fear God, and reverence man no further then they reverence God in Heaven, and the Law on Earth, which is the true and during support of Sovereignty and subjection.

*Uet. Magna Charta. 29. Chap. 31. Charta.*

*3 Instit. c. 68. p. 146, 147.*

*Sciendum etiam tibi est, quod Justitiarius sic creatus, Convivium solennitatemve aut sumptus aliquos non faciet tempore susceptionis officii & dignitatis sue, cum non sint illa gradus aliqui in facultate Legis, sed officium tantum illa sicut & Magistratus ad Regis nutum duratura.*

Here the Text tells us, that there is no cost of Presents, entertainment or equipage at this advancement of a Serjeant to a Justicehip; and the reason why none there is, to wit, that the cost of solemnities attends Degrees, Dignity and State of Honour conferred on a person, from the result whereof others, attendants, relations and friends are seen in service and gratified for it: but Justicehip being onely delegation to an office executable by and determinable at the pleasure of the King, there is no Degree proceeded in beyond that of Serjeant, but an additional faculty to express Magistratiquely and with judicial authority, the learning of Law, that in the Serjeant was seen in pleading, and now may further appear in judging. It is true, in the Case of Bishops it is otherwise; for though when they were Doctorated they kept Feast; yet shall that not excuse them, but at their Consecration, they so shall doe also, because they are admitted into a superiority of order, and have a dignity of temporary Baronage, though not personal, yet in the rights of their Sees, and are therefore to gratulate the King's favour and their friends kindness in attending the Ceremonies of their Consecration with preparation for, & entertainment of them with gloves, and good cheer, and with sober, hearty and generous welcome, the cream, marrow and Musique of all entertainments: but in this of a Justice, the official Improvement of a Serjeant, there is no cause of further joy and triumph, then as it is an opportunity to glorifie God, serve the King, and his people, honour the Law, his study and profession, nor is the reward of it more, if so much, as by a good round practice is gained; And therefore when it comes to a Serjeant of yeares that has plyed hard at the oare when young, and has feathered his nest well, it comes very seasonable to alleviate his toyl and to be a port to his old

*Hac est voluntas Regis per Institiarios suos, & per legem suam, & non per Dominum Regem in Camera sua vel aliter. 2 R. 3. fol. 12. 3 Instit. p. 146.*

*Episcopatus est Sacerdotium completum & perfectum, inferiores ordines sunt antecedentia ad Sacerdotium ex conjugitate, sed non ex necessitate. Durandus lib. 4. dist. 24. q. 1. art. 8. p. 802.*

age and a help to his retirement. These are the motives to good and grave mens inclinations to observe the King's pleasure, and to serve him as Justices. Pride, popularity, covetousness, idleness, are no jewels or ornaments in a Judge, but rather the treacherous *Syren*-notes that make the *Achilles* of Learning, piety and truth in them self-felons, accessaries to their ruine and defamation: which had *Thorpe* considered he would not have so dishonoured the Law, and his singular judgement therein by bribery, nor *Tho. De Wryland* Chief Justice of the Common-Pleas, for an accessary in Murther, or *Stratton* Chief Baron, For Felony, and all the Justices in *E. 1.* time (except *Messingham* and *Beckingham*) have deserved for their bribery and corruption to be removed, fined, and imprisoned: *Qui non amoverentur nisi clarescentibus culpis*, as *Matthew Paris* his words (of some such delinquents) are.

*Habitu tamen indumenti sui in quibusdam ipse extunc mutabit sed non in omnibus insignis ejus.*

The Coyff called the *Pileum* in the *Roman* Stories, being a Priestly habit, and so by Saint *Jerom* owned under the name of *Pileolum*, as the fourth kinde of *Sacerdotal* habiliment, the Judge continues; so doth he his long Robe and Cap, onely *habitu in quibusdam mutabit*. Now a habit we know is a token of Regency in Universities, It's to accompany the Hood, when Masters of Arts goe to Congregations, It is an old Philosophers short cloak, of which I have written in the notes on the precedent Chapter; that which is to be added is, that as men of honour in the Heroique ages, either covered not their heads at all, (Which is the reason why *Homer* makes no mention of *Pileus*, nor any of the ancient Statues are seen other then bare headed; or if they did cover them, yet onely but when need was, and that with some lap of their garment) so did they not then wear covering for shoulders longer then necessary, nor them longer then either cold or raine required it: which though we (now accustomed to more delicacy and trimness) have altered, yet so much of the antique vest as intimates gravity and learning is retained, and this our Text makes to reside in the habit of a Sergeant in Common with a Judge, who wear long Robes Priestlike, for so the long Robe is reckoned 39. *Exod.* 22.

*Cum Capitis penulato circa humeros ejus & desuper collobo*] with a furred cape about his shoulders; so is the Translators reading; Robes were the best of garments, and those that signified excellency and State. And therefore as they were long from the collar to the foot, to import the extent of dignity over the whole person of the wearer, according to that pattern which I believe the Christian Church took for her long robe, from that Text, wherein we reade in the midst of the seven Candlesticks, one like the Son of man, clothed with a garment down to the foot; So was there a shorter robe, which the Priests wore from the pattern of old, *pallium superhumeral* *לְעֵמֶת* *Exod.* 28. 4. 21. verses, which *Pallium* or short cloak signified a vest, *panno aut pelle suffultâ*, whence the lining of the Judges robes with silk in summer, and furr in winter, hence the furred Cape, *Capitium*] anciently *mamillare fœminarum*; a stomacher, or rather a short cloak, like those women heretofore wore, when they rode, or were ill, and yet doe wear in Child-birth, which is now worne onely by Country old women, and Country Midwives, which *Capitium*, because it was a guard to the breast and shoulders, which cabinetted and secured the entrals of life and tenderness, things of security from weather were called Capes, thus the Seamen call a port where they touch for relief, and put in for safety a Cape. Our Chancellour then by *Capitium penulatum*] meanes not that *tegmen Capitis* which *Varro* mentions, but that *penulatum Capitium*, that vest or loose garment which is worne in rain and stormes over the close garment, which *Ulpian* reckons amongst the garments that are in common between men and women, and are used indifferently by them, both call *penulas*, or as we call them Caped rockets or short Cloaks not much longer if so long as the middle; *Severus* is accounted the first that allowed this garment, yet onely to old men, and that on their journeys, and in cold and wet weather; (a) *Tully* terms it *penula viatoria*; *Galba* made so much of this garment that *Quintilian* tells us, when one of his favourites asked him to bestow his *penula* upon him, he refused

to

30 E 3. 4. In-  
stit. Chap. 8 p. 79.  
3 Instit c. 68. of  
Bribery p. 147.

M. Paris p. 903.

Romani Satur-  
nalibus Pileum  
gerabant, aliis die-  
bus nudo capite e-  
rant. Turneb. Ad-  
vers. lib. 8. c. 4.  
Sanctus Hiero-  
nymus ad Fabio-  
lam. lib. de Vest  
Sacerdotali.

Leges Salmasium  
in Fectul. lib. De  
Corona Militis.  
Turneb. loco pra-  
citato.

Rev. 1. 13.

Cunæus lib. 2. c. 2  
De Republ. He-  
braeorum in Tom.  
8. Critic. Bibl.  
p. 854.  
Spelm. in Gloss.  
p. 138.  
Cape pro scrinio  
ad conservandas  
reliquias. Idem  
eodem loco.

Tunicas neque capita neque strophias ne-  
que zonas, &c. lib. 4. De vita Pop. Ro-  
mani.

Penulata vestis qua nebuloso & pluvioso  
tempore supra tunicam assumitur loco pallii  
ad arcendas a corpore pluvias.

Alexandrum consuevisse ut senes penulis  
intra urbem frigoris causa uterentur, quum  
id vestimentum itinerarium aut pluvia su-  
fferet. Lampridius in Severo.

(a) Cic. ad Attic. lib. 10. Ep. 138.  
Lib. 6. c. 3.

to do it, saying, *Si non pluit non est tibi opus, si pluit ipse utar.* Paynus tells us of many *Penula's*, the *Penula scortea* which the *Pegasarii Cursores* used, the *Penula Gausapina* which we call the Gossips Mantle, the *Pennula Oratoria* which *Tacitus* alludes to, all which were several habits for several persons on several occasions, such as the *Capitia Pennulata* for the Serjeants, who being men of years, weakness, and dignity, do as well for security as state, wear these short Cloaks furr'd in the Cape. From these furr'd Capes on their *Capitia Pennulata* came probably *Semi-copes* and *Copes* used in Cathedrals and Churches under the name of *Capa Canonica* & *Capa Chorales*; and from this the term of *Festa in Cappis*, which because they were lined with furr or silk on the inside according to the season of the year, the Serjeants, that in their Robes are Sacerdotal, continue to wear Robes lined according to the seasons,

*Et desuper Collobio cum duobus Labellis.* ] This *Collobium* does not here signifie a short Coat or a Tabard, like that we call Souldiers Mandils, or Mantles of the fashion of Coat-Armours, such as our Heralds Coats are; for that the *Codex Theodos.* forbid Senatours and men of worship to wear: but it imports that *Cowl* that was proper to Monks, Hermits, Souldiers, and Country-men, who because they were encounterers with hardships, had these *Superbumeralia* to defend them. Thus the learned Knight understands these very words of our Chancellour; and thus we all know, that though the *Hood* or *Cowl* be worne about the shoulders, it is the proper tegument of the head and neck. And therefore *Julius Firmicus* reckoning those that are defective and impaired in health, and thereupon dye, mentions among others *Collobici*, that is, such as by reason of infirmity are fain to keep their heads in cases, and hide them in a hole as it were, lest the winde blow upon them. *Collobium* then was as a hood for warmth, so *cum duobus Labellis*, which Lips, longer then ordinary, might be convenient to close up that room in which their trinkets were carryed, *Pera Oratoria*, that in which Advocates carryed their Papers; for as Priests and Priestly men did by severe penance and study *portare rugas in vertice frontis*, and *auxilium portare Clientibus*, so did they *portare fasciculum librorum sub ala*: and so our Advocates ordinary do, save onely Serjeants and the great (within Barr) Counsel; for these have their Baggs carryed by their Clerks, but of old 'twas otherwise. For as the *Collobium* was used for the Head-case, so the *duo Labelli* joyned to it might render it capable to be useful for stoadges. And thus in the habit and some other solemnities the Serjeant and the Doctor of the Lawes agree, and little or no dissimilitude is between them; for though the Serjeant has in *England* more Honour then the Doctor of the Lawes: yet the Doctor of the Lawes is more generally honoured and owned in the World, because he is a Professor of the Lawes of the Continent, when the Serjeant is onely of the municepe local Lawes.

*Sed Iustitarius factus Chlamyde inducetur firmata super humerum ejus dextrum, ceteris Ornamentis Servientis adhuc permanentibus.*

As the office of a Justice is an advance to the *State and Degree* of a Serjeant in the person of the Officer; so is there an advance in the Nobility of that Vest, which in a Justice is superadded to that of a Serjeant. The Long-robe and Cap, the Hood and Coyffare the same, and the colours of black, purple, and scarlet, for the respective dayes are the same; but the *Chlamys* which the Justice has, makes the difference. Now this *Chlamys*, *Suidas* calls *ἱματιον στρατιωτικον*, a Military Garment, and he sayes *Numa* was the founder of it, who learned it from the *Albanians*, whom he being Victor of, and liking their Vest, from them used it. It was called by the *Romans*, *Paludamentum*; and *Varro* sayes it had its name, *quod qui ea habent, conspiciuntur ac sunt palam*: to this *Seneca* alluded when he sayes *He does not look upon men for their gay Garments and rich Apparel; but accounts of them as he believes their mindes are crowned with virtue and issued with generosity, and the noble and virtuous pride of well-doing.* This *Chlamys Imperatoria* was that which the (a) *Roman* Chieftains put on when they led forth their Armies, as the *Toga* was their garment in peace, when they stayed in the City,

*Quantum humilitatis putamus eloquentia attulisse penulas istas, quibus astricti, & velut inclusi cum iudicibus fabulamur.* In *Dialog. Orator.*

*Matth. Paris in vitis. p. 123. 127. Observandum est interius has cappas Chorales olim pellibus variis fuisse furratas, suffultas, & duplicatas, ut dicimus nunc, lineatas.* Gloss ad *Matth. Paris in voce Cappa.*

*Milites Cappati Cappi Regii, nihil praeter Camisiam de Sacco, Calceos de Dove, & Capam de Cilicio secum gerant.* *M<sup>o</sup> Paris. p. 610.*

*Cod. Theodos. lib. 4. tit. 10.*

*Spelm. Gloss. in Collobio.*

*Moriantur autem aut Spatici, aut Apoplectici, aut Collobici.* Lib. 3. c. 14.

*Ovid 1. Amor. Eleg. 8.*

*Saturn. 1. Catil.*

*Suidas in verbo.*

*Lib. 6. De Lingua Latina.*

*Quarimus quid optime factum, non quid ultraissimum, & quid nos in possessione felicitatis aeterna constituat, non quid vulgo, veritatis pestimo interpreti, probatum sit. Vulgum autem tam Chlamydatos quam Coronatos voco; non enim colorem vestium quibus pratecta corpora sunt aspicio, oculis de homine non credo, habeo certius meliusque lumen, quo a falsis vera dijudicem.* *Senec. de vita beata. c. 2.*

(a) *Fornierius ad Legem 100. p. 236.*

*Virgil*

Æncid. 8. 115.

Virgil describes Pallas by this,

— Ipso agmine Pallas

In medio Chlamyde pictis conspectus in armis.

Valer. lib. 1. de Crasso.

This Garment after grew so requested that every Nation had of them, and those of diverse sorts: hence is it that we read of *Chlamys aurata, crocea, purpurata, intexta*

*Cum ad bellum exiit Imperator ac Lictores mutaverunt vestem & si qua incinuerunt, dicitur profecti paludatus.* Varro lib. 6. De Lingua Latina.

*Breviarius lib. 9. p. 127. Edit. Sylburg.*  
Xiphil. Epitom. Dionis in Caro Caligula. p. 249.

Ἐφ' ἵππῳ βασιλικῇ καὶ ἐν χλαμύδι περυσῆ. In Vitellio. p. 311.

In Severo. p. 408.

In Caracalla. p. 429.

Herodianus in Severo. p. 524.

Idem in Caracalla. p. 546.

(a) Herodian. lib. 7. in Maximo. p. 595.

(b) Zosimus lib. 5. p. 809.

(c) Χλαμύδα τὴν ὀκταῖαν ἢ Ἐλωικὸν τρέπαν λαμβάνων. In Commodo p. 382.

Cassiodor. in Chronicis. p. 628. Edit. Sylburg.

Jornandes lib. 1. De Regnor. & Tempor. Success. p. 651.

Xiphilinus in Epist. Dionis. p. 428.

Statua Scipionis cum Chlamyde Cic. pro Rabirio Postumo 16.

Humeris Tempus sustinere. Orat. pro Flacco 72. Ut Comitibus suis, ut distabat, humeris sustineret. Cic. pro Milone.

\* Isaiah 9. 6. c. 22. 22.

Quamvis puer sit habet humeros aptos ad Imperium sustinendum. Forner. in Is. 9. 6. Grotius in Ezech. 28. 13.

on their Benches, but also their Ornaments and honourable Remembrances when in their graves: witness the Sculptures of the Roman Statues *Chlamydated*, and of our Knights and Judges in their Pictures and Monuments. Now this *Chlamys* is in our Text said to be *firmata super humerum ejus dextrum*, to tell us, that Judgeship is a thing of burden to an honest man, and one that makes conscience to know and perform his duty; and that he that buckles to it had need to lay his right shoulder, his best abilities of minde and body to discharge it wisely and fully. Hence it is that *Sisiphtinus* derives *humerus* from *Humus*, because as the ground complains of no burthen that is laid upon it, but supports it because it self is of solid substance; so a good public-spirited Heroique, whom God has endowed with parts and piety, goes thorough stich, as we say, with his duty, and having put his shoulders to the yoke, stinches not, but is *firmatus super humerum dextrum*, that is, goes on in his work indefaigably, as if he were *περυσζέννσι*, as our Lord *Jesus* is said to be so adapted to it, \* That the Government which was laid upon his shoulders, he bore up valiantly and victoriously. As our Judge must pray and endeavour, he (according to his proportion and ability) may, that the Magistracy he has *virtute Chlamydis data & imposta*; he may *peragere dignè & debite* without any gap, chop, or breach in justice; for therefore is this *Chlamys* clofed on his right shoulder, that he may learn to be alwayes uninterruptedly courageous for, and in the truth: and that the firmness of his faith in God and to the King, may appear in his service of them both, and their people for their sakes, with might and main.

Excepto quod stragulata veste aut coloris bipartiti, ut potest Serviens Justitarius, non utetur, &c.

