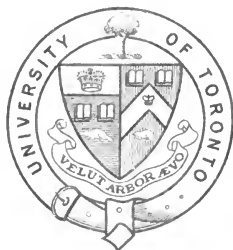




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THE  
FOURTH PART  
OF THE  
INSTITUTES  
OF THE  
LAWS OF ENGLAND.





Bestman  
1824.

THE  
FOURTH PART  
OF THE  
Institutes of the Laws of England.

CONCERNING  
THE JURISDICTION OF COURTS.

---

Proverbs 22. 28. *Ne transgrediaris antiquos terminos quos posuerunt patres tui.*

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

---

Authore EDUARDO COKE, MILITE, J. C.

*Hæc ego grandævus posui tibi, candide lector.*

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1797



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DE O,  
PATRIÆ,  
TIBI.

PROCEMIUM.

IN the two former parts of the Institutes, we have principally treated *de communibus placitis*, and of those two great pronouns [*meum & tuum*.] In the third we have handled *placita coronæ*, and criminal causes. But because *rerum ordo confunditur, si unicuique jurisdictio non seruetur*, we in this fourth and last part of the Institutes are to speak of the jurisdiction of the courts of justice within this realm.

*Jurisdictio est autoritas judicandi sive jus dicendi int' partes de actionibus personarum et rerum secundum quod deducta fuerunt in judicium per auctoritatem ordinariam seu delegatam:* And again, <sup>b</sup> *Jurisdictio est potestas de publico introducta cum necessitate juris dicendi.* It is derived of *jus*, and *ditio*, i. *potestas juris*.

<sup>c</sup> *Curia* hath two severall significations, and accordingly it is severally derived. It signifieth the kings court, where his royall person, and his honourable household doe reside, and is all one with *palatium regium*, and is derived ἀπὸ τῆς κυρίας, of the lord, because the sovereign lord resideth there. It also signifieth a tribunall, or court of justice, as here it doth, and then it is derived à cura, quia est locus, ubi publicas curas gerebant.

Of jurisdictions some be ecclesiasticall, and some civill, or temporall: of both these some be primitive, or ordinary with-

*Regula.*

*Jurisdictio quid?*  
Braet. l. 5. f. 400,  
401.  
Brit. fo. 1. & 32.  
Fleta li. 6. ca. 36.  
unde, &c.  
<sup>b</sup> Lib. 10. f. 73. a.  
En le case del  
Marshallsea.

<sup>c</sup> *Curia quid?*

*Festus.*

## A P R O E M E.

out commission; some derivative, or delegate by commission. Of all these, some be of record, and some not of record; some to enquire, hear, and determine, some to enquire only; some guided by one law, some by another; the bounds of all and every severall courts being most necessary to be known. For as the body of man is best ordered, when every particular member exerciseth his proper duty: so the body of the commonwealth is best governed when every severall court of justice executeth his proper jurisdiction. But if the eie, whose duty it is to see, the hand, to work, the feet, to go, shall usurp, and inroach one upon anothers work: as for example, the hands or feet, the office of the eie to see, and the like; these should assuredly produce disorder and darknesse, and bring the whole body out of order, and in the end to destruction. So in the common wealth (justice being the main preserver thereof) if one court should usurp, or inroach upon another, it would introduce incertainty, subvert justice, and bring all things in the end to confusion.

Now when I considered how much it would tend to the honour of the kings majesty, and of his laws, to the advancement of justice, the quiet of the subject, and generally to the good of the whole common wealth (no king in the Christian world having such tribunals, and seats of justice, as his majesty hath, which, God willing, in this treatise we shall make to appear) that all the high, honourable, venerable, and necessary tribunals, and courts of justice within his majesties realms and dominions, as well civill as ecclesiasticall, might be drawn together, as it were, in one map, or table, (which hitherto was never yet done) that the admirable benefit, beauty, and delectable variety thereof might be, as it were, *uno intuitu* beholden, and that the manifold jurisdictions of the same might be distinctly understood and observed. We having (as else where we have said) collected some materials towards the raising of this great and honourable building, and fearing that they should be of little use after my decease, being

very

In the preface to  
the first part of  
the Institutes.

## A P R O E M E.

very short, and not easily of others to be understood, if I should have left them as they were.

Out of the duty that I owe to his most excellent Majesty, and my zeal, and affection to the whole common wealth, I have adventured to break the ice herein, and to publish more at large those things which in our reading we had observed concerning jurisdiction of courts. I confesse it is a labour of as great pains, as difficulty: for as in an high and large building, he that beholds the same after it is finished, and furnished, seeth not the carriages, scaffolding, and other invisible works of labour, industry, and skill in architecture: so he that looketh on a book full of variety of important matter, especially concerning sacred laws, after it is printed and fairly bound and polished, cannot see therein the carriage of the materials, the searching, finding out, perusing, and digesting of authorities in law, rols of parliament, judicall records, warrants in law, and other invisible works, *tam laboris, quam \* ingenii*: yet I was the rather encouraged thereunto, both because I have published nothing herein, but that which is grounded upon the authorities and reason of our books, rols of parliament, and other judicall records, and especially upon the resolution of the judges of latter times upon mature deliberation in many cases never published before; wherewith I was well acquainted, and which I observed and set down in writing, while it was fresh in memory.

\* *Mirera quasi  
nervos minims.*

There be amongst the kings records divers and many rols, whereof you shall find little or no mention (that we remember) in our books, viz. *Rot. Parliament. Rot. Placitorum Coronæ, Rot. Placitorum Parliament. Rot. Claus. Rot. Brevium, Finium, Inquisitionum, Liberationum, Rot. Cartarum, Eschaetriæ, Pat. Rot. Ordinationum, Rot. Franciæ, Scotiæ, Vasconia, et Almania, Rot. Romana, Rot. Judæorum, Rot. Ragman, Brangwin, Rot. Contrariensium* (and the reason of the naming of this roll thus, was for that Thomas earl of Lancaster (a man singularly beloved) taking part with

## A P R O E M E.

with the barons against king E. 2. in hatred of the Spencers, it was not thought safe for the king, in respect of their power and greatnesse, to name them rebels or traitors, but *contrarients*) and some others. In this and other parts of our Institutes we cite divers records out of many of these rolls: Herein, as in the rest of our works, you shall observe, that in the course of our reading we took all in our way, and omitted little or nothing, for there is no knowledge (seemeth it at the first of never so little moment) but it will stand the diligent observer in steed at one time or other.

And thus for all our pains, wishing the benevolent reader all the profit, we (*favente Deo, et auspice Christo*) begin with the high, and most honourable court of parliament.

OF THE  
HIGH AND MOST HONOURABLE  
COURT OF PARLIAMENT.

---

C A P. I.

*Of what Persons this Court consisteth.*

**T**HIS court consisteth of the kings majesty sitting there as in his royall politick capacitey, and of the three estates of the realm: viz. of the lords spirituall, archbishops and bishops, being in number 24, who sit there by succession in respect of their counties, or \* baronies parcell of their bishopricks, which they hold also in their politick capacity; and every one of these when any parliament is to be holden, ought, *ex debito justitiæ*, to have a writ of summonns. The lords temporall, dukes, marquisses, earls, viscounts, and barons, who sit there by reason of their dignities which they hold by descent or creation, in number at this time 106: and likewise every one of these being of full age ought to have a writ of summonns *ex debito justitiæ*. The third estate is the commons of the realme wherof there be <sup>a</sup> knights of shires or counties, citizens of cities, and burgessees of burghes. All which are respectively elected by the shires or counties, cities and burghes, by force of the kings writ *ex debito justitiæ*, and none of them ought to be omitted: and these represent all the commons of the whole realme, and trusted for them, and are in number at this time 493.

See the first part of the Institutes, sect. 161. for the ancient and latter names of parliament, and the antiquity thereof.

*Modus tenendi, Parl. cap. 2.*

\* All the bishopricks of England be of the kings progenitors incorporation, to have succession and foundation, *tenendum per comitatam seu baroniam*, and were of ancient time donative, and these bishops are called by writ to

the parliament as other lords of parliament be. Rot. Clause 9 H. 4. m. 1. Glanvil. lib. 7. ca. 1. vers. finem. Bract. lib. 5. fo. 412. 427. a. 10 H. 4. 6. 21 E. 3. 60. 17 E. 3. 40. 48. 73. Dicitur deane of London. <sup>a</sup> 5 R. 2. cap. 4. stat. ult. so are they ranked. Prov. 11. 14. *Salus ubi multa consilia*. Rot. Parl. 7 H. 4. nu. 2. *Multorum consilia requiruntur in magnis*.

*Of what Number.*

In the beginning Romulus ordained an hundred senators for the good government of the common wealth: afterwards they grew to 300, and so many were of the house of commons in Fortescues time; who treating with what gravity statutes are made, saith; *Dum non unius, aut centum solum consultorum virorum prudentia, sed plus quam trecentorum electorum hominum, quali numero olim senatus Romanorum regeretur, ipsa statuta edita sunt.*

*Festus.*

Fortescue, cap. 18. fo. 40.

IV. INST.

*B*

*Erant*

Cicero, lib. 1.  
Epist. famil.

*Erant autem senatores majorum gentium, et senatores minorum gentium, ex patriciis et nobilibus electi, hii ex populo.*

Rot. Parl. 7 H. 5.

[ 2 ]

Rot. Parl.  
50 E. 3. Bonum  
Parliamentum.

And it is observed that when there is best appearance, there is the best successe in parliament. At the parliament holden in the seventh year of the reign of H. 5. holden before the duke of Bedford, gardian of England, of the lords spirituall and temporall, there appeared but thirty in all: at which parliament there was but one act of parliament passed, and that of no great weight. In anno 50 E. 3. all the lords appeared in person, and not one by proxie. At which parliament, as it appeareth in the parliament roll, so many excellent things were sped and done, as it was called *bonum parliamentum*.

\* 14 H. 8. 3.  
per Fineux Hol-  
lenf. chron.  
34 H. 8. 956,  
957. Dier  
38 H. 8. 60, 61.  
2 & 3 E. 6. ca. 36.  
a 28 E. 3. ca. 6.  
Regist. 177.  
F. N. B. 164. k.  
Pl. R. 232.  
Stanf. Pl.  
Cor. 49.  
b For this dis-  
tinction, see the  
second part of  
the Institutes,  
Mag. Cart. verb.  
[per pares.]  
to. 29. a.

And the king and these three estates \* are the great corporation or body politick of the kingdome: and do sit in two houses, viz. the king and lords in one house, called the lords house, and the knights, citizens and burgeses in another house, called the house of commons.

\* For this word [commons] see the statute of 28 E. 3. whereby it is provided that the coroners of counties shall be chosen in full county *per les commons de mesme les counties*. Commons are in legall understanding taken for the frank tenants or freeholders of the counties. <sup>b</sup> And whosoever is not a lord of parliament and of the lords house, is of the house of the commons either in person, or by representation, partly coagmentative, and partly representative.

But of ancient time both houses sat together. In 8 H. 4. an act of parliament concerning the succession of the crown intailed to H. 4. whereunto all the lords severally sealed, and Sir John Tebetot the speaker in the name of the commons, put to his seale.

Note, that in the letters to the pope by all the nobility of England at the parliament holden in 28 E. 1. the conclusion is this, *In cuius rei testimonium sigilla nostra tam pro nobis quam pro tota communitate præd. regni Angliæ præsentib. sunt appensa*. Hereby I gather, that at this time the commons had no speaker, but both houses sat together, for if the commons had then had a speaker, they would have appointed him to have put to his seale for them, as in 8 H. 4. they did. Certain it is, that at the first both houses sat together, as it appeareth in the treatise *De modo tenendi parliamentum*. Vide Rot. Parl. 5 E. 3. nu. 3. and in other places in the same roll, and in 6 E. 3. in divers places it appeareth that the lords and commons sat together, and that the commons had then no continuall speaker, but after consultation had, they agreed upon some one or more of them that had greatest aptitude for the present businessse to deliver their resolution, which wrought great delaies of proceeding, and thereupon the houses were divided, and the surest mark of the time of the division of them is, when the house of commons at the first had a continuall speaker, as at this day it hath.

Of ancient time  
both houses sat  
together.

Rot. Parl. 50 E. 3.  
nu. 8.

After the division the commons sat in the chapter house of the abbot of Westminster.

And this court is aptly resembled to a clock which hath within it many wheels, and many motions, all as well the lesser as the greater must move: but after their proper manner, place, and motion;

## Cap. 1. The High Court of Parliament.

2

tion; if the motion of the lesser be hindered, it will hinder the motion of the greater.

### The Names.

This court is called by severall names, as anciently [*witenege mote*] *conventus sapientum; parliamentum*, of which we have spoken in another place; *comitia*, à *corundo*, quia *coerunt ibi deliberaturi de* <sup>a</sup> *arduis et urgentibus negotiis regni, et statum, et defensionem regni, et ecclesiæ Anglicanæ concernentibus.* <sup>b</sup> *Commune concilium regni,* <sup>c</sup> *generale concilium regni, et* <sup>d</sup> *concilium regni, and assisa generalis, and assisa ab assidendo, as assisa de Clarendon 22 H. 2.*

Upon some of the records and rols of the parliament it is written,

*Perlege quæ regni clarissima conciliorum  
Sunt monumenta, aliter nil præter somnia cernis.*

<sup>e</sup> And Virgil writing of the parliament of the gods used the same word of *concilium* in the same sense.

*Panditur interea domus omnipotentis Olympi,  
Conciliumq; vocat diuum pater, atq; hominum rex, &c.*

Tacitus in *vita Agricolæ* in the time of the Britons calleth it *conventus*, à *conveniundo*.

Ingulphus, who died before 1109, saith, *Rex Eldredus convocavit magnates, episcopos, proceres, et optimates ad tractandum de publicis negotiis regni.*

Tully calleth it, *Conseffum senatorum*, à *confidendo*.

### Parliaments in Scripture.

And the like parliaments have been holden in Israel, as it appeareth in the holy history. *Convocavit David omnes principes Israel, duces, tribunes, et præpositos turmarum, tribunos, centuriones, et qui præerant substantiis et possessionibus regis, filiosque suos, cum eunuchis, et potentes, et robustissimos quosque in exercitu Jerusalem.* And when they were all assembled, the king himself shewed the cause of calling that parliament. *Audite me fratres mei et populus meus, cogitavi ut ædificarem domum in qua requiesceret arca fœderis domini, et ad scabellum pedum Dei nostri, et ad ædificandum omnia præparavi, &c.*

<sup>b</sup> And the like parliament did king Solomon son of king David hold. *Congregavit Solomon majores natu Israel, et cunctos principes, tribunos, et capita familiarum de filiis Israel in Jerusalem, &c.* <sup>c</sup> There was also a parliament holden in the time of the judges. *Convenit universus Israel ad civitatem quasi homo unus eadem mente, et uno consilio, &c.* And that parliament builded on such unity, had blessed successe.

Of this court of parliament the king is *caput, principium et finis*. And as in the naturall body when all the sinews being joyned in the head do join their forces together for the strengthening of the body, there is *ultimum potentia*: so in the politike body when the king and the lords spirituall and temporall, knights, citizens, and burgeses, are all by the kings command assembled and joyned to-

See the first part of the Institutes, sect. 164. ubi supra.

<sup>a</sup> Breve parliam.  
<sup>b</sup> Brevia originalia de vasto, &c.

<sup>c</sup> W. 1. in exordio.

<sup>d</sup> Glanvil, lib. 8. cap. 10. & lib. 13. cap. 32. Lib. 9. cap. 10. Bracton lib. 3. tract. 2. cap. 3. <sup>e</sup> Æneidos 10. concilium deorum.

[ 3 ]  
34 H. 6. 40. a. Prifot.

1 Chron. ca. 28.

*Preparation.*  
Actus activorum sunt in patiente dispositi, saith the philosopher.

<sup>b</sup> 2 Chron. ca. 5. 2.

<sup>c</sup> Judges 20. 11. Conventus.

Modus tenend. parl.



gether under the head in consultation for the common good of the whole realm, there is *ultimum sapientie*.

*What Properties a Parliament Man should have.*

Rot. parl. anno  
3 H. 6. nu. 3.

It appeareth in a parliament roll, that the parliament being, as hath been said, called *commune concilium*, every member of the house being a counsellor, should have three properties of the elephant; first, that he hath no gall: secondly, that he is inflexible, and cannot bow: thirdly, that he is of a most ripe and perfect memory: which properties, as there it is said, ought to be in every member of the great councill of parliament. First, to be without gall, that is, without malice, rancor, heat, and envy, *in elephante melancholia transit in nutrimentum corporis*. Every gallish inclination (if any were) should tend to the good of the whole body, the common wealth. Secondly, that he be constant, inflexible, and not to be bowed, or turned from the right, either for fear, reward, or favour, nor in judgement respect any person. Thirdly, of a ripe memory, that they remembring perils past, might prevent dangers to come, as in that roll of parliament it appeareth. Whereunto we will add two other properties of the elephant, the one, that though they be *maximæ virtutis, et maximi intellectus*, of greatest strength, and understanding, *tamen gregatim semper incedant*, yet they are fociable, and goe in companies; for *animalia gregalia non sunt nociva, sed animalia solivaga sunt nociva*. Sociable creatures that goe in flocks or heards are not hurtfull, as deer, sheep, &c. but beasts that walk solely, or singularly, as bears, foxes, &c. are dangerous and hurtfull. The other, that the elephant is *philanthropos, homini erranti viam ostendit*, and these properties ought every parliament man to have.

Virg. Georg.  
Illum non po-  
puli fasces, non  
purpura regum  
Flexit.

Aristotle. Bar-  
tholomæus.

\* [ 4 ]

*Of Records of Parliament.*

<sup>a</sup> Mich. 5 E. 1.  
in communi  
banco. Rot. 100.  
Linc. Pasch.  
19 E. 1. Rot.  
145. Abbot de  
Seiby. Pasch.  
28 E. 1. coram  
rege rot. between  
the King and  
Venables in  
Quare Impedit.  
Mich. 3 E. 2.  
coram rege rot. 6.  
and many others  
where the causes  
and reasons, pro  
et contra have  
been set down,  
&c. 6 E. 3. fo. 5.  
per Herle.  
3 E. 4. 2. b. 7. z  
19 H. 6. 63. a.  
per Fray.  
22 E. 4. 18. per  
time, &c.

The reason wherefore the records of parliament have been so highly extolled, is, for that therein is set down in cases of difficulty, not only the judgment, or resolution, but the reasons, and causes of the same by so great advice. <sup>a</sup> It is true \* that of ancient time in judgements at the common law, in cases of difficulties either criminall, or civill, the reasons and causes of the judgement were set down in the record, and so it continued in the reigns of E. 1. and most part of E. 2. and then there was no need of reports: but in the reign of E. 3. (when the law was in his height) the causes and reasons of judgements, in respect of the multitude of them are not set down in the record, but then the great casuists and reporters of cases (certain grave and sad men) published the cases, and the reasons and causes of the judgements or resolutions, which from the beginning of the reign of E. 3. and since we have in print. But these also, though of great credit, and excellent use in their kind, yet far underneath the authority of the parliament rolls, reporting the acts, judgements, and resolutions of that highest court.

Hussey. rot. par. 19 E. 1. rot. 12. Margery Weylands case. Nota quia op-

*The Summons of Parliament.*

The king *de advisamento concilii* (for so be the words of the writ of parliament) resolving to have a parliament, doth out of the court of chancery send out writs of summons at the least forty days before the parliament begin: every lord of parliament, either spirituall, as archbishops, and bishops, or temporall, as dukes, marquisses, earls, viscounts and barons; peers of the realm, and lords of parliament ought to have severall writs of summons.

Prov. 13. 16. Sapiens omnia agit cum consilio. Vide infra. These writs of summons you shall find in former times in the close rol, for they are not in

the Register, and in that rol are the writs *De expensis militum, civium et burgenfium, et procuratorum cleri*, and these are in the Register also.

*Temporall Assistants.*

And all the judges of the realm, barons of the exchequer of the coif, the kings learned counsell, \* and the civilians masters of the chancery are called to give their assistance and attendance in the upper house of parliament, but they have no voices in parliament; and their writs differ from the writs to the barons: for their writs be, *Quodd interstitis nobiscum et cum cæteris de consilio nostro* (and sometimes *nobiscum* only) *super præmissis tractaturi, vestrumque consilium impensuri*; but the writ to the barons is, *Quodd interstitis cum prælatis, magnatibus et proceribus super dictis negotiis tractaturi, vestrumque consilium impensuri*.

\* Regist. 261. F. N. B. 229. a. ib. called attendants.

*Spirituell Assistants. Procuratores Cleri.*

And in every writ of summons to the bishops, there is a clause requiring them to summon these persons to appear personally at the parliament, which is in these words, *Præmonientes decanum et capitulum ecclesiæ vestre Norwicensis, ac archidiaconos totumque clerum vestre diocesis. quodd iidem decani et archidiaconi in propriis personis suis, ac dictum capitulum per unum, idemque clerus per duos procuratores idoneos plenam et sufficientem potestatem ab ipsis capitulo et clero divisim habentes prædicti die et loco personaliter interfint ad consentiendum hiis quæ tunc ibidem de communi consilio dicti regni nostri divina favente clementia contigerit ordinari*: and the bishop under his seal make certificate accordingly. And these are called *procuratores cleri*, and many times have appeared in parliament as spirituall assistants, to consider, consult, and consent, *ut supra*, but had never voices there, because they were no lords of parliament. Some have thought, that because the clergy were not party to the election of the knights, citizens, and burgesses, that these *procuratores cleri* were appointed to give their consent for them, but then they should have had voices, which questionlesse they never had. And by the words of the writ it was to consent to those things which by the common council of the realm should happen to be ordained, so as their consent was only to such things as were ordained *de communi concilio regni*, and that there might be an act of parliament without them: and in many cases multitudes are bound by acts of parliament which are not parties to the elections of knights, citizens, and burgesses,

Mod. tenend. parl. ca. 2. Rot. Claus. 8 E. 2. m. 15. Dors. lb. 5. E. 2. m. 15. lb. 11 E. 3. parti. m. 1. lb. 22 E. 3. part 2. m. 3. lb. 36 E. 3. m. 16. Rot. par. 18 E. 3. nu. 1. 3 R. 2. 11 R. 2. 2: R. 2. Procuratores Cleri. reg. 261. a. F. N. B. 229. a. Procuratores de Clero. In fascicul. literarum procurat. &c. 13 H. 4. & 5 H. 5. See hereafter tit. Proxies.

as all they that have no freehold, or have freehold in auncient demefne, and all women having freehold, or no freehold, and men within the age of one and twenty years, &c. And it appeareth by the treatise *de modo tenendi parliamenti*, &c. that the proctors of the clergy should appear, *cum presentia eorum sit necessaria* (which proveth that they were voicelesse assistants only) and having no voices, and so many learned bishops having voices, their presence is not now holden necessary.

It is to be observed that in the writs of parliaments to the bishops (being lords ecclesiasticall secular) they are named by their Christian names and name of their office; as, *Rex, &c. reverendissimo in Christo patri Johanni eadem gratia archiepiscopo Cantuar.* or *rex, &c. reverendo in Christo patri Johanni episcopo Norwicensi. &c.* But if the surname be added it makes not the writ vicious.

But the abbots and priors being lords of parliament, religious and regular, might be named by the name of their office only, as *Rex dilecto sibi in Christo abbati Sancti Edmondi de Bury, &c.*

A duke, a marquise, an earl, and viscount are regularly named by their Christian names, and the names of their dignities, and rarely (yet sometimes) by their surnames; nor are they named by their knighthood, if they have any, but rarely. If a baron be a knight, he is regularly named by his Christian name, surname, and by *miles* or *chevalier*, and his barony. If he be no knight, then he is named by his Christian name, and the name of his barony; but if the surname be added, it maketh not the writ vicious. And this holdeth as well where the baron taketh his dignity of a place, as where he taketh it of his surname; but where the surname is dignified, there to make a formall writ, it is good to add the place of his barony.

Of ancient time the temporall lords of parliament were commanded by the kings writ to appear, *In fide et homagio, quibus nobis tenemini*, and in the reign of E. 3. *in fide et ligeancia*, and sometime, *in fide et homagio*, but at this day constantly *in fide et ligeancia*, because at this day there are no feodall baronies, in respect whereof homage is to be done, which in 21 E. 3. was the true cause of this alteration.

The ecclesiasticall barons secular or regular were commanded by the kings writ to be present, *in fide et dilectione, quibus nobis tenemini*, as the bishops are at this day.

We find in the rols of parliament a writ in anno 23 R. 2. and successively in every parliament untill and in the fifth year of H. 6. amongst the barons that came to the parliament, it is said *magistro Thome de la Warre*, and some say that the addition of *magister*, was to distinguish him from them that were knights: as in the roll of 1 E. 4. amongst the barons it is said, *Johanni de Audely armigero*, for that the rest of the barons (saving himself) and the lord Clynton were *chivaliers*. And others doe hold that he was of the clergy before the dignity descended to him, and in that respect he was called *magister*.

In the roll of 5 H. 5. and in many succeeding rols we find *baro* applied to the lord of Greystock, as *Radulpho baroni de Greystock*, and *Johanni baroni de Greystock*, and to few other.

In many rols we find the barons that were knights, named *chivaliers*, wherein we observed, that they liked to be called *chivaliers* rather

12 E. 3. bre'  
480. 31 E. 3.  
bre' 342. 32 E. 3.  
Bre' 291.  
7 H. 6. 27.  
21 E. 4. 15.  
For these regular lords of parliament, and when they ceased, see hereafter, p. 1.  
7 E. 4. bre' 163.  
7 H. 6. 29.  
11 E. 3. bre' 473.

11 E. 3. tit. bre.  
473.

rather then *milites* after the legall word (for *eques auratus* is not used in law.) For example, in anno 1 E. 4. *Edmundo Grey de Ruthin chivalier*, &c. and under subscribed thus, *milites omnes, exceptis Johanne de Audley armigero, et Johanne domino de Clynton*. And in 3 E. 4. all the barons (saving the lord Scales) have the additions of *chivaliers*, and subscribed thus, *Equites aurati omnes prater dominum Scales*. And in 7 E. 4. all the barons have the addition of *chivaliers*, and therefore subscribed thus, *equites aurati omnes*. Hereby and by many others it appeareth that the barons, if they were knights, were so named; and that they were not named *chivaliers* unless they were knights. But in the reign of H. 8. and since, barons are named *chivaliers* in the writ of summons, though they be no knights.

[ 6 ]

Baner legally *banerium*, *vexillum*, *banerher*, unde *banerherius* or *banerius*, i. *baro*, *vexillarius major*, et *banerettus* a diminutive of *banerius*, *vexillarius minor*. A baron is called *banerherius* or *banerius* of the banner, (being the ensigne of his honour) serveth for a guide and direction: so the baron observing the end of his nobility should be an example and guide to others, as well in war as in peace, in all notable habilites and vertues, and so of the baneret: both the baron and the baneret hath one kinde of baner: for the baneret is created in the field in the kings host, and (amongst other things) by cutting the sharp point of his pennon, and making it a banner. i. *vexillum baronis*: so as the baneret hath the baner, but not the dignity of the baron. And this doth notably appear by the case in 22 E. 3. the very words of which resolution I will first set downe, and then the effect. *Un fuit challengee pur ceo que il fuit a baner, et non allocatur: car fil soit a baner, et ne tient per barony, il ferra in assise*. That is, one was challenged because he had the banner and was a baneret, et non allocatur by the rule of the court, because albeit he had the banner, yet ne tient per barony, that is, he was no baron of parliament.

De Baneretto, et unde.

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

*Nota seriem temporis*, John Coupland a valiant leader in anno 20 E. 3. near Durham, at Nevils Castle, took in aperto prelio, David the second, king of Scots; for which king E. 3. created him knight baneret, and gave him lands and livings, and in 22 E. 3. the case in law fell out.

For this order of knighthood see Camdens Britannia 124, and for this case of Sir John Coupland, Camden in Linc. pag. 618. See 35 H. 6. fo. 46. There the challenge was that he was a baneret a lord of parliament. See 48 E. 3. 30. 48 Ass. pl. ultimo. Lib. 6. fo. 55. But Sir John Coupland was not the first baneret that England had, as \* some have thought, and was with us before the reign of E. 3. for in pelle exitus anno 8 E. 2. in scaccario *Johannes de Cromlewele banerettus*. And ex compoto garderobe anno 9 E. 2. *Nicholaus de Gray* was declared by writ of E. 2. to be de familia regis tanquam banerettus, both for his precedency and fallery.

\* Speed.  
See hereafter, pag.

For summoning of the commons a writ goeth out to the lord warden of the Cinque Ports for the election of the barons of the same, who in law are burgeses, and to every sheriffe of 52 counties in England and Wales for the choise and election of knights, citizens, and burgeses, within every of their counties respectively.

*The Beginning of the Parliament.*

Rot. parl. 3 H. 6.  
nu. 1.

H. 6. sat in parliament when he was 3 or 4 years old, and so did he in the 6 and 8 years of his reign. The royall person represented two wayes.

2 Rot. pat. 2n.

24 E. 3. m. 18.

The patent of the guardianship.

See Rot. parl.  
25 E. 3. nu. 10.

\* [ 7 ]

Rot. parl. 5 H. 5.  
nu. 1.

† 8 H. 5 cap. 1.  
in print.

*Nota, Quia in presentia majoris cessat potestas minoris* And the letters patents of this office is with a *quamdiu in partibus transmarinis moram fecerimus, &c. ut sup.* Rot. parl. 3 E. 4.

2 Rot. 1. 13. 14. Like letters patents to the earl of Warw. in the same parliament.  
nu. 15.

Parl. 28 Eliz. See an excellent president hereof, Rot. claus. anno 8 E. 2. 7. Sept. m. 26. & 1 pars pat. an. 8 E. 2. m. 26. with a commandement of attendance. Simile 10 E. 2. 2 part pat. m. 20. 13 E. 3. nu. 1. stat. 2 in absentia gardiani Anglie,

At the reterne of the writs the parliament cannot begin but by the royall presence of the king either in person or by representation. By representation two wayes, either by a gardian of England by letters patents under the great seale when the king is *in remotis* out of the realme: or by commission under the great seale of England to certain lords of parliament representing the person of the king, he being within the realme in respect of some infirmity.

\* The patent of the office of a gardien of England reciteth his speedy going beyond sea, or *in remotis*, or urgent occasions and the cause thereof. *Nos quod pax nostra tam in nostra absentia quam presentia inviolabiliter observetur, et quod fiat communis justitia singulis conquerentibus in suis actionibus et querelis, de fidelitate dilecti et fidelis nostri Edwardi ducis Cornubiæ, et comitis Cestrice filii nostri primogeniti plenarie confidentes, constituimus ipsum eiusdem dicti regni nostri ac locum nostrum tenent' in eodem regno quam diu in dictis transmarinis partibus moram fecerimus, vel donec inde aliud duxerimus.* (And this is that *capitalis iusticiarius* mentioned in Mag. Carta, cap. 11. when the king is *extra regnum*) with a clause of assistance. But yet if any parliament is to be holden there must be a speciall commission to the gardien, to begin the parliament, and to proceed therein: but the *teste* of the writ of summons shall be in the gardiens name.

\* A parliament was holden *in quinti quinto*, viz. anno 5 H. 5. before John duke of Bedford, brother and lieutenant to the king, and gardien of England, and was summoned under the *teste* of the gardien or lieutenant. [† It is enacted, that if the king being beyond the seas, cause to summon a parliament in this realme, by his writ under the *teste* of his lieutenant: and after such summons of parliament gone out of the chancery, the king arriveth in this realm: that for such arrivall of the same king such parliament shall not be dissolved, but the parliament shall proceed without new summons.]

\* In 3 E. 4. a parliament was begun in the presence of the king and prorogued untill a further day: and then William archbishop of York the kings commissary by letters patents held the same parliament and adjourned the same, &c. The cause of the said prorogation was, for that the king was enforced to go in person to Gloucestershire to repress a rebellion there.

As hath been said, the kings person may be represented by commission under the great seale to certain lords of parliament authorizing them to begin the parliament, and both the gardien and such commissioners do sit on a forme placed neer to the degrees that go up to the cloth of estate.

And in 28 Eliz. the queen by her commission under the great seale bearing date the 28 of October anno 28, reciting that she for urgent occasions could not be present in her royall person, did authorize John Whitgift archbishop of Canterbury, William baron of Burghley lord treasurer of England, and Henry earle of Derby lord steward of the household then being, *ad inchoandum, &c. tenendum, &c. et ad procedendum, &c. et ad faciend' omnia et singula, &c. nec non ad parlamentum adjuvandum et prorogandum, &c.* which

## Cap. 1. The High Court of Parliament.

7

which commission is entred in *hæc verba* in the Journall Book in the lords house, and in the upper part of the page above the beginning of the commission is written, *domina regina representatur per commissionarios, viz. &c.* the 29 day of October, the said commissioners sitting on a forme before the cloth of estate, after the commission read, adjourned the parliament untill the 15 of February following, &c. And this parliament began the 29 of October, and not the 15 of February, wherein the printed book is mistaken, for then the parliament begun, and was prorogued.

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

But when the parliament shall not begin at the day of the retorne, but for certaine urgent causes then to be prorogued untill another day, and then to be holden before the king, there is a ready way for the effecting thereof, and that is by writ patent under the whole great seale, reciting the writ of summons, and to bear *teste* before the retorne thereof, and signed above with the kings signe manuell, and directed *prælati, magnatibus, proceribus hujus regni, ac militibus, civibus, et burghensibus convocatis et electis ad hoc parlamentum pro quibusdam causis et considerationibus, &c.* to prorogue the parliament to a certaine day, and at the retorne of the summons, this writ being read in the upper house before certaine of the lords of parliament, and of the commons there assembled, and prorogation made accordingly, the parliament is prorogued: and this was so done in anno 1 Eliz. the retorne of the summons of parliament being the 9 of October, and by such a writ it was prorogued untill the 25 of February following, at what time in judgement of law the parliament did begin, and was holden, and not on the 9 of October, as it was adjudged. A like prorogation was made by the queens like writ of the parliament holden anno 5 Eliz. at both which dayes of prorogation, the parliament did hold before the queen her selfe, untill the dissolution of the same, which writs are entred in *hæc verba* in the Journall Book.

Prorogued by writ patent.

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

### *What is to be done the first Day of Parliament.*

On the first day of the parliament, the king or most commonly the lord chancellor or keeper of the great seale in the presence of the lords and commons, do shew the causes of the calling of his high court of parliament, but the king \* may appoint any other: as many times, the chiefe justice of England, and sometime <sup>a</sup> some other, as may appear in the parliament rols, only one I will transcribe.

<sup>b</sup> At this day Sir Henry Green the kings chiefe justice (although the lord chancellor were present) in the presence of the king, the lords and commons, declared the causes of the parliament <sup>c</sup> in English, viz. For redresse of matters touching the church, for observation of the peace, for the affairs of Scotland, for the inhauncing of the price of wooll, &c. <sup>d</sup> But at the next meeting Simon Langham bishop of Ely shewed the causes of parliament, and in

\*[ 8 ]

22 E. 3. Sir William Thorpe chiefe justice.  
2 17 E. 3. nu. 7.  
8. Sir Bart. de Burgherft.  
25 E. 3. nu. 16.  
27 E. 3. nu. 2.  
28 E. 3. nu. 1.  
29 E. 3. nu. 1.  
Sir William Sharshull chiefe just. 45 E. 3. nu. 8. Sir Robert Thorpe chiefe justice 47 E. 3. nu. 2. Sir Jo.

Knivet chiefe justice. 50 E. 3. nu. 2. Sir Jo. Knivet chief justice. 51 E. 3. nu. 13. by Sir Robert Ashton the kings chamberlain. <sup>b</sup> Parl. 36 E. 3. nu. 1. Simon Langham b. of Ely chancellor. <sup>c</sup> And so was it done ever after. 5 R. 2. nu. 2. The causes of parliament were in ancient time shewed in the chamber de point, or St. Edwards chamber. <sup>d</sup> Parlia. 27. E. 3. nu. 1.

the

the end, he did in the kings name require the commons to make choice of a learned and discreet man to be their speaker: and when a bishop was lord chancellor, he took a text of scripture which he repeated in Latin, and discoursed upon the same. But when a judge was lord chancellor, he took no text, but in manner of an oration shewed summarily the causes of the parliament.

### *The Election of the Speaker.*

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

But sicknesse is no cause to remove any knight, citizen or burgesse of the house of commons: so note a diversity between the speaker, and any other of the house of commons, and this diversity being not observed begat an error by some opinion in 38 H. 8. tit. 4. Parliament, Brook 7. for continuall experience is to the contrary.

### *The Presentment of the Speaker.*

When the commons have chosen their speaker, the person elected standing in his place disabling himselfe to undergoe so weighty a charge, as in his discretion he thinks fit, desires them to proceed to a new choise: which being denied, and he set in the chaire, then he prayeth them to give him leave, that he may disable himselfe to the king: after this they present him to the king in the lords house; where after he hath disabled himselfe to speak before the king, and for the whole body of the realme, and made humble suit to the king, left by his insufficiency the businesse of the realme may be hindred, to be discharged, and a more sufficient man to be chosen: if he be allowed by his majestie, then he maketh a protestation consisting on three parts: first, that the commons in this parliament may have free speech, as of right and by custome they have used, and all their ancient and just priviledges and liberties allowed to them. Secondly, that in any thing he shall deliver in the name of the commons (if he shall commit any error) no fault may be arrested to the commons, and that he may resort again to the commons for declaration of their true intent, and that his error may be pardoned. The third is, that as often as

necessity

Sicknesse cause  
to remove the  
speaker.

1 H. 4. nu. 62.

63. Rot. parl.

1 H. 5. nu. 9,

10, 11.

Rot. parl. 15 H.

6. nu. 10. & 27.

Sickness no  
cause to remove  
a member of the  
house of com-  
mons.

38 H. 8. parl.

Br. 7.

What the spea-  
ker shall do  
when he is  
chosen.

The king may  
allow of his ex-  
cuse, and dis-  
allow him, as  
Sir John Pop-  
ham was.

28 H. 6. nu. 6.

The protestation  
of the speaker.



necessity for his majesties service, and the good of the common wealth shall require, he may by the direction of the house of commons have access to his royall person.

\* This is in the parliament rols called a protestation in respect of the first part, the nature whereof is to be an exclusion of a conclusion, and herein that the house of commons be not concluded to speak only of those things which the king or lord chancellor, &c. hath delivered to them to be the causes of the calling of this court of parliament, but in a parliamentary course of all other arduous and urgent businesse, which principally consist in these five branches, as it appeareth in the writs of summons to the lords spirituall and temporall, viz.

Rot. par. 1. R.  
2. nu. 15. &c.  
Rot. Parl. 2 H.  
4. nu. 8. Sir  
Arnold Savage  
speaker. 5 H. 4.  
nu. 8. 7 H. 4.  
nu. 11. Sir Jo.  
Tibetot speaker.  
and ib d. nu. 30.  
1 H. 4. nu. 7.  
2 H. 5. nu. 10.  
a protestation.

And so in succeeding times called

### The Matters of Parliament.

1. Touching the king. 2. The state of the kingdome of England. 3. The defence of the kingdome. 4. \* The state of the church of England: and 5. The defence of the same church. And this appeareth by expresse words in the parliament writ in these words: *Pro quibusdam arduis urgentibus negotiis, nos, statum, et defensionem regni nostri Angliæ, et ecclesiæ Anglicanæ concernentibus quoddam parlamentum nostrum, &c. teneri ordinavimus, &c.* And these words [the state and defence of the kingdome] are large words, and include the rest. And though the state and defence of the church of England be last named in the writ, yet is it first in intention, as it appeareth by the title of every parliament: as for example, <sup>a</sup> To the honour of God and of holy church, and quietnesse of the people, &c.

Rot. parl. 9 H.  
4. An act intituled, *Indemnité des seigneurs et commons*, not printed.

\* See W. 1. anno 3 E. 1. in the preamble, the state of the realme, and of holy church. And the 2 part of the Institutes, W. 1. cap. 1. and in the preamble.  
<sup>a</sup> 36 E. 3.  
50 E. 3. &c.

Now for as much as divers lawes and statutes have been enacted and provided for these ends aforesaid, and that divers mischiefs in particular, and divers grievances in generall concerning the honour and safety of the king, the state and defence of the kingdome and of the church of England might be prevented, an excellent law was made anno 36 E. 3. which being applied to the said writs of parliament doth in few and effectuall words set downe the true subject of a parliament in these words. For the maintenance of the said articles and statutes, and redresse of divers mischiefs and grievances which daily happen, a parliament shall be holden every year, as another time was ordained by a \* statute.

36 E. 3. cap. 10.  
Parliaments ought to be holden once in a year.  
\* 4 E. 3. cap. 14. Inter leg.  
Edgar cap. 5.

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

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

Tacitus in vita Agricolæ, pag. 306.

\* Nota, Commune concilium. Conventus.

And

4 H. S. c. 8.

\* Neq; timida  
probitas, neque  
improba forti-  
tudo rei publicæ  
est utilis.

The like writ to  
all the other  
counties, saving  
in Wales they  
have but one  
knight and one  
burgesse.

[ 10 ]

a Nota, ad fa-  
ciendum et con-  
sentiendum.

And every city  
two citizens, and  
out of every  
burgh two bur-  
gesses.

b Nota, super ne-  
gotiis antedictis.

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

And this doth not only appear by the writs directed to the lords of parliament, but by the writs for election of the commons. For example. The writ to the sheriffe of Norfolk for election of the knights, citizens, and burgesses within that county is, *Rex vicecomiti Norff. salutem. Quia nos de avifamento et assensu concilii nostri pro quibusdam arduis et urgentibus negotiis, nos, statum, et defensionem regni nostri Angliæ, et ecclesiæ Anglicanæ concernentibus quoddam parlamentum nostrum apud, &c. teneri ordinaverimus, et ibidem cum prælatis, magnatibus, et proceribus dicti regni nostri colloquium habere et tractatum: ipsi vicecom. Norff. præcipimus firmiter injungend<sup>d</sup>, quod facta proclamatione in proximo comitatu tuo post receptionem ejusdem brevis, duos milites gladii cinctis, &c. elegeret, &c.* \* ad faciendum et consentiendum hiis quæ tunc ibidem de communi concilio nostro Angliæ (favente Deo) contingerent ordinari<sup>b</sup> super negotiis antedictis, ita quod pro defectu potestatis hujusmodi, seu propter improvidam electionem militum, civium et burgensium prædict<sup>r</sup> dicta negotia nostra infecta non remanerent quovismodo. And this power extendeth equally to all knights, citizens and burgesses of parliament.

### *What the Speaker shall doe after his Allowance.*

After the commons with their speaker are come from the lords house, and that the speaker is set in the chair, then he desireth the commons, that seeing they have chosen him for their mouth, that they would favourably assist him in their arduous and important affairs, and that he will do them the best service he can with all diligence and faithfull readinesse, or to the like effect.

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

Seeing the summons of parliament (as hath been said) is by the kings writs, which tend to the beginning of the parliament, it shall be necessary to speak somewhat of those writs. And it is to be observed, that the substance of those writs ought to continue in their originall essence without any alteration, or addition, unless it be by act of parliament. For \* if originall writs at the common law can receive no alteration, or addition, but by act of parliament, à multo fortiori, the writs for the summons of the highest court of parliament can receive no alteration or addition, but by act of parliament.

\* Braët. l. 5. f.  
413. Britton,  
122. 227. Fleta,  
li. 2. ca. 12.  
W. 2. ca. 25.  
1. pt. of the Inst.  
sect. 101. Epist.  
ad librum.

liament. Where <sup>a</sup> the writs of summons issued out of the chancery, and were returnable in the court of parliament, the return thereof could not be altered, and returnable into the chancery, but by act of parliament. And because the words of the writ for election of knights, &c. were, <sup>d</sup> *duos milites gladiis cinctos, &c.* it required an act of parliament, that notable esquires might be eligible.

Walsingham saith, that in *anno Domini* 1404. which was *anno* 6 H. 4. in the writs of the summons of parliament, there was added by the king a commandment in the writ, that no lawyer should be returned knight or burgesse, (but the historian is deceived, for there is no such clause in those writs, but it was wrought by the kings letters by pretext of an ordinance in the lords house, in 46 E. 3.) But at the next parliament in 7 H. 4. at the grievous complaint of the commons, being interrupted of their free election by those letters (which were letters of justice and right) it is, amongst other things, enacted, that elections <sup>\*</sup> should be freely, and indifferently made notwithstanding any prayer, or commandment to the contrary, i. *sine prece*, by any prayer or gift, *et sine precepto*, without commandment of the king by writ, or otherwise, or of any other which was a clofe, and prudent false, not only for that fore, but for all other in like case, and is but an act declaratory of the ancient law and custome of parliament.

### *Petitions in Parliament.*

On the first day of the parliament, after the commons be departed to choose their speaker, then are certain justices assistants, and civilians masters of the chancery attendants, viz. four justices, and two attendants appointed to be receivers of the petitions of England, Ireland, Wales, and Scotland, and that those that will deliver their petitions, are to deliver them within six days following. At that time there are other justices and civilians attendants, viz. three justices and two attendants appointed to be receivers of petitions for Gascoign and other <sup>\*</sup> places beyond the seas, and of the isles, and that they deliver their petitions within six days, &c.

Then are appointed of the nobility lords of parliament and bishops, viz. six of the nobility, and two bishops to be triers of the said petitions for England, Ireland, Wales, and Scotland, they together, or four of the prelates and lords aforesaid, calling to them the kings learned counsell, attendants in parliament when need should be, and to sit in the chamber of the treasury. The like appointment of the nobility and bishops to be triers of the petitions for Gascoign, and other places beyond the seas, and of the isles, and a place appointed for their sitting, calling to them the kings learned counsell when need should be. For petitions to be preferred into the lords house in parliament for the countries and places aforesaid, this was the ancient constant law, and custome of the parliament continued untill this day. Wherein these three things are to be observed. First, the extent of the jurisdiction of the parliament of England. Secondly, that for expediting of causes, there should be receivers of all petitions, both of judges of the realm for their knowledge in the laws of the realm, and of civilians attendants, who might prepare and in-

c. 7 H. 4. ca. 15.  
Rot. par. 5 R. 2.  
nu. 1. 2. 3. &c.  
they be now re-  
turned into the  
chancery, and  
kept in the office  
of the clerk of  
the crown there.  
d. 23 H. 6.  
ca. 15.

Parl. 6 H. 4. This  
was called *in-  
ter-  
tam* parliamen-  
tum, is k-learn-  
ing parliament.  
Rot. parl. 46 E.  
3. nu. 13. 5 R.  
2. c. 4. 7 H. 4.  
ca. 15. See here-  
after more of  
this matter, in  
this chap. pa.  
and who be eli-  
gible, &c.  
<sup>\*</sup> Nota.  
W. 1. ca. 5.  
3 E. 1.

### [ 11 ]

Receivers of pe-  
titions of Eng-  
land, Ireland,  
Wales, Scot-  
land.

<sup>\*</sup> Gascoign,  
Guyan, Poitiers,  
Normancy,  
Anjou, &c.

Triers of pe-  
titions.

form the triers, being lords of parliament, of the quality of those petitions. Thirdly, that there should be of the lords spirituall and temporall triers of those petitions to try out whether they were reasonable, and good and necessary to be offered and propounded to the lords.

Of petitions in parliament some be of right, some of grace, and some mixt of both: some preferred by the lords spirituall, some by the lords temporall, some by the commons, some by the lords and commons. *Extra parlamentum nulla petitio est grata, licet necessaria; in parlamento nulla petitio sit ingrata, si necessaria.* <sup>a</sup> All petitions ought to contain convenient certainty and particularity, so as a direct answer may be given to them.

<sup>b</sup> Petitions being timely preferred (though very many) have been answered by the law and custome of parliament before the end of the parliament. This appeareth by the ancient treatise, *De modo tenendi parliamentum*, &c. in these words faithfully translated in a fair and ancient manuscript, for bills and petitions. The parliament ought not to be ended while any petition dependeth undiscussed, or at the least, to which a determinate answer is not made.

And in the parliament rols, there is a title towards the end of the parliament. The petition of the commons, &c. with their answer entred and recorded in the roll of parliament. <sup>c</sup> And one of the principall ends of calling of parliaments is for the redresse of the mischiefs and grievances that daily happen. <sup>\*</sup> Innovations and novelties (sometimes termed in rols of parliament novelties) in parliamentary proceedings are most dangerous, and to be refused. <sup>d</sup> And sometime the king doth answer the petition of the commons by the assent of the prelates, counts, barons, and commons themselves, such unity hath been for the common good in parliaments in former times.

### *Appointment of Committees of Grievances, &c.*

The commons being the generall inquisitors of the realm, have principall care in the beginning of the parliament to appoint days of committees, viz. of grievances (both in the church and common-wealth) of <sup>\*</sup> courts of justice, of priviledges, and of advancement of trade. These committees when they meet, they elect one of them to sit in the chair in likeness of the speaker: the committee may examine and vote the questions handled by them, and by one, whom they appoint, report their resolution to the house, and the house, sitting the speaker, to determine the same by question.

<sup>e</sup> Bracton. *Gravius est aternam quam temporalem lædere majestatem.* And it appeareth by the statute of 36 E. 3. cap. 10. That it is one of the principall ends of the parliament to redresse grievances. And the words of the writ of parliament be, *De arduis et urgentibus negotiis statum et defensionem ecclesiæ Anglicanæ concernentibus.*

<sup>\*</sup> [ 12 ]

*Absents, Proxies.*

Any lord of the parliament by licence of the king upon just cause to be absent, may make a proxy: and in the bundle of proxies *anno* 5 H. 5. it appeareth, that in those days a spirituall lord in parliament might have made his proxy to the procurators of the clergie, or to any other clerk, but at this day he cannot make it but to a lord of parliament: but a knight, citizen, or burgesse of the house of commons cannot by any means make any proxy, because he is elected and trusted by multitudes of people.

21 E. 4. 50.  
The ancient record, *De modo tenendi parl. &c. vers. finem optime.*

*Of the ancient Treatise called Modus tenendi Parliamentum.*

Now for antiquity and authority of the ancient treatise, called *modus tenendi parliamentum, &c.* whereof we make often use in this part of the Institutes; certain it is, that this *modus* was rehearsed and declared before the Conqueror at the time of his conquest, and by him approved for England, and accordingly the Conquerour according to *modus* held a parliament for England, as it appeareth in 21 E. 3. fo. 60.

After king H. 2. had conquered Ireland, he fitted and transcribed this *modus* into Ireland in a parchment roll, for the holding of parliaments there, which no doubt H. 2. did by advice of his judges, being a matter of so great weight and legall. This *modus* in the parchment roll transcribed as aforesaid, by H. 2. remained in Ireland, and in *anno* 6 H. 4. was in the custody of Sir Christopher Preston knight, a man of great wisdom and learning, which roll king H. 4. in the same year, *de assensu Johannis Talbot chivalier* his lieutenant there, and of his counsell of Ireland, exemplified for the better holding of the parliaments there; and in the exemplification it expressly appeareth that H. 2. did transcribe this *modus*, as is aforesaid.

This *modus* was seen by the makers of the statute of Magna Carta, *anno* 9 H. 3. ca. 2. concerning the reducing of the \* ancient reliefs of entire earldomes, baronies, and knights fees according to such proportions as is contained in the *modus*, which they could not have done so punctually, if they had not seen the same, whereof you may read more at large in the first part of the Institutes, sect. 103. fo. 76. Verbo Relief. And some part of this *modus* is cited in the parliament roll, *anno* 11 R. 2. and other records of parliament, and upon diligent search we can find nothing against it. But many very ancient copies you may find of this *modus*, one whereof we have seen in the reign of H. 2. which containeth the manner, form, and usage of Gilbert de Scrogel marshall of England, in what manner he occupied and used the said room and office in all his time, and how he was admitted, &c. at the coronation of H. 2. and of his knight marshall, and other inferior officers, &c. and adjoined thereunto, and of the same hand is this *modus*, as fit for him to know.

But lest it might be said to me, as it was once said to an oratour, who having spoken much in commendation of Hercules: it was demanded

See the second part of the Inst. Mag. Cart. ca. 2. pag. 7, 8.  
See the first part of the Institutes sect. 164. fo. 110.  
See the 2. part Inst. pa. 8. the charter of king H. 1. at his coronation having relation to *modus tenendi parl.*  
See also the charter of king John anno 17. Math. Par. 246. *per antiquum relevium, viz. hæres comitis pro comite integro 100 l. hæres baronis pro baronia integra 100 marc. et hæres militis de feodo militis integro, 5 l.* See Mag. Cart. ca. 2.  
\* It is justly called *antiquum relevium*, because it is according to the proportion of this ancient *modus*.

At the parliament holden  
an. 1 Eliz.

[ 13 ]

demanded of one that stood by, *Quis vituperavit? ad quod non fuit responsum.* But now let us return to proxies.

A lord of parliament by licence obtained of the queen to be absent, made a proxy to three lords of parliament, *Conjunctim et divisim dans eis potestatem tractandi, tractatibusque auxilium et consilium impendendi, atque statutis et ordinationibus, quæ inactitat' contigerint, consentiendi, ita quod non sit melior conditio occupantis.* And one of the procurators gave consent to a bill, and the two others said, not content. And first it was by order of the lords debated amongst the judges and civilians attendants, and conceived by them that this was no voice, and the opinion was affirmed by all the lords of parliament *seriatim.* Another question was moved at that time, that if a lord of parliament make a proxy, and after come into the lords house of parliament, and sit there without arguing, consenting or speaking any thing: and it was conceived by the judges and civilians, that this sitting there without saying any thing was a revocation in law of his proxy; *à fortiori*, if he moved, or spake to any matter there propounded, and their opinion was resolved by the lords *seriatim.* And these were the proxies of the bishop of Bathe, the lord Howard chamberlain, and of the lord Windefor.

Lib. Sap. 17. 12.  
Mat. Par. pa.  
233.

King John in the 13 year of his reign being in extrem fear of both the pope and the French king, and especially of his own subjects (and what is fear, saith Solomon, but a betraying of the succours that reason offereth?) sent ambassadours to Admirallus Murelinus great emperour of Turkey Sir Thomas Hertington and Sir Ralph Nicholson knights, and Sir Robert of London clerk, *nuntios suos secretissimos*, to offer to be of his religion, and to make his kingdome tributary to him, and he and his subjects to be his vassals, and to hold his kingdome of him. But that infidell great prince, as a thing unworthy of a king, to deny his religion, and betray his kingdome, utterly refused to accept. King John in the 14 year (the next year) of his reign by his charter 15 May, by the threats and perswasion of the popes commissary Pandulphus surrendered his kingdomes of England and Ireland to pope Innocent the third, *cum communi consilio baronum* (as he inserted therein) and that thence forward he would hold his crown as feodary to the pope, paying for both the said kingdomes 1000. marks. Whereupon doing homage and fealty to the pope by the hand of Pandulphus, and taking off the crown from his head surrendered it to the pope by Pandulphus, at whose feet he laid also the royall ensignes, his scepter, sword and ring: all which was afterward accepted, approved, and ratified by the pope, by his bull which was called *Bulla aurea.*

Rot. Cl. an.  
3 E. 1. m. 9. in  
Schedula.

*Gregorius papa petiit à rege E. 1. per literas annum censum 1000 merc. Rex respondit se sine praelatis et procuratoribus regni non posse respondere, et quod jurejurando in coronatione sua fuit astrictus, quod jura regni sui servaret illibata, nec aliquid quod diadema tangat regni ejusdem absque ipsorum requisi consilio faceret.*

Rot. par. 40 E. 3.  
nu. 8. an act  
never yet printed.

In anno 40 E. 3. the pope by his ambassador demanded of the king homage for the kingdome of England and land of Ireland, and the averages of 1000 marks by the year, granted by king John to pope Innocent the third and his successors, and threatened that if it were not paid, the pope was resolved to proceed against the king. Whereupon the king in the same year calleth his court of parlia-

ment, and in the beginning of that parliament (saith the record) *Fuit monstre a les prelates, dukes, countes, barons, les chivaliers des counties, citizens et burgeises en le presence le roy per le chancelleur, coment' ils avoient entendue les causes del summons del parliament en generall, mes la volonte le roy fuist que les causes feussent monstres a eux en especiall, leur disoit coment le roy avoit entendue que le pape per force dun fait quel il dit que le roy Johan fesoit au pape de luy faire homage pur le realme d'Engleterre et la terre d'Ireland et que per cause du dit homage qil luy deveroit paier chescun an perpetuellement mille marcs, est en volonte de faire proces devers le roy et son roialm pur le dit service et cens recoverir; de quoi le roi pria as diis prelates, dukes, countes et barons leur aroys et bon conseil, et ce qil enverroit, en case que le pape vorroit proceder devers luy, ou son dit roialme per celle cause: et les prelates requeroient au roy quils se purroient per eux soul aviser et respondre lendemain, queux prelatz le dit lendemain adeprimis per eux mesmes, et puis les autres dukes, countes, barons et gentz respondirent et disoient, que le dit roy Johan ne nul autre purra mettre lui, ne son roialme, ne son peuple en tiele subjection sanz assent et accorde deus: et les communes sur ce demandez et avisez respondirent en mesme le manere; sur qui feust ordeine, et assentu per commune assent en manere quensuyt. En se present parlement tenuz a Westm' Lundy prochein apres la invention de la seinte croice lan du reign le roy Edward quarantisme, tant sur lestât de seinte eglise, come des droits de son roialm et de sa corone maintenir, entre autres choses estoient monstrez coment ad este parlee, et dit que le pape per force dun fait quele il dit que le roi Johan, iadis roy d'Engleterre fesoit au pape au perpetuite de luy faire homage pur le roialme Dengleterre et la terre de Ireland, et per cause du dite homage de luy rendre un annuel cens: ad este en volonte de faire processe devers le roi pur les ditz services et cens recoverir; la quele chose monstree as prelates, ducs, countes, barons, et la commun' pur ent avoir leur aroys et bon conseil, et demandee de eux ce que le roi enverra en case que le pape vorroit proceder ou rien attemper devers lui ou son roialme per celle cause? Queux prelates, ducs, countes, barons et communes en sur ce plein deliberacion responderont et disoient dune accorde, que le dit roy Johan ne nul autre purra mettre luy ne son roialme ne son peuple en tiel subjection sanz assent de eux, et come piert per plusieurs evidences, que si ce feust fait, ce feust fait sanz leur assent, et encontre son serement en sa coronacion, et outre ce le ducs, countes, barons, gentz et communes accorderent et grantent que en case que le pape se afforceroit ou rien attemperoit per proces, ou en autre manere de fait de consfireindre le roi ou ses subjects de per fait ce quest dit q'il voet clamer telle partie qils resistront et contrestervont ore toute leur puissance.*

This noble and prudent king took the fairest and surest way to give satisfaction, wherof the pope being certified, the matter ever since hath rested in quiet.

\* It is declared by the lords and commons in full parliament, upon demand made of them on the behalf of the king, that they could not assent to any thing in parliament, that tended to the disherison of the king and his crown, whereunto they were sworn. See hereafter in the case of Ireland.

*Lex et Consuetudo Parliamenti.*

By the ancient law, and custome of the parliament a proclamation ought to be made in Westminster in the beginning of the parliament, that no man upon pain to lose all that he hath, should

IV. INST.

C

during

I have thought good to transcribe it in proprio idiomate.

[ 14 ]

No king can put himself nor his realm, nor his people, in such subjection without assent of the lords and commons in parliament, and therefore if k. John had done it by the common counsell of his barons as his charter purported, yet it bound not, for that it was not done in parliament by the king, the lords and commons: and albeit it might (as here it appeareth, it cannot be done without authority of parliament) yet it is *contra legem et consuetudinem parliamenti*: to doe such a thing, as by the next record in 42 E. 3. appeareth. Ro. pat. 42 E. 3. nu. 7. *Lex et consuetudo parliamenti.*

7 E. 2. Stat. de diffinitione parliamenti. arma.

2 E. 3. ca. 3.  
Rot. par. 6 E. 3.  
nu. 1.

13 E. 3. nu. 2.

14 E. 3. nu. 2.

15 E. 3. nu. 2.

17 E. 3. nu. 3.

18 E. 3. nu. 2.

20 E. 3. nu. 1.

25 E. 3. stat. 1.

nu. 58. 25 E. 3.

stat. 2. nu. 5. &c.

Privy coat or

armour.

Games or plays.

Rot. par. anno

13 E. 3. nu. 5.

& 8.

\* See hereafter

pa.

† [ 15 ]

*Lex et consuetudo*  
*parliamenti*

Ista lex ab omni-  
bus est quæren-  
da, a multis  
ignorata, a pau-  
cis cognita.

Fleta, lib. 2.

cap. 2.

\* Rot. par. 11

R. 2. nu. 7.

See the first part

of the Institutes,

sect. 3. verb. *En*

*la ley*.

Rot. par. 2 H. 4.

nu. 11.

Rot. par. 3 H. 6.

In le countee de

Marshall's case.

Rot. par. 27 H. 6.

nu. 18. the earle

of Arundels case.

Rot. par. 31 H. 6.

nu. 26, 27, 28.

baron Thorps

case.

5 H. 4. nu. 22.

The earl of Nor-

thumblands

case.

Vide rot. par.

9 H. 4. *Indem-*

*nity des seigniors*

*et commons.*

during the parliament in London, Westminster, or the suburbs, &c. wear any privy coat of plate, or goe armed, or that games or other playes of men, women, or children, or any other pastimes or strange shewes should be there used during the parliament: and the reason hereof was, that the high court of parliament should not thereby be disturbed, nor the members thereof (which are to attend the arduous and urgent businesse of the church and common-wealth) should not be withdrawn.

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

And it is to be observed, though one be chosen for one particular county, or borough, yet when he is returned, and sits in parliament, he serveth for the whole realm, for the end of his coming thither, as in the writ of his election appeareth, is generall, *ad faciendum et consentiendum hiis quæ tunc et ibidem de communi consilio dicti regni nostri (favente deo) contigerint ordinari super negotiis prædictis*. i. *pro quibusdam arduis et urgentibus negotiis nos, statum, et defensionem regni nostri Angliæ et ecclesiæ Anglicanæ concernentibus*, which are rehearsed before in the writ.

And as every court of justice hath laws and customes for its direction, some by † the common law, some by the civill and canon law, some by peculiar lawes and customes, &c. So the high court of parliament *suis propriis legibus et consuetudinibus subsistit*. It is \* *lex et consuetudo parliamenti*, that all weighty matters in any parliament moved concerning the peers of the realm, or commons in parliament assembled, ought to be determined, adjudged, and discussed by the course of the parliament, and not by the civill law, nor yet by the common laws of this realm used in more inferior courts; which was so declared to be *secundum legem et consuetudinem parliamenti*, concerning the peers of the realm, by the king and all the lords spirituall and temporall; and the like *pari ratione* is for the commons for any thing moved or done in the house of commons: and the rather, for that by another law and custome of parliament, the king cannot take notice of any thing said or done in the house of commons, but by the report of the house of commons: and every member of the parliament hath a judicall place, and can be no witness. And this is the reason that judges ought not to give any opinion of a matter of parliament, because it is not to be decided by the common laws, but *secundum legem et consuetudinem parliamenti*: and so the judges in divers parliaments have confessed. And some hold, that every offence committed in any court punishable by that court, must be punished (proceeding criminally) in the same court, or in some higher, and not in any inferior court, and the court of parliament hath no higher.

Upon his petition exhibited to the king, wherein the question was, whether the power which he had raised was high treason, &c. which petition (saith the king) let be delivered to the justices by them to be considered. Whereupon the lords made protestation, that the order thereof belonged to them, which was to them allowed, and they resolved it to be no treason.

And



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

*Johannes episcopus Winton in misericordia pro pluribus defaltis. Idem Johannes episcopus attachiat' fuit ad respond' domino regi, de eo quare cum in parlamento regis apud novam Sarum nuper tent' per ipsum dominum regem inhibitu fuisset, ne quis ad dictum parlamentum summonitus ab eodem recederet sine licentia regis: idem episcopus durante parlamento prædict. ab eodem sine licentia regis recessit in regis contemptum manifestum, et contra inhibitionem regis supradictum. Et unde idem dominus rex per Adam de Fincham, qui sequitur pro eo, dicit, quod prædictus Johannes episcopus fecit ei transgress' et contemptum prædict. &c. in contempt. regis mille librarum. Et hoc offert verificare pro domino rege, &c.*

*Et prædictus episcopus in propria persona sua venit, et defendit omnem contemptum et transgress' et quicquid, &c. et dicit, quod ipse est unus de paribus regni, et prælatus sacros. ecclesiæ, et eis in est venire ad parlamentum domini regis per summonitionem et pro voluntate ipsius domini regis cum sibi placuerit, \* et dicit, quod si quis eorum deliquerit erga dominum regem in parlamento aliquo, in parlamento debet corrigi et emendari, et non alibi in minor' cur' quam in parlamento: per quod non intendit, quod dominus rex velit in cur' hic de hujusmodi transgr. et contempt. factis in parlamento responderi, &c. Et super hoc datus est eis dies coram rege à die sanctæ Trin. in quindecim dies ubicunq; &c. salvo rationibus. Ad quem diem præd. episcopus venit in propria persona sua, et datus est ei dies coram domino rege a die sancti Mich. in 15 dies ubicunq; &c. in eodem statu quo nunc, &c. salvo rationibus suis, &c. Ad quem diem venit prædict. Adam qui sequitur, &c. Et similiter prædictus episcopus in propria persona sua. Et prædictus Adam pro prædicto domino rege dicit, quod cum placeat ei parlamentum suum tenere pro utilitate regni sui de regali potestate sua facit illud summoneri ubi et quando, &c. pro voluntate sua, et etiam facit prohiberi existentibus tunc ad parlamentum, ne quis eorum abinde recedat contra prohibitionem suam, &c. absq. licentia, &c. Et si quis eorum abinde recedat contra prohibitionem, &c. in contempt. regis, &c. bene liceat ipsi domino regi sumere secliam erga hujusmodi delinquentes in qua curia placeat sibi, &c. Et ex quo dominus rex pro voluntate sua parlamenta sua tenet, &c. petit judicium pro ipso domino regi, si idem dominus rex duci debeat, seu compelli ad prosequend' in hac parte alibi contra voluntatem suam, &c.*

*Et prædictus episcopus dicit ut prius, quod cum aliquis deliquerit in parlamento, ibidem debet corrigi et emendari, &c. et licet aliquis summonitus esset veniendi ad parlamentum, et non venisset ibidem, debet puniri, per quod non intendit, quod dominus rex velit alibi responderi quam in parlamento, &c. Et super hoc datus est eis dies usq; in crâ. animarum ubicunq; &c. in eodem statu quo nunc, &c. Ad quem diem venit tam prædict. Adam, qui sequitur pro domino rege, quam prædict. episcopus in propria persona sua. Et datus est eis dies coram domino rege in octab. Sancti Hilarii ubicunq; &c. salvo rationibus suis, &c. Ad quem diem prædict. episcopus venit, et datus est ei dies ulterius coram domino*

Pasch. 3 E. 3. coram rege rot. 9. in Dorf. South. Nota, that this was by writ originall.

The declaration.

The plea of the bishop to the jurisdiction of the court.

[ 16 ]

\* Nota hoc.

This is the allegation of the kings attorney.

The B. maintains his former plea to the jurisdiction.

*rege in offiab. Pur. beatæ Mariæ ubicunq', &c. Ad quem diem venit tam prædictus episcopus, quam Johannes de Lincoln' qui sequitur pro domino rege, et datus est eis dies ulterius coram domino rege à die Paschæ in quinque septimanas ubicunq', &c. Salvo rationibus, &c. Ad quem diem venit tam præd. episcopus in propria persona sua, quàm prædict. Johannes de Lincoln, qui sequitur pro dicto domino rege, &c. Et datus est eis dies ulterius à die Sancti Michaelis in 15 dies ubicunq', &c. salvo sibi rationibus suis hinc in dicend' &c.*

[ 17 ]

And this is all that is in the record, whereby it appeareth that the plea of the bishop to the jurisdiction of the court after divers dayes given did stand, and was never over-ruled agreeably to the said resolutions in former times, that judges were not to determine matters concerning the parliament, as is aforesaid. Touching the report of the said case, thus far forth it agreeth, that this contempt cannot be punished in any other court than in the kings bench: so as the question is only for that court. It appeareth that the reporter never saw the said record, only took it by the care of that which was spoken in court (a dangerous kind of reporting, and subject to many mistakings, for seldome or never the right case is but) as in this case it fell out. For first, where the record saith, that the parliament was holden at Sarum, the report is of a parliament holden at Salop. 2. The report saith, that John B. of Winchester was arraigned, which implieth that he was indicted, &c. where he was sued by originall writ. 3. The inhibition made by the king alledged in the record, is not in the report. 4. Concerning the sudden opinion of Scrope in this report: by his opinion the parliament it selfe could not have punished this contempt: for he saith, *Ceux q. sont judges de parliament, sont judges de leur piers, mès le roy nad my pier in son terre demesne, pur q. il ne poet p. eux estre judge, donques aiors que cy ne poet estre judge*, whereas without question the parliament might have punished this contempt: and concludeth with a rule at the common law, that the king may sue in what court it pleaseth him. But matters of parliament (as hath been often said) are not to be ruled by the common law: and it seemeth that the rest of the judges were against Scrope, for the plea was never over-ruled, as by the record it appeareth.

*Vide per indictamenta termino Paschæ 1 & 2 Ph. et Mar. coram rege rot. 48.* Informations preferred by the attorney generall against 39 of the house of commons for departing without license contrary to the kings inhibition in the beginning of the parliament; whereof 6 being timorous burgessees *ad redimendam vexationem* submitted themselves to their fines, but whether they paid any, or very small, we have not yet found. And \* Edmond Plowden the learned lawyer pleaded, that he remained continually from the beginning to the end of the parliament, and took a travers full of pregnancy: and after his plea was *sine die per demise le roign.*

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

Now the said informations anno 1 & 2 Ph. and Mar. against 39 of the house of commons follow in these words. *Pasch 1 & 2 Ph. and Mar. regis et reginæ. Midd. ss. memorand' quod Edwardus Griffyn ar' attornat' domin. regis et reginæ generalis, qui pro eisdem domino rege et domina reginæ sequitur, venit hic in cur' dictorum dominorum re-*

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

Edw. Griffyn.

gis et reginæ coram ipsis rege et regina apud Westm' die Sabbathi proxim' post quind' Pasch. isto eodem termino, et dat cur' hic intelligi et informari. Quod cum ad parliamentum dominorum regis et reginæ nunc tent' apud West' annis regnorum suorum primo et secundo inhibitum fuit per ipsos dominum regem et dominam reginam in eodem parlamento, quod nullus ad idem parliament' summonitus, et ibidem intercessus, ab eodem parlamento absque speciali licentia dictorum dominorum regis et reginæ, et cur' parliament' prædict' recederet, seu seipsum aliquo modo absentaret. Quidam tamen Thomas Denton de in com' Oxon' ar' Henricus Cary de in com' gent' Richardus Warde de in com' ar' Edmund. Plowden de Tybmeshe in com. Berks armiger, Henricus Chiverton de in com. ar. Robertus Browne de in com. Johannes Courke de in com. Johannes Pethebrige de in com. Johannes Melhewes de in com. Johan. Courtney de in com. Radulphus Michel de in com. Thomas Mathew de in com. Richardus Brassey de in com. Thomas Massye de in com. armig'. Petrus Frechwell de in com. miles. Henricus Vernon de Sydbey in com. Derby armig. Willielmus Moore de villa Derb. in com. Derb. gen. Willielmus Banibrigge de in com. Johannes Eveleigh de in com. gen. Nich. Adams de Dartmouth, alias Clifton Harnys in com. Devon gen. Richardus Philipps de in com. ar. Anthonius Dylvington de in com. Andreas Hoorde de in com. Christopherus Hoell de in com. Dorset gen. Johannes Mannock de in com. gen. Thomas Philipps de in com. Johannes Hamond de in com. Johannes Philipps de in com. Willielmus Randall junior, de in com. Johannes Mayne de in com. Hugo Smyth de in com. gen. Rogerus Gerrard de in com. gen. Radulphus Scroope de in com. gen. Thomas Moore de Hambled. in com. Buck. gen. Willielmus Reade de in com. ar. Henricus Mannock de in com. ar. Joh. Maynard de villa Sancti Albani in com. Hertf. ar. Nich. Debden de in com. gen. et Philipus Tirwhyt de in com. ar' qui summoniti fuerunt ad dictum parliamentum, et in eodem parlamento comparuerunt, ac ibidem interfuerunt mandati et inhibitionem dominorum regis et reginæ supradict' parvi pendentes, ac statum reipublicæ hujus regni Angliæ minime curantes aut ponderantes postea scil. 12 die Januarii annis regnorum dictorum dominorum regis et reginæ nunc primo et secundo supradictis, et durante parlamento prædicto ab eodem parlamento sine licentia dictorum dominorum regis et reginæ et cur' suæ prædict' contemptuose recesserunt in ipsorum dominorum regis et reginæ ac mandati et inhibitionis suorum prædict' curiæq; prædict' contempt' manifestum, ac in magnum reipublicæ statum hujus regni Angliæ detriment', nec non in perniciosam exemplum omnium aliorum, &c. Unde idem atornatus dominorum regis et reginæ petit advisamentum cur' in præmis et debiti legis process. vers. eosdem Thomam Denton, Henricum Cary, Richardum Warde, Edm. Plowden, Henricum Chiverton, Robertum Browne, Joh. Courke, Joh. Pethebridge, Joh. Melhewes, Joh. Courtney, Radulph. Michel, Thomam Mathew, Richardum Brassey, Thomam Massye, Petrum Frechwell, Henricum Vernon, Will. Moore, Will. Banibrigge, Joh. Eveleigh, Nich. Adams, Richardum Philipps, Anthonium Dylvington, Andream Hoorde, Christopherum Hoell, Johannem Mannock, Thomam Philipps, Johan. Hamond, Joh. Philipps, Williel-

Inhibitum fuit.

[ 18 ]

Mandatum et inhibitionem.

[ 19 ]

man Randall, Joh. Moyné, Hugonem Smith, Rogerum Gerrard, Radulphum Scroope, Tho. Moore, Will. Read, Henricum Mannock, Johau. Maynard, Nicholaum Debden, et Phil. Tyrwhyt fieri ad respondend. domino regi, et dominæ reginæ de contempt' prædict'. &c.

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

Et modo scilicet die Veneris prox' post crast' animarum isto eodem termino coram domin. rege et domina regina apud West' ven' prædict'. Edm. Plowden per Andream Tuffer attornatum suum; et habit' audit' informationis prædictæ dic', quod ipse non intendit quod dominus rex et dominæ regina nunc ipsum Edmum' pro præmissis vel aliquo præmissorum impetere seu occasionare velint aut debent: Quia dicit quod ipse ad dict' parliament' in informatione prædict' specificat' interfuit et præsens fuit, ac in eodem parlamento continue remansit, viz. à principio ipsius parliamenti usq; ad finem ejusdem. Absq; hoc quod ipse idem Edmud. Plowden dicto 12 die Januarii, an. primo et secundo supradict' durant' parliament' prædict' ab eodem parliament' sine licentia dictorum dominorum regis et reginæ, et cur' suæ prædict' contemptuose recessit in ipsorum dominorum regis et reginæ ac mandat' et inhibitionis suorum prædict' curiæq; prædict' contemp' manifest', ac in magnum reipublicæ stat' hujus regni Angliæ detriment', nec non in perniciosum exemplum omnium aliorum modo et forma prout per informac' prædict' vers' eum supponitur. Et hoc paratus est verificare prout cur. &c. unde pet' judicium: et quod ipse de præmissis per cur' hic dimittatur, &c.

Nota, the pregnancy of this travers.  
Sine die per demise le royné.

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

Midd. Vc. fac' Thomam Constable de Grimby in com. Lincoln. ar. Hen. Leigh, de in com. Francis. Farnham de Querne in com. Leic. ar. Li. lo. Mic. 2 & 3 Ph. regis et Mar. reginæ. Joh. Holcroft. sen. de in com. milit. Will. Bromley de in com. ar. Tho. Somerset de in com. ar. Georg. Ferrers de Markyat' in com. Hertf. gen. Nich. Powtrel de Exinton in com. Nott' ar. F. Hill. 3 & 4 Ph. & Mar. Tho. Moyle de in com' Kane' milit. Tho. Waters de in com. ar. Will. Tylcock de civit' Oxon' gen. Li. lo. Hil. 2 & 3 Ph. & Mar. Tho. Balkden de Wychingleigh in com. Sur. milit. Li. lo. Mic. 2 & 3 Ph. & Mar. Math. Craddock de villa Staff. gen. Li. lo. Hil. 2 & 3 Ph. & Mar. Georgium Lye de villa Salop. gen. Cess. process. per mandat' attornat' dominorum regis & reginæ, quia ulterius professi non vult vers' ipsum Geo. Lye. Joh. Hoord de Bridgenorth in com. Salop. gen. F. Mic. 5 & 6 th. & Mar. Joh. Alsop de villa de Ludlowe in com. Salop. gen. Wil. Lawrence de civ. Winton. gen. Li. lo. Mich. 2 & 3 Ph. & Mar. Robert Hudson de civ. Winton. gen. Li. lo. ut antea. Edm. Rowe de Donwiche in com. Suff. mil. Rob. Coppinge de Donwiche in com' Suff. ar. Joh. Harman de hospicio dom. regis et dom. reginæ gen. Will. Crowch de Wellove in com' Somers. ar. Tho. Lewes de villa de Wels in com' Somers. gen. Li. lo. Hil. 2 & 3 Ph. & Mar. Wil. Godwyn de Wels præd' in com' Somers. gen. F. Mich. 3 & 4 Ph. & Mar. Joh. Ashburnham de Ashburnham in com' Suff. ar. Li. lo. Mic. 2 & 3 Ph. & Mar. Walt. Reynum de civ' Cicesst' in com' Suff. gen. Li. lo. Tr. 2 & 3 Ph. & Mar. Wil. Moodyere de Slindon in com' Suff. gen. F. Tr. 4 & 5 Ph. & Mar. Joh. Roberts de in com' Suff. gen. utlegat. &c. Wil. Pellet de Steininge in com' Suff. gen. F. Pasch. 2 & 3 Ph. & Mar. Rich. Bowyer de Arundell in com' Suff. gen. Li. lo. Mic. 3 & 4 Ph. & Mar. Will. Danby de in com. Westmerl. gen. Rob. Griffyth de civ' Novæ Sarum in com' Wilts. draper. Li. lo. ut supra. Joh. Hooper de civ. Novæ Sarum in com' Wilts. gen. Li. lo. Mic. 2 & 3 Ph. & Mar. Wil. Clark de in com. Grif. Curtys de

de *Bradstock* in com' *Wilt's* gen. Li. lo. ut supra, &c. *Tho. Hil. de Denyses* in com. *Wilt's* gen. F. Hil. 2 & 3 Ph. & Mar. *Edw. Umpton de London* gen. Li. lo. Mic. 2 & 3 Ph. & Mar. *Tho. Parker de in com'* *Joh. Reade de London* gen. F. Hil. 2 & 3 Ph. & Mar. *Arth. Allen de civ' Bristol* merch. *Egid. Payne de civ. Bristol.* gen. *Wilt. Hampshire de London* gen. Li. lo. Mic. 3 & 4 Ph. & Mar. et *Pet. Tayler de Marlborow* in com' *Wilt's*, *taylor.* Li. lo. Mic. 3 & 4 Ph. & Mar. *resp. regi de quibusdam transgress. et contempt. unde impetit' sunt.*

Cess. process.  
vers. *Georgium*  
Lye.  
Sine die per de-  
mise le Royne.  
Per cont' rott'  
de annis 1 & 2  
Ph. and Mar.  
rot. 48.

*Mid. Ve. fac' er' Trin. Edw. Braxden de civ' Wigorn. gen. George. Newport de Droitwich* in com' *Wigorn. gen. Wil. Wigstone de Wolstone* in com' *War. mil.* Li. lo. Mic. 2 & 3 Ph. & Mar. *Radulph. Browne de Woodlorges* in com. *War. gen.* Li. lo. Mich. 3 & 4 Ph. & Mar. *Joh. Harford de civ' Covent. gen. Cess. process. &c. Nich. Fryffe de in com'* *Rich Rayleton de in com.* *Marc. Wyrley de civ. Lichfield, gen. Walt. Johnson de villa de Kingst. n super Hull. Jac. Brenne de in com. gen. Joh. Payton de in com. Kanc. ar. Joh. Cheney de in com. Kanc. armigerum Willielmum Oxenden de in com. Kanc. armigerum. Tho. Keys de in com. Kanc. gen. Wil. Hannington de in com. Kanc. Joh. Tyffurs de in com. Nich. Cryffe de in com. Kanc. ar. Edw. Herbert de Starzley in com. Salop ar. F. Hil. 4 & 5 præd. Ph. & Mar. &c. Rich. Lloyd de in com. Kanc. gen. Joh. de Knylle de in com. ar. Hen. Jones de in com. mil. Meredith Gaines de in com. gen. et Rich. Bulkeley de in com. mil. Resp. regi de quibusdam transg. et contempt. unde impetit' sunt. Et postea, scil. termino sanct. Trin. annis 4 & 5 Ph. & Mar. pro eo quod sufficienter hic in cur' testatum est quod prædict. Joh. Harford habuit licentiam recedere a parliamentis. &c. Ideo Edw. Grifsyn ar. attornat. dominorum regis et reginæ generalis qui pro ipsis rege et regina in hac parte sequitur, dicit quod ipse ulterius in hac parte vers. præfatum Joh. Harford prosequi non vult. Ideo cess hic. process. vers. cum omnino, &c.*

Non prof. vers.  
Harford tantum.

Sine die per de-  
mise le Royne.

[ 21 ]

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

### Of Writs of Error in Parliament.

If a judgement be given in the kings bench either upon a writ of error, or otherwise, the party grieved may upon a petition of right made to the king in English, or in French (which is not *ex debito justitiæ*, but for decency, for that the former judgement was given *coram rege*) and his answer thereunto, *fiat justitia*, have a writ of error directed to the chief justice of the kings bench for removing of the record in *præsens parliamentum*, and thereupon the roll it self, and a transcript in parchment is to be brought by the chief justice of the kings bench into the lords house in parliament: and after the transcript is examined by the court with the record, the chief justice carri. th back the record it self into the kings bench, and then the plaintife is to assign the errors, and thereupon to have a *seire fac'* against the adverse party, returnable either in that parliament, or the next; and the proceeding thereupon shall be *super tenore re-*

The house of  
the lords is a  
distinct court for  
many purposes.  
22 E. 3. fo. 3.  
Registr. 17. lib.  
Intr. Rast. 184.

*cordi; et non super recordum.* All this, and many more excellent matters of learning are contained in the records following; whereof a light touch is hereafter given, the records at large being too long here to be rehearsed. And the proceeding upon the writ of error is only before the lords in the upper house, *Secundum legem et consuetudinem parliamenti.*

Rot. par. post  
festum Sancti  
Hil. anno 18 E. 1.  
rot. 8.

*Queritur Guilielmus de Valencia contra consilium regis, i. Justic' coram rege, pro injusto judicio tangen' allocationem Dionisie filie Guilielmi de monte Caniso ut hæred': sed dominus rex ratum habet eorum factum, et judicium redditum est contra Guilielmum de Valencia.*

Rot. par. 4 E. 3.  
nu. 13. Rich.  
earl of Arundels  
case. Ib. 28 E. 3.  
nu. 11, 12. Mortimer earl of  
Marches case.  
See Pasch.

If a nobleman had been erroneously attainted of treason, &c. he might have had his writ of error in parliament, notwithstanding the statute of 33 H. 8. ca. 20. for that must be intended of lawfull records of attainder: but if the attainder be established by authority of parliament, then he must exhibite his petition in parliament to be restored of grace. But now by the statute of 29 El. ca. 2. it is ordained, that no record of attainder of high treason that then was, for the which the party attainted had been executed for the same treason should be reversed for error: but this extendeth only to attainders of high treason, and not to any attainder of high treason after that act, nor to any high treason before, for the which the party was not executed.

28 E. 3. coram  
rege rot. 37 Wi-  
gorn. the same  
case. 33 H. 8.  
ca. 20. 29 Eliz.  
ca. 2. rot. par.  
7 R. 2. nu. 20.  
3 R. 2. nu. 14.

The prior and covent of Montague by their petition declare, that Richard Seimour had obtained an erroneous judgement against the said prior in the kings bench, upon a judgement given in the common place upon a fine for the mannor of Titenhull in the county of Somerset, &c. And the principall error was for denying of aid of the king where it was grantable, and that hanging a writ of right, the said Richard sued a *scire fac.* And commandment was given to the chancellor of England, that he should make a writ of possession and seison to be had, and other proceesse upon that judgment to be made: in this record you shall observe excellent pleading.

Rot. par. 13 R. 2.  
nu. 15. Sir Tho-  
mas Methams  
case.

Error in parliament upon a judgment in an appeal of death upon an acquittal of the defendant, and inquiry of the abettors, &c.

And (that we may observe it once for all) when one sueth in parliament to reverse a judgement in the kings bench, he sheweth in his bill which he exhibiteth to the parliament some error or errors, whereupon he prayeth a *scire facias*.

Rot. par. 50 E. 3.  
nu. 48.

The bishop of Norwich sheweth that an erroneous judgment was given against him in the common place for the archdeaconry of Norwich belonging to his presentation, and prayed that those errors might be heard, and redressed there: whereunto answer was made, that errors, by the law, in the common place are to be corrected in the kings bench, and of the kings bench in the parliament. and not otherwise.

## [ 22 ]

\* Rot. par.  
15 R. 2. nu. 23.  
& 18 R. 2. nu.  
31, 12, 13, 14,  
15. This par-  
liam. of 18 R. 2.  
is not mentioned  
in the printed  
book, because  
no act passed at  
this parliament.  
See 2 H. 4.  
nu. 40.

1 R. 2. nu. 28, 29. 2 R. 2. nu. 31. A writ of error in parliament between William Mountacute earl of Sarum, and Roger of Mortimer earl of March of a judgment in the kings bench.

\* The dean and chapter of Litchfield recovered in the common place against the prior of Newport Pannel: the prior by writ of error reverseth the judgment in the kings bench: the dean and chapter by writ of error in parliament reverseth the judgment in the kings bench, and affirmeth the judgment in the common place, and

and a commandment given to the chancellor, that the judgement in the common place be executed by proceſſe by him to be made.

<sup>b</sup> John Sheppy complains of a judgement in the kings bench in a writ of error.

<sup>b</sup> Rot. par.  
15 R. 2. nu. 22.  
<sup>c</sup> 21 R. 2. nu. 25.  
2 H. 4. nu. 13.

<sup>c</sup> Error in parliament between William Mountacute earl of Salisbury, and Roger de Mortimer earl of March, for the caſtle, town, and honour of Denbeigh, &c. upon a judgment given in the kings bench, and had a *ſcire fue* returnable the next parliament.

<sup>d</sup> William Seward alias Cheddre complaineth, that where he by that name was preſented and inducted to the parſonage of Wotton Under Egge in the county of Glouc', and thereof continued the poſſeſſion by the ſpace of four years, untill the king by untrue ſuggeſtion preſented Sir John Dawtry to the parſonage of Underhegge in that county, where there was no ſuch parſonage called Underhegge, as the ſaid William pleaded in a *quare impedit* brought by the king in the kings bench; upon which writ the king recovered by the default the parſonage of Underhegge, and not Under Egge, whereby upon a writ ſent to the biſhop of Worceſter, the ſaid William was put from his parſonage of Under Egge: for which miſtaking and error, the judgment for the ſaid John in full parliament was reverſed, and a writ awarded to the ſaid biſhop for the reſtitution of the ſaid William.

<sup>d</sup> Rot. par.  
1 H. 4. nu. 92.

The record and judgment given in the kings bench for the king, againſt Edmond Baſſet for certain lands, &c. was for divers errors reverſed in parliament, and reſtitution of the premiſſes with the mean profits reſtored to the ſaid Edmond.

Rot. par. 15 R. 2.  
nu. 24. & 2 H. 4.  
nu. 38.

In error in parliament between Roger Deyncourt, and Ralph de Adderlye for a judgement given in the kings bench for the mannor of Anſlye in com' Warr'. Sir William Gaſcoign chief juſtice delivered a copy of the record and proceſſe, word for word, under his hand, &c. to the clerk of the parliament, &c.

5 H. 4. nu. 40.

In error in parliament between Richard Quatermayns and William Hore, &c. upon an erroneous judgement given in the kings bench in an action of treſpaſſe, and the plaintiff entred his atturney of record to proceed therein.

Rot. par. 3 H. 5.  
nu. 19.

John Beauchamp lord Abergaveny complained in parliament upon an erroneous judgment given upon a verdict in the kings bench in a *ſcire fac'* upon a recogniſance in the chancery for keeping the peace. In the record whereof are excellent points of learning, as well touching the recogniſance, as the proceſſe, and iſſue.

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

Error in parliament, Paſch. 31 H. 6. upon a judgment given in an aſſize in the kings bench, *et intratur ſuper marginem, rot. mittitur in parlamentum per Johannem Forteſcue termino Paſchæ anno* 31 H. 6.

Rot. par. 31 H. 6.