Serjeants alwayes, till within this late time of distraction, I think wore their party-coloured Robes, and their Attendants party-Liveries, for the first year after they were Serjeanted; and that not as a token of diminution, but of their tenderness and new entrance on their State and Degree. *Genes. xxxvii. 3.* 'tis said, *Jacob* loved *Joseph*

Joseph more than all his Children, and he made him a coat of many colours. And this was done not onely to comply with the nature and humour of youth, which delights in variety and novity, in which regard that allusion of Pliny's may not be impertinent, That every egg of birds is party-coloured, which signifies youth to be an unsettled thing, this and that, and neither yet either, &c. but also to instruct us, that party-colour in garments signifies honour and victory, so, To Sifera a prey of divers colours, a prey of divers colours, of divers colours of needle-work, on both sides meet for the necks of them that take the spoile. In which words there is not onely  $\text{מִצְבָּרֵי}$  vestis Phrygionica, that embroydered in many colours set out to the life, which makes the garment glorious, gaudy, and delightful, of which the Prophet Ezekiel and other Scriptures speak; but that party-colouredness that is by tincture or dye, as the Rabbins expound this place by *vestes facta diversis speciebus colorum*, so  $\text{עֲרֵב}$  signifies: For though the plural,  $\text{עֲרֵבִים}$  signifies what has as many kinds of colours as there are dayes in the year, yet in the Singular it signifies onely vary-colours.

*Tunicam polymitam ex variis lictis confectam, in-nican figuratam, & pictam. Fagi-us in loc. Omne ovum volu-erum bicolor, lib. 10. Nat. Hist. c. 52. Judges 5. 30. 2 Sam. 13. 19. 20. Ezek. 16. 10. 13. c. 27. 24. Psal. 45. 15.*

*Stragulata vestis coloris bipartiti*] Though our Serjeants colour is black and purple, party per pale; yet *stragulata vestis*, is in Authors any thing that is rich and delightful; *Stragula*] \* *genus vestis, sive quicquid vel insternitur lecto, vel equo, vel alii rei*; so Tully also computes *stragulas vestes* amongst the greatest jewels, and (a) Livy; so Budens tells us, that *tapetes & tapetia, tapisfry* as we call that part of rich furniture; was brought by the Army out of Asia to Rome, and accounted an advance to the luxury of Rome. Whereas then our Text uses *stragulata vestis*, for *bipartiti coloris vestis*, it is not to signify as if Serjeants vests were like Heralds-Coates, embroydered with silk and gold, but were onely of two different colours of cloath, to signify his initiation by gravity and learning into grandeur and lustre: and thus sable and purple make a fair display of a Serjeants qualifications suitable to his trust, Learning and Generosity; by the one to know what justice and honesty is; and by the other to be enabled with courage and resolution to serve and propagate them.

*Quod in Festis ante altare sternunt in pavimento stragulum vite vocabimus. \* Valla lib. 6. c. 46. Dico te maximum pondus auri & argenti, eboris, pur-pura, plurimam vestem Melitensium, plurimam stragulam, &c. Cic. 4. Verr. 127. & 33. (a) Liv. 4. Belli Maced. 34.*

This then being a Companion and Emblem of incipency and meer entrance and Freshmanship, as I may so say, in the State and Degree of Serjeancy, the Justice is not to be alloyed by, and therefore the ensign of it not to wear, *Iustitarius non utetur*] saith the Text.

*Capitulum ejus non alio quam Menevero penulatur*] This is another difference; as the Serjeants Cape is lined with Lambskin, which is in token of tenderness: so the Justices is with *Menever*, that is, as I take it either the skin of a little beast bred in Germany, or of a Russia squirrel, but it is that which is spent in lining hoods and garments of graduates in arts, as black and yellow furs are for the linings of Liveries of Men of Societies and Mysteries. With this *Menever*, as the Caps of Judges and men of honour were lined, so the attires of Ladies and persons of quality, as somewhere I have seen in an ancient Picture.

*Qualem habitum te plus ornare optarem cum potestas tibi fuerit ad decorem status, Legis, & honorem regni tui.*

This clause is insinuate to the Prince why, and upon what reason Formalities were established, and civil Ceremonies first nourished, to wit, in order to the great and more consequent ends of stability and government. For as hedges of thorn and bryars preserve fields of Corn and Grain, and locks of Iron on doores of wood defend Carkanets of jewels, and Treasuries of gold, as Souldiers that have hardly a tatter (as we say) at their breeches, protect rights that have Kingdomes depending on them, and farthing Candles help men to finde a gemm that is invaluable, and without them would be lost; so the little things (as they are thought) of forms and methods, habits and proceedings, doe so conduce to the greater and nobler parts and portions of administrative prudence and virtue, that without them and their punctilio's in every thing duly observed, Errors and Inconveniencies will ensue. This is the reason our Chancellour mindes the Prince, when God shall doe well with him, to doe well by the Law, not onely in the greater and more considerable matters of securing it from all encroach-

encroachment upon it, but also in the very circumstantial and ritual appendances to it, *qualem habitum se plus ornare optarem*] and that not so much for love to mee, your Chancellour who have followed your misfortunes and disasters, and resolve to live and die your Votary, who though now a Banished Person from the Bench, and from the Countrey I love because I was born in it; yet cannot but wish well to the Law my study, to the Professors of it my Companions, whom I would beseech you to favour highly, and in all things to promote, *defendere, amplificare & ornare*, as Cicero's words are, *magnificentius angere & ornare* as the same Authour. I say Our Chancellour does not here barely desire their esteem, but somewhat more *decretis ornare*, to declare favours to them by Law, *Edificare & ornare classes*, to enlarge the borders and boundaries of houses of Law, and to make the habits of Lawyers, *vestitum pulcherrimum; & ornatum Regalem*, to account the professors of the Law as the Orator did Eloquent men of his time, *The Flower of the Nation, the Firmament of the Roman splendor, the Ornament of the Cities Dignity*; This is the generous temper, and superfluent cataract of his love to his profession and study beyond any private and narrow emolument of his own. For He presents not to the Prince his Fidelities and Sufferings, his Eclipses and hazzards, his Relations and Countrey, whom for his Sovereigns sake, he has quitted and is dubious ever to see, He beseeches him not to remember his Family when He comes into his Kingdom, and to set one Son of his at his right hand, and another at his left in the glory of his restitution, no such mercenary sallies of a mean soul does he in these words discover; but all that He remembers him of as a grave Counsellour and Father to his youth, so winnowed and chaffed to and fro by the *Enclydon* of a distracted Nation, a potent Antagonist in a possessed Throne, and his doubtful victory over his present dislustre, All that I say he craves of Him, is that he would make the Law which he counted *lumen & ornamentum Reipublice*, as Tully stiled *Hortensius*, in all the Ceremonies of it honourable, and the habit of it *Honoris ornamenta, monumenta gloria & laudis insignia*, as the Orator said against *Catilin*. And this he does, not from a spirit of opposition or in remora to the conspicuities of other artists, but as a brave and true spirited *Englishman pro bono publico*, this (saies he) will make men esteem well of the Law, and the professors of it, *& ornatissimam de illis sententiam dicere*, as the Orator's words are, and this comes to our Texts *ad decorem status Legis*, that men by the honours and riches they attain to by study of the Law, may be invited to apply themselves to it, and acquire excellent knowledge in it, and in the Conclusion fill the Nation with learning and skill, which accomplishes that which the Chancellour here presses, *honorem regni*. Thus the Chancellour evidences in his advice to the Prince, his love to the Law, which yet as a wise man he desires not exhibition of, till a fit season to shew it self in, is effectually administr'd. He, Good man, is not all agog, for he has learned *patience and submission by the things he has suffered*; but resolves by a holy and humble obsequiousness to serve Providence, and submit to the Regency of it. Therefore while he shewes his Love in this Advocation for the Law, he also manifests his submission to God for the time when his pleasure shall most advantage it self in the discovery of it, so it follows.

*Cum potestas tibi fuerit*] Those are his modest limits. Princes as well as Subjects are in and under the power of God, and he will have his will on them as well as on meaner men; for they are all but *clay in the hand of the Potter*, and the vessel he makes to honour is but still a vessel, the work of his hand. 'Tis not for us wormes, who crawl on a soyl of dust, and are busied in a World full of shaddowes and snares; to stand upon termes, and be dictatorially haughty. God that is above us can worry our folly; and launch our Tympany; yea and with the humorous matter, let out also the life-bloud of our beings, and then what are we? O what a madnes is it to fret and fume, to sacrilegiously resolve *not to wait upon the Lord any longer*. Such arrogant *Nebuchadnezzars*, who raunt and rave in their *Sultanish* bravado's, and consult not with God, build on tottering foundations that shatter down in a moment, and the place of them is no more known. Better and firmer is that foundation which is laid on faith in God, and obedience to God w<sup>ch</sup> resolves *to wait till God return and have mercy*; and when that season of his is come, then welcomes and walks worthy of it. This is the scope of our Chancellours *cum potestas tibi fuerit*] For his purpose being to press upon the Prince courageous Prudence and generous Patience under his present condition, when he presents

Cic. pro lege Manilia.

Cic. 2. De Finibus.

Flo. Italia, firmamentum populi Romani, ornamentum dignitatis.

Cic. 2. De Finibus.

Our Chancellour is worthy of admiration, even for this, which is a publique spiritedness well becoming a Gentleman.

Orat. pro Milone

Orat. 3. in Catilin.

Orat. pro Demosthena.

A good Monition



sents the Law and its artists as meet objects of his favour and kindness, and wishing his benefaction to them, as meet to promote the main design of Government, Peace, and Order, Religion and Learning, Industry and Riches, he so intends his advice to take place, as God's providence in the favour of a worthy issue to his adventures shall permit; for till God's *et vñ* is come, all's but talk and bustle, vanity and vapour that is put on by the spurr of the keenest mettle, and laid a-soak in the ripening it prudence and the most effectual conduct. Men may pray and project, forme and fight, but can never overcome their fears and obtain their wishes, 'till God's counsel be answered in every punct of it: and then his figure has all the perfection that weight and measure can accomplish it by. For as in the computation of life there are soure *Era's*, the Spring of Childhood, the High-summer of Youth, the Autumn of Manhood, the Winter of Old age, and each of these have their proportions of the summe of life, dividing the eighty years of man into four twentyes, and allowing to each pass a twenty years, before the abfolving of which no ordinary avenue is possible to the priviledge and benefit of the gradation that is before it; so in the *series* of God's operation, which is infallible, there is such an exact harmony and *Sorites* of concurrences, which are not to be abated or promoted beyond the proportion of God's endowment and situation of them, that there is nothing more to be done in the entertainments of God's pleasure in productions, then to be subact in our mindes to God, and to be thankful that he gives time as the season, and men as the instruments to their production.

Petrus Crinitus  
lib. 5. c. 3. De  
bonesta disciplina.

Nos sumus apud  
quos usque adeo  
nihil ante mortem  
otiosum est, ut si  
res passim non sit  
ipsa mors otiosa.  
Senec. de otio sa-  
pientii. p. 962.

*Scire te etiam cupio quod Justitiarum Anglia, &c.*

Here in the promiscuity of Titl's (*Justitiarum Anglia* here, as well as *Justitiarum Regis* in the former Chapter) our Text-Master shews the unity and inseperableness of King and Kingdom, both which make up but one and the same great Good, which compleats the Head and Members of Government and Order. And therefore as *respectu formalitatis* the Justices are the King's, for he onely does, as he onely can commissionate them to judge the people, whose the people, they be to judge, are; and that by the Law, whose the Law they are to judge the people by, is: so *respectu utilitatis & finis* the Justices are the peoples, that is, distribute justice in the place of the King for the peace of the people, which circumaction of appropriation in this reciprocal line of endearment, tyes that Gordian knot that nothing but necessity unavoidably can loosen or dissolve.

Non potest aliquis  
judicare in tempo-  
ralibus, nisi solus  
Rex vel Subdele-  
gatus. Fleeta lib. 1.  
c. 17.

Sine Warranto  
[Regis] jurisdic-  
tionem non habent  
neque correctionem.  
Lib. 2. c. 34.  
De Justitiarum de  
Banco.

*Non sedent in Curia.* ] That the Justices *fit* argues their authority, that they *fit in the King's Courts* displays and declares the publickness of it; but that *they fit not above three hours*, and that in the first and clear part of the day, when there is time to prepare for the Court before it sets, and to dispatch the subsequent business in the Afternoon when the Court sits not, is contrived with great prudence. For Lawing is not the *Totum Regni*, but the Plough and the Ax, the Shop and the Barn, the Field and the Market is to be tended as well as the Study and the Barr. Therefore as there are but certain times which are called Terms, wherein the Courts of the King sit, and by them causes in dispute can be determined: so are there in those Terms certain hours in the day, in which onely those Courts sit to hear causes, which hours are the hours that are neither so early that weak and sickly persons cannot rise at them, nor men, when they rise be without sleep, and drowsiness not shaken off them, fit presently to come to the Court: but they are the three middle hours in the fore-noon, which in the time precurring them, gave way to devotion, and preparation for the Court by consultation with Counsel before the Court sits, and takes the wits of both Clyents and witnesses in their coolness and keeness before they be loaden and surcharged with vice-ration, which the antecession of meat burthens the Afternoons hours with. I say, the order of the King's Justices sitting those hours, from eight to eleven, that is, from that time more or less as emergencies require, (for strict minutes, no nor hours in this case are precisely stood upon, that Maxim of the Law being true here, *Apices Juris non sunt Jura*;) argues a prudent appointment of experience to avoid the temerity and drowsiness, the indisposition and unfitness, that Afternoons clogg dispatches with. For though as to Formalities and Entries, as to matter preparatory to Tryals and Courts of Law, the fallows of Afternoons do well; yet as to the judicial and wise determination of affairs of life, reputation, and estate, the Morning judgement is most

subtile, sincere, and undisturbed: which is I believe the reason that the chief service and devotion of the Church was ever accounted her Morning Exercise. And surely if the Morning had not been as *Musis amica* so *Devotioni*, David would never have attributed so much to the Morning as he doth, *Thou shalt hear me in the Morning, In the Morning will I direct my prayer unto thee*, nor would he speak so much of God's loving kindness in the Morning, if he did not attribute much of furtherance to sanctity and seriousness to the Morning. Now the Morning being, in a large sense, any time before noon, and arguing sobriety and freedom from repletion and luxury, which declines prudence of fore-cast and deliberation, the hours here limited though but 3 in number, yet being in the best and clearest time of the day, are enough to dispatch much business in; especially considering the Judges are aged, whose infirmity as it often disables them in their decay of strength and tenacity to sit long: so after meals do the same infirmities engage them to repose, and therefore saith our Text, *Curia post meridiem non tenentur.* ] For as there are *Dies non Juridici* (as before I said) not onely every Lords day, but some dayes in every term; so are there *Hore Juridica & non Juridica*, which our Text warrants: whose Authority the great \* Chief-Justice quotes in the very words of our Text.

*Tsal.* 130. 6.  
*Psal.* 92. 2.  
*Psal.* 143. 8.  
*Psal.* 5. 3.  
Cum indulget iudex indigno, nonne ad prolationis contrarium provocat universos? *Fleta* lib. 1. c. 17.

*Fleta* lib. 2. c. 35.  
De diebus constitutis in Banco.  
\* 2 Instit. on c. 51. of Stat. 1 Westm. p. 265.

*Sed Placitantes tunc se divertunt ad pervisum & alibi, consulentes cum Servientibus ad Legem & aliis Consiliariis suis.*

*Selden* notes on this 51 Chapt.

*Pro ipsa substantioli cogebatur ille pauperculus multis diebus Scholae exercens, venditis in pervisio libellis, vitam famelicam & Codrinam protilure, M. Paris p. 79<sup>b</sup>.*

This refers (not to the Pleaders repairing to the *Pervise*-Exercises of Academique Origen, the same in Law that those Exercises in Oxford are, called *Pervise*, or *sittings general in the Scholes in the After-noon* (which Mr. *Selden* sayes he understood first out of Mr. *Wake's Musa regnantes*) and to which not onely young Lawyers repaired to learn, but old Serjeants to teach and shew their cunning,) I say, this clause turns us not to that *Pervise*, from whence the little place (whereof teaching of Schole was) in the lower part of the Church, was called *Pervisum*; but this refers to the consultation that Clyents use to have with their Counsellours and Serjeants about their Pleadings, Bills, Demurrers, Rejoynders, special Verdicts, Orders, the reading over of which judiciously and with intentness is called *Pervisum*, or as we say, *perusal of them*, that is, considering the legality of them, comparing them with Originals, making Briefs out of them, marshalling the evidence and preparing for tryal in Court.