And to omit many others, to deſcend to ſome of latter times, Richard Whalley recovered in aſſize by verdict againſt divers tenants, who brought a writ of error in the kings bench, where the judgment in the aſſize was affirmed, the tenant complained in parliament for error in the kings bench.

Rot. par. 23 El.  
Dier 23 El.  
f. 373.

Error in parliament upon complaint of Sir Chriſtopher Heydon knight of a judgment in a writ of error in the kings bench, between the ſaid Sir Chriſtopher plaintiff, and Roger Godſalve and others defendants,

Rot. par. 12 Jac.

fendants, upon a judgment given for the said Roger, &c. against the said Sir Christopher in an assise before justices of assise, wherein the judgement in the assise was affirmed in the kings bench, whereof the complaint was made, *sed non prevailuit*.

In case of treason, &c. the lords spirituall make their procurtors. The peers are judges of treason, &c. during the parliament, &c.  
Rot. par. 5 H. 4. nu. 11, 12.  
Rot. par. 21 R. 2. sub tit. Plac. Coronæ, &c.  
Rot. par. 31 H. 6. nu. 49.

A peer of the realm being indicted of treason, or felony, or misprision of treason, may be arraigned thereof in parliament, a lord steward being appointed, and then the lords spirituall shall make a procurator for them; and the lords, as peers of the realm, during the parliament are judges, whether the offence be treason, &c. that is supposed to be committed by any peer of the realm, and not the justices, as it appeareth in the earl of Northumberlands case, rot. parl. 5 H. 4. nu. 11, 12. See in the parliament holden 21 R. 2. *sub titulo Pl. Coronæ*, in a roll annexed, &c. before the steward of England and other lords temporall, Richard earl of Arundels case. Rot. parl. 31 H. 6. nu. 49. Thomas earl of Devon was arraigned of high treason before Humphry duke of Buck' steward of England *hac vice*, and was acquitted by his peers, 10 E. 4. fo. 6. b. Stanf. Pl. Coron. 153. b.

### Of Judicature.

\* Vide placita in parlam. anno 33 E. 1. rot. 33. Nicholas Segrave adjudged per prælatos, comites, barones et alios de concilio. At the parliament at York anno 12 E. 2. *Consideratum est per prælatos, comites, barones, et communiatem Angliæ*. The lord Awdeleys case. At the parl. at Westm' 15 E. 2. Hugh le pier adjudged per les seignours et commons. Rot. parl. 42 E. 3. nu. 20. Sir John at Lee adjudged by the lords and commons. Rot. pat. 50 E. 3. 2. parte, A pardon to the lord Latimer of a judgement in parliament. Rot. parl. 50 E. 3. nu. 34. Lo. Nevils case.

Now order doth require to treat of other matters of judicature in the lords house, and of matters of judicature in the house of commons. And it is to be known, that the lords in their house have power of judicature, and the commons in their house have power of judicature: but the handling hereof according to the worth and weight of the matter would require a whole treatise of it self; and to say the truth, it is best understood by reading the judgements and records of parliament at large, and the journals of the house of the lords, and the book of the clerk of the house of commons, which is a record, as it is affirmed by act of parliament in anno 6 H. 8. ca. 16.

The lord Awdeleys case. At the parl. at Westm' 15 E. 2. Hugh le pier adjudged per les seignours et commons. Rot. parl. 42 E. 3. nu. 20. Sir John at Lee adjudged by the lords and commons. Rot. pat. 50 E. 3. 2. parte, A pardon to the lord Latimer of a judgement in parliament. Rot. parl. 50 E. 3. nu. 34. Lo. Nevils case.

See Rot. clauf. 1 R. 2. m. 5. 8. 38, 39. *A tresage counsell le roy, les seigniors et commons, &c.* Rot. parl. 1 H. 4. nu. 79. it is no act of parliament but an ordinance, and therefore bindeth not in succession. Rot. par. 2 H. 5. nu. 13. error assigned that the lords gave judgement without petition or assent of the commons. Rot. par. 28 H. 6. nu. 19. and many others in the reign of king H. 6. king E. 4.

And of latter times, see divers notable judgements, at the prosecution of the commons, by the lords at the parliaments holden 18 and 21 Jac. regis, against Sir Giles Mompeyson, Sir John Michel, viscount S. Albone lord chancellor of England, the earl of M. lord treasurer of England, whereby the due proceeding of judicature in such cases doth appear.

Thomas



Thomas Long gave the maior of Westbury four pound to be elected burgeesse, who thereupon was elected. This matter was examined and adjudged in the house of commons, *secundum legem et consuetudinem parliamenti*, and the maior fined and imprisoned, and Long removed: for this corrupt dealing was to poyson the very fountain it self.

Arthur Hall a member of the house of commons for publishing and discovering the conferences of the house, and writing a book to the dishonor of the house, was upon due examination, *secundum legem et consuetudinem parliamenti*, adjudged by the house of commons to be committed to the Tower for six months, fined at five hundred marks, and expelled the house.

Munckton stroke William Johnson a burgeesse of B. returned into the chancery of record, for which upon due examination in the house of commons, it was resolved that *secundum legem et consuetudinem parliamenti*, every man must take notice of all the members of the house returned of record at his perill: but otherwise it is of the servant of any of the members of the house; for there he that striketh, &c. must have notice. And the house adjudged Munckton to the Tower, &c.

If any lord of parliament, spirituall, or temporall, have committed any oppression, bribery, extortion, or the like, the house of commons, being the generall inquisitors of the realm (comming out of all the parts thereof) may examine the same, and if they find by the vote of the house, the charge to be true, then they transmit the same to the lords with the witneses and proofs.

### Priviledge of Parliament.

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

*Magister militie Templi petit quod distringat (catailla unius de concilio) tempore parliamenti pro redditu unius domus in London: rex respondet, non videtur honestum, quod illi de concilio suo distringatur tempore parliamenti, sed alio tempore, &c.* Whereby it appeareth that a member of the parliament shal have priviledge of parliament, not only for his servants, as is aforesaid, but for his horses, &c. or other goods disfreinable.

*Querela Comitiss cornubiæ, versus Bogonem de Clare et priorem sancte Trinitatis London, quod ipsi tempore parliamenti ipsum comitem in medio aula Westm' ad procuracionem ipsius Bogonis citaverunt, quod compareret coram archiepiscopo Cantuar', &c. Ipse prior venit et Bogo similiter, et ponunt se in gratiam, misericordiam, et voluntatem regis de alto et basso, ob quod mandantur turri London: postea venit dictus Bogo et finem fecit domino regi pro prædicta transgressione per duas mille marcas, &c. et quoad prædict' comitem respondeat comiti 1000. li. pro transgressione sibi facta, &c. et prædictus prior mittitur ibidem ad faciend' secundum quod thesaurarius ei dicit ex parte dni. regis.*

And yet the serving of the said citation did not arrest, or restrain his body, and the same priviledge holdeth in case of *sub pana*, or other proccesse out of any court of equity.

In the book of the house of commons at the parliament holden 8 Eliz. Owmsloe speaker. fo. 19.

23 El. lib. fo. 12. Popham attorny generall speaker.

Ib. 2. Aprilis. 1 Mariz. Vid. 11 H. 6. c. 11. 5 H. 4. ca. 6.

[ 24 ]

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

Vide inter leges Edw. Confess. c. 3.

Petitiones coram domino rege ad parliament' post festum Sancti Mich. anno 18 E. 1. fo. 7.

Plac. coram rege et ejus concilio ad parliam. suum post festum Sancti Hil. anno 18 E. 1. fol. 1. Vide inf. 10 E. 3. more hereof concerning serving of a citation.

Rot. parlam.  
anno 8 E. 2. in  
Dorf. cl. 8 E. 2.

*Rex mandavit justiciariis suis ad affsas, jurat', &c. capiend. assignat' quòd supersedeant captioni eorundem ubi comites, barones et alii summoniti ad parliamentum regis sunt partes, quamdiu dictum parlam. duraverit.*

Ibid. m. 33 & 22.

*De non procedendo ad capiend' affsas versus illos, qui ad parliamentum regis apud Eborum venerunt.*

In Scacc' ex Originali de anno 10 E. 3. ro. 27. No.  
\* That is, in court of parliament.

*Rex omnibus balivis et fidelibus suis ad quos, &c. salutem. Sciatis, quòd cum curiæ nostræ in quibus \* negotia regni nostri dedecantur ubiq; adeo liberæ sint et exemptæ, et à tempore quo non extat memoria liberæ et exemptæ fuerunt, quod nec aliqua forum ecclesiasticum concernentia in eisdem curiis nostris fieri seu exequi, nec aliqui easdem curias nostras ad aliqua forum ecclesiasticum contingentia faciendum vel exequendum ingredi debeant, vel consueverunt aliquibus temporibus retroactis, ac magister Henricus de Harewedon clericus, Edmundus de Lukenore et Johanne de Wellingburgh de eo quòd ipsi nuper in cancellaria nostra in præsentia venerabilis patris I. Cantuariensis archiepiscopi cancellarii nostri quasdam citationes sive monitiones dilecto clerico nostro Johanni de Thoresby, ne non provocaciones, appellaciones et instrumenta publica super citationibus seu monitionibus prædictis in nostri contemptum et coronæ nostræ ac regiæ dignitatis nostræ præjudicium, et contra libertatem et exemptionem prædictæ fecerunt per inquisitionem in quam se inde in curia nostra coram dilecto cancellario nostro et aliis de concilio nostro posuerunt conviæti fuissent et ea occasione prisonæ nostræ mancipati in eadem ad voluntatem nostram moraturi. Nos de gratia nostra speciali ad requisitionem Philippæ reginæ Angliæ consortis nostræ charissimæ perdonavimus eidem Henrico, Edmundo et Johanni imprisonment prædictam; ita tamen quod nobis satisfaciant de redemptione sua occasione præmissorum, et quod super citationibus, monitionibus, provocacionibus, appellacionibus seu instrumentis prædictis in dicta cancellaria nostra sic factis processum aliquem non faciant, nec quicquam quod in nostri vel juris coronæ nostræ præjudicium cedere possit attemptent vel attemptare faciant de cætero quovis modo. In cujus, &c. Teste rege apud turrim London 15 die Aprilis, ex originali de anno 10 E. 3. Rot. 27. Not.*

Citationes.  
This John de Thoresby was then clerk of the parliament.

[ 25 ]

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

\* Priviledge of parliament in informations for the king, generally the priviledge of parliament do hold, unless it be in three cases, viz. treason, felony, and the peace.

### Of Statutes, or Acts of Parliament.

\* Vid. 14 R. 2.  
nu. 15. & 13  
H. 4. nu. 25.  
b 4 H. 7. 18. b.  
p. tous les justices. 7 H. 7.  
14 & 16. 11 H. 7.  
27. a. Brook  
prerogative 134.  
Fortescue fo. 20.  
cap. 18. Dier  
1 Mar. 92.  
4 Mar. 144. 39 E. 3. 7. Thorp male erravit. Rot. parl. 37 E. 3. nu. 39. 1 R. 2. nu. 56. diversity between acts of parliament and ordinances. 2 R. 2. stat. 2. nu. 28.

There is no act of parliament but must have the consent of the lords, the commons, and the royall assent of the king, and as it appeareth by <sup>a</sup> records and our <sup>b</sup> books whatsoever passeth in parliament by this threefold consent, hath the force of an act of parliament.

The difference between an act of parliament, and an ordinance in parliament, is, for that the <sup>c</sup> ordinance wanteth the threefold consent, and is ordained by one or two of them.

I have

<sup>d</sup> I have read of a restitution in blood, and of lands of one William de Lasenby by the king, by the assent of the lords spirituall, and commons, (omitting the lords temporall) this we hold is an ordinance, and no act of parliament. And when the clergy is omitted and the act made by the king, the lords temporall, and commons. See the rols of parliament and authorities following, viz. Rot. parl. Pasch. <sup>e</sup> 15 E. 2. the case of the Spencers. 3 R. 2. cap. 3. in print: Our soveraigne lord by the common consent of all the lords temporall, and at the petition of the commons, &c. 7 R. 2. cap. 12 accord. 11 R. 2. nu. 9, 10, 11. See 1 H. 5. c. 7. <sup>f</sup> 21 R. 2. nu. 9. & 10. 6 H. 6. nu. 27. 7 H. 8. Kelw. 184. the opinion of the justices agreeable with the said acts of parliament. And note the mutability in this particular case of the Spencers, of this high court of parliament. The judgement by parliament in 15 E. 2. against the Spencers, was in the same year by act of parliament repealed: that repeale was repealed by authority of parliament in 1 E. 3. that repeal of 1 E. 3. was repealed by act of parliament in 21 R. 2. and that of 21 R. 2. was repealed by authority of parliament in 1 H. 4. And so the judgement against the Spencers standeth in force.

<sup>d</sup> 13 H. 4. nu. 20.

<sup>e</sup> Repeal 1 E. 3. cap. 2. stat. 1. 15 E. 3. tit. Petition. F. 2. See Rot. par. an. 1 H. 4. part 5. m. 36. the Isle of Man given to the king by the lords temporall and commons. <sup>f</sup> Repeal. 1 H. 4. cap. 3.

### *The Division of Acts of Parliament.*

Of acts of parliament some be introductory of a new law, and some be declaratory of the ancient law, and some be of both kinds by addition of greater penalties or the like. Againe, of acts of parliament, some be generall, and some be private and particular. All acts of parliament relate to the first day of parliament, if it be not otherwise provided by the act.

33 H. 6. fol. 17.

### *The severall Formes of Acts of Parliament.*

In ancient time all acts of parliament were in form of petitions. And for the severall forms of acts of parliament, see the princes case in the 8 book of Reports. Now for the reading, committing, amending, ingrossing, voting, and passing of bills in either house, and touching conferences with the lords, and for the priviledge of any member of either houses, and of their servants more then hath been said, they be so ordinary and well known, and in such continuall practice, as it were but expence of time to treat any more of them. And for that many times the rols of the parliament have not been truly ingrossed, at the request of the commons certain of them are to be appointed, who should be at the ingrossing of the rols of parliament.

Dier 3. Mar. 131. lib. 8. fo. 1. the princes case. Concerning the ingrossing in rols of acts of parliament. Rot. parl. 7 H. 4. nu. 65.

[ 26 ]

### *In former Times Acts of Parliament were proclaimed by the Sheriffes.*

When I read the case of premunire in 39 E. 3. upon the statute of 27 E. 3. of provisors against the bishop of Chichester, and observing that serjeant Cavendish of counsell with the bishop objected two things: first, that the act whereupon the writ was grounded,

grounded, was no statute. Secondly, that if it were a statute, it was never published in the county: whom Sir Robert Thorpe chiefe justice answered. Although proclamation be not made in the county, every one is bound to take notice of that which is done in parliament: for as soon as the parliament hath concluded any thing, the law intends, that every person hath notice thereof, for the parliament represents the body of the whole realm: and therefore it is not requisite that any proclamation be made, seeing the statute took effect before. This gave me to understand, that albeit it was not required by law that statutes should be published in the county; yet seeing in those days and long after, the use of printing came not into this realm; the use was (as it appeareth by Cavendishes speech) that they should be published in the county, to the end that the subjects might have expresse notice thereof, and not to be overtaken by an intendment in law, which gave me occasion to search and inquire how this usage was, and how long it continued. And in the end I found, that at every parliament the acts that passed were transcribed into parchment, and by the kings writ directed to the sheriffe of every county of England, and commandement given to him, that all the said statutes in all places through his whole bayliwick, as well within franchise as without, where he should finde most fit, that he not only should proclaime them, but to see that they should be firmly observed and kept. And the usage was to proclaim them at his county court, &c. and there to keep the transcript of the acts, that who so would, might reade or take copies thereof. And this writ was sometime in Latine and sometime in French, as in those dayes the statutes were enacted in Latin or in French. But an example of the one, and of the other will more illustrate this matter.

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

At the parliament in anno 10 E. 3.

\* Nota that the sheriffe that hath custodiam committatus, should see the statutes within his county to be kept.

At the parliament. 1. R. 2.

*Edwardus Dei grat' rex Anglię et Francię, et dominus Hibernię vic' Norff. salut.* Quędam statuta p. nos, p̄latos, comites, barones, et alios magnates ad parlamentum nostrum tentum apud Eburum in cro. Ascensionis ultim' p̄terit' ordinavimus et stabilivimus, prout sequitur, and recite the severall statutes verbatim. And then the writ concludeth. Et ideo tibi p̄cipimus, quod statuta illa et omnes articulos in eisdem contentos in singulis locis in baliva tua, tam infra libertates, quam extra, ubi expedire videris, publice proclamari et \* firmiter teneri et observari facias. Teste, &c.

*Richard p. la grace de Dieu roy Dengleterre et de France, et seignieur d'Ireland a nostre viscount de Norff. salut.* Sachez que al honneur de Dieu, et reverence de saint eglise et pur nurrer peace, unitie, et concord in touts parts deins nostre realme, le quel nous desirons mult entierelement, del assent des p̄lats, dukes, counts et barons de mesme nostre realme, al instance et speciall request des communs de nostre realme assemblees a nostre parliament tenuus a Westm. a la quinzim de S. Michael lan de nostre reigne premier avons fait ordeiner et stablier certaine statuts en amendement et relievement de mesme nostre realme, et en la forme que sensuiſt. Primerement est assensus et establie, que saint eglise eit et enjoy se touts les droitures, &c. rehearsing all the statutes that passed at that parliament. And the writ concludeth thus. Et pur ceo vous mandons que touts les statuts faces crier et publier, et firmement tener p. my vostre brullie selonq; la forme et tenor de icel, et ceo ne lesses en aucun manner. Done p. testimoignants de nostre grand seale al Westm. le premier jour de Fevrier lan de nostre reigne primer. And the like writs continued untill

untill the beginning of the reign of H. 7. long time after printing within the reign of H. 6. (as hath bin said) came unto us.

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

[ 27 ]

The passing of any bill or bills by giving the royal assent thereunto, or the giving any judgement in parliament doth not make a session, but the session doth continue untill that session be prorogued or dissolved: and this is evident by many presidents in parliament ancient and late.

The parliament of 14 E. 3. began at Westminster the Wednesday after Mid Lent: the first Monday of the parliament, the ninth part of their grain, wooll, and lambe, &c. was granted to the king, on condition that the king would grant their petitions in a schedule beginning. These be the petitions which by the commons and lords was drawne into a forme of a statute, and passed both houses, and the royall assent thereunto, and the same exemplified under the great seal. After this the parliament continued, and divers acts made, and petitions granted, and in the end that parliament was dissolved.

Rot. parl.  
14 E. 3. stat.  
primo. nu. 7, 8,  
9. &c.

In the parliament holden anno 3 R. 2. it is declared by act of parliament that the killing of John Imperiall ambassadour of Jenoa, was high treason, *crimen læsæ majestatis*, and yet the parliament continued long after, and divers acts of parliament afterwards made, and petitions granted: and in the end the parliament dissolved.

Rot. parl. 3 R. 2.  
nu. 18. &c.

In the parliament begun the first day of March, anno 7 H. 4. on Saturday the 8 day of May it was enacted by the king, the lords spirituall and temporall, and the commons, that certain strangers by name, who seemed to be officers to the queen, should by a day depart the realm, and proclamation thereof in kinde made by writ, by authority of parliament, which parliament continued, and divers other acts of parliament made, and petitions answered: and on the 22 day of December 8 H. 4. dissolved.

Rot. parl. 7 H. 4.  
nu. 29. &c.

The parliament begun 7 November, and on the first day of the parliament it was resolved by all the judges, that those that were attainted of treason, and returned knights, citizens, or burgessees of parliament, that the attainders were to be reversed by authority of parliament before they could sit in the house of commons: and that after the attainders reversed, both the lords, and those of the house of commons might take their places, for such as were attainted could not be lawfull judges, so long as their attainders stood in force: and thereupon the attainders were reversed by act of parliament, and then they took their places in parliament, and the parliament continued, and divers acts made.

Rot. parl. 1 H. 7.  
nu.  
1 H. 7. fo. 4. b.

\* The bill of queen Katharine Howards attainer passed both houses about the beginning of the parliament, whereunto the king sitting the parliament by his letters patents gave his royall assent, and yet the parliament continued untill the first day of Aprill, and divers acts of parliament passed after the said royall assent given. Divers more might be produced, but these shall suffice. So as albeit bills passe both houses, and the royall assent given

\* Rot. par.  
33 H. 8. begun  
the 16 day of January, and continued till the first of April following.  
On the 12 of February the queen was beheaded in the Tower, sitting the parliament.

*Prorogo à ferro*  
*et rogo, unde*  
*prorogatio.*  
*Adjourn, unde*  
*adjournare, et ad-*  
*journamentum, est*  
*ad diem dicere, or*  
*diem dare.*  
 Rot. parl. 23 H. 8.  
 24 H. 8. nu. 1.  
 25 H. 8. nu. 1.  
 26 H. 8. nu. 1.  
 27 H. 8. nu. 1.  
 &c. 2 & 3 E. 6.  
 nu. 1. 3 & 4 E. 6.  
 nu. 1. &c.  
 1 Mariz sess. 2.  
 28 Eliz. nu. 1.  
 &c. And in  
 every of them it  
 is said [and there continued untill such a day;] and yet in them divers adjournments were. See the  
 Journall Book in the lords house. *Ultimo Junii 14. Eliz. Custos magni sigilli ex mandato dominæ re-*  
*ginæ adjournavit præsens parliament' usq; in festum omnium sanctorum.* And in the parliament in anno  
 39 Eliz. *Custos magni sigilli ex mandato dominæ reginæ* (the queen being absent.)

given thereunto, there is no session untill a prorogation or a dissolution.

The diversity between a prorogation and an adjournment, or continuance of the parliament, is, that by the prorogation in open court there is a session, and then such bills as passed in either house, or by both houses, and had no royall assent to them, must at the next assembly begin again, &c. for every severall session of parliament is in law a severall parliament: but if it be but adjourned or continued, then is there no session: and consequently, all things continue still in the same state they were in before the adjournment or continuance.

And the title of divers acts of parliament be, At the session holden by prorogation, or by adjournment and prorogation, but never by continuance or adjournment *tantum*. And the usuall form of pleading is, *ad sessionem tentam, &c. per prorogationem.*

[ 28 ]

We have been the longer and more curious for the clearing of this point for two reasons, 1. For that the adjournment or continuance (as before it appeareth) is much more beneficiall for the common-wealth for expediting of causes, then a prorogation. 2. In respect of a clause in the act of subsidie in the parliament holden in anno 18 Jac. regis, which is but declaratory of the former law, as by that which hath been said appeareth.

When a parliament is called and doth sit, and is dissolved without any act of parliament passed, or judgement given, it is no session of parliament, but a convention.

In the 18 year of R. 2. at a parliament holden before the duke of York (the king being in his passage to Ireland) the petitions of the commons were answered: and a judgement given in the kings bench for the prior of Newport-pannell, against the dean and chapter of Lichfield was reversed, but no act of parliament passed, and therefore this parliament is omitted in the print; but it is no question but it was a session of parliament, for otherwise the judgement should not be of force: and many times judgements given in parliament have been executed, the parliament continuing before any bill passed.

### *The House of Commons is a distinct Court.*

*Nota,* the house of commons is to many purposes a distinct court, and therefore is not prorogued, or adjourned by the prorogation or adjournment of the lords house: but the speaker upon signification of the kings pleasure by the assent of the house of commons, doth say: this court doth prorogue or adjourn itself; and then it is prorogued or adjourned, and not before. But when it is dissolved, the house of commons are sent for up to the higher house, and there the lord keeper by the kings commandement dissolveth the parliament; and then it is dissolved, and not before.

And

Rot. parl.  
 18 R. 2. which  
 began 15 Hilarii.

M.B.

And the king at the time of the dissolution ought to be there in person, or by representation: for as it cannot begin without the presence of the king either in person or by representation (as before it hath been said) so it cannot end or be dissolved without his presence either in person or by representation. *Nihil enim tam conveniens est naturali æquitati, unumquodq; dissolvi eo ligamine quo ligatum est.*

Bracton.

It is declared by act of parliament, that the kings letters patents under his great seale, and signed with his hand, and declared and notified in his absence to the lords spirituall and temporall, and commons assembled in the higher house of parliament, is, and ever was of as good strength and force, as if the kings person had been there personally present, and had assented openly and publickly to the same.

33 H. 8. cap. 21.  
royall assent by  
letters patents.  
Dier. 1 Mar. 93.  
*Commission au 4  
Seigniors, &c. a  
donner royall assent,  
& indorcement  
fait. Soit fait  
come est desire.*

### Of Subsidies and Aides granted by Parliament.

Subsidie is derived of the verb *subsidiari*, which signifieth to be ready to help at need, unde *subsidium*, which signifieth aide and help at need, so properly called, when souldiers were ready to help the foreward of the battell: and aptly was the word so derived, aswell because that which we call now *subsidia*, subsidies, were anciently called *auxilia*, aides, granted by act of parliament upon need and necessity: as also, for that originally and principally they were granted for the defence of the realm, and the safe keeping of the seas, &c. *Commun'a pericula requirunt communia auxilia.*

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

Ph. Cominæus,  
L. b. 5. fo. 233.

Subsidies taken in their generall sense for parliamentary aides are divided into perpetuall and temporary: perpetuall into three parts, viz. into *custuma antiqua*, five magna, *custuma nova* five parva, and into custome of broad cloth. Temporary, whereof there are three kindes, viz. 1. Of tonnage and poundage of ancient time granted for a year or yeares uncertainly, and of latter times for life. 2. A subsidie after the rate of 4s. in the pound for lands, and 2s. 8d. for goods. And 3 for an aide called a fifteenth. And of these in order.

[ 29 ]

### *Custuma antiqua five magna.*

*Custuma antiqua five magna* was by act of parliament granted to king E. 1. his heirs and successors for transportation of three things, viz. wools, woolfels, and leather, viz. for every sack of wool containing thirty six stone, and every stone fourteen pound, half a mark; and for three hundred woolfels half a mark, and for a last of leather thirteen shillings four pence, to be paid as well by strangers as by English. *Prælati, magnates, et tota communitas consenserunt quandam novam consuetudinem nobis de lanis, pellibus et coriis*  
IV. INST. D

See hereafter,  
ca. 11. Verb. de  
nous Customes,  
&c. Rot. finium  
an. 3 E. 1. Rot.  
par. 3 E. 1.  
m. 1. dat. 10  
Novemb. which  
which was in the  
end of the year,  
for he began his

reign 17 Nov.  
Confirmat. cartarum Vet.  
Mag. Cart. 2 part  
fo. 36. a.  
\* Int. brevia de  
term Mich.  
26 E. 1. In offi.  
remem. regis.  
\* 12 H. 4. nu. 45.  
6 H. 6. nu. 11.  
12 E. 4. ca. 3.  
7 E. 4. nu. 30.  
1 E. 6. ca. 13.  
1 Mar. cap. 18.  
1 Eliz. ca. 19. &  
3 Jac. regis ac-  
cord.

*dimid' marc', de 300. pellibus dimid' marc', et de lasa coriorum unam marcam.* In the statute called *Confirmationes cartarum anno 25 E. 1.* there is a saving in these words, *Save a nous, et nous heirs la custome des leynes, peaux et quires grant' per le communalty du realm.* See also the like in the preamble: \* *Salva tamen nobis et hæreditibus nostris custuma lanarum, pellium et coriorum per communitatem dicti regni nobis prim' concess.*

\* Note it is said in divers records, *per communitatem Angliæ nobis concess'*, because all grants of subsidies or aides by parliament doe begin in the house of commons, and first granted by them: also because in effect the whole profit which the king reapeth doth come from the commons.

### *Custuma parva et nova.*

Custuma is de-  
rived of the  
French word *cous-  
sum*, i. tributum  
seu vectigal.  
Rot. cart 31 E. 1.  
nu. 44. called  
Carta merca-  
toria. This was  
questioned rot.  
ordinat. anno 5 E. 2. but allowed of in parliament, anno 1 E. 3. 9 E. 3. ca. 1. 27 E. 3. fiat. Stapl.  
ca. 26. F. N. B. 227. d. 259. a.

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

### *Custome of what Things, ex antiquo.*

1 El. Dier 165.

And it is to observed, that of ancient time no custome was by English or stranger, but for wools, woollens, and leather. Hereby it appeareth how necessary the knowledge of ancient records, and of the true originall of every thing is.

Of wools dra-  
ped into cloth  
no custome was  
duc.

In the reign of E. 3. a great part of the wools for the which such custome was granted, and paid, as is aforesaid, was draped into broad cloth: whereupon question grew, whether upon the transportation of the cloth, into which the wool was draped, custome should be proportionably paid, having regard to the quantity of the wool so converted into cloth: and it was resolved, that no custome should in that case be paid, because the wool by the labour and industry of man was changed into another kind of merchandize: wherewith the king held himself satisfied, and so it appeareth in the kings own writs and records enrolled in the exchequer.

The first act of parliament that gave any subsidy of cloth, was in anno 21 E. 3. (not printed) viz. fourteen pence of lieges, and one and twenty pence of strangers, for every cloth of assise, and two shillings four pence of lieges, and three shillings six pence of strangers for every cloth of scarlet, &c. *Vide inter original' de seaccario, 24 E. 3. rot. 13.* And the reason of granting the said subsidies of broad cloth was, *Quia jam magna pars laneæ regni nostri in eodem regno pannificitur, de qua custuma aliqua non est soluta,*  
per

[ 30 ]

Int. Orig. de  
Seaccario.  
24 E. 3. rot. 13.



*per quod proficuum quod de custumis et subsidiiis lanarum, si extra dictum regnum ducerentur, percipere debemus, in multo diminuantur, &c.* And yet if in any case the king might by his prerogative have set any imposition, he might have set one in that case, for that, as it appeareth by that record, by making of cloth the king lost his customes of wool: and therefore for further satisfaction of the king for the custome of wool; at the parliament holden in anno 27 E. 3. a subsidy was granted to the king his heirs and successors, (\* over the customes thereof due) viz. of every whole cloth of assise not ingrained, four pence, and for the half of such a cloth, two pence, and of every cloth ingrained five pence, and of the halfe two pence half penny, and of every cloth of scarlet six pence, and of the half three pence; and the alnegers fee is granted to him by act of parliament, viz. for the measuring of every cloth of assise of the seller a half penny, and of half a cloth a farthing for his office, and no more, nor shall they take any thing for a cloth that is lesse; and that he take nothing of the alnage of any cloth but only of such cloth as is to be sold. And both in this act, and in some acts in the reign of H. 3. *consuetudines et custumæ*, which are englished, customes, are taken for the subsidies that were granted by parliament, for verily those were ancient and right customes or subsidies. And in the statute of 11 H. 4. customes and subsidies are used as *synonymæ*.

Ib. 27 E. 3. rot. 4. See the second part of the Institutes, Mag. Cart. cap. 30. p. 60. By 27 E. 3. stat. 1. & ca. 4. Custome of cloth.

• Viz. the subsidies granted in anno 21 E. 3. The alnegers fee of the subject granted by parliament. Mag. Cart. ca. 30. Consuetudines.] stat. de Scaccario. 51 H. 3. Custum. des Leynes. 11 H. 4. ca. 7.

### Butlerage.

Butlerage is a custome due to the king of two shillings of every tun of wine brought into this realm by strangers: but Englishmen payeth it not.

*In libro rubeo in scaccaria in custodia rememoratoris regis, fol. 265.* the grant of king John to the merchants of Aquitain trading for wines thence into England of divers liberties, viz. *De libertatibus concessis mercatoribus vinetariis de ducatu Aquitanie, reddendo regi et heredibus suis 2 s. de quolibet dolio vini ducti per eisdem infra regnum Angliæ vel potestate regis.*

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

All merchant strangers in consideration of the grant to them by the king of divers liberties and freedoms, *Concesserunt quod de quolibet dolio vini quod adducent vel adduci facerent infra regnum, &c. solvent nobis et heredibus nostris nomine custumæ duos solidos, &c.*

Rot cartarum anno 31 E. 1. nu. 44. called Carta mercatoria.

### Prisage.

Prisage is a custome due to the king of the wines brought in by the merchants of England of every ship having twenty tuns or more, two tuns, viz. one before the mast, and the other behind, paying twenty shillings for each tun; and this is called *certa prisæ*, and *recta prisæ*, and *regia prisæ*, as in the record ensuing appeareth, and hereof merchant strangers are discharged, *per cartam mercatoriam*, 31 E. 1. ubi supra.

Fleta li. 2. ca. 21. Rot. pat. ac H. 3. Rot. par. 28 E. 1. pro Math. de Colymbar.

*Memorandum quod rex habet ex antiqua consuetudine de qualibet nave mercatoris vini 6. carcat' applican' infra aliquem portum Angliæ de viginti doliis duo doliæ, et de decem doliis unum de prisæ regia pro quadam certo ab antiquo constitut' solvend'.*

P. Rec. 20 R. 2. Vid. Tr. 23 E. 1. rot. 124. Prisæ vinorum in Hibernia.

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

It is called butlerage because the kings chief butler doth receive it, and prisage, because it is a certain taking or purveyance for wine to the kings use.

43 E. 3. ca. 3. &  
1 H. 8. ca. 5.

Concerning the  
alning of new  
draperies.

[ 31 ]

In Hilary tearm, anno, 2 *Jac. regis*, upon a suit made to the king by the duke of Lenox, question was moved concerning new draperies, as frizadoes, bayes, northern cottons, northern dozens, clothrash, durances, perpetuanoes, fustians, canvas, sackcloth, worsteds, and stuffs made of worstead yarn, whether the king might grant the alning of them with a reasonable fee, or whether they were within the said statute of 27 E. 3. And these questions were by the kings commandment in this Hilary Term referred to all the judges of England to certifie their opinions concerning the suit to the lords of his privy counsell; who upon often hearing of the cause, and mature deliberation, and conference amongst themselves, in the end in Trinity term following with one unanimous consent, certified in writing in these words following, viz. To the lords and others of his majesties most honourable privy counsell. Our duties to your lordships remembered. May it please the same to be advertised, that according to your letters in that behalf, we have heard the matter touching the farm of the alnage, and measurage, that is sought to be granted by his majesty of sundry kindes, as well of new made drapery, as of other stuffs made within this realm. And upon hearing as well of some of the part of the master of Orkney, as of others, both of the behalf of the duke of Lenox and master Shaw, have informed our selves touching the same. And for our opinions we are resolved, that all new made drapery made wholly of wool, as frizadoes, bayes, northern dozens, northern cottons, cloth rash, and other like drapery, of what new name soever, for the use of mans body, are to yeeld subsidy and alnage according to the statute of 27 E. 3. and within the office of the ancient alnage, as may appear by severall decrees in that behalf made in the exchequer in the time of the late queen. But as touching fustians, canvas, sackcloth and such like made meerly of other stuff then wool, or being but mixed with wool, we are of opinion, that no charge can be imposed for the search or measurage thereof, but that all such patents so made are void, as may appear by a record of the 11. year of H. 4. wherein the reason of the judgment is particularly mentioned, which we held not amisse to set down to your lordships, which is thus, The same king H. 4. granted the measurage of all woollen cloth and canvas that should be brought to London to be sold by any stranger or denizen (except he were free of London) taking one half penny for every piece of cloth so measured of the seller, and one other half penny of the buyer, and so after the rate for a greater or lesser quantity, and one penny for the measuring of 100. els of canvas of the seller, and so much more of the buyer. And although it were averred that two other had enjoyed the same office before with the like fees, viz. one Shering by the same kings grant, and one Clytheroe before by the grant of king R. 2. yet, amongst other reasons of the judgment, it was set down and adjudged, that the former possession was by extortion, and coercion, and without right, and that those patents were *in operationem, oppressionem et depauperationem*

See Rot. parl.  
50 E. 3. nu. 142.  
Cogware Ker-  
seys.

See hereafter,  
cap. 67.

See Rot. parl.  
9 H. 4. nu. 34.  
Kendall clothes,  
&c. 11 H. 4. c. 2.  
enact. 11 H. 4.  
nu. 26. for rem-  
nants of cloth,  
&c. 11 H. 4. c. 7.  
stat. 2.

*pauperationem populi domini regis, et non in emendationem ejusdem populi,*  
*&c.* and no benefit to the king, and therefore the patents void.  
 And as touching the narrow new stuffe made in Norwich and  
 other places with worsted yarn, we are of opinion that it is not  
 grantable, nor fit to be granted, for we cannot find, that there was  
 ever any alnage upon Norwich worsteds. And for these stuffs,  
 if after they be made and tacked up for sale by the makers thereof,  
 they should be again opened to be viewed and measured, they will  
 not well fall into their old plaits to be tacked up as before, which will  
 be (as is affirmed) a great hinderance to the sales thereof in grosse,  
 for that they will not then appear to be so merchandizable, as they  
 were upon the first making of them up: and even so we humbly  
 take our leaves. Serjeants Inn, the 24. of June. 1605. Which  
 certificate being read by the lords of the privy councill (I being  
 then attorny generall and present) was well approved by them all,  
 and commandment given, that it should be kept in the councill  
 cheft to be a direction for them to give answer to all suits of that  
 kind.

And it is to be observed, \* that acts of parliament that are made  
 against the freedome of trade, merchandizing, handycrafts, and  
 mysteries, never live long.

37 E. 3. ca. 5, 6.  
 38 E. 3. ca. 2.  
 lib. 11. fo. 54.  
 de Taylers de  
 Ipswich.

*Good Bills or Motions in Parliament seldom die.*

[ 32 ]

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

*Bills, motions.*

8 E. 2. n. 1.  
 17 E. 3. nu. 49.  
 1 R. 2. nu. 82.  
 4 R. 2. nu. 36.  
 9 R. 2. nu. 44.  
 1 H. 4. nu. 121.  
 2 H. 4. nu. 83.  
 2 H. 4. nu. 70.  
 11 H. 4. nu. 47.  
 1 H. 5. nu. 23.  
 7 H. 5. nu. 18.

1 H. 6. nu. 41. 7 E. 4. nu. 20. *Acts of Parliament.* 2 E. 3. cap. 2. 25 E. 3. ca. 5. 4 H. 4.  
 ca. 22. 1 H. 5. cap. 1. 15 H. 6. ca. 14. 1 R. 3. ca. 3. 21 H. 8. cap. 5. 23 H. 8. cap. 4.  
 26 H. 8. cap. 3. 31 H. 8. ca. 1. 32 H. 8. cap. 32. 2 E. 6. cap. 8. & 13. 1 & 2 P. & Mar.  
 cap. 13. Vide *Infra*, cap. 8. pa.

*The Subsidy of Tunnage and Poundage.*

By the subsequent records you shall observe 13. things. 1. The  
 grant of poundage only. 2. Of tunnage and poundage. 3. Sever-  
 rall rates, sometimes 6. d. 8. d. 12. d. for poundage. 4. Some-  
 times 2. s. 18. d. 3. s. 5. *Hac vice*, 1, 2, 3, 4. years, for l. 6. To  
 merchants, &c. 7. To have intermission and to vary, lest the  
 king should claim it as a duty. 8. Expressed upon free gift.  
 9. Upon condition to keep the seas, and for commerce. 10. That  
 is ever the consideration and cause of the grant. 11. Granted  
 without retrospect. 12. Sometimes double of strangers. 13. Cloth  
 excepted, that it be not subject to tunnage and poundage. 31  
 H. 6.

\* Of poundage only, and 6. d. in the pound, for two years upon  
 condition, &c.

*The Records.*

47 E. 3. nu. 12.

- <sup>b</sup> 6 R. 2. nu. 13.    <sup>b</sup> 6.d. for poundage, and 2. s. for tunnage of wine, *hac vice*.  
<sup>c</sup> 7 R. 2. stat. 1.    <sup>c</sup> 6.d. of every pound of merchandize, and 2.s. of every tun  
of wine, upon condition, &c. *hac vice*.  
<sup>d</sup> 5 R. 2. nu. 40.    <sup>d</sup> Sometime to have intermission, and to vary, lest the king  
9 R. 2. nu. 11.    should claim as duties.  
10 R. 2. nu. 18.    <sup>e</sup> for tunnage of wine 3.s. and 6.d. for poundage for one  
11 R. 2. nu. 12.    year.  
<sup>e</sup> 13 R. 2. nu. 20.    <sup>f</sup> 3.s. for tunnage of wine, 12 d. for poundage, *hac vice*.  
<sup>f</sup> 14 R. 2. nu. 12.    <sup>g</sup> 6.d. for poundage, and 18 d. for tunnage of wine for three  
17 R. 2. nu. 12.    years.  
<sup>h</sup> 2 H. 4. nu. 9.    <sup>h</sup> 8. d. for poundage and 2.s. for tunnage of wine.  
<sup>i</sup> 4 H. 4. nu. 28.    <sup>i</sup> 12. d. for poundage, and 3.s. for tunnage of wine for three  
years.  
<sup>k</sup> 6 H. 4. nu. 9.    <sup>k</sup> 12.d. for poundage, and 3. s. for tunnage of wine for severall  
8 H. 4. nu. 9.    times upon condition, sometime for one year. In these and most  
9 H. 4. nu. 27.    of the former granted upon condition for due employment <sup>l</sup> of  
<sup>l</sup> 11 H. 4. nu. 45.    their own good will, and so entred, and the king to have a cer-  
<sup>m</sup> 13 H. 4. nu. 10.    tain sum <sup>m</sup> more expressly.  
<sup>n</sup> 1 H. 5. nu. 17.    <sup>n</sup> 12.d. for poundage, and 3.s. for tunnage of wine for four  
<sup>o</sup> 3 H. 5. nu. 50.    years.  
<sup>p</sup> 2 H. 6. nu. 14.    <sup>o</sup> The like subsidy is granted to the king for his life upon con-  
<sup>q</sup> 3 H. 6. nu. 17.    ditions, &c. which was the first grant of tunnage and poundage  
9 H. 6. nu. 14.    for life, which was a leading grant, as hereafter appeareth.  
<sup>r</sup> 23 H. 6. nu. 16.    <sup>p</sup> The subsidy of poundage only for two years.  
<sup>s</sup> 31 H. 6. nu. 2.    <sup>q</sup> Tunnage of wine and poundage granted for severall years.  
& cap. 8.    <sup>r</sup> Tunnage and poundage, *ut prius* of denizens, double of  
\* Nota.    strangers.  
<sup>t</sup> 4 E. 4. & 12 E. 4.    <sup>s</sup> Tunnage of wine and poundage granted to H. 6. for life with  
ca. 3. in print.    an exception of all woollen \* cloth: and here cloth was first ex-  
<sup>u</sup> Rot. par.    cepted, and was a leading exception in all subsequent acts.  
1 H. 7. not    <sup>t</sup> Tunnage of wine and poundage granted to E. 4. for life with  
printed, for he    no retrospect, but for the time to come.  
had many sub-    <sup>u</sup> At the parliament holden anno 1 H. 7. a like act was made for  
sidies, but print-    the grant of the subsidies of tunnage and poundage to him for his  
ed none.    life.  
<sup>x</sup> Rot. parl. 1 H. 8.    <sup>x</sup> And the like subsidy was granted to king H. 8. at the parlia-  
not printed.    ment holden anno 1. of his reign for his life.  
Vid. 6 H. 8.    <sup>y</sup> The like grant was made to E. 6. queen Mary, queen Eliz. and  
ca. 14. in print.    king James for their severall lives, and in all these it is affirmed,  
[ 33 ]    that the like grants were made by act of parliament to king H. 7.  
1 E. 6. ca. 13.    and king H. 8.  
1 Mar. cap. 18.    <sup>y</sup> The consideration of the grant of the subsidies of tunnage and  
1 Eliz. cap. 19.    poundage is ever, as is afore said, expressed in the grant, for the  
1 Jac. ca. 33.    keeping and safeguard of the seas, and for intercourse of mer-  
chandise safely to come into this realm, and safely to passe out of  
the same. And this pertaineth properly to the office of the lord  
admirall to see the consideration of the act to be performed.  
\* They are granted of the free good will of the subjects, and so  
expressly set down in the parliament roll.

\* Rot. par.  
11 H. 4. nu. 45.  
13 H. 4. nu. 10.

A book of rates  
or values.

In king James his reign, when I was a commissioner of the treasury, these subsidies granted for life amounted to one hundred and therefore thousand pounds *per annum*, and so letten to farm. The values of the merchandize for the which the subsidy of poundage is paid, do appear in a book of rates in print, whereby the merchant

chant knows what he is to pay. The subsidy of tunnage of wine is certain in these acts by the contents of the vessels: and none of these acts doe extend to any other liquid merchandize imported or exported, but unto wines only: and seeing nothing is more incertain then the continuance of the values of merchandizes wherefore the subsidy of poundage is paid, it were good at every grant of them to set down the rates in a schedule annexed to the bill.

*Subsidies temporary and usuall at his Day.*

Subsidies temporary and usuall at this day. And this is when the commons in parliament freely grant to the king an aid to be levied of every subject of his lands or goods after the rate of 4. s. in the pound for lands, and 2. s. 8. d. for goods, and for aliens for goods double, to such ends and for such considerations, and to be paid at such times, as by the acts thereof (which are usuall and frequent) doe appear. And in former times in this kind of subsidy, this order was observed, that over and above the subsidy of tunnage and poundage, the commons never gave above one subsidy of this kind, and two fifteens, (and sometime lesse) one subsidy amounting to seventy thousand pounds, and each fifteen at twenty nine thousand pounds, or near thereabouts; nor above one subsidy, which did rise to twenty thousand pounds, the clergy gave not.

At the parliament holden in 31 Eliz. the commons gave two subsidies, and four fifteens, which first brake the circle.

In 35 Eliz. three subsidies and six fifteens.

In 39 Eliz. three subsidies and six fifteens.

In 43 Eliz. four subsidies and eight fifteens, &c.

In 21 Jac. *regis*, three subsidies and fixe fifteens in shorter times then had been before.

In 3 Car. *regis*, five subsidies in shortest time of all.

And it is worthy of observation how quietly subsidies granted in forms usuall and accustomable (though heavy) are borne; such a power hath use and custome: on the other side, what discontents and disturbances subsidies framed in new molds doe raise, (such an inbred hatred novelty doth hatch) is evident by examples of former times:

As that of 4 R. 2. a new invention of subsidies of the kings subjects of either sex by the poll, &c. for the furnishing of the earl of Buckingham for his going into France, whereupon a strong and a strange rebellion ensued, wherein three great and worthy officers were by the rascall rebels barbarously and wickedly murdered, viz. Simon Sudbury archbishop of Canterbury, chancelour of England, the prior of S. Johns of Jerusalem, treasurer of England, and Sir John Cavendish chief justice of England.

In 4 H. 7. another like new found subsidy was granted, which raised a rebellion in the north, in which the noble earl of Northumberland a commissioner in that subsidy, was by the rebels cruelly and causelessly slain.

In anno 16 H. 8. to furnish the king for his going in his royall person into France, a new device for getting of mony was set on foot, which made the headlesse and heedlesse multitude to rise in rebellion,

Rot. Par. 4 R. 2.  
nu. 15.  
5 R. 2. nu. 32.

Hollensh Chron.  
769.

[ 34 ]  
Hollensh Chron.  
891.

rebellion, untill Charles Brandon the noble duke of Suff<sup>r</sup> quieted, and dispersed them.

Rot. par. 9 E. 3.  
nu. 5.

At the parliament holden in 9 E. 3. when a motion was made for a subsidy to be granted of a new kind, the commons answered, that they would have conference with those of their severall countries and places, who had put them in trust, before they treated of any such matter.

9 H. 6. nu. 15.  
10 H. 6. nu. 50.

*Vide* 9 H. 6. nu. 15. Every knights fee to pay 20 s. and so according to the value under or over, and so of the clergy for lands purchased since 20 E. 1. And all other having 20 l. lands not holden as is aforesaid, 20 s. & c. This whole subsidy for certain doubts the king utterly releafed, so as there is no mention made of the same: but hercof thus much shall suffice.

*Sæpe viatorem nova, non vetus orbita fallit.*

### Of Fifteens, Quinzims, &c.

Fifteens, Quinzim or Task, or Quinta decima.

A fifteen is a temporary aid granted to the king by parliament, which without further inquiry is certain, and therein differeth from the subsidy, which is ever uncertain, untill it be assessed.

Second part Inst.  
Mag. Carta cap.  
ultimo.

The fifteen of ancient time was the fifteenth part of goods moveable, but in 8 E. 3. all the cities, boroughs, and towns in England were rated certainly at the fifteenth part of the value at that time generally upon the whole town, whereof you shall read more at large in the second part of the Institutes, in the last chapter of Magna Carta, verb. *Quintam decimam partem bonorum mobilium.*

### Of Tenths.

There is *decima pars* of the laity, and for the most part of cities and boroughs by their goods (*Vid.* 1 R. 2. nu. 26.) which proportionably is, *secundum decimam quintam partem.* That which we call tax, tallage, tenth, and fifteen, the Saxons called *geldinn\**, we use the word changing *g* to *y*, for *gelding*, *yeelding*, &c.

\* Doomsday.

Norff. in Wanelunt, l. Wayland, & ibid. in Frebringe in Maf-

No \* subsidy before the end of the parliament, because it is to accompany the pardon.

ingham, &c. \* Rot. par. 11 R. 2. nu. 11. This is contained in the act of subsidy, and so an act of parliament: and accordingly subsidies, &c. have been granted, as in the book of statutes appeareth.

### Of Acts of Parliament of Confirmation of Letters Patents.

Rot. par. 2 H. 5.  
nu. 20. 1 H. 6.  
nu. 46. 3 H. 7. to  
the queen. 6 R. 8.  
to the duke of  
Suff.

We have read of particular acts of confirmation of letters patents; but the first of lands, &c. that was the more generall, was the statute of 31 H. 8. ca. 13. of monasteries (to make those lands the more passable) but after that, generall acts of confirmation of letters patents have been very frequent.

*How the Lords give their Voices.*

In the lords house, the lords give their voices from the puisne lord *seriatim* by the word of [content,] or [not content.]

A bill was preferred at the parliament holden in anno 6 H. 6. that no man should contract or marry himself to any queen dowager of England without speciall licence and assent of the king, on pain to lose all his goods and lands. The bishops and clergy assented to this bill, by the word of [content,] as far forth as the same swerved not from the law of God and of the church, and so as the same imported no deadly sin. At this time there were besides the archbishops and bishops, 27 abbots and 2 priors, (albeit in troth the number was many times uncertain, as in the close roll it appeareth) which severally held *per baroniam*, and were lords of parliament, and so continued untill they were dissolved in the reign of H. 8. The entry of the said act of 6 H. 6. in the roll is: It is enacted by the king, lords temporall, and commons, that no man should contract or marry himself to any queen of England, without the speciall license and assent of the king, on pain to lose all his goods and lands. The bishops and clergy assented to this bill, as far forth as the same swerved not from the law of God, and of the church, and so as the same imported no deadly sinne.

Rot. par. 6 H. 6. nu. 27.

[ 35 ]

How many lords spiritual in former times.

This is holden to be an act of parliament: first, for that the assent of the clergy could not be conditionall. Secondly, it was not against the law of God nor of the church, nor imported any deadly sinne to make this law by authority of parliament, as it appeareth by Magna Carta, cap. 7. which had by 32 acts of parliament been confirmed, and many others.

This law was made after the marriage of queen Katherine dowager of H. 5. with Owen ap Meredith ap Grono (descended of the princes of Wales) by whom she had issue Edmond of Hadham aforesaid, earle of Richmond, and Jasper of Hatfield, after earl of Pembroke, and duke of Bedford.

*How the Commons give their Voices.*

The commons give their voices upon the question, by yea or no, and if it be doubtfull, and neither party yield, two are appointed to number them; one for the yea, another for the no: the yea going out, and the no sitting: and thereof report is made to the house. At a committee, though it be of the whole house, the yeas go of one side of the house, and the noes on the other, whereby it will easily appear which is the greatest number.

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

*How Parliaments succeed not well in five Cases.*

It is observed by ancient parliament men out of record, that parliaments have not succeeded well in five cases. First, when the king hath been in displeasure with his lords, or with his commons. 2. When any of the great lords were at variance between themselves. 3. When there was no good correspondence between the lords

lords and the commons. 4. When there was no unity between the commons themselves. 5. When there was no preparation for the parliament before it began.

<sup>a</sup> For the 1: so essentiall is the kings good will towards his commons, that it was one of the petitions of the commons to the king, that he would require the archbish. and all others of the clergy to pray for his estate, for the peace and good government of the land, and for the continuance of the kings good will towards his commons: whereunto the thrice noble king assented with these effectual words, The same prayeth the king: and many times the like petitions for the lords. <sup>b</sup> How the king in all his weighty affairs had used the advice of his lords and commons, (so great a trust and confidence he had in them.) Alwaies provided, that both lords and commons keep them within the circle of the law and custome of the parliament.

<sup>c</sup> For the second: at the parliament holden in 4 H. 6. what variance was there between the duke of Gloc. and the b. of Winchester, and their friends on either side: the successe was, that little was done in any parliamentary course at that parliament, and that little was of no moment.

<sup>d</sup> At the parliament holden in the third year of H. 6. the great controversie was between John earl marshall, and Richard earl of Warwick with like successe.

<sup>e</sup> The like controversie between William earle of Arundell and Thomas earl of Devon, for superiority of place, with like event. And many more might be cited. <sup>f</sup> And alwaies in the beginning amity was made between the grandes of the realm by shaking of hands and kissing, and sometime by <sup>g</sup> submission.

For the third, when it was demanded by the lords and commons what might be a principall motive for them to have good successe in parliament, it was answered, *Britis insuperabiles, si fueritis inseparabiles. Explosum est illud proverbium: divide, et impera, cum radix et vertex imperii in obedientium consensu rata sunt.*

For the fourth, unity between the commons themselves. It is most necessary in both these, and agreeable to the parliament in the book of Judges. *Quasi homo unus, eadem mente, uno consilio.*

For the fifth, the summons of parliament is by forty dayes or above before the sitting, to the end that preparations might be had for the arduous and urgent affairs of the realme: and that both the king, according to the example of king David, and likewise the nobles and commons should prepare; for *preparata meditationes sunt semper saniores et meliores quam propterata*, wherein both houses may greatly expedite the business of the common wealth in parliament, if they will pursue the ancient custome of parliament, viz. in the beginning thereof to appoint a select committee to consider of the bills in the two last parliaments that passed both houses, or either of them, and such as had been preferred, read, or committed, and to take out of them such as be most profitable for the common-wealth.

<sup>a</sup> Rot. parl.

37 E. 3. nu. 2.  
and the writ to  
the clergie, *De  
orando pro rege  
& regno*, which  
was usuall in  
those dayes.

<sup>b</sup> Rot. parl.

43 E. 3. nu. 1.  
25 E. 3. nu. 15.  
50 E. 3. nu. 2.

<sup>c</sup> Rot. par. 4 H. 6.  
nu. 12. See the  
acts of that par-  
liament.

<sup>d</sup> Rot. par. 3 H. 6.  
nu. 1. & 10.

<sup>e</sup> Rot. parl.

27 H. 6. nu. 18.

<sup>f</sup> Rot. par. 2 H. 4.  
nu. 14.

5 H. 4. nu. 18. 20.

<sup>g</sup> Rot. Parl.

21 R. 2. by the  
court of Arun-  
dell to the duke  
of Lancast.

4 H. 6. nu. 12.

[ 36 ]

Rot. parl. anno

11 H. 4. nu. 10.

the king desired

this unity.

20 Judicum.

1 Chron. cap. 28.



*The Honour and Antiquity of the Parliament.*

For the honour and antiquity of the parliament, see the first part of the Institutes, sect. 164. verb. *Veigne les burgeſſes*, and in the preface to the ninth book of my Reports, fo. 1, 2, 3, 4, &c. whereunto you may adde, *Int' leges Edwardi re is, ca. 8. de decimis eccleſiæ reddendis, ſect. de apibus vero. &c. Hæc enim prædicavit beatus Auguſtinus, et conſeſſa ſunt à rege baronibus et populo.* A grant by expreſſe act of parliament. *Vide infra*, cap. 79. pag.

7 H. 6. 28. lib. 11. fo. 14.  
Inter leges Edwardi regis, ca. 8.

*The Power and Jurisdiction of the Parliament.*

14-13

<sup>a</sup> Of the power and jurisdiction of the parliament, for making of laws in proceeding by bill, it is ſo transcendent and absolute, as it cannot be confined either for cauſes or perſons within any bounds. Of this court it is truly ſaid: <sup>b</sup> *Si antiquitatem ſpectes, eſt vetuſtiſſima, ſi dignitatem, eſt honoratiſſima, ſi jurisdictionem, eſt capaciſſima.*

<sup>a</sup> See 13 Eliz. cap. 1.  
<sup>b</sup> 39 H. 6. 15. *Vide infra*.  
ca. 79.  
<sup>b</sup> Fortesc. ca. 18.  
<sup>c</sup> Virgil.

<sup>c</sup> *Huic ego nec metas rerum, nec tempora pono.*

Yet ſome examples are deſired. <sup>d</sup> Daughters and heirs apparant of a man or woman, may by act of parliament inherit during the life of the anceſtor.

<sup>d</sup> Rot. par. 12 E. 4. nu. 20, 21, 22. the caſe of the wives of the duke of Clarence and Gloucester.  
<sup>e</sup> 12 F. 4. nu. 34. duke of Buckingham.

<sup>e</sup> It may adjuge an infant, or minor of full age.

<sup>f</sup> To attain a man of treason after his death.

<sup>g</sup> To naturalize a mere alien, and make him a ſubject borne.

<sup>h</sup> It may baſtard a childe that by law is legitimate, viz. begotten by an adulterer, the huſband being within the foure yeas.

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

<sup>f</sup> 21 R. 2. nu. 27. Sir Ro. Pleſington.  
<sup>g</sup> 31 H. 6. cap. 1.

<sup>i</sup> John of Gaunt duke of Lancaſter had by Katherine Swinford before marriage four illegitimate children, viz. Henry, John, Thomas, and Joane. And becauſe they were borne at <sup>k</sup> Beaufort in France, they were vulgarly called Henry de Beaufort, &c. John before the 20 year of R. 2. was knighted, and Henry became prieſt. <sup>l</sup> At the parliament holden 20 R. 2. the king by act of parliament in forme of a charter doth legitimate theſe three ſonnes, and Joane the daughter: and the charter beginneth thus. *Rex, &c. chariſſimis conſanguineis noſtris nobilibus viris<sup>m</sup> Johanni militi: Henrico clerico: Thomæ p<sup>r</sup> domicello, ac dilectæ nobis nobili mulieri: Johanne Beaufort domicellæ germanis præchariſſimi avunculi noſtri, Johannis ducis Lancaſtriæ natis ligeis noſtris ſalutem, &c. Nos dicti*

<sup>h</sup> This is uſuall in many parliaments.  
<sup>h</sup> Rot. par. 5 & 6. E. 6. the lo. marquiſſe of Wincheſters caſe.

<sup>n</sup> *Henrico clerico: Thomæ p<sup>r</sup> domicello, ac dilectæ nobis nobili mulieri: Johanne Beaufort domicellæ germanis præchariſſimi avunculi noſtri, Johannis ducis Lancaſtriæ natis ligeis noſtris ſalutem, &c. Nos dicti*

<sup>i</sup> Rot. par. anno 20 R. 2. m. 6.

<sup>q</sup> *Johanne Beaufort domicellæ germanis præchariſſimi avunculi noſtri, Johannis ducis Lancaſtriæ natis ligeis noſtris ſalutem, &c. Nos dicti*

<sup>k</sup> Beaufort came to the houſe of Lanc. by marriage

between Blanch of Artois, and Edmond firſt earle of Lancaſt.

<sup>m</sup> This John in anno 21 R. 2. was created earle of Somerſet, and marquiſſe Dorſet. But in 1 H. 4. the marquiſhip was taken away by parliament. <sup>n</sup> This Henry was after biſhop of Wincheſter, cardinall of S. Eweby, and chancellor of England.

<sup>l</sup> Rot. par. 20 R. 2. membr. 7.  
<sup>m</sup> But in 1 H. 4. the marquiſhip was taken away by parliament.  
<sup>n</sup> This Henry was after biſhop of Wincheſter, cardinall of S. Eweby, and chancellor of England.

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<sup>q</sup> Joane was firſt married to Ralph the firſt earle of Weſtmerland, and after to Robert Ferrers lord of Owſeley.

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\* Nota.

*avunculi nostri genitoris vestri precibus inclinati, vobiscum qui (ut asseritur) defectum natalium patimini, ut hujusmodi defectu (quem ejusque qualitatis quascunque) presentibus habere volumus pro sufficienter expressis) non obstante ad quaecunque honoris dignitates, (\* excepta dignitate regali) praeeminencias, status, gradus, et officia publica et privata tam perpetua quam temporalia, atque feudal' ac nobil' quibuscunque nominibus nuncupantur, etiamsi ducatus, principat', comitat', baronia, vel alicia feuda fuerint, etiamsi mediate, vel immediate vel à nobis dependeant seu teneantur, praefici, promoveri, eligi, assumi et admitti, illaque recipere, retinere, perinde libere et licite valeatis, ac si de legitimo thoro nati existeretis, quibuscunque statutis seu consuetudinibus regni nostri Angliae in contrarium editis seu observatis (quae hic habemus pro ita licet expressis) nequaquam obstantibus; de plenitudine nostrae regalis potestatis, ac de assensu parlamenti nostri tenore praesentium dispensamus, vosque et vestrum quemlibet natalibus restituimus, et legitimamus. In cujus rei testimonium. Tege rege apud Westm. 9 die Febr. Per ipsum regem in parlamento.*

In this act are divers things worthy of observation. 1. The names whereby they were legitimated. 2. That this legitimation was not *simpliciter*, but *secundum quid*: for they were legitimated and made capable of all dignities, except the royal dignity: so as this legitimation extended not to make them or their posterities inheritable to the crown, but to all other dignities. 3. That before their legitimation, they were not created to any of their dignities. 4. The briefe and artificiall penning of this legitimation, with generall words, as if the particularity were expressed, and with a brief *non obstante*, and with as little blemish as may be. 5. And hereby it appeareth, that \* H. 7. being son of Edmond of Hadham earle of Richmond, and Margaret his wife, daughter and heir of John de Beaufort duke of Somerset: which Margaret lineally descended from the said John de Beaufort, legitimated and made capable of all dignities, as is aforesaid, *excepta regali dignitate*, that the best title of H. 7. to the crown, was by Elizabeth his wife, eldest daughter of E. 4. yet before this marriage the crown was by act of parliament intayled to H. 7. and to the heirs of his body, the right of the crowne then being in the said Elizabeth, eldest daughter of E. 4. 6. In this act the said Thomas before his legitimation could not be called esquire, and therefore he hath this addition of \* *domicello*, either derived of the French word *domoicell*, which signifieth a young souldier not yet knighted, or signifieth nobly born. And note, Johan. the daughter, had the addition of de Beaufort and *domicella* in that sense also.

<sup>b</sup> And albeit I finde an attainer by parliament of a subject of high treason being committed to the tower, and forth-coming to be heard, and yet never called to answer in any of the houses of parliament, although I question not the power of the parliament, for without question the attainer standeth of force in law: yet this I say of the manner of the proceeding, *Auferat oblivio, si potest; si non, utcumque silentium tegat*: for the more high and absolute the jurisdiction of the court is, the more just and honourable it ought to be in the proceeding, and to give example of justice to inferiour courts. But it is demanded, since he was attainted by parliament, what should be the reason that our historians do all agree in this, that he suffered death by a law which he himself had made. For answer hereof, I had it of Sir Thomas Gawdye knight,

\* Nota, pro corona.

Rot. parl. anno 1 H. 7. not in print.

7 H. 4. cap. 2. the like to H. 4. the right of the crowne being then in the descent from Philip daughter and heir of Lionel duke of Clarence.

Vid. 1 H. 7. 12, 13. 25 H. 8. cap. 22. repeal by 28 H. 8.

cap. 7. & 1 Mar. parl. 1. cap. 1. See 13 Eliz. ca. 1. in principio.

\* See Hovenden, pag. 608. for this word *domicel*.

<sup>b</sup> Rot. parl. 22 H. 8.

The attainer of Tho. Cromwell earle of Essex.

knight, a grave and reverend judge of the kings bench, who lived at that time, that king H. 8. commanded him to attend the chiefe justices, and to know whether a man that was forth-coming might be attainted of high treason by parliament, and never called to his answer. The judges answered, that it was a dangerous question, and that the high court of parliament ought to give examples to inferiour courts for proceeding according to justice, and no inferior court could do the like; and they thought that the high court of parliament would never do it. But being by the expresse commandement of the king, and pressed by the said earle to give a direct answer: they said, that if he be attainted by parliament, it could not come in question afterwards, whether he were called or not called to answer. And albeit their opinion was according to law, yet might they have made a better answer, for by the statutes of Mag. Cart. ca. 29. 5 E. 3. cap. 9. & 28 E. 3. cap. 5. No man ought to be condemned without answer, &c. which they might have certified, but *facta tenent multa, que fieri prohibentur*; the act of attainder being passed by parliament, did bind, as they resolved. The party against whom this was intended, was never called in question, but the first man after the said resolution, that was so attainted, and never called to answer, was the said earl of Essex; whereupon that erroneous and vulgar opinion amongst our historians grew, that he died by the same law which he himself had made. The rehearfall of the said attainder can work no prejudice, for that I am confidently perswaded, that such honourable and worthy members shall be from time to time of both houses of parliament, as never any such attainder, where the party is forth coming, shall be had hereafter without hearing of him.

[ 38 ]

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

<sup>c</sup> *Ait Josua ad Acab, fili mi, da gloriam Domino Deo Israel, et confitere mihi quid feceris, ne abscondas.*

<sup>d</sup> *Interrogatus Levita maritus mulieris interfectæ quomodo tantum scelus perpetratum esset, &c.* And the conclusion is after hearing and discerning the cause, consider, consult, and then give sentence.

<sup>e</sup> And as evil was the proceeding in parliament against Sir John Mortimer, third son of Edmond the second earl of March (descended from Lionell duke of Clarence) who was indicted of high treason for certain words, in effect, that Edmond earl of March should be king by right of inheritance, and that he himself was next rightfull heir to the crown after the said earl of March; wherefore if the said earl would not take it upon him, he would: and that he would goe into Wales, and raise an army of 20000. men, &c. which indictment (without any arraignment or pleading) being meerly fained to blemish the title of the Mortimers, and withal being insufficient in law, as by the same appeareth, was confirmed by authority of parliament: and the said Sir John being brought into the parliament without arraignment or answer, judgement

<sup>a</sup> Lex divina.

John 7. v. 15.

Deut. c. 17. v. 10.

& ca. 19. v. 15.

Mat. Par. 18 Joh-

annis 273.

*In civile videtur*

*et contra canones*

*esse in hominem*

*absentem non voc-*

*atum, non con-*

*stitutum nec con-*

*stitutum ferre sen-*

*tentiam.*

Hereof see pauls

*possea*

<sup>b</sup> Acts 25. 16.

Gen. 3. 9. Dixit

dominus, Adam,

ubi es? Vide

Gen. 13. 21.

Ecclesiasticus

11. 7. 8.

<sup>c</sup> Praxis sancto-

rum Josua 7. 19.

22, 23. &c.

<sup>d</sup> Jud. 20. 3.

<sup>e</sup> Rot. par. 2 H 6.

nu. 18.

judgement in parliament was given against him upon the said indictment; that he should be carried to the tower of London, and drawn through the city to Tiborn, and there hanged, drawn and quartered, his head to be set on London bridge, and his four quarters on the four gates of London, as by the record of parliament appeareth.

*The Proceeding in Parliament against Absents.*

The ancient law and custome of the parliament was, that when any man was to be charged in parliament with any crime or offence, or misdemeanour, the kings writ was directed to the sherif to summon and injoin the party to appear before the king in the next parliament. For example.

Placita in parlamento domini regis, anno E. r. 33. Northampt.

[ 39 ]

Placita coram domino rege, Pas. 33 E. r. Rot. 19. Oxon.

*Dominus rex mandavit vic' quod assumptis secum quatuor de discretioribus et leg' militibus com' sui in propria persona sua accederet ad Nicholaum de Segrave, et ipsum in presentia predictorum militum summon' et ex parte domini regis firmiter ei injungeret quod esset coram domino rege in proximo parlamento suo apud Westm' in primo adventu domini regis ibidem ad audiendam voluntatem ipsius domini regis super hiis, quæ tunc ibidem proponere intendret vers' eum, et ad faciendam et recipiendam ulterius quod curia domini regis consideraret in præmissis. Et vic' modo mandavit quod assumptis secum Thoma Wale, Waltero filio Roberti de Daventry, Roberto de Gray de Wolloston, et Radulpho de Normavill quatuor milit', &c. in propria persona sua accessit apud Stowe ad manerium predicti Nicholai, et in presentia eorundem militum summon' predictum Nicholaum, et ei firmiter injunxit quod esset coram domino rege in isto parlamento nunc juxta formam et tenorem mandati præd', &c.*

*Amaricus de Sancto Amando, magister Johannes de Sancto Amando Willielmus de Monte Acuto, Richerdus Attchaw constabularius castri Oxon, Rich. de Hawle, Thomas de Carleton capellanus, Johannes de Ros, Johannes de Trenbrigg, Willielmus Attewarde frater ejus, et Philippus de Wigenton attachiat' fuerunt per vic' in castro Oxon' per præcept' domini regis responsur' eidem domino regi in parlamento suo in crastino sancti Mathæi apostoli anno regni sui xxxiii. super quibusdam criminibus et transgressionibus infra scriptis, et inde per manucaptionem sufficient' adjornat' coram ipso domino regi hic ad hunc diem, scilicet a die Pasche in xv. dies, &c.*

Or a writ might be directed to the party himself, when any complaint was made against him, *De injuriis, gravaminibus, aut molestationibus*, to appear in his proper person before the king and his council, &c. As for example:

Placita coram rege apud Cantuar' de termino Pasce. anno regni regis E. r. 30. Confimile breve ubi supra eidem Roberto de Burghersh ad sectam majoris et baronum quinque portuum.

*Dominus rex mandavit breve suum Roberto de Burghersh in hæc verba. Edwardus Dei gratia, &c. Dilecto et fideli suo Roberto de Burghersh constabular' castri sui Dover et custod' suo quinque portuum, salutem. Quia dilectus nobis in Christo abbas de Faversham et Robertus de Gurne baliivus suus ejusdem villæ erant concilio nostro apud Eborum existente de diversis injuriis, gravaminibus et molestacionibus eis per vos voluntar' et absq; causa rationabili multipliciter illatis graves querimonias deposuerunt, petentes instanter ut eis super hoc fieri faceremus remedium opportunum; propter quod dedimus eis diem coram nobis et concilio nostro à die Pasche in xv. dies, &c. ad querelas suas prædictas tunc ostendend', et ad faciend'*

*ciend' super hoc ulterius et recipiend' quod iustitia suaderet; vobis mandamus, quod in propria persona vestra sitis coram nobis et concilio nostro ad diem predictam' prefatis abbati et balivis suis super premissis respons' factur' et receptur' quod curia nostra consideraverit in hac parte, et ab iniuriis, gravaminibus, molestationibus et districtionibus indebitis prefatis abbati et balivis suis interim inferendis penitus desistendo. Et habeatis ibi hoc breve. Teste me ipso apud Linliscum xxx. die Januarii, anno regni nostri xxx. Virtute ejus brevis predictus Robertus venit, et breve illud protulit ad diem in eodem contentum. Et predictus abbas venit et querelas suas protulit in quodam rotulo scriptas, et quas in curia hic querelando ostendit et legere fecit, de quibus prima est hec, &c.*

Now they which absent themselves shall be proceeded withall, vide 50 E. 3. nu. 37. Adam Buries case, 2. parte patent. 21 R. 2. nu. 15, 16. Rot. Par. 17 R. 2. nu. 28. 11 H. 4. nu. 37, 38. 15 H. 6. nu. 4. 33 H. 6. fo. 17. Sir John Pilkingtons case.

And where by order of law a man cannot be attainted of high treason, unlesse the offence be in law high treason, he ought not to be attainted by generall words of high treason by authority of parliament (as sometime hath been used) but the high treason ought to be specially expressed, seeing that the court of parliament is the highest and most honourable court of justice, and ought (as hath been said) give example to inferiour courts.

There was an act of parliament made in the 11 year of king H. 7. which had a fair flattering preamble, pretending to avoid divers mischiefs, which were, 1. To the high displeasure of almighty God. 2. The great let of the common law, and, 3. The great let of the wealth of this land: and the purvien of that act tended in the execution contrary, *ex diametro*, viz. to the high displeasure of almighty God, the great let, nay the utter subversion of the common law, and the great let of the wealth of this land, as hereafter shall manifestly appear. Which act followeth in these words:

The king our sovereign lord calling to his remembrance that many good statutes and ordinances be made for the punishment of riots, unlawfull assemblies, reteinders in giving and receiving of liveries, signs and tokens unlawfully, extortions, maintenances, imbracery, excessive taking of wages contrary to the statutes of labourers and artificers, the use of unlawfull games, inordinate apparell, and many other great enormities and offences, which been committed and done daily contrary to the good statutes, for many and divers behoofull considerations severally made and ordained, to the displeasure of almighty God, and the great let of the common law, and wealth of this land, notwithstanding that generally by the justices of the peace in every shire within this realm in the open sessions is given in charge to enquire of many offences committed contrary to divers of the said statutes, and divers enquests thereupon there straitly sworn, and charged before the said justices to enquire of the premisses, and therein to present the troth which any letted to be found by imbracery, main-

25 H. 8. ca. 12. Eliz. Barton, and others. And see the act of the attainer of the lord Cromwell, anno 32 H. 8. ubi supra.

A mischievous act with a flattering preamble in 11 H. 7.

[ 40 ]

11 H. 7. ca. 3.

maintenance, corruption and favour; by occasion whereof the said statutes be not, nor cannot be put in due execution: for reformation whereof, for so much that before this time the said offences, extortions, contempts, and other the premisses might not, nor as yet may be conveniently punished by the due order of the law, except it were first found and presented by the verdict of twelve men thereto duly sworn, which for the causes afore rehearsed will not find nor yet present the truth: wherefore be it by the advice and assent of the lords spirituall and temporall, and the commons in this present parliament assembled, and by authority of the same enacted, ordained and established, that from henceforth as well the justices of assise in the open sessions to be holden afore them, as the justices of peace in every county of the said realm, <sup>a</sup> upon information for the king before them to be made, have full power and authority <sup>b</sup> by their discretion to hear and determine all offences and contempts committed and done by any person or persons against the form, ordinance, and effect of <sup>c</sup> any statute made and not repealed, and that the said justices upon the said information have full power and authority to award and make like processe against the said offenders and every of them, as they should or might make against such person or persons as been present and indicted before them of trespassse done contrary to the kings peace, and the said offender, or offenders duly to punish according to the purport, form, and effect of the statutes. Also be it enacted by the said authority, that the person which shal give the said information for the king shall by the discretion of the said justices content and pay to the said person or persons against whom the said information shall be so given his reasonable costs and damages in that behalf sustained, if that it be tried or found against him, that so giveth or maketh any such information. Provided always, that any such information extend not to treason, murder, or felony, nor to any other offence, wherefore any person shall lose life, or member, nor to lose by nor upon the same information any lands, tenements, goods or chattels to the party making the same information. Provided also that the said informations shall not extend to any person dwelling in any other shire, then there, as the said information shall be given or made, saving to every person or persons, cities, and towns, all their liberties and franchises to them and every of them of right belonging and appertaining.

<sup>a</sup> Upon information without any indictment.

<sup>b</sup> By their discretion, and not *secundum legem & consuetudinem*. *Angl.* as all proceedings ought to be.

<sup>c</sup> Obsolete statutes and all, and specially such as time had so altered from the originall cause of the making thereof, as either they could not at all, or very hardly be observed and kept.

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

1 H. 8. ca. 6.

By pretext of this law Empson and Dudley did commit upon the subject unsufferable pressures and oppressions, and therefore this statute was justly soon after the decease of H. 7. repealed at the next parliament after his decease, by the statute of 1 H. 8. ca. 6.

A good caveat to parliaments to leave all causes to be measured by the

the golden and straight metwand of the law, and not to the uncertain and crooked cord of discretion.

It is not almost credible to foresee, when any maxime, or fundamentall law of this realm is altered (as elsewhere hath been observed) what dangerous inconveniences doe follow, which most expressly appeareth by this most unjust and strange act of 11 H. 7. for hereby not only Empson and Dudley themselves, but such justices of peace (corrupt men) as they caused to be authorized, committed most grievous and heavy oppressions and exactions, grinding of the face of the poor subjects by penall laws (be they never so obsolete or unfit for the time) by information only without any presentment or triall by jury being the ancient birthright of the subject, but to hear and determine the same by their discretion, inflicting such penalty, as the statutes not repealed imposed: these and other like oppressions and exactions by or by the means of Empson and Dudley and their instruments, brought infinite treasures to the kings coffers, whereof the king himself in the end with great grief and compunction repented, as in \* another place we have observed.

This statute of 11 H. 7. we have recited, and shewed the just inconveniences thereof, to the end, that the like should never hereafter be attempted in any court of parliament. And that others might avoid the fearfull end of those two time-servers, Empson and Dudley. *Qui eorum vestigia insequuntur, eorum exitus perhorrescant.*

See the statute of 8 E. 4. ca. 2. the statute of liveries, an information, &c. by the discretion of the judges to stand as an originall, &c. This act is deservedly repealed.

Vide 12 R. 2. cap. 13. Punishment by discretion, &c. Vide 5 H. 4. ca. 6. 8. See the \* Commission of sewers. Discretion ought to be thus described. *Discretio est discernere per legem quid sit justum.* And this description is proved by the common law of the land, for when a jury doe doubt of the law, and desire to doe that which is just, they find the speciall matter, and the entry is, *Et super tota materia, &c. petunt discretionem justiciariorum*, and sometime, *ad visamentum et discretionem justiciariorum in præmissis, &c.* that is, they desire that the judges would discern by law what is just, and give judgement accordingly.

See the statute of the judges, 11 H. 7. ca. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

\* In the chapter of the Court of Wards and Liveries.

\* Lib. 5. fo. 100. Rocks case. Lib. 10. fo. 123. &c.

Pl. com. 348. Barnards case.

*Acts against the Power of the Parliament subsequent bind not.*

[ 42 ]

N.B. An article of the statute made in 11 R. 2. cap. 5. is, that no person should attempt to revoke any ordinance then made, is repealed, for that such restraint is against the jurisdiction and power of the parliament, the liberty of the subject, and unreasonable. And likewise the last will and testament of king R. 2. under the great seal, privy seal, and privy signet, wheréby he devised certain mony, treasure, &c. to his successors upon condition to observe all the acts and orders at the parliament holden in anno 21 of his reign, was holden unjust and unlawfull, for that it restrained the sovereign liberty of the kings his successors.

Sundry lords of parliament (but no bishops) or six of them, and certain knights of shires of the commons or three of them are authorized by authority of parliament to examine, answer, and plainly

IV. Instr.

E

determine

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

21 R. 2. ca. 16. 21 R. 2. nu. 47.

determine all the petitions exhibited in that parliament, and the matters contained in the same by their good advice and discretion, &c. The high power of a parliament to be committed to a few is holden to be against the dignity of a parliament, and that no such commission ought to be granted.

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

Also I find that in times past the houses of parliament have not been clearly dealt withall, but by cunning artifice of words utterly deceived, and that in cases of greatest moment, even in case of high treason, as taking one example for a warning in like cases hereafter.

King H. 8. after the clergy of England had in their convocations acknowledged him supream head of the church of England, thought it no difficult matter to have the same corroborated and confirmed by authority of parliament, but withall secretly and earnestly desired that the impugnors and deniers thereof, though it were but by word, might incur the offence of high treason, and finding the one, that is, the acknowledgement of his supremacy likely to have good passage, and having little hope upon that which he found to effect the other concerning high treason, fought to have it passe in some other act by words closely cowched, though the former act of supremacy had been the proper place. \* And therefore in the act of recognition of his supremacy it is enacted, that he should have annexed and united to the crown of this realm the title and stile thereof: † and afterwards towards the end of the parliament, a bill was preferred whereby many offences be high treason, and thereby it is enacted, That if any person or persons by <sup>a</sup> word or writing, <sup>1</sup> practise or attempt any bodily harm to the king, the <sup>b</sup> queen or their heirs apparent, <sup>2</sup> or to <sup>c</sup> deprive them or any of them, of their dignity, <sup>d</sup> title, or name of their royall estates, <sup>3</sup> or that the king should be an <sup>e</sup> heretique, schismaticque, tyrant, insidell, or usurper of the crown, &c. that every such person so offending should be adjudged traytors, &c. So as now by this latter act, he that by word or writing attempts to deprive the king of the title of his royall estate is a traytor, but the former act had annexed to the crown the title of the stile of supremacy, and therefore he that should by word or writing attempt to deprive the king thereof should be a traytor. And <sup>f</sup> upon this law of 26 H. 8. ca. 13. for denying of the kings supremacy divers suffered death as in case of high treason, whereas all laws, especially penall, and principally those that are penall in the highest degree <sup>g</sup> ought to be so plainly and perspicuously penned, as every member of both houses may understand the same, and according to his knowledge and conscience give his voice. <sup>h</sup> *Erit autem lex honesta, justa, possibilis, secundum naturam et secundum consuetudinem patriæ, temporisque conveniens, necessaria et utilis, manifesta quoque, ne aliquid per obscuritatem incertum captionem \* contradat, nullo privato commodo, sed pro communi civium utilitate conscripta, ideo in ipsa constitutione ista consideranda sunt, quia cum leges institutæ fuerint non erit liberum arbitrium judicare de ipsis, sed oportebit judicare secundum ipsas,* which be excellent

1 H. 4. nu. 70.

2 H. 4. ca. 22.  
Vide 21 R. 2.  
nu. 44.

26 H. 8. ca. 1.  
Acts of parliament ought to be plainly, and clearly, and not cunningly and darkly penned, specially in criminal causes.

\* 26 H. 8. ca. 1.  
† 26 H. 8. ca. 13.

<sup>a</sup> By word, &c. this by construction referres to the 2. clause.

<sup>b</sup> Shadowed with the queen or prince.

<sup>c</sup> Deprive, an obscure word.

<sup>d</sup> Note this word [title] in the former act.

<sup>e</sup> Parker b. of Cant. Lib. de Antiquitat. Brit. Ecclesiæ. Clericus animo toto obsequi, nondum enim quid sibi hic novus vellet titulus, aut quorsum tenderet, proposuit, &c.

<sup>f</sup> But this act lived not long, for twice it was repealed, viz. by 1 E. 6. c. 12. & 1 Mar. c. 1.

<sup>g</sup> What qualities laws ought to have.

<sup>h</sup> Isidor. 2. Etymol.



cellent rules for all parliaments to follow. But the statute of 5 Eliz. ca. 1. hath concerning the \* supremacy dealt plainly and perspicuously as by the same appeareth.

5 Eliz. ca. 1.  
\* Exod. 4. 16.  
Tuc. i. Moyses eris  
ei. i. Aur. n. in  
his que ad deum

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

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

Subsequent parliaments cannot be restrained by the former.

43 E. 3. ca. 1.  
21 H. 7. ca. 1.  
28 H. 8. ca. 17.  
1 E. 6. ca. 11.  
lib. 4. to 46. the  
B. of Cant. cate.

### *Acts of Parliament enrolled in other Courts.*

For the better observation of any act of parliament enacted for the commonwealth, or of a petition of right, or judgment in parliament, or the like, and to encourage the judges that the same may be duly executed, the same may be enrolled in the courts of justice in this manner. The tenor of the record must be removed into the chancery by writ of *certiorari*, and delivered into the kings bench by the hands of the chancellor or lord keeper, and sent by mittimus to the court of common pleas, and by like mittimus into the exchequer, and the king by his writ may command any court to observe and firmly to keep such an act of parliament, as it appeareth by these two precedents. *Ex Rotulo Claus. anno 28 E. 1. m. 2. Dors. Rex thesaurar' et baronibus suis de scarcar' salutem. Quia volumus quod Magna Carta domini Henrici quondam regis Angliæ patris nostri de libertatibus Angliæ quam confirmavimus et etiam innovavimus in omnibus et singulis articulis suis firmiter et inviolabiliter observetur. Vobis mandamus quod cartam prædictam in omnibus et singulis suis articulis quantum in vobis est coram vobis in dicto scaccario observari faciatis firmiter et teneri. T. R. apud Dunfries 23. die Octobris.*

Int. placita parl.  
18 E. 1. rot. 18.  
Ibid. 20 E. 1.  
Magnum placitum int. com.  
Gloc' & com.  
Heref. & Essex  
irr. rot. claus.  
an. 23 E. 1.  
in Dors. irr. 10  
Magna Carta.  
Pasch. 33 E. 1.  
rot. par. Nich.  
Segraves case,  
rot. 22.  
Tr. 12 E. 2.  
ro. 60. de irr.  
Petition in parliament, al banke le roy.

*Rex justic' suis de banco salutem: Cum in alleviationem gravaminum quæ populus regni nostri occasione guerrarum hæcenus toleravit, ac in emendationem status ejusdem populi, nec non ut ex hoc se exhibeat ad nostra servicia promptiorem, nobisque in agendis nostris libentius subsidium faciat in futurum, quosdam articulos eidem populo plurimum (annuente domino) profuturos de gratia nostra speciali duxerimus concedendos. Vobis mandamus quod dictos articulos quos vobis mittimus sigillo nostro consignatos coram vobis in banco prædicto quantum in vobis est juxta vim, formam et effectum eorundem observari faciatis firmiter et teneri. T. R. apud Dunfries 30. die Octobris.*

*Every Member of the Parliament ought to come.*

5 R. 2. stat. 2.  
c. 4. rot. par.  
31 H. 6. nu. 46.  
fines were set, &c.  
If any of the  
lords or com-  
mons come not,  
&c. they shall  
be fined.

Every lord spirituall and temporall, and every knight, citizen, and burgesse shall upon summons come to the parliament, except he can reasonably, and honestly excuse himself, or else he shall be amerced, &c. that is, respectively, a lord by the lords, and one of the commons by the commons.

By the statute of 6 H. 8. ca. 16. no knight, citizen or burgesse of the house of commons shall depart from the parliament without licence of the speaker and commons, the same to be entred of record in the book of the clerk of the parliament, upon pain to lose their wages.

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Vi. 3 E. 3. 1 E.  
sup. If any of the  
lords or com-  
mons depart, &c.  
they shall be  
fined. 1 & 2 Ph.  
and M. rot. 48.  
ut sup.  
\* 5 R. 2. stat. 2.  
ca. 4.

If a lord depart from parliament without licence, it is an offence done out of the parliament, and is finable by the lords: and so it is of a member of the house of commons, he may be fined by the house of commons. Vide 1 & 2 Ph. and Mar. coram rege. Rot. 48. divers informations by the attorney generall for departing without licence, *ut supra*.

\* The punishment of sheriffes for their negligence in returning of writs, or for leaving out of their returns any city or borough which ought to send citizens and burgeses.

*Advice concerning new and plausible projects and offers in Parliament.*

See before pa. 14.  
rot. par. 13 E. 3.

When any plausible project is made in parliament to draw the lords and commons to assent to any act (especially in matters of weight and importance) if both houses do give upon the matter projected and promised their consent, it shall be most necessary, they being trusted for the common-wealth, to have the matter projected and promised (which moved the houses to consent) to be established in the same act, lest the benefit of the act be taken, and the matter projected and promised never performed, and so the houses of parliament performe not the trust reposed in them. As it fell out (taking one example for many) in the reigne of H. 8. On the kings behalfe the members of both houses were informed in parliament, that no king or kingdome was safe, but where the king had three abilities. First, to live of his own, and able to defend his kingdome upon any sudden invasion or insurrection. 2. To aide his confederates, otherwise they would never assist him. 3. To reward his well deserving servants. Now the project was, that if the parliament would give unto him all the abbies, priories, friories, nunneries, and other monasteries, that for ever in time then to come, he would take order that the same should not be converted to private use: but first, that his exchequer for the purposes aforesaid should be enriched. Secondly, the kingdome strengthened by a continuall maintenance of 40 thousand well trained souldiers with skilfull captains and commanders. Thirdly, for the benefit and ease of the subject, who never afterwards (as was projected) in any time to come should be charged with subsidies, fifteenths, loanes, or other common aides. Fourthly, lest the honour of the realme should receive any diminution of honour by the dissolution of the said monasteries,

nafteries, there being 29 lords of parliament of the abbots and priors (that held of the king *per baroniam*, whereof more in the next leafe) that the king would create a number of nobles, which we omit. The faid monafteries were given to the king by authority of divers acts of parliament, but no provision was therein made for the faid project, or any part thereof; \* only *ad faciend' populum* thefe poffeffions were given to the king his heirs and fucceffors to do and ufe therewith his and their own wils, to the pleafure of almighty God, and the honour and profit of the realme.

Now obferve the catastrophes in the fame parliament of 32 H. 8. when the great and opulent priory of Saint Iohns of Jerufalem was given to the king, he demanded and had a fubfidie both of the clergie and laity. And the like he had in 34 H. 8. and in 37 H. 8. he had another fubfidie. And fince the diffolution of the faid monafteries he exacted divers loanes, and againft law received the fame.

27 H. 8. de monafteries, &  
31 H. 8. cap. 13.  
32 H. 8. cap. 14.  
\* 27 H. 8. ca. 28.

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

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

If the king by his writ calleth any knight or efquire to be a lord of the parliament, he cannot refufe to ferve the king there in *communi illo concilio*, for the good of his country. But if the king had called an \* abbot, prior, or other regular prelate by writ to the parliament to the common counsell of the realme, if he held not of the king *per baroniam*, he might refufe to ferve in parliament, † becaufe *quodam fecularia*, he was *mortuus in lege*, and therefore not capable to have place and voice in parliament, unleffe he did hold *per baroniam*, and were to that common counsell called by writ, which made him capable: and though fuch a prelat regular had been often called by writ, and had *de facto* had place and voice in parliament, yet if *in rei veritate* he held not *per baroniam*, he ought to be difcharged of that fervice, and to fit in parliament no more.

\* For that the abby of Leicefter was founded by Robert Fitz-Robert earle of Leicefter (albeit the patronage came to the crowne by the forfeiture of Simon de Mountford earle of Leic.) yet being of a fubjects foundation, it could not be holden *per baroniam*, and therefore the abbot had no capacity to be called to the parliament, and thereupon the king did grant, *quod idem abbas et fucceffores fui de veniendo ad parlamenta et concilia noftra vel hæredum noftrorum quieti fint et exonerati imperpetuum.*

† De jure et confuetudine Angliæ ad archidiaconatum Cantuarienfem, &c. abbates, priores, alioſq; prælatos quoscunque per baroniam de d. mino rege tenentes pertinet in parlamentis regiis quibſcunque ut pares regni prædicti perſonaliter intereſſe, ibiq; de regni negotiis ac aliis tractari confuetis cum cæteris dicti regni paribus ac aliis ibidem jus intereſſendi habentibus conſulere et tractare, ordinare, ſtatuerè, et diffinire, ac cætera facere quæ parliamenti tempore ibid. immuniunt faciend'.

No man ought to fit in that high court of parliament, but he that hath right to fit there: for it is not only a perſonall offence in him that fitteth there without authority, but a publick offence to the court of parliament, and confequently to the whole realme. But all the caſes abovesaid, and others that might be remembered touching this point, as little rivers, do flow from the fountain of *modus tenendi parlamentum*, where it is ſaid. *Ad parlamentum ſum-*

Rot. Clauf. in dorf. 10 H. 7. 20 Septemb. Writs to divers ad ordinem militie de balneo ſuſcipiend. juxta antiquam confuetudinem in creatione uſitatam.

\* Of regular prelates that hold *per baroniam*.

† [ 45 ] And ſo was it adjudged in the parliament at York, an. 12 E. 2. in the caſe of the abbot of S. James extra Northamp. Stanf. pl. cor. 153. a.

\* Rot. pat. an. 26 E. 3. part. 1. m. 22. See Rot. clauf. in dorf. 11 E. 3. part 2. m. 11 Religioſus que teignont per barony ſont tenus de venir au parliament. Vid. ibid. 13 E.

3. part. 2. m. 28 & 1.

† Rot. pat. 11 R. 2. part. 1. m. 2. artic. 34.

Modus tenendi parl. ca. 2.

This is *infra* explained by the assise of Clarendon.

*moneri et venire debent ratione tenuræ suæ omnes et singuli archiepiscopi, episcopi, abbates, priores et alii majores cleri qui tenent per comitatum vel baroniam ratione hujusmodi tenuræ, et nulli minores, nisi eorum præsentia necessaria vel utilis reputetur, &c.*

One rare and strange creation of a lord regular of parliament we cannot passe over, which was, that king H. 8. in the fifth year of his reign, by his letters patents under the great seale, did grant unto Richard Banham abbot of Tavestock in the county of Devon, being of his patronage, and to the successors of the said abbot, *ut eorum quilibet, qui pro tempore ibidem fuerit abbas, sit et erit unus de spiritualibus et religiosis hominis parliamenti nostri, hæredum et successorum nostrorum, gaudend' honore, privilegio et libertatibus ejusdem.*

By that which hath been said, it appeareth that this creation of a regular lord of parliament was voide, for that the abbot was neither *baro*, nor had *baroniam*, &c. And if the king might create abbots or priors lords of parliament in this manner, by the same reason he might create deans and archdeacons lords of parliament, which without question he cannot.

10 H. 2. cap. 11.  
Mat. Par. 97.  
Assise de Clarendon.

By the act of parliament of 10 H. 2. called the assise of Clarendon, it is declared, *Ut pars consuetudinum et libertatum antecessorum regis, viz. Henrici primi et aliorum, quæ observari debent in regno et ab omnibus teneri, viz. archiepiscopi, episcopi, et universæ personæ regni, qui de rege tenent in capite habeant possessiones suas de rege sicut baroniam, et inde respondeant justiciariis et ministris regis, et sequantur et faciant omnes consuetudines regias, et sicut cæteri barones debent interesse judiciis curiæ regis cum baronibus, quousq; perveniatur \* ad diminutionem membrorum vel ad mortem.* So as by this act a tenure of the king in chiefe was in equipage with a barony.

Rot. parl. 11 &  
21 R. 2.

Cart. libertat. a  
rege Johanne  
anno 17 regni  
sui concess. Mat.  
Par. 343.

And king John by his great charter of liberties made anno 17 of his reigne, granteth, *Quod faciemus summoneri archiepiscopos, episcopos, abbates, comites, et majores barones regni singulatim per literas nostras.* Out of this clause we are to observe these things: First, that these barons called here *majores*, were lords of parliament, and called thereunto by the kings writs. Secondly, that they were called *majores* comparatively, and that was in respect of others which were called *barones minores*, or *nobiles minores*, and were freeholders that \* hold by knights service and escuage. i. *Servitium scuti*, of three sorts, viz. *militis*, *armigeri*, et *generosi*, knights, esquires, and gentilehomes, or gentlemen. These *barones minores* were lords of mannors, and had not the dignity of lords, but had courts of their freeholders, which to this day are called court barons, *curiæ baroniar'*. Of this baron it is said in that law made by king Edward before the conquest: *Barones qui suam habent \* curiam de suis hominibus, videant ut sic de eis agant, quatenus erga deum reatum non incurrant, et regem non offendant.*

## [ 46 ]

\* Nota, a knightsfee is the service of a knight, that is of a man at arms, or of war. Hereof see the second part of the Instit. cap. de Militibus.  
1 E. 2. Inter leges Edw. cap. 21 Ib. ca. 9.  
\* 1. Curiam baronis, Glanv. li. 8. cap. 11. acc'.  
Bract. li. 3. 154.  
b. Camd. Erit. 121.

*Baro à bar, Germanica lingua liberum et sui juris significat.* 1. which agreeth well with that which hath been said. 2. That *baro major* was called *baro major regni*. 3. That every greater baron was feverally summoned by the kings writ, which continueth to this day.

*The Fees of the Knights, Citizens, and Burgesſes of Parliament.*

First, for the knight of any county it is 4s. *per diem*, and ſo it hath been time out of mind, which is particularly expreſſed in many records, but let us take one in *hæc verba*. *Johannes Shordich unus militum comitatus Middleſex venientium a parlamento tenet apud Weſtm' in cro. animarum ultimi præteriti habet allocationem 4 li. et 4s. pro 21 diebus pro expenſis ſuis veniendo ad parliament' prædict' ibid. morando, et exinde ad propria redeunto, capiendo per diem 4s. Teſte rege apud Weſtm' 24 die Novemb. anno 46.* Every citizen and burgeſſe is to have 2s. *per diem*, *ut ſupra*, *mutatis mutandis*.

<sup>a</sup> Nota the writ *de expenſis militum, &c.* doth comprehend the ſumme according to the aboveſaid computation, and a commandement to the ſheriffe to levie the ſame <sup>b</sup> *de communitate comitatus prædicti tam infra libertates, quam extra.* (*Civitatis et burgis de quibus cives et burgeſes ad parlamentum noſtrum, &c. venerunt duntaxat exceptis.*) The like writs to the ſheriffes *de expenſis civium et burgenſium*, to levie the ſame in cities and boroughs.

<sup>c</sup> An. 1 R. 2. nu. 11. the commons petitioned in parliament, that all perſons having lay fee might contribute to the charge of the knights, and to all tallages. The king answered, [The lords of the realm wil not loſe their old liberties,] note the writ is *de communitate*.

<sup>d</sup> Alſo there is a writ in the Register *de expenſis militis non levandis ab hominib' de antiquo d'nico, nec ab natiuis.* <sup>e</sup> Other diſcharges *de expenſis militum*.

<sup>f</sup> For the wages of the knights of the ſhire of Cambridge ſee the ſtatute of 34 H. 8. cap. 24. *Conſimile pro inſula de Elv, &c.*

<sup>g</sup> H. 4. an. 14. of his reigne ſummoned a parliament *cro. Purificationis*, and he deſeased 20 Martii following, ſo as the parliament was diſſolved by his deſeaſe. Thereupon it was a queſtion, whether the knights and burgeſſes ſhould have their wages ſeeing nothing paſſed in that parliament. And it was reſolved, that if upon view of the kings <sup>h</sup> records any like preſidents may be found, allowances of their fees ſhal be made. <sup>i</sup> Alſo the clergy were contributory by reaſon of their benefices to the expences of the procurators of the clergy.

<sup>k</sup> But chaplains which are maſters of the chancery and attendants at the parliament, ſhal not be contributory by reaſon of their benefices to the expences of the clergy, as by the Register *ubi ſupra* appears: and this was by an act of parliament made in \* 4 E. 3. which in generall words is recited in the writ directed to the arch-deacon for their diſcharge.

<sup>i</sup> Regiſt. 261. F. N. B. 229. a.

<sup>k</sup> Vid. ſup. pa. 4, 5.

\* Parl. an. 4 E. 3. apud Winton,

Indorſ. clauſ. an. 46 h. 3. nu. 4 Rot. clauſ. 7 R. 2. nu. 1. de expenſis milit. Regiſt. fo. 192. a. acc' Drota. Veniendo, morando, redeundo, per diem 4s. Par. 51 E. 3. nu. 45. 35 H. 8. cap. 11. See the ancient treatiſe, *De modo tenendi parl.*

<sup>a</sup> Regiſt. f. 192. a. See the ſtat. of 12 R. 2. ca. 12. and ſee 23 H. 6. ca. 11. how the ſheriffe ſhall levie the ſame. See 8 R. 2. tit. Avowrie 260. what the common law was.

<sup>b</sup> Nota, de communitate. Vid. ſup. pa. 1. For the legall underſtanding of this word commons.

<sup>c</sup> Rot. par 1 R. 2. nu. 11.

<sup>d</sup> Regiſt. 261. 7 H. 6. 35. b. F. N. B. 14 E.

<sup>e</sup> Regiſt. 191, 192. 12 R. 2. ca. 12.

<sup>f</sup> 34 H. 8. ca. 24. 9 H. 6. nu. 46.

<sup>g</sup> Rot. par. 1 H. 5. nu. 26. <sup>h</sup> Nota, for preſidents.

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

See the stat. of  
5 R. 2. cap. 4.  
Vid. sup. pa. 4.  
5. Rot. brev.  
7 R. 2.  
[ 47 ]  
Do f. clauf.  
7 R. 2. m. 10.  
& 37.

Vi. stat. de  
1 Mar. cap.

A knight baneret being no lord of parliament is eligible to be knight, citizen, or burgesse of the house of commons being under the degree of a baron, who is of the lowest degree of the lords house. But Thomas Camois was not only a knight baneret, but a baron and lord of parliament in anno 7 R. 2. and served in that parliament as a baron of the realme, and therefore as of a thing notorious he was discharged. One under the age of 21 years is not eligible, neither can any lord of parliament sit there untill he be of the full age of 21 years.

An alien cannot be elected of the parliament, because he is not the kings liege subject, and so it is albeit he be made denizen by letters patents, &c. for thereby he is made *quasi, seu tanquam ligens*: but that will not serve, for he must be *ligens revera*, and not *quasi*, &c. And we have had such an one chosen and disallowed by the house of commons, because such a person can hold no place of judicature: but if an alien be naturalized by parliament, then he is eligible to this or any other place of judicature.

39 E. 3. 35. 36.

But it is objected that Gilbert de Umphrevill earle of Andgos in Scotland, was called by the kings writ to the parliament in 39 E. 3. by the name of Gilbert earle of Andgos: and in a writ of ravishment of ward brought against him, by the name of Gilbert Umphrevill chivaler, he pleaded to the writ, that he was earle of Andgos not named in the writ: and for that he was summoned to every parliament by the name of the earle of Andgos, and the king sent to him a writ of parliament under the great seale, as to a peer of the land, by judgement of the court the writ did abate. We have searched for the truth of this case, and do finde it in the plea rolls in this manner.

Richard de Umphrevill baron of Prodhowe and Redesdale in the county of Northumberland, had issue Gilbert, who after the death of his father was a baron of this realm, and in the reign of H. 3. married with Mawde daughter and heir of the earl of Andgos in Scotland, who by her had issue Gilbert, who was earle of Andgos as heir to his mother, and baron of Prodhow and Redesdale as heir to his father: he sat in parliament upon summons by writ in 27 E. 1. 28 E. 1. 30 E. 1. 35 E. 1. 1 E. 2. and 2 E. 2. by the name of Gilbert earle of Andgos. Robert his sonne sat in parliament, anno 12 E. 2. by the same name of dignity, and so forth, all E. the seconds reign. And Gilbert his sonne sat in parliament in 6 E. 3. and in every parliament following untill, and in 4 R. 2. by the same name. And in Gilbert his sonne (who deceased in anno 15 H. 6.) that surname of Umphrevil ceased. Hereby it appeareth that the said Richard Umphrevil and his posterity, from whence soever they originally descended, were liege Englishmen: for if they had been aliens, they could not have enjoyed the lordships of Prodhowe, Otterborne, Harbottle, and Redesdale in England, nor the barony of Kime in Lancashire, which the two last Gilberts enjoyed. And note, the book in 39 E. 3. concludeth, that

All this doth  
appear in the  
rolls of parliament in all the  
several times.

These two were  
commonly called  
the earls of  
Kime.

Gilbert

Gilbert Umphrevil was summoned to the parliament under the great seale, *come un pier del realme*.

A bishop elect may sit in parliament as a lord thereof.

Hil. 18 E. 1.  
fo. 4. nu. 105.

*Of Knights, Citizens and Burgeses of Parliament.*

None of the judges of the kings bench, or common pleas, or barons of the exchequer that have judicall places can be chosen knight, citizen, or burgesse of parliament, as it is now holden, because they be assitants in the lords house; and yet you may read in the \* parliament roll, an. 31 H. 6. that Thorp baron of the exchequer was speaker of the parliament. But any that have judicall places in the court of wards, court of duchie, or other courts ecclesiasticall, or civill, being no lord of parliament, are eligible.

\* None of the clergy, though he be of the lowest order, are eligible to be knight, citizen, or burgesse of parliament, because they are of another body, viz. of the convocation.

A man attainted of treason or felony, &c. is not eligible: for concerning the election of two knights, the words of the writ be, *Duos milites gladiis cinctos magis idoneos, et discretos eligi fac.* And for the election of citizens and burgeses, the words of the writ be, *Duos, &c. de discretioribus et magis sufficientibus*, which they cannot be said to be, when they are attainted of treason or felony, &c.

Maiores and bailiffes of townes corporate are eligible against the opinion in Brook, anno 38 H. 8. tit. Parliament.

Any of the profession of the common law, and which is in practice of the same, is eligible. For he which is eligible of common right cannot be disabled by the said ordinance in parliament in the lords house in 46 E. 3. unless it had been by act of parliament: and if it had been by authority of parliament, yet had the same been abrogated by the said statutes of 5 R. 2. stat. 2. cap. 2. and 7 H. 4. cap. 15. which are generall lawes without any exception, as hath been said.

At a parliament holden at Coventry anno 6 H. 4. the parliament was summoned by writ (and by colour of the said ordinance) it was forbidden, that no lawyer should be chosen knight, citizen, or burgesse, by reason whereof this parliament was fruitlesse, and never a good law made thereat, and therefore called *indoctum parliamentum*, or lack-learning parliament. And seeing these writs were against law, lawyers ever since (for the great and good service of the common-wealth) have been eligible: for as it hath been said, the writs of parliament cannot be altered without an act of parliament: and albeit the prohibitory clause had been inserted in the writ, yet being against law, lawyers were of right eligible, and might have been elected knight, citizen, or burgesse in that parliament of 6 H. 4.

By special order of the house of commons the attorney generall is not eligible to be a member of the house of commons.

At the parliament holden 1 *Caroli regis*, the sheriffe for the county of Buckingham was chosen knight for the county of Norff. and returned into the chancery: and having a *subpena* out of the chancery served upon him, at the suit of the lady C. *pendenie parlamento*, upon motion, he had the priviledge of parliament allowed

• Rot. par.  
31 H. 6. nu. 26,  
27, 28.  
Note, he could  
not be speaker  
unless he were  
knight of the  
shire, &c. in the  
book of burgeses  
of the house of  
commons.  
• Alex. Nowels  
case, who after  
was deane of  
Pauls being a  
prebend. 1 Mar.

[ 48 ]

Rot. par. 46 E. 3.  
nu. 10.

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

Rot. Clauf. anno  
6 H. 4.  
See before pa. 10.  
4 Petty acts pass-  
ed at this par-  
liament of little  
or no effect, as  
by the same ap-  
pears.  
Rot. parl. 50 E. 3.  
nu. 83. an ordi-  
nance that no  
sheriffe should  
be justice of  
peace, &c.  
bound not the  
subject until a  
statute made  
1 Mar. c. 8.

allowed unto him by the judgement of the whole house of commons.

*Who shall be Electors of Knights, Citizens, and Burgesse, how and when: and of Elections.*

Who shall be electors, and who shall be chosen, and the time, place, and manner of election, and therein the duty of the sheriffe, you may reade in the positive lawes of 7 H. 4. cap. 15. 11 H. 4. cap. 1. 1 H. 5. cap. 1. 8 H. 6. cap. 7. 10 H. 6. ca. 2. 23 H. 6. cap. 15. 6 H. 6. cap. 4. &c. which need not here be particularly rehearsed.

5 Eliz. cap. 1.

No knight, citizen or burgesse can sit in parliament before he hath taken the oath of supremacy.

*Vide* Rot. clauf. 7 R. 2. 7 Octobris in dorf. Sir Thomas Moreville elected one of the knights for the county of Hertford, *ibid*. James Berners chosen to serve in parliament, and both of them discharged. See the record.

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

For the election of the knights, if the party of the freeholders demand the poll, the sheriffe cannot deny the scrutiny, for he cannot discerne who be freeholders by the view: and though the party would wave the poll, yet the sheriffe must proceed in the scrutiny.

If the king doth newly incorporate an ancient borough (which sent burgesse to the parliament) and granteth that certain selected burgesse shall make election of the burgesse of parliament, where all the burgesse elected before, this charter taketh not away the election of the other burgesse. And so, if a city, &c. hath power to make ordinances, they cannot make an ordinance that a lesse number shall elect burgesse, for the parliament then made the election before: for free elections of members of the high court of parliament are *pro bono publico*, and not to be compared to other cases of election of maiors, bailiffes, &c. of corporations, &c.

[ 49 ]

Ro. par. 5 H. 4.  
nu. 38.

If one be duly elected knight, citizen, or burgesse, and the sheriffe returne another, the returne must be reformed, and amended by the sheriffe: and he that is duly elected must be inserted: for the election in these cases is the foundation, and not the return.

By originall grant or by custome, a selected number of burgesse may elect and binde the residue.

### *Concerning Charters of Exemption.*

The king cannot grant a charter of exemption to any man to be freed from election of knight, citizen, or burgesse of the parliament (as he may do of some inferiour office or places) because the elections of them ought to be free, and his attendance is for the service of the whole realme, and for the benefit of the king and his people, and the whole common-wealth hath an interest therein: and



and therefore a charter of exemption that king H. 6. had made to the citizens of York of exemption in that case, was by act of parliament enacted and declared to be void. And though we finde some presidents that lords of parliament have sued out charters of exemption from their service in parliament, yet those charters are holden to be void: for though they be not eligible, as is aforesaid, yet their service in parliament is for the whole realme, and for the benefit of the king and his people, of which service he cannot be exempted by any letters patents. And if he hath *læsam phantasiam*, or be extremely sick, or the like, these be good causes of his excuse in not comming, but no cause of exemption, for he may recover his memory and health, &c. So as the said presidents were grants *de facto*, not *de jure*: for if the king cannot grant a charter of exemption from being of the grand assise in a writ of right, or of a jury in an attainr for the mischief that may follow in those private actions, *à fortiori*, he cannot grant any exemption to a lord of parliament: for his service in parliament is publick for the whole realme. But if any lord of parliament be so aged, impotent, or sick, as he cannot conveniently without great danger travell to the high court of parliament, he may have license of the king under the great seale to be absent from the same during the continuance or prorogation thereof: but if the rehearfall be not true, or if he recover his health, so as he become able to travell, he must attend in parliament. Or without any such license obtained, if he be so aged, impotent, or sick, as is aforesaid, and yet is amerced for his absence, he may reasonably and honestly excuse himselfe by the statute of 5 R. 2.

After the precept of the sheriffe directed to the city or borough for making of election, there ought *secundum legem et consuetudinem parliam.* to be given a convenient time for the day of the election; and sufficient warning given to the citizens or burgeses that have voyces, that they may be present: otherwise the election is not good, unlesse such as have voyces doe take notice of themselves and be present at the election.

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

Thus much have we thought good to set down concerning knights, citizens, and burgeses, because much time is spent in parliament concerning the right of elections, &c. which might more profitably be employed *pro bono publico.*

Now to treat more in particular (as it hath been much desired) of the lawes, customes, liberties and priviledges of this court of parliament (which are the very heartstrings of the common-wealth, whereof we have remembered some: and you may see some \* few other examples in the margent too long here to be rehearsed) † would take up a whole volume of it selfe: certain it is, as hath been said, that *curia parliamenti suis propriis legibus subsistit.*

All the justices of England and barons of the exchequer are assistants to the lords to informe them of the common law, and there-

29 H. 6. cap. 3.  
Rot. par. 1 part.  
11 E. 3.  
Rot. par. 4 part.  
1 E. 4. m. 15.  
pro. Do. Beauchamp.  
Rot. par. 2 E. 4.  
part. 2. m. 2.  
pro Dom. Vefey.

39 E. 3. 15.  
34 H. 6. 25.  
35 H. 6. 42.

5 R. 2. c. 4.  
stat. 2.

See before pag.  
24. 25.

\* 16 R. 2. rot.  
claus. in dorf.  
rot. par. 11 R. 2.  
nu. 7.  
1 H. 4. nu. 143.  
2 H. 4. nu. 11.  
2 H. 4. ca. 1.  
Rot. par. 9 H. 4.  
*Indemnity des*

*Seignours & commons.* 1 H. 5. nu. 9. cap. 1. 4 H. 8. ca. 8. vers. finem. a generall law. 6 H. 3. c. 6. in the preamb.

unto

† [ 50 ]

<sup>a</sup> Rot. parl.

5 H. 4. nu. 12.

23 H. 6. nu. 45.

27 H. 6. nu. 18.

31 H. 6. nu. 26.

27. Lamb. inter

leges Edw. Con-

fessoris, ca. 3.

Ad synodos, ad

capitula venien-

tibus, siue sum-

moniti sunt, siue

per se quid agen-

dum habuerint, sit summa pax.

unto are called severally by writ. <sup>a</sup> Neither doth it belong to them (as hath been said) to judge of any law, custome, or priviledge of parliament. And to say the truth, the lawes, customes, liberties, and priviledges of parliament are better to be learned out of the rols of parliament, and other records, and by presidents and continuall experience, then can be expressed by any one mans pen.

*Per varios actus legem experientia fecit.*

*Multa multo exercitamentis facilius, quam regulis percipies.*

### *Consultations in Parliament for Maintenance of the Navie.*

In many parliaments consultations have been had for the maintenance of the navie of England, and remedies provided against decay of the same: as taking one example for many. In the parliament holden in anno 45 E. 3. the commons amongst their petitions do affirme, that the decay of the navy doth arise by three causes. First, for that sundry mens ships are seised for the king, long before they serve, whereby the owners are driven at their charges to find their mariners, to their undoing. Secondly, for that merchants, the nourishers of the navy, are oft restrained in their shipping, whereby mariners are driven to seek other trades and livings. Thirdly, for that the maisters of the kings ships do take up maisters of other ships as good as their selves are, whereby the most of those ships do lye still, and the mariners enforced to seek new livings: whereof they prayed remedy. To this petition of right the kings royall answer was, That he would provide remedy.

The kings navy exceeds all others in the world for three things, viz. beauty, strength, and safety. For beauty, they are so many royall palaces: for strength (no part of the world having such iron and timber as England hath) so many moving castles and barbicans: and for safety, they are the most defensive wals of the realm. Amongst the ships of other nations, they are like lions amongst silly beasts, or falcons amongst fearfull fowle.

In the reign of queen Elizabeth (I being then acquainted with this businesse) there were 33 besides pinnaces; which so garded and regarded the navigation of the merchants, as they had safe vent for their commodities, and trade and traffick flourished. A worthy subject for parliaments to take into consideration, and to provide remedy as often as need shall require. For navigation, see Gen. 6. 14. Sapient 14. 6. \* *Remp. quasi navem existimare debemus, quæ omnium manibus officioq; indiget, &c.* A leak in a ship is timely to be repaired: for as it is in the naturall body of man, so it is in the politick body of the common-wealth. *Non morbus in plerisq; sed morbi neglecta curatio corpus interficit.* And thus much for consultations in parliament concerning the navy of England.

See the first part of the Institutes. Sect. 164. verb. [*Veigne les bourgeois al parliament.*] And there have been since the conquest about 300 sessions of parliament, whereof divers are not printed.

In perusing over the rols of parliament we find first divers acts of parlia-

Rot. par. 45 E. 3.

nu. 32.

The decay of the navy.

The kings navy exceeds all others.

\* Patricius, lib. 5. De institutione reipublicæ.

Of the burgeses of parliament. About 300 sessions of parliament since the conquest.

parliament in print that are not of record in the roll of parliament. Secondly, many acts of parliament that be in the rolls of parliament, and never yet printed. Thirdly, divers clauses omitted in the print which are in the parliament roll. Fourthly, more in the print than in the record. Fifthly, many variances between the print and the roll. Sixthly, statutes repealed or disaffirmed, and yet printed, &c. Seventhly, whole parliaments omitted out of the print. Eightly, whole parliaments repealed, or a great part.

And of every of these taking some examples; for to handle all at large would require a whole treatise, which (we having broken the ice) some good man and lover of his country (we hope) will undertake to wade thorow.

[ 51 ]

As to the first, these are in print, and not of record, \* 20 E. 3. the oath of the judges. 27 E. 3. cap. 4, 5, 6, 7, 8. concerning the Alneger and Gascoigne wines. 37 E. 3. cap. 7. touching silver vessell. 37 E. 3. cap. 19. of hawkes. 2 R. 2. cap. 5. of newes. Vid. 11 R. 2. 11. 2 R. 2. cap. 3. of fained gifts. 7 R. 2. cap. 15. against maintenance. 9 R. 2. cap. 3. of error and attain. 11 R. 2. cap. 4, 5, & 6. not of record. 13 R. 2. cap. 11. touching clothes. 13 R. 2. cap. 19. concerning falmons. 13 R. 2. cap. 2. touching pilgrims. 13 R. 2. cap. 15. concerning the kings castles and gaoles. 14 R. 2. ca. 7. concerning tinne. 17 R. 2. cap. 8. of unlawfull assemblies. 17 R. 2. cap. 9. concerning falmons. 27 H. 6. cap. 3. touching employments, &c.

To the first.  
\* See the third part of the Institutes, *De corrupto iudice*.

As to the second: these acts of parliament are of record, and not in print. an. 11 E. 3. the creation of the duke of Cornwall, &c. by authority of parliament. 3 R. 2. nu. 39. concerning justices of peace, a profitable law for them. 8 R. 2. nu. 31. concerning the jurisdiction of the constable and marshall. 20 R. 2. concerning the legitimization of the children of John of Gaunt duke of Lanc. by Kath. Swinford. 5 H. 4. nu. 24. a commission or act of parliament for arraying and mustering of men. 8 H. 4. nu. 12. clergy exempted from arraying and mustering of men. 11 H. 4. nu. 28. against bribery and brocage in great officers, judges, &c. 11 H. 4. nu. 63. concerning attornies, &c. 6 H. 6. nu. 27. that a queen of England dowager, shall not contract her selfe or marry without the kings license. 9 H. 6. nu. 25. concerning fees of privy counsellors, and other head officers. And very many others.

To the second.  
See the Princes case, lib. 8. fo. 12.

As to the third: in these acts of parliament divers clauses are omitted out of the print, which are in the parliament roll. 36 E. 3. cap. 3. in the act of purveyors, &c. in the clause of the penalty, the steward, treasurer, and controller are expressly named, but omitted in the print. 2 R. 2. stat. 2. cap. 4. in confirmation of liberties, &c. saving the kings regality, is omitted. 13 R. 2. cap. 1. concerning presentations of the king, the last clause, concerning ratifications of the king, is omitted. 13 R. 2. cap. 2. touching provisions. 14 R. 2. cap. 4. nu. 9. concerning regrators of wools, high prices omitted in the print. 17 R. 2. cap. 4. of malt, leaveth out Hertfordshire. 2 H. 5. cap. 3. nu. 38. concerning enquests. 2 H. 5. ca. 1. nu. 30. concerning justices of peace. 9 H. 4. cap. 8. nu. 43. concerning provisions. 8 H. 6. nu. 50. cap. 10. concerning proces during the kings will, omitted in the print.

To the third.

As to the fourth: in these there is more in the print than in the record.

To the fourth.

record. 9 H. 4. cap. 8. nu. 43. touching provisions. 2 H. 5. stat. 2. cap. 3. nu. 38. touching jurors, &c.

To the fifth.

The fifth: In these the print vary from the record in some material thing. Generally in all the statutes made concerning provisions, or other the usurpations of the pope, the biting and bitter words are left out in the print. As to take an example or two. Vi. 38 E. 3. in print. cap. 1, 2, 3, 4. and in the roll, nu. 9. &c. 3 R. 2. cap. 3. in print. Rol. nu. 37. &c. the bishops being lord chancellors. 9 R. 2. nu. 1. the print mistake the beginning of the parliament, viz. Monday after S. Luke, for Friday. 9 H. 4. cap. 2. nu. 26. concerning attornies, &c. A roll of parliament intituled 14 E. 4. where it should be 13 E. 4. 9 H. 5. cap. 2 & 3. printed as perpetuall in some books, where they were to endure but untill the next parliament.

To the sixth.

The sixth: statutes pretended to be enacted, and after disaffirmed, and yet printed. 5 R. 2. cap. 5. stat. 2. touching inquiries of heresies. Anno 6 R. 2. nu. 52. disaffirmed by the commons, for that they protested it was never their meaning to be justified, and to binde themselves and their successors to the prelates no more then their ancestors had done before them. Robert Braibroke bishop of London was then lord chancellor. By this and that which followes, it appeareth how necessary it was in those dayes to have some of the commons to be (as hath been said) at the ingrossing of the parliament rolls, as appeareth rot. parl. anno 6 H. 4. nu. 56. 7 H. 4. nu. 65. &c. *et modo tenend<sup>o</sup>* parl. cap. 8. 2 H. 4. cap. 15. disavowed by the commons, and yet the pretended act printed 2 H. 5. cap. 6. against preachers, disavowed the next parliament by the commons, for that they never assented, and yet the supposed act printed.

[ 52 ]

Rot. par. 11 H. 4.  
nu. 12. vide  
7 H. 4. nu. 11.

To the seventh.

The seventh: whole parliaments omitted out of the print, wherein there be many notable things to be observed. an. 3 E. 2. a parliament holden at Westm. 3 Sept. Dorf. claus. 2 E. 2. m. 14. & 22. annis 4 E. 2. apud London. 5 E. 2. apud Westm. 6 E. 2. ib. bis. 7 E. 2. ib. 8 E. 2. apud Eborum. 11 E. 2. apud Westm. 16 E. 2. apud Rippon, et postea apud Eborum. an. 6 E. 3. a parliament holden at Westminster the Monday after the feast of S. Gregory. anno 8 E. 3. a parliament holden at York the day before the feast of S. Peter in cathedra. anno 11 E. 3. at Westm. whereat the prince was created duke of Cornwall, &c. an. 13 E. 3. holden at Westm. in 15 Mich. 22 E. 3. at Westm. the Monday next after the week in the midst of Lent. 29 E. 3. a parliament holden at Westm. the day after S. Martin. 40 E. 3. at Westm. the Monday after the invention of the crosse. 7 R. 2. at Westm. the Friday after the feast of S. Mark, &c.

The eighth: whole parliaments repealed and made void by subsequent parliaments. 1 H. 4. cap. 3. repealed. 21 R. 2. which had repealed the parliament of 11 R. 2. and reviveth the same. By 39 H. 6. cap. 1. a parliament holden at Coventry anno 38 H. 6. is wholly repealed. Rot. par. 12 E. 4. nu. A whole parliament holden anno 49 H. 6. *et redeptionis regni sui primo*, is repealed and reversed. <sup>a</sup> Vide the parliament of 15 E. 3. repealed. rot. parl. anno 17 E. 3. nu. 23. For there it is agreed that the statute of 15 E. 3. shall be utterly repealed, and lose the name of a statute, as contrarie to the laws and prerogative: and for that some articles there made are

repe-

To the eighth.

<sup>a</sup> Where the printed book suppose that there was another parliament in anno 15 E. 3. whereby the former statute was repealed, the truth is, the parliament was holden at Westm. 15 Pasch. anno 17 E. 3.

reasonable, it is agreed, that such articles and others agreed in this parliament shall be made into a statute by the advice of the justices.

<sup>b</sup> Many records of parliament can hardly be understood, unless you joine therunto the history of that time. For example: ' the cardinall of Winchester, uncle of the king, declareth in open parliament, that he being in Flanders, in his journey to Rome, returned back of his own will to purge himselfe of a bruit, that he should be a traytor to the realm, whereof (no accusation being against him) he was easily purged by the duke of Gloc. protector, by the kings commandement. But adde the history therunto, that the cardinall having certain of the kings jewels in gage, meant to have them brought after him: but these jewels being arrested and stay'd at Sandwich by the kings commandement, and the bruit hereof comming to the cardinals eare (he being therewith exceedingly troubled) for the recovery of them, returned in post to the parliament. Now after he was purged of the bruit of supposed treason; touching the said jewels stayed at Sandwich to the great hindrance of the cardinall, as he complained. It was on a motion on his behalfe, ordered that the cardinall should pay to the king six thousand pound more for them, and lend to the king thirteen thousand pound, which was done.

<sup>b</sup> Histories  
sometime ex-  
plaine records of  
parliament.  
<sup>c</sup> Rot. parl.  
10 H. 6. nu. 14;

This appeareth  
in the same par-  
liament nu. 15.

And for a conclusion hereof, and of this chapter of the high court of parliament, it is to be remembred, that by the statute of 42 E. 3. cap. 1. all statutes are repealed that are against Magna Carta, or Carta de Foresta.

See hereafter cap. 75. how and in what manner parliaments be holden in Scotland. And cap. 77. how and what manner parliaments be holden in Ireland, and how bills shall passe there, never before this time published, as we know.

Parliaments in  
Scotland.  
In Ireland.

## C A P. II.

[ 53 ]

## Of the Councill Board, or Table.

**T**HIS is a most noble, honourable, and reverend assembly of the king and his privy councill in the kings court or palace:

<sup>a</sup> with this councill the king himselfe doth sit at his pleasure. These counceillors, like good centinels and watchmen, consult of, and for the <sup>b</sup> publique good, and the honour, defence safety, and profit of the realm. *A consulendo, secundum excellentiam*, it is called the councill table. <sup>c</sup> private causes, lest they should hinder the publique, they leave to the justices of the kings courts of justice, and meddle not with them: they are called *concilium regis privatum, concilium secretum, et continuum concilium regis*. <sup>d</sup> The num-

<sup>a</sup> Rot. clauf.  
12 E. 3. parte 2.  
m. 19. 39 E. 3.  
fo. 14. rot. pat.  
1 R. 2. parte  
m. 16. 8 H. 4.  
m. 76. &c.  
Rot. par. 2 H. 6.  
nu. 15  
<sup>b</sup> Pro bono pub-  
lico.  
<sup>c</sup> 20 E. 3. ca. 1.  
25 E. 3. ca. 1.  
stat. 4. 42 E. 3.  
ca. 3.

Rot. par. 1 R. 2. nu. 87. 112. Rot. par. 7 H. 4. nu. 41. 11 H. 4. nu. 14. 23. 47. <sup>d</sup> Rot. par. 50 E. 3. nu. 10. 12. 1 R. 2. nu. 4. Rot. pat. 1 parte, m. 10. Rot. parl. 7 H. 4. 31. 41. 66. 67. 1. parte of the Institutes, sect. 164. rot. clauf. 16 E. 2. m. 5. in Doct. Hen. de bello mente laro de magro et de secreto concilio regis jurat.

ber of them is at the kings will, but of ancient time there were twelve, or thereabouts. Of the diversity of the kings severall counells, you may read in the first part of the Institutes, sect. 164.

See Rot. pat. 42 E. 3. parte 1. m. 13. *de concilio regis*.

King E. 3. would have his counsellors to have four properties. 1. That he be *parcus sui*, knowing that he would never be provident for him, that would not be a good husband for himself. 2. That he should not be *cupidus rei alienæ*, no covetous, nor greedy man, for *ei nihil turpe, cui nihil satis*. 3. That he should be *avarus reipublicæ*, covetous for the kings treasure and commonwealth: and 4. That he *super omnia sit expertus*; in what place the king shall employ him, that he be expert; for great offices are never well managed by deputy, where the officer himself is but a cipher.

Stanf. 72. F.  
*Senatores sunt  
partes corporis  
regis.*  
Rot. par. 3 H. 6.  
nu. 3.  
\* Inas ca. 46.

To these counsellors all due honour and reverence is to be given, for they are incorporated to the king himself, and bear part of his cares, they are his true treasurers, and the profitable instruments of the state. Such honour was given to counsellors of state in ancient time, \* that if one did strike in a senators or counsellors house, or elsewhere in his presence, he was fined.

† Alvredusc. 15.  
Hugh Spencer  
the father, and  
Hugh the son  
evill counsellors.

† See Vet. Mag. Cart. fo. 51. 2. parte. Hugh Spencer the father, lord Spencer earl of Winchester, and the kings chamberlain, and Hugh his son earl of Gloc<sup>r</sup> were adjudged in parliament to be exiled, &c. amongst other articles, six were. First, for that they by their evill covin would not suffer the grantees of the realm, nor the kings good counsellors to speak with or come neer the king, or to give him good counsell, or that the king might speak with them, but only in the presence or hearing of the said Hugh the father, and Hugh the son or of one of them, and at their wil, and according to such things as pleased them. Secondly, for giving evill counsell to the king, not to answer the petitions of the great men and others, but at their pleasure. Thirdly, that they, to attain by their malice and covetousnesse to the disheritance of the great men of the realm, and destruction of the people, put out good and covenable ministers, which had their places by assent, and put in others false and evil of their covin, that they should not cause right to be done. And sherifs, escheators, constables of castles, and others in the offices of the king, not covenable for the king, nor for the people they did make, and caused justices to be made not constants in the laws of the land, to hear and determine things touching the great men and people of the realm, &c. And so, that which ought to be for the maintenance of the peace, and of good men, and punishment of evill, was turned to the disheritance of the great men, and destruction of the people. Fourthly, that they falsely and maliciously did counsell the king to raise horse and arms, &c. in destruction of the good people, against the form of Magna Carta, and so by their evill counsell would have moved war within the realm, to the destruction of holy church, and of the people, for their proper quarrell. Fifthly, for defeating by their evill counsell that which the king had granted in his parliament by his good counsell, by the assent of the peers of the land, to the dishonour of the king, and against right and reason.

[ 54 ]

Magna Carta.

son. Sixthly, they would not suffer the king to take reasonable fines, &c. upon alienations, &c. Read the whole.

Hereby it appeareth that one or two ought not to be sole counsellors, and to make a monopoly thereof: for true it is that Homer saith.

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

Homer.  
See the articles  
against cardin d.  
Woolsey, heret-  
ter cap Chan-  
cery, pa. Art. 9,  
10. 15.

\* The duty of a privy counsellor appeareth by his oath, which consisteth on these articles or parts.

\* Utilis sed non  
solus.

1. That he shall as far forth as cunning and discretion suffereth, truly, justly and evenly counsell and advise the king in all matters to be commoned, treated, and demeaned in the kings councill, or by him as the kings counsellor.

a Ro. par.  
11 H. 4. no. 12.  
Nota. Vid. Vtr.  
Mag. Carr.  
parte 1. fo. 16c.  
*juramentum con-  
siliariorum.*  
Vide Fleta lib. 1.  
ca. 17.  
Nota, vide inf. 5.

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

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

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

Rot. par. 11 H. 4.  
no. 28.

5. That he shall with all his might and power help and strengthen the kings said councill in all that shall be thought to the same councill for the universal good of the king and his land, and for the peace, rest, and tranquillity of the same.

Nota, supra 2.

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

7. And generally that he shall observe, keep and doe all that a good and true counsellor ought to doe unto his soveraign lord.

By force of this oath and the custome of the realm he is a privy counsellor without any patent or grant during the life of the king that maketh choice of him.

It is enacted that all the kings counsellors and other head officers there named shall have yearly out of the exchequer such fees by way of reward as are there expressed.

Rot. par. 9 H. 6.  
no. 25.

Every privy counsellor hath a voice and place in the court of star-chamber, as in the chapter of the court of star-chamber appeareth.

For the better performance of which oath, king H. 8. would with that his counsellors would commit simulation, dissimulation

and partiality to the porters lodge when they came to sit in counsell.

[ 55 ]

*Of the President of the Councill.*

Principalis consiliarius.

Capitalis consiliarius.

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

There is, and of ancient time hath been a president of the counsell, who was sometime called *principalis consiliarius*, and sometime *capitalis consiliarius*, Rot. par. 9 E. 2. comes Lancast. 50 E. 3. 1 R. 2. 1. pars. pat. nu. 22. 1 H. 6. nu. 26, 27. *dux Bedf.* Rot. pat. 1 H. 6. parte 3. *dux Gloc.* Rot. parl. 10 H. 6. nu. 9. *dux Gloc.* See rot. parl. 11 H. 6. nu. 19. rot. parl. 22 H. 6. *dux Eborum.* Rot. pat. 13 E. 4. part 1. *Johannes Russel episcopus Rossen' et postea Lincoln' presidens consilii.* Int' record curie stellat' *Johannes Fisher episcopus Ross'* *presidens consilii* 12 H. 7. A. 25 H. 8. usq; 37 H. 8. *Carolus Brandon dux Suff'* in libro pacis, rot. parl. 1 E. 6. Pawlet. In the Journall book of parliament. 5 E. 6. & 7 E. 6. *dux Northumb.* 1 & 2 Ph. and Mar. comes Arundel, &c.

Acts of parliament naming the presidents of the counsell, 21 H. 8. cap. 20. 31 H. 8. ca. 10. 34 H. 8. ca. 1.

This office was never granted but by letters patents under the great seal *durante beneplacito*, and is very ancient: for John bishop of Norwich was president of the counsell in anno 7 regis *Johannis*, Holl. fo. 169. Math. Paris 205. and Math. Westm': *dormivit tamen hoc officium regnante magna Elizabetha.*

21 H. 8. ca. 20.  
Vid. rot. parl.  
50 E. 3. nu. 12.

The lord president is said in the statute of 21 H. 8. ca. 20. to be attending upon the kings most royall person, and the reason of his attendance is, for that of latter times he hath used to report to the king the passages, and the state of the businesse at the counsell table. See 50 E. 3. *ubi supra.*

Lord Privy Seal.  
See rot. parl.  
50 E. 3. nu. 10.  
& nota bene.

Next to the president of the counsell, (as more fully appeareth in the chapter of presidency) sitteth in counsell, &c. the lord privy seal, who besides his oath of a privy counsellor taketh a particular oath of the privy seal, which consisteth on four parts: 1. That he, as far forth as his cunning and discretion suffereth, truly, justly, and evenly execute, and exercise the office of the keeper of the kings privy seal to him by his highnesse committed. 2. Not leaving or eschewing so to do for affection, love, meed, doubt, or dread of any person or persons. 3. That he shall take special regard, that the said privy seal in all places where he shall divert unto, may be in such substantiall wise used and safe kept, that no person without the kings speciall commandment or his assent, or knowledge, shall move, seal, or imprint any thing with the same. 4. Generally, he shall observe, fulfill, and doe all and every thing, which to the office of the keeper of the kings privy seal duly belongeth, and appertaineth.

*The oath of the  
Lo. Privy Seal.*

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

27 H. 8. ca. 11.

Upon the lord privy seal are attendant four clerks of the privy seal: now how, and in what wise, the kings grants, writings, and leases, shall passe the three seals, viz. the privy signet, the privy seal,



seal, and the great seal, and the duties of the clerks of the privy signet, and privy seal, and what fees shall be paid, and where none at all, &c. and many articles concerning the passing of the kings grants, &c. you may read in the statute of 27 H. 8. a law worthy of observation. And of this act you may read Lib. 8. fo. 18. b. in the Princes case. This officer is named in the statutes of 2 R. 2. ca. 5. and 12 R. 2. ca. 11. \* clerk of the privy seal. In rot. parl. 11 H. 4. nu. 28. *Garden del privy seal*: and in the statute of 34 H. 8. ca. 4. lord privy seal. This seal is called by severall names. By the statute of 11 R. 2. cap. 10. it is provided that letters of the signet, nor of the kings secret seal shall be from henceforth sent in damage or prejudice of the realm, nor in disturbance of the law. Vide Mir. ca. 3. §. *Exception al pover de judge*.

27 H. 8. ca. 11.

\* An humble name of a great officer, and in those acts ranked amongst the grantees of the kingdom.

In the statute of *Articuli super Cartas*, cap. 6. 28 E. 1. it is called the little seal, and likewise in the statute of 2 E. 3. cap. 8. it is so called. Regist. fo. 186. *parvum sigillum*. 50 E. 3. nu. 185. F. N. B. 180. Fleta, lib. 2. cap. 12. §. *Est int.* &c. *Custos privati sigilli*, clerks of the signet, *clerici signetti* are named in the said act of 27 H. 8. &c. and are four in number attendant upon the kings principall secretary who always hath the keeping of this seal or signet, for sealing of the kings privy letters: these four clerks sit at the secretaries board. He that desireth to read more of the duty of privy counsellors, and how, and for what causes they are to be punished, if they offend; let him read the parliament roll of the 50 year of E. 3. nu. 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, &c. 34, 35, &c.

See the 2 part of the Instit. Artic. super Cart. ca. 6.

[ 56 ]

F. N. B. 85. a. See artic. super Cartas, ubi supra. lib. 8. ubi supra.

Acts of parliament concerning the kings privy councill, 25 E. 3. ca. 4. stat. 4. 28 E. 3. cap. 31. 42 E. 3. cap. 3. in print. 9 R. 2. nu. 12. 11 H. 4. nu. 28. 13 H. 4. cap. 7. 3 H. 7. cap. 14. 3 E. 6. cap. 5. 21 Jac. ca. 3. concerning warrants of assistance, &c. 3 Caroli. ca. 1. in the petition of right, concerning loans, &c. imprisonment, &c. martiall law, soldiers, &c.

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

See hereafter pa. in the chapter of the Chancery in the articles against cardinall Woolsey, artic. 9, 10, 15, &c. concerning privy counsellors.

It appeareth by the writs and records of parliament, that the high court of parliament is resolved to be holden by the king *per advisamentum consilii sui*, that is, by advice of his privy councill.

Orders of parliament for the privy councill, and other things concerning them in the rols of parliament. 50 E. 3. nu. 10. 12. 15. 21. 34. 42 E. 3. nu. 27. Sir John Lees case. 1 R. 2. nu. 87. 112. Rot. pat. 1 R. 2. parte 1. m. 16. 2 R. 2. stat. 1. nu. 49. Rot. parl. 1 H. 4. nu. 2. 7 H. 4. nu. 31, 32, 33. 41. 66, 67, 68, &c. 11 H. 4. nu. 14. 13 H. 4. nu. 3. 1 H. 6. nu. 30, 31, 32. 2 H. 6. nu. 15, 16, 17. 8 H. 6. nu. 27, 28. certain articles to the number of eighteen touching the order of the kings councill (amongst which the eleventh is, that all offices and benefices of the kings gift, such as had served him or his father, should be preferred thereunto) are established by the king, the bishops and lords. 9 H. 6. nu. 25. 11 H. 6. nu. 19. Six articles, whereof the last was, that a roll should be made of such as at any time had served in the wars, or otherwise, to the end they should be preferred to

offices and benefits. 12 H. 6. nu. 4. *De intendentiis consiliariorum.*  
31 H. 6. nu. 30. Vide Rot. pat. 32 H. 6. parte 1. m. 22.

Acts of counsell concerning the same. Rot. finium. 20 E. 3. m. 8. rot. clauf. 4 H. 4. in dorſ. m. 13. clauf. 25 E. 3. m. 10. pat. 19 R. 2. parte 2. m. 8. clauf. 20 E. 3. parte 1. m. 26. The clerks of the counsell are attendants upon the lords and others of the privy counsell. Concerning the clerks of the counsell and their duty, ſee rot. parl. anno 1 H. 6. nu. 32. 2 H. 6. nu. 17. &c.

Of theſe acts of parliament, orders in parliament, and acts of counsell we have referred you (for avoiding of tediousneſſe) to the originals. *Qui ambulat fraudulenter revelat arcana, qui autem fidelis eſt celat, &c.*

Prov. 11. 13.

Tobie 12. 7.

*Bonum eſt abscondere ſacramentum regis, opera autem dei revelare honorificum.*

Valerius lib. 4.  
Regulæ.

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

Ovid.

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

Vegetius lib. 3.  
de re militari.

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

Eraſmus in  
Epiſt.

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

\* Curtius.

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

Plinie.

*In conſiliario principis tria maxime requiruntur, libertas, fides, et veritas: libertas conſilii eſt ejus vita et eſſentia, qua erepta, conſilium evaneſcit.*

Tacitus.

*Privatæ res ſemper officere, officientque publicis conſiliis, peſſimum veri affectus et judicii venenum ſua cuique utilitas.*

[ 57 ]

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

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

Some rules of counſell, which in counsell we have obſerved, we will adde. Firſt, that it is ſafeſt to give a king counſell, when he demandeth it. Secondly, the trueſt and beſt counſell is ever given to a king, when the queſtion is ſo evenly propounded, as the counſellor knoweth not which way the king himſelf inclineth. Thirdly, that \* *præpropera concilia ſunt raro proſpera*: for reſolution ſhould never goe before deliberation, nor execution before reſolution. Fourthly, when upon debate and deliberation it is by the counsell table well reſolved, the <sup>a</sup> change thereof upon ſome private information is neither ſafe nor honourable, <sup>b</sup> nor that after reſolution timely execution be delayed. Fifthly, it is a mean of prosperous ſucceſſe when the queſtion is debated with a few, not that he ſhould rely upon them, but that thereby the ſtate of the queſtion may be wel underſtood, to the end the ſame may be plenarily and fully propounded to the whole board. Sixthly, <sup>c</sup> good counſel is the ſoul of the ſtate. Seventhly, when counſellors doe hide or diſguiſe

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

<sup>a</sup> Seneca. Non ſemper in uno gradu, ſed in una via, non ſemitat, ſed aptat.

<sup>b</sup> Saluſt. Priuſquam incipias, conſulto, & ubi conſulueris mature factio opus eſt.

<sup>c</sup> 11 H. 4. nu. 14.

disguise the truth, it is full of danger both to the king and to  
<sup>d</sup> themselves. Eighthly, violent courses are like to hot waters that  
 may do good in an extremity, but the use of them doth spoil the  
 stomach, and it will require them stronger and stronger, and by  
 little and little they will lessen their own operation. Lastly, such  
 fear as doth not fall in *constantem virum*, is an enemy to good coun-  
 sel: for what is fear, <sup>e</sup> but a betraying of such succours, as reason  
 (and counsell) should afford.

<sup>d</sup> Malum consi-  
 lium consultori  
 pessimum.  
 Rot. claus.  
 13 H. 3. nu. 19.  
 Segraves case.  
 Rot. par. 50 E. 3.  
 nu. 24. Segnoie  
 Latimers case.  
<sup>e</sup> Sap. 12.

No lord of parliament takes any place of precedency in respect  
 he is a privy counsellour. But under that degree such place a  
 privy councillor shall take, as is set down in *serie ordinum tempore*  
 H. 7. hereafter remembred in the chapter of Precedency.

C A P. III.

[ 58 ]

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

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

The surest way is to have him made by authority of the great  
 councill in parliament.

See Hollingsheds Chronicle, pa. 1069. which may give you oc-  
 casion to search for the records of such protectors as are there re-  
 heard.

C A P. IV.

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

HIS stile is *seneschallus Angliæ*. This office is very ancient,  
 and was before the conquest. For I reade in an ancient and  
 authentickall manuscript, intituled *authoritas seneschalli Angliæ*:  
 where putting an example of his authority, saith: *Sicut accidit God-*  
*wino comiti Kancie tempore regis Edwardi antecessoris Willielmi ducis*  
*Normandie pro huiusmodi male gestis et consiliis suis (per seneschallum*  
*Angliæ) adjudicatus et forisfecit comitiam suam.*

*His stile.*  
*The antiquity of*  
*his office.*  
 Nota, then a  
 judge of the peers  
 of the realm.  
 1 H. 4. 1.  
 13 H. 8. 13.  
 Cust. de Norm.  
 cap. 10.

In the time of the Conqueror William Fitz-Eustace was steward  
 of England. And in the reign of William Rufus and H. 1.

Hugh Grantsfemenel baron of Hinkley held that barony by the said office.

Of ancient time this office was of inheritance, and appertained to the earldome of Leicester, as it also appeareth by the said record: *Seneschalcia Angliæ pertinet ad comitum de Leicester, et pertinet ab antiquo*. That is, that the earldome of Leicester was holden by doing of the office of steward of England. Other records testifie that it should belong to the barony of Hinkley. The truth is, that Hinkley was parcell of the possessions of the earle of Leicester, for Robert Bellomont earle of Leicester in the reigne of H. 2. married with Petronil daughter and heir of the said Hugh Grantsfemenel baron of Hinkley and lord steward of England, and in her right was steward of England. And so it continued, untill by the forfeiture of Simon Mountfort it came to king H. 3. who in the 50 year of his reign, created Edmond his second son earle of Leicester, baron of Hinkley, and high steward of England, which continued in his line untill Henry of Bullinbroke \* son and heir of John of Gaunt duke of Lancaster and earl of Leicester, who was the last that had any estate of inheritance in the office of the steward of England. Since which time it was never granted to any subject, but only *hac vice*. And the reason was, for that the power † of the steward of England was so transcendent, that it was not holden fit to be in any subjects hands: for the said record saith, *Et sciendum est quod ejus officium est supervidere, et regulare sub rege, et immediate post regem totum regnum Angliæ, et omnes ministros legum infra idem regnum temporibus pacis et guerrarum, &c.* and proceedeth particularly with divers exceeding high powers and authorities, which may well be omitted, because they serve for no present use.

And albeit their power and authority have been since the reign of H. 4. but *hac vice*, yet is that *hac vice* limited and appointed. As when a lord of parliament is <sup>d</sup> indicted of treason or felony, then the grant of this office under the great seal is to a lord of parliament, reciting the indictment, *Nos considerantes quod justitia est virtus excellens et altissima complacens, eaq; præ omnibus uti volentes, ac pro eo quod officium seneschalli Angliæ, cujus præsentia pro administratione justitiæ et executione ejusdem in hac parte facien' requiritur, ut accepimus, jam vacat: de fidelitate, strenuitate, provida circumspeditione, et industria vestris plurimum confidentes ordinavimus et constituimus vos ex hac causa et causis seneschallum nostrum Angliæ ad officium illud cum omnibus eidem officio in hac parte debitis et pertinentibus hac vice gerend', accipiend', et exercend', dantes et concedentes vobis tenore presentium plenam et sufficientem potestatem et auctoritatem, ac mandatum speciale indictmentum prædicti. &c.* So as it appeareth, that this great officer is wholly restrained to proceed only upon the recited indictment. And he to whom this office is granted, must be a lord of parliament, and his proceeding is to be <sup>g</sup> *secundum leges et consuetudines Angliæ*, for so is his commission. And hereof you may read more at large in the third part of the Institutes, cap. High Treason. <sup>h</sup> Also at every coronation he hath a commission under the great seale *hac vice*, to hear and determine the claimes for grand serjeanties and other honourable services to be done at the coronation for the solemnization thereof: for which purpose the high steward doth hold his court some convenient time before the coronation.

\* Rot. par.

21 R. 2. nu. 4.  
Int. placita coronæ *scilicet* of Gaunt duke of Lanc. and earl of Leicester, steward of England.

His authority *hac vice*: and therefore he is not mentioned in the statute of 31 H. 8. ca. 10. concerning the placing of great officers.

† [ 59 ]

<sup>b</sup> Herewith agreeth the custom of Norm. cap. 10. fo. 17. Hollenst. Chron. p. 866.

<sup>c</sup> His authority (*hac vice*) limited.

<sup>d</sup> See the second part of the Institutes, Mag. Cart. cap. 29. 1 H. 4. cap. 1.

<sup>e</sup> He is sole judge by the common law, and can make no deputy.

<sup>f</sup> Stanf. pl. cor. 152. 1 H. 4. fo. 1. 13 H. 8. fo. 11. b.

<sup>g</sup> His rule.

<sup>h</sup> His further authority.

nation. See a president hereof before the coronation of king R. 2. John duke of Lancaster then steward of England, (who in claymes before him was stiled *treslonorable seignior le roy de Castile et Leon, et seneschal D'angleterre*) and held his court in *Alba Aula apud Westm. die Jovis proxime ante coronationem. Quæ quidem coronatio habita et solemnizata fuit die Jovis sequente, viz. 16 Julii anno 1 R. 2.*

The first that was created *hac vice* for the solemnization of the coronation of H. 4. was Thomas his second son. <sup>1</sup> And upon the arraignment of John Holland earl of Huntingdon, the first that was created steward of England *hac vice*, was Edward earl of Devon.

Rot. parl. 37 H. 6. nu. 49. Thomas Courtney earl of Devon was arraigned of high treason before Humphrey duke of Gloc. *hac vice* steward of England, and acquitted. And so was <sup>k</sup> the lord Dacres of the north arraigned of high treason before Thomas duke of Norff. *hac vice* steward of England and acquitted by 20 peers.

When he sitteth by force of his office he sitteth under a cloth of estate, and such as direct their speech unto him, say, Please your grace my lord high steward of England. The stile of the said John of Gaunt was, *Johannes filius regis Angliæ, rex Legionis et Castellæ, dux Aquitanie et Lancastrie, comes Derbie, Lincolnæ, et Leicestrie, seneschallus Angliæ.* And in respect his power before it was limited was so transcendent, I finde no mention made of this great officer in any of our ancient authors, the Mirror, Braſton, Britton, or Fleta. It seemeth they liked not to treat of his authority. Neither do I finde him in any act of parliament, nor in any book case before 1 H. 4. and very few since: which hath caused me to be the longer in another place to set forth his authority and due proceeding upon the arraignment of a peer of the parliament, by judicial record and resolution of the judges, agreeable with constant experience.

For the etymologie and signification of (*seneschallus*) see the first part of the Institutes: and though it hath severall derivations, yet as being applied to England, it is properly derived from *sen*, that is justice, and *schale*, that is, governour or officer, that is, *prefectus seu officarius justitiæ.* And this agreeth well with his authority and duty to proceed (as hath been said) *secundum leges et consuetudines Angliæ.*

It is to be observed, that as the peers of the realm that be triors or peers, are not sworne, so the lord steward being judge, &c. is not sworn: yet ought he according to his letters patents to proceed *secundum legem et consuetudinem Angliæ.*

<sup>1</sup> V. 1 H. 4. fo. 1. Therefore Tho. Walsingham, p. 363. and others who affirme that he was beheaded at Pleshy in Essex by the commons, do erre.

<sup>k</sup> Term. Pasch. 26 H. 8. of justice Spilman's report.

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

[ 60 ]  
First part of the Instit. sect. 78.

## C A P. V.

The Honourable Court of Star-Chamber, *coram Rege et Concilio suo*: Of ancient Time, *coram Rege in Camera*, &c.

That it is an eminent court proved by records and acts of parliament.

<sup>a</sup> 22 Lib. ass. pl. 52.

<sup>b</sup> Rot. pat. 1 part. m. 13. Fraud and falsehood.

<sup>c</sup> Rot. pat. 1 part. m. 13. Falshood in an officer and raising of a record.

<sup>d</sup> Rot. clauf. 42 E. 3. m. 8. in d. 15. Vid. rot. pat. 2 R. 2. 1 part. m. camera stellata. for raising. 12 R. 2. cap. 11. ccv. le council.

<sup>e</sup> Rot. clauf. 41 E. 3. Cambd. Brit. 130.

<sup>f</sup> Rot. clauf. 16 R. 2. in dorf. in. 11.

<sup>g</sup> Pat. 6 H. 5. & consimile anno 7 H. 5. pro manerio de Fish-erwicke in Com. Norff.

IN <sup>a</sup> the 28 year of the reign of E. 3. it appeareth, that the retorns *coram nobis*, are in three manners, *coram nobis in camera* (which, it is said, was afterwards called *camera stellata*.) 2. *Coram nobis ubicunque fuerimus in Anglia*, which is the kings bench; and *coram nobis in cancellaria*. And of all the high and honourable courts of justice, this ought to be kept within his proper bounds and jurisdiction.

<sup>b</sup> In 38 E. 3. *coram rege et concilio*, John Redland complained of Robert Spinke for delivery of prisoners upon false suggestion made to the king: upon hearing the cause, the defendant was acquitted, the plaintife imprisoned.

<sup>c</sup> In 39 E. 3. Ralph Brantingham one of the chamberlains of the exchequer complained before the king and his councill of Richard Cesterfield clerk deputy of the kings treasurer, in the receipt for divers allowances, payments, &c. unduly made, and for raising of records, &c. Upon the hearing of the cause by the whole councill, the defendant was acquitted, and the plaintife removed from his office, and committed to prison.

<sup>d</sup> The abbot de Bruera, and Ragge his monk sentenced *coram rege et concilio*, for raising of letters patents, and inserting other words: and the letters patents by sentence cancelled.

<sup>e</sup> In anno 41 E. 3. in a bill of complaint exhibited to the king by Elizabeth the widow of Nicholas Awdeley plaintife, against Jane Awdeley defendant, who appeared before the kings councill, viz. the chancellor, treasurer, justices, and others assembled *en la chambre des estoies pres de la receits*.

<sup>f</sup> A suit depending before the king and councill between the abbot of Saint Austen of Canterbury and others concerning wrecks, &c. The abbot brought his action at the common law against the parties, who being thereupon arrested and imprisoned, the sheriffe was commanded by the kings writ to deliver them, and to forbear to serve any other proces against them: and the reason there yeilded is notable, *Quia non est juri consensum, aut honestum, quod aliquis de hiis quæ coram nobis et concilio nostro in discussione pendunt, alibi inde interim placitari debeat, aut apparere*.

<sup>g</sup> A suit depending before the king and his councill, between W. G. of the one part, and H. S. of the other part: a sequestration is ordered for the preservation of the things in question.

In

<sup>b</sup> In 17 H. 6. an inrolment of a confession of John Ford of Lon. mercer before the lord treasurer and others of the kings counsell in the star chamber for the \* fraudulent packing and transporting of wooll, with a writ to the sheriffe of London to set him on the pillory.

<sup>b</sup> Rot. clauf.  
17 H. 6.

The abbot of Westminster exhibited his bill to the king against the sheriffes of London for arresting and drawing out with force a privileged person out of the sanctuary of S. Martins le grand belonging to the said abbey: which matter after due proceedings being heard in the court of star-chamber before the lords and others of the kings counsell, and Hodey and Newton chief justices, which justices determining, that by law the party ought to enjoy the privilege of sanctuary, the sheriffes were grievously fined in the star-chamber by particular name: which sentence the lord Dier, as he hath reported under his own hand, saw upon a reference to him and justice Southcote out of the star chamber, Trin. 11 regine Eliz. concerning the sanctuary of Westm. for Hampton and Whitacres being in for debt. And the lord Dier made this note with his own hand. *Nota, per le star-chamber.* And this is a notable proof of the jurisdiction of the court for fining, &c. That the bill was exhibited to the king, and that the two chief justices then did sit, and were judges (amongst others) in that court.

Anno 29 H. 6.  
Trin. 1. Eliz.  
Dier. manuscript  
not imprinted.

For divers riots, extortions, oppressions, and grievous offences by divers persons done against the kings peace and lawes, to divers of his liege people, commandement hath been given by the kings writs under the great seale (which continue untill this day) to appear before the king in the chancery, or before him and his counsell at certain dayes to answer to the premisses, which commandement hath been many times disobeyed. Provision is made by that act for the punishment of such disobedience, as by that act appeareth. True it is, that this act was but temporary, yet it affirmeth so much as before hath been said,

Stat. de 31 H. 6.  
cap. 2.  
Vide Rot. parl.  
1 H. 6. nu. 41.

Anno 35 H. 6. A writ of *certiorari* was directed: *Thome Kent clerico concilii: volentes certis de causis certiorari super tenorem cujusdam assus Pasch. ultime præterito apud Westm. in camera stellata concernen Johannem ducem Norff.* And see there proces of rebellion against the said duke.

Ex bundello brevium regis.  
35 H. 6.

Robert Davers a counsellor at law by bill exhibited to the king, &c. for defamation of raising a record. And the said Robert by the kings counsell in *camera stellata* was acquitted, and John Broket that made the rasure sentenced.

Rot. clauf.  
11 H. 6.

The kings counsell assembled in the star-chamber. The lord Cromwels case.

Rot. clauf.  
23 H. 6.

An order in the star-chamber for the duke of Yorks counsell to have access to him, because called into the chamber by privy seale, &c.

Rot. pat. 32 H. 6.  
m. 20.

An exemplification of a complaint by Richard Heron against John Prout, *coram rege et consiliariis suis in camera stellata*, for a great misdemeanour concerning wools.

Pat. 3 E. 4. part. 1.

Anno 8 E. 4. proceeding by English bill, answer, replication, &c. *coram rege et concilio.*

Rot. petit. 8 E. 4.

Anno 20 E. 4. a sentence in the star-chamber for turbulent and undue elections between the abbot of Bury and the inhabitants.

Rot. pat. 20 E. 4.  
part. 2.

We have omitted many other records, but because they be of like nature we have contented our self with these. And now we will consult with our book cases, and reports of law: wherein either *coram rege et concilio*, or *coram rege et concilio in camera stellata*, is named.

Book cases and  
reports of law.

39 E. 3. fo 14. 19 aff. pl. 1. 40 aff. 38. 13 E. 4. 9. in camera stellata. Vid. 27 E. 3. cap. 13. 21 E. 4. 71. in camera stellata. 2 R. 3. fo. 2. & 11. in camera stellata. 1 H. 7. 3. in camera stellata. This court in ancient times sat but rarely, for three causes. First, for that enormous and exorbitant causes which this court dealt withall only in those days rarely fell out. Secondly, this court dealt not with such causes, as other courts of ordinary justice might condignely punish, *ne dignitas hujus curiæ vilesceret*. Thirdly, it very rarely did sit, lest it should draw the kings privie council from matters of state, *pro bono publico*, to hear private causes, and the principall judges from their ordinary courts of justice.

That which now is next to be considered in *serie temporis* is the statute of 3 H. 7. the letter whereof followeth:

[ 62 ]

3 H. 7. ca. 1.

21 H. 8. ca. 20.  
The president of  
the kings coun-  
cell added.

It is ordained that the chancelour and treasurer of England, and the keeper of the kings privy seal, or two of them, calling to them a bishop and a temporal lord of the kings most honourable privy councill, and the two chief justices of the kings bench and common place for the time being, or other two justices in their absence, upon bill or information put to the said lord chancelour or any other against any person for unlawfull maintenance, giving of liveries, signs and tokens, and reteyners by indentures, promises, oaths, writings or otherwise, imbraceries of his subjects, untrue demeaning of sherifs in making of pannels, and other untrue returns, by taking of mony, by injuries, by great riots, and unlawfull assemblies, have authority to call before them by writ or privy seale the said misdoers, and they and other by their discretion, by whom the truth may be known to examine, and such as they find therein defective, to punish them after their demerits, after the form and effect of statutes there-of made in like manner and form as they should, and ought to be punished, if they were thereof convicted after the due order of law.

Camden Brit.

*Camere stellatæ auctoritatem prudentissimus princeps Henricus septimus ita parlamentaria adauxit et constabilivit, nonnulli primum instituisse falso opinantur.*

Upon this statute and that which formerly hath been said, these six conclusions do follow. The first conclusion is, that this act of 3 H. 7. did not raise a new court: for there was a court of star-chamber, and all the kings privy council judges of the same. For if the said act did establish a new court, then should those four or any two of them be only judges, and the rest that they should call to them should be but assistants, and aidants, and no judges: for the statute of 31 E. 3. cap. 12. which raiseth a new court, and be-  
fore



fore new judges, is introductory of a new law, by having conuſance of error in the exchequer, which ſhall be reverſed in the exchequer chamber before the chancelour and treaſurer, or calling to them two judges, there the chancelour and treaſurer are only judges in the writ of error, and ſo in the like. But it is clear that the two juſtices in the ſtar-chamber are judges, and have voices, as it hath been often reſolved, and daily experience teacheth. And further to clear this point, if the juſtices ſhould be but aſſiſtants and no judges in the ſtar-chamber, for that they are to be called, &c. then, and for the ſame reaſon ſhould neither lord ſpirituall nor temporall, nor other of the privy counsell be judges, nor have voices in the court of ſtar-chamber. And therefore the ſudden opinion in 8 H. 7. and of others not obſerving the ſaid diſtinction between acts declaratory of proceedings in an ancient court, and acts introductory of a new law in raiſing of a new court, is both contrary to law, and continuall experience.

2 H. 7. 13.  
Plow. Com. 393.

The ſecond concluſion is, that the act of 3 H. 7. being in the affirmative is not in ſome things purſued. For where that act directeth that the bill or information ſhould be put to the lord chancelour, &c. all bills and informations in that court are conſtantly and continually directed to the kings majeſty, as they were before the ſaid act; and it is a good rule, that where the act of 3 H. 7. is not purſued, there (if there be many judiciall preſidents in another fort) they muſt have warrant from the ancient court; and yet it is good (as much as may be) to purſue this act, there being no greater aſſurance of juriſdiction then an act of parliament. And where there be no ſuch preſidents, then the ſtatute as to the judges muſt be purſued: and that was the reaſon that in default of others, Sir Chriſtopher Wray chief juſtice of England for a time was made lord privy ſeal to ſit in the ſtar-chamber, *ne curia deſiceret in juſtitia exhibenda*.

[ 63 ]

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

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

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

6. Laſtly, that the juriſdiction of this court dealeth not with any offence, that is not *malum in ſe*, againſt the common law, or *malum prohibitum*, againſt ſome ſtatute.

It

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

Divers speciall acts of parliament have been also jurisdiction to this court, viz. 12 R. 2. ca. 11. 2 R. 2. cap. 5. 13 H. 4. cap. 7. 33 H. 8. cap. 1. 4 & 5 Ph. and M. cap. 8. 5 Eliz. ca. 9. 10. & cap. 14. 27 Eliz. cap. 4.

*The jurisdiction  
of this court*

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

Camden Brit.  
130. *In camera  
stellata tractantur  
criminalia, per-  
juria, imposturæ,  
dolus malus, ex-  
cessus, &c.*

As for oppression, and other exorbitant offences of great men, (whom inferiour judges and jurors (though they should not) would in respect of their greatnesse be afraid to offend) bribery, extortion, maintenance, champerty, imbracery, forgery, perjury, dispersers of false and dangerous rumours, news, and scandalous libelling, false and partiall misdemeanours of sheriffs and bailiffs of liberties, frauds, deceits, great and horrible riots, routs, and unlawfull assemblies, single combats, challenges, duels, and other hainous and extraordinary offences and misdemeanours; but ordinary, and such offences as may be sufficiently and condignly punished by the proceeding of the common laws, this court leaveth to the ordinary courts of justice and dealeth not with them, *ne dignitas hujus curiæ vilesceret*, as before is said.

For proceeding,  
*ore tenus*, see be-  
fore 10. claus.  
17 H. 6. John  
Fords case.  
Rot. claus.  
42 E. 3. the ab-  
bot of Brueries  
case, &c. *In no-  
veris ordo est or-  
dinem juris non  
servare.*

The proceeding in this court is by bill or information, by examination of the defendant upon interrogatories, and by examination of witnesses, and rarely *ore tenus*, upon the confession of the party in writing under his hand, which he again must freely confesse in open court, upon which confession in open court, the court doth proceed. But if his confession be set down too short, or otherwise then he meant, he may deny it, and then they cannot proceed against him but by bill or information, which is the fairest way.

The informations, bills, answers, replications, &c. and interrogatories are in English, and ingrossed in parchment, and filed up. All the writs and processe of the court are under the great seal: the sentences, decrees and acts of this court are ingrossed in a fair book with the names of the lords and others of the kings councill and justices that were present and gave their voices.

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Pafe. 12 Ja. Reg.

In an information in this court by the attorney generall against Sir Stephen Procter, Birkenhead and others for conspiracy against, and scandall of the earl of Northampton, and Edward lord Wootton two of his majesties privy counsell: at the hearing of which cause there sat eight in court, and four of them condemned the defendant: and the lord chancelour, the two bishops, and the chancelour of the exchequer acquitted him. And the question was, whether the defendant should be condemned or no: and herein it was moved by the kings learned councill, that when the voices be  
equall,

equall, that in that case, of which part the lord chancellor was, on that side it should be decreed, without regard, whether it was for the plaintiff or defendant: and it was resolved, that regularly *et de communi jure*, in respect of the equality of the voices no sentence could be given in that case, as it holdeth in the high court of parliament, and all other courts, according to the old rule, *paribus sententiis reus absolvitur*. And therefore the presidents of this court were to be searched; for except presidents could make a difference between this court and others, the defendant could not be sentenced. Whereupon the court referred this question to the two chief justices, that they calling unto them the kings learned counsell to view presidents, whether by the custome of this court the common rule in other courts is altered. Before whom in the presence of the kings learned counsell two presidents were produced for proof of the said custome, viz. one Termino Hil. anno 39 Eliz. between Gibson plaintiff, and Griffith and others defendants: wherein the complaint was for a riot. And upon hearing of the cause eight sat in court, and four gave their sentence that the defendants were guilty, and the other four, whereof the lord chancelour was one, did acquit the defendants, and no sentence of condemnation was ever entred. But the justices took it, that that president tended not to prove any such custome, for it agreed with the rule in other courts. Another president was shewed, Termino Hil. 45 Eliz. in an information by the queens attorny generall against Bathern and others for forging of a will, &c. Upon the hearing of the cause, the presence consisting of eight, whereof four gave sentence against the defendant for forgery, and to be punished according to the statute of 5 Eliz. the other four, whereof the lord chancelour was one, found him guilty of a misdemeanour, and not of the forgery, and imposed a fine of five hundred pound only, and imprisonment, and that was entred according to the lord chancelours voice. But no rule of court was shewed for entering thereof in that manner: so as it appeared not that it was ever moved, or debated in court, and in that case all concluded against the defendant, and it is but one president. Now whether this one, being such a one as it is, and so late, be sufficient to alter the generall law and course of all other courts, I leave to the judgment of this honourable court: and sentence was never given against Sir Stephen Procter agreeable to the generall rule in other courts. See Rot. parl. 8 H. 6. m. 28.

Lawrence Hide and Henry Hide esquires, exhibited a bill of complaint against George Coriet and others upon the statute of 32 H. 8. cap. 9. for unlawfull maintenance; and complained for three severall leases for certain years of the parsonage of Dynton in the county of Wilts. whereof the lessor nor any of his ancestors were in possession within a year before, &c. and pursued the statute: upon which part of the bill (for the bill concerned riots and other things) the defendant demurred in law, and the causes of the demurrer were. First, that by the said act this court had no jurisdiction of this cause upon this statute, because that the act which is introductory of a new law did not give jurisdiction to this court, but the suit must be in the courts of the common law upon this act, which (said they) also appeared, in that in the remedy given by the act in this clause, *In which action, bill, plaint,*

Erodus fo. 112

Hil. 39 Eliz. in camera stellata, Gibsons case.

Hil. 45 El. in camera stellata, Batherns case.

Mic. 36 & 37 El.

or information no *essoign*, *protection*, *wager of law*, or *injunction* shall be allowed, and that no *essoign*, &c. did lie in this court. The second objection was, this court had no power to give the plaintiff remedy to have execution in this court of the penalty given by this act. Whereunto upon great advisement it was answered and resolved. As to the first: that the statute did give jurisdiction to this court, for it is one of the kings courts, &c. intended in the act: and the statute of 3 H. 7. declareth that this court hath jurisdiction of maintenance, and this act of 32 H. 8. doth adde but a greater penalty: and as to the clause of *essoign*, &c. it must be construed *reddendo singula singulis*, &c. for as no *essoign*, &c. lieth in this court, so no *injunction* is awarded in the court of common pleas, &c. As to the second: it was resolved that this court had power in this case to grant execution of the penalty inflicted by this act, as in a like case had been done, in the case of James Taverner. And both these points had formerly been resolved in this court, 14 Maii. 27 Eliz. between Robert Bradshaw esquire plaintiff, and Robert Charnock esquire defendant, upon this statute, and the case decreed accordingly, and a commission awarded out of this court, to enquire of the value, &c. And for these causes by the rule of the whole court, the demurrer was over-ruled, and the defendant ordered to answer.

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

It is the most honourable court, (our parliament excepted) that is in the Christian world, both in respect of the judges of the court, and of their honourable proceeding according to their just jurisdiction, and the ancient and just orders of the court. For the judges of the same are (as you have heard) the *grandees* of the realm, the lord chancellor, the lord treasurer, the lord president of the kings council, the lord privy seal, all the lords spirituall, temporall, and others of the kings most honourable privy council, and the principall judges of the realm, and such other lords of parliament as the king shall name. And they judge upon confession, or deposition of witnesses: and the court cannot sit for hearing of causes under the number of eight at the least. And it is truly said, *Curia camera stellata, si vetustatem spectemus, est antiquissima, si dignitatem, honoratissima*. This court, the right institution and ancient orders thereof being observed, doth keep all England in quiet.

Albeit the stile of the court be *coram rege et concilio*, yet the kings council of that court hear and determine causes there, and the king in judgment of law is always in court. As in the kings bench the stile of the court is *coram rege*, and yet his justices who are his council of that court doe hear and determine, and so *coram rege in cancellaria*, and the like.

So this court being holden *coram rege et concilio*, it is or may be compounded of<sup>a</sup> three severall councils. That is to say, of the lords and others of his majesties privy council, always judges with-

out

Dier Mich. 6 &  
27 Eliz. fo. 236.

Dier 15 El. 323.  
in camera stellat.  
Taverners case. Pasc.  
27 El. in camera stellata.  
Charnocks case.

The dignity of  
this court.

The judges of  
this court.

Camb. ubi supra.

<sup>a</sup> See the 1. part  
of the Institutes.  
sect. 164. Verb.  
*veigne les Bur-  
gesses al parla-  
ment.*  
4 E. 3. 2. 3 aff.  
pl. 15.

out appointment, as before it appeareth. 2. <sup>b</sup> The judges of either bench and barons of the exchequer are of the kings council for matter of law, &c. and the two chief justices, or in their absence other two justices, are standing judges of this court. 3. The lords of parliament are properly *de* <sup>c</sup> *magno concilio regis*, but neither these, being not of the kings privy counsell, nor any of the rest of the judges or barons of the exchequer are standing judges of this court.

<sup>b</sup> 39 E. 3. 5.  
19 E. 3. Judg-  
ment. 174.  
W. 1. ca. 1.  
17 E. 2. *Stat. de*  
*Templariis*.  
16 R. 2. *Stat. de*  
*Premunire*.  
43 Aff. pl. 15.  
Regist. 124, 125.  
191. 27 H. 6. 5.

2 R. 3. 10. <sup>c</sup> 27 Aug. 5 H. 4. in the exchange between the king and the earl of Northumberland, in *turre*. 37 E. 3. ca. 18. &c. Note the parliament is called *commune concilium*.

It is now, and of ancient time hath been called the chamber of the <sup>d</sup> stars, the <sup>e</sup> star-chamber, the <sup>f</sup> starred chamber, in respect the roof of the court is garnished with golden stars. Some have imagined that it should be called the star-chamber, because *crimina stellionat*<sup>g</sup> are there handled: others of this Saxon word *stieran*, to steer or rule as doth the pilot, because this court doth steer and govern the ship of the common-wealth. Others, because it is full of windows: but the true cause of the name is, because, as is aforesaid, the roof is starred. In all records in Latin, it is called *camera stellata*.

The name of this court.

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<sup>d</sup> 41 E. 3. ubi sup.  
<sup>e</sup> In many of the records before cited.  
<sup>f</sup> 25 H. 8. ca. 1. Lambard.  
Sir Tho. Smith. lib. 2. ca. 4.

The process in this court is *suppæna*, attachment, process of rebellion, &c. all under the great seal.

The process.

In this court there is the clerk of the counsell, which is an office of great account, and trust, for he is to receive, endorse, enter, keep, and certifie the bills, pleadings, records, orders, rules, sentences and decrees of the court: and I find that in former times men of great account have had that office in this court: as to give you a little taste thereof: king H. 6. by his letters patents, 15 July *anno regni sui* 22. granted the same to Thomas Kent doctor of the law for his life, calling him *clericum concilii nostri*, and soon after swore him of his privy counsell. King H. 7. *anno* 1. of his reign, granted the same office to John Bladefwell doctor of laws for term of his life: but hereof this little taste shall suffice.

Officers of the court sworn.

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

Ecclesiasticus  
20. 8. *Qui potestatem sibi sumit injuste, edictur.*  
\* See *statut. de moneta temp*  
E. 1. 35 E. 1.  
*de Carlisle*.  
20 E. 3. ca. 4.  
Vid. 23 El. ca. 2.  
And note where he shall lose his ears for delamation of the queen.

See the first part of the Institutes, sect. 745. verb. Felony. *Major*

*jore pœna affectus, quam legibus statut' est, non est infamis. Pœna gravior ultra legem posita æstimationem conservat. Confessus in jure pro judicato habetur, cum quodammodo sua sententia damnatur. Cum consensente sponte mitius est agendum.*

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

*Quicquid judicis authoritati subijcitur, nobilitati non subijcitur.*

[ 67 ]

C A P. VI.

## A Court for Redresse of Delays of Judgements in the Kings great Courts.

14 E. 3. cap. 5.  
stat. 1.  
Rot. parl. 2 R 2.  
nu. 63. confirmed  
by parliament.

Judgements de-  
layed.

\* Nota, by good  
advice of the  
chancellour,  
treasurer, and  
justices.

Good accord.

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

**T**HIS court is raised by the statute of 14 E. 3. which followeth in these words.

*Item,* Because divers mischieves have happened of that, that in divers places, as well in the chancery, as in the kings bench; the common bench, and in the exchequer, before the justices assigned, and other justices to hear and determine deputed, the judgements have been delayed, sometimes by difficulty, sometimes by divers opinions of the judges, and sometime for some other cause: it is assented, established, and accorded, that from henceforth at every parliament shall be chosen a prelate, two earls, and two barons, which shall have commission and power of the king to heare by petition delivered unto them the complaints of those that will complaine them of such delays and grievances made, and they shall have power to do come before them at Westminster, or elsewhere, where the places or any of them shall be, the tenor of records and proceses of such judgements so delayed, and to cause the same justices to come before them, which shall be then present to hear their cause and reasons of such delays: which cause and reason so heard by \* good advice of themselves, the chancelor, treasurer, the justices of the one bench, and of the other, and other of the kings counsell, as many and such as shall seem convenient, shall proceed to take a good accord, and make a good judgement: and according to the same accord so taken, the tenor of the same record, together with the judgement which shall be accorded, shall be remaunded before the justices, before whom the plea did depend; and that they shall give judgement according to the same record: and in case it seemeth to them that the difficulty be so great, that it may not well be determined without assent of the parliament, that the said tenor or tenors shall be brought by the said prelate, earles, and barons in the next parliament

parliament, and there shall be a final accord taken what judgement ought to be given in this case, and according to this accord it shall be commanded to the judges before whom the plea did depend, that they shall proceed to give judgement without delay.

Before the making of this statute delay of judgements was forbidden both by the common law, and by acts of parliament. By the common law. 1. It is required, that *plena et celeris justitia fiat partibus*, &c. not *plena* alone, nor *celeris* alone, but both *plena et celeris*. All writs of *precipe quod reddat*, are, *Quod iuste et sine dilatione reddat*, &c. All judicial writs are *sine dilatione*, &c. 2. There did and yet doth lye a writ *de procedendo ad iudicium*, when the justices or judges of any court of record, or not of record, delayed the party plaintife or defendant, demandant or tenant, and would not give judgement: and thereupon an *alias plur'*, and an attachment, &c. doth lye. And the words of the writ be, *Quia redditio iudicii loquela que est coram vobis*, &c. *de quadam transgressionem eidem A. per prefat' B. illata, ut dicitur, diuturnam cepit dilationem ad grave damnum ipsius A. sicut ex querela sua accepimus, vobis precipimus quod ad iudicium inde reddendum cum ea celeritate que secundum legem et consuetudinem regni nostri procedas*, &c.

3. Likewise when justices or judges of any court of record, or not of record gave judgement, and delayed the party of his execution, the party grieved may have a writ *de executione iudicii*: by which writ the justices or judges are commanded, *Quod executionem iudicii nuper redditi*, &c. *de loquela que fuit*, &c. *per breve nostrum*, &c. *sine dilatione fieri fac'*. And thereupon an *alias, plur'* and attachment, &c. do lye.

4. By the meeting together upon adjournment of the cause out of the court, where the cause dependeth, &c. All the judges, &c. which now we call an exchequer chamber cause, warranted by the common law and ancient presidents before this statute: and the frequent use of this court of exchequer chamber hath been the cause that this court upon the act of 14 E. 3. hath been rarely put in ure.

5. By the kings writ comprehending *quod si difficultas aliqua interfit*, that the record should be certified into the parliament, and to adjourne the parties to be there at a certain day. *Si obscurum et difficile sit iudicium, ponantur iudicia in respect' usque magnam curiam*. An excellent record, whereof you may read in the parliament holden at Westminster the Tuesday after the translation of Becket, anno 14 E. 3.

Secondly, by acts of parliament. *Nulli vendemus, nulli negabimus, aut differemus justitiam vel rectum*.

That it shall not be commanded neither by the great-seale, nor by the little-seale, nor by letters, nor any other cause to delay right: and albeit such commandement come, &c. that by them the justices surcease not to do right in no manner. *Vide* 2 E. 3. cap. 8. 14 E. 3. cap. 14. 18 E. 3. stat. 3. 2 R. 2. a statute not in print, Rot. parl. nu. 51. whereby it is enacted, that no justice shall stay justice for any writ, letter of the great-seal or privy-seal, or other commandement whatsoever against the laws and statutes before

IV. INST.

Regist. 131. 2.  
F. N. B. 23. c.  
And so upon con-  
nufans granted.

Regist. fo. 22.  
F. N. B. 153. b.  
&c. Cust de  
Norm. cap. 27.

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Diuturna dila-  
tio.

Regist. fo. 18.  
F. N. B. fo. 20. a,  
&c.

See hereafter,  
ca. Exchequer  
and Exchequer  
Chamber.

2 E. 3. fo. 7.  
Ellys Callers  
case. Braet. lib. 1.  
ca. 2. rot. parl.  
14 E. 3. nu. ult.  
Sir Geff. Stan-  
tons case.

Mag. Cart.  
ca. 29.

2 E. 3. fo. 3.  
per Aldham.  
14 E. 3. jour. 24.  
18 E. 3. 47. 57.  
31 E. 3. an. 161.  
39 E. 3. 37.  
11 H. 4. 5. 76.  
9 H. 6. 58. b.  
5 E. 4. 132.  
Forfeic. cap. 5.  
F. N. B. 240. d.

that

\* Regist. fo.  
F.N.B. 240. d.

that time made, Rot. par. 2 H. 4. nu. 64. anno 5 H. 4. nu. 33. all which are declaratory of the common law. \* And upon the said act of 2 E. 3. a writ is framed, directed to the justices, by which they are commanded, *Quod ad justitiam partibus, &c. faciend' virtute alicujus mandati de magno sigillo, et parvo sigillo vobis direct' seu dirigend' nullatenus superseatis, &c.* And thus much for the common law and acts of parliament.