*Quare Iustitiiarii postquam se refecerint totum diei residuum pertranscunt studendo in Legibus, sacram legendo Scripturam, & aliter ad eorum libitum contemplando, ut vita ipsorum plus videatur contemplativa quam activa.*

This clause, from so true and knowing an Oracle as our Chancellour was, informs us of the piety and wisdom of the Law, that therefore calls the learned age of Lawyers off practice to *Iusticing*, that they may the better do justice to the people when they are taken off from all action of diversion, and wholly set apart to read over their books again, which they had in a good measure forgot; for practice though it adds to the stock of coyn, yet it abates the stock of reading: therefore the Judge being taken from pleading, is wholly to betake himself to read over his Law-books, to peruse Scripture-directions, and to contemplate moral prudence. This if the Judges had in that latitude that our Text speaks of, they had not that trouble with mul-

*Et caveat sibi [Rex] ne in sede iudicandi, qua est quasi Thronus Dei, quenquam loco suo substituat insipientem & indoctum, corruptibilem vel severum, ne pro luce ponat tenebras, & manu indocta modo furioso gladio seriat innocentes, culpabilesque prece vel precio utetur illegitime reddere quietos, ne per malitiam, vel ejusdem substituti imperitiam, simul cum ipso aeterno Incus mestitiam sibi comparet. *Fleta* lib. 1. c. 17.*

*Lib. 1. Serms. Dominici in Monte.*

titude of persons repairing to them, that now they have; for then the tricks and sharks of men were fewer then now they have found out, which multiplies the trouble and diversion of the Justices; though that time they have free from business contributive to the expedition of the Court, and from visits and conferences with friends, together with the affairs of their families and fortunes, they spend in meditating upon the Law, and on the word of God, and in such methods of wisdom as becomes their years, dignity, and learning to evidence themselves versed in. For a good Judge that does employ his Vacation as our Text describes, does not as *Acindinus* in St. *Augustine*, abuse power to oppress his underlings till they have quitted their right and sacrificed it to his lawless

lawless and sinful pleasure; but so demeans himself in the use of humane lawes, *ut secundum aeterna legis immutabiles regulas, quid sit, quo tempore jubendum vetandumque discernat*, considering that of Saint Jerom, *That the judgement of God and Man is not alike, nor is the same plea available in the assise before the Judge of quick and dead, assessed with by Saints and Angels, that will be acceptable here before us men, with whom many things pass for virtuous, which there will be rejected as vild*; And this our Text sets forth not so much as matter of recreation and pleasure as pain and study of the minde *studium, est dedita opera voluntatis hominis attentior atque impensior facies Donatus*. Hence is it that men of study doe wholly retire themselves from avocation, and intend their thoughts and speculations *ultimis viribus*, giving no sleep to their eyes, nor slumber to their eye-lids; but rising with the light, and sitting on the Eggs of their conception constantly, till they have hatched their designs. This David calls in his holy soul *Meditation in Gods Law day and night, celebrare per otia recta studia* as the Orators words are. And this study, the occupation of the minde in Contemplation and Invention, being properly the work of age, when the minde wearied with the seeming gaudery and real nothing of objects pleasing to light and credulous youth, retires it self in penance to time mispent in fruitless action and sinful delight, returns to consistency, and to preparation for higher fruitions, and more real and solid contentments. I say when the minde of man in the age and serious temper of it, dwels at home, and is abstracted from the objects of its vageness and insolidity, Then, Then, is it best at leisure and most pleased with the repose of study and the delights of contemplation. For as in youth the glory of it is action, so of age the honour thereof is contemplation. Then they doe *quietam vitam agere ab omni solitudine ac mundi turbinibus semotam*. their passions are ebbed low, and their curiosities satiated, with desire defeated, and expectation glutted; turns them upon more real objects of captivity, the contempt of the World, the preparation for death, the appropriation of the joys and comforts of the Almighty, the Communion with God and Christ, by the assistance of the Holy Spirit. These, These alts and elahs of Holy Musique, which attol the soul above wonted endearments, and heretofore surprising *juventutis lupanaria*, are the onely blessings of age, and the noblest compensations of lifes infirmity. When men can defie the sinful fear of men, as *Gascoigne* did, and dare own truth in the day of hazzard for it, then they doe as those that are *remoti à mundi turbinibus*, then they doe *quietam vitam agere*, which *Hankford* Chief Justice to *E. 4.* (though he was a most learned man in the Lawes, had never a Son, and had a great estate) yet never attained to. For had he not feared difficult times and the issue of them more then he ought, he had not been his own Murtherer as he was, nor had *Sir James Hales* that honest Judge, who stood alone in the Integrity of a lawful judgement in the Case of the Crown *Temps E. 6.* and who therefore highly deserved of *Queen Mary* whose Champion for her right in succession to the Crown he was (though shee requited him ill, in suffering him to be imprisoned for his Religion, which owned so constantly her Supremacy and Sovereignty) I say had that good Judge feared less the terrors of men he had not made himself away to avoid them as he did. I say had these, though otherwise worthy men, been *à turbinibus mundi remoti*, had they the *quieta vita altio*, which as good Judges and grave Sages they are described in the Text to have, they would have kept themselves from this great Offence.

*Nec unquam compertum est eorum aliquem, donis aut muneribus fuisse corruptum.*

This is not in the strictness of the letter to be understood. For our Chancellour right well knew, that *Sir William Thorp* Chief Justice of the Kings Bench *24 E. 3.* *cepit munera contra juramentum suum*, and *20 E. 1.*; all the Justices except two, *27 E. 3.* Justices Itinerant took bribes of *Berners*, and were fined for every pound a thousand marks, and so others, which *Sir Edward Cook* nominates, I say our Chancellour knowing these errors and misdemeanours in Judges, could not be thought to write thus confidently in a matter of apparent questionableness; but whereas he says

*Lib. De Vera Religione c. 31.*

*Non eadem est sententia tribunalis ejus & anguli susurrorum, multa hominibus via videntur justa qua postea reperentur prava. Sanctus Hieron. in Epist. ad Virgines Hermonenses.*

*Studium est animi assidua & vehemens ad aliquam rem applicata magna cum voluptate occupatio, Cic. 1. De Inventione.*

*Quid tam populare quam otium, quod ita jucundum est, ut & vos & Majores vestri & fortissimus quisque vir, maximos labores suscipiendos putet, ut aliquando in otio possit esse, praesertim in imperio & dignitate. Idem eodem loco.*

*A good employment of old age.*

*Militum Christi perfectio est exultantem habere a cunctis terrenis negotiis & tumultu seculi. Sanctus Hieron. Com. in c. 3 Lamentat. Tom. 5. Oper. \* Anno 1470. 10 E. 4. Holingshed p. 677.*

P. 1092.

5 Instit. p. 145. 146 & Chapr. 68.

Lib. 5. c. 7.

Good Justice  
administred  
in England.

*nec unquam compertum est*, he is to be understood, *non frequenter*; *Raro unquam*, as *Quintilian* expresses it. For though there have been such persons and presidents of mildmeaning Justices; who have been *donis & muneribus corrupti*; yet not often, as seldom as next door to never, have such been, The Justices of *England* being for the most part the most approved and impartial Judges of any in the World, nor is there any place under the Cope of Heaven, where I think so little iniquity in judgement judicially is, as in *England*.

*Unde & hoc genus gratia vidimus subsequutum, quod vix eorum aliquis sine exitu decedat, quod iustis magna & quasi appropriata benedictionis Dei est.*

Eccles. 9. 2.

Speech White-  
Hall. 1607. p. 520  
of his works,

*Neminem Diocle-  
sianæ Auguste  
prope magnorum  
virorum optimum  
& utilem filium  
reliquisse satis cla-  
ret, denique aut  
sine liberis viri in-  
terierunt, aut sa-  
les habuerunt, ut  
melius fuerit de re-  
bus humanis sine  
posteritate decede-  
re. Luge plura apud  
Alium  
Spartianum in  
Severo. p. 176.  
Edit. Sylburgii.*

Preface to Lit-  
tleton.

This inference is to have a modification to reduce it to rectitude in the Court of experience and truth. For because in outward things, the Wise man's caution is safe, not to conclude good or evil, love or hatred by them, for as much as they have unequal events and various catastrophes; therefore is the *hoc genus gratia*, and *vix eorum aliquis* to be gently pressed as an argument of benediction on men in their way and profession as rewarded by them for it. For though true it is, that Children are the gift of God, and that posterity to preserve a name, is much the delight of men and the mercy of God to many, that are in their families eternized by it, as has been our Royal-Family, in which, King *James* said he was in descent to the Kingdom of *Scotland* 300 yeares before Christ, and may it so continue in them I beseech God, and so is the suffrage of all true *Englishmen*, till *Shiloh* come, that is, for this Worlds ever. And as many others of ancient extract have by it been long in Nations and in honours, yet falls it so out often, that brave men either have no issue at all, or those not Monumental to them, unless it be for wickedness and dissimilitude of manners to their Generators, which *Emilius Spartianus* makes good in *Romulus*, *Numa*, *Camillus*, *Scipio*, both the *Cato's*, *Homer*, *Demosthenes*, *Crispus*, *Terence*, *Plautus*, *Caesar*, *Tully*, *Trojan*, *Antoninus Pius*, *Severus*, and may be instanced further in thousands of others: and therefore this is no infallible instance of Gods favour, no more then other things are, which are commonly distributed, of which the Father saies *dantur bonis, ne videantur esse summe mala, dantur malis ne videantur esse summe bona*, but that which I would have our Chancellours sense herein is, that God hath so approved the integrity of the Judges in *England*, and so rewarded it with living Memory, that very seldom they being Men of good Families, Breedings, Fortunes, and courages, doe deny themselves the content of Marriage (as Justices did when Priests and under vowes, as till *E. 3.* time, they often were) but in their lusty and liberal youth, bestowed themselves to women of quality, and thereby gained additions of fortune and relations, and as a consequent of their natural vigour, and conjugal content, prolificated. For though I know all the vigour and kindness nature has in her Repertory, and the most endeared expression of it parties can testifie each to other, availes nothing to encrease without Gods *fiat*, and his benedictive *Amen*; yet where those are, and are properly expressed, issue may come as the work of nature, as well as from a more hallowed cause, which our Chancellour calls here Gods grace, *magna & appropriata benedictio Dei*. And therefore, though I concur with Sir *Edward Cook*, who to this of our Chancellour adds another Crown to Judges, That they die not will-less; yet doe I think both these if they be peculiar blessings, yet are onely so to Judges as to other wisemen, who walk humbly before God, are diligent in their callings and advice, and act for the peace and plenty of their families living and dying. For though I know to be Childless is a curse as in the case of *Coniab*, and to have no Male Children is a death to a family, daughters with their persons carrying all they are and have into their Husband families, yet is it better to have no Sons then lewd and fordid ones. For as a wise Son maketh a glad father *Prov. 10. 1.*, for such an one gathereth in summer, verse the fifth, such an one heareth his Fathers Instruction *c. 13. v. 1.* so a foolish Son is a Son that causeth shame *c. 10. v. 5. c. 17. v. 2.* is a grief and calamity. And if wise Sons the Justices of *England* have eminently had; as truely I think, they more conspicuously then any profession of men have had, because they have given them better breedings then others have done, 'tis much towards that our Chancellour intends in that clause, *quasi appropriata benedictionis Dei est.*

Quod

*Quod ex Judicium Sobole plures de Proceribus & Magnatibus Regni hinc usque prodierunt, quam de aliquo alio statu hominum Regni, qui se prudentia & industria propria opulentos, inclytos, nobilissimosque fecerunt.*

This clause gives much confirmation to the precedent assertion, that the Judges of England have the rewards of justice in Gods benediction on them consisting in the encrease and continuation of their issue; which is so great a felicity that *Job* accounts it amongst the rewards of God's beloved ones, whom he corrects to their emendation, and thereby dignifies by this special testimony of his love, *That their seed shall be great, and their offspring as the grass of the earth.* For if it be a judgement to dye issueless, as in the case of *Comiah*, and to have ones seed cast out, as in the case of *Jehoiakim* and his seed whom God threatens; if God threatens to pour out his wrath upon the children of wicked men, then surely to have children, and to have those children blessed after them, to have them inherit the earth, to have them delivered in the evil day, is the peculiar honour of God to the piety and justice of Ancestry: which the Chancellor here takes notice of to fix on the Princes mind a love of the Law, which has been the raiser of so many excellent Siers, whom God has made the extern instruments and the natural causes of so fertile a Peerage and Nobility, as from them Lawyers by Profession and Judges by office have arisen. For though true it were that when the Justices were Clergy-men, there were no *Magnates* or *Proceres* that came from them as their lawful *Soboles*; yet when Lay-men came to be Justices, and they married and had issue, the issue of them inheriting such fortunes as they left them honestly gained and thriftyly improved, made them fit and worthy of the King's Honour, whereby they were not onely made men of Honour, but *Proceres & Magnates Regni*, ] that is, Barons, and of the high Nobility of England; so *Proceres & Magnates* are frequent to express Earls and Lords by, c. 38. *Magna Charta*, *Stat. Merton. W. 1. Gloster West. 2. Quo Warranto, West. 3.* and so in *M. Paris*, and so in all Acts of Parliament, when the Lords Spiritual and Temporal are named, those the Text calls *Proceres & Magnates*, are intended. And that these have in a great measure (many of the Ancient Baronies of England being extinct and determined) been the supplements and rise of the growing Nobility, no man can deny that has any skill in Antiquity, though because to avoid inconvenience I forbear to instance in particulars; yet a truth it is from our Chancellor, seconded by Sir *Edward Cook*, who has numbred near 200 great families risen from Lawyers, *The Professors of which Law by the blessing of God, hath obtained a greater blessing and ornament to their family and posterity then any other Profession*; for it is an undoubted truth, *That the just shall flourish as the Palm-tree, and spread abroad as the Cedars of Libanus*, thus Sir *Edward Cook*. Not that our Text-Master attributes all ascents to honour by *Riches*, and *Virtue*, to the Law in the science and practice of it; for there are many courses of life and wayes of profession, wherein diligence, crowned with success, makes rich, and riches had, procure Titles and Dignities, such as are Offices, Physick, Trades, Husbandry, Plantation, Buying and Selling of Land, all which have raised great estates and made families rich and honourable by them, especially the City, which how much soever it is vilified is no infrequent or unfruitful womb of Honour, Though I say the Chancellor allows these to have their respective shares in the pleasing returns of Conspicuity on their issues; yet the persons that have risen to be *Opulentos* (that is, *divitiarum pleni*, as *Tully* renders it, *Pecunia opulenti*, rich as they are who do *componere opes nullo fine*, and who get what they have *Ex sanguine & miseriis Civium*, as *Salust* accused some; like that *Clericus Militaris* whom *Lichfield's Chronicle* mentions in a short time to have grown from the inheritance of an Acre to an Earldom, and *Mansell* that greedy unconscionable Clerk, that had fifty Promotions at a time, being able in *H. 3.* his time to spend 4000 Marks a year. These are, as the Text sayes, *Opulentos, inclytos* ] that is, eminent *fulgore fama conspicui*, preferred above the vulgar, *non tantum titulo sed merito*, not for their fortune having *genus inclytum magnis titulis*, but virtue, as *Livy* storyes *Numa*, whom he terms *inclyta iustitia: Nobilesque* ] that is, having fortune to support, and virtue to become Honour and Peerage, are preferred to, and blessed in it above others,) he accounts the issue of the Justices.

*Iob. 5. 25.*  
*Ier. 22. ult. & 28.*  
*Ier. 36. 31.*

*Prov. 20. 7.*  
*Pf. 85. 13.*  
*Prov. 11. 21.*

*Ret. Parl. 45 E. 3.*  
*Ret. 22. M. 15.*  
*4 Instit. c. 8. of*  
*Chancery. p. 79.*

*Barones dixerunt*  
*posteri quos anti-*  
*qui Heroes &*  
*Proceres, Spelm.*  
*in voce Baro.*  
*Tag. 968, 970.*  
*971, 974, 979, 982,*  
*990, 991, 993, 999,*  
*1000, 1003, 1004,*  
*&c.*

Leaf next after  
the Epistle to  
the 2 Report.

*Pf. 92. 13.*

*2. Offic.*  
*Senec. in Herc.*  
*Furent. 3.*

*Inclyta iustitia re-*  
*ligiosa ea tem-*  
*pestate Numa*  
*Pompius erat.*  
*Lib. 1. ab Urbe.*

*Quaquam*

*Quamquam Mercatorum Status, quorum aliqui sunt, qui omnibus Justitiariis Regni præstant divitiis, numerum in millibus hominum excedat.*

This our Chancellour grants, that by how much the greater improbability of it is, the greater may appear the blessing of it, to improve it to so unlikely an end. For though I think it well-becomes the Chancellour to advance his purpose by all the plausible arguments, that art with truthican forme to so noble a tendency; yet that thus he magnifies the estate of Merchants beyond that of Judges, and yet concludes the Judges children to be more durably fortunate & worthily honoured then the sons of Merchants are, seems to me high-wracked, perhaps beyond the proportion that can be made out in confirmation of it. For though I believe in *H. 6.* time the Justices were not so great gainers as since they have been, by reason whereof they might be so much excelled by Merchants as now they are not; yet, that either they then should be so mean in estate, that one Merchant should in wealth exceed them all, or that any Merchant should be so great, as that he should so vastly exceed ordinary calculates, seems to me strange. I confess Trade is a thing of gain if well followed, and timely left; (for there are *Apoplexies* in Trade, and men sometimes had they known well when to have given over, had dyed great in estate, who persisting in it have dyed beggars:) but that it operates such Mountains and Mines of wealth, as one man of the number may thereby get twelve mens estates, and those Justices, who are for the most part men of great years and great fortunes, is to me strange, and as in the Text, *Hyperbolique*. Yet in that our Chancellour sayes what historically I will believe rather then dispute, unless I could think his age produced what *Queen Elizabeths* Reign, the rise of riches and trade, did, a race of *Sir John Spencers*, *Sir William Cravens*, *Sir Thomas Greshams*, to which may be added *Sir Baptist Hicks*, *Sir William Cockain*, *Sir Thomas Middleton*, and *Sir Stephen Soams*, unless I say these were matched by men in our Chancellour's time, I see no reason he should so advance the gains of trade above that of the Law, when as there are instances of late as well as former Judges, *Judge Gawdy*, *Mounson*, *Cook*, *Popham*, and the Chancellour *Coventry* & others equal to them. So that in what Profession soever, if God move the heart to ingenuity and diligence, and fortunate them to a prosperous event, there may be great encrease as well as in the Profession of the Law; for it is God alone that maketh men by his blessing rich, and addeth no sorrow to the riches he blesses men to get, *For the liberal soul shall be made rich, and he that watereth shall be watered also himself.*

Prov. 10. 22.  
Prov. 11. 25.

*Dilige ergo Justitiam, Fili Regis, qua sic dicit, colit, & perpetuat factus colentium eam, & Zelator esto Legis qua Justitiam parit, ut à te dicatur quod à justis scribitur, Et semen eorum in aeternum manebit.*

Having in the prementioned passages shewn the worth and eminency of the Law, and commended it in the fruits of God's blessing on the labour and posterities of the chief Lawyers the Justices, whom he acknowledges to be the great meriters of respect, and the great stakes in the hedge of Government, who as they have *Primorum Ordinum Sacerdotia*, id est, *Doctrina, virtutisque premia*, as *Budaus* his words are, so are every way accomplished to it: and therefore are by the Chancellour, as Promoters of Justice, to be beloved. For in as much as the Law is the rule of *English* Justice, and the Justices, the ordinary speaking rule of the Law, do answer all motions in the Courts, even in the presence of the King, by reason that the King's Judicature is committed to them by the King, according to the Law; and that Answers and Declarations of theirs from the Courts are the Law and Justice of the Nation, by which the Order, Wealth, and Peace of the Nation is preserved, Our Chancellour, I say, upon these persuasions that the Law is so beneficial to not onely the Professors of it, but to their Posterities, whom the blessing of God gives and preserves estates and honour to, for that is the sense of *dicit, colit, & perpetuat factus colentium eam,*] counselling him well to not onely love the Law, but *Esto Zelator Legis*] to be a passionate doter on the Law, as a Suiter is on his *Mistris*, whom he desires to keep from all lovers but himself, and that for that one and onely

4 Infr. c. 7.  
King's Bench.  
p. 73.

ζηλοταὶ νόμου  
Αἱ. 21. 20.  
Zelari significat  
amulari, cupido a-  
liquid imitari, ve-  
bementer amare,  
adeo ut nullam a-  
moris in partem a-  
dmissi patimur.

only reason, that it doth *ducere ad virtutis viam & premium*, that the promise may be fulfilled in you, *Their seed shall remain for ever*. And so he ends this one and fiftieth Chapter.

CHAP. LII.

*Princeps. Unum jam solum superest.*

**H**ERB the Prince is personated as formerly convinced of the wisdom and fitness of the Law of England for England, and of the unreasonableness of all Arguments produced against the prevalence, honour, and continuation of it; yet that he may be fortified to repell all Applications of diversion, he further craves the Chancellor's solution of that which chiefly sticks with him, and somewhat demurrs his plenary consent and resolution. *Unum superest solum* ] That's but a little punct but of huge import, like the *One thing* our Lord sayes is necessary, *Mary's choice, the better part*, and the *One thing David desired of the Lord*, and the *One thing that is first to be sought*, the endeavour after which has promise of *all things to be added*. *One thing* sayes the Prince, *one numero*, but all *pondero*, for it unresolved, does *fluctuare mentem & inquietare*, that is, *fluctuando inquietare*; for as Seas are disturbed by the agitation of waters from the winde, so is the minde of man hurried this and that way when 'tis unquiet, this Virgil terms *magno curarum fluctuat aestu*, and Lucretius, *Fluctuat incertis erroribus ardor amantum*; yea Curtius setting out Alexander's distraction, not knowing what way to go, or whose counsel to follow, expresses it by this, *That the King was at a flumm which advice to follow, whether his own or Parmenio's*: and as a man fevered from all consistence and with the winde hither and thither acted, as it alters its blasts, so the Princes owns himself to be discomposed; and therefore as he prayes relief from his wisdom, so promises he not to raise more scruples, *non amplius te questionibus fatigabo* ] sayes he. This premised he produces his debate.

Lib. 3. Æneid.  
Lib. 4. 217. v.  
Fluctuari animo  
Rex putabatur, &  
modo summo modo  
Parmenionis  
consilium expen-  
dere, Curtius.  
Quod sine nervis  
& articulis hinc  
& illuc se habet.  
Auctor ad Heren-  
nium lib. 4. 147.

*Dilationes ingentes, ut asseritur, patiuntur Leges Anglia in processibus suis plusquam Leges aliarum Nationum, quod petentibus, necdum juris sui prolatio est, sed & sumptuum quandoquidem importabile onus. &c.*

Because *Delay of Justice* is one of the great errors of men in power, as being a kinde of *Denial of Justice*; therefore the Lawes are said *pasi not inferre Dilationes*. *Patiuntur Leges* ] sayes our Text, thereby intimating that Lawes do permit rather then approve of Delayes, and account them rather necessary evils then desirable goods. This *Dilatio* Authours interpret by *Prorogatio*, so Pliny in those words, *Nec ulla segetum minus dilationem patitur*; so Livy, *Per Dilationes bellum gerere*, that is *prorogare bellum, Pedetentim & per Intervalla bellare*; thus Cicero uses *Temporis dilatio*, and Horace, *Dilator, spe longus, iners, avidusque futuri*: thus the Moralist tells us that *Delay is the best remedy of wrath*, and as it impedes precipitations and advantages, truth and justice in the ripening of discoveries; so the Lawes of Nations and the wisdom of Law-makers did encourage *petere advocaciones*, which Lipsius on that phrase in Seneca writes, *Significare moram & tempus deliberandi*, which is fuitable to Seneca's expression *lib. 2.* where his words are; *\* Utrique parti dares advocacionem, dares tempus, nec semel audires; magis enim veritas elucet, quo sapius ad manum venit*. Thus for the good of men in the clearing of justice in all the lineaments of her beauty and truth, the Civil Lawes allow *Delay*, and hard it would otherwise be, nay impossible it would in some cases be to make out truth where the act of God or other occurrence inevitably intercepted, if time should not be indulged men either to use that help whence the hinderance should be removed, or to think of some other way equivalent to that which by reason of those demurrs, is not obtainable. For the Law being *Ars equi & boni*, and intending nothing but justice, as it allows Delayes for such a time as the Judge, who is presumed just and wise, shall allow, *ubi spatia non cadunt in certam regulam*, for then there is no waving the prefixed time of the Law; so does it abhor that those well-

Lib. 18. c. 2. 10.  
Phil. 3. 12.  
In Arte 35. de  
Senibus.  
Maximum reme-  
dium ira dilatio  
est. Lib. 3. de Ira  
p. 591.  
Seneca lib. 1. de  
Ira. p. 546.  
Commentar in  
loc. p. 554.  
\* Lib. 2. de Ira.  
p. 569.  
Aliciat. in leg. 99.  
Fornierius in Leg.  
eandem. p. 232. :  
233.

Fornierius loco  
præcit.

well-intended conveniences and prudent remedies should be misapplied, to foster injury and delay of shift and dishonesty; for they account such execrable, *crebra dilaciones quibus res in longius tempus extrahantur frustrationis & calumnie suspicione laborant*, say the Doctors; and therefore though the Law allow time or prorogation upon petition, yet

Forterius.  
Leco practato.

*In pecuniariis causis omnis dilatio singulis causis plus semel tribui non potest, in Capitalibus autem res tres dilaciones, accusatori duas dari possunt, sed utrinque causa cognita.*  
Paulus Lib. 5. sent.

Digest. lib. 2. tit. 12. p. 239.

Digest. lib. 2. tit. 12. p. 238. in margine.

Digest. lib. 5. tit. 1. p. 694. De iudiciis.  
P. 709.

*Synagm. Juris lib. 48. c. 8. De actionibus & dilacionibus.*  
14 E. 3. c. 5.

does it doe that purely upon the pre-asserted grounds, and if second dayes of delay be desired, it judges of the justness of them, and grants and denies as it sees fit, so are the authorities which confirme the rule of *Bartolus, Ex causa potest Judex dilaciones prorogare, yea and minuire* too, as he in wisdom and justice findes the reason so to doe, which considered since this which our Text calls *dilatio*, is the *constitutio vel extensio spacii temporis ad aliquid agendum vel dicendum per consensum quorum interest, vel per legem vel iudicem facta*, and that ordinary and extraordinary ones, are in their kinds allowed necessary and convenient for the accomplishment of the ends of justice, as *Tholossanus* clears out of the Civil Lawes, The Lawes of *England* which allows *Essoine*-dayes, does not exceed the proportion of other Lawes, nor herein gratifies the gain of

Officers, who by these delays, multiply to themselves fees, which the Prince here calls by *importabile onus*, but does in whatever the Law is slow and the proceeding favourable to any excuse that may plausibly and with colour of reason be granted in prosecution of a gentle and religious tenderness that it has to all mens conditions, and with an eye to that general rule of *doing to others what we would have others doe to us*, and *because no man ought to goe beyond, and defraud his brother, since the Lord is the avenger of all such*: these things being by the Prince well ruminated, the Lawes of *England* are by him charged (through misinformation) with that which they are not guilty of. For notwithstanding that in all Governments and Lawes, some inconveniences will fall out, and some persons be aggrieved, by reason that delays are occasioned by *difficulty, divers opinions of the Judges, and sometimes for some other cause*, as the words of 14 E. 3. c. 5. are; yet is there as little fault to be found with the Law of *England* for this, as with any Law in the world. For though the Law of *England* does think it unreasonable to condemn a person unheard, especially where he is not able to appear, the act of God, or other impossibility of appearing, intervening and crossing him; yet does the Law, as delay favours of fraud, oppression, of ill will and perverse humour, utterly decry and disapprove it: witness the Statutes of 14 E. 3. c. 5. & c. 14. 20 E. 3. c. 2. 27 E. 3. c. 1. 27 Eliz. 5. 8. Eliz. c. 2. which together with sundry others have in all times been enacted against it. And thereupon, though there may and are several excuses on good and reasonable grounds allowed, yet is not the Law light or therein favourable to unnecessary delay and prorogation of spight: but purely inclined so such lenity and latitude upon the prementioned reasons, which protects both Lawes and men from sin and guilt for legally practising it, according to that rule of *Bartolus, non est in mora qui potest exceptione legitimâ se tueri*. And so he ends this Chapter.

Digest. lib. 2. tit. 14. De Testis.  
p. 307.

2 Test. 4. 6.

### CHAP. LIII.

*Cancellarius. In actionibus personalibus extra Urbes & Villas Mercatorias, &c.*

[*N* *Actionibus Personalibus*] Of these I have discoursed in the Notes on the 25. and 26 Chapters. [*Extra Urbes & Villas mercatorias*] That is, without Corporations, which are Counties and Staples of trade within themselves. (For Corporations being the most secure residencies of men of art and mystery, have private local Lawes reserved and indulged to them, which are distinct from the general Lawes of open places,) which is the reason the Text sayes *extra Urbes & Villas mercatorias*, the *processus sunt ordinarii*] That is, all matters of Justice, whether in actions between man and man, or in matter that concern the peace, are tryed in the Hundred, County,



County-Court Lect or Affairs, according to the Custom of them respectively, and that as part of the *Lex terra*, which though it cannot avoid some delay; yet so long as it is in any degree moderate, is very tolerable and useful. So was the judgement of Parliament in Justice Riche's Case, when it was determined that a reasonable time may be taken to deliberate upon answer to interrogatories; but when they are excessive, such as are unbecomable to Justice either in men to desire, or in the Law to grant, when they are *mere subtilitates & ingenuis delis voluntatis*, and tends to the multiplying of a cause, (for so *excusatio*, whence *excussio*, is by \* Tully rendered) then the Lawes of England never have, never can, never I hope will endure them, but have discovered them; hence allowed they by the Statute 13 E. 1. c. 12. no *Esuare* in appeals of the death of a man, no *Esuare De malis legibus*, where the Tenant is not set and producible to appear before the Justices, 13 E. 1. c. 17. no *Esuare* after 2 day given *proce periturus*; yet in that the Statute of *Esuaries* does allow Challenges of *Esuaries* in certain Cases, it clearly appears that *Esuaries* as delays in obstruction of Justice the Law allows not. For the Law of England being a Law of virtue, loves nothing that is, excessive, which virtue is not; but

2. Luffin. 2. 75.  
2. 37. *Magnum*  
*Charta*  
2. 7. *De*  
*Writ*  
2. Luffin. 2. 75.

*Lex non loquitur & nec alium mandavit nisi per excessum sicut Iamulus. Iulio Prudentia dicit se Deum esse. & Lib. 1. De Legibus.*

*Legibus summittitur sicut dicitur ad 6. in l. 1. in antea post facta summittitur, p. 10. dicitur esse, ut circumstantia dicitur esse, tunc per quod, ut arbitria iuris dicitur esse. F. 1. l. 1. c. 1.*

*in rebus excessibus*

*In Verbis veris & Falsis illis perissimum cum in rebus causa deponit, ceteris ad in illis rebus periturus se periturus.*

Because men of trade as well Strangers as others, are the inhabitants of Towns and Cities of trade, and their affairs will not permit them long stay, therefore the Law of England has allowed them a speedy course for the obtaining of right against detainers of it from them; so Stat. *Adm Barret* 13 E. 1. 9 E. 3. c. 1, and other Statutes, the execution of which being in Corporations (where of course by the local custom and Law there are weekly Courts in three or less of which judgement may be obtained) Delays are in a great measure out of doores. For those *Charters* and *Assemblies* of men having much of contract and comark, and of Buying and selling for great summs upon barely the Royalty of the faith of traders, without Bond, Bill, or Writsells, if it should not be speedily and without delay be made good by the Law of the place, so great inconveniences would follow, as the Law thinks not fit to permit, but to prevent the facility of them, has by act of Parliament ever loved the rights of them; and that for the better carrying on of Justice, Honesty and Civil living within them; yet it not for haste (as we say) a cause of waste, for though the trials are speedy, yet not quicker then is convenient, both for the Plaintiff to prove his charge, and the Defendant to provide himself of defence; for if there were *minus perissimum* it might cause *Quereis peris lesionem*, as well as in the *rebus causa* there would be. That then which is by our Text aimed at is to prevent the Justice of England, in the legal Administration of it, admirable both as to the allowance of delay as a moderate and proper assistant to ripeness, and the disallowance of it as a disipation of those ill humours speedy trial would draw to an head and expell.

2. 5. 10. 1.

*Excessus in Rebus ultimatus in omnibus fore rebus periturus minus sunt periturus, sed in Anglia quidem modo celebrantur.*

This is added to shew that the greater and more valuable the nature of the thing is that the Law is to determine, the more time does the Law allow to the trial and decision of it. Real Actions what they are I have touched in the Notes on the 25 and 26. Chapters, yet as to the mention of them here, this is to be added, that the Lawes of all Nations esteem them the greatest and most valuable of things Civil, not in the sense that the *actiones extraordinarie* in the Civil Law are, which doe wholly depend on the Judges pleasure. who can make them what they will. No such reason of real actions are we to have; for in that they are extraordinary actions, and cause more delay then other less consequent ones doe, arises from the value,

*In rebus extraordinarie actione irregulari officium publici iuris, quia in rebus ordinariis officium admodum admittere ad nos, cum in rebus se casus sunt & app. Titul. l. 1. c. 1. 1. 1. 1.*

*Usque eo difficiles ac morosi sumus ut nobis non satifaciat ipse Demosthenes. Cic. in Oratore 56.*

Note this well.

Cook on Littleton. p. 131. B.

*Contemptor propria vita. Magister tua.*

3. Instit. p. 143. c. 66. Of Conspiracy. & c. 73. Of Perjury. p. 163 c. 75. p. 169. c. 77. & 78. p. 175.

intricacy, and difficulty of them, since title of Land and the fee's of Estate are much more weighty in their nature and value *qua* such, then Debts, Damages, and the like. This is the reason why in all Actions that are to try and determine solid parts of Estates, Lands, Offices, &c. every where in the World, *Morosi sunt processus*, sayes our Text, that is, not onely tedious and crabbed, but difficult and hard to bring about; *Difficiles ac morosi* Tully couples, to shew, that all things that are of Concern are leisurably to be transacted, and capable by many pauses and sluggs on them to be retarded: *Sed in Anglia sunt celeriores*, ] For that the Law, as has been heretofore made good, hates delay as it is opposite to justice, which ought to be free, full, and speedy as farr as may stand with reason and convenience. For though Effoines upon solid reasons are allowed, and Protections in case of service to the King and Kingdom against the enemies of it been given some time, but ever by allowance of Law: yet did Queen Elizabeth, who maintained many Warrs, grant few or no Protections, and her reason was, *That he was no fit Subject to be employed in her Service that was subject to other mens actions, least she should be thought to delay justice.* Which added to the former instances, accommodates the Chancellour's purpose with Confirmation, *That speedy execution of justice is the glory of England*; and that no delay can be in tryals if there be not neglect in prosecution, or combination in Adversaries to spin out suits in infinitum: and then, as in all cases so in this, he that values not but contemns his own quiet, may disturb another mans. For though no Law can well hinder turbulentness, which is a sufficient vexation to its self; yet the Lawes of England do as much to discourage and punish it as may be, and that by punishment of Conspiracy and Perjury, *Forging of Deeds Champerty, Barretry*: and this to prevent Delay of justice, and to promote the fruits and felicities of love and charity. Which the Law doing to out-law those *lyers in wait*, whose onely work and wages it is to do mischief; does contribute much to the expedition of justice and to the absorption of unnecessary delays, which are faults and errors of men, not of the Law, for that decrees righteous things, and proceeds according to evidence, allowing no delay but what is contributive to discovery and determination of right; if the indulgence of the Law to these purposes be abused by one parties industry, and not opposed by sutable vigilance in the other party, the Law is not to be blamed, but the party whose the remissness is: for the Law gratifies always the diligent Prosecuters, presuming those have ever good desires to come to issue, who prosecute the means thereunto most vigorously. Now that it may appear that the Chancellour's averment, that proceedings legal in England are more speedy then in other parts they are, he quotes his own experience while he lived in France.