This statute of 14 E. 3. cap. 5. consisteth of two generall parts, viz. the preamble and the body of the act. In the preamble three things are to be observed. 1. That (notwithstanding the provision of the common law) mischiefs do happen by delay of judgements. 2. It enumerateth in what courts these delayes do happen, viz. in the chancery, in the kings bench, the common bench, and the exchequer, the justices assigned, and other justices to hear and determine deputed. 3. It declareth how these delayes have grown, viz. sometime for difficulty of the matter in law, sometime in diversity of opinion of the judges, and sometimes for some other cause, that is, by commandements, letters, or messages of the king or great men, &c. In the body of the act we have collected many observations. 1. That at every parliament there shall be chosen a prelate, two earls, and two barons, (or one bishop, two earles, and two barons.) viz. At this parliament were chosen, 1. John Stratford archbishop of Canterbury, (a man famous for learning, loyalty, and vertuous living.) 2. Rich. Fitzalan earle of Arundel, a man of great wisdom, prowes, and integrity. 3. William Clynton earle of Huntingdon, and admirall of England, a man lately before advanced for his singular valour, wisdom, and vertue. 4. The lord Wake of Lidel. and 5. Ralph lord Bassett of Drayton, two of the most renowned barons of England. *Quos omnes honoris causa nomino.*

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2. This act doth appoint that the prelate, two earls, and two barons are to have a commission and power of the king under the great seal (and none of them can be absent) which commission is to endure untill the next parliament.

3. This commission and power consisteth on ten parts. 1. *Ad audiendum*, to hear the petition delivered to them, the complaints of those that will complain to them of such delayes or grievances made. 2. *Ad venire faciend'* to do come before them at Westminster, or elsewhere, the tenor of the records and proceses of such judgements so delayed; and this is to be done by the kings writ of *certiorari*. 3. *Ad venire faciend'*, to cause the same justices to come before them. 4. *Ad audiend' suas rationes et causas talium dilationum*, to hear their reasons and causes of such delayes which ought to be entred of record. 5. Which causes and reasons so heard, *ad procedendum*, to proceed to make a good accord. 6. But this must be done not only by themselves, but by the good advice of certain assistants appointed by the act, viz. the chancelour, treasurer, the justices of the one bench and the other, and other of the kings counsell, as many, and such as they shall think convenient. 7. *Ad capiendum*, to take a good accord of the assistants. 8. *Ad faciendum*, to make a good judgement. 9. *Ad remandandum*, to remaund before the justices, before whom the plea did depend, the tenor of the said record, together with the judgement that so shall be accorded.



corded. Lastly, that those justices shall presently give judgement according to the said record.

A commission granted in 18 E. 3. grounded upon this statute, and referring to the same being enacted, as there it appeareth, at a parliament holden *die Mercurii proximi post medium quadragesimæ anno 14 E. 3. regni Angliæ et Franciæ primo*, there being two parliaments in that year, which you may reade, being worthy of observation, for it is a good exposition of this act.

4. It is further provided by the said act of 14 E. 3. that in case it seemeth to them, that the difficulty is so great, that it cannot well be determined without assent of parliament, that the tenor or tenors shall be brought by the said prelate, earls, and barons unto the next parliament, and there shall finall accord be taken what judgement shall be given in this case.

<sup>a</sup> It is better that the demandant be delayed, then the tenant inherited, or that the law be altered. Shard. We cannot nor will delay any man in respect of our oath.

<sup>b</sup> The justices ought to delay no man in the name of the king where the king hath no right. The demandant shall not be legally delayed twice for one cause.

<sup>c</sup> Delay in a *quare impedit*, though it be by essoin, is a disturbance. <sup>d</sup> *Semper fur est in mora.* <sup>e</sup> *In circuitu impij ambulat.*

<sup>f</sup> In divers cases the party grieved shall have an action for unjust delay.

<sup>g</sup> *Tolle moram, semper nocuit differre paratis*

But seeing neither the common law, nor any of the acts of parliament do extend to ecclesiasticall courts, it is then demanded, what if an inferiour ordinary will refuse, or delay to admit and institute a clerk presented by the right patron, to a church within his dioces, or the like: or delay, or refuse to give sentence in a cause depending before him. It is answered, that the archbishop of the province may grant his <sup>h</sup> letters under his seale to all and singular clerks of his province, to admonish the ordinary, within nine dayes to performe that which by justice is desired, or otherwise to cite him to appeare before him or his officiall at a day in those letters prefixed, and to cite the party that hath suffered such delay, then and there likewise to appeare, and further to intimate to the said ordinary, that if he neither perform that which is enjoyned, nor appear, he himselfe without further delay will performe the justice required. Or in the former of the said cases, the party delayed may have his *quare imp.* but that is thought not to be so speedy a remedy.

Rot. pat. 18 E. 3.  
2 part.

Rules concerning  
delays.

<sup>a</sup> 18 E. 3. 54. a.

13 H. 4. 4.

24 E. 3. 64. a.

<sup>b</sup> 4 E. 3. 2. a.

22 H. 6. 39. per  
Newton.

10 E. 3. 57.

40 E. 3. 22. &c.

<sup>c</sup> 4 E. 3. 14.

6 E. 3. 4.

<sup>d</sup> Braeton.

<sup>e</sup> Psal. 12. 9.

<sup>f</sup> 44 E. 3. 4.

18 E. 3. 12, 13.

20 H. 6. 10.

21 E. 4. 22, 23.

F. N. B. 96. f.

97. b.

<sup>g</sup> Ovidius.

<sup>h</sup> This is called  
*duplex querela*,  
necessary to be  
known for find-  
ing of institu-  
tions, &c.

## C A P. VII.

The Court of Kings Bench, *coram Rege.*

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

Fo. 108. a.

**B**RACON doth make in few words a notable expression of this court. *Habet rex plures curias in quibus diversæ actiones terminantur, et illarum curiarum habet unam propriam, sicut autem reiam, et iusticiarios capitales qui proprias causas regias terminant, et aliorum omnium, per querelam, vel per privilegium, sive libertatem.* And soon after speaking of the justices of this court saith: *Item iusticiariorum quidam sunt capitales, generales, perpetui, et majores à latere regis residentes, qui omnium aliorum corrigere tenentur injurias, et errores.*

\* Nota.

\* A granter prohibitions.

And Britton saith: *In droit des justices que sont assignes de nous suer et tener nostre lieu ou q. nous seons en Anglitterre. \* Veilons que eux eiant conusans de amender faux judgements et de terminer appeales et auters trespasses faitz enconter nostre peace, et \* enconter nostre jurisdiction, et leur record se esteant solong; ceo que nous manderons per nostre bre.*

Fleta in describing this court saith: *Habet et rex curiam suam et iusticiarios suos tam milites quam clericos locum suum tenentes in Anglia, coram quibus, et non alibi nisi coram semetipso et concilio suo vel auditoribus specialibus falsa judicia et errores iusticiariorum revertuntur et corriguntur: ibidem etiam terminantur brevvia de appellis, et alia brevvia super actionibus criminalibus et injuriarum contra pacem regis illatarum impetrata, et omnia, in quibus continetur ubi tunc fuerimus in Anglia.*

Libet niger in  
scaccario, cap. 4.

In the Black Book of the exchequer, it is thus said of the chief justice of this court: *capitalis justitia præsidet primus in regno.* Out of these three ancient authors we observe these six conclusions.

First, where Bracton saith, *Habet rex plures curias in quibus diversæ actiones* \* *terminantur*; hereby, and in effect by <sup>a</sup> Britton, and this conclusion followeth, that the king hath committed and distributed all his whole power of judicature to severall courts of justice, and therefore the judgement must be *ideo consideratum est per curiam.* And herewith do agree divers acts of parliament and book cases, some whereof, for illustration, we will briefly remember; and leave the judicious reader to the rest.

\* Note this word

<sup>a</sup> See Britton, f. 1. speaking of the king, *Et pur ceo que nous ne suffisons in nostre proper person a oier & terminer tous querels del peuple. Avons partie nostre charge en plusieurs parts come est ordeine, &c.*

20 E. 3. cap. 1.

<sup>b</sup> Stat. de Marl.

52 H. 3. ca. 1.

Vii. 4. H. 4.

ca. 22.

<sup>c</sup> 14. 8. cap. 2.

in effect.

<sup>d</sup> Bract. lib. 1.

ca. 5. fol. 3. b.

<sup>e</sup> 20 E. 3. cap. 1.

speaking in the

king's person.

<sup>b</sup> *Provisum, concordatum et concessum est, quod tam majores, quam minores justitiam habeant et recipiant in curia domini regis.* <sup>c</sup> That the lawes ecclesiasticall and temporall were and yet are administred, adjudged, and executed by sundry judges, &c. <sup>d</sup> *Expedi etiam magistratus reipublicæ constitui, quia per eos qui juredicendo præsumt effectus rei accipitur; parum est enim jus in civitate esse, nisi sint qui possunt jura gereve.*

<sup>e</sup> For the pleasure of God and quietnesse of our subjects as to save our conscience, and to keep our oath, by the assent of our great men and other of our councill, we have commanded our justices, that they shall from henceforth do even law and execution of right to all our subjects, rich and poor, without having regard to any person, without letting to do right for any letters or commandment

## Cap. 7. The Court of Kings Bench.

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mandement which may come to them from us, or from any other, or by any other cause.

Agreeable to that great canon of the law *anno* 3 E. 1. which we have translated into Latin: *Rex præcipit quòd pax sacrosanctæ ecclesiæ et regni solidè custodiatur et conservetur in omnibus; quolibet; justitia singulari tam pauperibus quam divitibus administratur, nulla habita personarum ratione.* See the second part of the Institutes, W. 1. cap. 1.

8 H. 4. the king hath committed all his power judiciall, some in one court, and some in another, so as if any would render himselfe to the judgement of the king in such case where the king hath committed all his power judiciall to others, such a render should be to no effect. And 8 H. 6. the king doth judge by his judges (the king having distributed his power judiciall to severall courts) and the king hath wholly left matters of judicature according to his Lawes to his judges.

And albeit it be enacted that the delinquent shall be fined at the will of the king, *Non dominus rex in camera sua, nec aliter nisi per justiciarios suos (suam imponit) et hæc est voluntas regis, viz. per justiciarios et legem suam, unum est dicere.*

The second conclusion is, that in those dayes this court of kings bench did follow the court: and therefore Bracton calleth it *aulam regiam*, because they sat in the kings hall. Britton calleth the justices of this court, *justices assignes de nous suer*: and Fleta, *ubi tunc fuerimus in Anglia*.

The third is, that it is called the kings bench, and the pleas thereof *coram rege*: because in this court (as Bracton saith) those *capitales justiciarum proprias regis causas terminant*, and therefore the king himselfe cannot be judge in *propria causa*.

The fourth is, that under these words [*proprias causas*] are included three things. First, all pleas of the crowne; as all manner of treasons, felonies, and other pleas of the crown which *ex conguo*, are aptly called *proprie causæ regis*, because they are *placita coronæ regis*. Secondly, regularly to examine and correct all and all manner of errors in fact, and in law, of all the judges and justices of the \* realm in their judgements, proceffe, and proceeding in courts of record, and not only in pleas of the crown, but in all pleas, reall, personall, and mixt, (the court of the exchequer excepted, as hereafter shall appear.) And this is *procurum quarto modo* to the king in this court: for regularly no other court hath the like jurisdiction, and therefore may be well called *propria causa regis*, and these two be of high and soveraign jurisdiction. <sup>a</sup> Thirdly, this court hath not only jurisdiction to correct errors in judiciall proceeding, but other errors and misdemeanours extrajudiciall tending to the breach of the peace, or oppression of the subjects, or raising of faction, controversy, debate, or any other manner of misgovernment; so that no wrong or injury, either publick or private, can be done, but that this shall be reformed or punished in one court or other by due course of law. As if any person be committed to prison, this court upon motion ought to grant an *habeas corpus*, and upon returne of the cause do justice and relieve the party wronged. And this may be done though the party grieved hath no priviledge in this court. It granteth prohibitions to courts temporall and ecclesiasticall, to keep them within their proper jurisdiction. Also this court may baile any person for any offence

W. 1. an. 3 E. 1.  
cap. 1.  
Fleta lib. 1.  
ca. 29.

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8 H. 4. fo. 19.

8 H. 6. 20 & tit.  
Grant. F. 5.

2 R. 3. fol. 11.

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

\* And in Ireland of errors in the kings bench the. c. lib. 7. fo. 18. F. N. B. 22. 34 Aff. 7. 39 E. 3. Error 88. <sup>a</sup> Lib. 11. fo. 98. Jam. Baggescafe Vid. 10 E. 3. ca. 3. Marthallca.

whatsoever. And if a freeman in city, burgh, or town corporate be disfranchised unjustly, albeit he hath no privilege in this court, yet this court may relieve the party, as it appeareth in James Bagges case, *ubi supra, et sic in similibus*.

F. N. B. 89. 92.

\* Tr. 19 E. 3.  
coram rege  
rot. 56. Linc.

<sup>b</sup> 2 part of the  
Institutes, Mag-  
na Carta, cap. 11.

Fourthly, this court may hold plea by writ out of the chancery of all trespasses done *vi et armis*, of replevins, of \* *quare impedit, &c.*

<sup>b</sup> See the second part of the Institutes, the 11 chapter of Mag. Carta, *Communia placita non sequantur curiam nostram*.

Fifthly, this court hath power to hold plea by bill for debt, continue, covenant, promise, and all other personall actions, *ejectioe firme*, and the like, against any that is in *custodia mareschalli*, or any officer, minister, or clerk of the court: and the reason hereof is, for that if they should be sued in any other court they should have the privilege of this court: and lest there should be a stayler of justice (which is so much abhorred in law) they shall be impleaded here by bill though these actions be common pleas, and are not restrained by the said act of Magna Carta, *ubi supra*. Likewise the officers, ministers, and clerks of this court privileged by law in respect of their necessary attendance in court, may impleade others by bill in the actions foresaid. And all this appeareth by Bracton, who lived when Magna Carta was made, *ubi supra*: where he saith, *Et aliorum omnium per querelam vel per privilegium sine libertatem*. And continuall experience concurrith with antiquity herein.

See the second  
part of the In-  
stitutes, *ubi*  
*supra*. 27 H. 3.  
coram rege.  
rot. 9.

*Hus & Haut.*

*H. P. captus per querimoniam mercatorum Flandriæ et imprisonatus offert domino regi hus et haut in plegio ad standum recto, et ad respondendum prædictis mercatoribus, et cunctis aliis qui versus eum loqui voluerint, &c.* This plea was after the statute of Magna Carta, anno 9 H. 3. Of these words *hus* and *haut*, two French words. *Hus* signifying an elder tree, and *haut* the staffe of a halbert, &c. I leave the conjecture that some have made thereof to themselves: we think it was then common bail changed now to *Do* and *Re*, and the rather for this word [*offert*.] And it is observable, that then putting in baile at one mans suit, he was in *custodia mareschalli* to answer all others which would sue him by bill, and this continueth to this day. If any person be in *custodia mareschalli*, &c. be it by commitment, or by latitat', bill of Mid' or other proces of law, it is sufficient to give the court jurisdiction: and the rather, for that the court of common pleas is not able to dispatch all the subjects causes, if the said actions should be confined only to that court. And seeing none but serjeants at law can practise in the court of common pleas, it is necessary that in this court of kings bench apprentices and other counsellors of law might by experience inable themselves to be called serjeants afterwards; otherwise serjeants must want experience, which is the life of their profession. And the proceedings in that court for so long time, and under so many honourable judges and reverend sages of the law, hath gotten such a foundation, as cannot now without an act of parliament be shaken. And the errors in the kings bench cannot be reversed (but in certain particular actions by the statute of 27 Eliz. cap. 6. wherein the jurisdiction of the court is saved) but in the high court of parliament, as before in the chapter of the court of parliament appeareth.

31 H. 6. 10. b.  
adjudge.

Sixthly,

Sixthly, if a writ in reall action be abated by judgement in the court of common pleas, and in a writ of error the judgement is reverfed in this court, and the writ is adjudged good, this court shall proceed upon this writ, and is not restrained by Magna Carta, *ubi supra, ne curia domini regis deficeret in iustitia exhibenda.*

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

A *scire fac'* to repeal a patent of the king may be brought in this court. And where Fleta saith, *Nisi coram semetipso et concilio suo, vel auditoribus specialibus falsa iudicia ac errores justiciariorum revertuntur*: It is to be known that all the common law errors in the court of exchequer (being the proper court of the king for his revenue and profit) were examinable before commissioners appointed by the kings writ under his great seal, which Fleta here calleth *auditores speciales*. But now by the statute of 31 E. 3. the chancelour and treasurer taking to them the justices and other sage persons, such as to them seemeth to be taken, shall examine the errors in the exchequer, &c.

<sup>a</sup> In ancient time, when pleas were holden in parliament, when the parties descended to issue, the record was adjourned into the kings bench to be tried there.

<sup>b</sup> See the statute of W. 1. against preposterous hearings in this court, and the exposition of the same in the second part of the Institutes.

<sup>c</sup> By the statute of *Artic' super Cart.* the chancelour and the justices of the kings bench were to follow the court: but notwithstanding both the chancery and the kings bench were at this time settled courts during the severall terms \* of the year, as by infinite records both before and after this statute doth appear. So as at this time they did not attend in the kings court, but when they were called yet were accounted as parcell of the kings household as long as they followed the court: but this cumbersome attendance wholly ceased in the reign of E. 3. and yet the lord chancelour would have had his purveyance, as if he had continued still as one of the household, untill he and all others, but those of the kings, queens, or princes household only, were restrained by act of parliament. 34 E. 3. cap. 2.

times and termes the court of chancery did sit.

Also upon perusal of the records in the reign of H. 3. from the beginning of his reign untill the ending of it, this court sat in the term time where the other courts of justice did sit. And the pleas were stiled to be holden *coram rege* as to this day they are: and this appeareth by Fitzh. Abridgement, in the titles of Corone, of Brief, of Wast, &c. and by Bracton who in many places voucheth judgments in the reign of H. 3. in terms *coram rege*. And this appeareth also in elder times: but hereof thus much shall suffice to prove, that at the making of the said act of 28 E. 1. and long before, this court in term times sat with the kings other courts, and specially for pleas of the crown, &c. and that the said act

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

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

3 H. 4. 7.

See more heresof  
in the chapter of  
the Exchequer.  
31 E. 3. cap. 12.

<sup>a</sup> Rot. par.  
18 E. 1. nu. 97.  
Placit. int. Jo.  
de novo Burgo &  
Regman, &c.

<sup>b</sup> W. 1. cap. 14.  
Against prepos-  
terous hearings.

<sup>c</sup> Art. sup. cart.  
28 E. 1. cap. 5.  
Glan. temps.  
H. 2. lib. 2. ca. 6.  
& lib. 11. ca. 1.  
*Coram iusticiis  
domini regis in  
banco sedentibus.  
Vid adjudicat'  
coram rege in  
every terme,  
from 1 E. 1. du-  
ring all his reign  
in every severall  
term in theyeare.  
And in all those*  
34 E. 3. ca. 2.

\*[ 73 ]

And so did the  
chancery both of  
them teing to  
some purposes  
but one court as  
it appeareth in  
the chanter of  
the court of  
chancery.

is to be intended, that the chancelour and the judges of this court should attend the king and follow the court when they were required.

3 El. Dier 187.

27 Aff. p. 1.

7 E. 4. 18.

4 H. 7. 18.

14 H. 7. 21.

It. 9. fo. 118. a & b.

Segnior Sanders case.

It is truly said that the justices *de banco regis* have supream authority, the king himself sitting there as the law intends. They be more then justices in eire.

The justices in this court are the sovereign justices of oier and terminer, gaol-delivery, conservators of the peace, &c. in the realm. See the books in the margent, you shall find excellent matter of learning concerning the supream jurisdiction of this court.

In this court the kings of this realm have sit in the high bench, and the judges of that court on the lower bench at his feet; but judicature only belongeth to the judges of that court, and in his presence they answer all motions, &c.

17 E. 3. 13. a. lib. 4. fo. 57. in the Sadlers case. Pl. Com. 262.

21 Aff. 12.

27 aff. 1. 28 aff.

52. 21 H. 7. 29.

b Pasch. 12 E. 3.

coram rege,

R. c. 99. Chichest.

W. 1. cap. 3.

lib. 9. fo. 118.

ubi sup. 12.

The justices of this court are the sovereign coroners of the land, and therefore where the sherif and coroners may receive appeals by bill, *à fortiori* the justices of this court may do it.

<sup>a</sup> So high is the authority of this court, that when it comes and sits in any county, the justices of eire, of oier and terminer, gaol-delivery, <sup>b</sup> they which have consufance, &c. doe cease without any writing to them. But if any indictment of treason or felony in a foreign county be removed before certain commissioners of oier and terminer in the county where this court sits, yet they may proceed, because this court (for that this indictment was not removed before them) cannot proceed for that offence. But if an indictment be taken in Midd. in the vacation, and after this court sit in the next term in the same county (if this court be adjourned) then may speciall commissioners of oier and terminer, &c. in the interim proceed upon that indictment, but the more usuall way is by speciall commission. And all this was resolved by all the judges of England at Winchester term, *anno 1 Jacobi regis*, in the case of Sir Everard Digby and others: and so had it been resolved, Mich. 25 & 26 Eliz. in the case of Arden and Somervile, for this kind of speciall commission of oier and terminer: and herewith agreeeth Pl. Com. in the earl of Leic<sup>r</sup> case, *anno 1 Mar. regine*.

Hil. 1 Jac. Sir Walter Raleighs case, &c. Pl. Com. fo 388. count de Leic<sup>r</sup> case 200<sup>r</sup>.

22 E. 3. 6. b.

24 E. 3. 73.

29 aff. 52.

Stanf. pl. cor. 15.

6 H. 8. cap. 6.

It extendeth only to felonies and murders.

And so supream is the jurisdiction of this court, that if any record be removed into this court, it cannot (being as it were in his centre) be remanded back, unlesse it be by act of parliament. And this appeareth by the judgment of the parliament in *anno 6 H. 8.* but by the authority of that act indictments of felonies and murders removed into the kings bench may by the justices of that court be remanded, and this court may send down as well the bodies of all felons and murderers, as their indictments into the counties where the same murders or felonies were committed or done, &c. in such manner, &c. as if the indictments had not been brought into the kings bench. But the justices of the kings bench of their own authority may grant a *nisi prius* in case of treason, felony, and other pleas: for there they send but the transcript of the record, and not the record itself, as shall be said in the chapter of Justices of *nisi prius*. But if the justices of the kings bench doe perceive that any indictment is to be removed into that court by practise or for delay, the court may refuse to receive the same, before it be entred of record, and remand the same back again for justice to be done.

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See before cap. Partiam. pag. 21. when a writ of error is sued of a judgment, *coram rege*, they proceed *super tenorem recordi*, and th record it self remaneth in this court.

2 H. 4. cap. 10.

By the statute of 2 H. 4. the clerk of the crown of this court, if

four score

fourscore or an hundred men be indicted of felony or trespassse, of one felony, or one trespassse, and they plead to an issue, as not guilty, the said clerk ought not to take for the *venire fac'*, nor for the entering of the plea but two shillings only, and not two shillings for every one, which act is made in affirmance of the common law. So if one man be indicted of two severall felonies or trespassses, and is acquitted, he shall pay but for one delivrance.

26 Aff. p. 47.

Out of this court are other courts derived, as from one fountain several springs and rivers, in respect of the multiplicity of causes, which have increased. *Jurisdiclio istius curie est originalis seu ordinaria, & non delegata.* The justices of this court have no commission, letters patents or other means to hold pleas, &c. but their power is originall and ordinary. They were called anciently \* *justicie, justiciarii, licum tenentes domini regis, &c.* The chief justice, \* *justitia Anglie, justitia prima, justiciarius Anglie, justiciarius Anglie capitalis, and justiciarius noster capitalis ad placita coram nobis terminand'*. To observe the changes of these names, and the reason and change thereof, is worthy of observation.

Designatio justiciariorum est a rege, jurisdictione vero ordinaria a lege.

\* Glanvil lib. 1. ca. 6, 13. &c. sæpenumero.

a Lib. nigro in scaccario. par. 1. ca. 4.

Never in any legall record (which we have seen) the were called *summi justiciarii*.

Rot. cart. 45 H3. 13 Aug.

Before the reign of E. 1. the chief justice of this court was created by letters patents, and the form thereof (taking one example for all) was in these words.

Capitalis justiciarius Anglie.

*Rex, &c. archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, vicecomitibus, forestariis, et omnibus aliis fidelibus regni Anglie, salutem. Cum pro conservatione nostra, et tranquillitatis regni nostri, et ad justitiam universis et singulis de regno nostro exhibendam constituerimus dilectum et fidelem nostrum Philippum Basset justiciarium Anglie quamdiu nobis placuerit capitalem. Vobis mandamus in fide qua nobis tenemini firmiter injungentes, quatenus in omnibus que ad officium justiciarii prædicti, nec non ad conservationem pacis nostre et regni nostri eidem dum in officio prædicto fuerit, plenius sitis intendentes. Teste rege, &c.*

Herein 6 things are to be observed. 1. That the creation of his office was by letters patents. 2. That this officer was originally instituted for three things. 1. *Pro conservatione nostra.* 2. *Tranquillitatis regni nostri.* 3. \* *Ad justitiam universis et singulis de regno nostro exhibendam.* The third thing to be observed is, that he was stiled *justiciarius Anglie capitalis*. 4. That Philip Basset was constituted chief justice of England, and after made knight, for he was not knight at the making of the letters patents. This Philip was of Wellesby in the county of Northampton, and was excellently learned in the laws of the realm; he was younger brother of baron Basset of Draiton Basset in the county of Staff. 5. That he was constituted *quamdiu nobis placuerit*. Lastly, the clause of attendance, and the persons that are to give attendance, &c. to him, are very remarkable. This Philip Basset was the last of this kind of creation by any like letters patents, and he died chief justice neer to the end of the reign of H. 3. king E. 1. being a wise and prudent prince knowing that *cui plus licet quam par est, plus vult quam licet*, (as most of these *summi justiciarii* did) made three alterations, 1. By limitation of his authority. 2. By changing *summus justiciarius*, to *capitalis justic'* 3. By a new kind of creation, viz. by writ, lest, if he had continued his former manner of creation, he might

\* This was the original jurisdiction of this court.

might have had a desire of his former authority, which three doe expressly appear by the writ yet in use. viz.

*Rex, &c. E. C. militi salutem. Sciatis quod constituimus vos justiciarium nostrum capitalem ad placita coram nobis tenenda, durante beneplacito nostro. Teste, &c.*

Which writ being called breve doth in few words comprehend the substance of the former letters patents: for *capitalis justiciarius noster* and *ad placita coram nobis tenenda* includes all that which was truly intended to be granted to him in the former letters patents, which alterations were made by authority of parliament, though not now extant. For it is a rule in law, that ancient offices must be granted in such forms and in such manner, as they have used to be, unless the alteration were by authority of parliament. And continuall experience approveth, that for many successions of ages without intermission, they have been, and yet are called by the said writ, *et optimus legum interpretis consuetudo*. But after the said alteration, viz. in anno 25 E. 1. Reginaldus de Grey (was stiled) *justiciarius Angliæ*, and he was in legall proceedings called *capitalis justiciarius noster*, when his patent was, *capitalis justiciarius Angliæ*.

We have seen a fine in these words: *Hec est finalis concordia facta in curia domini regis apud West' à die sancti Michaelis in tres septimanas, anno regni regis Henrici filii regis Johannis 3. coram domino Huberto de Burgo capitali justiciario Angliæ et aliis domini regis fidelibus tunc ibi presentibus.*

<sup>a</sup> In the writ *de homine replegiand'*, he (which was formerly called *capitalis justiciarius Angliæ*) is called *capitalis justic' noster*, and sometime *cap. justic' regis*. The stile of this court of kings bench is *Anglia* in the margin: and in divers acts of parliament he is called chief justice of England. 34 H. 8. cap. 26. 37 H. 8. cap. 12. 2 E. 6. cap. 13. 5 E. 6. cap. 11.

The chief justice in Ireland is called *capitalis justiciar' Hiberniæ* at this day.

Pasch. 13 E. 1. (the pleas in this court are *coram rege*) then were stiled thus, *Placita coram locum domini regis tenentibus, &c. ideo, venit inde jurata coram rege vel ejus locum tenentibus.* 15 Pasche, &c. within which words all the judges of the kings bench were included.

<sup>b</sup> Anno domini 969. in the abby of Ramsey this epitaph was engraven, &c. *De Ailivinus incliti regis Edgari cognatus totius Angliæ aldermannus, &c.* who was without question chief justice of all England. *Inter leges Auredi* cap. 34. he is called *cyninger ealdorman*, i. *regis aldermannus sive senator, sive judex.* Vide cap. 3. 15. & 38. *et inter leges Edvardi* ca. 35.

The rest of the judges of the kings bench have their offices by letters patents in these words. *Rex omnibus ad quos presentes literæ pervenerint, salutem. Sciatis quod constituimus dilectum et fidelem Johannem Docridge militem unum justiciariorum ad placita coram nobis tenenda durante beneplacito nostro, teste, &c.* <sup>c</sup> These justices of the kings bench are stiled 1. *Capitalis.* 2. *Generales.* 3. *Perpetui.* 4. *Majores à latere regis residentes*: but the chief justice is only called by the king *capitalis justiciarius noster*. They are called 1. *Capitales*, in respect of their supream jurisdiction. 2. *Generales*, in respect of their generall jurisdiction throughout all England, &c. 3. *Perpetui*, for that they ought not to be removed without just cause,

See in the chapter of the Constable and Marshall for this point.

Rot. par. 25 E. 1. so named in the writ of parliament to him directed.

Nota, this fine was levied, *Inter Martinum Abbatem de Wyssenden querentem, et Thurstanum Basset deforcientem de 3 carucat' terræ in lega.* before him in the kings bench, in 3 H. 3. before Mag. Car. and stiled *capit. justiciar' Angliæ.* Lib. de Wyssenden fo. 109. divers other fines with the same stile.

<sup>a</sup> Reg. ff. fo. 77. 24 E. 1. *stat' de consuetor'* 3 E. 3. coron. 361. Lib. Int. Co. tit. action sur le case, sect. 5.

<sup>b</sup> Aldermanni judices dicti sunt in diebus illis.

<sup>c</sup> Braet. li. 3. §. 108.



cause. 4. *Majores à latere regis residentes*, for their honor and safety, that they should be protected by the king in administration of justice, for that they be *à latere regis*.

And where in 5 E. 4. it is holden by all the justices in the exchequer chamber that a man cannot be justice by writ but by patent or commission, it is to be understood of all the judges, saving the chief justice of this court. But both the chief justice, and the rest of the judges may be discharged by writ under the great seal. L. 5 E. 4. 137.

None can be a judge of this court unless he be a serjeant of the degree of the coif, and yet in the writ of patent to them made, they are not named serjeants.

If a writ be returnable *coram justiciariis nostris apud Westm'*, it shall be returned in the common place: but if it be returnable in this court, it must be *coram nobis ubicunque fuerimus in Anglia*. See the second part of the Institutes, Mag. Cart. cap. 11. and the exposition upon the same. [76]

In former times some ill disposed clerks of this court, because they could have no original out of the chancery for debt returnable into this court, they would sue out an original action of trespass (a meer feigned action) returnable into this court, and so proceed to exigent, (where in truth the cause of action is for debt) and when the defendant appeared, &c. all the former proceedings were waved, and a bill filed for the defendant for debt. This is an unjust practice in derogation of the dignity and honour of this court, and worthy of severe punishment according to the statute of W. 1. c. 29. when it is found out: Vide in the chapter of the court of common pleas in the end thereof.

Now that we may here say somewhat to a vulgar objection of the multiplication of suits in law both in this court, and other of his majesties courts at Westm' more then hath been in the reigns of E. 3. R. 2. H. 4. H. 5. H. 6. E. 4. and R. 3. It is to be observed, that there be six causes of the increase of them, whereof two be general, and the other four particular. The generall be peace, and plenty: the particular, 1. The dissolution of so many monasteries, chanteries, &c. and the dispersing of them into so many severall hands. 2. The swarm of informers. 3. The number of concealors. 4. The multitude of attornies.

For the first generall: in the reigns of E. 3. R. 2. H. 4. H. 5. and part of the reign of H. 6. in respect of the wars in France, &c. and in the residue of the reign of H. 6. and in the reign of E. 4. in respect of the bloody and intestine wars, and in almost continuall alarums within the bowels of this kingdom, between the houses of Lancaster and York, there could not be so many suits in law, as since this kingdom hath enjoyed peace, which is the first generall cause, peace is the mother of plenty, (which is the second general cause) and plenty the nurse of suits. In particular, by the dissolution of monasteries, chanteries, &c. and dispersing of them, &c. Upon the statutes made concerning the same (there being such a confluence of ecclesiastical possessions) there arose many questions and doubts, whereupon suits were greatly increased. 2. Informers and relators raised many suits, by informations, writs, &c. in the kings courts at Westm' upon penall statutes, many whereof were obsolete, inconvenient, and not fit for those days,

W. 1. ca. 29.  
Vid. 20 H. 6.  
37. a. 30 E. 3. 32.  
It is true where  
one thing is pre-  
tended and ano-  
ther done.  
Multiplication  
of suits.  
Peace.  
Plenty.  
Dissolution of  
monasteries, &c.  
Informers.  
Concealors.  
Attornies.

*Silent leges inter  
arma.*

Concordia par-  
va res crescunt  
ex pulentialites.

and yet remained as snares upon the subject, so as the subject might justly say with Tacitus, *Prævis vitis laboravimus, nunc legibus*. 3. Concealors, *helluones*, that endeavoured to swallow up cathedral churches and the ecclesiastical possessions of church-men, and the livings of many others of the kings subjects. Lastly, the multitude of \* attornies, more then is limited by law, is a great cause of increase of suits.

\* See the preambles of the stat. of 4 H. 4. ca. 18.

33 H. 6. ca. 7.

\* Diminution of suits.

b Possessions of monast. and chanteries, &c.

35 El. ca. 3.

21 Ja. cap. 2.

Concealors.

c 21 Jac. ca. 4.

Informers.

See the third part of the Inst. cap. against vexatious relations informers &c.

d Attornies.

Rot. par. 20 E. 1.

rot. 4. *De appren-  
tibus et attornatis*.

15 R. 2. nu. 28.

4 H. 4. ca. 18.

33 H. 6. ca. 7.

See Rot. parl.

23 H. 4. nu. 63.  
not in print.

e 21 Jac. ca. 16.

\* [ 77 ]

See the 3 part of  
the Inst. cap.  
against Mono-  
polists and Pro-  
jectors.

3 Car. regis c. 1.

21 Jac. ca. 28.

3 Car. ca. 4.

a But now on the other side, to shew what great hope there is, that suits in law shall decrease, for that in effect all the particular causes of the increase of them are taken away, which we have thought good to remember.

b For the first, the statute of 35 Eliz. cap. 3. hath remedied part, but the statute of 21 Jac. ca. 2. hath given a plenary salve for the whole mischief, whereof you may read at large in the third part of the Institutes, cap. 87. against concealors, *turbidum hominum genus*.

c For the second, by the statute of 21 Jac. cap. 4. Informations, &c. upon penall statutes are to be heard and determined in their proper counties, and not in the courts at Westminster, whereby the vexatious swarm of informers, who are best trusted where they are least known, are vanished and turned again to their former occupations.

d Concerning attornies, the number are set down, and that they ought to be learned and vertuous, and as I understand, the judges at this time have this matter in consideration. But besides these, there are some other statutes made for avoiding and decreasing of vexatious suits.

As an e act in 21 Jac. regis, cap. 16. for limitation of actions and avoiding suits in law, a good and beneficial law. Another act at the same parliament, cap. 13. for the further reformation of jeofails, \* a good law for ending of suits.

Another at the same parliament, cap. 8. to prevent and punish abuses in procuring of proccesse of *superfedas* of the peace and good behaviour, out of his majesties courts at Westminster, &c. whereby infinite vexations, troubles and charges of the subjects are prevented.

Another at the same parliament, ca. 23. for avoiding of vexatious delays in causes by removing of actions and suits out of inferiour courts, wherein the former abuse was vexatious, grievous, and chargeable to the subject. A branch of an act at the same parliament, cap. 16. for pleading of tender of amends in an action of trespassse, *quare claus. fregit*, for a trespassse by negligence, or involuntary, wherein the defendant maketh no title, &c. an excellent and necessary law for avoiding of trifling and vexatious suits, especially in champion countries.

An act at the same parliament, cap. 2. against monopolies and new projects, &c. a great quiet for the time to come. *Anno 3 Caroli Regis, nunc*, cap. 1. The petition of right concerning the rights and liberties of all the subjects of this realm for their repose and quiet. Lastly, the repeal of so many obsolete penall statutes is a great mean of diminution of suits.

For the above said generall causes, viz. peace and plenty, long may they happily by the goodnesse of God continue without abuse within this realm.

The kings bench hath authority for great misprisions and offences, to adjudge and inflict corporall punishment, as pillory, papers, and the like: whereof you may read many presidents in the third part of the Institutes, pag. 219, 220.

## C A P. VIII.

## The Court of Chancery.

**C**ERTAIN it is, that both the Brittiſh and Saxon kings had their chancelors and court of chancery, the only court out of which originall writs doe iſſue: as taking ſome few examples before the conqueſt.

Edward the Confeſſor had Reinbald his chancelor. This Edward granted many mannors, lands, &c. and franchiſes to the abbot of Weſtminſter, and endeth his charter thus. *Ad ultimum, cartam iſtam ſigillavi juſſi, et ipſe manu mea propria ſignum crucis impreſſi, et idoneos teſtes annotari præcepi:* and amongſt thoſe witneſſes this you ſhall finde *Swardus notarius ad vicem Reinbaldi regie dignitatis cancellarii hanc cartam ſcripſi et ſubſcripſi.* He had alſo Leſrick to his chancelor.

King Etheldred alſo had a worthy name, and a worthy man to his chancelor. *Rex Etheldredus ſtatuit atque conceſſit quatenus eccleſiam de Elyc ex tunc et ſemper in regis \* curia cancellariæ ageret dignitatem, &c.* This king began his reign, anno domini 978, which albeit it was void in law to grant the chancelorſhip of England in ſucceſſion, yet it proveth that then there was a court of chancery.

King Edgar had Adulph: king Edred had Thurkettle: king Edmond the ſame: king Athelſtane Wolfine their chancelors, &c.

For further proof that there was a court of chancery before all theſe kings time, out of which writs remediall iſſued, as they doe to this day: hear what the Mirror ſaith, *Le primer conſtitutions ordeus per les viciſ roys, &c. ordein fuit que cheſeur ext del chancery le roy brief remedial a ſon pleint ſans difficultie.* Hereby it appeareth that in the reign of king Alfred there was a court of chancery out of which writs remediall iſſued, which was not then inſtituted, but affirmed to be a court then *in eſſ*, and enacted that out of that court writs remediall ſhould be granted without difficulty, which law continueth to this day. And thus much touching the court of chancery before the conqueſt: and therefore \* Polydor Vergil, who affirmeth this court to come in with the Conqueror, *perperam erravit.*

In a charter to the abbot of Weſtminſter by William the Conqueror, and amongſt the witneſſes it is written thus, *Ego Mauritius regis cancellarius facendo legi, et ſigillavi.* Arſtaſtus biſhop of Northelham in Norſſ, who tranſlated his ſee to Thetford, was alſo chancelor to the Conqueror.

*Cancellarii Angliæ dignitas eſt, ut ſecundus à rege in regno habeatur, ut altera parte ſigilli regii, quod et ad ejus pertinet cuſtodiam, propria ſignet mandata, &c.*

*Omnia brevia de pace, &c. irrotulari debent in rotulo cancellariæ.*

Nota ſaith, *Eſt inter cætera quoddam officium quod dicitur cancellaria, quod uno provido et diſcreto, ut epiſcopo vel clerico, major dignitatis debet committi ſimul cum cura magni ſigilli regni, cujus ſubſcripti ſunt cancellarij*

*The antiquity of this court.*  
26 L. 3. ill. p. 24. and the preface to the third book of Reports.  
Hiſtory of Ely, Hugo Petroburghenſis, Leland. Forſci. cap. 17.

In the ſecond book of the Hiſtory of Ely, written in the reign of king Stephen 1204 after the conqueſt.  
\* Curia Canc. Nota.

Mirror ca. 1. §. 3. & vide ca. 5. 8.  
*par le enſeignement de par-dun le roy in le chancery le temps le roy Alfred.* King Alfred began to reign anno domini 872, and was rather to king Edward ſenior, father of the ſaid Athelſtane.  
\* Error Polydori.

Fitz. Stephen. tempore H. 2. in the end of Stow. ſurvey of Lond. Bracton l. 1. See Glanv. l. 12. ca. 1. & 5. See Flota. l. 2. ca. 12.

*cancellar' omnes in Anglia, Hibernia, Wallia, et Scot' omnesque sigilla regis custodientes ubique præter custodem sigilli privati. Cui associantur clerici honesti, circumspècti domino regi jurati, qui in legibus et consuetudinibus Anglicanis notitiam habeant pleniorẽ, quorum officium sit supplicationes et querelas conquerentium audire et examinare, et eis super qualitatibus injuriarum ofensarum debitum remedium exhibere per brevìa regis.*

W. 2. 13 E. 1.

c. 1. 13 E. 1.

ca. 23, 24.

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1 part Instit.  
fcd. 101. Epist.  
lib. 9.

Vid. postea

ca. 10. of the  
court of com-  
mon pleas.

*Breve de forma donationis in revertere satis est in usu in cancellaria.*

*In cancellaria et in registro cancellariæ.*

For the antiquity and authority of this book of the register of the chancery, see the first part of the Institutes, *verb. per le Register*, and in the epistle to the ninth book of my Commentaries.

But to proceed (omitting many others) Robert Parning took the state and degree of a serjeant at law in 3 E. 3. and became the kings serjeant, and for his profound and excellent knowledge of the laws, in Trin. term 14 E. 3. was 24 Julii by writ created chief justice of England: in which office he remained untill the 15 of December following, on which day he was made lord treasurer of England. In that office he remained untill the 15 year of the reign of the same king, and then was constituted lord chancellor. This man knowing that he that knew not the common law, could never well judge in equity (which is a just correction of law in some cases) did usually sit in the court of common pleas, (which court is the lock and key of the common law) and heard matters in law there debated, and many times would argue himself, as in the report of 17 E. 3. it appears.

Ubi non est sci-  
entia, non est  
conscientia.  
17 E. 3. fo. 11.  
14. 23. 37.

Rot. par. 45 E. 3.  
Rot. 22. nu. 15.

In the 30 year of E. 3. Sir Robert Thorpe chiefe justice of the common pleas (not Sir William Thorpe chiefe justice of England, convicted of fordid bribery) a man of singular judgement in the laws of this realm, was constituted lord chancellor of England. And in the parliament anno 45 E. 3. a grievous complaint was made by the lords and commons, that the realme had bin of long time governed by men of the church in disherison of the crown, and desired that lay men only might be principall officers, &c.

After the decease of Sir Robert Thorpe 5 Julii anno 46 E. 3. Sir John Knivet knight, chief justice of England, a man famous in his profession, was made lord chancellor of England, who deceased in anno 50 E. 3. &c.

Rot. par. 5 R. 2.  
nu. 20.

In perusing the rolls of parliament in the times of these lord chancellours, we finde no complaint at all of any proceeding before them. But soone after, when a chancellor was no professor of the law, we finde a grievous complaint by the whole body of the realm, and a petition that the most wise and able men within the realm might be chosen chancellours, and that he seek to redresse the enormities of the chancery. But leaving many other records to their proper places hereafter, we will conclude this point concerning the antiquity and jurisdiction of this court with the opinion of all the judges of the realm in 9 E. 4. in a suit in the court of exchequer against the clerk of the hamper in the chancery upon his account in the exchequer, where it was holden by all the justices in the exchequer chamber, that all the courts of the king have been time out of memory, so as a man cannot know which of them is the ancientest court. And justice Young the plaintife demanded of the justices, what if the chancellor command me upon a payne, that

that I shall not sue him? To whom Billing the chief justice answered, you are not bound to obey it, because that commandment is against law: but seeing that toucheth upon the jurisdiction of the court, let us in the next place handle that point.

*The Jurisdiction of the Court.*

In the chancery are two courts, one ordinary, *coram domino rege in cancellaria*,<sup>a</sup> wherein the lord chancellor or lord keeper of the great seal proceeds according to the right line of the laws and statutes of the realm, *secundum legem et consuetudinem Angliæ*.<sup>b</sup> Another extraordinary according to the rule of equity, *secundum æquum et bonum*. And first of the former court.

<sup>c</sup> He hath power to hold plea of *seire fac'* for repeal of the kings letters patents, of petitions, *monstrans de droits*, traverses of offices, partitions in chancery, of *seire fac'* upon recognisances in this court, writs of *audita querela* and *seire fac'* in the nature of an *audita querela* to avoid executions in this court; <sup>d</sup> downments in chancery, the writ *de dote assignanda* upon offices found, execution upon the statute staple, or recognisance in nature of a statute staple upon the act of 23 H. 8. but the execution upon a statute merchant is returnable either into the kings bench, or into the common place, and all personall actions by or against any officer or minister of this court in respect of their service or attendance there. <sup>a</sup> In these if the parties descend to issue, this court cannot try it by jury, but the lord chancellor or lord keeper delivereth the record by his proper hands into the kings bench to be tried there; because for that purpose both courts are accounted<sup>b</sup> but one, and after trial had to be remanded into the chancery, and there judgement to be given. But if there be a demurrer in law, it shall be argued and adjudged in this court. Nota, the legall proceedings of this court be not inrolled in rolls, but remaine in *filaciis* being filed up in the office of the pety-bag. <sup>c</sup> Upon a judgement given in this court a writ of error doth lie returnable into the kings bench: <sup>d</sup> the stile of the court of the kings bench is *coram rege* (as hath been said) and the stile of this court of chancery is *coram domino rege in cancellaria*, et *additio probat minoritatem*. And in this court the lord chancellor or the lord keeper is the sole judge: and in the kings bench there are four judges at the least.

This court is *officina justitiæ*, out of which all originall writs and all commissions which passe under the great seal go forth, which great seal is *clavis regni*, and for those ends this court is ever open.

Of this court Fleta *ubi supra*, saith, *Dicuntur brevia cum sint formata ad similitudinem regulæ juris, quæ breviter, et paucis verbis intentionem proferentis exponunt, sicut regulæ juris, rem quæ est breviter enarrat: non tamen ita debet esse bre. quin rationem et vim intentionis contineat. Et sunt quedam brevia formata sub suis casibus, et quedam de cursu quæ consilio totius regni sunt approbata. quæ quidem mutari non poterunt absque eorundem contraria voluntate. Sunt et brevia ex eis sequentia quæ dicuntur judicialia, et sæpius variantur secundum varietatem plactorum preponent' et respondent', petentis et excipientis et secundum varietatem responsum. Sunt et quedam quæ dicuntur magistralia et sæpius variantur secundum diversitatem casuum, factuum et querelarum, et quorundam quedam*

<sup>a</sup> 8 E. 4. 5.  
<sup>9</sup> E. 4. 15.  
<sup>11</sup> E. 4. 7.  
<sup>b</sup> Stan. præf.  
<sup>c</sup> 20. fo. 65. b.  
<sup>d</sup> Pl. com. fo. 72.

<sup>e</sup> Rot. par. 8 H. 4. nu. 122. 2 R. 3. 1.

<sup>d</sup> Regis. 297.  
F. N. B. 263.  
Stanf. præf. ca. 1.  
Rot. par. 18 E. 3. nu. 41, 42.

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<sup>a</sup> 13 E. 2. coram rege, rot. 51. London.

<sup>b</sup> 10 E. 3. 61.  
24 E. 3. 63. 73.

<sup>c</sup> 18 E. 3. 25. 17. aff. 24.

<sup>d</sup> 14 E. 2. Dier. 315.  
Pl. com. 395. a.

<sup>e</sup> In par. Tr. 9. H. 6. rot. 5. int. placita regis.

*Officina justitiæ.*

Fleta lib. 2.  
ca. 12. Bract.  
li. 5. fo. 413.  
Britton ca. 84.  
Fleta lib. 6.  
ca. 35. & 36.

quædam sunt personalia, et quædam realia, et quædam mixta, secundum quod sunt actiones diversæ vel varix, quia tot erunt formulæ brevium, quod sunt genera actionum, quia non potest quis sine brevi agere, præcipue de libero tenemento suo, quia non tenetur quis respondere sine brevi, nisi gratis voluerit, et cum hoc fecerit quis, ex hoc ei non injuriabitur: volenti enim et scienti non fit injuria. De eadem autem re, plures alicui competere poterunt actiones, ordine autem, ut convenit, observato. Breve quidem regis in se nullam debet continere falsitatem, nec aliquem errorem: apparere debet vel in prima sui figura non vitiosum, maxime si fuerit patens sive apertum, quia originalia quædam sunt clausa, et quædam aperta. Et sive aperta, sive clausa, apparere non debent abrasa, nec abolita: et si inveniantur abrasa, tunc refert quo loco, à quo, et quando. Quo loco? videlicet utrum in narratione facti vel juris. Si autem in narratione facti, cadet coram justic' quasi suspectum. Facta enim et nomina mutari non debent, sed jura ubique scribi possunt. A quo? utrum videlicet per clericum cancellar' cui autoritas data fuerit, vel ausu temerario per alium, sicut clericum justic' vel vic' ad procuracionem alicujus partis: quo casu omnes agentes et consentientes tanquam falsarii puniantur. Item quando? videlicet utrum hoc fiat antequam bre. in curia resuscitatum et publicatum, vel post. Si autem post, erit breve suspectum et cadet, si à tenente fuerit hoc calumpniatum. Fiunt autem brevica judicialia in cancellaria ex recognitionibus et contractibus habitis et in rotulis cancellariæ irrotulatis et ex recordo cancellario et clericis sibi associatis per hac constitutionem concessio. Quia de hiis quæ recordata sunt coram cancellar' domini regis, et ejus justic' qui recordum habent et in rotulis eorum irrotulantur, non debet fieri processus placiti per summonitionem, vel attachiament', essonia, visus tre. et alias solemnitates cur' sicut fieri consuevit ex contractibus, et conventionibus factis extra curiam. Observandum est de cætero quod ea quæ inveniuntur irrotulata coram hiis qui recordum habent vel in finibus contenta, cum sint contractus sive conventiones vel obligationes sive servicia aut consuetudines recognita sive alia quæcunq; irrotulata quib' cur' regis sine juris et constitutionis offensa auctoritatem præstare potest talem de cætero habeat vigorem, quod non sit necesse de hiis placitare in posterum, sed cum venerit querens ad curiam domini regis, si recens sit cognitio, vel finis, viz infra annum per bre. levatus, statim habeat bre. de executione illius recognitionis factæ: et si forte à majore tempore transactio facta fuerit illa recognitio, vel finis levatus: præcipiatur vic' quod scire fac' parti de qua fit queremonia, quod sit ad certum diem, ostens. si quid sciat dicere quare hujus irrotulata vel in fine contenta executionem habere non debeant. Et si ad diem venerit, et nihil sciat dicere quare executio fieri non debeat, præcipiatur vic' quod rem irrotulatam vel in fine contentam exequi fac'. Eodem modo mandetur ordinario in suo casu, observato nihilominus quod inferius dicitur in statuto de medio qui per judicium aut recognitionem est obligatus. Ex hac quidem constitutione oriuntur bria. judicialia in cancellaria sicut coram ipsis justic'. Ipsi autem collaterales et socii cancellarii esse dicuntur præceptores, eo quod bria. causis examinatis remedialia fieri præcipiunt, et hoc quoque cum sine denar' ad opus domini regis, et quoque sine fine, eo quod omnia bria. non sunt omni tempore æquipollentia. De brevibus autem coram justic' ad primas assisas cum in partes illas venerint, fines capere non consueverunt, eo quod ad tempus itineris justic' ligat constitutio Magnæ Cartæ quæ talis est: Nulli justitiam negabimus, vendemus, vel differemus: sed non inhibebitur quin fines capiatur pro brevibus possessionum, et actionum personalium, pro celeriore justitia habenda; qui quidem pro qualitatibus et quantitibus portionem

portionem concessi in eisdem brevibus imbreuiabuntur, et in rotulis cancellariæ involuntur. Qui quidem rotuli singulis annis ad seaccar' liberabuntur, et fines hujus extrahuntur et per summon' seaccarii leventur. Clausula vero finis talis est, Et cape securitatem à præfato tali de 40 solid. ad opus nostrum pro hoc brevi. Verba autem extrac' de seaccario sunt hæc. De A. de B. pro brevi habend' diu marc' vel amplius prout finis factus fuerit. Conceduntur aliquando conquerentib' ob favorem paupertatis quod ubi præsumi potest sic quod plegios invenire non possunt de prosequend' clamorem suum quod securitatem præstent vic' per fidei interpositionem suam, non tamen in actionibus personalibus hoc concedendum est. Habet et rex clericos in officio illo expertos et legales qui formulas brevium cognoscunt, qui approbanda admittunt et defectiva omnino repellunt, quib' omnia bria. priusquam ad sigillum proveniunt cum deliberatione distincte et aperte in ratione, dictione, litera et syllaba examinare injunctum est. Et sciendum quod nullum bre. nisi per manus eorundem ad sigillum debet admitti. Habet etiam sex clericos suos prænotarios in officio illo, qui cum clericis memoratis familiares, &c. esse consueverunt et præcique ad victum et vestitum qui ad bria. scribenda secundum diversitates querelarum vultu intulati. Et qui omnes pro victu et vestitu de proficuo sigilli in cuiusmodi usus pervenerit debent honeste inveniri. Sunt etiam nihilominus clerici juvenes et pedites quibus de gratia cancellar' concessum est pro expeditione populi bria. facere cursoria, dum tamen sub advocacione clericorum superiorum fuerint qui eorum facta in eorum receperint pericula. Et in quolibet bri. debet scribentis nomen imbreuiari qui coarantizare poterint in peccatores si necesse fuerit. Et ne præfati clerici superflua petant stipendia pro scriptura sua, constitutum est quod tam clerici justic' quam cancellar' de solo denario pro scriptura unius brevis se teneant contentos.

And this court is the rather alwayes open, for that if a man be wrongfully imprisoned in the vacation, the lord chancelour may grant a *habeas corpus* and do him justice according to law, where neither the kings bench nor common pleas can grant that writ but in the term time; but this court may grant it either in term time or vacation. So likewise this court may grant prohibitions at any time either in terme or vacation; which writs of prohibition are not retournable: but if they be not obeyed, then may this court grant an attachment upon the prohibition retournable either in the kings bench or common place.

\* The author of that book speaking of the court of chancery, and of the jurisdiction it then had, saith, *Curia cancellariæ regie est curia ordinaria pro brevibus originalibus emanandis, sed non placitis communibus tenendis.*

Divers acts of parliament give authority to the lord chancelour to hear and \* determine divers offences and causes in the court of chancery, which is ever intended in this court proceeding in Latin, *secundum legem et consuetudinem Angliæ*, and the defendant shall not be sworn to his answer, nor examined upon interrogatories, and upon issue joyned it shall be tried in the king's bench, *ut in similibus casibus solet.* But our purpose is not to enumerate all these statutes, for our aim is principally at the general jurisdiction of this court.

The officers and ministers of this court of common law doe principally attend and doe their service to the great seal, as the \* twelve masters of the chancery, whereof the master of the rols is

\* New Tales, or Nova Narrationes, written about the beginning of E. 3. 27 E. 3. cap. 13. 2 R. 3. fo. 3. 13 E. 4. Dier 12 El. 283. a resolve.

\* [ 82 ]

Officers and ministers of this court. See the 2 part of the Inst. W. 2.

c1. 24. verb. Clerici de Cancellaria. chief clerks.

\* In the parliament rol of 5 R. 2. nu. 23. they are called

the chief, who by their originall institution, as it is proved before, should be expert in the common law, to see the forming and framing of originall writs according to law, which are not of course; whereupon such are called in our ancient authors *brevia magistratia*. The clerk of the crown, the clerk of the hamper, the sealer, the chafe wax, the controller of the chancery, twenty four cursitors for making writs of course or formed writs according to the register of the chancery, the clerk of the presentations, the clerk of the faculties, the clerk examiner of letters patents, the clerks of the petition, and the six attornies. The proceſſe in this court is under the great seal according to the course of the common law.

Having spoken of the court of ordinary jurisdiction, it followeth according to our former division, that we speak of the extraordinary proceeding according to the rule of equity, *secundum equum et bonum*, wherein we will pursue our former order.

Albeit our ancient authors, the Mirror, Glanvill, Bracton, Britton and Fleta doe treat of the former court in chancery, and of originall writs and commissions issuing out of the same, yet none of them do once mention this court of equity. We have also considered what cases in this court of equity have been reported in our books, and we find none before the reign of H. 6. and in that kings time, and afterwards plentifully, we then turned our eyes to acts of parliaments and parliament rolls.

<sup>a</sup> Some have thought that the statute of 36 E. 3. gave the chancellor his first authority for his proceeding in course of equity, by which it is enacted, That if any man think himself grieved contrary to any of the articles above written, or others contained in divers statutes, will come to the chancery or any for him, and thereof make his complaint, he shall presently have there remedy by force of the said articles and statutes, without elsewhere pursuing to have remedy. But certainly this act giveth the chancellor no power to proceed in course of equity, but that he grant to the party grieved originall writs which are called remediall grounded upon any statute for his relief, and there is no statute that gives the party grieved remedy in equity. Lastly, the last words of the act, without elsewhere pursuing to have remedy, doe manifest that the meaning of the makers of the act is to direct the party to be relieved by the common law, by actions upon these statutes, and not elsewhere.

In the parliament holden 13 R. 2. the commons petitioned to the king, That neither the chancellor nor other counsellor doe make any order against the common law, nor that any judgment be given without due proceſſe of law. Whereunto the kings answer was, The usages heretofore shall stand, so as the kings royalty be saved. In the same parliament another petition was, That no person should appear upon a writ *De quibusdam certis de causis*, before the chancellor or any other of the counsell, where recovery is therefore given by the common law: whereunto the kings answer is, The king willeth as his progenitors have done, saving his royalty.

In the parliament holden in 17 R. 2. it is enacted at petition of the commons, That forasmuch as people was compelled to come before the kings counsell, or in chancery, by writs grounded upon untrue suggestions, that the chancellor for the time being presently after

*Of the antiquity  
of this court of  
equity.*

Henry Beaufort  
son of John of  
Gaunt bishop of  
Winch. cardinal  
of St. Euse-  
bius, lord chan-  
celor in the be-  
ginning of the  
reign of H. 6.  
and in that  
kings reign John  
Kemp cardinal  
of S. Rufeline  
archb shop of  
York, lord  
chancellor.

See Rot. parl.  
28 H. 6. nu. 10.  
& 35 H. 6. fo. 3.  
<sup>a</sup> 36 E. 3. cap. 9.

Rot. parl. 13  
R. 2. nu. 30.

17 R. 2. ca. 6.



after that such suggestions be duly found and proved untrue, shall have power to ordain and award damages according to his discretion \* to him which is so travelled unduly as is aforesaid. This act extendeth to the chancelor proceeding in course of equity, and extendeth not to a demurrer in law upon a bill, but upon hearing of the cause upon these words in the act [duly found and proved] and this is the first parliament that I find touching this matter. And in the roll of the same parliament, I finde the first decree in chancery that ever I observed, the effect whereof was: John de Windfor complaineth and requireth to be restored to the manors of Rampton, Cottenham and Westwick with their appurtenances in the county of Cambridge, the which were adjudged to him by the kings award, then in the possession of Sir John Lisley, and now withholden by Sir Richard le Scrope, who by champerty bought the same: the cause was this. Upon a petition of Windfor against Lisley they both comprmitted the matter to the kings order, the king committed the same to the counsell, they after digesting of the same made a decree for Windfor under the privy seal, they send warrant to the chancelor to confirm the same, which was done under the great seal by a special injunction to Lisley, and to write to the sherif to execute the same. After this, Lisley by petition to the king requireth that the same may be determined at the common law, notwithstanding any former matter: the king accordingly by privy seal giveth warrant to the chancelor to make a *superfedeas*, the which was done by privy seal, after which Sir Richard Lescrope bought the same. Upon the ripping of the whole matter, this sale was thought no champerty, whereupon it was adjudged, that the said Windfor should take nothing by his said suit, but to stand to the common law, and that the said Sir Richard should goe without day.

The commons petitioned that no writs or privy seals be sued out of the chancery, exchequer or other places to any man to appear at a day upon a pain, either before the king and his counsell, or in any other place, contrary to the ordinary course of the common law: whereunto the king answered: that such writs should not be granted without necessity.

Amongst the petitions of the commons you shall find this, that all writs of *subpœna* and *certis de causis*, going out of the chancery and the exchequer may be enrolled, and not granted of matters determinable at the common law, on pain that the plaintiff doe pay by way of debt to the defendant forty pound: whereunto is answered, the king will be advised.

It is enacted, to endure untill the next parliament, that the exception (how that the party hath sufficient remedy at the common law) shall discharge any matter in chancery. At the next parliament you shall find a petition in these words. No man to be called by privy seal or *subpœna* to answer any matters but such as have no remedy by the common law, and that to appear so by the testimony of two justices of either bench, and by indenture between them and the plaintiff, which plaintiff shall always appear in proper person, and find surety by recognizance to prosecute with effect the matters of the bill only, and to answer damages if the same fall out against the plaintiff.

7 E. 4. fo. 14.

Rot. par. 17 R. 2. nu. 10. William Courtney son of Hugh earl of Devon, was then bishop of Cant. and lo. chancelor when this decree was made.

Champerty.

Rot. par. 2 H. 4. nu. 69.

Rot. par. 3 H. 5. nu. 46. Edmund Stafford archb. of York, was lord chancellor at this time.

Rot. Par. 9 H. 5. nu. 25. Rot. Par. 1 H. 6. nu. 41.

Never good petition in parliament dieth, but first or last will take effect. Vid. sup. p. 32. 15 H. 6. ca. 4.

But in *anno* 15 H. 6. for a perpetuall law, and for the true jurisdiction of this court it is enacted in these words.

39 H. 6. fo. 26.  
4 E. 4. 8. 14 E. 4.  
1. 16 E. 4. 9. b.  
18 E. 4. 13.  
6 E. 4. 10. b.  
7 H. 7. 12.  
Fortesc. ca. 34.  
Rot. par. 14 E. 4.  
nu. 5. William.  
Shetfords case  
Doct. & Stud.  
cap. 18. 24. 50.  
31 H. 6. ca. 2.

*Item*, forasmuch as divers persons have before this time been greatly grieved by writs of *subpœna*, purchased for matters determinable by the common law of his land, to the great damage of such persons so vexed, in subversion, and impediment of the common law aforesaid; our sovereign lord the king will, that the statutes thereof made shall be kept after the form and effect of the same. And that no writ of *subpœna* be granted from henceforth till surety be found to satisfie the party so grieved and vexed for his damages and expences, if so be that the matter may not be made good, which is contained in the bill. In *anno* 31 H. 6. cap. 2. there is a proviso in these words. Provided that no matter determinable by the law of this realm shall be by the said act determined in other form then after the course of the same law in the kings courts having determination of the same law.

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Trin. 2 Jac.

Tr. 2 Jac. *regis*, upon suit made to the king for erecting of a new office for taking of surety according to the said act of 15 H. 6. cap. 4. the king referred the cause to Popham chief justice, who upon conference with the judges in Fleetstreet, resolved that the surety was by force of that act to be by obligation, and to be made by the party grieved himself, because it concerneth his damages and costs, and the court was to set down the form and sum of the obligation, and in the end the suit prevailed not.

\* Pasch. 29 El.  
in Scaccario  
Woods case.  
Vide 7 El. Dier  
238. Seigneur  
Shandois case.

\* Pasch. 29 Eliz. in *scaccario*, in Woods case adjudged upon the statute of 2 E. 6. cap. 13. for the like reason that the forfeiture for non-payment of tithes shall goe to the party grieved.

*Reasons*, 1. &  
*majori ad minus*.  
Rot par. 2 R. 2.  
nu. 18.  
Rot. par. 13 R. 2.  
nu. 10.

1. Rot. par. 2 R. 2. nu. 18. the high court of parliament relieveth but such as cannot have remedy but in parliament.

The parliament for matters determinable at the common law doth remit the parties thereunto.

2 *Regula*.  
3.

2. *Nunquam decurritur ad extraordinarium, sed ubi deficit ordinarium.*

3. Whereas matters of fact by the common law are triable by a jury of twelve men, this court should draw the matter *ad aliud examen*, that is, to judge upon deposition of witnesses, which should be but evidence to a jury in actions real, personall, or mixt.

37 H. 6. 14.  
27 H. 8. 18.

This court of equity proceeding by English bill is no court of record, and therefore it can bind but the person only, and neither the state of the defendants lands, nor property of his goods or chattels.

Trin. 3 Jac.  
reg. in *scaccario*.  
Sir Thomas  
Thomilthorps  
case.

Egerton lord chancelour imposed a fine upon Sir Tho. The-milthorp knight, for not performing his decree in chancery concerning lands of inheritance, and estreated the same into the exchequer: and upon proccesse the party appearing pleaded that the fine was imposed by the lord chancelour for not performance of his decree, and that he had no power to asseffe the same. The attorny generall confessed the plea to be true, *et petit alvifamentum curiæ*, concerning the power of the chancelor in this case,

case, and upon debate of the question in court, and good advice taken, it was adjudged that the lord chancellor had no power to assesse any such fine, for then by a mean he might bind the interest of the land where he had no power, but of the person only, and thereupon the said Sir Thomas Themilthorp was discharged of the said fine.

Afterward the said lord chancellor decreed against Waller certain lands, and for not performance of the decree imposed a fine upon him, and upon proceſſe out of the court of chancery extended the lands that Waller had in Midd. &c. whereupon Waller brought his assise in the court of common pleas, where the opinion of the whole court agreed *in omnibus*, with the court of exchequer.

Waller's case.

The lord chancellor or the lord keeper is sole judge both in this court of equity, and in the court concerning the common law; but in cases of weight or difficulty he doth assist himself with some of the judges of the realm, and no greater exception can be taken hereunto then in case of the lord steward of England being sole judge in triall of the nobility, who also is assisted with some of the judges.

*The Judge of this court of equity, &c.*

For this court of equity the ancient rule is good. Three things are to be judged in court of conscience: covin, accident, and breach of confidence.

All covins, frauds, and deceits, for the which is no remedy by the ordinary course of law.

Accident, as when a servant of an obligor, mortgageor, &c. is sent to pay the money on the day, and he is robbed, &c. remedy is to be had in this court against the forfeiture, and so in the like.

The third is breach of trust and confidence, whereof you have plentiful authorities in our books.

The case in the chancery between the earl of Worcester and other plaintiffs, and Sir Moyl Finch and Eliz. his wife defendants was this. The queen being seised of the mannor of Raveſton and of certain lands in Stokegoldington, (which the plaintiff pretended to be a mannor either in right or reputation) granted by her letters patents the mannors of Raveſton and Stokegoldington to the said Sir Moyl, and John Awdelye, and their heirs: but this was upon confidence, that they should grant the mannor of Raveſton to Sir Thomas Heneage and Anne his wife, and to the heirs of Anne: and the mannor of Stokegoldington to Sir Thomas and Anne, and the heirs of Sir Thomas. Sir Moyl and Awdelye by deed indented and inrolled *termino Trin. 1588. 30 Eliz.* in this court for a thousand pound bargained and sold to Sir Thomas Heneage and his wife the mannors of Raveſton and Stokegoldington, and the scite of the priory of Raveſton in the county of Buck. and all other their lands, tenements and hereditaments in Raveſton, Weston, Pidington, and Stokegoldington, in the county of Buck. To have and to hold the mannor of Raveſton and the scite of the said priory, and all the premisses in Raveſton, Weston, Pidington, and Stokegoldington (other then the said mannor of Stokegoldington) to the said Sir Thomas and dame Anne, and the heirs of the said dame Anne: and to have and to hold the said mannor of Stokeg. to the said Sir Thomas and dame Anne, and to the heirs of Sir Thomas. Sir Thomas had issue by

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Mich. 42 & 43  
El. in Cancellar.  
Sir Moyl Finches  
case.

the said dame Anne the said Elizabeth one of the defendants his only child, and afterwards the said dame Anne died: the defendant alleadged that Sir Thomas was disseised of Stokegoldington, and the plaintiff denied it. And after Sir Thomas by deed indented and inrolled, bargained and sold the mannor of Stokegoldington to the plaintiff for payment of his debts and died: and for payment of his debts, they exhibited their bill against Sir Moyl, and the said Eliz. his wife, for the said mannor of Stokegoldington, and the lord chancellor decreed it for the plaintiff. And upon a petition preferred by the defendants to queen Elizabeth, she referred the consideration of the whole case to all the judges of England: and after hearing of the counsell of both parts on severall days, and conference between themselves, these points for rules in equity were resolved. First, that if there were any disseison, that nothing passed to the plaintiff either in right or equity, for the disseisor was subject to no trust, nor any *subpana* was maintainable against him, not only because he was in the *poss*, but because the right of inheritance or freehold was determinable at the common law and not in the chancery, neither had *cesti que use* (while he had his being) any remedy in that case. Secondly, it was resolved by all the justices, that admitting that Sir Thomas Heneage had a trust, yet could not he assign the same over to the plaintiff, because it was a matter in privity between them, and was in nature of a *chese* in action, for he had no power of the land, but only to seek remedy by *subpana*, and not like to *cesti que use*, for thereof there should be *possessio fratris*, and he should be sworn on juries in respect of the use, and he had power over the land by the statute of 1 R. 3. cap. and if a bare trust and confidence might be assigned over great inconvenience might thereof follow by granting of the same to great men, &c. Thirdly, when the land descended to Elizabeth one of the defendants, as heir to her mother, and the trust descended to her from her father, the trust was drowned and extinguished. Fourthly, when any title of freehold or other matter determinable by the common law come incidently in question in this court, the same cannot be decided in chancery, but ought to be referred to the triall of the common law where the party grieved may be relieved by error, attainr, or by action of higher nature. And when the suit is for evidences, the certainty whereof the plaintiff surmiseth he knoweth not, and without them he supposeth that he cannot sue at the common law: It was resolved that if the defendant make no title to the land, then the court hath just jurisdiction to proceed for the evidence; but if he make title to the land by his answer, then the plaintiff ought not to proceed, for otherwise by such a surmise, inheritances, freeholds, and matters determinable by the common law shall be decided in chancery in this court of equity. And thus were these points resolved by Sir John Popham, Sir Edmond Anderson, Sir William Periam, and Walmeslye, Gawdye, Fenner, and Kingesmill justices, and Clark and Savill barons of the exchequer, and all this amongst other things they certified under their hands into the chancery, and thereupon the former decree was reversed. And in debating of this case it was resolved by the two chief justices, chief baron, and divers other justices, that if a man make a conveyance, and expresse an use, the party himself or his heirs shall not be received to averre a secret trust, other then the expresse limitation of the use, unlesse such

A disseisor subject to no trust.

A trust cannot be assigned over.  
22 El. Dier fo.  
369. pl. 50.

Matters determinable by the common law cannot be decided in chancery.

Suit for evidence.

trust or confidence doe appear in writing, or otherwise declared by some apparent matter. And Popham said, that covin, accident, and breach of confidence were within the proper jurisdiction of this court.

Thomas Throckmorton esquire exhibited a bill in this court against Sir Moyl Finch knight, claiming a lease of the manors of R. and S. for many years to come, and shew clear matter in equity to be relieved against a forfeiture pretended by Sir Moyle for breach of a condition where there was no default in the plaintiff, &c. Unto which bill the defendant pleaded this plea, that for the trial of the forfeiture of which lease, he made a lease for years to one privileged in the exchequer, who brought an *electione firme* against the plaintiff, and upon pleading a demurrer in law, the lessee had judgment to recover against Thomas Throckmorton (now plaintiff in chancery :) whereupon Thomas Throckmorton brought a writ of error in the exchequer chamber, where upon due proceeding the judgement was affirmed, and demanded judgment, if after these judgements given at the common law he ought to be drawn to make any further answer in this court of equity. And Egerton lord chancellor delivered his opinion in court, that the defendant should answer to the bill : and forasmuch as the case was of great consequence, the consideration of the demurrer was by the queen referred to all the judges of England : before whom the counsell of Throckmorton said, that the intent of the lord chancellor was not to impeach the said judgments, but confessing the said judgments, to be relieved upon matter in equity : as if a man hath (as he is adviced) two matters to aid him, matter at the common law, and matter in equity, and being impleaded at the common law, doth by advice of his counsell assay the common law, where his adversary prevaieth against him, and hath judgment accordingly, yet in this case the party may, confessing the judgment, sue to be relieved upon a collateral matter in equity : and thereupon they shewed some presidents in time of H. 8. E. 6. &c. and one in the point between Ward and Fulwood. But upon great deliberation it was resolved by all the judges of England, that the plea of Sir Moyl Finch was good, and that the lord chancellor ought not to examine the matter in equity after the judgement at the common law : for though the lord chancellor (as hath been said) would not examine the judgment, yet he would by his decree take away the effect of the judgment : and for the presidents, they were grounded upon the sole opinion of the lord chancellor, and passed *sub silentio*. But that such a course should be permitted, it should be not only full of inconvenience, but directly against the laws and statutes of the realm, against which no president or prescription can prevail ; \* which you may read at large in the third part of the Institutes, cap. Pre-munire. Which resolution of the judges was signified by Popham chief justice to the lord chancellor, and thereupon no further proceeding was against Sir Moyle Finch, but his plea stood.

In a case depending in chancery by English bill between Mears plaintiff and Saint-John and his wife administratrix of John Almon defendant, the case was this : that the intellate took the profits of the lands of the plaintiff being within age by force of a trust reposed in him by the father of the plaintiff by his last will, the

Mich. 39 & 40  
El. in Cancellar'.

\* 27 E. 3. cap. 7.  
4 H. 4. cap. 22.  
&c. in the pre-  
amble. Doct. &  
Stud. 30. W. 2.  
ca. 5.  
Vid. Pasch.  
5 E. 4. coram  
rege rot. 35. Sir  
Simon Norres  
case.  
Nota.  
Mich. 37 & 38  
El. in Cancellar.

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yearly value of which lands was fourscore pounds *per annum*, and the intestate took the profits from the 23 year of queen El. untill the 33 year of her reign, and with parcell of the profits purchased lands in fee which descended to his heir, and left assets to his administratrix one of the defendants to satisfie the plaintiff, all debts paid. The question was, whether in this case the administratrix might not be charged in equity for the said mean profits: and Sir Thomas Egerton master of the rolls said, that he had seen a case in chancery in *anno* 34 H. 6. resolved by all the judges of England remaining in the Tower, that where the feoffees to use took the profits of the land, and received the rents, and made their executors, and died leaving assets to satisfie all debts over and above the said rents and profits, that the executors should be charged to satisfie *costi que use* for the said rents and profits, and accordingly it was decreed in Mears case against the defendant: but whether the heir should be contributory or no, it was doubted.

Pasch. 32 El. in  
Cancellaria.  
Withams case.  
Eborum.  
Vide 7 E. 4. 14.  
& 13 E. 4. 11.  
& 12.

Withams case in the chancery was, that a term for years was granted to the use of a feme sole, she took husband and died, whether the husband should have the use, or the administrators of the feme, was referred to the judges; and by them it was resolved, that the administrators should have it, and not the husband, because that this trust of a feme was a thing in privity, and in nature of an action, for which no remedy was but by writ of *subpana*. And so it was resolved by the justices in Waterhouses case, Hil. 8 Eliz. *Eborum*, for the trust runneth in privity in this case, and a husband should not be tenant by the curtesie of an use, nor the lord of the villain should have it at the common law.

Trin. 28 El. ad-  
judge in the  
kings bench, in  
Peacocks case.

A man possessed of a term for years in lands, by his last will devised the same to one and the heirs of his body begotten, made his executors and died, the devisee entreth by the assent of the executors, hath issue and aliens the term and dieth: this alienation barreth the issue, for a term for years cannot be entayled. And afterwards *anno* 31 Eliz. in a case depending in chancery between Higgins and Milles it was certified by the lord Anderfon and justice Walmsley (to whom it was referred) that no estate taile could be of a term, and that the alienation of the devisee did bar the issue.

Mic. 26. &  
27 El. coram  
rege.  
Perrots case.  
10 H. 6. 15. in  
London by pre-  
scription.  
Nota this resolu-  
tion is against  
the court of re-  
quests. See here-  
after, cap. 9.

In a premunire between John Perrot plaintiff, and T. M. H. W. and others defendants, it was resolved by Sir Christopher Wray chief justice, and the court of kings bench, that the queen could not raise a court of equity by her letters patents, and that there could be no court of equity but by act of parliament, or by prescription time out of mind of man. But the queen might grant power *tenere placita*, or *consens de plea*, for all must judge according to one ordinary rule of the common law, but otherwise it is of proceedings extraordinary without any certain rule.

These cases which upon so great and mature deliberation have been resolved by the judges of the realm, and whereunto we were privy and well acquainted with, we have thought good to report, and publish for the better direction in like cases hereafter.

He is made lord chancellor of England, or lord keeper of the great seal, *per traditionem magni sigilli sibi per dominum regem*, and by taking his oath, *forma cancellarium constituendi regnante Henrico secundo fuit appendendo magnum Angliæ sigillum ad collum cancellarii clerici*.

How he is created.  
Camden, p. 131.

Some have gotten it by letters patents, <sup>a</sup> at will, and <sup>b</sup> one for term of his life; but it was holden void, because an ancient office must be granted, as it hath been accustomed.

<sup>a</sup> 35 H. 6. 3. B. of Winch. 1 H. 6. nu. 16.  
<sup>b</sup> Cardinal Woolsey.  
<sup>c</sup> 5 El. ca. 18.

• It is enacted and declared, that the common law of this realm is and always was, and ought to be taken, that the keeper of the great seal of England for the time being hath always had, used, and executed, and from thenceforth may have, take, use, and execute the same and the like place, authority, pre-eminence, jurisdiction, execution of laws, &c. as the lord chancellor of England for the time being lawfully used, &c.

And so it appeareth in 18 E. 3. nu. 41. that the lord chancellor, or lord keeper for the time being ought to have consufance.

<sup>a</sup> I finde that king H. 5. had two great seals, one of gold, which he delivered to the bishop of Duresme, and made him lord chancellor of England, and another of silver, which king Henry the 5 delivered to the bishop of London to keep.

<sup>b</sup> *William de Ayremin garden des rolles del chancelar' et ses compaignons gardens del grand seale.* At this time was Robert Burnel bishop of Bath and Wels chancellor of England.

<sup>c</sup> It is to be observed, that where divers ancient statutes speak of the chancellor and of his lieutenant, it must of necessity be intended of such a lieutenant, as the law doth allow of, and that cannot be of a deputy, for the chancellor cannot make a deputy, but *locum tenens* is to be taken for one that holdeth the place, or hath equall authoritie of the chancellor, and that is *custos magni sigilli*: and this agreeth with the judgement of the said parliament in 5 Eliz. But all questions are now taken away by the said act of 5 Eliz. and at this day there being but one great seale, there cannot be both a lord chancellor and a lord keeper of the great seale at one time, because both these are but one office, as it is declared by the said act.

It is said before, that the chancellor by his ordinary power may hold plea of *scire fac'* to repeale the kings letters patents under the great seal being always inrolled in this court, which we (to make a true derivation of his name) shall now particularly touch. This writ of *scire fac'* to repeale letters patents doth lye in this ordinary course of justice in three cases. The first, when the king by his letters patents doth grant by severall letters patents one and the self same thing to several persons, the former patentee shall have a *scire fac'* to repeale the second patent. Secondly, when the king granteth any thing that is grantable upon a false suggestion, the king by his prerogative *jure regio* may have a *scire fac'* to repeale his own grant. Thirdly, when the king doth grant any thing, which by law he cannot grant, he *jure regio* (for advancement of justice and right) may have a *scire fac'* to repeale his own letters patents. Now the judgement in all these three cases is, *Quod prædictæ litteræ patentēs dicti domini regis revocentur, cancellentur, evacuentur, annullentur, et vacuæ, et invalidæ, pro nullo penitus habeantur, et teneantur; ac etiam quod irrotulamentum eorundem cancelletur, cassetur, et adnihiletur, &c.* Hereof our lord chancellor of England (for forein chancellours, it may be, have not like authority)

Rot. par. 18 E. 3. nu. 41.

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<sup>a</sup> Rot. par. 1 H. 6. nu. 13, 14.  
13 R. 2. nu. 7.  
Vide Camden ubi supra.

<sup>b</sup> Stat. de forma mittendi extract. in scaccarium, anno 16 E. 1. vet. Mag. Carta, 2 part. fo. 47. b.  
<sup>c</sup> An. 27 E. 1. de libertatibus perquirendis. Vet. Mag. Carta, part 1. fo. 126, & 2 part fo. 57, &c.

*Cancellarius unde.*

6 E. 4. 9.  
Dier 3 Eliz. 137.  
2 E. 3. 7.  
17 E. 3. 59.  
21 E. 3. 47.

Lib. 2. fo. 14. &c.

*The Lord chancellors oath.*

<sup>a</sup> Rot. Par.

10 R. 2. rot. 8.

The oath recited.

Vid. rot. parl.

11 H. 4. 1. nu. 28.

<sup>b</sup> Because he

hath power of

judicature, as is

aforesaid.

<sup>c</sup> 10 R. 2. rot.

par. nu. 8.

2 H. 4. nu. 10.

15 E. 3. nu. 10.

15. 37. 41, 42.

<sup>d</sup> Laine is an

ancient French

word, and signi-

fieeth to hide.

<sup>e</sup> Rot. par.

10 R. 2. nu. 6, 7,

8. &c. the case of

*Mich. de la Pole*

Chancelour of

England.

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Vid. artic. 20,

21, 26, 38. 41.

42. 44. 46.

is called *cancellarius*, à *cancellando*, i. à *digniori parte*, being the highest point of his jurisdiction to cancell the kings letters patents under the great seale, and damming the inrolment thereof, by drawing strikes through it like a lettice.

And all this which hath been said concerning the office of the lord chancellor, or lord keeper is included within his <sup>a</sup> oath, which followeth in these words, and consisteth upon six parts. He shall sweare,

1. That well and truly he shall serve our soveraigne lord the king and his <sup>b</sup> people in the office of chancellor (or lord keeper.)

2. That he shall doe right to all manner of people, poore and rich, after the <sup>c</sup> lawes and usages of the realm.

3. That he shall truly counsel the king, and his counsell he shall <sup>d</sup> layne and keep.

4. That he shall not know nor suffer the hurt or disheriting of the king, or <sup>e</sup> that the rights of the crowne be decreased by any meanes as far as he may let it.

5. And if he may not let it, he shall make it clearly and expressly to be known to the king, with his true advice and counsell.

6. And that he shall do and purchase the kings profit in all that he reasonably may, as God him help, and by the contents of this book.

### *Articles against Cardinall Woolsey.*

Now for as much as the articles exhibited to king H. 8. 1 *die Decembris anno 21* of his reign, by the lords and others of his privy counsell (whereof Sir Thomas More lord chancellor was one) and by two of the principall judges of the realm against cardinall Woolsey, do in divers of the articles concern the jurisdiction of the chancery, (viz. the 20 and 26 articles, &c.) and other titles of this fourth part of the Institutes, we have thought good justly and truly to transcribe from the very originall, under the proper hands of the lords and others of the privy counsell, and of the said judges, (which we have seen and had in our custody) and have compared this tranfcript with the originall it selfe, and have (because they are of great weight and use to many purposes) transcribed it *de verbo in verbum*, without omission of any thing, as matters of that nature ought to be: and the rather, for that in our Chronicles they are very untruly rehearsed: and before this time (that we finde) the true articles were never printed.

Constrained by necessity of our fidelity and conscience, complaine and shew to your most royall majesty, we your graces humble, true, faithfull, and obedient subjects: that the lord cardinall of York, lately your graces chancellor, presuming to take upon him the authority of the popes legat *de latere*, hath by divers and many sundry wayes and fashions committed high and notable grievous offences, misusing, altering, and subverting the order of your graces lawes: and otherwise contrary to your high honour, prerogative, crown, estate, and dignity regall, to the inestimable great hinderance, diminution, and decay of the universall wealth of this your graces realm. And it is touched summarily and particularly in certain articles here following, which be but a few in compari-

son



son of all his enormities, excesses, and transgressions committed against your graces lawes.

That is to say :

1. First, where your grace and noble progenitors within this your realm of England, being kings of England, have been so free, that they have had in all the world none other soveraigne, but immediate subject to Almighty God in all things touching the regality of your crown of England, and the same preeminence, prerogative, jurisdiction, lawfull and peaceable possession your grace and your noble progenitors have had, used, and enjoyed, without interruption or businesse therefore by the space of 200 years and more : whereby your grace may preferre against the popes holinessse, that he should not, nor ought to send or make any legat, to execute any authority legatine contrary to your graces prerogative within this your realme. Now the lord cardinall of York being your subject and naturall liege borne, hath of his high, orgallous, and insatiable minde, for his own singular advancement and profit, in derogation, and to the great imblemishment and hurt of your said regall jurisdiction and prerogative, and the long continuance of the possession of the same, hath obtained authority legatine : by reason whereof he hath not only hurt your said prescription, but also by the said authority legatine, hath spoyled and taken away from many houses of religion within this your realm much substance of their goods. And also hath usurped upon all your ordinaries within this your realme much part of their jurisdiction, in derogation of your prerogative, and to the great hurt of your said ordinaries, prelates, and religious.

2. Also the said lord cardinall being your ambassadour in France, made a treaty with the French king for the pope, your majesty not knowing any part thereof, nor named in the same ; and binding the said French king to abide his order and award of any controverfie or doubt should arise upon the same, betwixt the said pope and the French king.

3. Also the said lord cardinall being your ambassadour in France, sent a commission to Sir Gregory de Cassalis under your great seale in your graces name, to conclude a treaty of amity with the duke of Ferrare, without any commandment or warrant of your highnesse, nor your said highnesse advertised or made privy to the same.

4. Also the said lord cardinall, of his presumptuous minde, in divers and many of his letters and instructions sent out of this realm to outward parts, had joyned himself with your grace, as in saying and writing, The king and I would ye should do thus. The king and I do give unto you our hearty thanks. Whereby it is apparent that he used himself more like a fellow to your highnes, then like a subject.

5. Also where it hath ever been accustomed within this realm, that when noble men do sware their household servants, the first part of their oath hath been, that they should be true liege men to the king and his heirs kings of England : the same lord cardinall caused his servants to be only sworne to him, as if there had been no soveraign above him.

6. And also whereas your grace is our soveraign lord and head, in whom standeth all the surety and wealth of this realm ; the same lord cardinall knowing himselfe to have the foul and contagious

The soveraignty, prerogative, regall jurisdiction, and freedom of the crowne of England.

Prescribe.

Cardinall of York.

Authority legatine.

Spoyled many houses of religion

Usurped upon ordinaries.

Ambassadour.

Ambassadour.

[ 90 ]

The king and I.

Oath.

Great pocks.

gious disease of the great pocks broken out upon him in divers places of his body, came daily to your grace, rowning in your eare and blowing upon your most noble grace with his perilous and infective breath, to the marvellous danger of your highnesse, if God of his infinite goodnesse had not better provided for your highnesse. And when he was once healed of them, he made your grace to beleeve, that his disease was an imposthume in his head, and of none other thing.

Provision.  
Premunire.

7. Also the said lord cardinall by his authority legatine, hath given by prevention the benefices of divers persons, as well spirituall as temporall, contrary to your crown and dignity, and your lawes and statutes therefore provided: by reason whereof he is in danger to your grace of forfeiture of his lands and goods, and his body at your pleasure.

Counsellour.  
Forein ambaf-  
sadors.

8. Also the said lord cardinall taking upon him otherwise then a true counsellour ought to do, hath used to have all ambassadours to come first to him alone, and so hearing their charges and intents, it is to be thought he hath instructed them after his pleasure and purpose before that they came to your prefence, contrary to your high commandment by your graces mouth to him given: and also to other persons sent to him by your grace.

Letters sent from  
beyond sea.  
First to him.

9. Also the said lord cardinall hath practised so, that all manner letters sent from beyond the sea to your highnesse, have comen first to his hands, contrary to your high commandment by your own mouth, and also by others sent to him by your grace: by reason whereof, your highnesse nor any of your counsell had knowledge of moe matters but of such as it pleased him to shew them: whereby your highnesse and your counsell have been compelled of very force to follow his devices, which oftentimes were set forth by him under such crafty and covert meanings, that your highnesse and your counsell have often times been abused: inso much that when your counsell have found and put divers doubts and things which afterwards have ensued, he to abuse them used these words, [I will lay my head that no such thing shall happen.]

Foreign intelli-  
gence to him,  
&c.

10. Also the said lord cardinall hath practised, that no manner person having charge to make espiall of things done beyond the sea, should at their returne come first to your grace, nor to any other of your counsell, but only to himself: and in case they did the contrary, he punished them for their so doing.

Licenses to  
transport grain  
and victuall.

11. Also the said lord cardinall hath granted licences under your great seal, for carrying out of grain and other victuals after the restraint hath been made thereof, for his own lucre and singular advantage of him and his servants for to send thither as he bare secret favour, without your graces warrant or knowledge thereof.

Ambassadours  
resident with  
other princes.