*Sunt in Regno Francia, in Curia ibidem suprema, qua Curia Parlamenti vocatur, processus quidam, qui in eis plusquam triginta annis pependerunt. &c.*

*Cum Parisiam venisset Ludovicus convantu generali habito, Rempubl. reformavit. status optimis Lagibus de jure à judicibus dicendo, & de officiis non emendis. Gaguini Hist. in Ludovico Divo. lib. 7.*

*Bislaus in Notis ad Spelmani Apilog. p. 95.*

This instance acquaints us with the misery of seeking justice where justice is hard to be found; for though true it be, there were of old good Laws and brave Parliaments in the constitution of France: yet, since Absoluteness has been affected, and Armies necessary to support it, since these must live upon the spoils and sharks from the poor Peasant, and all Offices must to sale to raise Revenues and to maintain the equipage of Favourites, Causes that come into Advocates hands must be so lengthened out, that not years of Apprenticeship but even of life must be the measure of them. This the Chancellour makes out in instances of great oppression and excessive delay; which though it may perhaps in some few cases be parallell'd, some Law-suits being hereditary and continuous: yet is that not because judgement of Law has not been effectually given in them, but for that the parties have resolved an incessancy of suit, and bequeathed the Christianless legacy of persistence to their Children and Successours, whereby they have immortaliz'd the suits and differences in their families, to the ruine and disquiet of one or both parties of them. This indeed has sometimes fallen out in England, but that has been in case of Honour and Arms-bearing; as in that matchless memorable Contest between Reginald Lord Gray of Ruthen and Sir Edward Hastings, which lasted undetermined from R. 2. time to 11 H. 4. when judgement I think was given in it, from which there was Appeal to the King, by reason of which it rested litigious till

Henry

Henry the Sixth's time : but this being but in a case of Arms, reaches not the instance of our Text, which charges France in the High Court of Parliament (which ought to be the readiest and more effectual Court of dispatch) to be in so great a degree dilatory, that Plaintiffs had better lose their cause than sue for it, and Defendants answer the Demands of it then defend it in that Court, where not onely there are detentions of suit without Judgement thirty years in some cases and ten in other, but those chargeable evils brought upon Subjects, for seeking remedies of small evils, the remedies whereof have been worse then the diseases, witness the allegation of the Chancellour, who in the Text recites a case of one in Paris, who for a right of eight pence English in Rent, eight years in the Parliament of Paris prosecuted the detainer of it, and all in vain, for as the words are, *Nec speravit se in octo aliis annis se judicium obtenturum*. Many other such cases of ruining Delay I have my self been acquainted with from those, whom I could name if it were convenient, who have been undone or at least unrepairably maimed by Suits in the Parliament of Paris: so that true our Chancellour conceives it to be *Anglia Leges non tantas ut mihi visum est dilaciones sortiuntur ut faciunt Leges Regionis illius* ] which is confirmed by the prementioned Statutes made against Delay, and particularly by the 14 E. 3. c. 5. Which Statute though it erected a Court for redress of Delays of Judgements in the King's great Courts; yet was the inhibition and punishment of unnecessary and unjust Delay before that Statute at the the Common Law, which required, that *plena & celeris justitia fiat omnibus*; so in the Writs of *Præcipe quod reddat*, are *quod juste & sine dilacione reddat*: and so in the Writ *de executione judicii*, and the rest: all which, *pleno ore*, do confirm, *That the Lawes doe abhorre delay as it is an obstruction to justice.*

4 Instit. p. 67.  
c. 6.

*Sed revera pernecessarium est, dilaciones fieri in Processibus Actionum omnium, dummodo ipsa non fuerint excessiva.*

This the Chancellour asserts not to gratifie delays of *Subtily*, but delays of *Security* and *Discovery*; for many things are either composed or conquered by time, which in Post-hastes are lost and infeasible: which is the reason that there are such steps and gradations to judgement, that when ever it is gained it may appear to be after *Consideratum est per Curiam*, and after all, that diligence on both sides could inform the Court by, has been used. As therefore the Law does grant Essoines in certain cases, as hereafter shall be specified; yet those because they are in view of Law Delays (though not evil-intended ones) shall be restrained as much as possible. *Item, It is accorded and established, that it shall not be commanded by the Great-seal nor the Little-seal to disturb or delay common Right*, so sayes the Statute, 2 E. 3. c. 8. By the 6 E. 1. c. 8. *If the Defendant Essoine himself of the King's service, and does not bring his Warrant at the day given him by the Essoine, he shall recompense the party's damage for his journey, and shall be grievously amerced unto the King.* For the Law, as I said before, though it tolerates necessary and reasonable Delay, which does not endanger the freehold, and very life and soul of a cause; yet it abhorrs needless and vicious Delay, which the Text stiles excessive.

*Nam sub illis, partes & maxime pars rea, quam saepe sibi provident de defensionibus utilibus, similiter & consiliis, quibus aliis ipsi carerent.*

Though the Law provides not for the guilty person, as he is an offender against the Law, to answer which the Plaintiff compells him; and therefore ought and is rather favoured in tryals then the Defendant: yet that the equity and impartiality of the Justice of the Law may appear, the Text sayes, that Delays are useful and good as they steed all parties, even the guilty side with discoveries and improvement of men and things to its vindication and defence. For as it is the noblest victory that is obtained in a field foughten, and against an enemy disputing terms *ultimis viribus*; so is that the most creditable decision and judgement on causes and persons, which is after the causes and persons have not been surprised, and had all convenient latitude to free and evince their sentence and condemnation: Then then the sentence of the Law is most clear and justified. And hence come the unavoidable Delays of the Law, Delays do

I terme them, rather deliberations of the Law. (For delay being a word taken in the worst sense, is not properly attributable to the Law, which is *ars equi & boni*) but when the Law seems to be guilty of it, 'tis to be charged on Men the Lawyers, not on their Mistresse the Law, for the Law is precisely against delay, wherein then it does not speed processes, as eager persons desire, proceeds from the wisdom resident in it, which dictates to doe all things by deliberation, to a just and not to be repented of conclusion. And Magistrates who are in love with Justice, as that *Συλοσώνος & Χλαμύς*, which becomes the wearing of reigning *Darius's*. (I allude to the Story in *Strabo*, which tells us, that because *Syloson* having a garment that *Darius* when a private man loved, gave it him freely, in recompence thereof *Darius* when Emperour gave *Syloson* the whole Island and City of the *Samnians*) when I say Magistrates are virtuously entangled with the love of justice, and put on righteousness as a Garment, justice not onely helps them to, but continues them in, and graces them by her largesses. This is the Chancellours sense, that the Law of *England*, and the *Judges* in it, are therefore so blessed by God in the accomodation of their integrities, with Monuments of temporal eternity, their posterities in Name, Fortune, and Honour, because they doe not, either precipitate or retard justice, but so proceed upon Tryal to Sentence, that during the pendency of the cause, there is time given *recte consulere, perite defendere, utiliter consummare*, what is pertinent, if not to their total vindication, yet at least to their mitigation in point of judgement.

Lib. 14. Geograph.  
Unius vestis munus tam opulento regno compensans.  
Valer. Max. lib. De Mirabilibus.

*Nec unquam in iudiciis tantum imminet periculum quantum parit processus festinatus.*

This is in other words, To err on the right side, rather by being something too slow, then in any degree by being too quick, and that because we men dwell in a valley whence we can take but a short prospect of things, and being fallible by reason of our imperfect judgement, are so apt to err and mistake, because poised and gravelled with so many partialities and frauds; what we want in perspicacity and certainty of judgement, we are to supply by integrity of watch and diligence of search and enquiry, to which since nothing more contributes then time and experience, therefore too much haste making waste, is to be in all reason declined. For thereby conscience is not galled nor innocence injured, or if it be, yet in a less degree, and with a better excuse and defence. For however the passions of men may ruffle them into vehemencies, and no pace in judgement pleases them, but the Carrere, and full swoop, to ride as desperately upon their opposites ruine, as rage and cruelty can prick them on to; yet a wise and worthy *Genius*, such as that in *Justice* is, likes not those *Manilia Imperia*, those hot headed and fierce spirited proceedings, but follows the method of *God*, who waites that he may be Gracious, and the exhortation of the Apostle, to be slow to wrath, and to judge nothing before the time: yet this not so much out of timorousness, irresolution, or disaffection to justice, as in care and providence to conduct her into her proper channel, and to preserve her pure to the purpose of her institution. For because nothing is so perillous in judgement as hastyness, the Wise man's Counsel is, not to be rash in our words, nor to let our heart be hasty, and in another place, Goe not forth hastily to strive lest thou know not what to doe in the end thereof. Since as in private actions nothing is more injurious to mens fortunes and fames, then suddain and rash evidences of themselves, so is it in publique sanctions and judgments of Law, which *Daniel* intimated in that *Stigma* he gave the unjust and sanguine decree of *Nebuchadnezzar*, which he call a hasty decree, why saith he to *Arioch the King's Captain*, is the decree so hasty? The word in the original is not *ἄσπετος* hasting righteousness *Isaiah* 15. 5. nor *ἄσπετος* *Psal.* 55. 8. where *David* speaks of a prudent and warrantable haste, I would hasten my escape from the windy storm and tempest, nor *ἄσπετος* in *Prov.* 29. 20. Seeft thou a man that is hasty in his words, there is more hope of a fool then of him, it's none of these words, but it's *ἄσπετος* a Chaldee word signifying cruelis, festina, id est, cruelis saith *Grotius* and *Lorinus*, yea *Calvin* says that *Daniel* does in them perstringe the King for not deliberating on the tart nature of his decree, but passing that so lightly which concerned the lives of innocent persons. This mischief in judgement our Text tells us the Law avoids by halting in processes.

*Nec unquam in iudiciis tantum imminet periculum quantum parit processus festinatus.*

Vidi

Multos fortuna liberat peria, metu neminem, quia infixa nobis est eius rei aversio qua natura damnavit: ideo nunquam latendi fides fit etiam latentibus, quia coarguit illos conscientia, Sen.  
Epist. 57.  
Eralm. Adag. p. 401.  
Magnanimi mortuum tardum docet Philosophus, vocem gravem, locutionem tardam stabilentem, Lorinus in *Eccles.* 5. 2.  
*Eccles.* 5. 2.  
c. 7. v. 9.  
*Prov.* 14. 17.  
Festinare precipitanter & cum subito quodam pavore & sollicitudine, Lorinus in *Eccles.* 5. 2.  
*Dan.* 2. 15.

Videtur his verbis *Daniel* oblique perstringere Regis iracundiam & simul ingratitude, quod non satis diligenter inquisit, antequam proficeret ad crudele illud supplicium, *Calvin*, in locum.

*Vidi nempe quondam apud Civitatem Sarum coram Judice quodam ad Goalam ibidem deliberandum cum Clerico suo Assignato, &c.*

Here the Chancellour produces an instance of injury *though not murther* committed by a Justice his quickness, in shewing the extremity of his power; and 'tis an instance not by report or hearsay, but whereof the Chancellour was himself an ocular witness. *Vidi* sayes he ] that is, *vidi personam & audiui sententiam*, for he being a practiser of the Law in his youth *quondam* ] and riding the *Western* Circuit, did then at *Salisbury*, where the Assises for the County of *Wiltz* was holden, see one tryed before a Judge and condemned to be executed by burning, and the Clerk of Assises in Commission with him. *Ad deliberandum Goalam* ] as there are Justices of Assise, Oyer and Terminer, & nisi prius, according to the Stat. West. 2 c. 30. so are there of Goale-delivery, and that to expedite justice, and deliver persons by execution or discharge of them from unreaſonable burdens, which delivering of the Goale concerning the life and Members of man ought to be performed with great caution, and from a judicious Bench, which Sir *Edward Cook* well remembers me of in those words, *By the original institution of Justices of Assises and of nisi prius, the tryal should be before two at the least, and it were much for the advancement of Justice and right, to have the Law put in execution, for plus vident oculi quam oculus, and especially in Pleas of the Crown concerning the life of man* so that grave Judge, which tells us, that the Law does not onely take care that there should be *plena & celeris justitia*; (and therefore commissions, Goale deliveryes, *ne homines diu detineantur in prisona*) but also that they should be before Judges, *bone gentis & Sages autersque des places*: and that because the Law would have Justice and Mercy fairly mixed and marshalled together, that there may not be *more haste then good speed*, which that Judge of whom our Text speaks should have better considered then he did, and then he had avoided the terrour he fell into. For though true it be that Justices of Oyer and Terminer may upon indictment found, proceed the same day against the party indicted, as appears in 2 H. 4. in the Case of *Markz*, the resolute Bishop of *Carlisle*, of *Empson* the turbulent executor of the penal Statutes 1 H. 8. of *Bell* 3 E. 6. of *Bonham*, 10 *Elizabeth*, and *Felton* in our Memory, and yet not be *festinatum: judicium*, but as the enormities and proofs may be, prove though so speedily executed, most serious and good justice. Yet in a dubious Cause, and in that which concerns the life of one unnatural to their relations; where neither confession nor direct proof is, there upon presumptions, though never so vehement, or positive oath of suspected credit, as to the credit and veracity of the Affirmer, to adjudge and warrant execution is very hard, because the Judge is *discernere per Legem quid sit justum*, and the Law having entrusted him with a power of reprove, to the next Sesson, that then better proof may come if any be, or favour be shewed them, if the proof be not found enough to take away the life. This I say a Judge being enabled to doe and not according to his enablement doing is much to be blamed. And this our Text instances in, to minde how dangerous suddenness is. For here was a woman accused and condemned for murther of her husband, and burned therefore, who was clear of it, and that by the confession of a servant that did it; and owned afterward the fact, who besides that he charged himself onely with it, and was deservedly executed for it, did purge the woman executed from all hand in and all knowledge of it; *Magistrum suam uxorem ejus tunc combustam innocentem omnino fuisse de morte ejus* ] So are the words of the Text which shew not onely a plenary purgation of her, that was so speedily concluded the Murtherer, but also a sad sentence on himself for suffering an Innocent person to be condemned for his offence, which was accompanied also with such a terrour to the Judge, that he never clawed it off (as we use to say) but had the memory of it before his eyes, as his daily terrour and amazement. The consideration of which should make all men study temper and restraint of violence, and not indulge anger and fierceness of minde and action; for that our Lord reproves it in the Disciples *that would have called for fire from Heaven*, in those words, *Ye know not of what spirit ye are*, and instructs his to be *slow to judge*, and to bear with offences, as farr as wisely and safely we may rather then revenge them; which *Augustus* considering as great a piece of wisdom practised it to-

4 Instit. c. 30. 31  
2 Instit. on c. 30.  
Westm. p. 422.

4 Instit. c. 27.  
p. 160.

Few but effectual words  
saith Sir Edward Cook

4 Instit. p. 68  
4 Instit. c. 28.  
p. 167.

Luke 9. 54.

wards

wards *Timagenes*, whom though he knew to be an intemperate and rude reviler of him, yet he permitted to be in *Pollio's* house; and though he charges *Pollio* *duo* *Epis.*

Seneca lib. 3. de Ira. c. 25.

Securitatii magna portio est nihil inique facere, confusam vitam & perturbatam impotentes agunt, tantum metunt quantum nocent, nocens habuit aliquando laetandi fortunam; nunquam fiduciam. Ep. 105.

\* Holingshed. p. 1100.

Hic consentiamus mala facinora conscientia flagellari & plurimum illi tormentum esse eo quod perpetuo illam sollicitudo urget atque verberat. Senec. Ep. 97.

*Pollio*, thou nourishest a wilde Tigre or Savage to me: yet he seises not on the miscreant, nor disfavours not *Pollio*, but sayes *Frater mi Pollio, fratre*, by which condescension he avoided all severity against him, and did not burthen himself with the bloud of a Subject. Nor shall any man have cause to repent of his lenity in a dubious cause, because it proceeds from goodness and likeness to God, and has his approbation of, and benediction on it, which the contrary has not; for rash and sudden severities are the bratts of rage, which are repented of too late, if ever: witness the hard sentence on the good Earl of *Lancaster*, which cost the House of *Valence* E. of *Pembrok*, that had so deep a hand in it, Extirpation; and \* Judge *Morgan* who ran mad, and cryed continually to have the Lady *Jane* taken away from him. O, 'tis good to be slow in doubtful things, and not to suffer passion to precipitate; for though it be sutable to

*Jezabels* rage and *Ahab's* covetousness, to *Cain's* envy and *David's* lust; to the *Jews* malice and *Judas* his treachery: yet it is agreeable with no virtue in man, no love of or likeness to God, For his Judgements are alwayes just; and in that he is said *To go down & see whether the men of Sodom and Gomorrha have done altogether according to the cry of it which is come unto me, and if not I will know*; so is the Text, God as the Chief-Justice of the world teaches Judges to consider their Judgements before they deliver them: for *wisdom Begitens*, that temperament that is equally averse to rashness or sloth; is the best humour of a Justicer, without which no learning or fidelity in a Justicer can be meriful or valuable, *Nihil minus in duce perfecto quam festinationem temeritatemque convenire arbitrabatur*. The experience of which is the reason of that position and rule of the Law which Sir *Edw. Cook* quotes from this Chapter, and the Editor of *Fortescue* sets out in another Letter, to shew, not that it is a transplant (as I conceive) from some Authour unnamed, but that it is a golden sentence of his own, *Crebra in deliberationibus Judicia maturescunt, sed in accelerato processu nunquam*, which is as much as if he had wrote, That moderate and prudent respite may dilucidate and clear up the way to a just determination, which in a speedy and heady course proves abortion of all profitable discovery. Hence is it that our Law being a Law of Justice and Judgement, allows *Essoines* as approaches thereto, so the Chancellour sayes in the next words.