12. Also the said lord cardinall used many years together, not only to write unto all your ambassadours resident with other princes in his own name, all advertisements concerning your graces affairs, being in their charge, and in the same his letters wrote many things of his own mind without your graces pleasure known, concealing divers things which had been necessary for them to know: but also caused them to write their advertisements unto him. And of the same letters he used to conceal for the compassing of his purpose.

pose many things both from all your other counsellours, and from your self also.

13. Also where good hospitality hath been used to be kept in houses and places of religion of this realm, and many poore people thereby relieved, the said hospitality and relief is now decayed and not used: and it is commonly reported that the occasion thereof is, because the said lord cardinall hath taken such impositions of the rulers of the said houses, as well for his favour in making of abbots and priors, as for his visitation by his authority legatine. And yet neverthelesse taketh yearly of such religious houses, such yearlie and continuall charges, as they be not able to keep hospitalitie as they were used to do: which is a great cause that there be so many vagabonds, beggers, and thieves.

Hospitality in houses of religion decayed.

Impositions.

Yearly charges.

14. Also where the same l. cardinal said before the suppression of such houses as he hath suppressed, that the possessions of them should be set to ferme among your lay subjects after such reasonable yearly rent as they should well thereupon live, and keep good hospitality: and now the demesne possession of the same houses since the suppression of them hath been surveyed, met, and measured by the acre, and be now set above the value of the old rent. And also such as were fermors by convent seal, and copieholders be put out and amoved of their fermes, or else compelled to pay new fine contrary to all equitie and conscience.

Suppression of houses.

Reasonable rents.

Above the value.

New fine.

15. Also the said lord cardinall sitting among the lords and other of your most honourable privie councill, used himself, that if any man would shew his minde, according to his duty, contrary to the opinion of the said cardinall, he would so take him up with his accustomed words, that they were better to hold their peace then to speak, so that he would heare no man speak but one or two great personages, so that he would have all the words himselfe, and consumed much time with a fair tale.

Abused the privie councill.

All the words himselfe.

16. Also the said lord cardinall by his ambition and pride hath hindred and undone many of your poore subjects for want of dispatchment of matters, for he would no man should meddle but himself, insomuch that it hath been affirmed by many wise men, that ten of the most wisest and most expert men in England were not sufficient in convenient time to order the matters that he would retain to himselfe. And many times he deferred the ending of matters, because that suiters should attend and wait upon him, whereof he had no small pleasure, that his house might be replenished with suiters.

Ambition and pride.  
Want of dispatch.  
No man to meddle but himselfe.

Suters to attend.

17. Also the said lord cardinall by his authority legatine hath used, if any spirituall man having any riches or substance, deceased, he hath taken their goods as his own, by reason whereof their wills be not performed: and one mean he had to put them in fear, that were made executors, to refuse to meddle.

Taken the goods of spirituall men deceased.

18. Also the said lord cardinall constrained all ordinaries in England yeerly to compound with him, or else he will usurp halfe, or the whole of their jurisdiction by prevention, not for good order of the diocesses, but to extort treasure: for there is never a poore archdeacon in England, but that he paid yearly to him a portion of his living.

All ordinaries, &c. to compound with him.

19. Also the said lord cardinall hath not only by his untrue suggestion to the pope shamefully slandered many good religious houses,

Slandered religious houses to the pope.

By authority of  
his bull sup-  
pressed 30 houses  
of religion.

Caused divers  
offices to be  
found untruly.  
Perjury.

Examined mat-  
ters in chancery  
after judgements  
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Injunctions.

His servants  
rich.

The popes par-  
dons.

Oppression.

Elections of ab-  
bots, priors, &c.

Visited.  
Extortion.

Injunctions.  
Threatned  
judges.

Pension out of  
France.

houses, and good vertuous men dwelling in them, but also sup-  
pressed by reason thereof above thirty houses of religion. And  
where by authority of his bull he should not suppress any house,  
that had mo men of religion in number above the number of 6 or  
7, he hath suppressed divers houses that had above the number.  
And thereupon hath caused divers offices to be found by verdict  
untruly, that the religious persons so suppressed had voluntarily  
forlaken their said houses, which was untrue, and so hath caused  
open perjury to be committed, to the high displeasure of Almighty  
God.

20. Also the said lord cardinall hath examined divers and many  
matters in the chancery after judgement thereof given at the com-  
mon law, in subversion of your lawes, and made some persons re-  
store againe to the other party condemned that, that they had in  
execution by vertue of the judgement at the common law.

21. Also the said lord cardinall hath granted many injunctions  
by writ, and the parties never called thereunto, nor bill put in  
against them: and by reason thereof, divers of your subjects have  
been put from their lawfull possession of their lands and tenements.  
And by such means he hath brought the more party of the suiters  
of this your realm before himself, whereby he and divers of his  
servants have gotten much riches, and your subjects suffered great  
wrongs.

22. Also the said lord cardinall to augment his great riches  
hath caused divers pardons granted by the pope to be suspended,  
which could not be revived, till that the said lord cardinall were  
rewarded, and also have a yearly pension of the said pardon.

23. Also the said lord cardinall not regarding your lawes nor  
justice, of his extort power hath put out divers and many fermors  
of his lands, and also patentees of the arch-bishoprick of York and  
the bishoprick of Winchester, and of the abbey of St. Albons, which  
had good and sufficient grant thereof by your lawes.

24. Also the same lord cardinall, at many times when any  
houses of religion have been void, he hath sent his officers thither,  
and with crafty perswasions hath induced them to compromit  
their election in him. And that before he named or confirmed  
any of them, he and his servants received so much great goods of  
them, that in manner it hath been to the undoing of the house.

25. Also by his authority legatine, the same lord cardinall hath  
visited the most part of the religious houses and colleges of this  
your realm, and hath taken from them the twenty fifth part of  
their lively-hood, to the great extortion of your subjects and dero-  
gation of your lawes and prerogative, and no law to bear him so to  
do.

26. Also when matters have been near at judgement by proces  
at your common law, the same lord cardinall hath not only given  
and sent injunctions to the parties, but also sent for your judges,  
and expressly by threats commanding them to defer the judgement,  
to the evident subversion of your lawes, if the judges would so  
have ceased.

27. Also whereas neither the bishop of York nor Winchester,  
nor the abbey of S. Albons, nor the profit of his legation, nor the  
benefit of the chancery, nor his great pension out of France, nor  
his wards, and other inordinate taking could not suffice him, he  
hath

hath made his sonne *Winter* to spend seven and twenty hundred pound by the year, which he taketh to his own use, and giveth him not past two hundred pounds yearly to live upon.

His son *Winter*.

28. Also where the said lord cardinall did first sue unto your grace to have your assent to be legat *de latere*, he promised and formally protested before your majestie, and before the lords both spirituall and temporall, that he would nothing do nor attempt by the vertue of his legacie, that should be contrary to your gracious prerogative or regaltie, or to the damage or prejudice of the jurisdiction of any ordinary, and that by his legacie no man should be hurted nor offended: and upon that condition, and no other, he was admitted by your grace to be legate within this your realm: which condition he hath broken, as is well known to all your subjects. And when that he made this promise, he was busie in his suit at Rome to visit all the clergy of England both exempt and not exempt.

Legat *De latere*.  
His promise.

Nothing against prerogative or regality.  
Or to the prejudice of ordinary jurisdiction.

Breach of promise.

29. Also upon the suit of the said lord cardinall at Rome to have his authority legatine, he made untrue surmise to the popes holiness against the clergy of your realm: which was, that the regular perions of the said clergy had given themselves *in reprobum sensum*; which words S. Paul writing to the Romans applied to abominable sinne: which slander to your church of England shall for ever remain in the register at Rome, against the clergy of this your realm.

Untrue surmise to the pipe of the clergy.

30. Also the said lord cardinall had the more part of the goods of doctor Smith late bishop of Lincoln, bishop Savage of York, master Dalbye archdeacon of Richmond, master Tonyers, doctor Rothall late bishop of Durham, and of doctor Foxe late bishop of Winchester, contrary to their wils, and your laws and justice.

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Oppression and extortion.

31. Also at the oier and terminer at York, proclamation was made that every man should put in their bills for extortion of ordinaries, and when divers bills were put in against the officers of the said lord cardinall of extortion, for taking twelve pence of the pound for probation of testaments, whereof divers bills were found before justice Fitzherbert and other commissioners, the said lord cardinall removed the said indictments into the chancery by *certiorari*, and rebuked the said Fitzherbert for the same cause.

Extortion of ordinaries.  
Indictments of extortion of ord. removed into the chancery.

32. Also the said lord cardinall hath busied and endeavored himself by crafty and untrue tales to make dissention and debate amongst your nobles of your realm, which is ready to be proved.

Made debate between the nobles of the realm.

33. Also the said lord cardinals officers have divers times compelled your subjects to serve him with carts for carriage, and also his servants have taken both corn and cattle, fish, and all other victuall, at your graces price, or under, as though it had been for your grace, which is contrary to your laws.

Purveyance for him.  
Purveyance at the kings price, Vid. inf. 35, 36.

34. Also the said lord cardinall hath misused himself in your most honourable court, in keeping of as great estate there in your absence, as your grace would have done if you had been there present in your own person.

Keeping great estate in court.

35. Also his servants by vertue of your commission under your broad seal by him to them given, have taken cattel and all other victuall at as low a price as your purveyors have done for your grace by your prerogative, against the laws of your realm.

Purveyance.  
Prerogative in purveyance.

36. Also where it hath been accustomed that your purveyors for your

Purveyance.

your honourable household, have had yearly out of your town and liberty of S. Albons three or four hundred quarters of wheat, truth it is, that since the lord cardinall had the room of the abbot, that your said purveyors could not be suffered by him and his officers to take any wheat within the said town or liberty.

Injunction not to sue for pardon for causes in the star-chamber.

A great presumption.

Oppression.

37. Also he hath divers times given injunctions to your servants that have been for causes before him in the star-chamber, that they, nor other for them should make, labour by any manner way, directly or indirectly, to your grace to obtain your graces favour or pardon; which was a presumptuous intent for any subject.

38. Also the said lord cardinall did call before him Sir John Stanly knight, which had taken a farm by covent seal of the abbot and covent of Chester, and afterward by his power and might contrary to right committed the said Sir John Stanly to the prison of Fleet by the space of a year unto such time as he compelled the said Sir John to release his covent seal to one Leghe of Adlington, which married one Larks daughter, which woman the said lord cardinall kept, and had with her two children. Whereupon the said Sir John Stanly upon displeasure taken in his heart made himself monke in Westminster, and there died.

Legh of Adlington.

The card. kept Larkes daughter and had by her two children.

Clerk of the market.  
Prices of victuals.

39. Also on a time your grace being at S. Albons according to the ancient custome used within your verge, your clerk of the market doing his office, did present unto your officers of your most honourable household the prices of all manner of victuals within the precinct of the verge. And it was commanded by your said officers to set up the said prices both on the gates of your honorable household, and also within the market place within the town of S. Albons as of ancient custome hath been used. And the lord cardinall hearing the same, presumptuously, not like a subject caused the aforesaid prices which were sealed with your graces seal, accustomedly used for the same, to be taken off and pulled down in the said market place, where they were set up: and in the same places set up his owne prices sealed with his seale, and would if it had not been letted in semblable manner, used your seal standing upon your gates. And also would of his presumptuous mind have openly set in the stocks within your said town your clerk of your market. By which presumption and usurpation your grace may perceive that in his heart he hath reputed himself to be equall with your reall majesty.

Pulled down the prices, &c.

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The cardinals hat in the kings coin of groats, &c.

40. Also the said lord cardinall of his further pompous and presumptuous mind hath enterprised to join and imprint the cardinals hat under your arms in your coin of groats made at your city of York, which like deed hath not been seen to be done by any subject within your realm before this time.

41. Also where one Sir Edward Jones clerk parson of Crowley in the county of Buck' in the eighteenth yeer of your most noble reign let his said parsonage with all tithes and other profits of the same to one William Johnson by indenture for certain years, within which years, the dean of the said cardinals colledge in Oxenford pretended title to a certain portion of tithes within the said parsonage, supposing the said portion to belong to the parsonage of Chichelly, which was appointed to the priory of Tykeford lately suppressed, where (of truth) the parsons of Crowley have been peaceably

peaceably possessed of the said portion out of the time of mind. Whereupon a *subpœna* was directed to the said Johnson to appear afore the lord cardinall at Hampton-court, out of any tearm, with an injunction to suffer the said dean to occupy the said portion. Whereupon the said Johnson appeared before the said lord cardinall at Hampton-court, where without any bill, the said lord cardinall committed him to the Fleet, where he remained by the space of twelve weeks, because he would not depart with the said portion. And at the last upon a recognisance made that he should appear before the said lord cardinall whensoever he was commanded, he was delivered out of the Fleet; howbeit as yet the said portion is so kept from him that he dare not deal with it.

Subpœna.

42. Also where one Martin Decowra had a lease of the mannor of Balsall in the county of Warwick for tearm of certain years, an injunction came to him out of the chancery by writ upon pain of a thousand pounds, that he should avoide the possession of the same mannor, and suffer Sir George Throckmorton knight to take the profits of the same mannor to the time the matter depending in the chancery between the lord of S. Johns and the said Decowra were discussed. And yet the said Decowra never made answer in the chancery, ne ever was called into the chancery for that matter. and now of late he hath received a like injunction upon pain of two thousand pounds contrary to the course of the common law.

Injunction.

43. Also whereas in the parliament chamber, and in open parliament communication and devises were had and moved, wherein mention was an incident made of matters touching heresies, and erroneous sects, it was spoken and reported by one bishop there being present, and confirmed by a good number of the same bishops, in presence of all the lords spirituall and temporall then assembled, that two of the said bishops were minded and desired to repair unto the university of Cambridge for examination, reformation, and correction of such errors as there seemed and were reported to reign amongst the students and scholars of the same, as well touching the Lutherane sect and opinions, as otherwise. The lord cardinall informed of the good minds and intents of the said two bishops in that behalf, expressly inhibited and commanded them in no wise so to doe. By means whereof, the same errors, as they affirmed, crept more abroad and took greater place; saying furthermore that it was not in their defaults, that the said heresies were not punished, but in the said lord cardinall, and that it was no reason any blame or lack should be arrected to them for his offence: whereby it evidently appeareth that the said lord cardinall besides all other his hainous offences, hath been the impeacher and disturber of due and direct correction of heresies, being highly to the danger and perill of the whole body, and good christian people of this your realm.

Heresies and erroneous sects.

44. Finally, forasmuch as by the aforesaid articles is evidently declared to your most royall majesty, that the lord cardinall by his outrageous pride hath greatly shadowed a long season your graces honor, which is most highly to be regarded, and by his insatiable avarice and ravenous appetite to have riches and treasure without measure, hath so grievously oppressed your poor subjects with so manifold crafts of bribery and extortion, that the common-wealth of this your graces realm is thereby greatly decayed and impove-

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rished. And also by his cruelty, iniquity, affection, and partiality, hath subverted the due course and order of your graces laws to the undoing of a great number of your loving people.

Please it your most royall majesty therefore of your excellent goodnesse towards the weal of this your realm and subjects of the same, to set such order and direction upon the said lord cardinall, as may be to the terrible example of other to beware so to offend your grace, and your laws hereafter. And that he be so provided for that he never have any power, jurisdiction or authority hereafter to trouble, vex, and impoverish the common-wealth of this your realm, as he hath done heretofore, to the great hurt and dammage of every man almost high and low, which for your grace so doing, will daily pray, as their duty is, to almighty God for the prosperous estate of your most royall majesty, long to endure in honor and good health, to the pleasure of God, and your hearts most desire. Subscribed the first day of December the 21 year of the reign of our sovereign lord king Henry the 8.

T. More. T. Norfolk. Charl. Suff. Tho. Dorset. H. Exon. John Oxinford. H. Northumberland. G. Shrewsbury. R. Fitzwater. T. Rocheford. T. Darcy. W. Mountjoy. William Sandys.

William Fitzwilliam. Henry Guldeford. \* John Fitz James.

\* Anthony Fitz Herbert.

So these articles began to be subscribed by Sir Thomas More lord chancellor, and ended with the two judges of the law.

There be in this court many officers, ministers, and clerks of the court, the principall whereof is the <sup>a</sup> master of the rols, anciently called *garden des rolles*, *clericus rotulorum*, *custos rotulorum*. And this is an ancient office, and grantable either for life, or at will, at the pleasure of the king. <sup>b</sup> The house annexed to his office, is called *domus converforum*, so called because <sup>c</sup> king H. 3. founded this house to be a house of Jews as should be converted to the true religion of Jesus Christ, and there should have maintenance and allowance, which continueth to this day. King E. 3. anno 15 of his reign, by letters patents annexed this house to the office of *custos rotulorum*, and this office is grantable by letters patents: for the more assurance whereof, and of divers things worthy of observation, we have thought good to set down an act of parliament concerning this matter in these words.

<sup>c</sup> King E. 3. by his charter anno 51 of his reign did grant after the death of William Burfall then keeper of the rols and of the same house of converts of the kings grant to the keeper of the rols for the time being, and annexed it to the said office *imperpetuum*, and further granted that after the decease of the said William, the chancellor or keeper of the great seal after the voidance of the said office of keeping of the rols to institute successively the keepers of the rols, in *dicta domo converforum*, et *custodes illos ponend' in possessione ejusdem*, &c. This charter was confirmed by act of parliament, as by that which followeth appeareth.

<sup>d</sup> A nostre tresdoute H. le roy et son honorable conseil en cest parliament supplie son petit clerke William de Burfall gardeiner des rolles de la cancellarie, et gardeiner de la maison des converfes de Londres quele est de vostre honorable patronage que come le dit William a ses tresgraudes custages et repaille la chappelle de les edificies du dit maison, et nostre seignior le roy dareine (que dieu assoil) pur maintenance de la dit chappelle

\* Chief justice of England.

\* Sir Anth.

Fitzh. a justice of the court of common pleas.

<sup>a</sup> He was not called master of the rols, untill 11 H. 7. ca. 20. but never so called in any letters patents of this office.

<sup>b</sup> Fortesc. ca. 24.

<sup>c</sup> See the charter of election by king H. 3.

Holling. 1281.

Vid. Rot. parl.

18 E. 1. nu.

There were above fourscore converts in 18 E. 1. and petitioned in parliament for more relief.

<sup>c</sup> Rot. pat. 11 Ap. 41 E. 3. which you may read at large in Hol-  
lingh.

pa. 1281. 1282.

<sup>d</sup> Ex bundello

petit. parl. anno

1 R. 2.

*Garden des rolles de la chancery et de la maison des converfes de Londres.*

Nota the master of the rols or keeper is garden of the house of converts of the patronage or gift of the king.



et meason a la prier du dit William granta pur luy et ses heires per ses letters patens que le dit meason de converse apres le decense du dit William demerera a tous jours as gardein' de dits rolles pur le temps esleants tanque come ils seront en le dit office sans certain forme comprise en letters surfidites, please a nostre dit seignior le rey et seigniors deu parliament confirmer la dit grant et les letters patens issint ent faitz, et les choses comprises en yeels en euier de charitie. Whereunto full assent was given by authority of parliament.

After which act of parliament John de Waltham gardein or keeper of the rols obtained of R. 2. in the sixth year of his reign letters patens, whereby the king granted to him *et successoribus suis custodibus rotulorum* the said house of converts; and the reason hereof seemeth to be, for that in the said charter of 51 E. 3. *sibi et successoribus suis* wanted. This John of Waltham was in 12 R. 2. bishop of Salisbury, and after treasurer of England. Hereby it appeareth what estate the master of the rols hath in *domo conversorum*. And this house is the place where the rols of the chancery are kept, and are so called because they are written in parchment, and made up in bundels of rols, that is to say, of charters, letters patens, commissions, deeds enrolled, recognisances, &c.

Rot. pat. 6 R. 2.

These records since the beginning of H. 7. remain in the rols, and all before were transmitted into the Tower, and there remain.

Also for further manifestation hereof, we have thought good to set down a letters patens of this office in the 25 year of H. 6. and the rather for that it was granted *authoritate parliamenti*, in these words, *Henricus Dei gratia rex Angliæ, et Franciæ, et dominus Hiberniæ, omnibus ad quos presentes lre. pervenerint. Sciatis quod cum nos tertio decimo die Novembris, anno regni nostri decimo septimo constituimus dilectum clericum nostrum Johannem Stipendium custodem rotulorum et librorum cancellariæ nostræ cum omnibus ad officium illud spectantibus, percipiend' in eodem officio feoda, commoditates, et proficua consuetudina, quamdiu nobis placuerit. Et ulterius dederimus, et concesserimus eidem Johanni custodiam domus nostræ conversorum præfato officio pro inhabitatione dicti custodis per progenitores nostros quondam reges Angliæ ab antiquo depositæ, et annexæ: habendum et tenendum custodiam illam cum omnibus juribus et pertinentiis spectantibus ad eandem, prout in lris. nostris patentibus inde confectis plenius continetur. Nos bonum et gratuitum servicium quod dilectus clericus noster Thomas Kirkby nobis ante hæc tempora multipliciter impendit, indisque impendere non desistit meritis contemplantes, ac de fidelitate, circumspectione et industria ipsius Thomæ plenius confidentes, constituimus ipsum Thomam custodem rotulorum et librorum cancellariæ nostræ cum omnibus ad officium illud spectantibus, percipiendo in eodem officio feoda, commoditates, et proficua consuetudina a tempore quo officium illud percessionem seu alio modo quocunque proximo vacare contigerit, quamdiu nobis placuerit. Et ulterius dedimus et concessimus, ac p. presentes damus et concedimus eidem Thomæ custodiam dictæ domus nre. conversorum præfato officio pro inhabitatione ejusdem custodis per dictos progenitores suos ab antiquo (ut præmittitur) dispositæ et annexæ. Habend' et tenend' eidem Thomæ custodiam illam cum omnibus juribus et pertinentiis spectantibus ad eandem quamdiu ipsum Thomam dictum officium custodis rotulorum et librorum prædictorum habere et tenere sive occupare contigerit. Eo quod expressa mentio de vero valore annuo officii prædicti et ceterorum præmissorum seu alicujus eorum, aut de aliis donis seu concessionibus per nos præfato Thomæ ante hæc tempora factis in presentibus facta non existit,*

Clericus noster  
custos rotulorum  
et librorum can-  
cellariæ nostræ  
cum omnibus ad  
officium illud  
spect'. Custodia  
domus nostræ  
conversorum.

Custos rotu-  
lorum, &c.

*existit, aut aliquibus actibus sive ordinationibus in contrarium editis sive ordinatis, aut aliqua alia causa, re, seu materia in aliquo non obstantibus. In cujus rei testimonium has bras. mas. fieri fecimus patentes. Teste meipso apud Maidston vicesimo nono die Martii, anno regni nri. vicesimo quinto. Autoritate parlamenti.*

[ 97 ]

\* Belonging anciently to his office.

See the statute of 14 H. 8. cap. 8.

Of latter times in the grant of this office he is styled *clericus \* parvæ bagæ, custos rotulorum, et domus conversorum.*

The master of the rolls hath *in jure officii*, the gift of the offices of six clerks in the chancery.

In the absence of the lord chancellor he heareth causes and giveth orders.

See in the third part of the Institutes, cap. Præmunire.

## C A P. IX.

## The Court of Requests.

See hereafter the Courts of Audience and Faculties. pa.

HAVING spoken of the court of chancery, swayed and governed by the lord chancelour, or keeper of the great seale: it shall be fit in this place to treat of the jurisdiction of the court of requests, wherein the lord privie seale at his pleasure, and the masters of requests doe assemble and sit. And the originall institution hereof was, that such petitions as were exhibited to the king, and delivered to the masters of the requests, should be perused by them, and the party directed by them to take his remedy according to their case, either at the common law, or in the court of chancery. And thereupon they were called *magistri à libellis supplicum*: and in this respect this meeting and consultation was called the court of requests, as the court of audience and faculties are called courts, albeit they hold no plea of controverfie.

Cassaneus 7 part. fo. 136. b.

Those which in former times would have this court to be a court of judicature, took their aime from a court in France, which is called *curia eorum quos requestarum*, i. *supplicationum palatii magistrorum vocant, apud quos causa eorum tantum agitur, qui regis obsequiis deputati, vel privilegio donati sunt: hujus curie judices octo sunt.* But others taking this jurisdiction to be too narrow, contend to have it extend to all causes in equitie equall with the chancery, and their decrees to be absolute and uncontrollable. But neither of these are warranted by law, as shall evidently appear.

See before cap. Chancery. Perrots case, pag. 87. See the articles against cardinall Woolsey, p. 89. See Hals Chronicle ubi supra. and Guines learned preface to his reading in the Inner Temple, about 16 El. 1157. See Hals Chron. 8 H. 8. fo. 55. agreeth with the law.

In the reign of H. 8. the masters of requests thought (as they intended) to strengthen their jurisdiction by commission, to hear and determine causes in equity. But those commissions being not warranted by law (for no court of equity can be raised by commission) soon vanished, for that it had neither act of parliament, nor prescription time out of minde of man to establish it.

\* Mich. 40 & 41 Eliz. In the court of common pleas, upon the Inner Temple, about 16 El. \* Tr. 40 El. in communi banco inter Stepney and Lloyd. Rot. 1157. See Hals Chron. 8 H. 8. fo. 55. agreeth with the law.

a bill

a bill exhibited in the court of requests against Flood, for default of answer an attachment was awarded against Flood under the privie seale, to Stepney then sheriffe of Carnarven, who by force of the said writ attached Flood, and would not let him go, untill he had entred into an obligation to the sheriffe to appear before his majesties counsell, in the court of requests: upon which obligation the sheriffe brought an action of debt for default of appearance, and all this matter appeared in pleading. And it was adjudged upon solemne argument, that this which was called a court of requests, or the white hall, was no court that had power of judicature, but all the proceedings thereupon were *coram non iudice*, and the arrest of Flood was false imprisonment, so as he might avoid the bond by dures at the common law, without aide of the statute of 23 H. 6. ca. 10.

The punishment of perjury in the court of Whitehall by the statutes of 33 H. 8. cap. 9. and 5 Eliz. cap. 9. doth not give it any jurisdiction of judicature, no more than the statutes that give against a gaoler an action for an escape, or punisheth a gaoler of his owne wrong for extortion, an officer of his own wrong shall be punished by the statutes in that case provided, and yet the statutes thereby make them no lawfull officers: for it is one thing to punish, and another to give authority. So it was justice in the parliaments to punish perjury in the Whitehall, although the court were holden by usurpation, and so before it appeareth to be by the judgement in Stepneys case. See Beverlyes case, lib. 4. 123, 124. and the case of the orphans of London, lib. 5. fo. 73. where it is called the court of requests, taking the same to be according to the originall institution. And as gold or silver may as currant money passe even with the proper artificer, though it hath too much allay, untill he hath tried it with the touchstone: even so this nominative court may passe with the learned as justifiable in respect of the outside by vulgar allowance, untill he advisedly looketh into the roots of it, and try it by the rule of law: as (to say the truth) I my self did: but *errores ad sua principia referre, est refellere*, to bring errors to their first, is to see their last.

The author of the book of diversity of courts written in 21 H. 8. doth not so much as mention any such court: nor the Doctor and Student who wrote in 23 H. 8. treating of inatters of equity never mentioneth any such court: nor in any of the reports of H. 8. or of any other before him, we finde any mention made of any such court. Herein, as in all other things, we have dealt clearly and plainly, upon what authorities and reasons we have grounded our opinion: and when we undertook to write, we resolved to publish nothing *reluctante conscientia*, which we (by Gods speciall grace) have performed, without any spark of contradiction, or respect of any private whatsoever: that charge ever sounding in mine eare, that is given to all that take upon them to write, *Ne quid falsum au leant, ne quid verum non audeant*. And although the law be such as we have set down; yet in respect of the continuance that it hath had by permission, and of the number of decrees therein had, it were worthy of the wisdom of a parliament, both for the establishment of things for the time past, and for some certaine provision with reasonable limitations (if so it shall be thought convenient

[ 98 ]

Error, qui non resistitur, approbatur.

Regula.

nient to that high court) for the time to come : *et sic liberavi animam meam.*

[99]

## C A P. X.

## The Court of Common Pleas.

Mag. Cart.  
ca. 11.

Bracton lib. 3.  
fo. 105. b.

\* Ut sup.  
fo. 108. a.

Britton fo. 2.  
Vide Fleta lib. 2.  
cap. 2. & lib. 1.  
cap. 54.

**B**Y the statute of Magna Carta, cap. 11. it is provided, *Quod communia placita non sequantur curiam nostram, sed teneantur loco certo. Habet rex etiam curiam, et iusticiarios in banco residentes, qui cognoscunt de omnibus placitis, de quibus auctoritatem habent cognoscendi, et sine warranto jurisdictionem non habent nec coercionem. Et paulo post. Sunt etiam alii iusticiarii \* perpetui, certo loco residentes, sicut in banco, loquelas omnes de quibus warrantum terminantes, qui omnes jurisdictionem habere incipiunt prefato sacramento.*

*Oufstre ceo voilons q. justices demorgent continualment a Westminster. ou alors la, ou nous voudrons ordeiner, a pleader communes pleas solong; ceo que nous les manderons per nous breifes; issint que des parols deduces devant eux per nous breifes eyent record.*

Out of these, three things are to be observed: first what shall be said *communia placita*. They are not called *communia placita* in respect of the persons, but in respect of the quality of the pleas. Regularly pleas are divided into pleas of the crown, and into common or civil pleas. Pleas of the crown are treason and felony, and imprisonment of treason and felony, &c. This court is the lock and the key of the common law in common pleas, for herein are real actions, whereupon fines and recoveries (the common assurances of the realm) do passe, and all other real actions by original writs are to be determined, and also of all common pleas mixt or personall: in divers of which, as it appeareth before in the chapter of the Kings Bench, this court and the kings bench have a concurrent authority.

\* Robert Parning the kings serjeant at law 24 July 14 E. 3. was created chief justice of England, in which office he remained until the 15 of December following, and then he was made lord treasurer of England; in which office he continued untill the 15 year of E. 3. when he was made lord chancelour of England: and while he was lord chancelour, he would come and sit in this court being the lock and key of the common law, as is aforesaid: and there debate matters in law of greatest difficulty, as it appeareth in the report of the year of 17 E. 3. fo. 11. 14. 23. 37. &c. knowing assuredly, that he that knowes not the common law, can never rightly judge of matters in equity: whereof at that time very few matters were depending before him in chancery.

2. These words of Bracton, [*sine warranto jurisdictionem non habent,*] are well expounded by Britton, that that warrant is by the kings writs, *solong; ceo que nous les manderons per nous breifes*. So as regularly this court cannot hold any common plea in any action, real, personall, or mixt, but by writ out of the chancery, and returnable into this court.

3. That

See the second part of the Institutes Mag. Cart. cap. 11.  
Vid. 17 E. 3. 50.  
*Quare incumbra-vit,* and in the chapter of the kings bench here before.  
\* Vid. sup.  
p. 79.

3. That in certain cases this court may hold plea by bill without any writ in the chancery, as for or against any officer, minister, or privileged person of this court.

Also this court without any writ may upon a suggestion grant prohibitions to keep, as well temporall as ecclesiasticall courts, within their bounds and jurisdiction, without any originall or plea depending: for the common law which in those cases is a prohibition of it self stands in stead of an originall, whereof there be infinite presidents in this court. And Sir Thomas Egerton lord chancelour Mich. 7 Jac. regis called Fleming chief justice and all the judges of the kings bench, and Tanfeild chief baron, and the rest of the barons of the exchequer, of whom the chancelour demanded whether the court of common pleas had authority to grant any prohibition without writ of attachment or plea depending: who upon mature deliberation unanimously resolved, that this court might grant prohibitions upon suggestions without any writ of attachment or plea depending for the reason aforesaid, and according to a multitude of presidents. The justices of the common pleas were not called, because they had often resolved the point before. So as now this point concerning the jurisdiction of this court for granting of prohibitions upon suggestions, where there is neither writ of attachment, nor plea depending, is in peace, being resolved by the justices of the bench and of the common pleas, and by the barons of the exchequer.

4. This court upon an adjournment upon a forein voucher may hold plea likewise upon other foreign pleas, and upon generall bastardy, *Ne unques accouple in loiall matrimony, &c.* for none but the kings courts, and no inferiour court shall write to the bishop. So likewise upon ancient demesne pleaded, &c.

The chiefe justice of the common pleas is created by letters patents. *Rex, &c. Sciatis quod constituimus dilectum et fidelem E. C. militem, capitalem justiciarium \* de communi banco. Habendum quamdiu nobis placuerit, cum vadiis et feodis ab antiquo debitis et consuetis. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste, &c.*

And each of the justices of this court hath letters patents. *Sciatis quod constituimus dilectum et fidelem P. W. militem unum justiciariorum nostrorum de communi banco, &c.* But none can be constituted judge of this court unlesse he be serjeant at law of the degree of the coife, and yet in the letters patents to them made, they are not named serjeants.

The jurisdiction of this court is generall, and extendeth throughout all England.

For the antiquity of this court see before in the chapter of the kings bench adjoining thereunto, 6 E. 3. where a fine was levied in this court 6 R. 1. and in 39 E. 3. a plea in this court in 1 H. 3. And that I may speak once for all the justices of the kings bench, or of the court of the common bench, that they observe the ancient rule of law, *Nemo duobus utatur officiis*, for none of them can take any other office, or any fee, or reward but of the king only. And it were behoovefull to the common-wealth and advancement of justice and right, and preferment of well deserving men, if the like course were holden concerning all offices, as well ecclesiasticall as temporall and civill: and that no man following the example of the

8 R. 2. Attachment for prohib.  
pl. ultimo.  
9 H. 6. 61.  
10 E. 2. action sur lestat. 34.  
[ 100 ]

See the second part of the Institutes all these points.

\* So called the common bench in respect of the common pleas there holden.

See the second part of the Institutes, Mag. Cart. cap. 11.  
6 E. 3. 52.  
39 E. 3. 24.  
18 E. 3. Stat. 3.

reverend judges should enjoy two offices. For severall offices were never instituted to be used by one man.

Term. Trin.  
anno 19 E. 1. in  
communi banco,  
rit. 146. Rotel.  
in thesaur.

The jurisdiction of this court for punishment of their officers and ministers. *Petrus de Luffenham indictatus quod ipse in curia hic à die Sancti Hillarii in 15 dies anno regni regis nunc 19, falso et maliciose delevit adjorationem ejusdem effoin' ad diem illum intrati de com' Rotel. pro Roberto Attehalde de South-Luffenham petente et Radulph. de Kirkeby tenent' de placito terre, &c. Et quesitus qualiter se velit inde acquietare, dicit quod in nullo est inde culpabilis, et de hoc ponit se super juram' de sociis in cur' hic. Et qui jurati dicunt super sacramentum suum, quod prædictus Radulphus prædictis die et anno fuit in cur' hic, et dixit prædicto Petro quod prædictum effoinum fuit adjornat' et prædictus Petrus intravit infra bancum et rotulos de effoin', et cum perpendisset quod le aff. fuit appositum movit ipse pollicem suum et inde frotavit super le aff. quousq' illud fere omnino delevit ut sic faceret prædictum Robertum amisisse breve suum, &c. Ideo considerat' est quod prædictus Petrus committitur gaolæ de Ficete custodiend' per unum annum et unum diem pro falsitate et deceptione prædictis, et tunc redimendus pro voluntate domini regis, &c. Et sciend' quod liberatus fuit gaolæ die Mercurii prox' ante festum Sanctæ Margarete virginis hoc anno, &c. Postea die Veneris prox' ante festum Sanctæ Margarete virginis anno 20 deliberatus est prædictus Petrus, et inhibitum est ei, quod nihil habet nisi vestes pendentes in dorso, admittitur ad dimid' marc. per 20 li. Wil. de Okeham, ita tamen quod si ad plus sufficiat, &c. Justic' reservant eis potestatem, &c.*

[ 101 ]

Mich. 19 E. 1. in  
banco rot. 191.  
Northampton.

*Et quia prædictus Johannes de Vpton in cur' hic' recognovit quod hoc anno in æstate concessit quod prædictam defaltam remitteret, et pro illa concessione recepit 20s. in autumpno, et postea ad prædictam tertiam septimanam Sancti Michaelis idem Johannes remisit prædictam defaltam, per quam prædictus Willielmus recuperasse potuit prædictum ten' in fraudem et deceptionem prædicti Willielmi; ideo ipse pro falsitate prædicta committitur gaolæ de Fleet commoraturus per annum et diem, &c. per formam \* statuti, &c. Postea post annum et diem, &c. prædictus Johannes venit et deliberatus est secundum statutum, &c. et inhibitum est ei, &c. et finivit pro una marca.*

\* W. 1. cap. 29.

Eodem rot. nu.  
210. London.

*Bene examinatur fraus de brevi in jur' per vic' return' termin' Trin' et per quendam alium pancellum ejusdem mutatum et contrefectum, unde contrefactor per jur' est culpabilis, et adjudicatur gaolæ de Fleete per annum et diem. Et quia scriptor ejusdem brevis licet de falsitate et malitia non fuit particeps, nec aliquid mali fecisse putavit, &c. Custodiatur, &c. et finem fecit per unam marcam.*

Hil. 20 E. 1. in  
banco rot. 109.  
Northampton.

*Et quia Rogerus de Langeport attornatus est malæ famæ, et defatigavit cur': ideo committitur gaolæ, &c. Et quesitis rotulis de indictmentibus attornatorum, &c. compertum est quod idem Rogerus indictatus fuit, quod ipse fuit conversans in cancell' et socius Ade de Pontefracto, qui falsavit sigillum domini regis, et falsa brevina composuit, &c. Et quesitus qualiter se velit acquietare, dicit quod clericus est, et non potest in curia hic domino regi inde respondere. Et quia nullus ordinarius ipsum petit, &c. nec ipse Rogerus aliter se velit inde acquietare, ideo ipse committitur gaolæ quousque, &c. Et mittitur ad turrim London, &c.*

The officers of this court are many, viz. Custos brevium, tres prothonotarii, three prothonotaries: clericus warranorum, clerk of the warrants: clericus argenti regis, clerke of the kings silver: quatuor exigendarii, exigenters: quatuordecem salazarii, filazers: clericus juratorum,

*rotorum*, clerk of the juries: *clericus effinorum*, clerk of the es-  
foignes: *clericus utlagariorum*, clerke of the outlawries: this be-  
longs to the office of the attorney generall, who exerciseth it by de-  
puty.

In former times great abuses have been by attornies of this  
court, by suing out a judiciall proces without any originall: which  
when it hath been found out, it hath been severely punished;  
for many inconveniences thereupon doe follow. For example, in  
20 H. 6. an attorney of the common place had made a *capias* di-  
rected to the sheriffe of York, whereof there was no originall; at  
which day of the retorne an attachment was awarded by the court  
against the attorney to answer the deceit, whereupon he was taken  
and examined, and confessed it, and thereupon by the court he was  
committed to the Fleet, imprisoned for a moneth, and that his  
name should be drawn out of the roll of attornies, and never  
should be attorney either in this court or any other, and thereunto  
he was sworn. Note the severity of this judgement doth shew the  
heynousnesse of the offence.

An attorney sued out an *habere facias seisinam* against one, by  
force whereof the true tenant was put out of his freehold, where  
in truth there was no record of any recovery: the party grieved  
brought an action of deceit against the attorney, and recovered da-  
mages, and the attorney imprisoned.

*Memorandum quod magister Johannes Lovell qui fuit custos rotulorum  
et brevium domini regis de banco per manus suas proprias liberavit Jo-  
hanni Bacon clerico de mandato domini regis in hæc verba. Edwardus,  
Ec. Dilecto clerico suo Johanni Lovell salutem. Cum commiserimus  
dilecto clerico nostro Johanni Bacon custod' rotulorum et brevium nostrorum  
de banco; habendum quam diu nobis placuerit: vobis mandamus  
quod eidem Johanni rotulos et breviam prædicta quæ sunt in custodia vestra  
ex commissione nostra per chirographum inde inter vos et ipsum conficienda  
sine dilatione liberetis custod' in forma prædicta. T. me ipso apud Ste-  
benheth 17 Aprilis anno regni nostri 20.*

*Super quo prædictus Johannes liberavit dicto Johanni Bacon rotulos  
et breviam de termino Sancti Michaelis anno 17, usque hunc terminum, et  
similiter rotulos de esson'. Et scripta dedicta et suspecta cum talleis de-  
dictis, una cum compotis dedictis, ac etiam 160 nq' finium, duas ligulas  
de recordis sine die, et 14 certificat' episcoporum.*

20 H. 6. 37. a.  
W. 1. cap. 29.

[ 102 ]

17 E. 3. 51, 52.  
Nota, he may be  
punished for the  
crime, and the  
party grieved  
may have his  
action.

Pasch. 20 E. 1. in  
banco, rot. post.  
135.

C A P. XI.

[ 103 ]

The Court of Exchequer.

THE authority of this court is of originall jurisdiction without  
any commission. Of this court Britton speaking in the kings  
person saith. <sup>a</sup> *Volons nous que a nous eschequers a Westm' et al-*

*lors eyent nous <sup>b</sup> treasurers, et nous <sup>c</sup> barons illonques jurisdiction et re-*  
*cord de choses que touchent leur office a oier et determiner tous les causes*  
*que touchent nous debts, et auxi a nous fees, et les incident choses, sans*  
*les queux tiels choses ne purrent estre tries, et que ilz eyent power a co-*  
*nseiller*

<sup>a</sup> Britton fol. 2. c.  
<sup>b</sup> Nota treasurers  
in the plurall  
number.

<sup>c</sup> Of ancient  
time they were  
barons and peers  
of the realm, but  
nigro. Raccar  
parte 1. ca. 4.  
See the 14 chap.  
of Mag. Cant.  
and the expo-  
sition of the same

nuster de dettes que lon doit a nous dettors per ou nous puissons pluis tost aprocher a nre. dett.

<sup>d</sup> Et fo. 29. b.

<sup>d</sup> En droit des purprestures voilons nous que le noissances soient oustes aux coslages des purprestours, et les sufferables soient prise in nostre maine a la value per an soit involle, et solenque le discretions des treasors et des barons de nous eschequers soient arenes a fee farm a eux que pluis voient doner.

<sup>e</sup> Et fo. 38. b.

<sup>e</sup> Et soit auxi enquis de nos customes de quirs et de leyne qui les ount coilles, et combien les coillours ount bien suffert de passer de saches de leyne sauns payer custome, et combien eit valu la custome chescun au en chescun maniere de custome a nous apurtenant et ceux articles soient terminees a nostre eschequer selonc la discretion de nos barons.

See the Customers of Normandy, cap. 5. & 6. touching the exchequer there, both of another jurisdiction, and of other judges, and officers, then our court of exchequer is.

Mirror ca. 1.  
§. 14 De la  
place del Esche-  
quer.

L'eschequer est un place quare que solement est ordeine pur le prou le roy ou deux chivaliers. 2 Clerks, ou 2 homes, bres. sont assignes pur oier et terminer les torts faits al roy et a sa corone en droit de ces fies et ces franchises, et les accounts des bayliffs, et des receivours de deniers le roy et des administrators de ces biens per la vicee de une souverain que est treasorer de Anglitterre. Les deux chivaliers soloient estre appeles deux barons par offerer les amerciements de counties, et des barons et des tenants counties et baronies cy que nul ne suit offerre forsque per ces piers.

A celle place estoit assigne un seale ove gardien pur faire ent acquittance de chescun payment que avoir le voloit, et de sealer les bres. et les esirets south cere verie issant de celle place pur le prou le roy. En celle place sunt auxi chamberleines et plusieurs autres ministers que ne touch my molt a la ley.

Et ca. 1. § 3.

\* This was in respect of the tenure, for all earldomes and baronies were holden in capite.

20 E. 3. ass. 120.

26 ass. 37.

1 Artic. sup.

Cart. cap. 4.

28 E. 1. Stat. de

Roteland.

10 E. 1. reg. 187.

§ Fleta li. 2.

ca. 2.

<sup>b</sup> Ockam.

Ordeine fuit leschequer in mainer come ensuist, et les paines pecuniels de countees et barons en certein, et auxi de tenants, counties et \* baronies dispemlies et que ceux amerciements fussent offerred per les barons del eschequer, et que lein envoast les estreets de lour amerciements al eschequer ou que ilz fussent amercies en la court le roy.

<sup>c</sup> Ouster eco nul common plea ne soit desormes tenus en leschequer encounter la forme de la grand charter.

§ Fleta (for Bracton treateth not of this court) saith. *Habet et rex curiam suam et iudicarios suos residentes ad scaccarium.* And this is all I finde in him.

This court is divided into two parts, viz. judicall accounts, called *scaccarium computorum*, and into the receipt of the exchequer.

<sup>b</sup> *Una origo utriusque scaccarii, superioris scilicet, et inferioris, sed quicquid in superiori computatur, in inferiori solvitur.*

Before we observe any thing out of these ancient authors and acts of parliament, it shall be necessary to set down the great officers, the judges, and other officers and ministers of this court, as they be at this day.

*Fiscus* in one sense is taken for the exchequer, properly it is *sporta* a hamper, wherein the confiscations, seissments, and other moneys of the king were carried into the treasury.

1. *Dominus thesaurarius Angliæ*: which office he hath at this day by the delivery of a white staffe, at the kings will and pleasure. In former times he had this great office by delivery of the keys (golden keys) of the treasury: when treasure failed, the white staffe

The officers of this  
court.  
Rot. par. 13 R. 2.  
no. 5. & 7.



staffe served to rest him upon it, or to drive away importunate suiters.

2. *Theſaurarius ſcaccarii*, anciently called *arcarius ab arca*, and this office he hath by letters patents. For both theſe offices he hath 36s. l. fees, robes out of the wardrop 15. l. 7. s. 8. d. in toto 380. l. 7. s. 8. d. • Hugo Pateſhull was firſt treaſurer of the exchequer, and after *ſummus theſaurarius*.

*Cancellarius ſcaccarii*, that keepeth the ſeal. See Pl. com. 321. *Leſchequer ad chancellor et ſeale; et les bres. uſuall in le chancery in leſchequer, &c. ſont plus ancien que le regiſter.* See of the chancellor of the exchequer hereafter in the court of the exchequer chamber.

*Capitalis baro et barones alii.*

*Subtheſaurarius ſcaccarii*, anciently called *locum tenens theſaurarii*. *Petrus de Willebye locum tenens theſaurarii, anno 30 E. 1. et plures alii:* he nameth the two praiſers of all the goods ſeiſed or not cuſtomed, and ordereth whether the party ſhall have been at the price or not, he appointed the ſteward, cook and butler for the proviſion of the ſtar-chamber: he in the vacancy of the treaſurer doth all things in the receipt, that the treaſurer doth. In the ſtatute of 39 El. ca. 7. and 43 El. in the ſubſidy of the clergy he is called under-treaſurer of England. Concerning this matter I finde of record this writ following.

*Edwardus rex Angliæ et dominus Hiberniæ baronibus et camerariis ſuis de ſcaccario ſuo, ſalutem. Quum pro eo quod a venerabilis pater W. archiepiſcopus Eberum nuper theſaurarius ſcaccarii prædicti, circa diverſa negotia in partibus borealibus eſt occupatus, quo minus intendere poſſit ad ea quæ ad officium illud in dicto ſcaccario pertinent exercenda, conſtituerimus venerabilem patrem Johannem Wintonienſem epiſcopum c tenentem locum theſaurarii ſcaccarii prædicti, quouſque de officio illo aliter duximus ordinandum, percipiendo in eodem officio (dum illud ſic tenuerit) ſecundum conſuetum, a prout in literis noſtris patentibus præfato epiſcopo inde conſeſſis plenius continetur. Vobis mandamus quod ipſum epiſcopum a dicto officio admittatis et ei in his quæ ad officium prædictum pertineant intendatis in forma prædicta. Teſte Edwardo filio noſtro primogenito cuſtode regni noſtri, apud Hereford ſexto die Novembris, anno regni noſtri viceſimo.*

The office and duty of the lord treaſurer of England doth appear by his oath, which ſtandeth upon eight articles.

1. That well and truly he ſhall ſerve the king and his people in the office of treaſurer.

2. That he ſhall doe right to all manner of people, poor and rich, of ſuch things as concern his office.

3. The kings treaſure he ſhall truly keep and diſpend.

4. He ſhall truly counſell the king.

5. The kings counsell he ſhall \* layn and keep.

6. That he ſhall neither know nor ſuffer the kings hurt, nor his diſheriting, nor that the rights of the crown be decreaſed by any mean, as far forth as he may let it.

7. And if he may not let it, he ſhall make knowledge thereof clearly and expreſly to the king with his true device and counſell.

8. And he ſhall doe and purchaſe the kings profit in all that he may reaſonably doe: which in effect agreeth with the oath of the lord chancellor, as you may read *ubi ſupra*.

Vide rot. pa.  
13 E. 3. part 1.  
for this office.

\* Math. Paris  
18 H. 3. pa. 391.  
& 19 H. 3. anno  
dom. 1234.  
And ſo was Tho.  
Wimondham,  
anno dom. 1253.  
50 H. 3.

Rot. brevium.  
20 E. 2.

a Archbiſhop  
treſurer of the  
exchequer.

b Nota in dicto  
ſcaccario.

c Under-trea-  
ſurer.

d Treſurership  
of the exchequer  
granted by let-  
ters patents.

Cuſtos regni.

Vid. the lord  
chancellors oath  
in the chapter  
of the Chancery.

\* Lain is an old  
French word, to  
hide.

Forma constitutionis thesaurarii Angliæ.

*Imprimis post sigillationem patentium de illo officio vocetur in cur' cancellariæ, coram domino cancellario genibus flexis facit sacramentum, ut superius scribitur, et deinde sigillatum erit breve regis directum baronibus et camerariis de scaccario de attendenc' recitans effectum dictarum literarum patentium. Et inde recesserit dictus dominus cancellarius ad curiam scaccarii et ibidem (dicto thesauro stante) ad barram legantur literæ patentes prædictæ et similiter prædictum bre. et vocatus est idem thesaurarius ad locum suum per dictum dominum cancellarium accipiens cessum, et liberatæ erunt tunc et ibidem claves officii thesaurarii, et omnes officarii sub se recedent cum ipso thesauro in thesaurum et dantes ei attendenc'. This we have transcribed de verbo in verbum in eisdem verbis.*

Vid. Rot. Cartarum anno 17 H. 3.

The lord treasurer of England hath also granted to him by letters patents under the great seal, *thesaurarium scaccarii regis Angliæ*, which of ancient time was a distinct office by itself. The office of the treasurer of the exchequer did principally take care of the green wax, fees, and tenures, as it is said; he hath also with the barons the custody of records as by the ensuing record appears.

Hil. 25 El. coram baronibus.

In an information of intrusion in the exchequer against Brace, judgment was given for the queen against Brace, who brought a writ of error directed to the lord chancellor and lord treasurer, and they made a warrant under their seals to the barons to bring the record before them. And Manwood chief baron objected against both the writ and the warrant, for that the statute of 31 E. 3. c. 12. that giveth this writ of error is generall, that the lord chancellor and lord treasurer shall cause to come before them the record and proceſſe of the exchequer, and in as much as no speciall writ was given by the statute, therefore the writ ought to be directed to them that have the keeping of the record according to the course of the common law. \* And for that the treasurer of the exchequer and barons have the keeping of the records of the exchequer, the writ of error ought to have been directed to them, and that the lord chancellor and lord treasurer of England are judges in this case, and not the treasurer of the exchequer. And upon search of preſidents all the writs of error from the making of the statute untill 7 Eliz. were directed to the treasurer of the exchequer, and barons to bring the record before the lord chancellor and lord treasurer: but in 7 El. and since divers writs have been directed as this writ was, &c. But it was resolved by the lord chancellor, lord treasurer, and the two chief justices assistants, that the writ ought to be directed to the treasurer of the exchequer and barons that have the record in their custody according to the ancient course and preſidents, and thereupon this writ abated.

Note the statute speaketh of the chancellor and treasurer generally which is intended of the treasurer of England, in *dig-niori sensu*. See lib. 1. fo. 11. Sir William Pelmham's case.

\* Note hereby it clearly appeareth that the treasurer and barons of the exchequer are keepers of the records judiciall of the exchequer. Vide 9 E. 3.

Here four things are to be observed. 1. That albeit the barons, as hath been said, are the sole judges, yet the treasurer of the exchequer is joyned with them in keeping of the records, whereof the barons are judges, for they are parcell of the kings treasure. 2. That writs of error are to be directed to them that have the custody of the record wherein any judgment is given; as a writ of error to reverse a judgment in the court of common pleas, shall be directed to the chief justice only who hath the custody of the body of the record wherein the judgment is given, but the original writ and warrant of attorney are not in his custody. 3. That albeit the lord treasurer is also treasurer of the exchequer, yet the writ of error

ror is directed to him as treasurer of the exchequer, and the barons, to have the record before himself as treasurer of England and the chancellor. 4. That at the making of the statute of 31 E. 3. that giveth the writ of error, the offices of treasurer of England and the treasurer of the exchequer were in severall hands, as by the writs of error brought soon after appeareth. Before the said statute of 31 E. 3. the errors in the exchequer were sometimes examined in parliament, and sometimes before commissioners by force of the kings writ under the great seal.

It was petitioned in parliament in 22 E. 3. nu. 25. that erroneous judgments in the exchequer might be reversed in the kings bench, but it succeeded not.

Vide term. Pasch 14 E. 3. a writ directed to the treasurer and barons calling to them such justices as they should think fit, to examine the record, &c. of the judgement in the exchequer, &c. for the countesse of Kent against the abbot of Ramfey, upon which judgement the abbot brought his writ of error. Fitzherbert for another purpose abridgeth the case, tit. *scire fac.* 122.

Hil. 11 E. 3. in *libro rubeo in scaccario* fo. 322. the case of John de Lecestre chamberlaine of the exchequer, a notable president to the like effect. *Lege, quia optime.*

Nota in the act of 31 E. 3. that is called the counsell chamber, which now is called the exchequer chamber, because there was the assembly of all the judges being the kings counsell for deciding of matters in law.

The chamberlaines of the exchequer. For these officers see in the first part of the Inst. lib. 2. cap. Grand' Serjeanty, sect. 153. the office mentioned in the letters patents is, *officium unius camerariorum de recept' scaccarii, sive officium unius camerariorum de scaccario*, and is granted for term of life to be exercised by him or his deputy. To this office belong the office of one of the dorekeepers of the receipt.

*Contrarotulator.* Of so great regard is the right use of the pipe, as there is a controller thereof, which no other office in this court hath. And the chancelour of the exchequer is the controller of the pipe.

*Rememeratores.* 3. viz. *regis, thesaurarii, et primorum fructuum.*

*Clericus pipe.* Of this officer somewhat is necessary to be said. The originall institution of this court was taken from a conduit or conveyance of water into a cisterne: for as water is conveyed from many fountains and springs by a pipe into a cisterne of a house, and from thence into the severall offices of the same: so this golden and silver stream is drawne from severall courts as fountains of justice, and other springs of revenue reduced and collected into one pipe, and by that conveyed into the cistern of his majesties receipt, &c. Therefore all accounts and debts to the king are delivered and collected out of the offices of the kings remembrancer, and treasurers remembrancer, &c. and drawn down and put in charge in the pipe. So as whatsoever is in charge in this roll or pipe, is said in law to be duly in charge. The clerk of the pipe in the patent of his office, is called *ingrossator magni rot. in scaccario*.

Also the treasurers remembrancer is by his office to charge and enter from the originall into the annuall, otherwise called the great roll,

Par. 18 E. 3. nu. 40  
&c. Vid. 1 R. 2.  
nu. Sir Will-  
liam de la Poole's  
case, Mich. 33 E.  
34 E. 1. coram  
Roger de Hog-  
ham & al. is jus-  
ticiariis, &c.

[ 106 ]

1 part of the In-  
stitutes, cap.  
Grand serjeanty,  
sect. 153.

See the Stat. of  
5 R. 2. c. 14.  
Stat. 1. 26. Ad.  
p. 60.  
Duly in charge.

The annual roll  
great roll

Duly in charge.  
The roll of re-  
venues.

roll, all fee-farme rents and other rents whatsoever upon leases of lands within the survey of this court: and whatsoever is in charge in this roll is said to be duly in charge. Also he ought to keep another roll, commonly called a roll of reversions, as of grants of lands and offices in taile, for life or years *absque compoto, aut aliquid inde reddendo*, to the end, as often as need shall require, writs may be granted to enquire whether the issue be spent, the lessee dead, &c.

5 Auditors.  
1 H. 7. 4. a.  
7 El. Dier 238. b.  
Sir Rich. Lees  
case.

There be five auditors of the kings revenues within the survey of this court, and their office is to take the accounts of the kings receivers, sheriffs, escheators, collectors, and customers, and to audite and perfect them. But an auditor cannot allow any license or grant, for the auditor knoweth not whether the license or grant be good or no: but upon petition it ought to be allowed by the barons who know the law, *et sic de similibus*. Neither can the auditor put any thing in charge, for his office is (as hath been said) but to take and audite accounts: for the words of his patent be, *Concessimus B. officium unius auditorum scaccarii nostri quod I. S. nuper habuit et occupavit: habendum et tenendum prædictum officium præfato B. quam diu se bene gesserit in eodem per se vel sufficient' deput' suum*. Nay, though the barons do order upon sight of any record or evidence, that any thing shall be put in charge, this is used to be done to bring it in question, but it is not in law accounted to be duly in charge (untill it be recovered, received, and accounted for of record: for it is not judiciously done, because it may be done in the absence of the party. Neither can any auditor make a *super*, but of that that hath been received and accounted for before.

Quamdiu se be-  
ne gesserit.

[ 107 ]

Auditor of the prests take and audite the accounts of Ireland, Barwick, the mint, and of any money imprested to any man.

Auditor of the receipts. First, he is a kinde of filacer, for he fileth the tellers bills and entreth them. Secondly, he is a remembrancer, for he giveth to the lord treasurer a certificate of the money received the week before. Thirdly, he is an auditor, for he maketh debentures to every teller before they pay any money, and taketh and auditeth their accounts. Besides all these he keepeth the black book of receipts, and the lord treasurers key of the treasury, and seeth every tellers money locked up in the new treasury.

Green wax.

*Forinsec' oppositor*, the forein opposer, he doth oppose all sheriffes and bailiffs of liberties of their green wax: under these words [green wax] are included fines, issues, and amerciaments, recognizances for the peace, recognizances for appearance in any other court, and good behaviour, and such like incertainties certified in several streets into the office of the lord treasurers remembrancer, who delivereth the same to the clerk of the extreats to be put into proces. And because the extreats annexed to the writ are under a seale in green wax, they are vulgarly called greenwax. But felons goods, waifes, straves, outlawes goods, deodands, and such like, are within the sheriffes accounts, with which the escheator was wont to deale.

42 E. 3. cap. 9.  
H. 4. cap. 3.

*Clericus extractorum*, clerk of the extreats, his office is partly touched before.

4 H. 5. cap. 2.

Here it may be demanded what the meaning of these words (of estreats that fowne not) is. The act of 4 H. 5. cap. 2. being ori-

ginall in French, is in *proprio idiomate*, *Des ostreats nient forveun*, which by turning the two single *v* into a *w* was first made *forveun*, and afterwards *forwne*. Now *forveun* properly signifieth to be remembered, and such casualties, as are not to be remembered run not in demand, that is, are not leviable.

*Clericus nihilorum*, maketh a roll of all such summes as the sheriffe upon proces for the greenwax retorn *nihil*, and delivereth that roll into the office of the lord treasurers remembrancer to have execution done of it for the king. See the statute of 5 R. 2. cap. 13. stat. 1. concerning those retorns of *nihil* and the discharge thereof.

See the stat. of Rotel. vers. *finem*.

*Clericus placitorum*, clerk of the pleas. In this mans office all the officers and priviledged persons in this court are to sue and be sued. Of this matter more hereafter.

*Marfchallus*, marshall. To this officer the court committeth the keeping of the kings debtors during the sitting of the term, to the end they may provide to pay the kings debts, or else to be further imprisoned. Such offices as are found *virtute officii*, and brought into the exchequer, are delivered to him, to be delivered over to the lord treasurers remembrancer. He also appointeth auditors to sheriffs, escheators, customers, and collectors for taking their accounts.

Stat. de 51 H. 3. statut. 5.

*Clericus summonitionum*, clerk of the summons.

*Deputati camerarii duo*, called under-chamberlains of the exchequer: they cleave the tallies written by the clerk of the tallies, and read the same, that the clerk of the pell and the controllers thereof may see their entries be true: they also search for all records in the treasury.

*Secundarii rememoratoris regis duo*.

*Secundarii rememoratoris thesaurarii duo*.

*Secundarii pipæ duo*.

In the other part of the exchequer which is called the receipt. Concerning the course of the receipt of the exchequer, see Rot. Claus. 39 E. 3. m. 26.

Rot. clauf. 39 E. 3. memb. 26.

The two chamberlains. Of the duty of these officers see in the first part of the Institutes. Vide 51 H. 3. stat. 5. 14 E. 3. cap. 14.

First part of the Instit. Sect. 153.

*Clericus talliarum*. There be two kind of tales or tallies, the one is called a talley of a debt, and the other is called a talley of reward; of both which you may read in divers acts of parliament.

[ 108 ]

*Clericus pellis*, clerk of the pele. His duty is to enter every tellers bill into a roll, called *pellis receptorum*. His duty also is to enter in another roll payments called *pellis exitus*; and by what warrant the payment was made.

a 1 R. 2. cap. 5.  
b 27 H. 8. ca. 11.  
31 H. 8. cap. 16.  
2 E. 6. cap. 4.

*Numeratores*, 4 tellers. The office of a teller consisteth in four duties. 1. To receive monies due to the king. 2. To give to the clerk *pellis receptorum* a bill thereof, whereby he may be charged. 3. To pay to all persons monies by warrant of the auditor of the receipt. 4. They make yearly and weekly books of their receipts and payments, which they deliver to the lord treasurer.

*Junctores talliorum duo*.

*Deputati camerarii duo*.

*Custos thesaurie*.

*Tabellarii ordinarii 4.*

*Scribe duo.*

*Officiarii decimarum et primitiarum.*

Parl. 5 R. 2.  
ca. 16. stat. 1.

By the statute of 5 R. 2. for making a commission in the exchequer the clerk shall not take for his fee above 2 s. only; nor for a record of *nisi prius* with the writ but 2 s. only, as afore this time was wont to be done and used.

Vid. in the office of the kings remembrancer.  
Mich. 26 H. 6.  
rot. 46.

See in the end of a book containing many little books, as Fitzherberts justice of peace, *Carta feod'*, &c. the fees of the officers of the exchequer.

But it shall be necessary to set down the duties of the kings remembrancer, and of the lord treasurers remembrancer.

The duties of the kings remembrancer.

The office of the kings remembrancer consisteth principally in eight duties. His first is to write proces against collectors of customs, subsidies, and fifteens. 2. He entreth in his office all recognizances before the barons, and taketh bonds for any of the kings debts, for observing of orders, or for appearances, and his duty is to make out proces upon every of them. 3. He maketh proces upon informations upon penall statutes, all which informations are entred in his office. 4. He maketh bills of composition upon informations upon penall statutes, 5. He taketh the stalment of debts and entreth them. 6. The clerk of the star-chamber certifieth into his office the fines set in the star-chamber; this officer maketh a record thereof, and draweth them down into the pipe. 7. Into this office ought to be delivered to be safely kept, all assurances, conveyances, and evidences, whereby any lands, tenements, hereditaments, or other things are granted to the king. 8. Also there is a court of equity holden in the exchequer chamber by English bill: all the bills and proceedings thereupon are entred in the office of this officer. See the statute of 5 R. 2. cap. 14. stat. 1.

The duties of the lord treasurers remembrancer.

The office of the lord treasurers remembrancer principally consisteth in eight duties. 1. His duty is to preserve the broadspreading and fruitfull tree of tenures so many wayes beneficiall to the crown, and the jurisdiction of the court of wards, which sometimes were within the survey of this court, but since taken from it. He maketh out proces for the kings revenue by reason of the tenures of the king (wards excepted.) 2. He maketh proces of *fieri fac'* and extent for debts due to the king either in the pipe, or with the auditors. If a clerk of this court make any writ of proces for a debt which hath been paid and the tallies thereof joyned and allowed, he shall lose his office, and be imprisoned until he hath satisfied the party so much as by the discretion of the treasurer and barons he is endamaged. 3. He maketh proces against all sheriffs, escheators, receivers, and bayliffs, to bring them to account. 4. To make an entry of record, whereby it appeareth whether sheriffs and other accountants pay their proffers due at Easter and Michaelmas. 5. He maketh another entry of record, to the end it may be known whether sheriffs and other accountants keep their dayes of prefixion. 6. The green-wax is certified into his office, and are by him delivered to the clerk of the estreats, as hath been said. 7. There ought to be brought into this office all the accounts of customers, controllers, and all other accounts to make thereof in this office an entry of record, to avoid

See hereafter in the chapter of the court of Wards.  
1 R. 2. cap. 5.

all delay and concealment in the kings busines. 8. See the statute of 5 R. 2. cap. 14. stat. 1.

Concerning these officers there is an excellent law made in 5 R. 2. whereby it is enacted. [that from henceforth no baron of the exchequer, clerk of the pipe, remembrancer, opposer, controller, clerk of the pleas, and clerk of the foreign summons, auditor, or other chief officer of the exchequer be made, unlesse he be well learned in the law, or otherwise very skilfull in the courses and usages of the exchequer.] Here is the heartstring of this court, for albeit the lawes and orders thereof be most excellent, yet the benefit thereof consist in good and skilfull officers and ministers.

These things being understood, let us now peruse our ancient authors, for out of the old fields must come the new corne.

*Eyent nous treasurers.* Hereby it appeareth being in the plurall number, that there be two treasurers, whereof we have spoken before. There is also a treasurer of the kings chamber, *thesaurarius camerae regis*, which is not accountable in the exchequer, but to the king himself. If the king appoint some whom he trusts to take his account, this is esteemed to be done by the king himself, *Qui per alium facit, per ipsum facere videtur.*

*Et nous barons illoques jurisdiction.* \* All judicall proceedings according to law in the exchequer, are *coram baronibus*, and not *coram thesaurario et baronibus*: but the court of equity holden in the exchequer chamber, is holden before the lord treasurer, chancellor, and barons. Of this court we have given a touch before, and shall treat more hereafter. Note the judicall proceedings before the barons are in rols, but they are not numbred as in other courts.

The oath of the barons of the exchequer expressing their duties consisteth upon ten articles. 1. That well and truly he shall serve in the office of baron of the kings exchequer. 2. That truly he shall charge and discharge all manner of people, as well poor as rich. 3. That for highnesse nor for riches, nor for hatred, nor estate of no manner of person or persons, nor for any deed, gift, nor promise of any person the which is made to him, nor by craft, nor by ingen he shall let the kings right. 4. Nor none other persons right he shall disturbe, let or respite contrary to the lawes of the land. 5. Nor the kings debts he shall put in respite, where that they may goodly be levied. 6. That the kings need he shall speed before all others. 7. That neither for gift, wages, nor good deed, he shall \* layne, disturbe, nor let the profit or reasonable advantage of the king in the advantage of any other person, nor of himself. 8. That nothing he shall take of any person for to do wrong or right, to delay or to deliver, or to delay the people that have to doe before him; but as hastily as he may them goodly to deliver without hurt of the king, and having no regard to any profit that might thereof to him be therein, he shall make to be delivered. 9. Where he may know any wrong or prejudice to be done to the king, he shall put and do all his power and diligence that to redresse, and if he may not do it, that he tell it to the king: or to them of his counsell, which may make relation to the king, if he may not come to him. 10. The kings counsell he shall keep and layne in all things.

IV. INST.

K

Ln

Rot. Parl. 5 R. 2. nu. 105. and worthy to be printed.

Rot. parl. 3 H. 6. nu. 47.

28 H. 6. 11, 12. 5 R. 2. ca. 9. stat. 1. 20 E. 3. cap. 2. *The court of equity in the exchequer, Chamber.* See hereafter cap. 13. pa. 118. Rols not numbred. *The oath of the barons.* See the statute of 20 E. 3. cap. 2.

\* Layne, i. to conceale or hide.

Triall by record.

Mich. 27 & 28  
El. in scaccar.  
inter Leroigne  
et Savil.

33 H. 6. 19. 51,  
52.

[ 110 ]

For triall by re-  
cords, vid. Mich.  
32 & 33 E. 1.  
coram Rege.  
Robertus ar-  
chiep. Cant. &c.  
Hil. 8 E. 2. co-  
ram rege, Corn-  
wall. Walterus  
episc. Exon, &c.

22 E. 3. nu. 17.

51 E. 3. nu. 27.

5 R. 2. cap. 9.  
Course of the  
exchequer a-  
gainst law, &c.

\* That is, by his  
attorney : and  
therefore the ad-  
mittance of an  
attorney in these  
cases, is not *ex  
gratia curiæ* (as  
is said in the  
common plead-  
ing) but *ex debito  
iustitiæ*.

In the exchequer at the suit of the king in an information of intrusion of lands, wherein issue is joyned, which may be tried by the country ; yet where the king hath a direct record or records for the manifestation of his title, the kings attorney may pray that the triall may be by records, whereof you may reade a notable case, Mich. 27 & 28 Eliz. in the exchequer where the case was, that in an information of intrusion into certain lands, &c. against Savil, the issue was whether certain lands belonged to a louse or no, and upon a tryall by record judgement was given against Savil. Afterwards Savil the defendant died, and his sonne and heir brought a writ of error in the exchequer chamber, where it was holden, that this kinde of tryall by records was before the statute of 33 H. 8, cap. 39. the words whereof be, That all and every triall and trials of all manner of suits, bills, plaints, informations, &c. and issues in the court of exchequer, shall be made and tried by due examination of witnesse, writings, proofes, or by such other wayes or means, as by the court of exchequer shall be thought expedient ; and that every such judgement, decree or decrees, shall be good, perfect, and in full strength, force, and effect in law, to all intents, constructions and purposes. And yet, notwithstanding the generality of these words, if a judgement be given upon a triall by record, a writ of error doth lie thereupon ; because, as to that point, this act is but in affirmance of the common law.

It was petitioned in parliament, that remedy might be found, that no accountant in the exchequer do run in issues before he be warned. The kings answer was, the proces therein shall be first a *venire fac'*, then a *disfringas*, and after a writ out of the chancery to the treasurer and barons.

It was also petitioned in parliament, that such as owe to the king may upon their account be allowed of all such lones, as be due unto them, or to any of his ancestors : whereunto the king answered, the treasurer and barons shall make allowance of due debts.

So great care was taken by the court of exchequer (which is the centre of the kings revenue and profit) that no man might sue or plead for their discharge of any debts, account, or other demand, without having expresse commandement by writ or letter of the great seal. But by the statute of 5 R. 2. it appeared, that the parties ought to have been received thereunto, according to the law, without any such writ or letter : and that the obtaining of such writs or letters was to the great disquietnesse, mischief, and delay of the parties impeached, and no advantage to the king. And where before that time no plea could be allowed in the exchequer by attorney, but in proper person : by the said act it is ordained that the barons of the exchequer shall have full power to hear every answer of every demand made in the same : so that every person that is impeached or impeachable of any cause by himself or by \* any person, shall be received in the exchequer, to plead, sue, and have his reasonable discharge without carrying or suing any writ or other commandement whatsoever. So as by this act both these mischiefs are provided for. And out of this act this generall conclusion may be justly collected, that such course of the exchequer as tendeth to the disquietnesse, mischief, and delay of the subject, and no advantage to the king, is against law, and ought not to be allowed.

And



And it is to be observed, that Britton doth joyn in this clause, the treasurers and barons.

<sup>a</sup> And into the exchequer chamber or the like, all cases of greatest difficulty in the kings bench or common pleas, &c. are, and of ancient time have been adjourned and there debated, argued, and resolved by all the judges of England and barons of the exchequer. See more of this court *infra*, cap. 13. pagin. 121.

<sup>a</sup> *Tempore regis Johannis*, the abbot of Crowlands case. *Justiciarii tunc audientes surgentes de banco*, cum

*baronibus scaccarii et domini regis fidelibus illic residentibus colloquium*, &c. Rot. in scaccario de Grovelan. 1. Pl. Coram coram justiciis itinerantibus apud Turrin London. an. 4 E. 1. Rot. Claus. 13 E. 1. *infra*. p. 121. H. 1. 32 E. 1. coram rege Wigorn. Mic. 6 E. 2. in communi banco Despencers case. Mic. 11. E. 6. coram rege, case of the burgesses of Great Yarmouth.

*Acier et terminer tous les causes que touchent nous debts.* Here debts are taken for all manner of duties due to the king.

4 H. 6. 12. b.  
5 E. 4. 7.  
7 E. 4. 14. b.  
16. b.

*Et auxi a nous fees.* Here the tenures of the king (wherof we have spoken before) are expressed. And albeit there be many tenures of the king both in *capite*, and by knights service of some honor or mannor, &c. yet there be many more by the error or negligence of solicitors, by suing out of licences or pardons of alienation, where in troth the mannors or lands were not holden of the king in *capite*.

But Mich. 39 & 40 Eliz. it was resolved by all the judges of England, when I was attorney generall: that if a man purchase a license or pardon, and after being called into the exchequer do plead the license or pardon, that neither the purchase nor pleading is any conclusion, but the tenure may afterwards upon another alienation be traversed or denied. For the words of the license or pardon be, *Quæ de nobis tenentur in capite (ut dicitur)*; for neither the charge in this case is direct being grounded upon a license or pardon, nor the plea; for the license or pardon is pleaded, as it is, *ut dicitur*: and therefore neither the one nor the other doth conclude. But if he in his plea doth by expresse words (with a *bene et verum est*, &c.) confesse a tenure, in *capite*, and in discharge thereof plead the pardon or license in discharge thereof, there is a conclusion wrought: and so are the books to be intended: which resolution I heard and observed, and have reported it for advancement of truth and right.

Mich. 39 & 40  
El. per tous les  
justices.

[ III ]

Concerning licenses of alienation, and the short pleading of licenses and pardons, there is a profitable statute made *anno* 18 Jac. regis, and another *anno* 1 Jac. cap. 26. concerning orders of the exchequer.

46 E. 3. 33.  
29 Aff. 38.  
7 E. 6. Ettoppel.  
Br. 221. pl.  
com. 395.

18 Jac. cap.  
1 Jac. reg. ca. 26.

*Et les incident choses sauns les queux, &c. Quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa esse non potest.*

*Et que ils eyent pouver a consister des debts que lendoit a nous debtors per ce nous puissions plus tost approcher a nostre dett.* This is the ancient prerogative of the king as it appeareth in our books.

20 E. 3. ley 52.  
8 H. 5. 4.

The king brought an action of debt in this court against a prior alien. The prior had proces against A who detained goods from him, without which he could not answer the king. A came and claimed the goods as his tithes as parson of D, the prior claimed the tithes as parson of S; and thereupon issue taken for the king triable in the exchequer.

38 Aff. p. 20.

If he that is in execution will in this court confesse himself debtor to the king, where he is no debtor of record, he shall be

1 R. 2. cap. 12.

remanded to the first prison, and after the creditor be satisfied, then to be committed to the Fleet until he hath paid the summe confessed.

*Solong; le discretion des treasurers et barons, &c. soient avertis a ferme a eux que plus voient doner.* To the end that no lands in the kings hands, which ought to be to the kings profit, should be without a farmor that should yeild a rent to the king, the treasurer in certain cases, and with certain cautions ought to make a warrant to the great seal for demising thereof, that is to say, not only of lands extended, of lands during the vacation of any abbey, and of lands seised for an alienation without license, and before 23 H. 8. of land in ward, or the like upon uncertainties, but also of the demans of the crown out of lease, &c.

In original.  
Anno 16 E. 4.  
rot. 13.  
Nota herein five things.

1. Per manucaptionem.
  2. Commisimus.
  3. Custodiam.
  4. Yielding a rent.
  5. Provis, quod si quis alius plus dare voluerit.
- Nota Britton sup. *A eux que plus voient doner.*  
See 27 H. 8. cap. 11.

The lease will be best expressed by an example, first of lands extended. *Rex omnibus ad quos, &c. salutem. Sciatis quod per manucaptionem Walteri Mathew de Westm' in com' Mid. yeoman, et Nich. Whitfeld de eadem, yeoman. Commisimus Rico. Foster, custodiam unius sloopæ, 30 acr' terræ, 3 acr' prati, et 4 acr' pasturæ cum pertin' in Stanford in com' Lincoln, quæ fuerunt Silvani Southorpe, quæ in manus regis Edwardi nuper regis Angliæ terti' pro 138 li. 6 s. 8 d. in quibus idem Silvanus prefato nuper regi tenebat', seisis fuerunt, et in manibus nostris ea de causa adhuc existunt. Habendum a festo Sancti Michaelis anno regni nostri 13 usque finem 10 annorum ex tunc proxime sequen' et plenarie complendorum. Reddendo inde nobis per annum in custodia prædicta 25 s. prout nobis responsum est, ad festa Paschæ, et Sancti Michael' per æquales portiones. Proviso semper quod si aliquis alius dare voluerit de incremento per annum pro custodia prædicta sine fraude vel malo ingenio, quod tunc dictus Richardus tantum pro ea-lem solvere teneatur, si custodiam prædictam habere voluerit. In cuius rei, &c. Teste R. apud Westm. 7 die Novemb. anno regni nostri decimo sexto.*

Note by many presidents the lord treasurer may make a warrant to grant the lands extended, either for years, or *quam diu in manibus nostris fore contigerit.*

Rot. pat. 5 H. 6.

[ 112 ]

11 H. 6. 28. b.  
5 H. 6. 34. Br.  
Lease 71.  
Register 295.  
See for this word  
Commisimus.  
Vide 27 H. 8.  
ca. 1. a speciall  
proviso for the  
10. treasurer.  
\* 32 H. 6. ca. 5.  
17 R. 2. ca. 5.  
1 H. 4. cap. 18.  
Dier fo. 303.

The lord treasurer made a warrant to the lord chancelour to demise to John Pempons land parcell of the dutchy of Cornwall for the term of fifteen years in the like form of words as the before recited lease was. This lease was pleaded in 11 H. 6. and though the lease was by the words of *commisimus*, and *commisimus custodiam terræ, &c.* yet in pleading the lessee pleaded a demise of the land it self, and there allowed to be good, which is worthy of observation.

*Vide in original' in scaccario de anno 21 & 22 H. 7. rot. 4. et ibid. 23 H. 7. rot. 12.* many such leases. But of ancient time, as it appeareth by Britton, both the treasurer and barons did demise, &c. \* Letters patents of the alnage shall passe only by the lord treasurers warrant. And the gift of the office of the escheator belong to his office. Vide in the chapter of the Court of Escheator.

By the statutes of 8 H. 6. cap. 16. and 18 H. 6. cap. 6. it appeareth that the chancelor or treasurer had power to make leases in certain cases of wards lands: but that is altered by the statute of 32 of H. 8. of erection of the court of wards. \* Note the statute of 18 H. 6. ca. 1. extends only to the kings warrant, and not to the warrant of the lord treasurer.

See in the chapter of the Court of Wards.

\* Vid. pl. co'.  
491.

## Cap. 11. The Court of Exchequer.

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\* It is to be observed, that when in any act of parliament or other record the treasurer is named for demising, or other intermeddling with any of the kings revenue, it is to be intended of the treasurer of the exchequer.

*De nous customes de quirs et leynes, &c.* What these customes were appeareth in the second part of the Institutes, by the statute of confirmation *cartarum*, the last branch, and the exposition upon the same, whereby it appeareth that the king had no custome but such as was granted to him by act of parliament.

*L'eschequer est un place quarre.* It is foursquare and the carpet that sometime lay upon it had wrought in it the form of a chesse board, and thereupon it was called the exchequer: and about the end of the reign of E. 1. this court was new built, and therefore in 2 E. 3. it was called the novel eschequer, and it was new built upon this occasion. Both the parts of the eschequer were of an ancient building, and weak; fourscore and one persons (whereof the abbot of Westm' and forty eight of his monkes were part) brake into the receipt, and feloniously robbed the king of a hundred thousand pounds, *ad damnum inestimabile*, saith the record. All these fourscore and one were indicted of this felony, and committed to the tower of London, &c. and this was the occasion of the new building of both these parts of the eschequer.

*Qui solement est ordein par le prowe le roy.* Here is a short, but an effectual description of the jurisdiction of this court, that is, for the profit of the king. This profit is either immediate, or mediate: <sup>a</sup> immediate, as of lands, rents, franchises, hereditaments, debts, duties, accounts, goods, chattels, and other profits, and benefites whatsoever due to the king. <sup>b</sup> Mediate, as first, the privilege of the officers, and \* ministers of the court: for two things doe principally support the jurisdiction of a court, viz. the juit preservation of the dignity of it, and the due attendance of the officers and ministers of the same to sue and be sued in this court. 2. <sup>c</sup> By *quo minus*. 3. It extendeth (as hath been said) to the debtor of the kings debtor. 4. To prisoners in this court to be sued here. 5. To accountants that have entred into their account, except <sup>d</sup> collectors of dismes, they shall not be sued by bills, neither if he be sued in any other court, shall he have the privilege of this court.

*Ou deux chivaliers, et 2 clerks, ou 2 homes lettres.* 2. Chivaliers be hereafter explained. 2 Clerks, ou 2 homes lettres, the one is intended to be the baron of course, the other the clerk of the pipe.

† *De ses fees et franchises.* Of fees, that is tenures, whereof we have spoken before. Franchises, being flowers of the crown, are notorious and known.

*Et les accounts, &c.* All accounts to the king ought to be made upon oath, and it is best for the king to have the accounts to be taken in this court, for accounts taken by commission are little for

\* Hil. 18 E. 1. f. 9. nu. 128.

Second part of the Inst. Confr. Cart. Vid. supra cap. Parl. p. 29.

Mirror. Ockham.

2 E. 3. 25. rot. par. 31 E. 1. m. 12. Dorf.

Nota, the robbery of the king of his treasure is *damnum inestimabile*.

<sup>a</sup> 2 E. 3. 25. Jeffery Sharlugs case. 14 E. 3. tit. Scire fac' 122. 44 E. 3. 27. Reg. gift. 187. b.

Prohibit. 38. aff.

p. 20. rot. par. 1

1 R. 2. nu. 64.

2 H. 4. 11.

rot. par. 2 H. 4.

101. Dar' est no-

bis intelligi.

Rot. par. 11. H. 4.

54. 56. 64. ibid.

13 H. 4. 32.

8 H. 5. Ley 66.

20 E. 3. Ley 52.

32. H. 6. 24.

5 E. 4. 4. b.

7 E. 4. 30.

21 E. 4. 44. 45.

&c. 8 H. 6. 34.

36 H. 6. 26. li. 5.

f. 62. action sur

le case. 11 H. 7.

26.

<sup>b</sup> Stat. de Rut-

land. 10 E. 3.

\* Register 187.

F. N. B. 90. f.

Information de

<sup>c</sup> 14 E. 3.

11 H. 7. 26. Pl.

Com. 322. Lib. 6. fol. 18.

<sup>d</sup> 1 R. 3. cap. 14.

5 R. 2. cap. 10. stat. 1.

the barons shall hear,

&c. without any writ, letter or commandment. 4 H. 4. cap. 9.

7 H. 4. cap. 11. concerning com-

missions. 13 Eliz. cap. 9. Sewerj.

14 E. 3. cap. 12. Weights. 13 R. 2. cap. 2. No recognizance

intrusion ou trans. & 217. c. terræ taile. Vid. 32 H. 8. cap. 39. 16 Eliz. Dier 328. brev. 789. 20 E. 3. Ley 52. 2 H. 4. 9. 8 H. 5. 6. 10. 8 H. 5. Ley 66. 11 H. 7. 26. Pl. Com. 322. Lib. 6. fol. 18. <sup>d</sup> 1 R. 3. cap. 14. 5 R. 2. cap. 10. stat. 1. the barons shall hear, &c. without any writ, letter or commandment. 4 H. 4. cap. 9. 7 H. 4. cap. 11. concerning commissions. 13 Eliz. cap. 9. Sewerj. 14 E. 3. cap. 12. Weights. 13 R. 2. cap. 2. No recognizance or bond in double.

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e Stat. de Rutland. 10 E. 1.

f Ro. par.

21 E. 1. rot. 3.

g 5 R. 2. ca. 11.

h Rot. par.

3 H. 6. nu. 47.

18 H. 3. nu. 110.

Braſton lib. 3.

fo. 116. b.

See the 2 part of

the Inſt. Mag.

Cart. ca. 14.

Artic ſup. Cart.

ubi ſupra. Stat.

de Rotland.

20 E. 1. acc.

\* Pl. com. 209.

Glanv. lib. 9.

cap. 11. &c.

the kings benefit. e The keeper of the wardrobe is to make his account once in the year in the exchequer. f Once in the year the treasurer of Ireland shall account in the exchequer of England. g The accounts of the exchequer to be more shortly heard, made, and ingrossed, &c.

h The treasurers of the kings chamber are only accountable to the king, and not in this court of exchequer, but yet the king, by the advice of some whom he may trust in secret doth take account thereof, as before is said.

*Vide recordum et proceſſum contra Petrum de Rivalles alias Petrum de Oriall, theſaurarium et camerarium regis totius Angliæ et Hiberniæ, et custodem omnium foreſtarum, et omnium portuum maris de compoto reddit' de officiis prædictis, et de judicio contra ipſum reddito per deſaliam, quia venire recuſavit, niſi ſalvo regis conductu, quod rex denegavit, quaſi inſolitum et indebitum.*

*Per le viero de un ſoveraign que eſt treaſurer Dengleterre.* Of this great officer we have ſpoken before.

*Le 2 chivaliers ſoloient ee. 2 barons, &c.* And herewith agreeth Braſton, *Comites vero vel barones non ſunt amerciandi, niſi per pares ſuos ſecundum modum delicti, et hoc per barones de ſcaccario vel coram rege.*

*En cel place ſont auxi chamberleins, et pluſors auters miniſters, que ne touch my molt a la ley.* Hereof we have ſpoken before.

*Nul common plea ne ſoit diſformes tenuis in leſchequer enconter le form del grand charter.* Upon this act four ſeverall opinions have been conceived. \* 1. That this court might originally have holden plea of all common pleas; and this they think to prove by the title of Glanvils book, which taking it altogether is this, *Tractatus de legibus, &c. tempore Henrici 2. compoſitus, juſtitie gubernacula tenente illuſtri viro Ranulpho de Glanvilla, juris regni et antiquarum conſuetudinum eo tempore peritiſſimo, et illas ſolum leges continet et conſuetudines, ſecundum quas placitatur in curia regis ad ſcaccarium coram juſticiariis ubicunque fuerint.* 2. Others think that at the making of Magna Carta, the court of the exchequer was parcel of the kings bench, which they infer upon the words of this act, No common plea ſhall be holden in the eſchequer againſt the great charter, in which charter *curia noſtra* is only intended of the kings bench. 3. That in Magna Carta, to which this ſtatute refers, there is no reſtraint, and therefore this ſtatute of *artic' ſuper cartas* reſtraineth not. 4. That the ordinance of Rutland is no ſtatute, but made by the king for the order of this court. In the ſecond part of the Inſtitutes, in the expoſition of Magna Carta, cap 11. we have ſpoken nothing of this matter, but thought good to referre it to this act being his proper place.

As to the firſt: it appeareth by the ſaid ancient authors, and by the authority of our books, that the inſtitution and juriſdiction of this court have been only for the kings buſineſſe and profit, &c. as hath been ſaid. For the title of Glanvils book: firſt, it was never of his own making, for he would never have given himſelfe ſuch high and ſuperlative titles, as *Illuſtri viro juris regni, &c. eo tempore peritiſſimo.* 2. He that added the title ſpeaketh of three courts, viz. 1. *In curia regis.* 2. *Ad ſcaccarium.* 3. *Coram juſticiariis ubicunque fuerint.* For the firſt, viz. *in curia regis*, he intendeth juſtice in eire, &c. for example, *Inquirentur purpreſuræ vel in capitali curia, vel coram juſticiis regis ad tales inquisitiones faciend' in di-*

*verſas*

*versas regni partes transmissas per juratam patrie sive vicenei.* 2. *Al*  
*seccarium*, this court he doth mention but once (that I remember) Lib. 7. cap. 10.  
 in all his book in these words. *Si vero dominus rex aliquam custo-*  
*diam alicui commiserit, tunc distinguitur utrum ei custodiam pleno jure*  
*commiserit ita quod nullum eum inde reddere compotum oporteat ad seac-*  
*carium*, which agreeth with the originall institution and jurisdiction  
 of the court concerning the profit of the king. 3. *Cram justiciariis*  
*ubique fuerint* is the kings bench, wherof Glanvil was chief  
 justice, and of the pleas in that court is in effect the sum of his  
 treatise.

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As to the second: 1. Glanville who wrote in the reign of H. 2.  
 doth (as hath been said) name the exchequer as a distinct court  
 for the accounts to be made to the king. 2. In the \* black book  
 of the exchequer dedicated to H. 2. of the observations of the ex-  
 chequer, it is said, *Nulli licet statuta seaccarii infringere, vel eis quavis*  
*temeritate resistere, habet in hoc commune cum ipsa domini regis curia, in*  
*qua ipse in propria persona jura discernit, nec recordationi nec sententie in*  
*eo late licent alicui contradicere.* Whereby it appears that the kings  
 bench and exchequer were distinct courts in the reign of H. 2.