Genf. 18. 21.

Sueton. in Orazio.

Epistle to the 8 Report.

*Quare Leges Angliæ Essoiniam admittunt, qualia non faciunt Leges alie mundi universa.*

As the Lawes of *England* are for freedom Lawes by themselves, as we call those things that have no fellows; so are the Lawes of *England* particular and singular in this point of *Essoining*: for though other Lawes, as heretofore I have shewed, have what is in proportion (as it were) the same to these *Essoines*, yet *Essoines* in the nature and diversity of them they have not. The word *Essoin* is purely *French*, signifying want of ability in Souldiers to hold or take a place; thence *Essoiner*, to excuse or discharge an absent or impotent person. In the *Affises of Clarendon* *Tempus H. 2.*

Nulli liceat hospitari extraneum aliquem ultra unam noctem in domo sua nisi hospitatus ille Essoiniam rationabile habuerit. Hoveden in Annal. p. 449. in Hor.

Hengham Parva c. 2. p. 85. Edition. Seldeni.

Fleta lib. 6. c. 7, 8, 9. &c.  
Glanvil, lib. 1. c. 12, 19.  
Spelman, Gloss. p. 241.  
Probatit quodlibet Essoiniam jure jurando propria & unica manu, &c. Glanvil, lib. 1. c. 12.

\* Cook 2 Infit. on c. 19.  
Stat. Marlbridg. p. 137.

*Essoinare* is a word made *Latine* by our Historians, and used at large for any excuse; so *Hoveden*, No man was to lodge any stranger above one night in his house, unless he that is so entertained have a reasonable *Essoin* and *Excuse*: but the Lawyers restrain it to such excuses as in real Actions guilty persons make in the King's Courts, or in the Courts of their Lords. These *Essoines* at the Common Law are reported to be five, 1. *De ultra Mare*. 2. *De Terra sancta*. 3. *De Malo veniendi*. 4. *De Malo lecti*. 5. *De Servitio Domini Regis*. Of *Essoines* the Stat. of *Marlbridge* c. 19. writes, and \* *Sir Edw. Cook* tells us on it, That they were instituted upon just and necessary causes; and because they should not be used in feigned causes of delay, he that casts the *Essoin* ought to be sworn that the cause thereof was just and true. It should seem at the Common Law Oaths were not of old required

required, but men growing bold to misapply the just remedy of the Law unjustly, the Statute restrained Oaths to extraordinary not ordinary Essoines, that the reason of the excuse was necessary not dilatory, I mean, in Essoines of great delay, such as were those of the service of the King, &c. which had great delay; and therefore he that alledged that, was to swear, though in common Essoines, which were but for a small term, no Oath was required by the Statute: for the end of these being the promotion of Justice, if it appeared the party obtaining it otherwise designed it, 'twould benefit him little, and injure the party as little; for the Judges, who hate delay, will admit excuses in no case without Oath, but in in common Essoines. Besides these Essoines there are other stops to Proceedings at Law, and those profitable ones, the Text styles them *Utiles vocations ad Warrantiam*]

Of these (a) *Glanvil* writes, and (b) *Littleton*; and the reason of the Law is, that if I be bound to defend the title of another, as the Tenant is to defend the title, then he that has the reversion, fee, or term, must not onely furnish him with Deeds, if any he hath, but with such a proportion of money as is reasonable to that end; and that because if my term which precedes his futurity fail, his expectance also fails: and he warrants to me, and warranty draws supply and recompense for all damages. The like is the reason of Coparceners, *Qui reddent pro rata, si tenementum comparticipi allotatum evincatur* ] saith our Text. This is I suppose the sense of learned *Littleton*, Sect. 203. upon this reason, that where all have a joynt title, the eviction of part shall have contribution from the rest after an equal rate and proportion, because they all are of equal title and ought to be equal in profit and loss, according to that rule, *Cujus est lucrum ejus debet esse damnum, & e converso*: and where many are concerned, their profit and loss shall be proportioned and allotted to them indifferently. And these are therefore called by our Text *Res utiles*, because they do not onely engage parties to joyn in defence, that estates be not recovered from the Possessors of them; but after recovery oblige to recompense the damage that contrary to the nature of their estate they sustain: and this being but rational and just, is therefore profitable to be effected. All these the Lawes of England admitting, do not further thereby delay of pretence, which we call spinning out of time, which the Text terms *Frivola & infructuosa inducia* ] like the Parlyes of crafty Souldiers with those that besiege them, whom they pretend discourse with in order to rendition, when 'tis but to cease hostility till they be relieved, or have otherwise diversion: or like crafty and self-ended Creditors, who pretend offers of composition with their Debtors, whom by the hopes of it they keep from prosecutions of extremity, when as all the while they are designing escape and withdrawing themselves from them: or like cunning Mistresses, who pretend correspondencies with men whom they have designs upon, and them served, slight and desert them. The futility and fraudulent rottenness and inanity of which, operating nothing but frustration and circumvention, is the reason why *frivola & infructuosa* are joyned with these *Inducia*, and why the Text explodes them allowance in the Law: which further then they are ampliative of the truth, and not unreasonably prejudicial to the adverse party, the Law allowes not. And if time and vice of man shall usher in any subdalous error, by which the good intent of the Law becomes void, then the Law has a remedy ready for it, *In omni Parlamento amputari ipsa possunt.* ] For that is the felicity of England, that Parliaments are frequent, and the King in Parliament by that serious and effectual power that resides in Parliament, can either sweeten or reform the inconvenience; or if those seem not good to his Sovereign and Parliamentary Judgement, *amputari possunt*, that is, they may be damned by a Law, and cut from that root of inconvenience they to that time sprung from: so *Festus* uses *Amputare* for *resecare vel abscindere ramos Arborum*, and *Tully* *Amputare ramos miseriarum*; so *Amputata* & *circumcisaque inanitas pro sublata*: and the reason is, because amputation is the remedy of pestilency, mortification, and gangrening, hence in *Tully*, *Amputare quicquid & pestiferum*. So that when our Text tells us of reasonable Delays, it intends such as not fraud but favour, not craft but justice has introduced and continued; but when of such as are *Minus accommodata* ] that is, which are occasions of injury to particulars, and of loss to the whole which is composed of particulars, as the former it concludes proper to be continued, so these latter it judges necessary

*Fines dilationum sine dubio multi sunt & aperti, ut deliberatio, probatio, exhibitio, instructio, auditio, productio, conclusio & similia, Tholos. Synrag. Juris lib. 48. c. 8. ff. 20. de Dilatationibus.*

(a) *Lib. 3. c. 1. 2. 3.*  
(b) *Cap. 13. Sect. 697.*

COOK on Littleton. c. 13. Sect. 733. p. 383. Lib. 3. Infit. c. 1. p. 174. Ficta lib. 6. c. 4.

*Ut ille qui cum 130. dierum essent cum hoste pacis inducia non potest pulchatur agros quod dierum essent pacis non nostrum inducia. Liv. 4. ab urbe 127. In amore hac omnia insunt vitia, injuria, suspiciones, inimicitia, inducia. Terence in Eunuch. 1.*

3 *Tuscul.* 21.  
\* 1 *De Finib.*  
79.  
8 *Philipp.*  
244.

to be discharged, by that Grand Maul and Battery of Injustice and oppression, *Parliaments*; wherein not onely new risen and emergent evils are to be remedied *prece subditorum, & consilio Membrorum*: but also any Lawes in being, when they doe *claudicare*, that is, when by reason of age they grow dull and dispirited, as to the activity of their first Creation. When they have either Corns on their toes that make them tread gingerly and tenderly, or Gouts and Palfies that render them wholly unable to follow offenders smartly and quickly, when they doe *claudicare* ] that is, doe as *Plantus* his Taylor does, sit cross legged, still as a stone all day, when they are Badger-tooted and wont endure trial, but fall short of the end, *ex vulnere accepto claudicare* as *Tully's* words are, when Lawes doe not *renorem servare equabilem*, as *Budans* translates *Tully's* *actio claudicat*, then are those Lawes fit for Parliaments, (and blessed be God) these Physicians are of value to such valuable purposes. For from Kings, Lords Spiritual and Temporal, with Commons in Parliament, have the good additional Lawes of *England* been made, I mean those wholesome Statutes, which either restrained, explained, or added to the Common-Lawes, and which thereby have been, are, and I hope ever will be the daily cure of growing inconveniences, which mindes me daily to pray, in the words of the Psalmist though in a variation of sense. *Give thy judgements, O Lord unto the KING, and thy righteousness to these the King's Sons and Subjects*, that as the KING delights to be a fountain of Mercy and Justice, so his Subjects as Politique Sons may be dutiful and aidant to him therein, that the Nation may evermore blefs and pray to God for *This High Court of Parliament, under Our Gracious and Religious King assembled*, and enjoy good and beneficial Lawes by their instrumentality. For by the means of Parliament is it that *England* ever has, and ever will be happy, since by them, the best Lawes of the world have been either actually made, or possible so to be made, when they shall see cause of addition to or explication of the Lawes made, which is that which our Text intends by *optima in actu vel potentia*. For as he can want nothing that either has actually every thing, or has that in his power wch. will procure every thing when his will pleaseth to apply his power thereunto; so can that estate be defective in no point of good Lawes, which either has good Lawes *in actu exercito*, or has power to make the acts that are not, such as it would have them, since *frustra est potentia qua non reducitur ad actum*. And therefore the Law being, that Parliaments are frequently to be held, and those enabled to make Lawes of all sorts, *recte concludi potest* saies our Text, that if good Lawes there be not to answer all emergences, men are to blame, not the Government; for in that there is that sacredness which conveys optimacy to Lawes, if not *in actu*, yet *in potentia*, if they be not already the best, they may be bested further, *per potentiam reductam in actum*. For the Kings of *England* have been ever so Gracious Lords, that they have yeilded to all good and just Lawes that their Subjects in Parliament have humbly presented them; yea and the Subjects of *England* have ever (when themselves, and not seduced) been so dutiful Leiges, that they have desired nothing that their Princes have had just cause to except against; but have so been principled with Religion and Order, that the Law has been acknowledged by King and Subject the just Arbiter: and that conducted both King and people to happy improvements of good and durable advantages in prosecution of the Oath of God, both on Sovereign and Subjects: So ends the 53 Chapter.

*Quasi claudus  
Sutor domi sedet  
totos dies. Plau-  
tus Aul. 4. 34.  
lib. 2. De Oratore.  
De Claris Orator.  
120.*

See the Prayer for the High-Court of Parliament.

*Regum proprium est facere iudicium & iustitiam, & liberare de manu calumniatorum vi oppressos, & peregrinos, pupilloque & vidua qui facilius opprimuntur a potentioribus praeberi auxilium. Sanctus Hieronymus in c. 22. Jeremiae.*

*Ἐλευθεροῦν τοὺς ὄντας ὡς ὄντας μὴ πολιτείας τὸ κοινὸν συμφέρον σκοπεῖν. Aristot. Politic. lib. 3. c. 6.*

#### CHAP. LIV.

*Princeps. Leges illas nedum bonas, sed & optimas esse, &c.*

**T**HIS Conclusive Chapter is designed by the Chancellour in the Person of the Prince, as the recollection of all that has been written concerning the Lawes in the former Chapters of the Dialogue, wherein the intent of the Chancellour being, to present the Lawes of *England* to his love and judgement, as not onely Good but best for



for *England*, and that in whatever kinde time or men necessarily cal for either Change or Explication; what, in those Cases, is fit to be done, may be wisely and seasonably done by Parliament, which considered, the Prince is brought in acknowledging what heretofore the Chancellour had written in the 15 Chapter in those words, *Legem illam bonam esse & efficacem ad regni illius regimen*] which was in replication to his doubt Chapter the fourteenth; and which he seconds Chap. 28. 30. 33. 45. 47. Adding, that the Kingdom of *England* being governed *præstantissimis Legibus*] His discourse of so superexcellent Lawes cannot but be acceptable to the Kings of *England* in all times; and that because, as the knowledge of them is *non inutilis doctrina*] so the exercise of such knowledge is the Grace and Peace of Princes, who doe *delectare regere legibus præstantissimis*] and who have then their regal care in a good degree lessened, when they are instructed by equal Lawes, and by them indifferently admittred, and thereby thrive in the blessing of God, and the love and acclamation of their Subjects. For as no end is attained without proper meanes conducing thereunto, which is apparent in Mechaniques, wherein a good figure is not formed without good tooles, but be the designer the skillfullest man in the World; yet *ineptio instrumenti*] that is, the incongruity and unhandiness of the tool indisposes to a compleat artifice. (For *ineptio & ineptus* signifies every thing of defect and imparity; Thus (a) *Causa inepta* in Terence, (b) *Charta inepta* in Horace, (c) *Labor ineptus* in Pliny, (d) *Lusus ineptus* in Ovid, and thus *ineptire profacere aut dicere, quod neque loco, neque tempori, neque rebus, neque personis conveniat*, are to be understood.) I say our Text mentioning *ineptio instrumenti*, as that which does *fastidire*, not onely not make work pleasing to the Workman, but tedious, for so *fastidire aliquem* signifies, hence *fastidire preces* in Livy, and *Æstus fastidit amiltum* in (e) *Claudian*, implies that fitness to every purpose makes men excellent and acceptable in it.

*Et militem ignavum reddit debilitas Lancie & mucronis*] That is when a man dare not trust on the strength and toughness of his weapon, and the truth of its edge, that it will doe execution and keep off an enemy, though he press hard on him. For Lances, the weapons of *H. 6* time, if they were not of well growne, well seasoned, and stiff materials, if they would bend this and that way with the body of him whom it touched, yet dismounted not or took off from further trial of honour, or if the point of it would not pierce the clothes and light defences of Antagonists, but when they come to close fight, their edgeless armes, drew no blood, did no execution, such disanimations eclipse men of valour, and make them disappear on action: so doe Lawes that are unfit and not congruous to people, toyle out a Magistrate, and make him live and govern displeasingly, because the engines whereby he should doe, move not agilely, nor evenly, but have unequal pulses, being either too short or too long, too severe or too lax, too merciful or too just. Which since the Lawes of *England* are not but every way fitted to the Government of *England*, so that in the safety and preservation of them, all honest men doe think the welfare of their Countrey doth consist, so said \* the best and knowingest immortal Mortal of his time. The Monarchs of *England* have ever had great encouragement as to rule by the Lawes, so to know the Lawes they are to rule by. For as that of *Vegetius* quoted by Saint Thomas, or *Egidius Romanus* is true, that a Souldier is heartned on to battel when he has fit armes, and competent knowledge to use them, when he knows what he enterprises and delights in it, as it is the object of his intellect and by reason thereof is not strange to him, *quia nemo facere metuit quod se bene didicisse confidit* as the Text's words are] So is it in Government. No Magnetique is more potent, no inducement more cogent, then Lawes of reverence to Princes and punishments of the contrary, then power to defend, protect, order, reward, punish, all which being due to Princes by the Law of *England*, they have great encouragement to adorn their Province, to go on couragiously, and to proceed to know more and more of the Law, which is thus a buckler to them, and a beautifyer of them. For though as I wrote before in the Notes on the eighth Chapter, a Prince is not to be expected so furnished with *discreta determinataque peritia & scientia*] as a Justice has need to be; yet in the nature and forme, in the general and inchoate knowledge of it, he must have insight. For as those passages of Fathers and Scriptures which require in a Prince *Scripturarum Divinarum peritiam*] and ascribe to a Prince infallible knowledge, according to that of the *Wise man* *A Divine sentence is*

R r r

*Via inepta, incommoda, difficilis.* Cic. ad Attic. lib. 16. 337. (a) Terent. And. 15. 22. (b) 2 Epist. 11. 54 (c) Plin. Ep. 9. (d) Ovid. 2. Tristib. 45. Lib. 4. Belli Macedon 26.

(e) Epithal. 46.

*Bonum integritas corporis, misera debilitas.* Cic. 5. De Finibus 145.

\* Eicon Basil. p. 176.

Lib. 3. De Regimine Principum, cap. 21. p. 322.

Prov. 16. 16.

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in the lips of the King, therefore he shall not err in judgement; yet are to be understood not of profound and indeterminate knowledge of Scripture, but onely of such proportions as are convenient for direction and judgement in conducts and administrations of piety to God and men, I say, as these are then answered according to Scripture-requiries, when there is the *Day-starr* from on high visiting Princes in holy and serious resolutions of walking humbly before God, and prudently in the sight of men; then a Prince that does it may well be said to know the Scriptures like a good Christian, though not like a Workman that needs not to be ashamed, that is, to the proportion of a thorough-read Divine. For though it tends much to Princes lustre and admiration; that they, as Christians, know much of the depths of holy Learning,

Hoc igitur officium Rex se suscepisse cognoscit, ut sit in regno sicut in corpore anima; et sicut Deus in mundo; qua si diligenter recognoscit, ex altero iustitia in eo solus accenditur, dum consuevit ad hoc se positum ut loco Dei iudicium regno exerceat, ex altero vero mansuetudinis et clementia lenitatem acquirit, dum reputat singulos qui suo subsunt regimini sicut propria membra. Sanctus Thomas lib. De Regimine Principum. c. 12.