\* The author of  
 this book is  
 Gervasius Til-  
 buriensis a learn-  
 ed man and an  
 officer of the  
 exchequer cap. 1.

To the third, our statute is intituled *articuli super cart'* that is, ar-  
 ticles upon *Magna Carta et Carta de Foresta*: to as the sense of this  
 act is, that the exchequer should hold no common plea no more  
 then the kings bench: for the form of the great charter is, *Quod*  
*communia placita non sequantur curiam nostram.* Secondly, our sta-  
 tute is but an affirmation of the common law concerning the ju-  
 risdiction of this court, and this doth exprefly and notably appear  
 in the Register in these words. *Rex thesaurar' et baronibus de seac-*  
*cario salutem. Cum secundum legem et consuetudinem regni nostri com-*  
*munia placita coram vobis ad seaccarium predict' placitari non debeant,*  
*nisi placita illa nos vel aliquem ministrorum nostrorum ejusdem seaccarii*  
*specialiter tangerent, &c.* Here it is to be observed that this writ of  
 prohibition is not grounded upon the statute of *artic' super cart'* or  
 any other statute, but upon the common law and custome of  
 the kingdom, which concerning the jurisdiction of this court  
 doth in omnibus agree with our ancient authors and year-books,  
 wherein you shall observe an admirable harmony and consent in so  
 many successions of ages.

Regist. 137. b.

This is a statute proved by the title thereof, and for that it is en-  
 tred in the parliament roll, and in the Register 187. b. it is called  
*statutum de Roland.*

Stat. de Rotland.  
 10 E. 1. Vid. Pl.  
 Com. 221. per  
 2 barons. Regist.  
 187. b.  
*Respondet supe-*  
*rior.*  
 Int' præcept' de  
 termino Sancti  
 Hil. anno 14 E. 3.  
 ex parte remem.  
 regis rot. 9. in  
 seac'  
 Coronator.

Now it is good to know, how the law commonly called *respondet*  
*superior*, holdeth in this court and in other courts, and first by the  
 records of this court, and then by acts of parliament.

*Memorand' quod allocuto prefato Willielmo morantur nuper vic' super*  
*levatione 40. s. extra'* in magno rotulo de anno 12 in *kanc' sub nomine*  
*William Herlizan unius coronatorum com' Kanc' pro falso returno. Item*  
*Willielmus vic' die' super sacramentum suum quod prefatus Willielmus*  
*Herlizan non habet terr' vel ten'ta, bona, seu catalla in balliva sua, nec*  
*habuit unde dict' denar' levare possint. Et quia ipse coronator electus erat*  
*per comitatum juxta formam statuti, &c. ita quod in deservitu ejusdem coro-*  
*nator' totus comitatus ut elector et superior, &c. habeant regi respondere,*  
*præcip' nunc vic' quod de terris et tenementis hujusmodi totius comitatus in*  
*balliva sua fieri fac' prædict' xl. s. et eos habeat hic in cro. clausi*  
*Pasche super proffrum suum regi solvend'. Al quem diem vic' non re-*  
*turn'*

*torn' breve. Ideo sicut alias in cro' Sancti Johun' Baptiste.* For more presidents in the exchequer of this kind, see Mic. 17 R. 2. rot. Mic. 19 H. 8. rot. 4. *Eborum.* Pasch. 30 H. 8. rot. 30. Wiltes. Mich. 5 E. 6. rot. 130, &c. Stat. de 52 H. 3. *de seacario.*

How it holdeth in other courts. Vid. 11 E. 2. tit. Det. 172, where the sherifs be removable as in London for their insufficiency, *respondeat superior*, that is, the maior and comminalty of London.

45 E. 3. 9, 10. *Prior datife et removeable suffer eschape, respondeat superior.* 14. E. 4. *Pur insufficiency del bailie dun libertie respondeat dominus libertatis.* Vid. 44 E. 3. 13. 50 E. 3. 5. 14 H. 4. 22. 11 H. 6. 52. 30 H. 6. 32. W. 2. cap. 2. *Si non habeat balivus unde reddat, reddat superior.*

2 H. 6. cap. 10.

There is a generall statute concerning all the courts of the king, worthy of observacion in these words.

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*Item,* To the intent that better and more sure government be had within the courts of our lord the king for his profit, and ease of his people, which have to pursue, and doe in the same. It is ordained and established that all the officers made by the kings letters patents royall within the said courts, which have power and authority by vertue of their offices of old times accustomed, to appoint clerks and ministers within the same courts, shall be charged and sworn to appoint such clerks and ministers, for whom they will answer at their perill, which be sufficient, faithfull, and attending to that which pertaineth to them in performance of the businesse, as well of the king as of his people.

20 E. 3. ca. 2.  
Hereby it appeareth that to them belongeth doing of right and reason in leuell proceedings.

In the same manner we have ordained in the right of the barons of the exchequer, and we have expressly charged them in our presence, that they shall doe right and reason to all our subjects, great and small, and that they shall deliver the people reasonably and without delay of the businesse which they have to doe before them, without undue tarrying as hath been done in times past.

Mich. 13. Ja. In  
*Banke le roy in prohibition.*  
8 H. 5. 4. 45 E. 3.  
*Decies tantum.*  
12.

It was resolved in the case of auditor Povie, that if A be indebted to B, and B is indebted to the king, that the king by his prerogative may levie his debt upon A: but this levying ought to be of an immediate, and not of a mediate debtor to the debtor of the king. As if A be indebted to B, and B to C, and C to the king, the king cannot levy his debt of A, for then it might be levied *in infinitum, quod reprobatum in jure*, and this appeareth in our books.

Li. 5. fo. 89, 90.

For assignement of debts made to the king, see in my Reports.

7 Jac. cap. 15.

By the statute of 7 Jac. no debt shall be assigned to the king his heirs or successors by or from any debtor or accountant to his majesty, his heirs or successors, other then such debts as did before grow due originally to the kings debtor.

No obligation, recognizance or statute made for saving harmlesse or performance of covenants, &c. though it be forfeited, or for any cause, other then a due debt, can be assigned to the king by any of his debtors. These assignments of debts to the king are not favoured

voured in law when the kings immediate debtor is able to pay his debt; for by the assignment at the kings suit the body, lands and goods of the debtor to the kings debtor are liable to the king, whereas at the subjects suit, he could have had but his body only by *capias ad satisfaciend'*, or his goods only by *feri fac'*, or half his lands and goods by *elegit*. By the statute of 1 R. 2. a penalty is provided for him who confesseth a debt to the king (that is not debtor to the king of record) to delay the execution of others.

1 R. 2. ca. 12.

The barons of the exchequer are the sovereign auditors of England, for if a man assign auditors to a bailif or receiver to account, and the auditors will not allow just and reasonable allowances but commit the bailif or receiver to prison, such prisoner may have an originall writ of *ex parte talis* returnable before the treasurer and barons of the exchequer, &c. for his relief in that behalf.

Fletali. 6. ca. 64.  
2 E. 3. 12.  
14 E. 3. account 74.  
8 E. 4. 16.  
F. N. B. 129. f.  
Regist. 137.

Upon the accountant in the exchequer of B. Fulham the kings butler, he demanded allowance of certain parcels of wines given by the king to certain persons by word of mouth without writing, and it was disallowed by the rule of the court.

Rot. clauf. anno  
4 E. 3. m. 2.

Upon the account in the exchequer of Richard Bury keeper of the wardrobe, he demanded allowance for certain vessells of gold and silver and certain jewels given by the king *ore tenus* to Isabell queen of England, and others to Philip queen of England consort of the king, *et non allocatur*, by the like rule of the court: for the gifts by word in both these cases are void, which with Petitioners case that followeth are good rules to establish the law in a case wherein there hath been variety of opinions in our books.

Rot. clauf. anno  
4 E. 3. m. 19.

Hil. 6 E. 4. rot. 14. in *scaccario inter brevia in dorset*. Petitioners case. A warrant under the signet is not sufficient to issue any treasure of the king out of the receipt, but it must be under the great or privy seal.

35 H. 8. Prærog.  
B. 61. 14 E. 4.  
2. a.

If the barons doe not allow unto an accountant before them such just demands as he maketh, he may have a writ *De allocatione facienda*, directed to the treasurer and barons commanding them to allow the same.

Regist. 192. a. b.  
& 193.

[ 116 ]

*Of a Liberate for payment of a pension or debt, &c.*

A *liberate* is an originall writ issuing out of the chancery, and is directed to some officers that have of the kings mony in his hands to pay over a pension, debt, or duty. And it is not called a *liberate* by reason of any such word contained in the writ, (as for the most part writs are) for the words be *quod solvas* or *solvatis*, but it is so named *ab effectu*. But such a writ cannot be directed to the kings fermor to pay a pension, &c. because, though the ferm or rent be behind, yet it is not the kings untill it be paid, and all the writs in the Register are directed as is aforesaid to officers, as to the treasurer and chamberlain, to a customer, &c. The form of the writ appeareth in the Register 192, 193. And there it appeareth that there be two kinds of writs of *liberate*, one dormant or currant and continuall, and another *hac vice* and particular. And it is sometimes accompanied with a writ of allowance, as there you may read.

If

If the officer have sufficient in his hands to pay, &c. at the time of the *liberate* delivered to him, he is become debtor (by act of law) to the party, for which he may have an action of debt: but after the *liberate* sued out, and before the delivery, the king may discharge the officer of the kings money in his hands. And if the king decease before the delivery of the *liberate*, the officer hath no warrant to pay it.

If the officer at the time of the delivery of the *liberate* have of the kings money to pay but part, and not the whole, the writ is no warrant to him to pay part. See 21 H. 6. tit. det. 43. 27 H. 6. 9. 37 H. 6. 24, 25. 9 E. 4. 12. 14. 1 H. 7. 8. 2 H. 7. 9. F. N. B. 121. f. *br. tit. Taile deschequer.*

Vid. Mag. Cart. cap. 22. *Liberationem antiquitus statut', id est, precium antiquitus statutum.*

The course of the eschequer is, that as soon as a sherif or escheator enter into his account for issues, amerciaments and mean profits, to mark upon his head *O. Ni.* which is as much as to say, *oneratur, nisi habeat sufficientem exonerationem*, and presently he is become the kings debtor, and a *debet* set upon his head, and thereupon the parties *peravaille* are become debtors to the sherif or escheator, and discharged against the king.

Dier 7 El. 238.

The ancient course of the eschequer hath been, that if in an information of intrusion into lands or tenements the defendant plead not guilty, he shall lose the possession; and it is said that the reason of this course is, first for that regularly the kings title appeareth of the record, and therefore the defendant may take knowledge thereof, and the rather for that in every information of intrusion it is specified of whose possessions the lands, &c. were: but if the defendant plead not guilty, the kings learned councill cannot know the defendants title, to provide to answer the same, as the defendant may doe to the kings title.

[ 117 ]

## C A P. XII.

A Court to enquire of, and certifie unlawful and untrue Accounts in the Exchequer.

6 H. 4. cap. 3.  
See rot. parl.  
6 H. 4. nu. 59.  
for the print  
swarveth from  
the record.

**T**HIS court sitteth by commission under the great seal by force of the statute of 6 H. 4. directed and sent, together with the tenour of the account, to the most lawfull and discreet persons in the counties, where the accountants be officers, to enquire and certifie the profits which the sheriffs, escheators, alnagers, controllers, and other the kings officers have received, &c. by them upon their said accounts deceitfully concealed, &c. and being attainted of the said frauds and deceits, they shall forfeit treble the value, and their bodies to prison, untill they have made fine and ranfome to the king, after the discretion of the judges.

But (as hath been said before) it is certain, that it is ever most for the kings benefit that accounts be yearly taken in the exchequer,  
and



## Cap. 13. The Court, &c. in the Exchequer Chamber. 117

and not by commission: and to that end an ordinance was made in the parliament holden anno 21 E. 1. in these words: *Dominus rex vult et præcipit, quod de cætero singulis annis semel in anno compositus Vasconie et Hibernie per constabularium Burdegaliæ, et thesaurarium Hibernie reddantur ad scaccarium Angliæ, et ibid. audiantur per thesaurar' et barones suos. Afortiori* of accounts within the realm.

Rot. parl. anno  
21 E. 1. Rot. 3.  
Vide rot. parl.  
28 E. 1. Nich.  
de Clere the-  
saurarius Hi-  
bernæ.

And of the court of the exchequer we will end with an old verse ingraven in stone in the exchequer wall,

*Ingrediens Jani, rediturus es æmulus Argi.*

The chief baron is created by letters patents, and the office is granted to him *quamdiu se bene gesserit*, wherein he hath a more fixed estate (it being an estate for life) then the justices of either bench, who have their offices but at will: and *quamdiu se bene gesserit* must be intended in matters concerning his office, and is no more then the law would have implied, if the office had been granted for life. And in like manner are the rest of the barons of the exchequer constituted, and the patents of the attorney generall, and solicitor are also *quam diu se bene gesserit*.

See Lit. 1 part of  
the Instit. sect.

## C A P. XIII.

[ 118 ]

### The Court of Equity in the Exchequer Chamber.

THE judges of this court are the lord treasurer, the chancelour, and barons of the exchequer. Generally, their jurisdiction is as large for matter of equity, as the barons in the court of the exchequer have for the benefit of the king by the common law: for all the proceedings both in this court of equity, and of that by the common law ought to be, as hath been said, for the profit or benefit of the king, or touching the king: and if in either court they hold any plea, which is not for the profit or benefit of the king, or which toucheth not the king, there lyeth a prohibition, which, as is aforesaid, appeareth in the Register: for all are said *communia placita* which are not *placita corone*.

Art cler. cap. 4.  
Regist. fol. 187.  
b. stat. de Rot-  
land. cap. ulti-  
mo.

By the statute of 33 H. 8. cap. 39. they have full power and authority to discharge, cancell and make void, all and singular recognizances and bonds made to the king for payment of any debt or summe of money, or for performance of conditions, &c. upon shewing the acquittance, &c. or any proof made of payment and performance. Also to cancell and make void by their discretion all recognizances made for any appearance or other contempt. And that if any person of whom any such debt or duty is demanded, alledge, plead, declare, or shew in the said court sufficient cause and matter in law, reason and good conscience in barre or discharge of the said debt or duty, and the same matter sufficiently prove in the said court: then the said court shall have power and authority to judge and allow the said proof, and clearly acquit and discharge such

Cancell.

Cancell.

Matter in law,  
reason and good  
conscience.

## 118 The Court, &c. in the Exchequer Chamber. Cap. 13.

Lib. 7. fo. 18.  
Sir Thomas Ce-  
cils case, and  
resolved by Eng-  
lish bill in the  
exchequer cham-  
ber. See there  
divers presidents.  
\* Lib. 7. fo. 20.  
ubi supra.  
Et lib. 3. fo. 12.  
Sir Wil. Her-  
berts case.  
Inheritance.  
Freehold.

such person and persons. Also lands chargeable to the kings debts in the seisin and possession of divers and sundry persons, the same shall be wholly and \* intirely, and in no wise severally liable to the payment of the said debt and duty: but in the said act of 33 H. 8. all manner of estates, rights, titles, and interests, as well of inheritance as freehold, other then joyntures for term of life, are excepted.

By the said act of 33 H. 8. speciall jurisdiction is given to the court of augmentation, when title is pretended to any manors, lands, tenements, or hereditaments, bargained, sold, or exchanged by the king, upon which letters patents there is or shall be reserved any annuall rents or farms, paiaible in the court of augmentations, and divers other clauses which gave to the court of augmentation jurisdiction. But the court of augmentation is but in shew annexed to the court of the exchequer, and not *de jure*, as hereafter it appeareth in the chapter of the Court of Augmentations. And therefore this court of exchequer chamber cannot claime any jurisdiction given and appropriated to that court, for that the court of augmentations is dissolved.

I. S. holdeth lands of the king by fealty and a yearly rent, and maketh a lease thereof for years to A. B pretends that I. S. leased the same to him by a former lease; albeit there is a rent issuing out of these lands to the king, yet neither A nor B can sue in this court by any priviledge in respect of the rent, for that the king can have no prejudice or benefit thereby, for whether A or B doth prevaile, yet must the rent be paid: and if this were a good cause of priviledge, all the lands in England holden of the king by rent, &c. might be brought into this court.

But if Black acre be extended to the king for the debt of A as the land of A, and the king leaseth the same to B for years, reserving a rent: C pretends that A had nothing in the land, but that he was seised thereof, &c. this case is within the priviledge of this court, for if C prevaile the king loseth his rent.

The king maketh a lease to A of Black acre for years reserving a rent and A is possessed of a team for years in White acre, the king may distrain in White acre for his rent, yet A hath no priviledge for White acre, to bring it within the jurisdiction of this court.

Note reader, where our books say, that the king may distrain for his rent in all the other lands of his tenant, of whomsoever the same be holden, it is thus to be understood, that the other lands must be in the actuall possession of the kings tenant, for he cannot distrain in those lands in the possession of his tenant for life, tenant for years, or at will.

Some are of opinion that a court of equity was holden in the exchequer chamber before the statute of 33 H. 8. And then it must be a court of equity by prescription: for we find no former act of parliament that doth create and establish any such court: and if it be by prescription, then judiciall presidents in course of equity must guide the same: as to the jurisdiction, certain it is that there hath been of ancient time an officer of the exchequer called *cancellarius scaccarii*, of whom amongst other officers of the exchequer Fleta saith thus: *Officium vero cancellarii est sigillum regis custodire simul cum controrotulis de proficuo regni*. And the Mirror saith, *Perjure est per la ou il fuit chancelor del eschequer vea a tiel a faire*

32 E. 3. tit. Aid.  
Lerry. 1.  
35 H. 6. 56.

[ 119 ]

44 E. 3. 45.  
13 E. 4. 6.  
8 H. 5. 4.  
Pl. com. 523. a.  
This prerogative  
holdeth not only  
in case of rent,  
service, but in  
case of a rent  
charge, and rent  
secke.

*Cancellarius scac-*  
*carii.*  
Mirror. cap. 2.  
§ 13. & cap. 5.  
§ 2.

luy

*luy acquittance de tant que avoit pay al eschequer de la dett le roy south le seale del eschequer ou delay a faire acquittance de tiel jour tanq. a tiel jour, &c.* His ancient fee is 40 marks. Livery out of the wardrobe 12 li. 17 s. 4 d. in toto 39 li. 10 s. 8 d. See 25 H. 8. cap. 16.

\* The exchequer hath a chancelour and seal, and the writs usuall in the chancery in the exchequer to lease land, are more ancient then *prerog. regis*.

\* Pl. com 321.

Hereupon it is collected, that seeing there hath been time out of minde of man a chancelour of the exchequer, that there should also be in the exchequer a court of equity.

Where some doe vouch 22 E. 4. tit. Petition 9. for the naming of the chancelour of the exchequer in granting of writs of search to the treasurer and chancelour, the book is false printed, for it should be the chamberlaines and treasurer of the exchequer: for no writ of search is directed to the chancelour, &c. but to the treasurer and chamberlain of the exchequer, who have the custody of the records, &c.

\* We find a petition of the commons in 2 H. 4. that no writs or privie seals be sued out of the chancery, exchequer, or other place, to any man to appear upon a pain, &c. to answer, &c. contrary to the ordinary course of the common law: whereunto the king answered, that such writs should not be granted without necessity.

<sup>a</sup> Rot. par.  
<sup>2</sup> H. 4. nu. 69.

<sup>b</sup> Anno 3 H. 5. the commons petitioned that all writs of *subpœna* and *certis de causis* going out of the chancery and the exchequer might be inrolled, and not granted of matters determinable at the common law on pain of 40 li. The kings answer was, That he would be advised.

<sup>b</sup> Rot. parl. anno  
3 H. 5. nu. 46.  
<sup>c</sup> 7 H. 6. 44.  
6 H. 7. 15.  
8 H. 7. 13.  
lib. 1. fo. 17.  
Vet. N. B.  
\* Rot. clauf. in.  
Dors. an. 13 E. 1.  
in schedula pend.  
*Et si contingat  
quod, &c.* Vide  
supra, pag. 110.  
31 E. 3. cap. 8.  
31 Eliz. cap. 1.  
27 Eliz. cap. 8.  
31 Eliz. cap. 1.  
Co. pl. Intr.  
fo. 2. 24. 37.

\* So as in the exchequer there are these seven courts. 1. The court of pleas, 2. The court of accounts, 3. The court of receipt, 4. The court of the exchequer chamber being the \* assembly of all the judges of England for matters in law, 5. The court of exchequer chamber for errors in the court of exchequer. 31 E. 3. cap. 8. and 31 Eliz. cap. 1. 6. A court in the exchequer chamber for errors in the kings bench. 27 Eliz. ca. 8. 31 Eliz. ca. 1. Co. pl. Intr. fo. 2. 24. 37. and 7. This court of equity in the exchequer chamber.

## C A P. XIV.

[ 120 ]

### Of First-fruits and Tenths Ecclesiasticall.

**A** Court of the first-fruits and tenths was raised, officers constituted, of chancelour, treasurer, kings attorney, two auditors, and two clerks: authority given them to compound for first-fruits, bonds taken therefore should be of like force as a statute staple: but this court was dissolved by queen Mary parl. 1. sess. 2. cap. 10.

Stat. de 32 H. 8.  
cap. 45.  
Rot. par. 47 E. 3.  
nu. 30.  
7 H. 4. nu. 43.  
acc.

These were granted to the crown by the statute of 26 H. 8. cap. 3. But all the clergy were exonerated and discharged thereof afterwards, anno 2 & 3 Ph. and Mar. cap. 4.

26 H. 8. cap. 3  
2 & 3 Ph. and Mar.  
cap. 4.

The

1 Eliz. cap. 4.  
observe the alteration and alteration.

The statute of 26 H. 8. revived, and first-fruits and tenths of the clergy reunited to the crown by anno 1 Eliz. cap. 4. But no court is revived, but first-fruits and tenths to be within the rule, survey, and government of the exchequer, and created a new office, and officer, viz. a remembrancer of the first-fruits and tenths of the clergy, who taketh all compositions for the said first-fruits and tenths, and maketh proces against such as pay not the same.

25 H. 8. cap. 5.  
1 Eliz. cap. 4.

First-fruits, or annates, *primitiæ*, are the first-fruits after avoidance of every spirituall living for one whole year (except vicarages not exceeding 10 li. and personages not exceeding 10 marks) but all are to pay tenths.

Ecclesiasticall livings were sometimes valued by a book of taxation made in 20 E. 1. which remaineth in the exchequer, and by another taxation in 26 H. 8. which also remaineth in that court. And according to this latter taxation are the values of ecclesiasticall livings computed for the first-fruits and tenths. What pope first imposed first-fruits, untill <sup>a</sup> historians do agree, I will not trouble my self.

What we finde of record concerning first-fruits, we will summarily relate.

<sup>b</sup> The king forbiddeth H. P. the popes nuntio to collect first-fruits, &c.

<sup>c</sup> That the popes collector be willed no longer to gather the first-fruits of benefices within this realm being a very novelty, and that no person do any longer pay them.

<sup>d</sup> The commons do petition that provision may be made against the popes collectors for levying of the first-fruits of ecclesiasticall dignities within the realm. The answer of the king in parliament is, There shall be granted a prohibition in all such cases where the popes collectors shall attempt any such <sup>e</sup> novelties.

<sup>f</sup> Upon complaint made by the commons in parliament, the king willeth that prohibitions be granted to the popes collectors for receiving of first-fruits.

<sup>g</sup> Against first-fruits by arch-bishops and bishops to the pope of Rome, terming it a horrible mischief and damnable custome.

<sup>h</sup> It is enacted, that the popes collectors should not from thenceforth levy any money within the realm for first-fruits of any ecclesiasticall dignity by any provision from Rome upon pain of the statute of provisors: but this is omitted out of the print of 9 H. 4. cap. 8.

<sup>i</sup> The bishop of Norwich had in 19 E. 3. by prescription time out of minde of man first-fruits within his dioces of all churches after every avoidance. But these also were given to the crowne

<sup>k</sup> by the statute of 26 Hen. 8. cap. 3.

Tenths ecclesiasticall, *decimæ*, these are the tenth part of the value of all ecclesiasticall livings yearly payable to the king, his heirs and successors by the said statute of 26 H. 8. and 1 Eliz. to be valued as is abovesaid.

These the pope (as the canonists hold) pretended to have *de jure divino*, as due to the high priest by pretext of these words, *Præcipe Levitis atq; denuncia, cum acceperitis à filiis Israël decimas quas dedi vobis, primitias earum offerte Domino, id est decimam partem decimæ, ut reputetur vobis in oblationem primitiarum tam de areis, quam de torcularibus et universis quorum accipietis primitias offerte Domino, et date*

<sup>a</sup> Walf. an. Dom. 1316. Trivet. Ranulphus Cistrensis, li. 7. c. 42. Polyd. Virg. lib. 8. cap. 2. Platina. Fox, &c.

<sup>b</sup> 2 E. 3. Rot. claus. m. 4.

<sup>c</sup> Parl. 1 R. 2. nu. 66.

<sup>d</sup> Rot. par. 4 R. 2. nu. 44.

<sup>e</sup> Note they were not so ancient with us, as is pretended.

<sup>f</sup> Rot. par. 6 H. 4. nu. 50.

<sup>g</sup> 6 H. 4. cap. 1.

<sup>h</sup> Rot. par. 9 H. 4. nu. 43.

<sup>i</sup> 19 E. 3. tit. Jurisdiction. 22.

<sup>k</sup> 26 H. 8. cap. 3.

[ 121 ]

Num. 18. 26. &c. Vi. Jerom. in Eze. ca. 44. v. 28. &c.

*date ea Aaron sacerdoti.* But the parliaments in 25 H. 8. and 26 H. 8. were not of opinion that these tenths did belong to the bishop of Rome; as by the severall preambles thereof appeareth, which we have added; for that we have endeavoured to shew through all this work the severall claims or pretences of every thing whereof we have treated. And king Philip and queen Mary yeilded not these tenths to the pope, but (as hath been said) by authority of parliament discharged the clergy thereof: which they would never have done, if they had taken them to be due to the pope *de jure divino*. And the bishop of Norwich could not have prescribed to have first-fruits within his dioces, if they had been due to the pope *de jure divino*: and the rather, for that Anthony de Becke, for whom the prescription was made, was a reiteiner to the court of Rome, and made bishop of Norwich by the pope.

19 E. 3. tit. Jurisdiction, ubi sup.

# C A P. XV.

## The Court of Augmentations of the Revenues of the Crowne of England.

**T**HIS court was erected by authority of parliament in *anno* 27 H. 8. consisting of a chancelour, treasurer, attorney, solicitor. And all lands, &c. belonging to monasteries, and purchased lands were within the survey and governance of this court. This court could not be erected but by parliament, because a chancelour and a court of equity were constituted. More hereof in the next chapter.

# C A P. XVI.

[ 122 ]

## The Court of Generall Surveyours of divers of the Kings Lands with Power to make Leases for Twenty-one Years erected by Act of Parliament in 33 H. 8.

33 H. 8. cap. 31.

**B**OTH these courts king H. 8. by his letters patents *anno regni sui* 38 dissolved, and erected a new court of augmentations by his letters patents. The dissolution was holden void, because they were created by authority of parliament. Vid. the rehearfall of the statute of 7 E. 6. cap. 2. and the erection was also void for the cause aforesaid. And thereupon the said letters patents, as well for the dissolution of the former, and for the erection of the new court of augmentations were confirmed and established by the said act of 7 E. 6.

Bract. Nihil tam conveniens est naturali æquitati, unumquodque dissolvi eo ligamine quo ligatum est.  
7 E. 6. cap. 2.  
1 Mar. cap. 10

Queen Mary according to the power given to her for dissolution of

Dier 4 Eliz. 16.  
So resolved by  
all the judges.

of the said court by act of parliament holden the fifth of October in the first yeare of her reigne, did afterwards by her letters patents, bearing date 23 *Januarii* in the same yeare dissolve the said court of augmentations; and the next day following by other letters patents united the same to the exchequer, which was utterly void, because she had dissolved the same before: so as she pursued not her authority.

[ 123 ]

## C A P. XVII.

## The Honourable Court of Chivalry before the Constable and Marshall.

*The stile of the court.*

*The judges.*

43 E. 3. fo. 3.  
See the first part  
of the Institutes.  
sect. 745. many  
other authorities  
cited.

*The name.*

1. part of the  
Institutes, sect.  
102 & 153.

*The place.*

*The jurisdiction.*

Rot. par. 8 R. 2.  
nu. 31. not in  
print. 13 R. 2.  
stat. 1. ca. 2.  
Rot. par. 8 H. 6.  
nu. 38.

\* The judges,  
vide infra.  
1 H. 4. cap. 14.

\* Nota declared.

*The power and jurisdiction.*

ROT. Pat. 12 H. 4. m. This court is called *curia militaris* and rot. parl. 2 H. 6. nu. 9. the marshall court.

The judges of this court are the lord constable of England and the earl marshall of England, and this court is the fountain of the marshall law. And the earl marshall is both one of the judges, and to see execution be done.

*Constable* or *custable* is compounded of two Saxon words, *cuning* per *contractionem* kinge, and *stable*, id est. *columnen*, quasi *columnen regis*, anciently written *cuningstable*. *Marshall* anciently written *marsecalc*, likewise of two Saxon words, viz. *marc* for *equus*, and *stalc* *curator*, quasi *curator equorum*: for the marshall *marischallus*, and the derivation thereof, see the first part of the Institutes, sect. 102. fol. 74. sect. 154. fo. 106. section 745. fo. 391.

This court of chivalry was anciently holden in the kings hall. The jurisdiction is declared by the statute of 13 R. 2. stat. 1.

Because the commons doe make a grievous complaint, that the court of the \* constable and marshall have incroached to them, and daily doe encroach contracts, covenants, trespasses, debts and detinues, and many other actions pleadable at the common law, in great prejudice of the king and of his courts, and to the great grievance and oppression of his people, the king willing to ordain a remedy against the prejudices and grievances aforesaid, hath \* declared in this parliament by the advice and assent of the lords spirituall and temporall the power and jurisdiction of the said constable in the form that followeth.

To the constable it appertaineth to have consufance of contracts and deeds of arms, and of war out of the realm, (1) and also of things that touch war within the realm, which cannot be determined or discussed by the common law, with other usages and customes to the same matters pertaining, which other constables have heretofore duly and reasonably used in their time, joyning to the same that every plaintiff shall declare plainly his matter in his petition afore that any man be sent for to

to answer thereunto. And if any will complain that any plea be commenced before the constable and marshall, that might be tried by the law of the land, the same complainant shall have a privy seal of the king without difficulty directed to the said constable and marshall to surcease in that plea, till it be discussed by the kings counsell, if that matter ought and of right pertaineth to that court, or otherwise to be tried by the common law of the realm of England, and also that they surcease in the mean time.

See the third part of the Institutes, cap. High Treason, pag. 26. Rot. pat. 25 E. 3. parte 1. m. 16. 1 H. 4. between the lord Morly and the earl of Sarum, the record whereof we have seen. Rot. pat. 2 H. 4. parte 1. m. 7. between Kighly and Scroop. Rot. pat. 3 H. 4. Ballethuls case. Rot. Vascon. 9 H. 5. nu. 14. Bullemiers case. Rot. parl. 21 R. 2. nu. 19. &c. Rot. parl. 2 H. 6. nu. 9. Holl. Chron. 424. 3 H. 4. Sir John Annesleys case. See this case Walsing. pa. 237. *Duellum percussum. Ibidem* 8 R. 2. 446. John Walshe case. For this case of Walsh, see Walsing. pa. 311. and Stowes Annals 477. Howes Chron. 8 H. 6. 371. between John Upton and John Down. Vide Stowes Survey of London 385. See this case, rot. pat. 8 H. 6. parte 2. m. 7. Annals 609. Stow. *ibid.* anno 25 H. 6. anno domini 1446. between John Davye and William Catur his master, Annals 655. *ibid.* 386. battell joyned between Thomas Fitz-Thomas prior of Kilman and James Butler earl of Ormond; but when it came to the point the king forbad it. Vide Rot. parl. 2 H. 6. nu. 9. John lord Talbot lieutenant of Ireland accused the earl of Ormond of high treason before the earl of Bedford constable of England in his marshals court, the king did abolish the accusation.

What judgment shall be given when either party is vanquished, see the articles of the duke of Glouc' constable of England about the beginning of the reign of R. 2. The law of arms is, that the appellant being overcome shall incur the same punishment, that the defendant ought to have done if he had vanquished.

See an ancient manuscript in French entituled *Modus faciend' duellum coram rege. Bone foy et droit et ley de arms voet que l'appellant encourage mesme peyne que le defendant devoiroit, sil fait courtois et discomfit.* \* And this seemeth to be consonant to the law of God.

This manuscript treateth both of the jurisdiction and manner of the proceeding before the constable and marshall, and for that it is long, and I doubt not but copies thereof are in many hands, I have not inserted it here.

There are many in forain parts that have written of combats, &c. in Latine, French, and Italian. As Alciat, Lancelottus, Conradus, Johannes de Lignano, Mutio Justino Politano, Berandler, Beutheus, Desdiguieres, &c. to whom we refer the reader, for that it is safe to follow the acts of parliament concerning the jurisdiction of this court, and such presidents as have been before the constable and marshall in the marshals court within this realm.

(1) *Out of the realm.*] This is to be understood in any forain part beyond the seas, in *partibus exteris et transmarinis*. For upon the sea the admirall hath jurisdiction, which admirall (our English

IV. INST.

I.

Neptune)

[ 124 ]

\* Deut. 19. 13. And the judges shall make diligent inquisition, and if the accuser be found false, and that he hath given false witness against his brother, then shall you doe to him, as he had thought to doe to his brother, and thou shalt put evil away from the midst of thee.]

Neptune) cannot meddle with any thing beyond the seas upon the land, and the constable and marshall have no consuance of any thing done upon the sea.

26 H. 8. ca. 13.  
35 H. 8. cap. 2.  
5 E. 6. cap. 11.

Where by these acts it is provided, that all treasons, misprison of treasons, or concealment of treasons committed out of this realm of England, should be inquired of, heard and determined in the kings bench by good and lawful men of the same shire where the said bench shall sit, or else before such commissioners and in such shire, as should be assigned by the kings commission by good and lawful men of the same shire, in like manner and form to all intents and purposes as if such treasons, &c. had been done within the same, &c. None of these acts doth take away the jurisdiction of the constable and marshall, where one accuseth another of high treason done out of the realm: for of such an accusation of one against another of any high treason done out of the realm the constable and marshall should have consuance thereof: because high treason is not triable by jury according to the course of the common laws of the realm in that case for want of proof, as by all the presidents aforesaid it appeareth: Neither doth the said act of 35 H. 8. or 5 E. 6. take away the statute of 28 H. 8. cap. 15. for tryall of treasons done upon the sea, albeit they be done out of the realm. See hereafter cap. 23. and the third part of the Institutes, cap. of Piracy, pa. 111, & 112. and there was no doubt conceived of the triall of them. See the preamble of the statute of 35 H. 8. and of 5 E. 6.

See 1 E. 6. ca. 12.  
& 5 E. 6. ca. 11.  
in the 3 part of  
the Inst. p. 24.

See 5 El. ca. 5.

\* Vid. Regi. 129.  
F. N. B. 114. b.  
Note remedy by  
the common  
law for wrong  
done beyond the  
sea.

† [ 125 ]  
Rot. par. 8 R. 2.  
nu. 31. not  
printed.

Rot. par. 5 R. 2.  
nu. 39. Bennet  
Wilmots case.  
6 H. 7. 5. Simile.

\* Regul. 6 H. 7.  
4. 5.

Breve Vic' Lon-  
don pro lictis &  
barris, &c. pro  
duello fac'.  
Lex armorum.  
Pro duello, &c.  
See the articles  
set down by  
Tho. of Wood-  
stock duke of  
Glouc' constable  
of England,  
about the begin-  
ning of the reign  
of R. 2.

\* If any merchant English be spoiled, or his goods taken from him beyond sea by any merchants strangers, and the English merchant cannot upon suit attain † to justice there, he shall have upon testimony thereof a writ out of the chancery to arrest the merchants strangers if they come into England or their goods, &c. untill they be satisfied. See hereafter the chapter of Admiralty.

Before this act at a parliament holden in the 8 year of R. 2. there was enacted, that no plea which should concern the common law should be tried before the constable and the marshall.

No addition either of persons or of jurisdiction can be added to this court, unlesse it be by act of parliament, \* for ancient courts ought to be exercised according to the ancient and right institution.

In the appeal aforesaid between Upton and Down in 8 H. 6. after battell joyned, the kings writ out of the court of chancery issued to the sheriffs of London, as we find it entred and recorded in the great book of the abby of Bury fo. 87. as followeth.

*Rex vic' London salutem: precipimus vobis firmit' injungentes quod quosdam listas et barras de meremio fortes et satis sufficientes pro quodam duello inter Johannem Upton appellantem et Johannem Down defendentem, secundum legem armorum die Lunæ prox' futur' apud Westsmithfield in suburb' civitatis prædictæ Deo dante perficiend' contra diem prædictum nostris sumptibus et expensis erigi, construi, et fieri fac' in omnibus prout in ultimo duello ibidem facto fact' fuerunt, et quod terra infra listas prædictas cum sabulo sufficiente et equalit' cooperatur, ita quod aliqui lapides grandes aut arena infra easdem listas minime inveniantur quovismodo: et de omnibus et singulis pecuniarum summis quas circa premissa applicaveritis, nos vobis in compoto vestro ad thesaurarium nostrum per*



*per presens mandatum nostrum, debitam allocationem habere faciemus, &c.*

By this writ we observe 4. things. 1. That sheriffs ought to make the lists, &c. 2. The manner how they are to make them. 3. That they ought to make them by the kings writ. 4. That they are to be made at the kings charges.

By the statute of 1 H. 4. all appeals of things done within the realm shall be tried and determined by the good laws of the realm, &c. And that all appeals made of things done out of the realm shall be tried and determined before the constable and marshall of England for the time being, and that no appeal be pursued in parliament.

They proceed according <sup>a</sup> to the customes and usages of that court, and in cases omitted, according <sup>\*</sup> to the civil law, *secundum legem armorum*. And therefore upon attainders before the constable and marshall of England for the time being no land is forfeited, or corruption of blood wrought.

For records, book-cases, and other authorities in law as well for the exposition of the said statutes, as for the jurisdiction and proceedings of this court, <sup>b</sup> see the first part of the Institutes, sect. 102. and 745. and peruse the authorities there cited. See also the petition of right, 3 Car. cap. 1.

It is to be observed that after sentence pronounced in this court of chivalry in case of arms the party grieved may appeal to the king, whereof you may read a notable record, Rot. pat. 13 R. 2. parte 3. Note also a speciall rol, an. 14 R. 2. intituled *rot. process' in curia militari in causa armorum, int' Ric'm le Scoop chivalier, et Robertum Groceuer chivalier*.

And for this cause (amongst others) <sup>c</sup> the heralds are attendants upon this court. Of these heralds there be *tres reges*, viz. *Garter rex armorum, Clareceux \* rex armorum ex parte australi. Norroy rex armorum ex parte boreali, et sex alii heraldi*. These English heralds are messengers of war and peace, skilfull in descents, pedigrees, and armories; they marshall the solemnities at coronations, they manage combats before the constable and marshall, and upon request they solemnize the funerals of noble, honourable, reverend, and worshipfull personages. <sup>a</sup> They were first incorporated by king R. 3. and afterwards newly incorporated by king Philip and queen Mary. Their learning and faithfull dealing in descents and pedigrees upon just proof may be a mean to quiet many controversies about the titles of honors, dignities, and inheritances.

<sup>b</sup> In the Prophet Ezechiel it is thus written: *Dicit dominus deus, et erit manus mea super prophetas, qui vident vana, et divinant mendacium: in concilio populi mei non erunt, et in scriptura domus Israel non scribentur*.

Upon these latter words divines doe hold, *Quod mes erat in Israel, quod unaquæque familia genealogiam ejus scriberet, in qua dinoscebatur*

norem tenens, Latine faciales. 5 E. 4. 6. b. Pl. Com. 12. b. <sup>a</sup> Rot. pat. 1 R. 3. rot. pat. 2 & 3 Ph. and Mar. 18 July: their college is in the parish of S. Bennet in Castle Baward awed granted to the corporation of the heralds by letters patents bearing date 13 July 1555. anno 2 & 3 Ph. and Mar. <sup>b</sup> Ezech. 13. 8, 9. Psalm. 69. *Dilectantur de libro viventium, et cum justis non scribentur.* 1 Eisd. ca. 2. 62. *Ili quæsierunt scripturam genealogiæ suæ et non invenerunt, et ejecti sunt.*

See mod' fac' duction coram. 1 E. 4.

1 H. 4. cap. 14.

Rot. par. 11 H. 4. nu. 24.

<sup>a</sup> 13 H. 4. fo. 4, 5. *By the civil law, &c.* <sup>b</sup> 37 H. 6. fo. 3. Forcible cap. 32. fo. 38.

<sup>b</sup> 11 H. 4. nu. 24. All statutes made touching the courts of the constable and marshall and admiral of England that be observed. Vide rot. par. 5 H. 4. nu. 24. An act not in print touching a commission for arraying and mustering of men, which at this day is of force, and no other. Vide 8 H. 4. n. 12. Clergy exempt out of that. See also 14 E. 3. stat. 2. nu. 53. a commission or lieutenancy. See hereafter amongst the ecclesiastical courts, tit. Appeals. Vid. Glover 82, 83. <sup>c</sup> Saxonice Epahold i. honorem tenens.

*quilibet de qua tribu erat, et de qua familia, et quæ hæreditas ejus esse deberet, et ille qui penitus destrueretur non scriberetur.*

<sup>c</sup> Discharged of subsidies.

<sup>c</sup> These heralds are discharged of subsidies, tols and other charges of the common-wealth, by letters patents of E. 6. anno 3<sup>d</sup> of his reign.

See the first part of the Institutes for degrees, and creations of nobility, and triall thereof, Sect. 9. fo. 16. and Sect. 95. fo. 69. whereunto you may adde a notable writ in <sup>d</sup> the Register, when a baron or any higher degree of nobility is sued in the \* court of common pleas, and proceſſe awarded againſt him by *capias* or *exigent*, then may he ſue out this writ.

<sup>d</sup> Regil. 237. b. F. N. B. 247. c

\* Or in the kings bench or other court.

Nota, pro barone.

Vid. 8 H. 6. 9.

10. 14 H. 6. 2.

lib. 6. fo. 53. b.

<sup>e</sup> Countes de

Rutlands caſe.

*Rex juſticiariis ſuis de banco ſalutem. Mandamus vobis, quod ſi G. T. miles coram vobis ad ſectam alicujus per actionem perſonalem implacitatus exiſſit, talem proceſſum et non alium verſus ipſum in actione prædicta fieri faciatis, qual' verſus dominos, magnates, comites ſive barones regni noſtri Angliæ qui ad parlamentum noſtrum de ſommonitione noſtra venire debent aut eorum aliquem ſecundum legem et conſuetudinem regni noſtri Angliæ fuerit faciend', quia prædict' G. T. unum baronum regni noſtri prædict' ad parlamenta noſtra de ſommonitione regia venientium recordari, &c.*

The barony of Edmond de Eincourt commonly Deincourt of Langley in Lincolnſhire originally created by writ, had long continued in his ſurname, and having no iſſue male, deſirous that his ſurname, arms, and barony, all which he held in fee ſimple might continue, by humble ſuit importuned king E. 2. for that he conceived, *Quod cognomen ſuum et arma poſt mortem ſuum delerentur, et corditer aſſectabat ut poſt mortem ejus in memoria haberentur, ut de maneris et armis ſuis feoffaret quemcunque vluerit*: and in the end he obtained his ſuit by the kings letters patents under the great ſeal, and afterwards about 19 E. 2. he aſſigned according to the kings grant his ſurname, arms, and poſſeſſions. For we find in the cloſe rols that the ſaid Edmond baron of Eincourt ſat in parliament untill and in 18 E. 2. and that after his deceaſe his aſſignee ſat in parliament in 1 E. 3. by the name of William de Eincourt, and in his heirs males the dignity, ſurname, and poſſeſſions continued \* untill 21 H. 6. and then his heir male together with the name and dignity ceaſed.

10 E. 2. Camden Brit. rot. cart. 23 H. 3. nu. 32. 34. Almarick earl of Leic' Math. Par. pag. 647.

\* Inquiſit'

21 H. 6. poſt mortem Wilhelm domini de Eincourt.

Hil. anno 31 El.

And I did hear the baron of Burghley lord treaſurer deputy to the earl of Shrewſbury then earl marſhall of England, in hearing of the cauſe by the queens commandement between Edward Nevil and lady Mary Vane daughter and heir of Henry lord of Aburgavenny for the right of the barony of Aburgavenny, vouch a record in the reign of E. 4. That the lord Hie, who bare for his enſigns of honor quarterly ſilver and ſable, having no iſſue male, by his deed, under his ſeal granted his name, arms and dignity over, but having not the kings licence and warrant, the ſame was in parliament adjudged to be void.

Our heralds are conſtituted by letters patents, and have many ceremonies done unto them at their creation, but thoſe ceremonies are not of the eſſence of their office, but the letters patents only: and ſo was it adjudged in the kings bench in the reign of Queen Eliz. in the caſe of Dethick king of arms. But thus much of heralds upon this occaſion ſhall ſuffice; and now let us return to our conſtable and marſhall.

In ancient laws before the conquest, you shall read *de heretochis* or *heretogis*, i. *ductoribus exercitus*, ab *hepe exercitus* et *tocon*, *ducere*.

*Heretochius* agreeth with either of these great officers, *constabularius* or *marischallus*: *isti vero eligebantur per commune concilium pro communitate regni per provincias et patricos in pleno folk mote*.

This office of the constable of England was afterwards of inheritance by the tenure of the mannors of Harlesfield, Newman, and Whitenhurst by grand serjeanty, in the line of the Bohuns earls of Hereford, and Essex, and afterwards of right in the line of the Staffords and dukes of Buckingham as heirs generall to them: at the last by the opinion of \* all the judges it was lawfully descended to Edward duke of Buckingham, who was attainted of treason, in anno 13 H. 8. whereby this office became forfeited to the crown, and since that time both in respect of the amplitude of the authority both in war and peace, and of the charge, it was never granted to any subject, but now of late *hac vice*.

For the office of the earl marshall, see the first part of the Institutes, sect. 102. & 135.

The effect of the grant of this office of constable of England is in very few words, viz. *officium constabularii Angliæ una cum omnibus feodis, præsidiis, commoditatibus, et emolumentis quibuscunque officio prædicto qualitercunque pertinentibus, et ab antiquo debitis et consuetis*. And by no means we are to follow the irregular president of the grant thereof by king E. 4. in the 7 year of his reign to Richard Wideville earl Rivers and lord of Grafton and De la mote for his life: which patent you shall find rot. pat. anno 7 E. 4. part 1. and is directly against the common law and the statutes concerning the jurisdiction of this office: and therein to over-reach all the good and wholesome laws made for the declaration of the jurisdiction of this great office, power was given to the earl Rivers to have consuance in case of high treason, and other causes and affairs, *que in curia constabularii Angliæ ab antiquo, viz. domini Guilielmi Conquestoris progenitoris regis, seu aliquo tempore citra, tractari, audiri, examinari et decidi consueverunt, seu de jure debuissent sive debent, et diversa alia perferam*. And therefore by no means the same or the like is to be drawn into example.

For grants of this great office of constable of England, see the presidents, and by that which hath been said choose the best. Rot. pat. 1 H. 4. parte 1. *Henrico comiti North pro vita*. Rot. pat. 4 H. 4. parte 2. *Johanni filio regis, ad placitum*. Rot. parl. 1 H. 6. nu 23. *Duci Glouc' ad placitum*. Rot. pat. 1 H. 6. parte 2. *Johanni duci Bedford pro vita*. Rot. pat. 8 H. 6. parte 1. *Richardo duci Eborum in absentia Johannis ducis Bedford*. Rot. pat. 25 H. 6. parte 1. *Johanni vicecom' de bello monte*. Rot. pat. 28 H. 6. parte 2. m. 22. *Henrico com. Northumbr. ad placitum*. Rot. pat. 29 H. 6. parte 1. *Edmundo duci Somerset ad placitum*. Rot. pat. 1 E. 4. parte 3. m. 188. *Johanni com. Wigorn'*. Rot. pat. 7 E. 4. parte 1. *Johanni domino Tiptoft*. Rot. pat. 7 E. 4. *Ubi supra Richardo com' Rivers*. Pat. 8 E. 4. parte 1. Pat. 9 E. 4. *Georgio duci Clarenc'*. Pat. 9 E. 4. parte 2. *Richardo duci Glouc'*. Pat. 10 E. 4. parte. \* *Johanni Tiptoft comiti Wigorn. pro vita*. Pat. 16 E. 4. parte 1. *Ricardo duci Eborum. Henricus Stafford dux Buckingham jure hæreditario*. Pat. 1 R. 3. *Thomas dominus Stanley. Edwardus dux Buck' jure hæreditario*.

This great office hath been usually granted, as by the presidents  
1. 3

Int' legei Edwardi regis.  
Lamb. 136. Hovenden annal. cap. 35. De Heretochis.  
Of ancient time eligible.  
Lambard ubi sup. Hovenden ubi sup.

\* See 11 El.  
Dier 285. fo. resolved in 6 H. 3.

*Ille omnium immansissimus*: but the debts of cruelty are never unpaid, *respice finem*.

aforesaid appeareth, *exercendum per se vel per sufficientes deputatos suos, seu per sufficien' deputatum suum.*

There is also an office of *subconstabularius* granted to Thomas Kent doctor of laws. Pat. 23 H. 6. parte 2. Simile pat. 22 E. 4. m. 2.

There is also *clericus constabularia Angliæ, et promotor causarum et negotiorum regiam maiestatem tangen'*. This office was granted to Thomas Appulton with a fee of five marks. Pat. 8 E. 4. parte 1.

Concerning the grants of the office of earl marshall of England: for this office ever passed by the grants of the king, and never belonged to any subject by reason of tenure, as the stewardship, and constableness of England sometime did.

Ro. Cart.  
20 R. 2. m. 1.  
n. 3.

\* This is the first stile that ever came in any patent.

Ro. Cart. 9 R. 2.  
nu. 17.

*Rex, &c. sciatis quod cum nos nuper de gratia nostra speciali concessimus dilecto consanguineo nostro Thomæ comiti Nottingham officium mareschalli Angliæ: habendum ad totam vitam suam. Nos jam de ulteriori gratia nostra concessimus præfato consanguineo nostro officium prædictum \* una cum nomine et honore comitis mareschalli. Habendum sibi et hæredibus suis masculis de corpore suo excurrentibus cum omnibus feodis, proficiis et pertinentiis quibuscunque dicto officio qualitercunque spectantibus imperpetuum. Huius testibus, &c. Dat' 12 Junii anno regni sui 20.*

This charter of creation is confirmed by act of parliament. The former grant before recited, yet shorter then this, was made anno 9 R. 2.

For other grants of this office in Rot. Cartarum, pat. & parl. See Rot. Cart. 1 Johannis parte 2. nu. 85. Rot. Cart. 9 E. 2. nu. 32.

Vide Rot. Pat. { 1 H. 3. m. 14. 16.  
22 R. 2. parte 1. m. 12.  
1 H. 4. parte 1. & 5. m. 6.  
1 R. 3. parte 1. m. 12.  
1 H. 7. parte 3.  
2 H. 8. parte 2.  
25 H. 8. parte 2.  
1 E. 6. parte 2. m. 19. & 22.  
19 Ja. parte 13. nu. 5.

Vide Rot. Parl. { 3 H. 6. m. 181.  
1 Mariæ, nu. 34.  
1 R. 2. m. 4. & 3.  
20 R. 2. nu. 33.  
Parl. 21 E. 1. rot. 1. *Quæ pertinent ad officium comitis mareschalli, &c.*

Pat. 22 E. 4.  
m. 2.

There was also *vicemareschallus*, which office was granted to Tho. Grey *hac vice*.

Vide *lib. nigr. de scaccario*, concerning the offices of the constable and marshall, *et lib. rubro fo. 36.*

See also the marshall of England, Fleta lib. 2. cap. 4, 5. and Britton in principio libri.

See Mich. 13 E. 2. in *scaccario pro feodis constabularii Angliæ.*

Hil. 5 E. 3. in *scaccario certificatio facti regi pro officio mareschalli.*  
1 E. 3. fo. 16. 2 E. 3. fo. 12. 48 E. 3. 3. Rot. parl. 2 R. 2. nu. 47. 5 R. 2. tit. Triall. 54. Rot. par. 5 H. 4. nu. 39. Keylwey 172. Stanf. Pl. Cor. 65. Fortescue ca. 32. fo. 38. 5 Mar. Br. tit. Battell 15.

*Hereſita* ſignifieth a ſoldier hired and departing without licence, derived of *here*, *exercitus*, and *ſiten*, to depart.

If any ſoldier have covenanted to ſerve the king in his war, and appear not at the time and place-appointed, there lyeth by the common law an original writ of *capias conductos ad proſciſcendum*, directed to two of the kings ſerjeants at arms to arreſt and take him whereſoever he may be found, and to bring him *coram concilio noſtro* with a claufe of aſſiſtance; but of this matter ſee the third part of the Inſtitutes, cap. [Soldiers that depart, &c.] See 3 Car. the petition of right concerning martiall law, and the commiſſion to lieutenants, &c.

Regiſt. fo. 191.2.  
& Pat. 5 E. 3.  
nu. 18.

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To conclude with ſome ſhort touch concerning right of war. *Si quando acceſſeris ad expugnandam civitatem, offeres ei primum pacem*; and ſee there many things concerning right of war. *Quis rex iturus committere bellum adverſus alium regem, non ſedens prius cogitat ſi poſſit cum decem millibus occurrere ei qui cum viginti millibus venit ad ſe, alioquin illo adhuc longe agente legationem mittens rogat ea quæ pacis ſunt.*

Deut. 20. 10. &c.  
Luc. 14. 31.

*Haud facile vincitur qui de ſuis et adverſarii copiis vere poterit judicare. Qui colloquium offert, ſemper pavſeit*, he that offereth parly is ever afraid. *Nulla ſunt meliora conſilia quam quæ ignoraverit adverſarius antequam facias.*

Tactus.  
Vegetius de re  
militari.

*Nullum bellum eſt juſtum niſi aut pro rebus petitis geratur, aut ante denunciatum ſit, et indiſtum.*

Cicero offici.

*Jure gentium non licet indiſtas inimicitias exercere et bellum gerere, priuſquam ille à quo injuria ſit orſa moneatur illicitam injuriam reſarcire, et ab injuria abſistere.*

Camden.

*Juſtum autem bellum eſt quod tria hæc habet, authorem, cauſam, finem.*

Lipſius.

*Semper in prælio hiis maximum periculum, qui maxime timent.*

Saluſt.

*Longa belli præparatio celerem dat victoriam.*

Veget. ut Seneca.

*Ideo ſuſcipienda ſunt bella, ut ſine injuria in pace vivatur.*

Cicero ubi ſup.

*In republica maxime conſervanda ſunt jura belli.*

Ariſt. 10.

\* *Olim veteri lege armorum cives et burgenſes militiam tractare prohibiti fuerunt.*

\* Vid. 24 E. 3.  
tit. coron.

We vouch *Vegetius* for his own honor and worthineſſe, and for that *Fortefcue*, fo. 72. b. citeth him.

## C A P. XVIII.

## The Court of the Marshalsea.

*The name.*

1 part of the Institutes, §. 102. & 135.

*The antiquity and honor.*

4 H. 6. 8. L.

5 E. 4. 229.

*Wherefore it is called the court of the marshalsea.*

FOR the derivation of *marescallus et mareschalcia*, see before in the next preceding chapter of the court of the constable and marshall, that they be derived from two Saxon words which we conceive tendeth much for the proof of the antiquity and honor of our nation, seeing other nations have the same officers and offices; and in respect their name is derived from the language of our ancestors, it is like they took the same from us.

Albeit in this court the steward and marshall of the household are judges, and the steward hath the precedency, yet the court is called the court of marshalsea for three causes. First, he is not only a judge, but seeth that execution (which is the life of the law) be done. Secondly, his office is in force both in time of peace, and in time of war. Thirdly, though the constable hath the precedency of the marshall of England, yet the court holden before them is called the marshall court for the causes aforesaid. See before in the chapter of the constable and marshall, see also rot. par. anno 8 H. 4. nu. 82. that the court of the marshall can hold no plea but such as were holden in the reign of E. 1.

*The jurisdiction of this court is original and ordinary.*

4 H. 6. 1.

For the jurisdiction of this court, and within what precinct, see in my Reports, lib. 10. fo. 68, 69, &c. *Le case del marshalsea*. Lib. 6. fo. 20, 21. Michelbornes case. 7 H. 4. 15. in Calvins case. Lib. 4. fo. 46, 47. Swifts case. See par. 30 E. 1. rot. 2. All inquisitions concerning any citizen of London shall be taken in London.

Hil. 20 R. 2. coram rege rot. 58. Mied.

*Pertinet ad marescallum cur' hic venire fac' juratores super felonis captos cum manuo're in aula regis.*

This court hath his foundation from the common law of England.

W. 1. ca. 26. fees.

This marshall by the statute of W. 1. can take no fee for doing of his office but only of the king, but such fees as latter acts of parliament have given him, he may take. See the third part of the Institutes, cap. Extortion.

For the fees of the marshall of the kings house, and of staffe bearers, and servitors of bills, see the statute of 2 H. 4. cap. 23.

Rot. par. 17 E. 3. nu. 31.

To conclude this chapter with an act of parliament not in print. It is enacted that every person arrested into the marshalsea, may tell his own tale, and that the officers doe not passe the verge. See par. 50 E. 3. nu. 91. 162.

## C A P. XIX.

## The Counting-house of the Kings Household.

*Domus Compotus Hospitii Regis.*

**I**T is commonly called the green cloth, in respect of the green-cloth upon the table, whereat the honourable officers hereafter mentioned do sit, viz. the lord steward, the treasurer of the kings house, the controller of the kings house, the master of the household, the cofferer, and two clerks controllers continually sitting in this counting-house for these purposes. First, for daily taking the accounts for all expences of the said household. Secondly, for making of provisions for the said household, according to the laws and statutes of the realm. Thirdly, for making of payment for the same accordingly. Fourthly, for the good government of the kings servants of household. Fifthly, the cofferer is to pay the wages to the kings servants beneath the staires, and the lord chamberlaine above the stairs of the kings household. Vide 39 Eliz. cap. 7. and he is to account in the exchequer for about 40000 li.

33 H. 8. cap. 12.

See *Fleta de officio thesaurarii hospitii regis, &c.* Habet enim rex alios clericos in hospitio suo, et thesaurar' garderobæ suæ quæ est locus clericis tantum assignatus, quæ in Francia camera clericorum appellatur. Huic enim thesaurario cur' expens' regis et familie suæ committit', q. cum clerico provido sibi associato pro controlatore recordum habet ut in hiis q. officium suum contingunt.

Fleta lib. 2.  
c. 13.  
Thesaurarius.  
Garderobæ.

Officium thes. garderobæ est pecuniam, jocalia ex omnia regi facta recipere et recepta regisque secreta custodire, et de receptis expens' facere rationabiles, expensarumque particulas inbreviare, et de particulis comp' reddere ad scaccarium singulis annis in festo Sanctæ Margarete absque sacro præstando, eo quod de consilio regis est juratus, et unde primo debet distincte et aperte comp' reddere de omnibus recept' separatim per se in uno rotulo. In alio autem rotulo de expens' cotidianis de quibus sen' audiverit comp', simul cum thes. et consocio suo. Item de necessariis expens. in quibus emptiones equorum, caraviæ et plura alia continent'. Item de donis. Item de oblationibus et elemosinis. Item de valliis militum. Item de valliis balistar'. Item de feod' forinsecis. Item de præstit' et accionibus.

Compotum reddere.

De consilio regis  
juratus.  
Modus competi.

Item de expens. garderobæ in quib' emptiones pannorum, pelure, cere spem tele, et hujusmodi comprehenduntur. Item de jocalibus. Item de expens. forinsecis, in quibus diversi cenant' in compot' reddend. Item de nunciis. Item de falconar'.

Thes. autem memoratus convenire debet singulis noctibus sen. hospitii, camerar' controlatorem et clericum eius, coffiarium, mar' aulæ et hospitiar' milites, mar' servientem et duos hospitiar' aulæ et hospitiar' cameræ servientes, assidem ferculorum, pincernam, panetr' pistorem et clericum eorum tam officiorum, q. de expens. dietæ, viz. panis, vini, et cervis. pichiorum, cythararum, salis, fructus, casei et hujusmodi respondet.

Convenire singulis noctibus.  
Coffitarius.

Item

Magistri Cocorum clericus Coquinarius.

*Item duos magistros cocorum, lardenar', polctar', scutellar', falfar' et clericum coquinæ qui de eisdem officiis pro omnibus in eorum præsentia de expens. illius dictæ reddit rationem, quorum omnium præsentia necessaria est. Item cleconfinar', janitor' servientem ad custodiam summar' et carcerarum deputatum et clericum de marescalcia cum marescall' fractore equorum, qui quidem clericus de expens. feni et aven' liere fracture equorum et harnesse pro equis et caveolis ac de vadiis servient' scutiferarum clericorum et garc' respondebit, cuj' inter' est scire tam de hiis qui de novo erunt admitti ad vad' regis, quam de vagantibus et in hiis vadia minuire et augere. Vadia autem absentibus sine speciali præcepto regis nisi obsequio reg' fuerint minime concedunt', præsentia autem coronatoris regis necessaria erit in pleno compoto, compoti auditores super foro frumenti et aven. instruet et edocet qualis' proclamat' in eisdem partibus per quod melius scire possint quot panes obolati fieri debent de quart' frument. quibus omnibus congregatis audire debent expens. et rationabilem compot' illius dietæ.*

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*Marescalli autem de supervenientibus debent inferiori mar' testimonium perhibere. Hostiarius miles hostiariis aliis de numero ferculorum lardenar', coco, camerar', hostiario camer' regis, et sic quibus alii et sic audiat' compotus de tota dieta.*

And then followeth a description of the duties of the severall officers above said, worthy the reading.

Artic. sup. Cart. cap. 2.

The cofferer is in Fleta called *coffarius* of the coffer: because he should have money in his cofer to pay wages, &c. as is afore said. It is enacted by the statute of 28 E. 1. cap. 2. That all purveyours shall account in the \* household, or in the wardrobe. Rot. par. 28 E. 3. nu. 34. no purveyor arrested shall be brought before the councell, &c. but take his remedy by the common law. See the third part of the Institutes, cap. Purveyours.

\* Counting house having the greencloth. Rot. par. 28 E. 3. nu. 34.

\* 36 E. 3. ca. 2, 3, 4, &c.

\* See the statutes concerning purveyours, anno 36 E. 3. cap. 2, 3, 4, 5, 6, &c. But observe that there is left out of the print the pain on the steward, treasurer, controller, and other officers of the household at the kings will, for not executing the statute: which omission hath made those of the greencloth the bolder.

Rot. par. 36 E. 3. nu. 18.

At that parliament it was also enacted, that the kings cariages should be made in as easie manner as might be, and that in the summer, and other times convenient, as in August (which is also left out of the print.) For the kings cariages see Mag. Cart. cap. 21. and the exposition upon the same in the second part of the Institutes.

For the Wardrobe, vide 15 E. 2. rot. per se. 1 E. 4. ca. 1. clerk of the wardrobe, Rot. parl. 7 H. 7. the expences of the kings household and wardrobe. 1 H. 8. an act concerning the great wardrobe. 3 H. 8. the assignment for the kings wardrobe. 39 Eliz. cap. 7. master of the wardrobe, whose office is accountable in the exchequer. See W. 1. cap. 44. what issues the kings justices are to estreat into the wardrobe: more of the wardrobe, Rot. claus. 33 E. 1. m. 3. rot. liberationum, 11 E. 2. m. 4. To conclude, see Rot. claus. 18 E. 4. m. 13. where it appeareth that letters and writings concerning matters of state, which were not fit to be made vulgar, were inrolled in the wardrobe, and not in the chancery, as leagues were and ought to be, as it appeareth in 19 E. 4. 6. And thus much of the wardrobe being mentioned in Fleta.

Vid. infra, cap. 26.

The officers of the counting-house never held plea of any thing.



C A P. XX.

The Court of the Lord Steward, Treasurer, and Controller of the Kings Household, concerning Felony by compassing or Conspiracy to kill the King, or any Lord or other of the Kings Councill, &c.

THEY have jurisdiction by act of parliament, to enquire, heare, and determine the said offence, as particularly and at large appeareth in the third part of the Institutes, cap. Felony, by compassing, or conspiracy to kill the king, &c.

3 H. 7. cap. 14.  
3 part of the Institutes cap. Felony by compassing or conspiracy to kill the king, fo. 67.

C A P. XXI.

The Court of the Lord Steward of the Kings House, or in his Absence of the Treasurer, and Controller of the Kings House, and Steward of the Marshalsea.

THEY have jurisdiction by act of parliament to enquire of, hear, and determine all treasons, misprision of treasons, murders, manslaughter, bloodshed, and other malicious striking, whereby blood shall be shed in any of the palaces and houses of the king, or in any other house where the king in his royall person shall be abiding. And by that act the \* limits and bounds of the kings palaces or house, or the house where the royall person is abiding, are particularly and expressly set forth and described. In this and like cases we refer you to the statute it selfe, for *compendia sunt diffundia*.

33 H. 8. cap. 12.  
See the statute for the triall and manner of proceeding.  
Rastall pl. 124.  
See the third part of the Institutes, cap. Misprision. fol. 229.  
\* Vide 28. ca. 12.

## C A P. XXII.

The Court of the Admiralty proceeding according to the Civill Law.

*Articuli Admiralitatis.*

*Articuli Admiralitatis.*

The articles of the admiralty. The proces and proceedings in this court are in the name of the lord admirall.

The complaint of the lord admirall of England to the kings most excellent majesty against the judges of the realme, concerning prohibitions granted to the court of the admiralty 11 die Febr. penultimo die termini Hilarii, anno 8 Jac. regis: the effect of which complaint was after by his majesties commandement set downe in articles by doctor Duri judge of the admiralty; which are as followeth, with answers to the same by the judges of the realme: which they afterwards confirmed by three kinds of authorities in law.

1. By acts of parliament.
2. By judgements and judiciall proceedings: and lastly, by Book cases.

*The title of the complaint.*

Certain grievances whereof the lord admirall and his officers of the admiralty do especially complain, and desire redresse.

1. *Objection.*

**T**HAT whereas the conuifance of all contracts and other things done upon the sea belongeth to the admirall jurisdiction, the same are made triable at the common law, by supposing the same to have been done in Cheapfide, and such places.

*The answer.*

By the lawes of this realm the court of the admirall hath no conuifance, power, or jurisdiction of any manner of contract, plea, or querele within any county of the realm, either upon the land or the water: but every such contract, plea, or querele, and all other things rising within any county of the realm, either upon the land or the water, and also wreck of the sea ought to be tried, determined, discussed, and remedied by the lawes of the land, and not before, or by the admirall nor his lieutenant in any manner. So as it is not materiall whether the place be upon the water *infra fluxum et refluxum aque*: but whether it be upon any water within any county. Wherefore we acknowledge that of contracts, pleas, and querels made upon the sea, or any part thereof which is not within any county (from whence no triall can be had by twelve men) the admirall hath, and ought to have jurisdiction. And no president can be shewed that any prohibition hath been granted for any contract, plea, or querele concerning any marine cause made or done upon the sea, taking that only to be the sea wherein the admirall hath jurisdiction, which is before by law described to be out of any county. See more of this matter in the answer to the sixth article.

The description and limitation of the (sea) wherein the lord admirall hath jurisdiction.

When

When actions are brought in the admiralty upon bargains and contracts made beyond the seas, wherein the common law cannot administer justice, yet in these cases prohibitions are awarded against the admirall court.

2 *Objection.*

Bargains or contracts made beyond the seas wherein the common law cannot administer justice (which is the effect of this article) do belong to the constable and marshall; for the jurisdiction of the admirall is wholly confined to the sea, which is out of any county. But if any indenture, bond, or other specialty, or any contract be made beyond sea for doing of any act or payment of any money within this realm, or otherwise, wherein the common law can administer justice, and give ordinary remedy; in these case neither the constable and marshall, nor the court of the admiralty hath any jurisdiction. And therefore when this court of the admiralty hath dealt therewith in derogation of the common law, we finde that prohibitions have been granted, as by law they ought.

*The answer.*  
See hereafter in the proofs by judgements and judiciall presidents.

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Whereas time out of minde the admirall court hath used to take stipulations for appearance and performance of the acts and judgements of the same court: it is now affirmed by the judges of the common law, that the admirall court is no court of record, and therefore not able to take such stipulations: and hereupon prohibitions are granted to the utter overthrow of that jurisdiction.

3 *Objection.*

The court of the admiralty proceeding by the civill law is no court of record, and therefore cannot take any such recognisance as a court of record may do. And for taking recognisances against the lawes of the realme, we finde that prohibitions have been granted, as by law they ought. And if an erroneous sentence be given in that court, no writ of error, but an appeale before certain delegates do lye, as it appeareth by the statute of 8 Eliz. *regine*, cap. 5. which proveth that it is no court of record.

*The Answer.*

8 Eliz. cap. 5.

That charter-parties made only to be performed upon the seas are daily withdrawn from that court by prohibitions.

4 *Objection.*

If the charter-party be made within any city, port town, or county of this realm, although it be to be performed either upon the seas, or beyond the seas, yet is the same to be tried and determined by the ordinary course of the common law, and not in the court of the admiralty. And therefore when that court hath incroched upon the common law in that case, the judge of the admiralty and party suing there have been prohibited, and oftentimes the party condemned in great and grievous damages by the laws of the realm.

*The Answer.*

That the clause of *non obstante statuto*, which hath foundation in his majesties prerogative, and is currant in all other grants, yet in the lord admirals patent is said to be of no force to warrant the determination of the causes committed to him in his lordships patent, and so rejected by the judges of the common law.

5 *Objection.*

Without all question the statute of 13 R. 2. cap. 3. 15 R. 2. cap. 5. and 2 H. 4. cap. 11. being statutes declaring the jurisdiction of the court of the admirall, and wherein all the subjects of the realm have interest, cannot be dispensed with by any *non obstante*, and therefore not worthy of any answer: but by colour thereof, the court of the admiralty hath contrary to those acts of parliament incroched upon the jurisdiction of the common law,

*The Answer.*  
13 R. 2. cap. 3.  
15 R. 2. cap. 5.  
2 H. 4. cap. 11.

to the intolerable grievance of the subjects, which hath oftentimes urged them to complain in your majesties courts of ordinary justice at Westm. for their relief in that behalf.

*6 Objection.*

To the end that the admirall jurisdiction may receive all manner of impeachment and interruption, the rivers beneath the first bridges, where it ebbeth and floweth, and the ports and creeks are by the judges of the common law affirmed to be no part of the seas, nor within the admirall jurisdiction: and thereupon prohibitions are usually awarded upon actions depending in that court, for contracts and other things done in those places; notwithstanding that by use and practise time out of mind, the admirall court have had jurisdiction within such ports, creeks, and rivers.

*The Answer.*

The like answer as to the first. And it is further added, that for the death of a man, and of mayhem (in those two cases only) done in great ships, being and hovering in the maine streame only beneath the points of the same rivers nigh to the sea, and no other place of the same rivers, nor in other causes, but in those two only, the admirall hath cognisance. But for all contracts, pleas, and querels made or done upon a river, haven, or creek, within any county of this realm, the admirall without question hath not any jurisdiction, for then he should hold plea of things done within the body of the county, which are triable by verdict of twelve men, and meerly determinable by the common law, and not within the court of the admiralty according to the civil law. For that were to change and alter the laws of the realm in those cases, and make those contracts, pleas, and querels triable by the common laws of the realm to be drawn *ad aliud examen*, and to be sentenced by the judge of the admiralty according to the civil laws. And how dangerous and penall it is for them to deal in these cases, it appeareth by judiciall presidents of former ages. See the answer to the first article.

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*The 7 Objection.*

That the agreement made in *anno domini* 1575, between the judges of the kings bench and the court of the admiralty for the more quiet and certain execution of admirall jurisdiction is not observed as it ought to be.

*The Answer.*

The supposed agreement mentioned in this article hath not as yet been delivered unto us, but having heard the same read over before his majesty (out of a paper not subscribed with the hand of any judge) we answer, that for so much thereof as differeth from these answers, it is against the laws and statutes of this realm: and therefore the judges of the kings bench never assented thereunto, as is pretended, neither doth the phrase thereof agree with the terms of the laws of the realm.

*The 8 Objection.*

Many other grievances there are, which in discussing of these former will easily appear worthy also of reformation.

*The Answer.*

This article is so generall, as no particular answer can be made thereunto, only that it appeareth by that which hath been said, that the lord admirall his officers and ministers principally by colour of the said void *non obstante*, and for want of learned advice have unjustly incroached upon the common laws of this realm, whereof the marvail is the lesse, for that the lord admirall, his lieutenants, officers, and ministers have without all colour incroached and intruded upon a right and prerogative due to the crown, in that they have

have seized, and converted to their own uses goods and chattels of infinite value taken by pirates at sea, and other goods and chattels which in no sort appertain unto his lordship by his letters patents, wherein the said *non obstante* is contained, and for the which he and his officers remain accountable to his majesty. And they now wanting in this blessed time of peace causes appertaining to their naturall jurisdiction, they now inroach upon the jurisdiction of the common-law, lest they should sit idle and reap no profit. And if a greater number of prohibitions (as they affirm) hath been granted since the great benefit of this happy peace, then before in time of hostility, it moveth from their own inroachments upon the jurisdiction of the common law. So as they do not only unjustly inroach, but complain also of the judges of the realm for doing of justice in these cases.

Touching our proceedings in granting of prohibitions concerning any of the said articles, two things are to be considered of. First, the matter; and secondly, the manner. For the matter nothing hath been done therein by your majesties courts at Westminster, but by good warrant of law and former judicall president. And for the manner, we have granted none in the time of vacation, nor in the term time in any of our chambers, nor in the court in the terme time *ex officio*, but upon motion made in open court by learned counsell, and after a day prefixed, and warning given to the adverse party, and upon reading of the libell in open court, and hearing of the counsell learned of such of the parties as were warned and did attend.

The said answers are proved and confirmed (as is aforesaid) by three kind of authorities in law. First, by authority of the high courts of parliament. Secondly, by judgments and judicall presidents. Thirdly, by book-cases, and the authority of our books.

Concerning the acts of parliament: it is enacted by the statute made in 13 R. 2. ca. 5. That the admirals and their deputies shall not meddle from henceforth with any thing done within the realm of England, but only with things done upon the sea, according to that which hath been duly used in the time of the noble king Edward grandfather of king R. 2. By the which it is manifest, that the jurisdiction of the court of admiralty is only confined to things done upon the sea, which the adverse party yielded, but claimeth by a colour of a *non obstante*, &c. which is utterly void, as hath been said.

By the statute of 15 R. 2. cap. 3. it is enacted and declared, That the court of the admirall hath no manner of consufance, power nor jurisdiction of any manner of contract, plea or querell, or of any other thing done or rising within the bodies of the counties, either by land or by water, and also of wreck of the sea, but all such manner of contracts, pleas, and querrels, and all other things rising within the bodies of the counties as well by land as by water, as is aforesaid, and also wreck of the sea shall be tried, terminated, discussed, and remedied by the laws of the land, and not before, nor by the admirall nor his lieutenant in no manner. Nevertheless of the death of a man, and of a mayhem done in great ships, being and hovering in the main stream of the great rivers only beneath the points of the same rivers, and in no other place

1 By acts of parliament.

13 R. 2. cap. 5.

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15 R. 2. ca. 3.

Note, the lord admirall hath greater jurisdiction in case of the death of a man, and mayhem, then in other cases.

of the same rivers, the admiral shall have conuſance. This latter claue giveth the admirall further juřiſdiction in caſe of death and mayhem, (with neither of which we ever medled) but in all other happening within the Thames, or in any other river, port, or water, which are within any county of the realm, (as all rivers and havens be, as hereafter ſhall manifeſtly appear) by expreſſe words of this act of parliament, the admirall or his deputy hath no juřiſdiction at all. Wherein it is to be obſerved, how curious the makers of this ſtatute were to exclude the admirall of all manner of juřiſdiction within any water which lyeth within any county of the realm.

2 H. 4. cap. 11.

The ſtatute of 2 H. 4. cap. 11. enacteth, That the ſaid act of 13 R. 2. cap. 5. be firmly holden and kept, and put in due execution, and further at the prayer of the commons that as touching a pain to be ſet upon the admirall or his lieutenant, that the ſtatute and common law ſhall be holden againſt them, and the party grieved ſhall recover his double dammages. By which act it appeareth, that the ſtatute of 13 R. 2. is but an affirmation of the common law, as ſhall alſo manifeſtly appear hereafter.

Which three acts cannot be diſpenſed withall by a *non obſtante*, as hath been ſaid before, but remain in full force, and hath been put in due execution in all ages.

27 Eliz. cap. 11.

The ſtatute of 27 Eliz. cap. 11. deſcribeth particularly the limits of the lord admirals juřiſdiction in theſe words. All and every ſuch of the ſaid offences before mentioned, as hereafter ſhall be done on the main ſea, or coaſt of the ſea, being no part of the body of any county of this realm, and without the precinct, juřiſdiction and liberty of the cinque ports, and out of any haven or pier, ſhall be tried and determined before the lord admirall, &c. So as by the judgment of the whole parliament the juřiſdiction of the lord admirall is wholly confined to the main ſea, or coaſts of the ſea being no parcell of the body of any county of this realm.

5 Eliz. cap. 5.

And by theſe four acts of parliament all the ſaid objections that have been made, or can be made againſt the proceedings of the kings courts at Weſtminſter (being grounded on the ſame) are fully answered. And we will conclude this firſt part with the ſaying of God himſelfe. Almighty God (as he himſelf out of a whirlwind ſpake) hath ſhut up the ſea within certain dores and bounds, *Quis conſulit oſtiis mare, quando erumpebat, quaſi de vulva procedens: circumdedi illud terminis meis, et poſui veſtem et oſſia, et dixi, Uſque huc venies, et non procedes amplius, et hic confringes tumentes fluctus ejus.*

2. By judgements and judicial preſidents.

Concerning the ſecond kind of proof, viz. by judgments and judicial preſidents, every of them in all ſucceſſions of ages *in ſerie temporis*, taking ſome in every age for many that might be cited.

Regiſt. Origin.  
fo. 129. F. N. B.  
114.

Regiſter Origin. fo. 129. F. N. B. 114. If goods be taken from an Engliſh man in Spain beyond the ſea, and the party cannot obtain juſtice there, he ſhal have a writ to the ſherif to arreſt the body of the offenders, and to ſeiſe of their goods to the value: which proveth that the admirall cannot hold plea thereof, for that the party hath remedy by the common law, and the admirals power is only *ſuper altum mare*.

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Hil. 6 H. 6. ]  
Rot. 303. in  
Banc.

Hil. 6 H. 6. rot. 303. in the court of common pleas between John Burton plaintiff, and Bartholomew Put defendant, the caſe was this upon the ſaid ſtatutes. The ſaid Bartholomew ſued the ſaid

faid John Burton in the admirall court before Thomas duke of Exeter then admirall of England, for that the faid John Burton with force and arms the fecond day of September, anno 1 H. 6. three fhips of the faid Bartholomew with his prifoners and merchandizes to the value of 960 marks, 5 s. 5 d. *cb.* in the fame fhips being vid take and carry away, fupposing by his libell the fame to be taken away, *super altum mare*, upon the high fea. Although the taking aforefaid was *infra corpus comitatus in Briftow* (the faid fhips lying in the haven of Briftow) and not upon the high fea, contrary to the form and effect of the faid statutes; the parties defcended to an iffue, which was found for the plaintiff and damages affeffed for the plaintiff to 700. l. And it appeareth by the record, that this being the firft cafe that we can yet find that received judgment in the court of common pleas upon the faid statutes, the fame depended in advifement and deliberation eight terms: and then the record faith, *Et super hoc audito tam recordo quam veredicto predicto, et per curiam plenius intellect': consideratum est quod præd' Johannes Burton recuperet vers' præfat' Bartholomæum damna sua prædicta occasione attachamenti, prosecutionis, et vexationis, quam misarum et custagiorum ad septingentas libras per juratores præd' superius assessi in duplum per statutum, &c. quæ damna in duplo se extendunt ad mille et 400. l. et idem Barth. penam decem librarum erga dominum regem nunc per idem statut' incurrat, et capiatur, et querens remittit 400. l.* Upon which judgment four things are to be observed. Firft, that it is *contemporanea expositio*, being made within twenty years of the making of one of the faid statutes, and *contemporanea expositio est optima*. Secondly, that albeit the faid three fhips with the prifoners and merchandizes in them lay in the haven, *inter fluxum et refluxum aquæ*, and *infra primos pontes*, yet that the haven is *infra corpus comitatus*, and that for taking of the fhips and the prifoners, and merchandizes in the fame no fuit ought to be in the admirall court, but at the common law. Thirdly, that the court of admiralty hath no jurisdiction but *super altum mare*, which is not within any county, for the record faith, that the faid three fhips with the prifoners and merchandize in the fame, did lye *infra comitat' Briftoliæ, et non super altum mare*, as the plaintiff in the admirall court supposed the fame to be. Lastly, that judgment fo solemnly, and with fuch advifement given, if it were alone, were fufficient to give full fatisfaction in this point: for *judicium est tanquam juris dictum*, and *judicium pro veritate accipitur*. But to proceed.

Pasch. 12 H. 6. rot. 124. a like action brought by Robert Cupper upon the faid statutes in the court of common pleas (reciting the faid three statutes) againft John Rayner of Norwich, for that the faid Rayner did fue the faid Cupper in the court of admiralty before John countee of Huntingdon and Ivery lieutenant to John duke of Bedford admirall of England, for that Rayner having a fhip in *portu aquæ Jernemuthæ infra corpus com' Noiff.* ready for a voyage to Zealand the faid Cupper entered the faid fhip lying in the faid haven, and took away divers goods in the fame being, *afferendo per prædictum placitum res illas super altum mare emerfisse, ac si res illæ super altum mare emerfissent, cum non ibi, sed apud Jernemutham contra formam statutorum præd'*, which alfo proveth that the haven is within the body of the county.

In Portu.

Pasch. 12 H. 6.  
rot. 124. in banc.

In Portu.

In the same terme in the same court a like action between John Widewell and the said John Rayner, rot. 123. which with many others being to one effect we omit.

\* Mich. 31 H. 6. rot. 315. in banc. Hil. 2. Ph. & Mar. rot. 130. Cr. a prohibition upon a charter-party. Hil. 17 Eliz. rot. 410. Cr. Spencers case, and infinite others upon charter-parties.

\*[ 139 ]

\* Mich. 31 H. 6. rot. 315. between William Hore, and Jeffery Unton for a suit in the court of admiralty before Henry duke of Exeter, admirall of England, concerning a contract of fourscore pounds upon a charter-party of affrait of a ship of the said Jeffery called the Trinity of Harflew to goe from the port of Pole \* towards the parts of Iseland, *cum contractus ille apud novam Sarum infra corpus comitatus, et non super altum mare factus et junctus fuit, contra formam statutorum præd.* The defendant pleaded to issue, which was found against him, and dammages assessed to a hundred marks, and costs to forty pound: and thereupon judgment is given by the court, that he should recover his dammages *in dupl.* according to the statute, &c. Which judgment directly proveth, that if a charter-party or any other contract be made within city, town, or county of the realm, though the performance thereof be to be done and performed upon the high sea, yet the admirall hath no jurisdiction, because it may be tried by the common law, as by the said record it appeareth. But where the whole is to be done *super altum mare*, and no part of it *infra corpus comitatus*, the admirall hath jurisdiction.

32 H. 8. ca. 14.

The statute of 32 H. 8. c. 14. concerning freights of ships giveth to the lord admirall or his deputy power to make certificate concerning the ships of aliens in ports, &c. And if the lord admirall or his deputy be not resiant, then it giveth power to the customer and controller, or their deputy to make certificate: but without question this giveth no power to the lord admirall to hold plea of freights of ships more then he had before, no more then it doth to the customer and controller, to whom equall power is given by the act to make certificate concerning the ships of aliens, &c. in the absence of the lord admirall or his deputy, as to the lord admirall or his deputy being present: and yet no man will affirm, that the customer and controller can hold plea of freights.

Mich. 38 H. 6. rot. 36. cr.

Mich. 38 H. 6. rot. 36. cr. A premunire brought by John Cassy esquire, *Qui tam*, &c. against Richard Beuchamp, Thomas Pounce esquires, and others upon the statute of 16 R. 2. for suing *in curia Romana vel alibi*: of matters belonging to the common law. For that the defendant did sue the plaintiff in the admirall court before Henry duke of Exeter, that the said John Cassye did take and carry away certain jewels *super altum mare, ubi idem Johannes Cassye bona illa apud Stratford at. Bowe infra corpus comitatus Midd' et non super altum mare cepit*, which is so evident, and of so dangerous consequence, as no application shall be made thereof.

Book of entries. fo. 23.

In the book of entries fo. 23. tit. Admiralty, it appeareth that the taking of a ship called the Trinity of London lying upon the river at E. in the county of Kent is not *super altum mare*, but *infra corpus comitatus Kentiæ*. And therefore a suit for the taking of that ship lying there in the admirall court before John earl of Huntingdon admirall of England appeareth to be against the said statutes, and yet no question that taking was *infra fluxum et refluxum maris, et infra primos pontes*.

Book of entries. ubi supra.

9 H. 7. A premunire brought for a suit in the admirall court before John earl of Oxford for taking and carrying away *quandam naviculam*



*naviculam apud Horton Key at Southlyn, &c.* supposing the same to be *super altum mare*, where it was *infra corpus comitatus*.

Mich. 16 H. 8. rot. 140. The river of Thames at Belinggate is not within the jurisdiction of the admirall, but *infra corpus comitatus*. Mich. 16 H. 8. rot. 140.

35 H. 8. A prohibition to John Dudley knight, viscount Lisse for holding plea in the court of admiralty for a contract made in *vivo Thamesiæ*, supposing the same to be *super altum mare*, where in truth it was in *vivo Thamesiæ apud B. in com' Essex*, which notwithstanding was *infra fluxum et refluxum aque, et infra primos pontes*. Book of entries, ubi supra.

Hil. 36 H. 8. rot. 38. cr. The like prohibition *inter Wheeler et Warner, eodem termino rot. Inter Tooley et Loxes*, a prohibition for a contract made at Dantike, *in partibus transmarinis*. And in 2 Jac. regis, the whole court of common pleas, because the libell supposed the act to be done *in partibus exteris et transmarinis*, granted a prohibition. Hil. 36 H. 8. rot. 38. cr.

Trin. 38 H. 8. rot. 126. between Crane and Bell a promise made at Dartmouth, that a ship called the Mary Fortune should passe safely without taking and surprising, &c. which ship was after taken by the Spanyards *super altum mare* is not determinable in the court of the admiralty, for that albeit the taking was upon the high sea, yet the promise was made upon the land, whereupon an action doth lye at the common law. Trin. 38 H. 8. rot. 126.

[ 140 ]

Tr. 3 & 4 Ph. and Mar. rot. 709. between Lawrence Mashe-rode, and Richard Wyn, a prohibition out of the court of common pleas to the court of the admiralty, William lord Howard then lord admirall being. Tr. 3 & 4 Ph. & Mar. rot. 709. in banco.

Tr. 3 & 4 Ph. and Mar. rot. 811. the like prohibition granted out of the same court to the court of admiralty between Robert Inne plaintiff, and Roger Garland defendant. Eodem termino rot. 181. in banc.

Hil. 4 & 5 Ph. and Mar. rot. 831. the like prohibition.

Many are the presidents in the reign of the late queen Eliz. in the court of common pleas, the kings bench and exchequer, which we purposely omit, and insist rather upon the more ancient, yet one or two we will remember concerning things happening beyond sea, whereupon an action did lye at the common law agreeable with the president in the reign of H. 8. Hil. 4 & 5 Ph. & M. rot. 831.

Mich. 39 & 40 Eliz. rot. 3158. A prohibition out of the court of common pleas for a suit in the admirall court upon a bill under the parties hand and seal for French crowns, for that the bill was made beyond sea. Mich. 39 & 40 El. rot. 3158.

And Mich. 3 Jac. a prohibition was granted in the like case to the admirall court by the court of eschequer, for Sir John Swinarton having the priviledge of that court for a matter rising beyond the sea. And divers prohibitions granted also in the like case in the kings bench. Mic. 3 Jac. in seaccar.

For causes of actions which are transitory done out of the realm, an action may lye at the common law, but if the cause be criminall or locall done beyond sea, then before the constable and marshall only. See in the chapt. of the Court of the Constable, and Marshall.

Concerning the last manner of proof, viz. by book-cases and authorities of our books. 3. By book cases and authorities in law.

In the Register the most ancient book of the law, fo. F. N. B. fo. 87. I. & 88. F.

Temps E. 1. A-  
vowry 192. in  
communi banc.

In temps E. 1. tit. Avowry 192. a replevyn was brought for the taking of a ship in the coast of Scarborow in the sea, and for carrying the same from thence into the county of N. Mutford the plaintiff counteth of a taking in the coast of Scarborow, which is neither town nor place, out of which a jury may be taken, for that the coast is four miles long, and also of a thing done in the sea, this court hath no consufance, for certain judgement is given thereof to mariners. Berry chief justice of the common place; the king willeth, that the peace be as well kept on the sea, as on the land, and we find that you are come hither by due processe, and therefore ruled him to answer. Out of which four things are to be observed. First, that it is called the sea which is not within any county from whence a jury may come. Secondly, that the sea (being not within any county) is not within the jurisdiction of the court of common pleas, but belongs to the admirall jurisdiction. Thirdly, that when the ship came within the river, then it is confessed to be within the county of Northumberland. Lastly, that when a taking is partly on the sea, and partly in a river, the common law shall have jurisdiction.

8 E. 2. tit. Co-  
ron. 399.

8 E. 2. tit. coron. 399. It is no part of the sea, where one may see what is done of the one part of the water, and of the other, as to see from one land to the other, that the coroner shall exercise his office in this case, and of this the country may have knowledge; whereby it appeareth that things done there are triable by the country (that is, by jury) and consequently not in the admirall court.

43 E. 3.  
Vjd. 5 E. 3. 3.  
tit. Replevin. 41.

43 E. 3. Norff. as the said lord Dier voucheth the record in Mich. 15 & 16 El. saying (*quod vidi*) the case was, that the abbot of Ramley was seised of the mannor of Brancafter in Norf. bordering upon the sea, upon sixty acres of marsh of which mannor the sea did flow and reflow; and yet it was adjudged parcell of the abbots mannor, and by consequence within the body of the county unto the low water mark.

Pasch. 17 El. in  
foccario.

[ 141 ]

And it was adjudged Pasch 17 El. in the exchequer, Diggs being plaintiff, that the land between the flowing and reflowing of the sea belonged to the lord of the mannor adjoyning, as the lord Dier doth there report.

48 E. 3. 3:

48 E. 3. 3. If a mariner makes a covenant with me to serve me in a ship upon the sea, yet *si lower ne soit pay*, it shall be demanded in this court by the common law, *et ne per la ley de mariner*.

46 E. 3. tit. Co-  
nufans 36.

46 E. 3. tit. Conufans 36. An action of trespassse was brought for taking of a ship in the haven of Hull against certain persons; the maior and bailiffes of Hull demanded consufance by the charter of the king granted unto them, that the citizens and burgesfes of Hull should not be impleaded *alibi de aliquibus transgressionibus, conventionibus et contractibus infra burgum, &c. quam infra burgum*. And the conufans was granted; which proveth that the haven of Hull where the ship did ride was *infra burgum de Hull*, and by consequence *infra corpus comitatus*, and determinable by the common law, and not in the admirall court.

7 R. 2. Tres-  
passe in Sta-  
thorn pl. 54.

7 R. 2. tit. *trespasse in Stathorn*, pl. 54. In trespassse for a ship and certain merchandize taken away (which trespassse must of necessity

cessity be alledged in some town and county in some river or haven) the defendant pleaded, that he did take them *in le haut mere* ove les Normans *queux sont enemies le roy*. And it is ruled a good plea, which concurrith with the other books.

7 H. 6. 22. 35. An action lieth at the common law for forestalling, &c. in a port or haven, for that it is *infra corpus comitatus*, and triable by the common law, and by consequence the admirall hath no jurisdiction there.

19 H. 6. 7. The statute doth restraine that the admirall shall not hold plea of any thing rising within any of the counties of the realm, but executions he may make upon the land. And therefore where it is said in 22 Ass. pl. 93. that every water, which flows and refloes, is an arme of the sea, yet it followeth not that the admirall shall have jurisdiction there, unlesse it be out of every county, or else such a place whereof the country cannot take knowledge, as it appeareth in the book of 8 E. 2. before cited. But of this more hereafter.

Fortescue, cap. 32. fo. 38. *Nam si quæ super altum mare extra corpus cuiuslibet comitatus regni illius fiant quæ postmodum in placito coram admirallo Angliæ deducantur per testes, illa juxta legum Angliæ sanctiones terminari debent*, which proveth by expresse words that the jurisdiction of the admirall is confined to the high sea, which is not within any county of the realm.

2 R. 3. fo. 12. *Hibernici sunt sub admirallo Angliæ de re facta super altum mare*, which agreeth with the former, viz. that the jurisdiction of the admirall is *super altum mare*.

Stanford, lib. 1. pl. cor. fo. 51. b. If one be slaine upon any arme of the sea, where a man may see the land of the one part and of the other, the coroner shall inquire of this, and not the admirall, because the country may take consufance of it, and doth vouch the said authority of 8 E. 2. whereupon he concludeth in these words. So this proveth, that by the common law before the statute of 2 H. 4. &c. the admirall had no jurisdiction but upon the high sea, which only authority were sufficient to overrule all the said questions. For hereby appeareth, that the jurisdiction of the admirall is only confined by the common law to the high sea, and agreeth with all the former book cases and acts of parliament.

4 & 5 Ph. and Mar. Dier 159. b. By the libell in the admirall court the cause is supposed to commence *sur le haut mere et infra jurisdictionem del admiralty ubi revera facta fuit in tali loco infra corpus comitatus et non super altum mare*. Whereby it also appeareth, that the lord admirals power is confined to the high sea.

Pasch. 28 Eliz. in the kings bench the case was, that a charter-party by deed indented, was made at Thetford in the county of Norfolk, between Evangelist Constantine of the one party, and Hugh Gynne of the other part, by the which Constantine did covenant with Gynne that a certain ship should saile with merchandizes and goods of Hugh Gynne to Muttrel in Spaine, and there should remain by certain dayes, &c. Upon the breach of which covenant Gynne brought an action of debt of 500 l. upon a clause in the same charter, and alledged the breach of the covenant, for that the ship did not remain at Mutterel in Spaine by so many dayes as were limited by the covenant. Whereupon issue was

taken and tried before Sir Christopher Wray chief justice of England, and found for the plaintife: and in arrest of judgement it was shewed, that this issue did rise out of a place totally and meerly in a forein kingdome out of the realme, from whence no jury of twelve men could come, and therefore the triall was insufficient. But it was adjudged by Sir Christopher Wray, Sir Thomas Gawdy, and the whole court of kings bench after great deliberation that the plaintife should recover 500 li. besides his damages and costs, for that the charter party whereupon the action is brought was made at Thetford within this realme, and that the triall being in the same place where the action was brought was sufficient.

Mich. 30 & 31  
Eliz. coram rege.

And the like case was after adjudged in the same court, Mich. 30 & 31 Eliz. in an action upon the case upon an assumpsit grounded upon an instrument called a policy, commonly made between merchants for assurance of their goods, whereby the undertaker did assume that such a ship should saile from Melcome Regis in the county of Dorset unto Abvile in France safely without violence, &c. and declared that the said ship in sailing towards Abvile, that is to say, in the river of Somme in the realme of France was arrested by the French king, &c. whereupon issue was taken and tried, where the action upon the assumpsit was brought, and againe the validity of the triall newly questioned, and in the end resolved and adjudged as before; which judgement proves, that where part of the contract or other thing is made in any place within any of the counties of the realm, though the performance thereof be upon the high sea, the triall and determination of the whole act belongeth to the common law, and consequently the court of the admiralty ought not to deale therewith.

These answers being delivered to king James, *magna est veritas et prevailuit.*

*The kings prerogative of the sea, &c.*

*The antiquity of the court of admiralty long before the reign of E. 3. in whose days some have dreamed it began.*

Now for the great prerogative and interest that the king of England hath in the seas of England, and for the antiquity of the court of the admiralty of England, and of the name of the admirall, we have seen an ancient and a notable record, intituled, *De superioritate maris Angliæ et jure officii admiralitatis in eodem.* \* So much whereof as we finde in *archivis regis*, we will transcribe *de verbo in verbum*, as it is in the record it self.

\* In archivis in Turri London.

This cause was handled in or about the 22 year of E. 1. as by divers parts of the record it appeareth. Admirall of the sea of England.

Time out of minde.  
Lawes, statutes, and ordinances.

*A vous seigneurs auditors deutes per le rois de Engleterre et de France a redresser les damages faits as gens de lour roialmes et des autres terres subgits a lour seignuries per mer et per terre en temps de pees et de trewes. Monstrent les procurours de prelatz et nobles, et del admirall de la mier d'Engleterre et de cominalties des cities et des villes, et des merchants, mariners, messagiers, et pelerins et des tous autres du dit royaume d'Engleterre et des autres terres subgits a la seignurie du dit roy d'Engleterre et daillours sicome de la marine de Genue, Catalogne, Espagne, Alemaigne, Seland, Hoyland, Frise, Denemarch, et Norway et de plusieurs autres lieux del emper, que come les roys d'Engleterre per raison du dit royaume du temps dont il ny ad memoire du contraire eussent est en paiceable possession de la souveraine seignurie de la mier d'Engleterre et des isles estants en ycele per ordinance et establisement des loiz, estatutz, et defences et des vesseaux autrement garnies*

garnies que vœssaux de merchandise et de seurte prendre et sauue gardes  
 loner en tous cas que mestier serua et par ordinance entre tout manere des  
 gentis taunt d'autre signurie come de leur propre de tous \* aultres faitz neces-  
 saires a la garde de pees, droiture et equitie par elques passants et per  
 souveraigne garde et toute manere de conissance et justice haulte et basse  
 sur les dites lois, estatuts, ordenances et defences, et par tous autres faitz  
 queux a le gouvernement de souveraigne seignurie appartenir purrent es lieux  
 avandits. Et A de B admirall de la dit mier deputy per le roy d'Eng-  
 litere, et tous les aultres admirals par mesme celui roy d'Englitere et ces  
 anceffers iales royes d'Englitere eussent est en paisible possession de la dit  
 souveraigne garde ove la conissance et justice et tous les aultres appurte-  
 nances avanditz forprise en case dappele et de querele fait de eux a leur  
 souveraignes roys d'Englitere de defalte de droit ou de mauvais judgement,  
 et especialment par empeschement metre et justice faire seurte prendre de  
 la pees de tout manere de gentis usants armes en la dit mier ou menans  
 nefs aultrement appareilles ou garnies que nappertient au nief de mar-  
 chants et en tous aultres points en queux homme poit avoir reasnable  
 cause de suspicion vers eux de robbery, ou des aultres mesfaitz. Et come  
 le maistre de nefs du dit roialme d'Englitere en absence des dits admirals  
 eussent este en paisible possession de conuistre et juger des tous faitz en la  
 dite mier entre tous manere de gentis selonc les lois estatuts et les defences,  
 franchises et custumes.

Et come en le primer article de lailliance nadgaires fait entre les  
 dites rois en les traites sur le darreine pees de Paris soient comprises les  
 paroles que sensuient en une sedule annexe a yceste.

Primerment il est traite et accorde entre nous et les messagers et les  
 procurours de juditz en nom des dits roys que yceux roys feroient lun a l'autre  
 desores en avant bons verrois et loyaux amyes et eydans cointre tout  
 homme sauue lesglise de Rome en tiels manere que si aucun ou plusieurs qui-  
 cunques ilz fuissent voloient deponticer, empescher, ou troubler les dits  
 roys en franchises et liberties, privileges es droits, es droitures, ou es  
 custumes de eux et de leur roialmes quils feroient bons et loyaux amys et  
 aydans cointre toute homme que puisse venire et morir a defendre, garder  
 et maintenir les franchises, les liberties, les privileges, les droits, les  
 droitures, et les custumes de susdites, except le dit roy d'Englitere monsieur  
 John duc de Breban en Brabant et ses heires descendus de lui et de la  
 fille le roy Denglitere, et except par le dit nostre seignior le roy de France  
 excellent prince Dubert roy d'Allemagne ses heires roy d'Allemagne, et  
 monsieur Johan counte de Henan en Henan, et que lun ne ferra en con-  
 saille ne en aide ou lautre perde vie, membre, estate ne honnor temporel.  
 Monsieur Reymer Grimbold maistre de la navie du dit roy de France que  
 se dit estre admirall de la dit mier deputy per son seignior avandit pur  
 sa guerre cointre les Flemings apres le dite alliance faite et affirmee cointre  
 le forme et la force de mesme lalliance et l'intention de ceux qui la  
 firent loffice del admirall en la dite mier Denglitere par commission du dit  
 roy de France torseusement emprist et usa un an et plus en pernans le gentis  
 et marchants du roialme d'Englitere et daillours per la dite mier passants  
 oveque leur biens et les gentis ainsi prises livra a la prison de son dit  
 seignior le roy de France leur biens et marchandizes a les rescivoirs per  
 mesme celui roy de France a ceo deputy en les ports de son dit roialme  
 come a luy forfait et acquis fist amener per son judgement et agard, et la  
 prise et detenue des dites gentis ove leur dites biens et marchandises et son  
 dit judgement, et agard sur la forfaiture de eaux et acquist ait justifie  
 devant vous seigneurs auditors en escripts per my l'autorite de sa dite com-  
 mission

De Botertort,  
 admirall of the  
 sea.

Note for the an-  
 tiquity of the  
 admirall of  
 England. The  
 said De Boter-  
 tort was admirall  
 of the sea coast-  
 ing upon Yar-  
 mouth in Nor-  
 folk (right over  
 against France)  
 and of that sta-  
 tion in anno  
 22 E. 1.

The league be-  
 tween E. 1. and  
 the French  
 king.

Margaret the  
 third daughter  
 of E. 1. was  
 married to John  
 the duke of Bra-  
 bant an. dom.  
 1290, & 13 E. 1.  
 Monsieur Raymer  
 Grimbold mas-  
 ter of the French  
 navie.

The admirall of  
England to  
whom the conu-  
sance appertain,  
&c.

*mission sur l'admiralte avantdite per lui ainsi usurpe et per une defense communement fait per le roy d'Engleterre per my son poer selonc la forme de le tiers article de lalliance avantdite qui contient les paroles desuscripts en requerant que de ceo il en fuisse quitz et absolus en grand damage et prejudice du dite roy d'Engleterre et des prelets et nobles et aultres desus-nomes. Purquoy les dits procureurs et les noms de leurs ditz seigneurs a vous seigneurs auditeurs avantditz prient que delivrance derive et hastine des dites gents ovesq; leur biens et marchandises ainsi prises et deteneues faicets estre fait al admirall du dit roy d'Engleterre a qui la consance de ceo apertient de droit scome dessus est dit ainsi quils sans disturbance de vous et d'autre puisse de ceo conoistre et faire ceo que apertient a son office avantdit. Et que le dit monsieur Reymer soit condempne et distreint a faire due satisfaction a tous les dits damages seavant come il purra suffire et en sa defalte son dit seignior le roy de France per que il estoit deputez al dit office, et que apres derive satisfaction faitz as dits damages le dit monsieur Reymer soit si duement punis pur le blemissement de la dite alliance, que la punission de luy soit as aultres exemple pur temps a venir.*

*Item in alio rotulo annexo.*

Admirall of  
England.

*Item, a la fin que venes et consilieres les formes des proces et les letters ordenees per les consailhurs le aiel nostre seignior le roy, &c. especialment a retenir et maintenir le souverain que ses dits auncesters roys d'Engleterre foloyent avoir en la dite nier d'Engleterre quant al amendement declaration et interpretation des loix per eux faites a gouverner tous maneres des gents passants per la dite nier. Et primerement a son admirall et as maistres et mariners des niefs de Cinc ports d'Engleterre, et des autres terres annexes a la corone d'Engleterre emendant a sa armee en la dite nier pur retenir et maintenir la garde des lis avantditz, et la punission de tous faitz al encountre en la nier susdite.*

*Item in alio rotulo de articulis super quibus justitarii domini regis sunt consulendi de anno regni regis E. 3. 12.*

\* E. 1. avus E. 3.

*Item ad finem quod resumatur et continuatur ad subditorum prosecutionem forma procedendi quondam ordinata et inchoata per \* avum domini nostri regis et ejus consilium ad retinendum et conservandum antiquam superioritatem maris Angliæ, et nos officii admiralitatis in eodem quoad corrigendum, interpretandum, declarandum et conservandum leges et statuta per ejus antecessores Angliæ reges dudum ordinata ad conservandum pacem et justitiam inter omnes gentes nationis cujuscunque per mare Angliæ transeuntes, et ad cognoscendum super omnibus in contrarium attemptatis in eodem, et ad puniendum delinquentes et damna passis satisfaciendum. Quæ quidem leges et statuta per dominum Richardum quondam regem Angliæ in reditu suo à terra sancta correctæ fuerunt, interpretata et in insula Oleron publicata et nominata in Gallica lingua. La ley Olyronn.*

R. 1.  
Insula de Olyron  
in Gallia.

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See this charter  
in the epitile to  
the 4 book of  
Reports.

And long before this king Edgar in his charter saith thus: *Mihl concessit propitia divinitas cum Anglorum imperio omnia regna insularum oceani cum suis ferocissimis regibus usque Norwegiam ac maximum partem Hiberniæ*

*Hibernie cum sua nobilissima civitate de Dublin Anglorum regno subjugare, &c.*

We have also found a record in 10 E. 3. in these words.

*Rex dilecto et fideli suo Galfrido de Say admirallo flote sue navium ab ore aque Thameſie verſſ. partes occidentales, ſalutem. Cum nuper vobis per literas noſtras mandaverimus quod vos una cum quibuſdam navibus de quinque portibus noſtris quas de guerra pro obſequio noſtro muniri et parari mandavimus ſupra mare profiſceremini ad obvian. et reſſen. quibusdam galis in diverſis partibus exteris proviſis et hominibus armatis munitis que ad partes domini noſtri ad gravand. nos et gentes noſtras, vel ad partes Scotie in inimicorum noſtrorum ibidem ſuccuſum divertere ut acciperimus proponebant. Et quia jam nobis ab aliquibus eſt relatum quod galee huiusmodi uſque ad numerum viginti et ſex ad partes Britan. et Norman. rriter acceſſerunt et ibidem adhuc ſe tenent ad mala, ut creditur, contra nos et noſtros que poterunt perpetrand. vel ad ſuccurrend. diſtis noſtris, ut prædicitur, inimicis. Nos advertentes quod progenitores noſtri reges Anglie domini maris Anglicani circumquaque et etiam deſenſores contra hoſtium invaſiones ante hæc tempora extiterunt, et plurimum nos tæderet, ſi honor noſter regius in deſenſione huiusmodi noſtris (quod abſit) deperiat temporibus, aut in aliquo minuat, cupientesque huiusmodi periculis auxiliante domino obviare, ac ſalvationi ac deſenſioni regni et populi noſtrorum providere, malitiamque hoſtium noſtrorum reſſenari vobis in fide et ligeancia quibus nobis aſſiſti eſtis, et ſicut de vobis ſpecialiter confiſimus, mandamus firmiter injungendo quod ſtatim viſis præſentibus et abſque ulteriori dilatione naves portuum prædictorum, ac alias naves que jam paratæ exiſtunt ſupra mare teneatis, &c.*

Rot. Scotie  
10 E. 3. m. 16.

And becauſe the reader by this record ſhall diſcern, that of ancient time there were ſeveral admirals (for the wiſdom of thoſe dayes would not truſt one man with ſo great a charge, nor any man to have a certain eſtate in an office of ſo great truſt). I will briefly give the reader ſuch light thereof as I have found of record.

*Rex commiſit Galfrido de Lucy maritimam Anglie cuſtodiend. quamdiu domino regi placuerit, &c.*

Rot. pat. anno  
8 H. 3.

*Rex commiſit Richardo Aquillum marinam regis Norf. et Suff. &c. quamdiu nobis placuerit.*

Rot. pat. anno  
9 H. 3.

*Petrus de Rival capitaneus Picanie habet ad totam vitam ſuam cuſtodiam omnium portuum et totius coſtere marine Anglie, excepto portu de Dover, qui eſt in cuſtodia Huberti de Burgo.*

Rot. Car.  
15 H. 3.

*Willielmus de Leybourne conſtituitur capitaneus nautarum et marinarum de regno et poteſtatis regis, quamdiu regi placuerit.*

Rot. Vaſcon.  
22 E. 1. m. 8.

*Willielmus de Leybourne admiralus Anglie.*

Rot. par. 23 E. 1.  
2 parte pat. anno  
25 E. 1. m. 14.  
Clauf. in Dorſ.  
m. 18.

*Willielmus de Leybourne capitaneus marinariorum, &c.*

To let you know what we have obſerved in thoſe times: there were alſo two other, the one had the government of all the fleet from the mouth of the Thames weſtward, and the other from the mouth of the Thames northward.

*Johannes Botetort cuſtos regis portuum maritimarum verſus partes boreales. 25 Martii.*

1 parte pat.  
25 E. 1. m. 9.

*Nicholaus Kyriell conſtituitur admiralus flote omnium navium ab ore aque Thameſis tam quinque portuum, quam aliorum portuum et locorum per coſteram maris verſus partes occidentales, quamdiu regi placuerit. Teſte rege apud Turrin London 8 Decembris.*

1 parte pat.  
10 E. 2.

Claus. 15 E. 2.  
pat. 15 E. 2.  
Teste rege apud  
Ebor. 19 Maii.

*Robertus de Leyboin admirallus quarundam navium regis sup' mare occidentali.*

*Robertus Battayli admirallus flote navium ab ore aque Thamefis de singulis portubus versus austrum.*

*Johannes Perbrome constituitur capitaneus, et admirallus flote navium magnæ Gerevnihe et omnium aliorum locorum ab ore aque Thamefis per cofteram maris versus partes boreales, quanuliu, &c. Teste rege apud Stanf. 21 Aprilis.*

1 parte pat. anno  
1 E. 3. m. 21.

*Warroffus de Valloignes constituitur capitaneus et admirallus flote navium ab ore aque Thamefis tam quinque portuum quam aliorum portuum et locorum per cofteram maris versus partes occidentales, quamdiu, &c. ut supra.*

2 parte claus.  
12 E. 3. in Dorf.

*Petrus Bard admiralus navium ab ore aque Thamefis versus partes occidentales. 18 Augusti.*

*Thomas de Drayten admirallus ab ore aque Thamefis versus partes boreales. 18 Augusti.*

And so in the reigns of R. 2. H. 4. H. 5. H. 6. But in these and in former times there was a great admiral of England, vid. supra pa. 142, 143, 144.

Rot. pat. anno  
14 H. 6. 25 Oct.  
18 E. 4.

The king did by charter constitute John Holland duke of Exeter and Henry his son to be *admirallos Angliæ, Hiberniæ, et Aquitaniæ, pro termino vite.*

This charter being of a judiciall office and granted to two, we hold to be void: for such ancient offices must be granted as they formerly have been. This duke is he that is mentioned in the former records, who being a great peer of the realm endeavoured to inroach upon the common law, but the subjects by course of law were defended and recompensed.

Rot. parl. 7 H. 4.  
nu. 19, 20. &c.  
26. & 142.  
9 H. 4. nu. 19.

The merchants, mariners, and owners of ships undertook the safeguard of the seas for the subsidies of tunnage and poundage, &c. and that merchants should name two persons, the one for the south part, the other for the north part, who by commission should have the like power as other admirals have had touching the same.

### *Addition of some Records of Parliament.*

11 H. 4. nu. 24.  
Rot. par. 17 R. 2.  
48. 4 H. 4.  
nu. 47. 11 H. 4.  
nu. 61.

All statutes made concerning the court of the admiral shall be observed.

Sundry towns of the west part prayen remedy against the officers of the admiralty for holding plea of matters determinable by the common law, the which they pray may be revoked: the kings answer was, The chancelor by the advice of the justices upon hearing of the matter shall remit the matter to the common law, and grant a prohibition.

7 R. 2. nu. 14.

The earl of Northumberland admiral of the north, and the earl of Devon' admiral of the west, to receive the subsidy of tunnage and poundage; and to keep the seas.

### *Addition of Books.*

1 part Instit.  
§ 459. & 677.  
14 H. 4. fol. 11.

See the first part of the Institutes, sect. 459. and sect. 677. where Littleton speaketh of a man out of the realm, or beyond sea;



sea, and adde thereunto the notable case in Mich. 11 H. 4. fo. 11. pl. 85. Sovingles case, the defendant in an appeal of death being outlawed, brought his writ of error, and assigned for error, that at the time of the outlawry, and before, he was in the kings service upon the sea in the company of the lord Berkley then admirall, and had a writ unto him to certifie.

Lord Berkeley  
admirall.

6 R. 2. tit. Protection 46. 7 R. 2. tit. Trespasse Statham. 10 H. 7. fol. 7. a. Vide 18 H. 6. nu. 52. where the owner of a ship shall answer for hurt done by his ship, though he be not party thereunto.

Vid. Lacies case, Cr. 25 El. li. 2. fo. 93. Vid. li. 5. fo. 106, 107. and 108. Sir Henry Constables case. Lib. 6. fo. 47. Dowdales case, Brook, tit. Error 177.

See certain statutes, viz. 27 E. 3. cap. 13. Stat. Staple. 31 H. 6. cap. 4. 2 R. 3. cap. 6. 28 H. 8. cap. 16.

It appeareth by the former records, that the admiralty is sometime called *admiralitas*, sometime *admirallatus*, and sometime by other names, as *admirallus*, *capitaneus* or *custos maris*, or *marinæ*, or *maritaniæ*, or *flotæ navium*, that is, of the navy floating on the sea. *Ley marine*, *ley des mariners*.

The name.

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The officer is called admirall indifferently both in English and in French. We name him in Latin *admirallus*, and the court *curia admiralitatis*, derived of *amir*, *id est*, *præfektus*, et *ἀνδρὶς* i. *marinus*, *præfektus marinus*, *admiralius*, *admirallus*, *admiralli curia res maritimas tractat*: in hac numerantur *admirallus Angliæ*, *locum tenens et judex*, *scribæ duo*, *serviens curiæ viceadmiralli Angliæ*.

Camden.

*Hæda* or *hitha*, i. *portus* a haven, as Queen-hithe, Lamb-hithe, &c. *Hafne courts*, now haven or port courts, *hable*, i. *portus*.

To conclude, the king of Englands navy doth excell the shipping of all other forain kings and princes: for if you respect beautifull statelineffe, or stately beauty, they are so many large and spacious kingly and princely palaces. If you regard strength and defence, they are so many moving impregnable castles, and barbicans, and were teamed of old the wals of the realm. When our English navy is among the ships of other nations, it is like lions *inter pecora campi*, and like a falkon *inter phasianos*, *perdices*, et *alia volatilia timida cali*.

Besides, no part of the world have such timber for building and reparing of ships as our king hath.

## C A P. XXIII.

The Court of the Commission under the Great  
Seal by Force of the Statute of 28 H. 8.  
cap. 15.

28 H. 8. cap. 15.

*The commissioners.*

THIS court must be holden *coram admirallo Angliæ, seu ejus locum tenente*, and 3 or 4 such other substantiall persons, as shall be named by the lord chancellor for the time being.

*The jurisdiction.*

Their jurisdiction is to hear and determine all treasons, felonies; robberies, murders, and confederacies committed or done upon the sea, &c.

*To be heard and determined by the common law.*

These offences shall be heard and determined according to the course of the common law, and therefore some of the judges of the realm are ever in this commission.

See the 3 part of the Instit. cap. Piracy. pa. 111, 112. &c.

Concerning the mischief that was before the making of this statute, and how the said act hath been formerly expounded, you may read plentifull matter in the third part of the Institutes, cap. Piracy.

The proceſſe and proceedings herein are in the name of the king: see before cap. Chivalry, p. 124. that the statute of 35 H. 8. cap. 2. nor that of 5 E. 6. c. 11. taketh not away this act of 28 H. 8. concerning treasons; Note, that in all the commissions granted for the execution of this act of 28 H. 8. since the said acts of 35 H. 8. 5 E. 6. power and authority is given to hear and determine all treasons, &c. done upon the sea.

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## C A P. XXIV.

Of Port-mootes, *alias* Port Courts, *alias* Port-mote Courtes.

A Portmote is a court kept in haven towns, or ports, and thereof taketh his name *curia portus*, &c.

*Portus est locus in quo exportantur et importantur merces, a portando.* And they are *portæ regni* the \* gates of the realm, \* *Hitha* and *heda* often in Domesday is taken for a haven or port, anciently written *hafne* and now haven, by changing the *f* into *v* as is usuall.

Every haven is within the body of the county, &c. whereof see before plentifull matter in the chapter of the court of the admiralty proceeding according to the civil law. See 43 Eliz. cap. 15.

\* See in the chapt. of the Courts of the Forest.

² Hereof cometh in London Queenhithe, and in Lambith Lamouthæ, &c.

C A P. XXV.

The Power and Authority of Commissioners and others for the maintaining and erecting of Beacons, Signes of the Sea, or Light-houses, and Sea-marks, and concerning Watches.

See the 3. part of the Inst. cap. Buildings, p. 204.

**B**EACON, this word is derived of the Saxon word *beacon*, i. *speculum*, unde *speculantur adventus hostium*, and is often called *signum speculatum*, and *bechan* in the Saxon language is *signum dare*, and we use the word to becken to at this day.

*Beacon.*

Before the reign of E. 3. there were but stacks of wood set upon high places, which were fired when the coming of enemies were desired, but in his reign pitch boxes, as now they be, were in stead of those stacks of wood set up, and this properly is a beacon.

Light-houses, *ignes speculatorii, seu monitorii, seu lumen maritimum, seu \* pharus, unde versus,*

*Ligbt-houses.*

*Lumina noctivagæ tollit pharus æmula lunæ.*

\* ἀπο τῆ φάρῳ, id est, lucidum.

These light-houses are properly to direct seafaring men in the night when they cannot see marks, and these are also *signa speculatoria*.

Sea-marks, as steeples, churches, castles, trees, and such like for direction of seafaring men in the day time, and these are called *signa marina*, or *speculatoria*, or *signa nautis*, whereof Virgill 5 Eneids.

*Sea-marks.*

*Hic viridem Æneas frondenti ex ilice metam*

*Constituit \* signum nautis pater, unde reverti*

*Sciverit, et longos ubi circumsteteret cursus, &c.*

\* Id est insignium.

So as you may divide *specula* or *signa speculatoria*, or *signa nautis* into three branches, viz. into beacons, light-houses, and sea-marks.

At the common law none but the king only could erect any of these three, which ever was done by the kings commission under the great seal, as taking some few examples for many.

*De signis super montes per ignem faciend'.*

*De signis super montes faciend'.*

*Rex assignavit a Henricum Epu. Norwic' et b Willielmum comitem Suff. et alios, &c. (inter alia) ad signa speculatoria super montes in com' Norf. ponend'. Et similes commissiones in aliis comitatibus.*

*Vide Rot. clauf. 1 R. 2. m. 41. in dors' pro vigiliis et ignibus speculatoriis, et monitoriis.*

He that is desirous to see more of beacons, &c. and watching of the same, let him read the *c* act of 5 H. 4. which is an act of parliament, and Dors' pat. anno 28 H. 6. parte 2. m. 21. in com' Kanc' et memb. 13. pro com' Norf. pro signis, anglice beacons, et vigiliis. Et Dors' pat. anno 1 E. 4. parte 3. &c.

But of latter times by the letters patents granted to the lord admiral

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Rot. Scotie.

10 E. 3.

Rot. Clauf. Vasc'

10 E. 3.

Rot. Franc'

47 E. 3. m. 20.

a Henricum

Spencer, he of a soldier became a bishop.

b William Ufford comes Suff.

c Rot. par. 5 H. 4.

nu. 24. not in print worthy to be read.

mirall he hath power to erect beacons, seamarks, and signs for the sea. &c.

8 Eliz. cap. 13.

By the act of 8 Eliz. it is provided and enacted, That the master, wardens and assistants of the Trinity house of Deptford strond (a company of the chiefest and most expert masters and governors of ships) shall and may lawfully from time to time at their will and pleasure, and at their costs, make, erect, and set up such and so many beacons, marks, and signs for the sea in the sea-shoars, and uplands neer the sea coasts, or forelands of the sea only for seamarks, as to them shall seem most meet, whereby the dangers may be avoided, and ships the better come to their ports. And all such beacons, marks and signs so by them to be erected shall be continued, renewed and maintained from time to time at the costs and charges of the said master, wardens and assistants. An excellent law, that this power and authority was given to them which had greatest skill, seeing they were works for the safety of the realm, and safeguard of the lives of seafaring men, and that these works should be erected, and made, and continued by them at their own costs and charges, because they knew to goe the nearest way.

Pasch. 1 Jac. It was resolved by the two chief justices, attorney, and solicitor, that this act extended as well to light-houses in the night, as to beacons, &c. by the day.

*Beconagium* signifieth money due or payable for the maintenance of beacons, or the watching of the same. What punishment they incur which take down, sell, or otherwise cut down any seamarks, see the said act of 8 El. *ubi supra*, wherein it is to be observed, that if the person offending be not able to pay the penalty therein inflicted, he shall be deemed convict of outlawry, *ipso facto*, to all constructions and purposes: the like whereof we have not observed in any other statute.

Convict of out-lawry.

*Wardwite*, aliàs *wardwite*, or *ward penny*, to be free from contribution of money to watches and wards.

We have out of an ancient manuscript transcribed this ordination that followeth, which in the county of Norf. hath been ever observed, and it is very probable, that the like hath been done by like authority in other maritime counties.

Norf.

*Ordinatio pro vigill' observand' in com' prædict' à Lynne usque Yermouth.*

Robertus de Monte alto and Tho. de Bardolfe sat in parliament, 14 E. 2. as barons of the realm, as appeareth in the parliament rolls.

\* 5 H. 4. cap. 3. Watches to be made upon the sea coast by the number of the people, in the places, and in manner and form as they were wont to be.

*Hæc igitur autoritate mandati nos Robert de Monte alto et Thomas de Bardolfe mandamus vic' Norf. quod venire faciat coram nobis apud Norwic' die Mercurii in fest' decollationis Sancti Johannis Baptiste prox' futur' omnes milites, omnes capit' constabul' hundred', et constabul' vill' et duos homines de discretis' cuiuslibet villæ ubi portus vel applicat' navium in balliva sua tam infra libertat' quam extra in com' prædict' ad consulend', formand', auxiliand' qualiter et quomodo dict' custod' securius pro salvatione partium illarum fieri possit, et ad faciend' quod ex parte dom. regis super præmissis injungitur. Ad quem diem nos dict' Robert' et Thomas personaliter accessimus ibidem, ac milit', capit' constabul' hundred', constabul' vill' cum omnibus hominibus vill' ubi applicat' navium exist' de portu Lynne et de portu Yarmouth coram nobis ibidem compar', et asseruerunt, quod valde necesse esset pro salvat' totius patriæ quod vigill' fiant in 4 locis periculosis sicut \* antiquo more fieri solebant juxta mare. Et quod omnes homines corpor' valid' de com' Norf. contribuend' ad ill' faciend', per quod ordinat'*

*ordinat' et consens' eorum concordat' est quod duæ vigill' per sex homines de corpore potenti tam per dies quam per noctes fieri in hundred' de Freebrigge, viz. apud Wolvexton, et apud Clencherne, eo quod dict' hundred jung' se mari à Wilsbiche usque Dersingham per 14 leucas. Et quod quilibet vigilans capiet per diem et per noctem pro vallis suis 3 d. Et quod hundred de Clackclose adjung' eidem hundred' de Freebrigge ad contribuend' ad vigill' illa faciend' viz. pro qualibet septiman' 4 s. 6 d. et idem hundred. de Freebrigge 6 s. pro septiman'. Et sciend' est 77. vill. continentur in dict' hundredo que assignantur ad dict' vigill' faciend.*

Freebrigge.

Clackclose.

Smythdon.

Southgrenhoe.  
Laundiche.

*Fiat etiam una vigill' apud Southlynn in Clychern, &c.*  
*Item quod una vigill' fiet in hundred' de Smythdon apud Thornham per sex homines, eo quod dictum hundred' jungit se mari de Dersingham usque Deepedale fenn per 12 leucas. Et quod hundred de Southgrenhoe et Laundiche adjung' eidem hundred' de Smythdon ad contribuend' ad vigill' ill' faciend', viz. hundredo de Southgrenhoe 3 s. 6 d. per septiman' et hundred. de Landliche 4 s. per septiman', et hundred. de Smythdon 3 s. Et continent' in dict' hundred' 79. vill' ad vigill' illa faciend.*

Gallow.

Brothercroffe.

*Et fiat una vigill' in hundred' de Gallowe apud Burnham per 4. homines, eo quod dict' hundred. jungit se mari de Deepedale usque Holkham per 3. leucas. Et hundred. de Brothercroffe adjungit' eidem hund' ad contribuend. ad vigill' ill' faciend', viz. hundred' de Brothercroffe 3 s. per septim' et idem hundred. de Gallowe 4 s. per septim'. Et sciend' est 45. vill' sunt in dict' hundred' ad vigill' illa faciend.*

Northgrenhoe.

Weyland.  
Giltcroffe.  
Grimshoe.  
Ertham.

*Item fiet un' vigill' in hundred' de Northgrenhoe apud Holkham per 6. homines, eo quod dict' hundred' jungit se mari, a Holkham usque Marston per 6. leucas. Et hundred' de Weyland, Giltcroffe, Grimshoe, et Ertham adjung' eidem hundred' ad contribuend' ad vigill' illa faciend', viz. Weyland 2 s. per septim', Grimshoe 2 s. per septim', Giltcroffe 2 s. per septim', et Ertham 2 s. per septim', et idem hundred' de Northgrenhoe 2 s. per septim'. Et sciend' est quod 76 vill' sunt in dict' hundred' ad vigill' ill' faciend.*

Holt.

Eynsford.  
Hemsted.

*Item fiet unum vigill' in hundred' de Holt apud Wabern per sex homines, eo quod dict' hundred' jungit se mari à Marston usque Sheringham per 7 leucas. Et hundred. de Eynsford et Hemsted adjung' eidem hundred de Holt ad contribuend' ad vigill' faciend', viz. Eynsford 4 s. per septim', Hemsted 3 s. 6 d. per septim' et idem hundred' de Holt 3 s. per sept. et sciend. est quod 70 vill. sunt in dict' hundred' ad vigill' ill' faciend.*

Northerpingham.

Southerpingham.  
Mitford.

*Item fiet unum vigill' in hundred. de Northerpingham in duobus locis, viz. apud Ronton et Timmingham per 5 homines, eo quod dict' hundred. jung se mari à Sheringham usque Munstye becke per decem leucas, et hundred. de Sautherpingham et Mitford cum vill. infra libert' adjung. eidem hundred. ad vigill' illa facienda, viz. Southerpingham 6 s. 8 d. per sept. Mitford 3 s. 6 d. per sept. et Northerpingham 12 s. 6 d. per sept. Et sciend' est quod 77. vill' sunt in hundred. præd. ad vigill. ill. faciend.*

Tunstead.  
Humbleyard.  
Fowrehoe.

*Item fiet unum vigill. in hundred. de Tunstead apud Bastwick per sex homines, eo quod dict' hundred' jungit se mari à Munstey usque Walcote per 4 leucas. Et hundred. de Humbleyard et Fowrehoe adjung. eidem hundred. ad contribuend. ad vigil. ill. faciend', viz. Humbleyard 3 s. per sept. Fowrehoe 3 s. per sept. et Tunstead 4 s. 6 d. per sept. et sciend. est quod 76 vill. sunt in dict' hund. ad vigil. ill. faciend.*

Happing.

*Item fiet unum vigil. in hundred. de Happing in duobus locis, viz. apud Happisborough per 4 homines et apud Wasturham per 4 homines, eo quod dict' hundred.*

*dict. hund. jungit se mari à Walcote usque Wimbesdele in loco periculoso per 6. leucas. Et hundred. de Taverham, Depwade, Shropham et Disse adjung. eidem hund. de Happing ad contribuend. ad vigil. ill. faciend. viz. hund. de Taverham 2 s. per sept. Depwade 3 s. per sept. Shropham 5 s. per septim. et Disse 2 s. per sept. et dict. hund. de Happing 2 s. per sept. Et sciend. est quod 60. vill. sunt in hund. prædict. ad vigil. ill. faciend.*

Eastflegge.  
Westflegge.

Walsham.  
Blowfeild.  
Loddon.  
Clavering.

*Item fiet unum vigil. in hund. de Eastflegge et Westflegge in tribus locis, viz. apud Winterton per 6 homines, apud Saltwos haven per sex homines, et apud Fordham per sex homines, eo quod dict. hund. jungit se mari à Wykelock usque Buntton in Misford in loco periculoso per 7 leucas. Et hund. de Walsham, Blowfeild, Loddon, et Clavering adjung. eidem hund. ad contribuend. ad vigill. illa faciend. viz. Walsham 4 s. 6 d. per sept. Blowfeild 4 s. 6 d. per sept. Loddon 5 s. 6 d. per sept. Clavering 5 s. 6 d. per sept. Westflegg 2 s. per sept. Eastflegg 2 s. per sept. Et sciendum est quod 102 vill. sunt. in dict. hund. ad vigil. ill. faciend.*

Signa.  
Fierbares.

*Præcept. est omnibus capital. constabul. de hund. adjung. mari in locis prædict. in forma prædicta hac instant. die dominica prox. futur. et similiter præcept. est eidem capital. constabul. et omnibus aliis subconstabul. hundred. totius com. quod sine dilatione levare et reparari fac. signa et fierbares super mont. altior. in quolibet hund. ita quod tota patria per illa signa quotiescunque necesse fuit premuniri posset, et quod ipse constabul. capital. per avizam. constabul. villarum et aliorum proborum hominum agist. fac. fideliter denar. pro vad. vigil. in hundred. prædict. instant. quod. ordinat. solvend. de septimana in septim. ita quod de fest. in vigil. prædict. nullo modo inveniantur per eorum defect. et similiter quod omnes qui agist. sunt ad arma et potent. ad portanda arma, et omnes illi qui loco potent. ad arma sua portanda assignat. sint providi et parati sint indices nocte ad veniend. solemniter distinct. et aperte in present. domini Walteri de Norwic. episcopi juxta nos assiden. ibidem cur. \* cācar. totius com. Norf. coram nobis vn. fecimus proclamar. Et similiter præcept. est vic. quod levare. fac. denar. agist. in hundred. prædict. pro costis et vad. præd. solvend.*

\* Vigiliarium.

For watches, and against night-walkers, see the statute of Winch. 13 E. 1. cap. 4. 5 E. 3. cap. 14. Vid. 5 H. 7. 5.

Vide Lamb. inter leges Edovardi regis, fo. 136. b. et inter leges Wilhelmii regis, fo. 125. a.

Dorf. Clauf.  
8 H. 4. m. 8.  
& 10.

Quod homines de Larkesfeld, Filbarow street, Newchurch, et Worth in com' Kane' tenentur facere vigilias in Romney Marsh.

## C A P. XXVI.

*De Conservatore seu Custode Treugarum, i. Induciarum et salvorum Regis Conductuum,*

And incidently of the Office, Authority, and Priviledge of Ambassadours; and of Leagues, Treaties, and Truces.

**B**y the statute of 2 H. 5. robbery, spoyling, breaking of truces, and safe conducts by any of the kings liege people and subjects within England, Ireland, and Wales, or upon the main sea, was adjudged and determined to be high treason: but this branch concerning high treason is repealed by the statute of 20 H. 6. But by the said act of 2 H. 5. for the better observation of truces and safe conducts, *conservator induciarum et salvorum regis conductuum* was raised, and appointed in every port of the sea by letters patents: his office was to enquire of all offences done against the kings truces and safe conducts upon the main sea (out of the counties, and out of the liberties of the cinque-ports) as admirals, of customs, were wont.

It concerneth the jurisdiction of divers courts, and especially of the said court before mentioned upon the said statute of 28 H. 8. and of the court of the admiralty, to know the rights of leagues and ambassadours, as far as the lawes of England extend unto, for of them we will only treat.

All leagues or safe conducts are, or ought to be of record, that is, they ought to be inrolled in the chancery to the end the subject may know, who be in amity with the king, and who be not: who be enemies, and can have no action here; and who in league, and may have actions personall here. \* In all treaties, the power of the one party and the other ought to be equall.

A league may be broken by leavying of war, or by ambassadour or herall.

Bryan held opinion in 19 E. 4. *ubi supra*, that if all the subjects of England would make war with a king in league with the king of England without the assent of the king of England that such a war was no breach of the league. See the statute of 2 H. 5. cap. 6. in the preamble.

In the duke of Norf. case Hil. 14 Eliz. the question was, whether the lord Herise and other subjects of the king of Scots, that without his assent had wasted and burnt divers towns in England, and proclaimed enemies, were enemies in law within the statute of 25 E. 3. the league being between the king and the Scot: and resolved that they were enemies.

And in the bishop of Rosses case, ann. 13 Eliz. the question being, *An legatus, qui rebellionem contra principem ad quem legatus concitat,* Hil. 13. Eliz.

IV. Inst.

N

legati

2 H. 5. ca. 6.  
stat. 1.

20 H. 6. cap. 11.

19 E. 4. 6. 5.  
18 H. 6. cap. 4  
20 H. 6. cap. 1.  
Vide supra.  
p. 132.  
\* Regula.19 E. 4. *ubi supra*. See the third part of the Instit.  
cap. Treason.  
verbi. Le. 220.  
2 H. 5. cap. 6.  
Hil. 14 Eliz.

*legati privilegiis gaudeat, et non ut hostis pœnis subiaceat.* And it was resolved that he had lost the privilege of an ambassador, and was subject to punishment.

Hil. 12 Jac.

Samuel Palache affirming himselfe to be the subject and ambassador of Mula Sedan king of Morocco to the states of the United Provinces, to treat and negotiate with them of divers matters between them; and they of the United Provinces having accepted him for an agent or legat. And the last of June 1611, there being enmity between the king of Morocco and the king of Spaine, the king of Morocco made a commission to the said Samuel to take Spaniards and their goods. The 25 of October 1613, the king of England gave him letters of safe conduct as a publick minister sent to the states of the United Provinces. 3. Martii 1613, the states licensed him to leavie men to furnish his ships, &c. In June 1614 he took a carvell of the Spaniards at the Canaries laden with sugar, and another ship there also laden with hides, of the goods of Spaniards; and after, with distresse of wind, he with the said prizes was driven to Plimouth, there being at that time league both between England and Spain, and between England and the United Provinces, and wars between Spain and the United Provinces. And against this Samuel the Spanish ambassador here in England complained at the councill table, and charged him with piracy. The said Samuel and his company being arrested, and the goods seized, the Spanish ambassador prayed that he might proceed against him as a pirat upon the said statute of 28 H. 8. cap. 15. The lords of the councill referred the consideration of this request to the chiefe justice of England being present at the table, and to the master of the rols, and Sir Daniel Dun judge of the admiralty, to consider of the case, and to direct a course of justice therein indifferently. And the said referrees heard the councill learned both in the common and civill lawes on both sides on two severall dayes in this terme: and after conference between themselves, and with others, these points were resolved. First, that at this day there could be no ambassador without letters of credence of his \* soveraigne, to another that had soveraigne authority. *Legatus per litteras de sua legatione fidem facere debet, si exigantur, et communitorium, s. instructions privas*, for the ambassador himself for his direction.

\* Nulli nisi absoluti principes et qui majestatis jura habent, legatos constituere possunt.

Secondly, that of ancient time ambassadors were called *oratores*.

*Virgil.*  
Idem, 11  
*Æneid, Legati*  
*responsa ferunt.*  
Idem, 12  
*Æneid. Nuntius*  
*hæc Idmon*  
*Pbrygio mea*  
*dicta tyranno*  
*Haud placitura*  
*refer.*

*Jamq; oratores aderant ex urbe Latina  
Velati ramis olei—*

And afterwards they were called *legati à legando, nuntii à nuntiando*, and afterwards *ambassiatores* or *embessatores*, and sometimes agents: for *omnis legatus est agens*, but *omnis agens* is not *legatus*: for if he be sent from a king or absolute potentate or state to a king or absolute potentate or state to treat between them, although he in his letters of credence be termed an agent or *nuntius*, yet he is an ambassador or legate.

Thirdly, it was resolved, that ambassadors ought to be kept from all injuries and wrongs, and by the law of all countries, and of all nations they ought to be safe and sure in every place, in so much that it is not lawfull to hurt the ambassadors of our enemies: and  
herewith



herewith agreeth the civill law. And if a banished man be sent as ambassadour to the place from whence he is banished, he may not be detained or offended there, and this also agreeth with the civill law.

I. si. F. de Lega.  
In aut. de sanctiss.  
§ Rerum Col. 9.

The case (which we have seen reported) in the reign of H. 8. was this: there being amity between king H. 8. and the French king, and enmity between H. 8. and the pope, \* R. Pole a rebell and traitor to the king of England flyeth to Rome, whom the pope being in amity with the French king sendeth as ambassadour to him: the king of England demandeth his rebell of the French king, notwithstanding he was sent as ambassadour, *sed non prevaluit*. And it is truly said, whosoever said it, *Quia veritas à quocunque dicitur à Deo est, fuit semper etiam apud Gentiles (qui nul'am tenebant veræ fidei rationem) inviolabile nomen nuncii et legati, etiamsi ab hostibus mitterentur semper salvi, et hodie apud Saracenos et Turcos, à quibuscunque tutæ designantur legationes et literæ, etiamsi illis ad quos deferantur molestæ sint et injuriosæ*. But if a foreign ambassadour being *proxex* committeth here any crime, which is *contra jus gentium*, as treason, felony, adultery, or any other crime which is against the law of nations, he loseth the priviledge and dignity of an ambassadour as unworthy of so high a place, and may be punished here as any other private alien, and not to be remanded to his soveraign but of curtessie. And so of contracts that be good *jure gentium* he must answer here. But if any thing be *malum prohibitum* by any act of parliament, private law or custome of this realme, which is not *malum in se jure gentium*, nor *contra jus gentium*, an ambassadour residing here shall not be bound by any of them: but otherwise it is of the subjects of either kingdome, &c.

\* See the third part of the Institutes, cap. High Treason, verb. *Overt fact.* pa. 14. Tempore H. 6.

Pasch. 36 Eliz. Henry de Vale and other Frenchmen imported divers manufactures, as cloth of tissue, cawles, points, &c. Whereupon Tomlinson and other good merchants of London exhibited divers informations upon the statute of 19 H. 7. which prohibit the same; of whom the Frenchmen complained at the councill table, and it was resolved by the lord treasurer Burghleigh and the whole councill, that it was no breach of the league between this kingdom and France, for that in the articles of the league the lawes of either kingdome be excepted: and therefore if Tomlinson the subject being a French merchant should trade into France, he must observe the laws and customes of France.

Pasch. 36. in scac.

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19 H. 7. cap. 11.

Fourthly, it was resolved, that admit the said Palache was no ambassadour, notwithstanding because there was enmity between the king of Spain and the king of Morocco, he could not be indicted as a pirat before commissioners upon the said statute of 28 H. 8. Because that one enemy cannot be a felon for taking of the goods of another enemy. And the words of the said act be, [that the commissioners by force of the said act shall proceed, as if the offence had been committed upon the land, and according to the course of the common law.]

See 2 R. 3. by all the justices, that this is no felony, which case is in his parts remembered hereafter. For it is very observable what the law of England is in that case. It was holden by some of the civilians, that albeit the Spaniard could not proceed against him *criminaliter*, upon the said act of 28 H. 8. yet the goods being *in solo alicui*, that is, in the soile of the king of England, who was in

2 R. 3. fo. .

Trin. 2. Jac. co-  
ram rege.

league with both, that the Spaniard might proceed against Palache, *civilliter* in the admirall court: but that was resolved to the contrary by Popham chiefe justice, and the whole court of the kings bench Trin. 2. Jac. to be against the law of England in that case: where the case was this, that where the king of England was in league with the king of Spain, and with those of Holland, &c. and there was enmity between the king of Spain and those of Holland, &c. and one of Holland upon the high sea in *aperto praelio* took the goods of a subject of Spain, and brought them into England, *infra corpus comitatus*, and for that the goods were in *solo amici*, the Spaniard whose goods were taken libelled for them *civilliter* in the admirall court. It was resolved by the whole court of the kings bench upon conference and deliberation, that the Spaniard had lost the property of the goods for ever, and had no remedy for them in England. And relyed principally upon the book in 2 R. 3. *ubi supra*, being of so great authority: for by that book, he that will sue to have restitution of goods robbed at sea, ought by law to prove two things. First, that the soveraigne of the plaintife was at the time of the taking in amity with the king of England. Secondly, that he that took the goods was at the time of the taking in amity with the soveraigne of him whose goods were taken: for if he which took them was in enmity with the soveraigne of him whose goods were taken, then was it no depredation or robbery, but a lawfull taking, as every enemy might take of another: all which appeareth in the said book. See the statutes of 27 E. 3. and 31 H. 6. well expounded in 2 R. 3. *ubi supra*. Vide 7 E. 4. 14. 13 E. 4. 9. 22 E. 3. fo. 23. concerning this matter. And for that there was enmity between the king of Spain and those of Holland, therefore it could not be depredation, but a lawfull taking. It was also resolved by the court of the kings bench, that the goods so taken being within this realm, viz. *infra corpus comitatus*, in *solo amici*, that if the Spaniard sue for them *civilliter* in the court of the admiralty, that a prohibition should be granted, and that it should be determined by the laws and statutes of England, and not by the civill law.

27 E. 3. ca. 13.  
& cap. 17.  
31 H. 6. cap. 4.  
7 E. 4. fo. 14.  
13 E. 4. 9.  
22 E. 3. 16, 17.  
Regist. 129.  
F. N. B. 114.  
Prohibition.  
Nota.

With this resolution of the kings bench doctor Taylor an Englishman, and solicitor for the king of Spain, was at the first much offended, but when he had taken advice and understood the reason of the resolution, he was well satisfied.

Lib. 5. fo. 106.

If a shipwrack be on the sea, yet if any of the goods come to land within this realm, the admirall shall not have jurisdiction, but it belongeth to the common law.

See the third part of the Institutes, cap. Treason: what offence it hath been, and what it is at this day to kill a foreign ambassador: and see there 3 R. 2. John Imperials case, ambassador of Genoa. It appeareth in the holy history, viz. in the first book of the Chronicles, that injury and disgraces offered to king Davids ambassadors which he sent to Hanon king of the Moabites, *ad consoland' ei supra mortem patris sui, grandem etiam contumeliam sustinuerunt*, &c. was a just cause of warre by David against the Moabites, and was severely revenged, as by the holy history it appeareth.

There be four kindes of leagues. 1. *Fœdus pacis*, and that a Christian prince may have with an infidell. *Si fieri possit, quod ex vobis est, cum omnibus hominibus pacem habeatis*. 2. *Fœdus congratulationis* five

[ 155 ]

1 Chro. 19. 2.  
&c.

Rom. 12. 18.  
Gen. 14. 13. &c.  
Abrah. cum rege  
Sodom.

*five consolationis.* And this may a Christian prince make with an infidell as David did with Hanon: *ubi supra.* 3. *Fœdus commutationis mercium five commercii.* And this also may be made with an infidell, as king Solomon did with Hiram an infidell, and Josua did with the Gibionites. 4. *Fœdus mutui auxilii,* and this cannot be done with an infidell or an idolater. Jehosaphat king of Juda, made *fœdus mutui auxilii* with Achab king of Israel, an idolater: for Achab said to Jehosaphat, *Veni mecum in Ramoth Gilead. Cui ille respondet, Ut ego et tu, et sicut populus tuus, sic et populus meus tecum erimus in bello:* in which warre Achab was slain, and Jehosaphat was in extreme danger. And after, as the text saith, *Reversus est autem Jehosaphat rex Jude in domum suam pacifice in Jerusalem, cui occurrit \* Jehu filius Hanani, et ait ad illum, impio prebes auxilium, et hiis qui oderunt dominum amicitia jungeris, et ideo niam quidem domini merebaris.* And the laws of England concerning these four leagues are as you perceive grounded upon the law of God.

Josua cap. 9.  
2 Kings 5. 1. &c.  
& 34. 35.  
2 Chron. 18.  
Jeremy 15. 4.  
See 1 Mac 8.  
19, 20. & cap. 10.  
2 Chron. 19. 2.  
& cap. 20. 35.  
&c.

\* The prophet of God.

But here ariseth a question, that seeing *fœdus pacis*, or *fœdus commercii* may be stricken between a Christian prince and an infidell pagan and idolater, and those leagues are to be established by oath, whether the infidell or pagan prince may swear in that case by false gods, seeing he thereby offendeth the true God by giving divine worship to false gods. This very doubt was moved by Publicola to S. Augustine, who resolveth the same thus: he that taketh the credit of him that sweareth by false gods not to any evill but good, he doth not joyn himselfe to that sinne of swearing by devils, but is partaker with those lawfull leagues wherein the other keepeth his faith and oath. But if a Christian should any way induce another to swear by them, herein he should grievously sin. And seeing the leagues in these cases are warranted by the word of God, *et per praxin sanctorum in sacra scriptura*, all incidents thereunto are permitted: for *per praxin sanctorum* the practise of holy men in scripture, may often time be collected how the commandments in it are to be understood, and *praxis sanctorum* appeareth before.

Aug. Epist. 154.  
ad Publiculam.

August. lib. de mendacio cap. 2.  
15. Praxis sanctorum interpretis præceptorum.

And it is to be observed that of ancient time, and untill latter dayes no ambassadour came into this realme before he had a safe conduct. For as no king, &c. can come into this realm without a licence or safe conduct, so no *prorex*, &c. which representeth a kings person can doe it. For safe conducts see the writs in the Register *de salvo conductu*, and the statutes of 15 H. 6. 18 H. 6. and 20 H. 6. with all incidents thereunto. And king H. 7. that wise and politique king would not in all his time suffer lieger ambassadours of any foraine king or prince within his realm, nor he any with them, but upon occasion used ambassadours.

Rot. parl. 9 H. 6. nu. 12. and long after.  
See lib. 7. Calvins case, De rege Marne.  
Regist. fo. 25, 26.

15 H. 6. cap. 3.  
18 H. 6. cap. 8.  
20 H. 6. cap. 1.  
1 H. 7. fo. 10.  
Legate of the pope sworne, &c.  
\* Four qualities ought to be in an ambassadour.

\* Every ambassadour ought to have four qualities, expressed in this verse

*Nuncie, sis verax, tacitus, celer, atque fidelis.*

And of him another saith.

*Fœderis orator, pacis via, terminus iræ,  
Semen amicitie, belli fuga, litibus hostis.*

William de la Pole duke of Suff. by the commons was charged (amongst other things) with this, that he procured the king, in his presence only without any other of the councell, to have secret conference with the French ambassadours, &c. for the which

Rot. pl. 28 II nu. 28.

(amongst other things) he was banished, &c. as by the record appeareth.

1 Decemb.  
21 H. 8.

See these articles  
before in *bac*  
*verba*, cap.  
Chancery,  
artic. 2, 3, 9,  
10, 12.

\* Cardinall Wolsey was charged with these notable high and grievous offences (amongst others) viz. That he being the kings ambassador in France made a treaty with the French king for the pope, the king not knowing any part thereof nor named in the same, and binding the French king to abide his order and award, if any controversie or doubt should arise between the said pope, and the said French king.

Also that the said lord cardinall being the kings ambassador in France sent a commission to Sir Gregory de Cassalis under the great seal in the kings name to conclude a treaty of amity with the duke of Ferrare without the kings commandement or warrant, nor the king advertised nor made privy to the same.

Also the said lord cardinall taking upon him otherwise then a true privy counsellor ought to doe, hath used to have all ambassadors to come first to him alone, and to hear their charges and intents, &c.

Also the said lord cardinall used many years together not only to write to all the kings ambassadors in forain parts with other princes in his own name all advertisements concerning the kings affairs being in their charge, and in the same letters wrote many things of his own mind without the kings pleasure known, concealing divers things which had been necessary for them to know, but also caused them to write their advertisements to him, and of the same letters he used to conceal, for the compassing of his purpose, many things both from the kings counsell and the king himself.

The difference between a league and a truce is, that a truce is a cessation from warre for a certain time: a league is an absolute striking of peace.

<sup>a</sup> A truce.  
Rot. Franc.  
19 E. 3. m. 10.  
part 1.  
<sup>b</sup> See the truce  
at large, lib. par.  
fo. 5.

<sup>c</sup> A league.  
rot. par. 4 H. 5.  
nu. 14.  
<sup>d</sup> 9 E. 4. 2. a.  
<sup>e</sup> 39 H. 6. 30.  
<sup>f</sup> Ro. pat. 35 E. 5.  
part 2. m. 24.  
claus. 10 H. 4.  
m. 15. *nuntius*  
*papae*.

Rot. claus.  
14 H. 3. m. 1.  
rot. claus.  
12 R. 2. m. dorf.  
<sup>g</sup> Ro. pat.  
17 R. 2.  
part 1. m. 23.  
Rot. Franc.  
12 H. 6. m. 2.  
Rot. pat.  
12 H. 6.  
12 part. m. 6.

\* Of a truce we have read in anno 19 E. 3. to this effect. *Rex post initas inducias cum Francorum rege per mediationem<sup>b</sup> Romani pontificis, copias suas bellicas demum reduxit, postea deprehendens praefat<sup>c</sup> regem Franc<sup>e</sup> hostilia contra ipsum moliri, et nuntios praefati pontificis si noluta pace dissidium fovere, praemissa omnia per literas patentes exponenda auxit, et bellum cum praefato rege resumpsit.*

<sup>c</sup> A league and alliance was made between king H. 5. his heirs and successors, and Sigismond king of the Romans his heirs and successors kings of the Romans, and was confirmed by act of parliament. The instrument whereof is very long, but not so long as effectually and worthy of observation.

<sup>d</sup> It is said in 9 E. 4. that a league made between two kings (without naming of successors) doth not extend to successors, although by our law *rex non intermoritur*.

<sup>e</sup> Justice Ashton is of opinion, that no ambassador ought to be sent to the pope, but there may be many presidents to the contrary, for besides his spirituall jurisdiction he is a temporall prince, whereof see a president among many others, <sup>f</sup> Rot. pat. 35 E. 3. parte 2. menib. 24. and likewise the pope sent ambassadors into England, who were sworn not to attempt any thing prejudiciall to the king or kingdome.

<sup>g</sup> And that we may give some taste of every kind: in times past the king of England sent ambassadors to generall councils, as taking  
one

one example of that sort for many. *Ad concilium Basiliens' sub Eugenio papa, quorum destinati sunt per regem ambasciatores et oratores episcopi \* Robertus London', Philippus Exoniensis', Johannes Rossensis', Johannes Baiocensis' et Bernardus Aquarens' Ed'us comes Moriton, abbas Glasston' et beate Mariæ Eborum, prior Norwici, Henricus Bromsflet miles, (dominus Wescie) Thomas Browne legum doctor decanus Sarum, Johannes Colleville miles, et alii.* Their authority was in these words. *Dantes et damus eis et ipsorum majori parti potestatem et mandatum tam generale quam speciale nomine nostro et pro nobis in eodem concilio interessendi, tractandi, communicandi, et concludendi tam de hiis quæ reformationem ecclesiæ universalis in capite et in membris, quam in hiis quæ fidei orthodoxæ fulcimentum, regumque ac principum pacificationem concernere poterunt, nec non de et super pace perpetua, guerrarumve abstinentia inter nos et Carolum † adversarium nostrum de Francia, ac etiam tractandi, communicandi, et appunctuandi, consentiendi insuper, et si opus fuerit, dissentiendi hiis quæ juxta deliberationem dicti concilii inibi statui, et ordinari contigerit.* Promittentes et promittimus bona fide nos ratum, gratum, et firmum perpetuo habiturum totum et quicquid per dictos ambasciatores, oratores, et procuratores nostros, aut majorem partem eorundem actum, factum, seu gestum fuerit in præmissis, et in singulis præmissorum, et hoc idem cum de et super hiis certiorati fuerimus quantum ad nos et Christianum principem attinet, executioni debitæ curabimus demandar'. *In cujus rei testimonium has literas nostras fieri fecimus patentes. Dat' sub magni sigilli nostri testimonio in palatio nostro Westm' 10 die Julii.*

We have expressed this ambassage the more particularly, for that, to this councill also I find that Henry Beauford (son of John of Gaunt by Katherin Swinford) bishop of Winchester and cardinall of S. Eusebye addressed himself and had licence to transport and carry with him 20000 l. of gold and silver (mute, but moving ambassadors) notwithstanding the statutes of 9 E. 3. cap. 1. and 5 R. 2. cap. 2. &c. For the form of a safe conduct (which is called *de salvo conductu*) see the Register. And for the effect and validity thereof, see the statutes of 15 H. 6. cap. 3. 18 H. 6. cap. 4. 20 H. 6. cap. 1.

*Recordum et process' contra Petrum de Rival thesaurarium et camerarium totius Angliæ et Hiberniæ, et custod' omnium forestarum et omnium portuum maris, &c. de compoto regi reddito de officiis prædictis et de judicio contra ipsum reddito per defaltam, quia venire recusavit, nisi salvo regis conductu, quod rex denegavit quasi inslitum et indebitum.*

What reward legats have had in former times you may read, Rot. liberat. 11 H. 3. m. 13. Rot. clauf. 11 H. 3. m. 11. in dorf. Rot. liberat. 3 E. 1. m. 9. Eodem rot. 1 E. 1. m. 2. Rot. alman. 11 E. 3. per totum rotulum.

See Beda in his history of England, Lib. 1. cap. 11. hereafter cap. 75. Of Scotland, *in fine*, the danger of unwise and incertain leagues.

• Robert Gilbert doctor of divinity. John Langdon doctor of divinity died at this councill. Nicholas Abbas Glasston, Willielm. Abbas beate Mariæ Eborum. The letters of the pope whereby by generall counceils are called, you may read in Mat. Par. anno dom. 1245. pa. 386.

†[157]

Rot. pat. anno 11 H. 6. parte 1. m. 10 & 12. & anno 12. part. 2. m. 13. 9 E. 3. ca. 1. 5 R. 2. ca. 2. Safe conduct. Reg. fo. 25, 26

Anno 13 H

## C A P. XXVII.

The Court of the Justices of Assize, and *Nisi Prius*.

Glanvil lib. 13. cap. 32, 33. &c. Bract. lib. 4. fo. 164. b. Britton fo. 106. b. 112. 118. Fleta li. 4. cap. 1. & 5. Mirror ca. 2. § 15. Stat. Walliæ in Vet. Mag. Car. 2 part. fo. 12. 26 ass. p. 24. \* F. N. B. 177. Reg. See the 1 part of the In't. sect. 442. Mag. Car. ca. 30. 39 H. 6. 19. b. mord.

When justices of assize by patent first began. † The patent of the justice of assize. <sup>a</sup> *Justic' nrosres ad assisas*. Hereunto belong commissions of associat' writs of admittance, and of *si non omnes*, &c. F. N. B. 177. Register, and a writ to the sheriff to bring before them *omnia brevia assis' jurat' et certificat'* &c.

<sup>b</sup> *Jurat'* when the recognitors are turned in *juratam*. 19 E. 2. ass. 418. 29 ass. p. 78. &c. <sup>c</sup> *Certificat'*. hereof you may read in F. N. B. and the Register. <sup>d</sup> *Nota*, <sup>e</sup> W. 2. ca. 25.

**F**OR the writ of assize, whereof the justices take their name; in all ancient authors, it is called *assisa novæ disseisinæ*, or *petit brief de novel d'sseisin*. Of which writ Bracton saith. *Recognitio assisæ novæ disseisinæ multis vigiliis excogitata et inventa fuit recuperandæ possessionis gratia, ut per summariam cognitionem absque magna juris solemnitate, quæsi per compendium, negotium terminetur*. And the Mirror saith, that for expedition of justice, and ousting of delays, it was ordained by Ranulph de Glanvill; but I finde the writ more ancient, as it appeareth in 26 Ass. pl. 24.

At the common law assises were not taken but either in \* bank, or before justices in eire, and this was a great delay to the plaintiff, and a great molestation and vexation of the recognitors of the assize. For remedy whereof, it is enacted by the statute of Magna Carta, *Quod recognitiones de nova disseisina, et de morte antecessoris non capiantur nisi in suis propriis comitatibus, et hoc modo nos si extra regnum fuere capitales justiciarii nostri, mittent justiciarios nostros per unumquemque comitatum semel in anno, qui, &c. capiant comitatibus illis assisas prædictas*. By force of this act, these three conclusions are to be observed. First, that no assize can be returnable in the kings bench, or common bench, unless the disseisin be done in the county where the benches sit respectively, or if both benches sit in one county, then the plaintiff hath election to make it returnable in which bench he will. Secondly, that the justices of both benches in that case have jurisdiction originally and ordinary without any patent. Thirdly, that upon the said act of Magna Carta letters patents to justices of assize were framed for the taking of assises in the proper counties in these words.

† *Rex, &c. dilectis et fidelibus suis R. M. uni justic' suorum de banco, et I. L. uni justic' suorum ad placita coram nobis tenend' assign' salutem. Sciatis quod constituimus vos justiciarios nostros una cum hiis quos vobis associaverimus, ad omnes <sup>a</sup> assisas, <sup>b</sup> jurat', <sup>c</sup> certificat' coram quibuscunque justic' tam per diversa brevia domini Johannis nuper regis Angliæ patris nostri, quam per diversa brevia nostra in cent' nostris South' Wiltes. Dorset. Somerset' Devon' et Cornub' ac in civitate Exon' arranian' capiend'. Et ideo vobis mandamus, quod ad certos dies et loca quos vos ad hoc provideritis, assis', jurat', et certificationes illas capiat; <sup>d</sup> faciuri inde quod ad justiciam pertinet secundum legem, et consuetudinem regni nostri Angliæ. Salvis nobis amerciamentis inde provenien'. Mandavimus enim vicecomitibus nostris com' et civitat' prædict', quod ad certos dies et loca quos eis scire faciatis assis', jurat' et certificat' illas una cum brevibus origin' et omnibus illis ea tangen' coram vobis venire fac'. In cujus rei testimonium. &c.*

<sup>e</sup> By this writ the seisin and possession was recovered, and became most frequent. *Quia non est aliud breve in cancellaria, per quod querentes*

*querentes habent tam festinum remedium, quam per assisam.* <sup>f</sup> And after the statute of W. 2. was made and thereby it was provided, *quod assignentur duo justiciarii jurati, coram quibus, et non aliis, capiuntur assise, &c. ad plus ter per annum.*

<sup>f</sup> W. 2. ca. 30.  
vid. 4 E. 3. cap. 2.

<sup>g</sup> *Dominus rex, &c. precepit, quod de cætero assignentur octo justiciarii circumspecti et discreti ad assisas, jurati, et certificati capiendo per totum regnum Angliæ, viz. and divideth the realm into eight parts, and to every part assigneth two justices.*

<sup>g</sup> Ro. par. 21 E. 1.  
rot. 3. De justiciariis assignatis.

But divers acts of parliament have given unto justices of assise authority in many cases.

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<sup>b</sup> *Per statutum de finibus cap. 3. justiciarii ad assisas capiendas assignati deliberent gaolas in com' illis tam infra libertates quam extra de prisonariis quibuscunque.* <sup>c</sup> Appeals of murder, robbery and rape may be commenced before justices of assise. <sup>d</sup> Power given to justices of assise to try the appeals of approvers. <sup>e</sup> *Justiciarii ad assisas capiendi assignati non compellant juratores dicere præcise.*

<sup>b</sup> 27 E. 1. Stat. de finibus cap. 3.  
To deliver gaols.  
<sup>c</sup> 22 E. 4. 10.  
<sup>d</sup> Stat. de Appellatis. an.  
28 E. 1.

<sup>f</sup> Justices of assise shall enquire for non-returning, and false returns of sheriffs.

<sup>e</sup> W. 2. cap. 30.  
<sup>f</sup> W. 2. cap. 39.  
2 E. 3. cap. 5.

<sup>g</sup> Justices of assise may hear and determine of conspirators, false informers, and wicked procurers of dozens, enquests and juries at the complaint of any without writ, and without delay, and of confederacies and champerties and maintainers, bearers, and alliances by bond, &c. <sup>h</sup> Of defaults of sheriffs, escheators, bailiffs, and other officers.

<sup>g</sup> Artic. sup.  
Car. 28 E. 1.  
4 E. 3. c. 11.  
7 R. 2. c. 15.  
Regist. 186. 188.  
4 E. 3. ca. 12.  
Of maiors and bayliffs, que ne serche wines.

<sup>i</sup> Justices of assise may enquire of defaults, &c. of punishment of victuallers, &c. which sell at unreasonable prices.

<sup>h</sup> 20 E. 3. ca. 6.  
<sup>i</sup> 23 E. 3. ca. 6.

<sup>k</sup> They have power to hear and determine riding and going armed, &c. and to punish justices of peace, sheriffs, bailiffs, and others for not doing their office in that case.

<sup>k</sup> 2 E. 3. ca. 3.  
de Northampton. 1 R. 2. ca. 7.

<sup>l</sup> They may hear and determine treason in counterfeiting of money, &c. <sup>m</sup> They shall do execution of the statute of 13 H. 4. of riots done in their presence upon pain of an hundred pound.

Of unlawful maintenance.  
<sup>l</sup> 3 H. 5. ca. 7.

<sup>n</sup> And by the statute of 2 H. 5. commissions shall be awarded to enquire of the default of justices of assise, and of justices of peace in that behalf.

<sup>m</sup> 13 H. 4. cap. 7.  
<sup>n</sup> 2 H. 5. cap. 8.

<sup>o</sup> They shall enquire of, hear, and determine all offences contrary to the statute of 23 H. 6. concerning sheriffs, under-sheriffs, and their clerks, coroners, stewards of franchises, bailiffs, and keepers of prisons for extortion, and for letting to bail such as were not bailable, or for denying of bail to them that ought to be bailed, &c.

<sup>o</sup> 23 H. 6. ca. 10.  
33 H. 8. ca. 9.  
for shooting.

<sup>p</sup> Justices of assise shall take bail of him that is acquitted of murder within the year to answer to the appeal of the party, 5 Eliz. cap. 5. of Informers. 5 Eliz. cap. 4. of Labourers.

<sup>p</sup> 3 H. 7. cap. 1.

<sup>q</sup> Justices of assise of gaol-delivery, and of the peace, shall enquire of the default of coroners.

<sup>q</sup> 1 H. 8. S. ca. 7.

<sup>r</sup> Justices of assise, &c. shall enquire of false making of leather. <sup>s</sup> Of amending of high-ways. <sup>t</sup> Of hunters in parks. <sup>u</sup> Of unlawfull taking of fishes. <sup>x</sup> Of forgery of false deed. <sup>y</sup> Against deceit in linnen-cloth. <sup>z</sup> Against perjury. <sup>\*</sup> Of usury and many other things.

<sup>r</sup> 18 El. cap. 9.  
<sup>s</sup> 18 El. cap. 10.  
<sup>t</sup> 4 El. cap. 3.  
<sup>u</sup> 5 El. cap. 5.  
<sup>x</sup> 5 El. cap.  
<sup>y</sup> 1 El. ca. 14.  
<sup>z</sup> 5 El. ca. 9.

<sup>a</sup> Justices of assise twice in the year ought to proclaim the statute of 32 H. 8. and other statutes against unlawfull maintenance, champerty, imbracery, and unlawfull retheyners. <sup>b</sup> They ought to proclaim

<sup>w</sup> 13 El. cap. 8.  
<sup>a</sup> 32 H. 8. ca.  
<sup>b</sup> 33 H. 8. ca. 9.

proclaim the statute of unlawfull games in their circuit. See the Custom of Normandy, cap. 19.

W. 2. c. 30. See the 2 part of the Inst. the exposition of this act. Vid. Fleta l. 4. c. 5. Vid. Hil. 32 E. 3. m. 5. See the authority of justices of nisi prius, in libro meo. fo. 54. b. the pl. begun, *Et auxint en nisi prius grant devant Stenf.*

Now concerning justices of *nisi prius*, they were first instituted by the statute of W. 2. of issues joynd in the common bench, and kings bench: and their authority is annexed to the justices of assize, and is by force of a judicial writ, and therefore we have joynd them under one title. And this appeareth in the judicial writ of *nisi prius*, which is:

*The writ of nisi prius.*

*Rex vicecomiti salutem. Præcipimus tibi quod venire fac' coram justiciariis nostris apud Westm' in octab. Sancti Michaelis, vel coram justiciariis nostris ad assisas in com' tuo per formam statuti nostri inde provis' capiend' assignatis, si prius die Lunæ prox' ante festum, &c. apud, &c. venerint 12. tam milites quam alios, &c.*

Reg. judic. 48.  
75. W. 2. ca. 30.  
6 E. 6. Dier 77.  
[ 160 ]  
7 R. 2. ca. 7.

And by the said act the justices of *nisi prius* have power to give judgment in assise of *darrein presentment* and *quare impedit*.

By the statute of 7 R. 2. *nisi prius* shall be granted as well in the exchequer as elsewhere.

18 El. ca. 12.

Of issues joynd in the kings bench, common bench, and eschequer, the chief justices, or chief baron, or in their absences two other justices or barons of the said severall courts, as justices of *nisi prius* for the county of Midd. within the terme, or four days after shall severally try, &c. and that commissions, and writs of *nisi prius* shall be awarded, &c. It is to be observed that there is but a transcript of the record sent to the justices of *nisi prius*.

9 El. Dier 261.

27 E. 1. de finibus. F. N. B. 241. c.  
Stat. de York.  
12 E. 2. c. 3. & 4.  
2 E. 3. ca. 16. &c.  
4 E. 3. cap. 2.  
14 E. 3. ca. 16.

By the statute of 27 E. 1. *de finibus*, ca. 4. it is provided, *Quod inquisitiones et recognitiones capiuntur tempore vacationis coram aliquo justiciario de utroque banco, coram quibus placitum deductum fuerit.* See the statutes of York, 2 E. 3. cap. 16. 4 E. 3. ca. 2. and the statute of 14 E. 3. cap. 16. which statute doth provide that *nisi prius* may be taken in every plea real and personall before two, so that one be justice of one of the benches, or the chief baron or serjeant sworn, without any regard where the plea depended, and this standeth yet at this day. Vid. 42 E. 3. cap. 11. 19 H. 6. fol. 47. 33 H. 6. fol. 14. 16 H. 7. fol. 14. 5 Mariae Dier fol. 163.

Rot. clauf.  
10 E. 2. m. 10.

*Concordatum fuit per totum concilium regis, quod nullus vicecomes aut coronator fiat justiciarius ad assisas capiend', gaolas deliberand', transgress' audiend' et terminand', seu ad aliquod aliud officium justic' faciend', eo quod debent esse intendentes aliis justiciariis.* Which act is declaratory of the common law, for that (as by the reason yielded in the act it appeareth) these offices be incompatible, the one being attendant unto, and within the controlment of the other.

F. N. B. 240. c.  
Stanf. 156.  
Nisi prius in case of felony and treason. 4 E. 3. cap. 11.  
27 E. 3. f. 23.  
rot. par. 37 E. 3. m. 18. F. N. B. 241. a.

14 H. 6. cap. 1. Justices of *nisi prius* have power in all cases of felony and treason to give judgment as well where the prisoner is acquitted, as where he is attainted, and to award execution.

Where the king is a party, a *nisi prius* may be granted, if the kings attorny assent unto it.

10 E. 4. fo. 14.  
20 E. 4. 18.  
3 Mar. Dier 100,  
101 & 131.

In appeal of murder, robbery, and rape brought in the kings bench, if the parties be at issue, a *nisi prius* may be granted before justices of assize. 25 E. 3. 30. 14 E. 3. *Nisi prius* 16. 22 E. 4. 19. 21 H. 7. 36. 9 El. Dier 261. 42 E. 3. c. 11. 8 H. 5. 6.

But it is to be observed, that if the appellee be acquitted before justices



justices of *nisi prius*, they have power to acquit, &c. and give judgment, as is aforesaid.

They may also enquire and judge of the abettors and damages by the statute of W. 2. cap. 12. and not by the said act of 14 H. 6. And so it is if the appeal be brought before the justices of assise, they have also power to enquire and judge, *ut supra*.

These justices of *nisi prius* were instituted for two causes, viz. 1. *Propter intolerabilem jacturam juratorum, et in exonerationem juratorum.* 2. *Ad celerem justitiam in ea parte exhibendam.*

*Inquisitiones et jurat' in placito terræ capiend' quæ magnæ non sunt examinationes, capiantur in patria, &c.*

And hereupon a prohibition is grantable to justices of assise, *Quod non caperent in patria inquisitiones quæ magna indigent examinatione.*

By the originall institution of justices of assises and of *nisi prius*, the tryall should be before two at the least, and it were much for the advancement of justice and right, to have the law put in due execution, for *plus vident oculi quam oculus*, and specially in pleas of the crown concerning the life of man, in regard whereof they shall be worthy of greater allowance.

Before the justices of assise *in pays* a forain plea, viz. villenage was pleaded, for tryall whereof the record was removed into the common bench, and there a *venire fac'* was awarded, and retorne, *servie*, and a *habeas corpus* with a *nisi prius* was prayed. And it was objected that the issue was not joyned in bank, nor judgment to be given there, and yet in the end the prayer was granted, as in a \* certificate, upon an assise a *nisi prius* shall be granted: \* and so it is upon a forain voucher, receipt shall be granted, and a tryall by a *nisi prius* had.

The justice of *nisi prius* may grant a *tales de circumstantibus*, either when but one or more appear of the principall pannell, or where eleven doe appear: and all the jury may be of the *tales de circumstantibus*, as it was upon a *tales* at the common law.

Where the king is party, a *nisi prius* is grantable for the king, but not for the party without assent of the kings attorny, and io are the books to be intended.

In attaint the plaintiff craved a *nisi prius*, and because one of the petit jury was prisoner in Newgate, and came in ward and pleaded, and was remanded, and if a *nisi prius* should be granted he should lose his challenges, the court denyed to \* grant any *nisi prius* otherwise a *nisi prius* may be granted in an attaint.

In trespass between the duke of Exeter and the lord Cromwell, the councill of the duke moved for a *nisi prius*, and for that the duke was a prepotent prince in that country, and the *venire fac'* being returned, there was a great rout in the hall, so as if a *nisi prius* should be granted great mischief might ensue, therefore no *nisi prius* was granted.

More you may read of the writs of assise and of *nisi prius* in our books, that which hath been said concerning the jurisdiction may suffice. It is commonly called a writ of *nisi prius*, but the words of the writ are *Si prius, &c.* And albeit the authority of justices of assise (as it hath appeared) hath by act of parliament been exceedingly enlarged both in dignity and multitude of causes, yet they retain their first and originall name, albeit assises here in these days

very

\* See the 2 part of the Inst. upon this act of W. 2. cap. 12.

d 27 E. 1. stat. de finibus, cap. 4. Reg. It. 186.

W. 2. cap. 30.

Regist. 186.

14 E. 3. off. Br. 413. & tit. Aff. Fitzh. 110.

Dier manuscript. H. 1. 11 Eliz. 26 aff. p. 3.

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\* 7 H. 4. 45.  
8 E. 4. 16.  
F. N. B. 183. h.  
a 18 E. 3. 1.  
49 E. 3. 21.  
3 H. 4. 18.  
b 35 H. 8. cap. 6.  
23 El. Dier 376.  
4 & 5 Ph. & Mar. cap. 7. 14 El. c. 9. 18 El. cap. 12. Vid. 8 Eliz. Dier 145.  
c 25 E. 3. 39.  
18 E. 3. 58.  
14 E. 3. Nisi prius 16. 24 E. 3. 23. 21 H. 7. 34. F. N. B. 140.  
Stanf. pl. cor. 156. a. b.  
d 44 E. 3. fo. 2. 44 aff. p. 20.  
8 H. 4. 23.  
21 E. 3. 17.  
6 aff. p. 7.  
e 15 E. 3. Nisi prius. 22. simile. 21 E. 3. ibidem 21.  
f 32 H. 6. 9.  
22 E. 3. 16.  
F. N. B. 241. a. Dier 4 El. 215.

very rarely taken before them. See in the chapter of Justices of Peace powers and authorities lately granted to justices of assise and justices of *nisi prius*.

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## C A P. XXVIII.

## Justices of Oier and Terminer.

For generall  
commissions, see  
42 ass. pl. 5.  
2 R. 2. cor. 47.  
pl. com. 390.  
Countee de Leic'  
cafe.

Hereupon they  
are called justices  
of oier and ter-  
miner.

\* Nota, these  
generall words.

\* Nota.

**T**HE authority of justices of oier and terminer is by commission. Of commissions of oier and terminer there be two sorts, one generall, so called because it is generall, in respect of the persons, the offences, and the places where the offences are committed, the which commission followeth in these words.

*Elizabeth Dei gratia Angliæ, Franciæ, et Hiberniæ regina, fidei defensor, &c. Charissimis consanguineis suis Willielmo marchioni Winton, Henrico comiti Southt', &c. ac dilectis et fidelibus suis Rogero Manwood uni justic' suorum de banco, Johanni Jefferay uni justic' ad placita coram nobis tenend' assign', Johanni Arundell militi, &c. Johanni S. John, Humf. Walrond, William Pool, Petro Edgecombe, Thomæ Morton, &c. salutem. Sciatis quod assignavimus vos et tres vestrum, quorum aliquem vestrum vos præfat' Rogerum Manwood et Johannem Jefferay unum esse volumus justiciarios nostros ad inquirendum per sacramentum proborum et legalium hominum de com' nostris Southt' Wiltes. Dorset, Somerset, Devon. et Cornub. et eorum quolibet, ac aliis viis, modis, et mediis quibus melius sciveritis, aut poteritis tam infra libertates quam extra, per quos rei veritas melius sciri poterit de quibuscunque prodicionibus misprisionibus prodicionum, insurrectionibus, rebellionibus, murdris, felonis, homicidiis, interfecionibus, burglariis, raptibus mulierum, congregationibus et conventiculis illicitis, verborum prolationibus, coadjutationibus, misprisionibus, confæderationibus, falsis allegantiis, transgressionibus, riotis, routis, retentionibus, escapis, contemptibus, falsitatibus, negligentis, concealamentis, manutenentiis, oppressionibus, cambipartiis, deceptionibus, et \* aliis malefactis, offensis, et injuriis quibuscunque, nec non accessar' eorundem infra com' prædict' et eorum quemlibet, tam infra libertates, quam extra per quoscunque et qualitercunque habit', fact', perpetrat' sive commiss'. Et per quos vel per quem, cui vel quibus, quando, qualiter, et quomodo, ac de aliis articulis et circumstantiis præmiss. et eorum aliquod vel aliqua qualitercunque concernen. Et ad easdem prodiciones et alia præmissa (hac vice) audiend. et terminand. secundum legem et consuetudinem regni nostri Angliæ. Et ideo vobis mandamus quod ad certos dies et loca quos vos, vel tres vestrum, quorum aliquem vestrum ex vobis præfat. Rogero Manwood et Johannem Jefferay unum esse volumus, ad hoc provideritis diligenter super præmissis faciatis inquisitiones, et præmissa omnia et singula audiat' et terminetis, ac ea faciatis et expleatis in forma prædicta \* facturi inde quod ad justitiam pertinet secundum legem et consuetudinem regni nostri Angliæ. Salvis nobis amerciamentis et aliis ad nos inde spectantibus. Mandavimus enim vicecomitibus nostris com' prædict. quod ad certos dies et loca, quos vos vel tres vestrum, quorum aliquem vestrum*

ex

*ex vobis prefat. Rogerum Mamwood et Johannem Jefferay unum esse volumus, eis scire feceritis venire fac' coram vobis, vel tribus vestrum, quorum aliquem \* vestrum vobis prefat' Rogerum Mamwood et Johannem Jefferay unum esse volumus, tot et tales probos et legales homines de ballivis suis tam infra libertates, quam extra per quos rei veritas melius sciri poterit et inquiri. In cujus rei testimonium has literas nostras fieri fecimus patentes, Teste me ipsa apud Westm' 27 die Junii anno regni nostri decimo octavo.*

2 Particular commissions of oier and terminer so called in respect of the persons of the offences, or of the places, whereof you shall finde five presidents in the Register: † 1. Against the bishop of Winchester and his ministers. 2. *De nave fraffa*, if the goods ought to be taken for wreck. 3. Of divers oppressions, &c. extortions, &c. by the kings ministers. 4. Of oier and terminer for the prior of Daventry. And 5. for the king in time of vacation, which you may reade there.

\* Concerning commissions of oier and terminer ten conclusions are to be observed. 1. That oiers and terminers shall not be granted, but before the justices of the one bench or the other, or the justices errant, and that for great or horrible trespasses, or the kings especial grace, according to the statute in the time of his grandfather.