Learned Princes in matters of Reformed Religion.

Ut decet sacra Theologia Professore[m] ] as our Text's words are, and as King James and King Charles the First, Princes of eternal memory, to the admiration of all men are acknowledged to excell in, and it to evidence in their writings, which are memorable and matchless remains of their regal judgement and piety in the knowledge of the mysteries of our Holy Religion, and of the Law of God the rule of it. I say, though to be scientificque to this proportion be the glory of them; yet, *Earum in confuso degustare sententias*] less proportions in our Chancellour's sense would have creditably adorned them, because they have Councils in Sacris, whose place it is to know the more cryptique parts of Scripture-knowledge: so that Princes need not *Vitam profundere, omnes nervos intendere, et omnem ingenii vim applicare*, as Tully phrases it; nor are Princes to be put upon such exactnesses as reside in those who endeavour to do

Cic. ad Attic. lib. 1. 13. 1 offic. 118.

Tanul. 2. Theologia ut nomen pra se fert est scientia de Deo, huius autem scientia perfecta traditio et earum rerum qua Deo per se competunt, et illarum qua eidem ex eo quod mundi opifex et finis est, conveniunt. exacta notitia continetur. Arragonius in Praefatione ad 2. secunda Sancti. Thomae de spe, fide et charitate. (a) Lib. 4. c. 1. 10. (b) Tacitus lib. 5. (c) Cic. pro Cluentio. 56.

De Morali Institutione Principum. lib. 15.

learning, may be well accounted in *Belvacensis* his words quoted in our Text, *Scripturarum divinarum habere peritiam*: ] so by understanding the Law in the sense we have in all humility (and under pardon of our betters) prediscoursed of, (respect being had in the plenariness of knowledge and learning thereof to the Reverend Judges, the Great Masters of that Science, who are the Prince's Counsel, and by whom he distributes his justice to his people) the Prince may be said to understand the Law, his interest, and preservation, and accordingly to be encouraged to undergo the great and God-like charge of Government cheerfully; for that the Text's rule is, *Nemo facere metuit qui se bene didicisse confidit*. For since ignorance causes fear, and knowledge confidence, the Chancellour presses the Prince to know the Law, that he may trust in it, as that which best warrants Government, and most enables him to a courageous managery of it, which *That holy Miracle of Devotion and Magnanimity, whom all Generations for it shall call Blessed*, our late blessed Sovereign King Charles, had so much the conviction of, that he applies to his Great Son, our now Gracious Trajan, this counsel, *Rather to be Charles le Bon then le Grand, Good then Great; for the true glory of Princes consists in advancing God's glory, in the maintenance of true Religion and the Churches good, also in the dispensation of civil power, with justice and honour to the publick peace. Piety will make you prosperous, at least it will keep you from being miserable; nor is he much a Loser that loses all, yet saveth his own Soul at last.*

Cap. 27. To the Prince of Wales.

*Sic et fecerunt Carolus Magnus, Ludovicus filius ejus, Robertus quondam Rex Francie, qui hanc scripsit sequentiam, Veni Spiritus, adsit nobis gratia.*

Here the Text presents the Prince by the great examples of France, which he is so much

much taken with, to be excellently accomplished both in the knowledge of God and the Law of his Government; and that upon the account, that Princes great in reputation and glory, have thereby attained those eminencies, by name *Charles the Great*, *Charlemaine* as the *French* Historians call him, who, as he was the founder of the *French* Empire, so did excell in all those gifts and graces of minde which were requisite to make a *Charle-maine*: For he was carefully instructed in Religion, which he honoured and loved with reverence all his life time, and likewise the Churches Pastors, charity, temperance, equity, care of justice, relief of the poor, to keep his faith both to friend and foe, to use victory modestly, were the notable effects of his excellent knowledge; he by nature loved learning and learned men, he called humane Sciences his Pastimes, he built the Universities of Paris and Pisa, he honoured the Lawes of the Land, nothing would he doe without advice of the three Estates, He took not the Empire but with consent of the Romans who elected him, the good old Lawes of the Empire he confirmed, and excellent new ones he added, Church-affairs much disordered he settled by five Councils, Mentz, Tours, Challons, Rheimes, Arles, all congregated to settle and reform it, which settlement he caused to be published in a Book called *Capitula Caroli Magni*; when he was 68 years old, and had ended the Warrs, he spent three whole years in his study, reading the Bible and *Saint* Augustine: thus sayes the story of *Charles the Great*. Good things also record they of *Lewis* his son, named in our Text, who was called *Ludovicus Pius*, not in \* reproach to his King-les sloath, for which, losing all his Dominions, he was stiled *Lewis the Gentle*; but for that he was of most excellent temper, and did partrize though not in fortunateness, yet in intentness on meditation of Scripture and good books: as long after did *Lewis the Ninth*, whom Historians call the *Saint*, Leading a life worthy a King, loving and honouring Religion with much zeal and respect, taking delight in reading the Holy Scriptures, the which he caused to be translated into the French tongue, He had a good, just, and sober soul, &c. *Et Robertus quondam Rex Franciæ*] This *Robert* was the 37 King of France, Son of *Hugh Capet*, and was so noted for piety, that he is called *Robertus Pius*. *Helgaldus* in his life sayes so much of him, as more of admiration and super-superlative character cannot be written, That he was the Standard-example of civil life, the patient embracer of all the casualties of mortality, devout to God, making the Church his content, and the humility of a sinner in it his dayly delight, simplicity of soul he loved, contemned and pardoned injuries, avoided excess both in dress and dyet, was a man of notable eloquence, taken up wholly in reading and meditating *David's Psalter*, a great Benefactor to the Church, having a Priestly minde in a King's Estate and Person; which so contributed to his acceptance in what ever he said or did, that the responsals, which our Text calls the sequence, *Spiritus sancti adsit nobis gratia*, &c.] are said to be his: this and much more is he famed for in Chronicle. These, together with other Princes of France famous for piety, *Philip*, *Lewis the Seventh*, and *Lewis the Ninth*, who reigned all long and desiredly, are by our Chancellour from *Belvacensis* presented to the Prince, as the notable examples of piety and probity, which are the chiefest ornaments of Princes, and which being efficacious and in very truth in them, disposes them to the right use of power; which is not more to consider themselves placed by God and the Lawes in an uncontrollable height, (which no Subjects must or ought, to dare to set themselves to insolently confront or abate, the rule being in the Doctors, *Imperator gerit omnia Jura in scrinio pectoris*, (by which they are made sole Lords of Lawes) whereby to incline them to do what they in the latitude of such power may, as men of might in the full swoop and swinge of their absolute power do :) then to solicit and remember them, that though they are accountable to no man or Tribunal here, yet to God and the Majesty and Jurisdiction of his Divine Absoluteness, whose Vassals the mighty Monarchs of the World are, they are responsible. And therefore as the Chancellour began, and has hitherto prosecuted this Discourse of the commendation of the Lawes of *England*, to beget in the Prince a de-

*Cujus exemplum imitati omnes sero qui secuti sunt Francorum Reges, magnis atque excellentissimis factis cum Religione & fidei Christiana dignitatem conservarent atque ampliarent.*  
*Legè Gaguini Hist. in Carolo Magno.*  
*Grimston. Hist. France. p. 50.*

Page 52.  
 P. 61.  
 P. 63.

*Imitator erat in hac Carolo Magni Imperatoris & filii eius Ludovici Imperatoris qui per semetipfos lectionibus pascebantur. In Fragmento Historia Aquitanicæ, p. 81. p. 64.*

\* Grimston. p. 64.

*Ob morum mansuetudinem Pii hominem est consequutus.* Gaguini Hist. in vita ejus.

History of France. p. 130.

*Boni viribus spectatissimus Rex nec minus optimi Discipulini eruditus.* Gaguinus lib. 5. fol. 42. B.

*Erat in eo jugis & frequens ad Deum oratio, generosa flexio innumerabilis ad humanam conversationis exemplum, per laboris genera universa, vir provocatus ad summa, sifens in consistorio clientens se esse liberrime fatebatur, nunquam injuria accepta ad ulciscendum ductus, &c.* Helgaldus in Epitom. vita ejus inter Historias Francorum ab Anno Christi 900. ad Annum 1285. p. 63.

Grimston Hist. France. p. 96.

See Sage Moral. Philosophia.

fire to know what is just and unjust by the Law, and that Law the Law of *England*, and the measure of that Justice by the Law, has acquainted him with, and earnestly invited him to make the object of his love and choice; so does he here in this conclusion inculcate the sense of these prementioned designs of his love, evidenced in those familiar, friendly, and loyal applications to him, which the Prince in the Dialogue is brought in so to resent, that he not onely yields to the Chancellour's swasion, as appears in those words, *Quia, Cancellarie, ad Legum Angliæ disciplinatum mihi jam conspicio sufficienter esse suatum*, &c. but subjoyns a relaxation to the gravity and goodness of his love and learning therein from any further travel or argument in satisfaction to his youth, *Non te amplius hujus prætextu sollicitare conabor*] saith he: and as a towardly and grateful Prince, who well understood the profit and benefit of his Discipline, entreats him to a further procedure in methodizing the Law, and in regulating his studies therein, that so he may attain to the knowledge of the *English* Law, which is the glory for *English* Princes to know that they may love, and love that they may

*Quem ego credo manibus pedibusque obnixè omnia fallurum.* Terent. And. 1.

1. 134.

Cæsar Comment. lib. 7. *Telli Gallici*. 5.

Cic. 3. Philipp. 147.

*Ut illa flamma divinitus exstitisse videatur, non quia deleter Jovis Optimi Maximi Templum, sed quia præclarior magnificentiusque deprecetur.* Cic. 6. Verr. 61.

\* Chail. 1. Cent. 8. p. 277. 278.

conform their publick administrations thereunto. This is that which the personated Prince is here mentioned *obnixè deprecere*, that is, not faintly and formally, but *cum conata, instanter, totis viribus*, to desire and long after; (for *deprecere* is a verb of vehemence, so *Cæsar* uses *Deprecere omnibus pollicitationibus ac præmiis* for earnest and not to be denied attacking, leaving no stone untried and unremoved: *Non modo non recussem, sed appetam atque etiam deprecam* is *Tully's*.) And that upon resolution of conviction, that as the Chancellour was no \* *Κολοιδε εν μύσει*, no *Gracchus*, making a great noise to no purpose, or in our Proverb's language, *A great cry and a little wool*;

nor did he in his discourse and the arguments of it, *Apologum Alcinoi introducere*, as they do ingratiously enough to wise men, who frame arguments from impertinent fabulosity, no such trite, nugatory, Theatrical trifler was our Text-Master: but as one that had himself imbibed the Law, and by the practical science of it had connaturalated the reason of it to his minde, which was fully possessed of it, and was able to possess others with the love and understanding of it, he draws off the Prince from his prepossessions, and makes him a Convert of that courage that he bids defiance to all other Lawes in competition with it; for his approbation of its fitness to the temper and people of *England*, the incomparison between which and it he makes as wide and impossible to be rationally reconciled, as to compare the *Φωσφορος*, which precedes the Sun and has the prebeminence of all stars in the influence of the World, *Lucifer*] to the other stars, which are as farr beneath it as Heaven and Earth, or the utmost opposites in nature are remote from each other. Not but that the Prince approves other Lawes as highly for other Countreyes, as the Common and Statute-Lawes for this; but that he would conclude as he began, being still the same he was in the fixedness of a well-ballasted judgement, he supersedes his further address to him and progress in this Dialogue, giving humble and hearty thanks to God who is *Alpha & Omega, qui ea incipit, profectus est, & finivit*, as his words are.] For God alone it is that excites us to, encourages us in, preserves us for, and crowns us with ability to serve his glory in all honest and worthy undertakings: and to him, *As the onely giver of every good and perfect gift*, does my prostrate and grateful soul ascribe the onely praise and power of this my weak enablement to finish this undertaking. For notwithstanding those flattering *Hyperbole's* which vain men are apt to excurr in, as he vapouringly did who encomiated *Archimedes* in those words, *Quod ad Geometriam attinet Deum aliquem in ea fuisse Archimedes*, There is too too just cause for all men to debase themselves before God, and to acknowledge all that they know is but ignorance to the light of his Omniscience: and that whatever is theirs in the clarity of speculation, is but mutuated from that primæve and Architectonique light, *which enlighteneth all that come to, and live in, the World*. This, This, being the *Mercy sprung from on high visiting me* in the darkness, error, and ignorance of my sinful minde, and raising me up from the grave into which I was almost \* gone while this was composing, and from which this goodness and favour of God (which I beg may be ever legible in my heart and life) raising me when others have miscarryed, as did Father *Pradus* in his Comment on

*De Privilegiis Luciferi. Lege Rosellium in Pimian. Mercurii. Tom. 1. lib. 2. Com. 9. c. 4.*

Commandinus in Epistola Dedicatoria Cardinal. Farnesio ante opera aliqua Archimedis. Impres. Venetiis Anno 1558.

\* By reason of a great sickness.

*Ubi dum operi suo invigilat operi suo intermoritur.* Ribadeneira Catal. Societas Jesu. p. 134.

others have miscarryed, as did Father *Pradus* in his Comment on

*Ezechiel,*

Ezechiël, and Villalpandus, who perfecting Prædus his unaccomplished endeavour, dyed also at Rome, what remains, but that as God has given me a new life to perfect (though in a weak and worthless measure) this endeavour; so I hope he will give me a will to improve every advantage his providence ministers to me to his glory, and the good of the men with whom, and Age in which, I live.

*Continuis tandem laboribus fractus & magni operis mole veluti oppressus, pestilenti morbo Romæ succumbit. Idem p. 134.*  
*Quem tamen scio imperfectum esse, semper enim accessio fieri poterit, utilem tamen fore existimo magnoque aliis incitamento, ut augeant inchoata, liment rudia, impolita perpoliant, & novis accessibus suppleant qua à me præmissa, vel nimis comperta sunt. Ribad. idem loco præcis. p. 226.*

*The Author's Conclusion.*

I shall conclude all with the Epilogue of the grave and learned Littleton, *Que ideo voil que tu croies, &c. I would not have thee (READER) believe, that all which I have said in these [Commentaries] is Law, or apprehended by me void of mistake,] for I will not presume to take this upon me, but of those things that are not Law, enquire.* And albeit certain things which are moved and specified in these Commentaries be not altogether Law, nor in every particular such as men of deeper judgement would produce: yet what is in all love and humility offered Thee may make Thee in some measure more apt to understand and apprehend the reason and arguments of our Text-Master, drawn from, and quoted for, the honour and establishment of the Lawes. For my intention is not to blazon an ambition to seem to know much, or by a Dictatorian confidence to impose upon Thee any thing against thy reason and better skill, but to continue some memorial of what the learning of former men and times has instructed me in to the benefit of those that shall live after me. And I pray God I may attain to that high and onely to be emulated degree of learning, to know how to be truly humble and generously modest, considering that of the Apostle, *God resisteth the proud but he giveth grace to the humble,* which Sir Edward Cook comments well upon in that Aphorism, which on Littleton's Epilogue he recites, *Nulla virtus, nulla scientia, locum suum & dignitatem conservare potest sine modestia.*

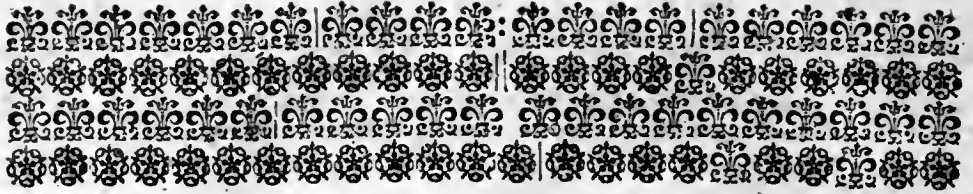
4 Jacob. Ad calcem Institutionum in Littletonum.

*Scripti Σὺν Θεῷ.*

*Ζῶν μὲν ἐπαμῆ, ἀποθανῶν δὲ μακαρίζε.*

*Operam da ut vivus laudabilis, mortuus autem beatus judicaris. Antagenes apud Stobæum, Serm 69.*

*Literarum scientiam justam, juveni morum temperantiam, seni solatia vitæ afferre, in rebus secundis ornamentum, in adversis subsidium esse. Budæus in lib. De studio Literarum recte instituendo.*



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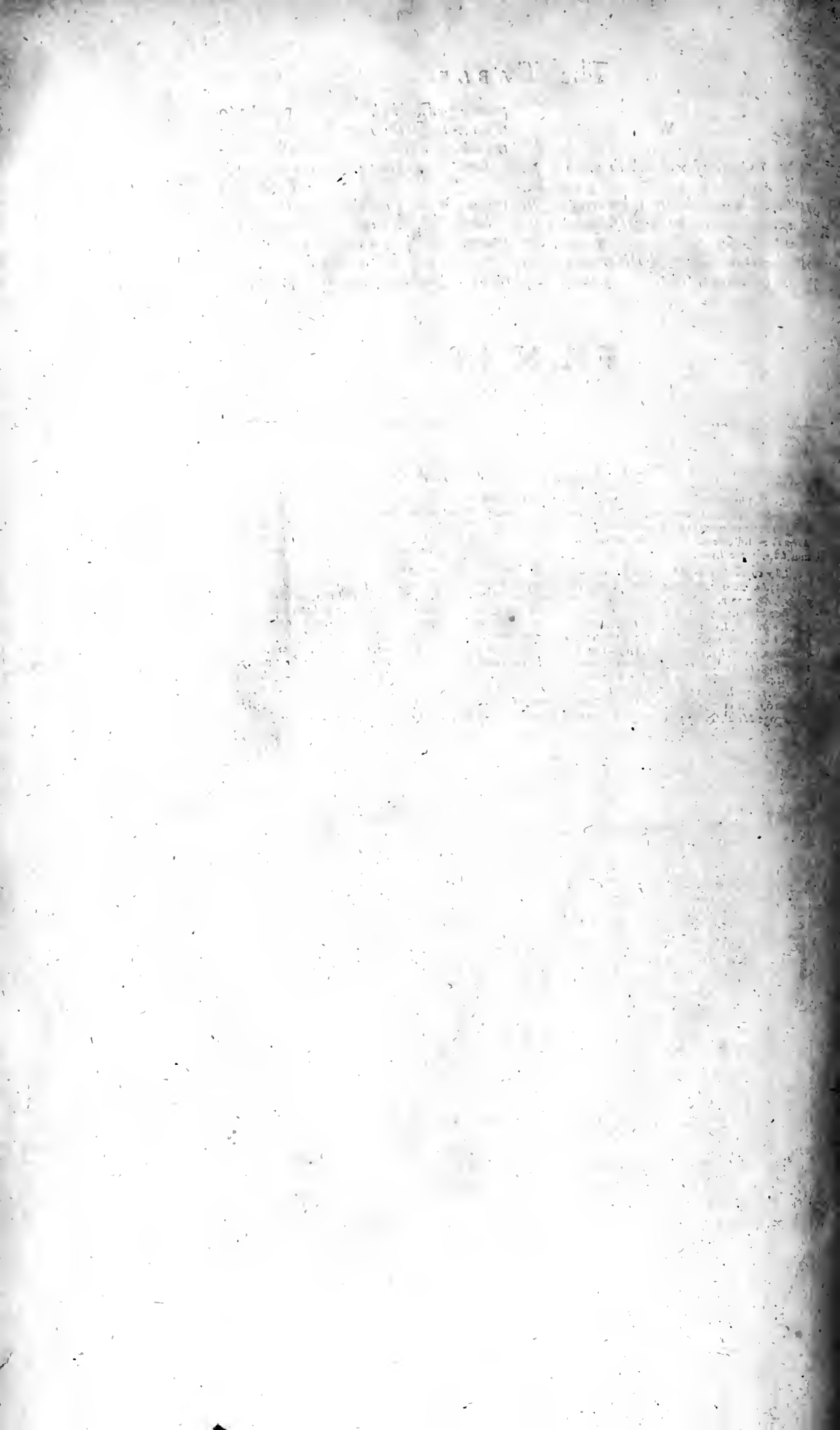
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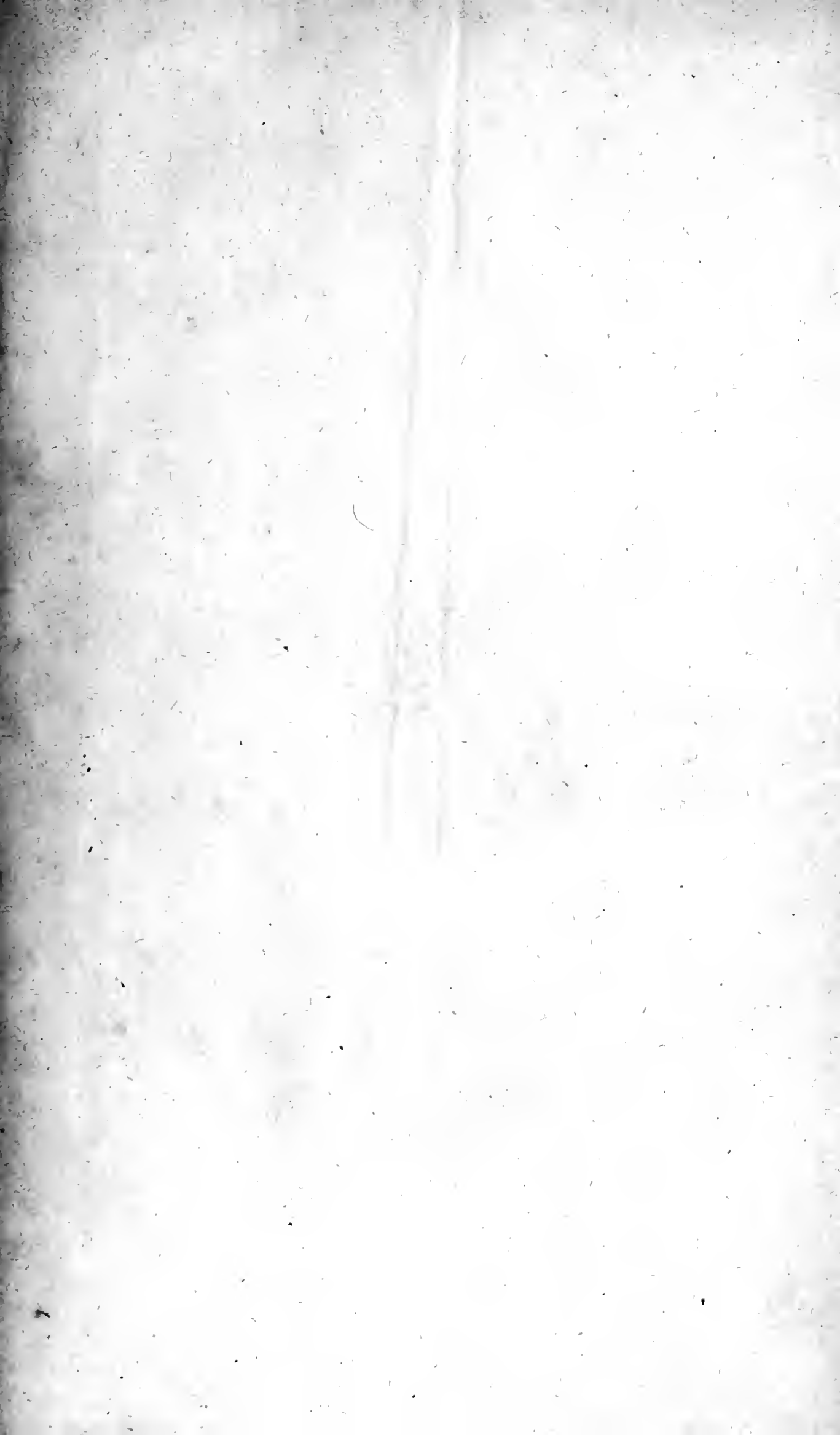
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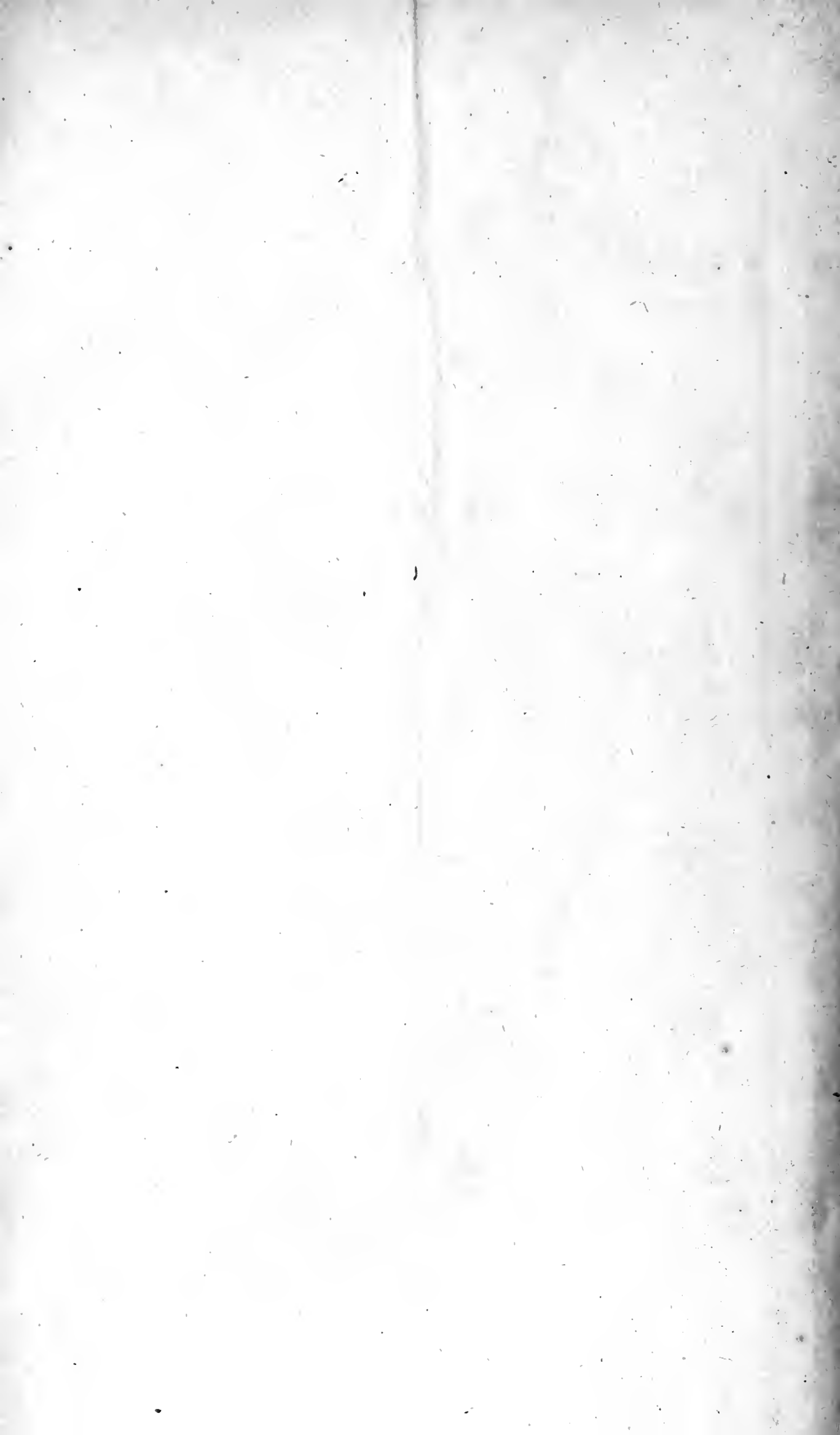
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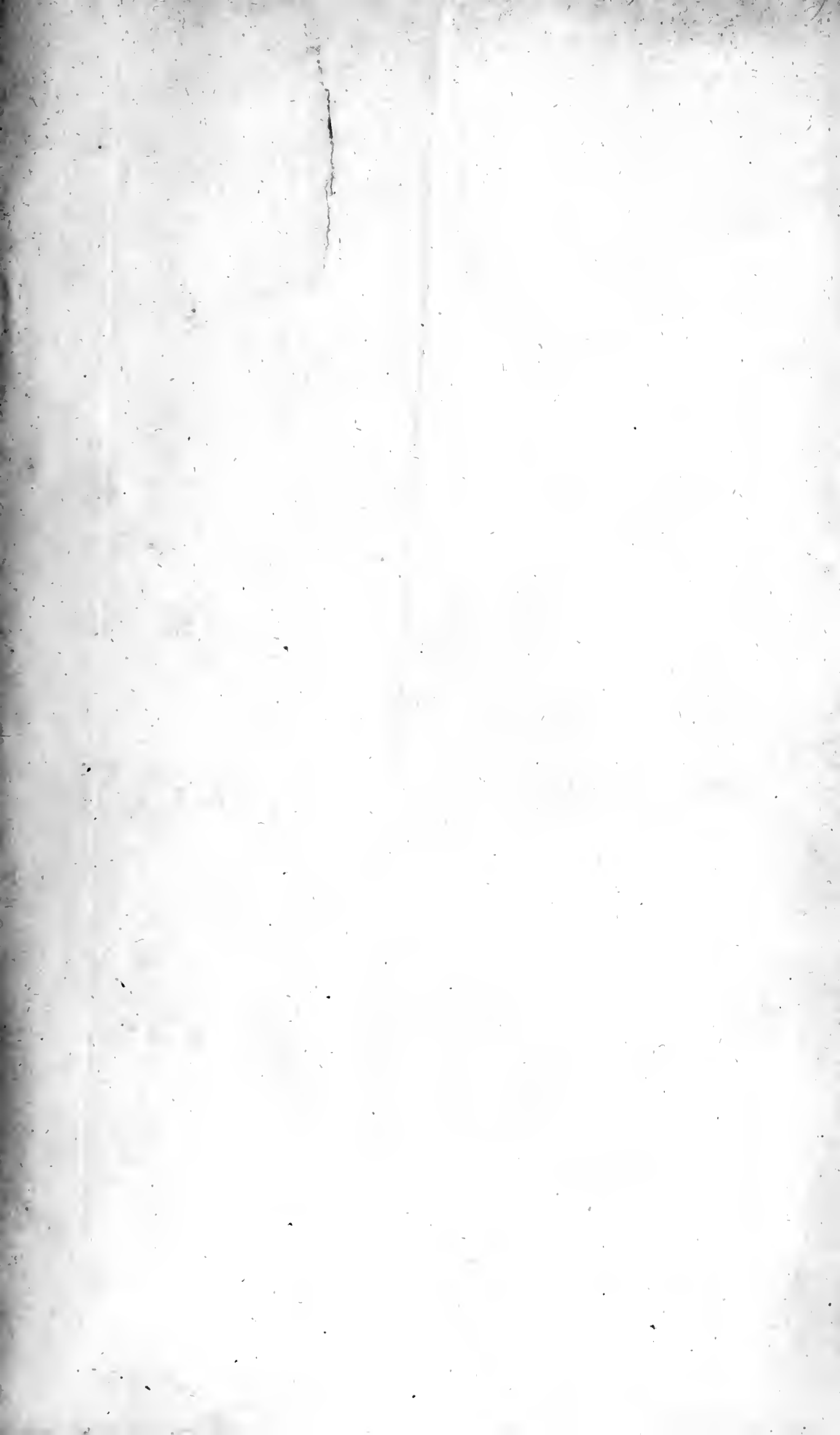
### The Authour's request to the Reader.

**T**hough I have endeavoured by an unusual inspection; to avoid all mistakes in the Press; yet some have unhappily intruded themselves, which if thy ingenuity encline thee to pardon and correct, thou shalt highly oblige me, who, what ever this may prove, intend well in it to thy benefit: Be pleased therefore to rectifie the Errata's as followeth. Page 8. lin.56 read it. p.10.l.42. r. also. p.28.l.53.r.had. l. 41. r. vivendi. p.29. l.4. r. detrahimus. l.8. r. for we. l.30. r. Sempronius. l.55. r. England, p.322. l.1. r. Christ. p.33. l.16. r. doctrinx que. p.34. l.23. r. apposite. p.35. l.8. r. *συμφορον κεινον*. l.9. r. this. l.13. r. Lordy. *ibid.* r. with which. p.39. l.22 r. servilizes. p.40. l.56. r. considerable. p.43. l.4. r. insuperability. p.46. l.11. r. need. p.48. l.54. r. Preservation. p.52. l.24. r. have. p.53. l.16. r. that. l.38. r. For p. 54. l. 46. r. as. p. 56. l.31. r. hic. p.60. l.9. r. additions. p.65. l.30. r. care. p.72. l.27. r. of. p.68. l.18. r. just. l.26. r. time to come after us. p.74. l.35. r. was. p.80. l.47. r. his. p.85. l.10. r. George the Artift. p.89. l.54. r. mettle. p.98. l.23. r. his. p.112. l.35. r. a for and. l.55. r. but. p.114. l.13. r. had. p.126. l.35. r. ingenious. p.138. l.ult. r. King. p.139. l.10. r. to the Law. p.136. l.8. r. whom. p.140. l.17. r. E.3. p.159. l.47. r. could not doc. p.164. l.34. r. thing. p.168. l.41. r. to them. p.170. l.27. r. Lawes. p.172. l.5. r. Profession. p.174. l.33. r. by. p.179. l.36. r. a. p.182. l.ult. r. dissolute. p.198. l.38. r. is. p.228. l.26. r. repressing. p.245. l.14. r. not. p.288. l.24. r. other. p.291. l.33. r. temerity. p.292. l.10. r. obstinate. p.306. l.30. r. timid. p.326. l.34. r. Ministerial, but. p.334. l.19. d. not onely. p.342. l.23. r. 6. s. 8. d. l.26. 3. s. 4. d. p.434. l.1. d. thoy. p.435. l.50. r. Mercer. p.436. l.23. r. a. p.470. l.52. d. has. p.487. l.55. r. indivisible. p.548. l.49. r. many more. p.544. l.27. r. exceed. p.537. l.27. d. to. r. in. l.51. r. *sonantes*. p.565. l.19. r. Chancellour, d. p.565. l.26. r. erectus a. p.567. r. For. p.583. l.ult. r. But. p.591. d. Ifagoge Moral. *Philosoph. in marg.* In the Introduction p.1. l.18. d. in. p.3. l.13. r. Gentile. p.4. l.14. r. Isabel.













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