2 And in the Register there is a *superfedeas, quia non enormis transgressio*, which word [*enormis*] is in the statute of W. 2. *ubi sup.*

3 To commissioners of oier and terminer a writ of *superfedeas* was delivered, *quia enormis transgressio non est, ideo superfedeant*, for it was not but for cutting down of trees. \* And afterward a writ of *procedendo* under the great seal of later date was delivered to them to proceed *secundum legem et consuetudinem Angliæ non obstante aliquo mandato, &c.* by vertue whereof, notwithstanding the former writ, they did proceed by advice of all the justices. For a writ of *superfedeas* is one thing, and an absolute repeale or countermand of the commission it selfe is another. A *superfedeas* is but to stay, or forbear the proceedings, \* that is, *super advisamentum federe*, and is not *mes un surcesse de advisement*. And such may the cutting down of trees be, as it may be *enormis transgressio*, and therefore notwithstanding a *superfedeas* the cause may proceed by a writ of *procedendo*. But after an absolute repeale or countermand by the king of the commission it selfe, the commissioners cannot proceed after by force of any *procedendo*, but there must be a new commission.

The second conclusion is, that commissions are like to the kings writs, such are to be allowed which have warrant of law and continuall allowance in courts of justice. For all commissions of new invention are against law untill they have allowance by act of parliament. † Commissions of *novell inquiries* are declared to be void: 2 commissions to assay weights and measures (being of new invention) are declared to be void, and that such commissions should not be after granted. So as a commission is a delegation by warrant of an act of parliament, or of the common law, whereby jurisdiction, power, or authority is conferred to others. *Sapientis iudicis est cogitare tantum sibi esse permiffum, quantum commissum et creditum.* And it is a good rule for all commissioners to hold the like, and ever to keep themselves within their commission.

† Regist. 125, 126, 127.  
F. N. B. 110, 111. For particular commissions see  
42 off. pl. 12.  
34 off. p. 8.  
29 E. 3. 30, 31.  
Rot. clauf.  
18 H. 3. m. 15.  
de Petro de Rivall.  
\* 2 E. 3. cap. 2.  
34 E. 2. cap. 1.  
To be named by the court and not the party.  
See the statute of 12 E. 3. cap. 4. which extends to Enquiries.  
4 H. 4. cap. 9.  
Vide rot. parl.  
50 E. 3. nu. 51.  
for commissions of inquiry what persons ought to be named: 6 note a diversity between commissioners of enquiry, and of oier and terminer.  
b W. 2. 13 E. 1. cap. 29.  
c Regist. 124, 125. 2 E. 3. cap. 2.  
d 12 Aff. p. 21.  
Vide Br. com. 12.  
and oier and terminer 4.  
e Regist. 124, 125.  
\* Superfed under  
f 18 E. 3. cap. 2.  
g 18 E. 3. cap. 4.

Rot. par. 2 H. 4.  
nu. 22.

The commons do petition, that certaine commissions lately sent to cities for the making of certaine boats and bullingers being done without assent of parliament, might be repealed. The king doth answer, That after conference with the lords, reasonable answer should be made. And that these commissions took no effect, appeareth in this, that no further complaint was thereof made, and no such commission was ever after granted.

Rot. parl. 5 H. 4.  
nu. 39.

At the petition of the commons, the king granted that one Benet Wilman, who was imprisoned to answer before the constable and marshall of England, should be tried according to the common laws of this realm, notwithstanding any commission to the contrary. And thereupon a writ was accordingly directed to the justices of the kings bench, as there it appeareth. Of these kindes many more authorities might be cited, but let us return to our justices of oier and terminer.

Vid. 42 aff. p. 5.

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42 Aff. p. 12.  
Vi. F. N. B.  
110. b. Register  
125. &c.

In the reign of E. 3. the justices were so carefull, that no innovation should creep in concerning commissions of oier and terminer, that certain justices having their authority by writ, where they ought to have had it by commission, though it were of the forme and words that the legall commission ought to be, John Knivett chief justice by the advice of all the judges resolved, that the said writ was *contra legem*. And where divers indictments were before them found against T. S. the same, and all that was done by colour of that writ was damned.

3 Mar. Br. commissions 23.

The third conclusion is, that justices of oier and terminer cannot proceed upon any indictment, but upon indictments taken before themselves, for their authority is, *ad inquirend'*, *audiend'*, *et terminand'*.

Vide 29. aff. 33.

The fourth conclusion, that justices of oier and terminer may upon an indictment found proceed the same day against the party indicted. But against this there seems to be great authority: for in Kelwey fo. 159. b. it is thus said. *Mem. que en breise de oier et terminer. P. 9 H. 8. sur le insurrection in Londres il fuit determine cleverment per tous justices Dengleterre, que justices doier et terminer ne puir inquire un jour, et mesme le jour determine, nient plus que justices de peace; mes justices de gaol delivery et justices in eire poien bien.* It may be that he that set down this case took it upon trust, for it agreeth in effect *totidem verbis* with the Chronicle in 9 H. 8. fo. 843. and it is erroneous in divers main points. 1. That the oier and terminer was by writ, where it was and ought to be by commission, as hath been said. 2. That justices of oier and terminer cannot enquire one day, and determine in the same day, which without question they may do: for proof whereof we will cite some few records in stead of many.

Hil. 2 H. 4  
rot. 4.

Thomas Marks bishop of Carlisle before commissioners of oier and terminer was indicted, tried, and adjudged all in one day, for high treason.

1 H. 8. Sir Rich.  
Empsons case.  
Northampton.

*Die Lunæ post festum Sancti Michaelis, anno 1 H. 8. before Fisher, Brudnell, Palmes, &c. commissioners of oier and terminer, Sir Richard Empson was indicted of high treason and tried all in one day. And we desirous to see the entry, upon not guilty pleaded, it is thus: Ideo inter diē dominum regem et diē Rich. Empson militem in instant' diem ad horam primam post meridiem, &c. apud castrum de Northampton venerunt, &c. qui nec, &c. ad recogrosc', &c. Ad quos*

*quos quidem diem horam, et casum de Northampton venit coram præfatis justiciis præfatis Rich. Empson, &c.*

2 Dec' anno 3 E. 6. at Westm. before Richard Lister, Edward Mountague, Roger Cholmeley, Edmond Merton, William Portman, and Humfrey Browne, and other commissioners of oier and terminer, Robert Bell was indicted of high treason and tried the same day, 10 Dec' anno 3 E. 6. before Sir William Portman and other justices of oier and terminer at Reading in the county of Berks Thomas Bonham was indicted of high treason and tried the same day, 4 Augusti 10 Eliz. John Felton was before commissioners of oier and terminer in London indicted of high treason, and tried the same day by the advice of all the judges of England.

<sup>a</sup> Nota, the award in the roll by the justices of oier and terminer to the sheriffe to returne a jury, is not sufficient; but there ought to be a precept to the sheriffe, under the seals of the commissioners for the returning of a jury, but otherwise it is in the kings bench.

<sup>b</sup> The third error in the said case of 9 H. 8. that justices of peace cannot inquire and try the same day, which without question they may, for they are speciall justices of oier and terminer: and wherefore justices of oier and terminer should not try the same day, as well as justices of gaole-delivery, and justices in eire, no sound reason can be given.

<sup>c</sup> The fifth conclusion is, that if any offence be prohibited by any statute, and name not in what court it shall be punished; or if the statute appoint that it shall be punished in any court of record: in both these case it may be heard and determined before justices of oier and terminer. And so it seemeth to me if \*the statute appoint the penalty to be recovered in any of the kings courts of record, according to the opinion of Catlyn, Sanders, and Whiddon; for the court of oier and terminer is the kings court of record.

The sixth conclusion is, that the king may make a commission of association directed to others to joyn with the justices of oier and terminer, and a writ of admittance to the justices of oier and terminer to admit the others into their society, which writ is close. There is also a writ of *Si non omnes* directed to the justices of oier and terminer and to their associates: the formes of all which you may read in the Register *ubi supra*, and in F. N. B. *ubi supra*. And in all these commissions and writs, the justices are directed with this rule, *Facturi quod ad justitiam pertinet secundum legem et consuetudinem Anglie*, which is a true mark of a lawfull commission.

The seventh. If the justices sit by force of the commission; and do not adjourne the commission, it is determined.

The eighth. Justices of oier and terminer, or justices of peace, cannot assigne a coroner to an approver; for it is not within the commission of either of them, but justices of gaole-delivery may do it.

The ninth. Justices of oier and terminer shall send their records and proces determined, and put in execution to the exchequer at Mich. every year to be delivered there to the treasurer and chamberlains, &c. to keep them in the treasury.

The tenth. None of these commissioners, or of assise, or gaole-delivery, or of the peace, or other of the kings commissioners are countermanded by any new commission, unless the new commis-

<sup>a</sup> And with this constant experience agreeth 4 H. 5. tit. Enquest. 55.

<sup>b</sup> 22 E. 4. cor. 44. holden for no law.

<sup>c</sup> Vide *Legislatio* de 5 E. 6. cap. 14. Of forestallers, ingrossers, and regrators. 33 H. 8. ca. 9. Of unlawfull games. 7 Eliz. Dier 236.

See many statutes wherein justices of oier and terminer are expressly named.

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Commissions Br. 12.

9 H. 4. coron. 457. Stanf. pl. co. 143. c.

9 E. 3. cap. 5.

34 Aff. p. 8. L. 5 H. 4. fo. 12. 10 E. 4. fo. 7. 20 H. 7. 3.

Kelwey 116.  
Br. commiss. 6.  
19 Eliz. Dier 355.  
Vi. infra pag.  
169. The sta-  
tute of 2 & 3  
Ph. and M. cap. 18.

tion be shewed unto them for so many as it is shewed unto; or that it be proclaimed in the county, or that the new commissioners do sit and keep their sessions by force of the new commission, the former commission is countermanded.

18. for cities or towns corporate being no counties, but it extendeth not to commissioners of oier and terminer.

1 E. 6. ca. 7.

And a right profitable statute is made concerning this matter, viz. That no proces or suit before any justices of assise, gaole-delivery, oier and terminer, justices of the peace, or \* other of the kings commissioners, shall not in any wise be discontinued by the making or publishing of any new commission or association, or by altering of the names of any of the said justices or commissioners, but that the new justices and commissioners may proceed in every behalfe, as if the old justices and commissioners had still remained and continued not altered,

\* Nota, the general words.

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## C A P. XXIX.

The Courts of Speciall Justices of Oier and Terminer, of and concerning, 1. Purveyours. 2. Misdemeanours of Villaines, &c. 3. Sums of Money collected for Houses of Correction, &c. 4. Colledges, Hospitals, and charitable Uses.

### *And first of Purveyours.*

36 E. 3. cap. 4.  
Of purveyours.

Buyers of victuall, &c.  
Takers of carriage.

THIS court is raised by the statute of 36 E. 3. whereby it is enacted, That commissions shall be made to two good men and lawfull of every county, and the third to be of the kings house. So that if any of the three come not, the two shall proceed to enquire of the behaviour and acts of the said buyers and takers, and how much the said buyers have taken and bought; and how much carriage: and to heare and determine the contempts, outrages, and trespasses in that behalfe, as well at the kings suit, as of every man that will complaine of them.

These commissions are to be granted *ex merito justitiæ*, and cannot be denied. And it is to be observed, that the action or suit given by the said act is not popular; for either the king only is to have it, or the subject only that will complaine.

And for better information to be made to the said justices of the things aforesaid, the steward, treasurer, and controller of the two houses, (viz. of the king and queen) at every quarter or halfe year shall certifie into the chancery the parcels taken in every towne, and of every person; and the chancelor shall send the said certificate

certificate to the iustices which shall be so assigned. And that this act extend and hold place as well against the purveyors of the great horses of the said two houses, as against the buyers or takers before named.

2. *Concerning Misdemeanours, &c. of Villains.*

See the statute of 1 R. 2. cap. 6.

1 R. 2. cap. 6.

3. *Of and for Sums of Money collected for Houses of Correction, or for the Poore, &c.*

This court is raised by the statute of 39 Eliz. cap. 4. as by the same appeareth, wherein this is to be observed, that their proceedings, judgements, and executions shall remain good and available in law, without any redresse to be had by suit in any other court.

39 Eliz. cap. 4.  
1 Jac. cap. 7.

See the Second part of the Institutes the exposition of these statutes.

4. *Concerning Colledges, Hospitals, or Almes-houses, or for charitable and lawfull Purposes and Uses.*

It is lawfull for the lord chancelour or lord keeper of the great seale, and for the chancelour of the duchy of Lancaster (for lands within the county palatine of Lancaster) to award commissions under the great seale, or seale of the county to the bishop of the dioces and his chancelor, and to other persons of \* good and sound behaviour, to enquire by the oathes of twelve lawfull men, &c. as by all other good and lawfull means of all and singular colledges, hospitals, and other places, founded or ordained for the charitable reliefe of poore, aged, and impotent people, maimed souldiers, schooles of learning, orphans, or for such other good, charitable, and lawfull purposes and intents. And also of lands, tenements, and hereditaments, leases, goods and chattels given or appointed for the like lawfull and charitable uses. As also for reparation of highwayes, of bridges, and seabanks, for maintenance of free-schooles and poore scholars, and of orphans and fatherlesse children, and such like good and lawfull charitable uses. And to enquire of the abuses of misdemeanours, mis-employments, falsities, defrauding the trusts, alienations, and misgovernments, &c. And after such inquiry made upon hearing and examining thereof to set downe such orders, judgements, and decrees as the said good and charitable uses may be truly observed in full, ample, and most liberall sort, &c. Which orders, judgements, and decrees (not being contrary to the orders, statutes, and decrees of the donors or founders) shall stand \* firme and good, according to the tenor and purport thereof: which orders, judgements, and decrees are to be certified under the seals of the commissioners respectively, either

39 Eliz. cap. 4.  
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\* No person interested, &c. to be a commissioner.

Colledges in both universities, of Westminster, or Winchester, and cathedrall churches, &c. are excepted.

It extends not to lands in cities or towns corporate where there is a speciall government, &c. Nor to any colledge, hospital, or free-school, which have speciall visitors, &c. But this exception extends not to leases, goods, or chattels.

\* The party

grieved may complain to the lord chancelour or lord keeper, or to the chancelour of the said duchy, for their redresse therein, &c. and they have power to judge, &c. according to equite.

into the chancery of England, or of the county palatine of Lancaster.

It is to be observed that when any act of parliament doth authorise the lord chancellor or lord keeper to make or grant any commission under the great seal, that he may make or grant the same without any further warrant, because the king is party to the act of parliament, and there cannot be a greater warrant to the lord chancellor, &c. then the act of parliament.

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## C A P. XXX.

## Justices of Gaole Delivery.

Their Authority is by Commission in these Words.

*The commission of gaol-delivery.*  
Note, they are called the kings justices.

\* Their commission extends only to them that are in prison.

<sup>a</sup> Nota.

**E**LIZABETH, &c. Dilectis et fidelibus suis AB. CD. &c. Salutem. Sciatis quod constituimus vos, tres, et duos vestrum, quorum aliquem vestrum vos præfat' AB. &c. unum esse volumus, justiciarios nostros ad gaolam nostram castri nostri de C. de \* prison' in ea exist' hac vice deliberand. Et ideo vobis mandamus quod ad certum diem quem vos, tres vel duo vestrum (quorum vos præfat' AB. &c. unum esse volumus) ad hoc provideritis, conveniatis apud castrum prædict' ad gaolam illam deliberand' <sup>a</sup> facturi inde quod ad justitiam pertinet secundum legem et consuetudinem regni nostri Angliæ. Salvis nobis amercia-mentis et aliis ad nos inde spectantibus. Mandavimus enim vic' nostro com' nostri M. quod ad certum diem quem vos, tres, vel duo vestrum (quorum vos præfat' AB. et CD. unum esse volumus) ei scire feceritis, omnes prisiones ejusdem gaolæ et eorum attachiamenta coram vobis, tribus, vel duobus vestrum, (quorum aliquem vestrum ex vobis præfat. AB. et CD. unum esse volumus) ibidem venire fac. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste, &c.

<sup>b</sup> By the law of the land, *ne homines diu detineantur in prisona*, but that they might receive *plenam et celerem justitiam*, this commission was instituted, and by this commission gaols ought to be delivered <sup>c</sup> thrice in the year, and oftner if need be.

Their authority is by this commission, which consisteth in <sup>d</sup> few words. *Constituimus vos justiciarios nostros ad gaolam nostram castri nostri de C de prisonibus in ea existentibus hac vice deliberand.* <sup>e</sup> These justices ought to be, *bonæ gentis et sages auters que des places*, &c.

Upon this authority and by statutes given unto them, thirteen conclusions do follow.

1. <sup>f</sup> Justices of gaole delivery may arraign any man that is in prison in that gaole upon an indictment of felony, trespass, &c. before justices of peace, though it were not found before themselves, which (as hath been said) justices of oier and terminer cannot do. Justices of peace shall deliver their indictments to the justices of gaole delivery.

2. They shall take a panell of a jury returned by the sheriffe, without making any precept to him, as justices of oier and terminer (as hath been said) ought to make, and the reason of the difference

See the second part of the Instit. stat. de Glouc' cap. 9.

<sup>b</sup> 4 E. 3. cap. 2.

17 R. 2. cap. 9.

<sup>c</sup> Thrice in the year, and oftner if need be.

<sup>d</sup> Nota, few but effectually words.

<sup>e</sup> 4 E. 3. cap. 2.

<sup>f</sup> 4 E. 3. cap. 2.

3 Mar. Br. Commissions. 23.

2 R. 3. coron. 47.

<sup>4</sup> H. 5. enquest

55.



difference is, because a generall commandment is made to the sheriffe by the justices of gaole delivery to return juries against their coming: but if they have a speciall commission, otherwise it is by Hankeford.

3. They may deliver suspects for felony, &c. by proclamation, against whom there is no sufficient evidence produced to the great inquest to indict them, &c. which justices of oier and terminer, or justices of peace cannot do.

4. They may inquire and take indictments of felony, &c. of prisoners before them, and proceed upon them. And so was it resolved in an appeal of murder brought by Apharry against Morgan, who pleaded that he was *auterfoitz* indicted and convicted of the same felony, and had his clergy before justices of gaole delivery, and pleaded over to the felony (and the plea allowed.) And so may justices of oier and terminer doe, which is to be observed by the judicious reader, for both of them have authority to enquire, heare, and determine of such as be prisoners in the gaole: and in that case they have a concurrent authority.

5. If a man be indicted before justices of peace, and thereupon outlawed, and is taken and committed to prison, the justices of gaole delivery may award execution of this prisoner.

6. They may assigne a coroner to an approver, and make proces against the appellee in a forein county.

7. \* They may punish those that let men to baile or mainprise, which are notailable by law, or suffer them to escape.

By the statute of 1 E. 6. it is provided in these words.

And be it, &c. That in all cases where any person or persons heretofore have been, or hereafter shall be found guilty of any manner of treason, murder, manslaughter, rape, or other felony whatsoever; for the which judgement of death should or may ensue, and shall be repried to prison without judgement at that time given against him, her, or them so found guilty, that those persons, that at any time hereafter shall by the kings letters patents be assigned justices to deliver the gaole where any such person or persons found guilty, shall remain; shall have full power and authority to give judgement of death against such person so found guilty and repried, as the same justices before whom such person or persons was or were found guilty might have done, if their commission of gaole delivery had remained and continued in full force and strength.

8. Here by the judgement of the whole parliament this conclusion doth follow, that justices of gaole delivery, according to the generality of the words of their commission, may deliver the gaole of prisoners committed for high treason, which we prefer before any private opinion, especially concluding with a *quere*.

9. <sup>a</sup> Justices of gaole delivery shall send their records and proceses determined, and put in execution to the exchequer at Michaelmas every year to be delivered there to the treasurer and chamberlains, &c. to keep them in the treasury.

10. <sup>b</sup> Justices of gaol delivery may receive appeals of robbery and murder by bill, but the appellees must be in prison before them.

11. <sup>c</sup> To these justices commissions of association, and writs of admittance,

2 R. 3. coron. 47.

Pasch. 29 Eliz. coram rege, inter Apharry and Morgan in appeal. 9 H. 7. 9. 2 R. 3. coron. 47.

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15 H. 7. 5. b.

Stat. de Appellat. 28 E. 1. Stanf. pl. cor. 143. c.

\* 27 E. 1. stat. De finibus cap. 5. 4 E. 3. cap. 2. 1 & 2. Ph. and Mar. cap. 13. 1 E. 6. cap. 7. Treason, &c.

27 E. 1. de finibus. cap. 3. See 28 E. 1. De Appellat. the rec. tall.

V. 2 R. 3. coron. 47. case de Colborne.

Stanf. pl. cor. 57. 58. & 182. a.

<sup>a</sup> 9 E. 3. cap. 5. 14 H. 7. fo. 15 b.

<sup>b</sup> 13 H. 4. fo. 10. Diet. fo. 69.

<sup>c</sup> 11 H. 7. cap. 1. Stat. pl. cor.

<sup>c</sup> 2 E. 3. cap. 2.

admittance, and *si non omnes* (as hath been said of the justices of oier and terminer) are directed.

<sup>d</sup> 6 R. 2. cap. 5.

12. <sup>d</sup> Justices of gaole delivery shall keep their sessions in the principall and chief towns of the counties where the shire courts of the same counties be holden.

<sup>e</sup> & 3 Ph. and Mar. cap. 18.

<sup>\*</sup> 11 H. 6. cap. 6.

13. By the statute of 2 & 3 Ph. and Mar. it is provided, that all commissions of the \* peace or gaole delivery to any city or towne corporate not being a county of it selfe, shall stand and remaine, the granting of any like commission of the peace or gaol delivery in any shire, lathe, rape, riding, or wapentake, being of a latter date, to the contrary notwithstanding.

See in the chapter of oier and terminer *conclusion* 9. more concerning justices of gaole delivery. Vide 44 Aff. pl. 21.

See authorities lately granted to justices of gaole delivery in the chapter next ensuing of justices of peace,

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## C A P. XXXI.

### Justices of Peace.

**S**IR Anthony Fitz-Herbert, one of the justices of the court of common pleas, and divers others have written of the jurisdiction and power of justices of the peace, both in the court of the sessions of peace, as without; to whose labours I refer the reader.

And it is such a forme of subordinate government for the tranquillity and quiet of the realm, as no part of the Christian world hath the like, if the same be duly executed.

Before the conquest, *De pace violata*.

4 H. 7. cap. 12.

To the former treatises are necessary to be added certain acts of parliament made in the 21 year of our late soveraigne lord king James, and certain caveats, additions, and observations necessary to be known. *De pace violata; vide int' leges Alwedi, cap. 36. Edwardi cap. 6.*

But as a preface to all that shall be said of the office and duty of justices of peace, we will begin with that which is enacted by the statute of 4 H. 7. as a necessary caveat to all justices of peace, viz. The king considereth that a great part of the wealth and prosperity of the land standeth in that, that his subjects may live in surety under his peace in their bodies and goods: and that the husbandry of this land may increase and be upholden, which must be had by due execution of lawes and ordinances, chargeth and commandeth the justices of the peace to endeavour them to do and execute the tenor of their commission, the said lawes and ordinances ordained for subduing of the premises, as they will stand in love and favour of his grace, and in avoiding the pains that be ordained, if they do the contrary. And over that he chargeth and commandeth, that every man, what degree or condition that he be of, that let them in word or deed to execute their said authority in any manner or forme abovesaid, that they shew it to his grace; and if they do it not,

not, and it come to his knowledge by other then by them, they shall not be in his favour, but taken as men out of credence, and be put out of commission for ever. And over this he chargeth and commandeth all manner of men, as well the poore as the rich, which be to him all one in due ministration of justice, that is hurt or grieved in any thing, that the said justice of peace may heare, determine, or execute in any wise, that he so grieved make his complaint to the justice of the peace that next dwelleth unto him, or to any of his fellowes, and desire a remedy: and if then he have no remedy, if it be nigh such time as his justices of assises come into that shire, that then he so grieved shew his complaint to the same justices; and if he then have no remedy, or if the complaint be made long afore the coming of the justices of assise, then he so grieved come to the kings highnesse or to his chancelour for the time being, and shew his grieve: and his said highnesse then shall send for the said justice to know the cause why his said subjects be not eased, and his lawes executed. Whereupon if he finde any of them in default of executing of his lawes in these premises, according to his high commandment, he shall doe to him so offending to be put out of the commission, and furthermore to be punished according to his demerits. And over that his said highnesse shall not let for any favour, affection, cost, charge, nor none other cause, but that he shall see his lawes to have plain and true execution, and his subjects to live in surety of their lands, bodies and goods according to his said laws, and the said mischiefs to be avoided, that his subjects may increafe in wealth and prosperity to the pleasure of God.

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And where the words of the said act be: and further to be punished according to his demerits. These words are so to be understood, that he shall be punished in an ordinary court of justice by way of indictment upon this act, for his contempt, &c. and not by any absolute power, as hath been often observed.

It is to be observed, that when justice Fitzherbert and some others did write of the authority of justices of peace, the commission of the peace stood overburdened and incumbered with divers statutes, some whereof were before, and some since repealed: and with some, whereas there was none such, and stuffed with many vain and unnecessary repetitions, and many other corruptions crept into it by mistaking of clerks, &c. For amendment and correction whereof (being a matter of so great importance) Sir Christopher Wray chief justice of England, Mich. 32 & 33 Eliz. assembled all the judges of England, and upon perusall had of the former commission of the peace, and upon due consideration had thereupon, and often conferences between themselves, they resolved upon a reformation of the former, with divers additions and alterations both in matter and method, as it now standeth at this day: and there needeth yet another reformation of that also; for since that time divers statutes then in force have been repealed, and divers have expired. As for example, all the statutes of liveries inquirable by justices of peace are repealed by the statute of 3 Car. cap. 4. saving the statute of 1 R. 2. cap. 7. inquirable before justices of assise, *vide supra*, pa. 159. Also the statute of 27 H. 8. cap. 22. that the owner of any scite or precinct, &c. of any dissolved religious house under the value of 200 l. *per annum*, for the keeping

Compare the old with the new commission, and the reformations, additions, and alterations will appear. Mich. 32 & 33 Eliz. the commission of the peace reformed by all the judges of England.  
12 H. 4. ca. 3.  
8 H. 6. ca. 4.  
8 E. 4. ca. 2, &c.  
27 H. 8. ca. 22.  
5 El. ca. 2.

13 R. 2. ca. 8.  
4 H. 4. ca. 25.

39 El. ca. 2.  
4 H. 7. ca. 19.  
7 H. 8. ca. 1.  
27 H. 8. cap. 22.  
5 E. 6. cap. 5.  
5 El. ca. 2.

of honest and continuall household thereupon, and inquirable by justices of peace is repealed by 21 Jac. *regis* cap. 28. And the statute of 13 R. 2. cap. 8. and 4 H. 4. cap. 25. for taking by any inholders in gain above a half penny in a bushell of oats over the common price in the market, and inquirable by justices of peace be also repealed by the said act of 21 Jac. Likewise the statute of 39 El. cap. 2. concerning husbandry and tillage, which being but a probationer for a time, was discontinued 21 Jac. And the statutes concerning houses of husbandry and tillage in 4 H. 7. 7 H. 8. 27 H. 8. 5 E. 6. and 5 Eliz. are all repealed by 21 Jac. and divers others, &c.

It is a good rule therefore for all judges and justices whatsoever, that have jurisdiction by any statute which at the first was temporary, or for a time, to consider well before they give judgement, whether that statute have been continued or made perpetuall: and if it were at the first made perpetuall, whether it be not repealed or altered by any latter statute. *Erudimini qui iudicatis terram.* See in the second part of the Institutes the exposition upon the statute of 22 H. 8. ca. 5.

42 E. 3. cap. 9.  
W. 1. cap. 19.  
7 H. 4. ca. 3.

Justices of peace may enquire if estreats be not shewed by sheriffs, &c. to the party indebted and totted. A necessary law for the ease of the subject.

Rot. par. 28 E. 3.  
nu. 17.  
37 E. 3. nu. 18.  
50 E. 3. nu. 64.

Concerning the nomination of justices of peace, see the statutes of 12 R. 2. cap. 2. 2 H. 5. stat. 2. cap. 1. 18 H. 6. ca. 11. whereunto you may add, that before all these another act not in print was made in 28 E. 3. as well for their nomination, as how and by whom they shall be discharged. Certain it is that he, that is named in the commission of peace under the great seal to be a justice of peace is a lawfull justice of peace.

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21 Jac. reg. ca. 4.

At the parliament holden *anno* 21 Jac. *regis*, there was an excellent law made, entituled, An act for the ease of the subject concerning informations upon penall statutes, which act for that it principally concerneth justices of peace, is here inserted *in hæc verba* as followeth.

This was the ancient and prudent policy of parliament (as before it hath appeared) that justice might be administered and tried in their proper counties, and not to be drawn up to the courts at Westminster for the causes in this preamble expressed.

Whereas the offences against divers and sundry penall laws and statutes of the realme may better, and with more ease and lesse charge to the subject, be commenced, sued, informed against, prosecuted and tried in the counties where such offences shall be committed. And whereas the poor commons of this realm are grievously charged, troubled, vexed, molested, and disturbed by divers<sup>a</sup> troublesome persons, commonly called relators, informers, and promoters, by prosecuting and enforcing them to appear in his majesties courts at Westminster, and to answer offences supposed by them to be committed against the said penall laws and statutes, or else to compound with them for the same.

<sup>a</sup> Of this kind of men, it was formerly truly said, *Hoc genus hominum semper vitabitur, et tamen semper in civitate retinebitur.* But this law consisting of seven parts remedied all the former inconveniences, and the abuses of these troublesome persons.

1. For remedy whereof be it enacted by the authority of this present parliament, that all offences hereafter to be committed against any penall statute, for which any common informer or promoter may lawfully ground any popular action, bill, plaint, suit or information <sup>b</sup> before justices of assise, justices of nisi prius, or gaol-delivery, justices of oier and terminer, or justices of the peace in their generall, or quarter sessions, shall after the end of this present session of parliament be commenced, sued, prosecuted, tried, recovered and determined by way of action, plaint, bill, information or indictment before justices of assise, justices of nisi prius, justices of oier and terminer, and justices of gaole-delivery, or before the justices of peace of every county, city, borough, or town corporate, and liberty, <sup>c</sup> having power to enquire of, heare and determine the same within this realm of England or dominion of Wales, wherein such offences shall be committed, in any of the courts, places of judicature, or liberties aforesaid respectively, only at the choice of the parties, which shall or will commence suit, or prosecute for the same, <sup>d</sup> and not elsewhere, save only in the said counties, or places usuall for those counties or any of them

<sup>b</sup> Nota before justices of  
1. Assise.  
2. Nisi prius.  
3. Gaol-delivery.  
4. Oier & term.  
5. Peace.

But the greatest care for the due execution of this act will belong to the justices of peace, whereof there be many learned in the laws.

<sup>c</sup> Note this act giveth justices of peace no new power in cases where former acts gave them none, and so of the rest of the justices here named.

<sup>d</sup> So as they cannot be commenced, &c. in any of the kings courts at Westminster.

2. <sup>e</sup> And that like processe upon every popular action, bill, plaint, information or suit, to be commenced, or sued, or prosecuted after the end of this present session of parliament by force of, or according to the purport of this act, be had and awarded to all intents and purposes as in an action of trespass *vi et armis* at the common law.

<sup>e</sup> By this branch processe of out-lawry doth lye upon every popular action, a necessary clause for execution of justice.

3. <sup>f</sup> And that all and all manner of informations, actions, bills, plaints, <sup>g</sup> and suits whatsoever hereafter to be commenced, sued, prosecuted, or awarded either by the attorny generall of his majesty, his heirs, or successors for the time being, or by any officer or officers whatsoever for the time being, or by any common informer, or other person whatsoever in any of his majesties courts at Westminster, for or concerning any of the offences, penalties, or forfeitures aforesaid, shall be void, and of none effect, any law, custome, or usage to the contrary thereof notwithstanding.

<sup>f</sup> This clause was added that the kings majesty should be bound expressly by this act, that no information in the courts at Westminster should be exhibited by the kings attorny generall, by any common informer, or other person whatsoever. Note the generality of these words.

<sup>g</sup> Note, the king expressly named.

<sup>h</sup> Shall be laid in the proper county.

This clause is  
This is a very  
\*[ 172 ]

but in affirmance of the true institution of the common law, for *vicini viciniore facta prajumuntur fore*, and for these informers they were best trusted, where they were least known.

the said county where such offence in truth was committed and not elsewhere. And if the defendant to any such information, action or suit, pleadeth that he oweth nothing, or that he is not guilty, and the plaintiff or informer in such information, action or suit upon evidence to the jury that shall try the issue, shall not both prove the offence laid in the said information, action or suit, and that the same offence was committed in that county, then the defendant and defendants shall be found not guilty.

5. And be it further enacted by the authority aforesaid, that no officer or minister in any <sup>1</sup> court of record shall receive, file, or enter of record any information, bill, or plaint, count, or declaration, grounded upon the said penall statutes or any of them, which before by this act are appointed to be heard and determined in their proper counties, untill the informer, or relator hath first taken a \* corporall oath before some of the judges of that court, that the offence or offences laid in such information, action, suit, or plaint, was or were not committed in any other county, then where by the said information, bill, plaint, count or declaration the same is, or are supposed to have been committed, and he beleeveth in his conscience the offence was committed <sup>1</sup> within a year before the information or suit within the same county, where the said information or suit was commenced, the same oath to be there entred of record.

Vide 7 Jac. ca. 5.  
21 Jac. cap. 12.

6. And be it also enacted by the authority aforesaid, that if any information, suit, or action shall be brought, or exhibited against any person or persons for any offence committed, or to be committed against the form of any penall law either by, or on the behalf of the king, or by any other, or on the behalf of the king and any other, it shall be lawfull for such defendants to plead the generall \* issue, that they are not guilty, or that they owe nothing, and to give such speciall matter in evidence to the jury that shall try the same, which matter being pleaded had been a good and sufficient matter in law, to have discharged the said defendant or defendants against the said information, suit, or action; and the said matter shall be then as available to him or them to all intents and purposes as if he, or they had sufficiently pleaded, set forth, or alleadged the same matter in bar, or discharge of such information, suit, or action.

Provided alwayes that this act or any clause contained therein shall not extend to any information, suit, or action, grounded upon any law or statute made against popish recusants, or for, or concerning popish recusancy, or against those that shall not frequent the church and heare divine service, nor

The reasons of this clause were,  
1. For that in the courts aforesaid, specially before justices of peace, there are not such skilfull prothonotaries and clerks for good pleading as were in the kings courts at Westminster; and therefore the makers of this law provided that the defendant might plead the generall issue.  
2. For the ease and benefit of the subject, great charges growing by speciall pleading.  
3. For avoiding of demurrers upon strict, and nice points of pleading.  
4. For avoiding of writs of error, which often are brought in respect of speciall pleading.

\* [ 174 ]

to any information, suit, or action for maintenance, champettry, or buying of titles, nor to any suit, or information grounded upon the statute made in the first year of the reign of our soveraign lord the king, of a subsidy granted to the king, of tunnage, poundage, wool, &c. nor for or concerning the concealing or defrauding the king, his heirs or successors of any custome, tunnage, poundage, subsidy, impost, or prisage, or for transporting of gold, silver, ordinance, powder, shot, munition of all sorts, wool, woollens, or leather, but that such offence may be laid or alleadged to be in \* any county, at the pleasure of any informer, any thing in this act to the contrary notwithstanding.

\* This proviso referreth only to the county, &c. So as no information, &c.

grounded upon any of the statutes in this proviso mentioned can be commenced, &c. in any of the kings courts at Westminster but before the justices of assize, justices of nisi prius, or gaol delivery, justices of oier and terminer, or justices of peace.

There was another mischief which lay heavy upon the subject, whereof advantage might be taken by any informer, which was not provided for by this act, viz. divers former statutes, which in respect of the alteration of times lay as snares upon the people, and at this day could not be performed. For example; that a yard of broad-cloth of the finest making scarlet grayned, or other cloth grayned, what colour soever it be, should not be sold above the value of 16s. a broad yard, &c. Which act and many other acts of parliament of like nature, and other obsolete laws to a very great number were at this parliament utterly repealed, and made void. We advise therefore the justice of peace (for to him we principally direct our speech, though it concern the rest of the justices before named) seriously to read over that act, where all those obsolete laws are particularly mentioned and repealed, and therefore no information, &c. can be commenced, &c. upon any of them.

4 H. 7. cap. 8.

21 Jac. ca. 18.

At the same parliament also anno 21 Jac. regis, an other good and profitable law was made concerning justices of peace and others, the tenor whereof is as followeth.

*The Title. An Act to enlarge and make perpetuall the Act made for ease in pleading against troublesome and contentious suits prosecuted against Justices of the Peace, Maiors, Constables, and certain others his Majesties Officers for the lawfull execution of their office, made in the 7. year of his Majesties most happy reign.*

21 Jac. ca. 17

Whereas an act intituled, an act for ease in pleading against troublesome and contentious suits prosecuted against justices of the peace, maiors, constables, and certain others his majesties officers for the lawfull execution of their office made in the seventh year of his majesties most happy reign of England, was made to continue but for seven years, and from thence to the end

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7 Jac. regis ca. 5.  
That act extended to  
1 Justices of  
peace.

2 Maiors or  
bailiffs of cities or  
towns corporate.  
3 Headborows.  
4 Portreves.  
5 Constables.  
6 Tithingmen.  
7 Collectors of  
subsidies and fif-  
teenths, and not  
to any officer not  
named in that act.

end of the next parliament, after the said seven years which by experience hath since been found to be a good and profitable law. Be it therefore enacted by the kings most excellent majesty, the lords spirituall and temporall, and the commons in this present parliament assembled, and by the authority of the same, that the said act shall from and after the end of this present session of parliament be perpetuall, and have continuance for ever.

Made perpetuall.

This act of  
21 Jacobi ex-  
tendeth to  
1. Churchwar-  
dens.  
2. All persons  
called sworn-  
men executing  
the office of  
churchwardens.  
3. All overseers  
of the poor.  
4. All others in  
their aid and as-  
sistance, and not  
to any other of-  
ficer or person  
not named in  
this act.

And be it further enacted by the authority aforesaid, that all churchwardens, and all persons called sworn-men executing the office of the churchwardens, and all overseers of the poor, and all others, which in their aid or assistance, or by their commandment shall doe any thing touching or concerning his or their office, or offices, shall hereafter be enabled to receive and have such benefit and help by vertue of the said act, to all intents, constructions, and purposes, as if they had been specially named therein.

And whereas notwithstanding the said statute, the plaintiff is at liberty to lay his action which he shall bring against any justice of peace, or other officer in any forain county, at his choice, which hath proved very inconvenient unto sundry of the officers, and persons aforesaid, that have been impleaded by some contentious and troublesome persons in countries far remote from their places of habitations.

This branch ex-  
tendeth to  
1 Actions upon  
the case.  
2 Trespasse.  
3 Battery.  
4 False impris-  
onment.

Be it therefore further enacted by the authority aforesaid, that if any action, bill, plaint, or suit upon the case, trespassse, battery, or false imprisonment shall be brought after the end of this present session of parliament against any justice of peace, maior, or baylif of city, or town corporate, headborow, portreve, constable, tything-man, collector of subsidy or fifteens, churchwardens, and persons called sworn-men executing the office of churchwarden, or overseer of the poor, and their deputies, or any of them, or any other which in their aid, or assistance, or by their commandment, shall do any thing touching or concerning his or their office or offices, for or concerning any matter, cause or thing by them or any of them done by vertue or reason of their or any of their office or offices, that the said action, bil, plaint, or suit shall be laid within the county where the trespassse or fact shall be done and committed, and not elsewhere And that it shall be lawfull to and for all and every person, and persons aforesaid, to plead thereunto the generall issue, that he or they are not guilty, and to give such speciall matter in evidence to the jury which shall try the same, as in or by the said former act is limited or declared. And that if upon the tryal of any such action, bill, plaint, or suit, the plaintiff or plaintiffs therein shall not prove to the jury which shall try the same, that the trespassse, battery, imprisonment,

The actions  
aforesaid shall  
be laid in the  
proper county.

To plead the ge-  
nerall issue.



imprisonment, or other fact, or cause of his, her, or their such action, bill, plaint, or suit was, or were had, made, committed, or done within the county where such action, bill, plaint, or suit shall be laid, that then in every such case, the jury which shall try the same, shall find the defendant and defendants in every such action, bill, plaint, or suit, not guilty, without having any regard or respect to any evidence given by the plaintiff or plaintiffs therein touching the trespassse, battery, imprisonment, or other cause, for which the same action, bill, plaint, or suit is, or shall be brought: and if the verdict shall passe with the defendant or defendants in any such action, bill, plaint, or suit, or the plaintiff or plaintiffs therein become nonsuit, or suffer any discontinuance thereof, that in every such case the defendant or defendants shall have such double costs, and all other advantages and remedies, as in and by the said former act is limited, directed, or provided.

The plaintiff upon the evidence must prove that the cause of action was done or had in the proper county.

See also another act the same parliament, *anno 21 Jacobi regis*, 21 Jac. ca. 15. intituled,

*An Act to inable Judges and Justices of the peace to give restitution of possession in certain cases.*

Be it enacted by the authority of this present parliament, that such judges, justices, or justice of the peace, as by reason of any act or acts of parliament now in force are authorised, and inabled upon inquiry to give restitution of possession unto tenants of any estate of freehold, of their lands, or tenements which shall be entred upon with force, or from them withholden by force, shall by reason of this present act have the like and the same authority and ability from henceforth (upon indictment of such forcible entries, or forcible withholdings before them duly found) to give like restitution of possession unto tenants for term of years, tenants by copy of court-rol, guardians by knights service, tenants by elegit, statute merchant and staple of lands, or tenements by them so holden, which shall be entred upon by force, or holden from them by force.

See 8 H. 6. cap. 9. and 31 El. cap. 11.

1. Tenant for years. 2. Tenant by copy, &c. 3. *Guardens en chevally*. 4. By statute merchant. 5. By statute staple, which no former act extended unto.

1. Judges or justices of the kings bench. 4 H. 7. 18 b. 7 E. 4. 18. 2. Justices of the peace. 8 H. 6. cap. 9. lib. 9. f. 113. b. 214. 8. Kelw. 159. Not justices of oier and terminer, nor any other justice. In stead of *disseisint* which was formerly in the indictment, now it shall be said, *ejecit, expulit, et amovit, or detinuit*. This act extendeth to Tenant by elegit,

*In termino Pasch. 6 E. 1. Coram rege prima fuit institutio justiciarium pro pace conservanda.*

Rot. parl. 18 E. 1. fo. 3. nu. 41. *Homines de Chesershire qui onerati sunt de servientibus pacis sustentandis, petunt exonerari de oneribus statut' Winton, &c. Rex non habet consilium mutandi consuetudines, nec statuta sua revocandi.*

The lord chancellor and others of the privy counsell doe remove divers justices of peace for that they were retayning to the archbishop, &c.

Dors. claus. an. 8 R. 2. m. 5.

See

Rot. par. 3 R. 2.  
nu. 39.

See a profitable and good law for justices of peace in the parliament roll, and not in print.

Regula.

But let us return to the duty of a justice of peace, for *melius est recurrere quam male currere*.

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13 E. 4. 9.  
20 E. 4. 6. b.  
He may enter  
into the house  
the door being  
open. See lib. 5.  
f. 91, 92. Se-  
mains case.

7 E. 3. 16.  
29 E. 3. 9.  
2 E. 4. 8. 9 E. 4.  
26.

Mag. Cart. c. 29.

\* Read the stat.

14 H. 8. f. 16. a.

Vid. 1 R. 3. ca. 3.  
3 H. 7. ca. 3.  
1 & 2 Ph. and M.  
ca. 13. & 2 & 3  
Ph. and Mar.  
c. 10.

One or more justice or justices of peace cannot make a warrant upon a bare surmise to break any mans house to search for a felon, or for stolen goods, for they being created by act of parliament have no such authority granted unto them by any act of parliament: and it should be full of inconvenience, that it should be in the power of any justice of peace being a judge of record upon a bare suggestion to break the house of any person of what state, quality, or degree soever, and at what time soever, either in the day or night upon such surmises. But if the party suspected be indicted, then the sheriff by force of the kings writ may demand the party indicted to be delivered; and that not done, he may break open the house, &c. and apprehend the felon; for that the kings writ is a *Non omittas propter aliquam libertatem*: but if the kings process be in debt, trespass, &c. at the suit of a party, there the sheriff by force of the kings writ cannot break open the house of the subject. And so is the book in 13 E. 4. fo. 9. which saith; it was holden, that for felony or suspicion of felony a man may break the house to take the felon, and two reasons are yeilded in the book. 1. Because it is for the common weale to take them. 2. Because the king hath an interest in the felony, and in such case the writ is a *Non omittas propter aliquam libertatem*: but otherwise it is for debt, or trespass, the sheriff or any other cannot break the house to take him. And yet it is to be understood, that if one be indicted of felony, the sheriff may by process thereupon after denyall made, &c. break the house for his apprehension, or upon hue and cry of one that is slain or wounded, so as he is in danger of death, or robbed, the kings officer that pursueth may (if denyall be made) break a house to apprehend the delinquent: but for justices of peace to make warrants upon surmises, for breaking the houses of any subjects to search for felons, or stolen goods, is against Magna Carta, *Nec super eum ibimus, nec super eum mittimus, nisi per legale iudicium parium suorum, vel per legem terre*: and against the \* statute of 42 E. 3. cap. 3. &c. And we hold the resolution of the court, viz. of Brudnell, Pollard, Broke, and Fitzherbert in 14 H. 8. to be law, that a justice of peace could not make a warrant to take a man for felony, unless he be indicted thereof, and that must be done in open sessions of the peace. For the justice himself cannot arrest one for felony, unless he himself suspect him, (as any other may) and by the same reason he cannot make a warrant to another. And all this appeareth in that book, and is agreeable with our former books, in 42 Aff. p. 5. & 12. & 24 E. 3. tit. Com. Br. 3. and with reason, for this warrant to take a felon should be in nature of a *capias* for felony, which cannot be granted before indictment, nor after indictment, but in open court. And this is the reason wherefore justices of peace before indictment could not have let any charged with felony or suspicion to bail, or mainprise, because justices of peace are judges of record, and ought to proceed upon record, and not upon surmises. *Sed distinguenda sunt tempora, et concordabis leges*: for since the statutes of 1 & 2 Ph. & Mar.

Mar. cap. 13. and 2 & 3 Ph. & Mar. cap. 10. (the words whereof be, That the said justices, or one of them being of the quorum, when any such prisoner is brought before them for any manslaughter, or felony, shall take examination, &c.) if any person be charged with any manner of felony, and information be given to a justice of peace of the felony or suspicion of felony, and feareth that the kings peace may be broken in apprehending of him, the said justice may make a warrant to the constable of the town to see the kings peace kept in the apprehending and bringing of the party charged with or suspected of the felony before him, and the party that giveth the information of his knowledge or suspicion to be present and arrest the delinquent; and in this manner it is implied and intended by the said statutes for the prisoner to be brought before them: and this (as we take it) agreeth with the common use and observance ever since those statutes. And this agreeth also with the said book in 14 H. 8. that a justice of peace may make his warrant for the salvation of the peace, meaning to assist the party that knoweth or hath suspicion of the felony. But in this case neither the constable, nor any other can break open any house for the apprehension of the party suspected or charged with the felony, for it is in law the arrest of the party that hath the \* knowledge or suspicion, who cannot break open any house: but if the \* door of the house be open, he may enter into the same, and arrest the party. Thus much upon reading of some that have written of the office of justices of peace, we have thought good to adde. For though commonly the houses or cottages of poore and base people be by such warrants searched, &c. yet if it be lawfull, the houses of any subject, be he never so great, may be searched, &c. by such warrant upon bare surmises.

\* Concerning bailment and mainprize, and what offenders were bailable by the common law, you may reade in the second part of the Institutes, W. 1. ca. 15. Now something is necessary to be added in respect of some variety of opinions touching the true diversity and signification of bailment, mainprize, *fideijuss.* surety, pledges, *plevin*, *plevina*, *replevin*, borough, and the like. And first of baile.

Some derive this word from the French word *bailler*, *id est*, *tradere*, to deliver, because the prisoner is delivered out of prison; but it cannot be so derived: for the entry is, *traditur in* or *per ballium*, and then the sense (or non-sense) should be, he is delivered into delivery. But this word *ballium* is truly fetched from the French noun *bail*, that signifieth a gardian, keeper, or gaoler: \* and herewith agreeth Bracton, who saith, *Nun erit ulterius per ballium dimittendus*. And againe, *Per ballium dimittatur usque adventum iustitiariorum, alioquin remaneat in prisina*: and in the same page, *tradas in ballium 12 probis hominibus*. We reade not in Britton of this word baile, but of some other words hereafter following, *Que plevissent corps de home ceux ne sont my proprement pledges mes sont manipernors pur ceo que ilz supposent que ceux plevissable sont livers a eux per baile corps pur corps*.

\* There bailment is called a living prison.

¶ A man arrested or imprisoned (and bailable) for felony shal be bailed before it appeareth whether he be guilty or no. But if a man be convicted by verdict or confession, &c. he is not bailable, because

\* 2 H. 7. 3. &c.  
15. 4 H. 7. 2. 3.  
5 H. 7. 4. 10 H.  
7. 17. 20 H. 7.  
12. 7 E. 4. 20.  
8 E. 4. 3. b.  
10 E. 4. 17.  
9 E. 4. 26.  
11 E. 4. 4. 13 E.  
4. 9. 7 H. 4. 3.  
17 E. 4. 5. 27 H.  
8. 23. a. Dier.  
7 Eliz. 236. b.

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\* 20 E. 4. fo. 6.  
17 E. 4. 5. a.  
Lamb. fo. 188,  
189.

\* *Baile and mainprize*.

See the second part of the Institutes, W. 1. ca. 15. fol. 472, &c. Glanv. li. 14. ca. 1. W. 1. cap. 15. 27 E. 1. stat. de finibus cap. 3.

*Of bail and bailment.*

\* Bracton lib. 3. fol. 123. And herewith agreeth the Register. fo. 133. b. Fleta lib. 1. ca. 26. Mirror ca. 2. § 14.

\* Cuius de Norm. b 24 E. 3. 23. 25 E. 3. 42. b. mainprize 1. 3 F. 3. cor. 224. 2 Eliz. Dier. 212. F. N. B. 246. c.

because it appeareth that he is guilty. So, if upon examination a man confesseth a felony, if the mittimus be for felony confessed, he cannot be bailed.

<sup>c</sup> 33 E. 3. main-  
prise 12.

<sup>d</sup> This agreeth  
with the former  
etymologie.

<sup>e</sup> 36 E. 3. ib. 13  
ac<sup>4</sup> 4 H. 6. 8.

22 H. 6. 59.

32 H. 6. fo. 4.

ac<sup>4</sup> 39 H. 6. 27.

21 H. 7. 33.

\* Vid. infra †.

<sup>f</sup> 36 E. 3. ubi  
sup. Br. Main-  
prise 39.

<sup>c</sup> By Shard there is a diversity between bail and mainprise; for the entry of the bail is, that such an one *traditur in ballium*, in which case they be his <sup>d</sup> gardians: and if they suffer him to escape, they shall answer for it.

<sup>e</sup> And where it is said there, *Et per quosdam ilz ferra pende*, it was spoken but in \* *terrorem*, and thereupon a *quere* is made of it. And that it was no felony in ancient time, hear what the Mirror saith. It is abusio to think that such pain should be awarded to the bail, as to the principals which made default, where they were but amer-  
ciable in that case.

<sup>f</sup> And where any man is delivered in *ballium*, he may safely be kept by his bail for their indempnity, because the court of justice doth deliver him unto them to be safely kept.

The manner of the severall entries of the bail is worthy of ob-  
servation, because it is only attained unto by observation of presi-  
dents, and the course of courts.

21 H. 7. 20. b.  
per Fineux.

F. N. B. 251. d.

See Lamb.

fo. 352, 353.

F. N. B. 251. f.

And first in case of bailment for felony by the common law, those that do bail him are severally bound to the king by recogni-  
sance in a certain summe, that the prisoner shall appear at a cer-  
tain day, &c. *Et ultra quilibet eorum corpus pro corpore, &c.*

The bail of a felon before two justices of the peace, where-  
of one to be of the quorum by the statutes of 1 & 2 Ph. & Mar. & 2 & 3 Ph. & Mar. is for the felon in double, and for each of the bail in single. As for example: if the felon be 40 li. the bail is 20 li. a piece. And herein to observe in effect three things. 1. *Ad comparandum* at the next gaole delivery. 2. *Ad standum recto de feloniam prædictam*. 3. *Ad respondendum dicto domino regi, &c.* See the second part of the Institutes, the statute of Marlebridge, cap. 27. if the party bailed *propter privilegium clericale respondere noluerit, non amercientur illi quibus traditus fuit in ballium*. There must be also a *liberate* in that case to the gaoler, if the felon be formerly committed to prison, to deliver him out of prison.

Nota, amercien-  
tur.

\* Vid. supra †.

[ 179 ]

25 E. 3. 39.

3 E. 3. tit. cor.

40 Aff. 42.

3 E. 1. cap. 15.

27 E. 1. stat. de

finibus, cap. 3.

Hil. 18 H. 8.

Bendl. This bail  
is determined by  
the judgment,  
if the principall  
be then there.

Before the said statutes of 3 E. 1. cap. 15. 27 E. 1. cap. 3. and 1 & 2 Ph. and M. cap. 13. If any person had been let to bail that was not bailable: by law this amounteth to a negligent escape, and shall be punished as a negligent escape of a felon shall be, that is, to be fined at 5 li. But by the statute of 1 & 2 Ph. and Mar. the justices of gaole delivery shall in that case set what fine upon the justices of peace, &c. they shall think fit. Upon a *capias*, and a *cepi corpus* returned, the entry is *traditur in ballium 8 die Maii anno 16 regis H. 8. Jo. Long, &c. usq; diem Mercurii prox' futur', et sic de die in diem. et termino in terminum, quousq; placitum prædictum terminetur, viz. quilibet eorum corpus pro corpore*.

If A be in *custodia mareschal'* in the kings bench, and a bill of debt be brought against him; and the defendant finde B for his bail, B entresth a recognisance to the plaintife with this condition precedent, *Quod si contigerit præd' defendentem debiti' et damna illa præfato querenti minime solvere, aut se prisonæ mareschalli ea occasione non reddere*, that then he would satisfie the same.

Nota, in these personall actions the baile is only bound, and  
§ their.

21 H. 7. 40. b.

their recognisance is generall, and of no certain summe, as it is in case of felony: and against him that is by bail in the kings bench, any stranger in the same term may sue him by bill in any personall action; otherwise it is if he were by mainprife *de die in diem*. But if A be outlawed in any personall action, and taken by force of a *copias utlegatum*, and plead any plea triable by the country in avoidance of the outlawry, as that he was commorant in another county, &c. In this case A shall be bailed, and the entry is, *Super hoc, T. B. et B. T. manuceperunt præfat. A habendum corpus ejus hic, &c. et sic de die in diem in quemlibet diem placiti, quousque placitum prædictum terminetur, et judicium inde redditum fuerit, viz. quilibet eorum corpus pro corpore: et prædictus A assumpsit pro seipso essendi tunc hic ad quemlibet diem placiti prædicti sub pæna 40 li. &c. si contingat ipsum A. ad aliquem diem, &c. defaultum facere, aut sectam suam in hac parte non prosequi.* Note, wheresoever the principall is bound, it is in a certain summe.

And where some do hold, that in all cases when any statute enacteth that the body of the delinquent shall be committed to prison at the will of the king, he cannot be let to mainprife before the kings will be known; the rule is good if it be rightly understood; for he cannot in that case by force of any such statute be imprisoned, before he be indicted, convicted, and judgement given, and then he cannot be bailed or letten to mainprife, because his offence appeareth, as hath been said.

And the case there cited in 24 E. 3. upon the statute of 2 E. 3. cap. 3. for going armed in Westm. hall, &c. the book saith, that Thomas Figgot *chivaler fuit arraine per Shard, &c.* which proveth that he was indicted, arraigned, and legally proceeded with, neither was his armour forfeited before conviction. And note, that the said act in that case giveth the forfeiture of his armour, and imprisonment: and therefore in that case he shall not be fined: but Sir Thomas Figgot might have been bailed before conviction.

In the next place we are to speak of mainprife, *manuceptio*, which deriveth it self, and signifieth a taking into the hand.

Every bail is mainprife, (for those that are bail take the person bailed into their hands and custody) but every mainprife is not a bail, because no man is bailed but he that is arrested, or in prison: for he that is not in custody or prison cannot be delivered out, as before it appeareth. But a man may be mainperned which never was in prison, and therefore mainprife is more large then bail. As in an appeal of felony, the defendant wage battell, &c. and a day appointed, &c. the plaintife shall finde mainprife, &c. to appear, &c. And yet he never was in prison or under custody. And \* sometime these mainperners are called pledges. Also if A be in execution for debt, &c. at the suit of T, and sueth a *scire fac'* upon a release or the like, the entry is, *Et super hoc prædictus A. dimittitur per manucept' E. D. E. F. qui eum manuceperunt, ad habendum corpus ejus hic ad præfatum terminum, et sic de die in diem, &c. quousque inde judicium redditum fuerit. Et si pro prædict. T. transierit, exequatur, viz. quilibet sub pæna 40 li. quas quilibet recognovit, &c. ad opus ipsius T. levare, &c. si contigerit ipsum A. ad aliquem diem placita defaultum facere, seu idem placitum cum effectu minime prosequi, vel se ab executione judicii, si pro præd. T. reddatur versus ipsum A. faciend. retrahere, &c.* And this is properly in the entry said, by mainprife, and no baile, because it is for the plaintife in the *scire fac'* who was in execution.

9 E. 4. 2. 2.  
See before cap.  
of the kings  
bench.

Here the bail are  
bound in no sum  
but corpus pro  
corpore, the  
principall in a  
certain sum.

Stanf. pl. cor. 27.  
b.

24 E. 3. 33. Sir  
Tho. Figgots  
case.

Of mainprife.

17 E. 3. fo. 2.  
17 Aff. p. 1.  
5 E. 3. 21. 32 E.  
3. Mainprife 23.  
\* 9 H. 4. 3.  
1 H. 6. 6.  
30 E. 3. 20.  
26 E. 3. 12.  
11 H. 4. 43.  
22 R. 2. conu-  
sance 37.  
8 H. 6. 30.

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\* Register.

F. N. B. 249, 250.

Bract. lib. 3. 154.

a 33 E. 3. main-

prife 12. 36 E. 3.

ib. 13. 1 R. 2. tit.

bill 9. 9 E. 4. 12.

7 H. 8. 4.

31 H. 6. 10.

32 H. 6. 4.

39 H. 6. 37.

21 H. 7. 33. a.

Vid. 4 H. 6. 8.

per Cokeine.

Of pledges.

Glanvil li. 10.

c. 5. Stat. de offic.

cor. 4 E. 1. Plegii

de prosequendo.

b F. N. B. 31. f.

& 195. h.

17 E. 3. 75. b.

Lib. 8. 61. &

lib. 5. 49. a.

Bract. li. 4.

f. 254. a.

\* Regula.

\* Regist. 283.

F. N. B. 19.

18 E. 4. 9.

d Vid. 2 H. 6.

f. 15. 2 part of

the Inst. W. 2.

cap. 2.

c 31 E. 3. main-

prife 21.

42 E. 3. 7. acc'

f 12 El. Dier

288. 20 E. 3.

pledges 11.

9 E. 4. 27.

2 H. 4. 17.

18 E. 4. 9.

2 H. 7. 1. 17.

e See Mag. Cart.

cap. 8. 2 part of

the Institutes.

Surety, Securitas.

b Regist. F. N. B.

85. See the third

part of the Instit.

cap. Fugitives.

12 H. 7. fo. 2.

13 H. 7. 10. b.

k 13 H. 7. fo. 10.

b 14 H. 7. 8. per

Fineux & Trem.

These words are

well explained.

Hil. 30 Eliz. co-

ram. rege infra.

cution. Now for as much as every bail is a mainprife (as hath been said) bail is oftentimes tearmed in our books by the name of mainprife as before it hath partly appeared, and as it appeareth in the \* writ *de manucapione*. 38 E. 3. fo. 14. 11 H. 6. 31. 50 E. 3. 11. 1 H. 7. 1. And in divers acts of parliament, Acton Burnell 11 E. 1. 4 E. 3. cap. 2. 23 H. 6. cap. 10. 1 & 2 Ph. and Mar. cap. 13.

Lastly, <sup>a</sup> there is a manifest diversity between *de die in diem*, and a bail: for he that is by mainprife *de die in diem* no bill can be maintainable against him: otherwise it is against him that is by bail *per cursum curiæ*.

*Plegii* and *plegiatio* are derived of the French word *pleige*, which signifieth one that undertaketh for another, a surety, *fidei jussor*. Now as every bail is a mainprife, so every bail and mainprife is *ex vi termini* *plegiatio*: which see in Glanville for the act of suretiship. But in legall understanding it is taken, first for the pledges which the demandant or plaintife finde in such writs as begin *Si A* (i. *querens*) *fecerit te securum de clamore suo prosequendo*, &c. And these are called *plegii de prosequendo*, and the reason of these were, for the answering of the king of the amerciament if the demandant or plaintife were barred or nonsuit, &c. so cautious were the founders of our law, that the king should ever be answered of such duties as belonged to him: but the writ of the <sup>b</sup> king, queen, or of an infant, shall not comprehend that clause, *si fecerit te securum*, &c. because they shall not in those cases be amerced. But it is observable, that the tenant or defendant shall finde no pledges: and yet if judgement be given against him he shall be amerced, &c. for \* *melior est conditio possidentis et rei, quam actoris*.

<sup>c</sup> Pledges may be found in the chancery, or may be entred at any time hanging writ or bill by the discretion of the justices, upon gaging deliverance by the avowant he shall finde pledges *de liberatione illa facienda*.

<sup>d</sup> There be also *plegii de retorno habendo* by the statute of W. 2: of pledges come *plevin*, *replevyn*, *replegiari*, &c. See the statute of Marlebridge, ca. 27. that *traditus in ballium, replegiatus, et per plegios* is all one and *synonyma*.

<sup>e</sup> When the defendant commeth in by cap. or exigent he shall not finde pledges but mainprife.

<sup>f</sup> He that sueth by bill shall finde pledges *de prosequendo in fine billæ*, which have been controverted in books.

We have hitherto spoken of pledges in a judiciall course.

<sup>g</sup> There be also voluntary pledges, as you may reade in Fleta, lib. 2. cap. 5. 32 E. 3. *monstrans des faitz*. 179. 42 E. 3. 11. 44 E. 3. 21. 48 E. 3. 20. 22 Eliz. Dier 270. F. N. B. 137. c.

Surety comprehendeth all the former. And note, there is a surety by the common law, and surety by statute. By the common law, <sup>h</sup> as in a writ *de securitate invenienda ne exeat regnum*, &c. There is surety of the peace, and surety of the good behaviour *de bono gestu*. The surety of the peace cannot be broken without some act, as an affray, or battery, or the like. But the surety *de bono gestu* consisteth chiefly, that a man demean himself well in his port and <sup>k</sup> company, doing nothing that may be cause of the breach of the peace, or of putting of the people in fear or trouble; and that it doth not consist in observation of things that concern not the peace,

peace, as in not well doing his art or occupation. Thus far is the authority of the book in 2 H. 7. by the resolution of all the justices assembled for that purpose. But in mine opinion, the reporter *male se gessit* in the last words of the case.

<sup>1</sup> At a general sessions holden at Bridgewater in the county of Sommerfet, anno 28 Eliz. one William King with sureties was bound by recognisance to appear at the next generall sessions of the peace in the same county, *et quod interim se bene gereret erga dictam dominam reginam, et cunctum populu suum.* And after at the next sessions, William King appeared and was indicted for slanderous words spoken since his binding, viz. for saying at one time to Edw. Kyrton, esq; 'Thou art a pelter, thou art a liar, and hast told my lord lies, and I will make thee a poor . . . And he was further indicted, that since the said recognisance, *clausum cuiusdam Johannis Wich, vi et armis fregit et intravit et averia et catalla ipsius Johannis in clausu predicto depascent'* illicitly vexavit et chasavit. And afterwards at another time he said to the said Kyrton, 'Thou art a drunken knave: which indictment was removed into the kings bench. And hereupon two questions were debated divers times both at the barre and the bench. First, admitting that all that is contained in the indictment to be true, whether any therein was in judgement of law a breach of the said recognisance. The second, for how much the said indictment was good in law. As to the first it was resolved, that neither any of the words, nor the trespassse, were any breach of the good behaviour, for that none of them did tend immediately to the breach of the peace, for though the said words (especially thou art a liar, &c. thou art a drunken knave) are motives and mediate provocations for breach of the peace, yet tend they not immediately to the breach of the peace; as if William King had challenged Kyrton, or sent him a challenge to fight with him, or had threatened Kyrton to beat or wound him, or the like: these tend immediately to the breach of the peace, and therefore are breaches of the recognisance of the good behaviour. And this diversity was justly collected upon the coherence and context of the statute of 34 E. 3. whereby justices of peace are assigned for keeping of the peace, and to restrain the offenders, rioters, and all other barattors, and to chastise them according to their trespassse and offence; and to inquire of pillors and robbers, in the parts beyond the seas, and be now come again, and go wandring and will not labour, &c. (And thus much for punishment of offences against the peace after they be done: now followeth an expresse authority given to the justices, for prevention of such offences before they be done.) viz. \* And to take of all them that be not of good fame, (that is, that be defamed and justly suspected that they intend to break the peace,) where they shall be found sufficient surety and mainprise of their good behaviour towards the king and his people (which must concerne the kings peace, as is also provided by the word subsequent) to the intent that the people be not by such rioters troubled or indamaged, nor the peace blemished, nor merchants nor other passing by the highwayes, disturbed, nor put in the perill that may happen of such offenders. For the trespassse, &c. Although every wrongfull trespassse is, *quare vi et armis et contra pacem*, yet these force and arms, or *contra pacem* implied in law are not taken to be such as shall

<sup>1</sup> Hill. 30 Eliz. coram rege.

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34 E. 3. cap. 2.

\* This was the first statute that gave this expresse authority to justice. of peace.

make a breach of the good behaviour; because they are trespassers upon the land or touching goods or chattels, and not the person of a man.

21 E. 4. 10.

As to the second point it was holden, that the indictment concerning the words was void and *coram non iudice*, and good only for the trespass, *quare clausum, &c.* But if there be any just cause of breach, he ought to have a *scire fac'* upon the recognisance.

21 H. 6. 26.

In an account, if a *capias ad computand'* be awarded against the defendant, and thereupon he is outlawed, and rendreth himself to the prison of the Fleet, and auditors be assigned to him, before whom they be at issue, and the auditors bring the record into the common place, and the defendant found surety in 200 li. to appear in proper person every day *pendente placito*; and if the issue passe against him, that he rendreth himselfe to prison.

<sup>a</sup> 45 E. 3. Surety 24.  
Register 291. b. Nota.

<sup>a</sup> A fine *sur consueance de droit* was levied to an infant, and because the infant ought to pay the fine to the king, he found *securitatem de fine solvendo*.

F. N. B. 79 g.

There is also a writ *de securitate pacis, et de bene gerendo*.

2 H. 7. 1. 4. & c.

<sup>b</sup> In *homine replegiando* the defendant avow for that the plaintiff is his villain regardant. The plaintiff said that he is free, and thereupon they were at issue, the plaintiff prayed that he might gage deliverance. And it was awarded that he should have deliverance of his goods, and finde no surety that the avowant should have the goods again if it were found for him. But note when the avowant be at issue upon the villenage, <sup>c</sup> then the plaintiff shall find surety to sue *cum effecta*.

36 H. 6. 23.

3 H. 4. 9.

<sup>b</sup> 6 E. 4. 8.

12 E. 4. 4. <sup>a</sup>.

5 H. 7. 3. <sup>a</sup>.

13 H. 7. 17. <sup>a</sup>.

<sup>c</sup> 3 H. 7. 3.

Surety; by statutes: see the statute of W. 1. cap. 20. *De malefactoribus in parvis* in the second part of the Institutes in the exposition of the same: the statute of Glouc. cap. 4. and W. 2. cap. 21. for finding of surety in a *cessavit*. See also the second part of the Institutes in the exposition thereof.

The statute of W. 2. c. 4. *Et statut. de defensione juris, anno 20 E. 1.* of finding of surety by tenant by receipt. See the second part of the Institutes the exposition of the same. And many other whereof we need not to make mention; only this is observable, that when any statute doth require pledges or surety to be found, they ought to be sufficient, for insufficient pledges are no pledges in judgement of law; and surety cannot be *ex vi termini* unlessse it be sufficient.

It appeareth by W. 2. cap. 29. that the \* writ *de odio et atia* concerning the bailment of prisoners is grounded upon Magna Carta. And it is holden by some, that writ is not now in use, but is taken away by the statute of 28 E. 3. But this writ is revived again by the statute of 42 E. 3. cap. 1. whereby it is enacted that if any statute be made against Magna Carta, or *Carta de Foresta*, it is enacted to be void. See more of this matter in the second part of the Institutes, Mag. Cart. cap. 26. which were unnecessary here to be rehearsed. This writ *de odio et atia* is omitted by Fitzh. in his N. B. Concerning the writ *de marucaptione*, one kind thereof directed to the sherif is a writ grounded upon, and rehearsing the statute of W. 1. cap. 15. and how that before him by a certain inquisition of office A B standeth indicted *de quodam latrocinio cujusdam equi, &c.* Now in as much, as by the statute of 28 E. 3. he cannot

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See F. N. B.

151. g.

W. 2. ca. 29.

Mag. Cart.

cap. 26.

\* Reg. 133, 134.

28 E. 3. cap. 9.

Stanf. pl. cor.

77. g.

See Hil. 32 E. 1.

coram rege rot.

71 & 79.

Regist. 268. b.

F. N. B. 250. a.

Bract. li. 3.

f. 154. 28 E. 3.

cap. 9.



cannot take such inquisitions by force of any writ or commission, therefore that writ *de manucapione* ceaseth. But the writ of *manucapione* may be directed to other justices, as to the justices of the forest, justices of peace and to other: for the statute of 28 E. 3. extends only to sheriffs, and to sheriffs only upon taking of inquisitions. But a writ of *manucapione* may in other cases be directed to the sheriff. Vide the statute of 4 E. 3. cap. 2. for the court of the marshalsea, F. N. B. 25. I.

For the writ of *homine replegiari*, see the Register, fo. 133. F. N. B. 66. E. Hil. 43 E. 3. *coram rege* rot. 110. Suffex. Mich. 5 H. 4. rot. 26. *Devon' per breve regis in duobus com'* William Scuttes case. 11 H. 4. 15. F. N. B. 68. c. cap. in Witherham.

So odious was unjust imprisonment, or unjust deteyning of any freeman in prison, as in ancient time there lay a writ *de pace et imprisonmente*, &c. *ubi liber homo*, &c. *uno modo propter injustam captationem, et alio modo propter injustam detentionem*, &c. And there you may read the form of the writ of appeal, *de pace et imprisonmente*, which we have the rather remembred, that it may be observed what severall remedies the law hath allowed for the relief and ease of the poor prisoner. But the readiest way of all is by *habeas corpus* in the term time, or in the vacation out of the chancery, as you may read at large in the second part of the Institutes, Mag. Carta cap. 29. and statut. de Gloc. c. 9. and the exposition upon the same.

The clerk of the crown, clerk of the peace, and clerks of assise shall certifie briefly a transcript of such attainder, outlawry or conviction as is had for any kind of felony before justices of oier and terminer, justices of gaol delivery, and justices of peace before the king in his bench, there to be and remain of record, &c. <sup>a</sup> See the statute, a very necessary law for the plea of *anterfoitz attainr* or convict for ousting of clergy, &c. and for escheats and forfeitures to the king.

<sup>b</sup> For the better understanding of this act of parliament, it is to be understood, that such attainders of outlawry and convictions of felony before any of the justices named in this act, as are certified, or delivered into the kings bench, are under the custody of the clerk of the crown of that court, and for that cause he is named in this act.

See the statute of 9 E. 3. cap. 5. by which it is ordained and established, that justices of assise, gaol delivery, and of oier and terminer, shall send all their records and processes determined, and put in execution to the exchequer at Mich. every year once to be delivered there, and the treasurer and chamberlains, &c. shall keep them in the treasury as the manner is, so that the justices always doe first take out the estreats of the said records and processes against them to send to the exchequer, as they were wont before.

By the statute of 11 H. 4. ca. 3. justices assigned (*id est*, justices of assise) shall cause to be delivered into the kings treasury all the records of assises, mordancettor, and of certifications before them determined every second year.

All indictments and presentments in the sheriffs turn, or law days

Regiſ. 80. a.  
Regiſ. 133. b.  
F. N. B. 250. k. l.  
& 251. a. b. c.

Regiſ. 70.  
F. N. B. 250.  
d. f. i.  
See Bract. li. 3.  
121. 154. Fleta  
li. 2. ca. 2.

Bract. li. 3.  
fo. 145. Britton  
fo. 49. Fleta,  
li. 1. ca. 40.  
Mirror ca. 2.  
§. 11. *la appeal de*  
*imprisonment.*

24 H. 8. cap. 14.  
This is expound-  
ed to be reddendo  
*ſingula ſingulis*  
*reſpectuſve*. Vide  
8 E. 4. 18.

<sup>a</sup> Vid. Dier 8 EL  
253. 254. upon  
another branch  
of this act.

<sup>b</sup> 14 H. 7. 20. per  
Kib'e. Br. Judg. 8.  
to be understood  
of the kings  
bench.

14 H. 7. 15. b.  
per Merdaut.

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11 H. 4. cap. 3.  
13 H. 4. cr-  
tor 91.

3 E. 4. cap. 3.  
V. 14 E. 4. 131.  
8 E. 4. 10. 5.

shall be delivered to the justices of peace of the same county, at their next sessions of peace to award proceſſe, &c.

3 H. 7. ca. 1.  
lib. Intr. Raſt.  
43-

After the murder or manſlaughter found before the coroners they ſhall deliver their inquisitions afore the justices of the next gaol delivery.

3 H. 7. ca. 1.

If any perſon be murdered in the day, and the murderer eſcape untaken, the townſhip ſhall be amerced, and the coroner hath power to enquire thereof upon view of the body, and the justices of peace have power to inquire of ſuch eſcapes, and to certiſie afore the king in his bench.

W. 1. an. 3 E. 1.  
cap. 1.

Pax { Eccleſiæ.  
Terræ.  
Juſtitia pacis  
mater & nutrix.

And (that we may ſay ſomewhat of every thing) forasmuch as the charge to be given at the ſeſſions of the peace conſiſteth on two parts, laws eccleſiaſticall for the peace of the church, and laws civil or temporall for the peace of the land, it ſhall be very fit to lay, as a foundation of the charge, that excellent law eſtabliſhed by authority of parliament, which we have tranſlated into Latin. *Imprimis rex vult, et præcipit quod pax ſacroſanctæ eccleſiæ, et terræ ſolide cuſtodiatur et conſervetur in omnibus, quodque juſtitia ſingulis, tam pauperibus, quam divitibus adminiſtretur, nulla habita perſonarum ratione.*

Fiſt of all, the king willeth and commandeth that the peace of holy church, and of the land be well kept and maintained in all points, and that common right (*i. juſtice*) be done to all, as well poor as rich, without reſpect of perſons.

Hereupon the charge to conſiſt upon two parts. 1. Of laws eccleſiaſticall, and 2. Of laws civil, or temporall, with an exhortation to doe juſtice.

1 Mar. cap. 12.  
3 & 4 E. 6. ca. 5.  
Though the body of theſe acts be repealed, yet the *axiome* rehearſed in the preamble ſhall continue for ever.

Or an other axiome or principle of the law may be the foundation of the charge. *Imprimis intereſt reipublicæ, ut pax in regno conſervetur, et quæcunque paci adverſentur provide declinentur.*

It is moſt neceſſary in a commonwealth to provide, that tranquillity and peace be continued in the realm, and that all things being contrary thereunto may by foreſight be eſchewed.

\* Or that of 32 H. 8. There is nothing within this realm that conſerveth the ſubjects in more quietneſſe, reſt, peace, and good concord, then the due adminiſtration of his laws.

\* 32 H. 8. cap. 9.

Or the like, ſee the third part of the Inſtitutes, in Epilogó.

## C A P. XXXII.

A Court of Inquiry of the Defaults of the Justices of Peace, Justices of Assize, Sheriffs, and Under-Sheriffs, touching the Execution of the Statute of 13 H. 4. cap. 7. concerning Riots, Assemblies, and Routs.

THIS court is raised by the statute of 2 H. 5. and is a court only of inquiry, and to certifie the inquests incontinent into the chancery, as by the said statute more at large appeareth.

2 H. 5. cap. 3.  
See 19 H. 7.  
c. 13.

## C A P. XXXIII.

## Justices in Eire.

THEY were originally instituted for the good rule of the subjects, and for the ease of the countries, and that such as had franchises might claime them.

They were called *justiciarii in itinere*, or *itinerantes*, in respect of other justices that were *residentes*. In the black book in the exchequer, cap. 8. they are called *justiciarii deambulantes, et perlustrantes*. See Vet. Mag. Cart. 2 part. fo. 72. *Artic<sup>us</sup>, et sacramenta in itinere*.

See the 2 part of  
the Inst. W. 1.  
cap. 27.  
Bracton lib. 3.  
fo. 116.  
Britton fo. 1.  
2 E. 3. fo. 27.  
Kclw. fo. 143.

Their authority was by the kings writ in nature of a commission, they had jurisdiction of all pleas of the crown, and of all actions reall, personall, and mixt: they rood from seven years to seven years (but now by the statute of 27 H. 8. ca. 24. all justices in eire must be by letters patents under the great seal.) In what county soever they came, all other courts during the eire ceased, and all those pleas in that county, or rising there before any other, the justices in eire might proceed upon as the others might have done. For example: a writ was directed to the justices of the common pleas to adjourn, and send all the pleas of that county which were in the court of common pleas before the justices in eire to be determined before them, &c. And if judgment had been within that county, the justices in eire might award execution without a *seire fac<sup>i</sup>*. See the first part of the Institutes, sect. 514. and read the ancient books and other authorities there quoted for their antiquity and jurisdiction, and the causes wherefore they vanished away. But the other justices of eire, viz. of the forest, continue to this day according to their originall institution. See the chapter of the Court of the Forest. See also the second part of the

Regist.  
F. N. B. 243. k.  
14 H. 7. 29.  
15 H. 7. 5.

Institutes, Marlbridge 24, 25, 27. W. 1. cap. 18. & W. 2. cap. 10. and the exposition of every of them.

What franchises and liberties ought to be claimed before justices in eire, see lib. 9. fol. 24. the case of the abbot of Strata Marcella.

The stile of their court was, *Placita de juratis et assis et coron. de itinere Johannis de Vallibus et sociorum justic' itiner' apud Ockham in cori' Rutland in crastino epiphaniæ Domini, anno regni regis Edw. 14.*

These justices in eire did hold their courts, as hath been said, from seven years to seven years, and first they began with pleas of the crown, for saith Bracton, *Imprimis incipere debent de placitis coronæ, in quibus terminantur actiones criminales tam majores quam minores.* And one could not be indicted for any thing, concerning the pleas of the crown, done before the last eire: for so it appeareth by Bracton, *Nun erit querendum de placitis illis coronæ quæ emerferunt ante aliud iter justiciariorum, et quæ coram eis preposita non fuerunt.* And by Fleta, *Ex capitulis de veteribus placitis coronæ alias presentatis et nondum terminatis, sciet exceptio quibusdam indictatis oriri, quod de novo indictmento de fact' ante ultimum iter imposito non tenetur respondere; et si non sit allocabilis, sequitur quod juratores hundredi puniendi sunt de concealamento, vel de perjurio convincendi.*

And it were to be wished that in criminall causes at the kings suit, there were a limitation of time, specially in cases concerning the life of man. The common law in appeals at the suit of the party hath in those cases limited a time, viz. that they must be brought within the year and the day after the offence committed: and the reason thereof was, that the cause might be tryed, whiles it was fresh in memory, and that such as could testifie were living.

Vid. Hil. 15 E. 1. in banco rot. 56. they could adjorn into another county.

The justices in eire might inquire of the deeds of justices of gaol delivery.

Bracton saith, *Et si post intervallum accusare velit, non erit de jure audiendus, nisi docere potest se fuisse justis rationibus impeditum.* And Bracton also saith, that after the charge given the justices in eire, *debent transferre se in locum secretum, et convocatis ad se quatuor, vel sex, vel pluribus de com' qui dicuntur \* busones com' ad quorum nutum dependent vota aliorum qualiter à d'no. rege et concilio suo sit provisum, quod omnes tam milites quam alii qui sunt c 15 annorum et amplius jurare debent, &c.*

\* *Busones* sive *busones*, of the French word *bourson*: for as it is in the proverb, He that beareth the purse ruleth the roast, which agreeth with Bractons description here, *Ad quorum nutum dependent vota aliorum.* So vulgarly called, which also Bracton insinuateth, when he saith, *Qui dicuntur busones.* It is misprinted, and should be 12 annorum, 2 for 5. See the 2 part of the Inst. Mag. Car. ca. 7. & 35.

Br. Jurisd. 116. 27 aut. 1. F. N. B. Fletali. 1 ca. 10. § *Ex capitulis vers. finem.*

So great was the authority of justices in eire, that if they came into the county where the justices of the court of common pleas sat, the jurisdiction of that court during the eire ceased, but they yielded to the kings bench.

See cap. Itineris, Vet. Mag. Cart. part. 1. fo. 150. 151, & c.

See Hovenden, ann' D'ni. 1176. Vid. Hil. 13 R. 2. pl. 2. Of proceedings before them.

*Rex justiciariis suis prox' itinerantibus in com. N. salutem. Quia per \* commune concilium regni nostri Angliæ provisum est, quod qui-*

Regist. 19. b. \* *V. W. 2.* c. 10. Nota the Register is a good exposition of this statute. See the 2 part of the Inst. W. 2. cap. 10.

*libet liber homo libere possit facere attornatum ad libertates suas vendicandas, exigendas, prosequendas, et defendendas; vobis mandamus, quod attornat' quem A per literas suas patentes suo loco attornare voluerit, ad libertates suas vendicandas, exigendas, prosequendas, et defendendas coram vobis in itinere vestro in com' prædicto, loco ipsius A sine difficultate ad hoc recipiatis, &c.*

See also another writ in the Regifter, *ubi supra*, *De clamore admittend' in itinere, &c.*

## C A P. XXXIV.

[ 186 ]

## The Court of Justices of Trailbaston.

**T**HESE justices sat by force of the kings commission of oier and terminer grounded, as some hold, upon an ordinance made by king E. 1. and the lords at a parliament holden in anno 33 E. 1. for the hasty proceeding. And therefore they were called justices of trailbaston, because they proceeded as speedily as one might draw, or trail a staffe. They say upon the said ordinance in the same year, viz. 33 E. 1. a commission of oier and terminer *vocat' trailebaston secundum ordinationem inde fact' in parlamento de anno 33 E. 1.* By this it appeareth, as some have conceived, that this commission was builded upon an ordinance in parliament, and not upon an act of parliament.

33 E. 1. in Dorf.  
pat. parte 1.

Others say that this commission was grounded upon an act of parliament in anno 33 E. 1. intituled, *Statutum quod vocatur Ragman de justiciariis assignatis.* See the statute, and that the ordinance mentioned in the commission of 32 E. 1. is the statute *Ragman*, statutes being often called by the name of ordinances, for every statute is an ordinance, *sed non è converso.*

Vet. Mag. Cart.  
2 parte fo. 23.

But let us now consider what light our books have given us, the statute being somewhat obscure and dark.

In Trin. 2 E. 3. we read this case. William de B. sued a writ of error returnable in the kings bench upon a judgement given in a plea of land at the suit of John Hodey, which was pleaded by bill before justices of trailbaston, where because the justices of trailbaston did send only the record of the plea, they were commanded to send the transcript of their commission, and the bill also with the pannell, the which they did, and again the record also. In which case you may observe these five conclusions. First, it was assigned for error, that John Hodey made his plaint of certain land against William de B. being present in court before the justices of trailbaston, and he was put to answer without making of processe against him, and therefore they erred in receiving the plea without processe, &c. *sed non allocatur.* Secondly, for the justices of trailbaston be in their case as justices in eire; and in eire when the party puts in his bill against another which is present in court, the justices in eire ought to receive it. Thirdly, another error was assigned, that it appeared by the record, that

2 E. 3. fo. 27.

presently the justices of trailbaston took an inquest *de circumstan-  
ribus*, which came not in by proceſſe to give their verdict, and alſo  
it appeared by the record, that the twelve gave their verdict, *ſuper  
ſacramentum ſuum*, without ſaying *de conſenſu partium*; *ſed non allo-  
catur*. For in trailbaſton and in eire certain men are made to  
come by whom thoſe juſtices doe inquire *ex officio*, that is, without  
proceſſe, whereunto the parties which have pleaded to iſſue agree  
to be tryed by them, the court erreth not if they take an enqueſt  
of them, and it is not found of record, that William de B. did diſ-  
aſſent: and as to the other point, the court ſhall intend an aſſent  
where there appeareth no diſaſſent. Fourthly, the errors aſſigned  
being no errors, the court did ſearch for errors, and to affirm  
the judgment or to reverſe it. And the court did find in the firſt  
record which was ſent, that William de B. *dicit quod in nullo eſt  
inde culpabilis, et de hoc ponit ſe ſuper patriam*, where John de Hodey  
which was plaintiff did not joyn with him, *et prædictus querens ſimili-  
ter*, which joyning was in the ſecond record certified; but for that,  
that record came in without warrant, and the firſt record certified  
is the record in law, thereupon the former judgement was re-  
verſed. Fifthly, that no error was aſſigned, that the juſtices of  
trailebaſton had no lawful juriſdiction, but a writ of error brought  
upon their judgement, whereby, and by all the context of this  
caſe their juriſdiction was affirmed, the judges of the kings bench  
having, as is aforeſaid, a tranſcript of their commiſſion. Alſo  
they had juriſdiction in caſe of indiſtment of death, and ſo allow-  
ed, but appeals of felony were excepted in the ſaid ſtatute.

2 E. 3. 28.

14 E. 3.

Vide Dorſ. Pat. anno 14 E. 3. part 3. m. 8. & 2. A commiſ-  
ſion of trailbaſton was granted to Robert Parning treaſurer and  
others in London, Middleſex and Surrey, and like commiſſions  
were granted in other counties.

Rot. parl. 1 R. 2.  
101.

A petition was exhibited by the commons in full parliament,  
who prayed that no manner of eire or trailbaſton might be holden  
during the warres, or 20 years, &c. but it was not granted.

But *præcipitatio eſt noverca juſtitie*: and both in reſpect of the  
precipitation and of ſome reference to the next parliament by the  
ſtatute of Ragman, this commiſſion wholly long ſince vaniſhed, and  
is left out of the Register as not to be put in execution. But the  
commiſſion of oier and terminer there remaineth as neceſſary and  
uſeful for the puniſhment of horrible and enormous offences. See  
before the chapter of Oier and Terminer.

## C A P. XXXV.

## The Court of Wards and Liveries raised by Authority of Parliament.

**F**IRST, the king our said sovereigne lord by the authority aforesaid, ordaineth, maketh, establisheth, and erecteth a certaine court commonly to be called for ever The Court of the Kings Wards: which court by authority aforesaid continually and for ever shall be a court of record, and shall have one seale to be graven and made after such form, fashion, and manner, as shall be appointed by the kings highnesse, and shall remaine and be ordered, as hereafter shall be declared.

The statute of 32 H. 8. cap. 46. *The court of the kings wards.* A court of record. by the statute of 33 H. 8. cap. 22. the office of the liveries is annexed to the

court of wards. So as now it is in the court of wards and liveries.

Also be it enacted by authority aforesaid, that all wards which the kings highnesse now is, or hereafter shall be intitled to have, with their mannors, lands, tenements, rents, remainders, reversiones, services, and all other hereditaments whatsoever they be, as well in possession as reversion, and all revenues, issues, and profits of the same, and every part thereof, for the time the same shall be, or ought to be in the kings possession, shall be in the order, survey, and governance of the said court, and the ministers of the same, in manner and forme, as by this act is declared and limited.

See the first part of the Institutes. sect. 441. All wards, mannors, lands, &c.

Also that the said master of the wards for the time being shall have full power and authority to award under the seale to be appointed to the said court in the kings name such proces and precepts with reasonable pains to be therein limited, as be now commonly used in the court of the kings duchy chamber of Lancaster being at Westm. against every person or persons whatsoever they be, for and concerning the interest, right and title of the kings majesty, his heirs and successors, of in or for any wards lands, tenements, rents, account, receipt, services, or other cause in any wife touching or concerning any thing appointed by the order of the said court, or any part thereof, for and on the behalfe of our said sovereigne lord the king, or to or for any debt, rising and growing by occasion of the same.

In the order, survey, &c.

Proces.

Duchy chamber.

In any wife touching or concerning, &c.

Debt.

Also be it enacted by the authority aforesaid, that the said attorney, receiver generall, and auditors shall diligently from time to time attend upon the said maister in the said court for the hearing and ordering of matters and causes in the same court for the time of four terms in the year usually kept for the

Attend.

By the said act  
of 33 H. 8. the  
surveyour is ad-  
ded, and to take  
place before the  
attorney.

[ 189 ]  
Indebted.

No proces out  
the exchequer  
for or concerning  
any ward, &c.

Widowes.

Ideots.  
Naturall fools.

To let and fet.

the law at Westm. and procure with all diligence, that all rents, fermes, profits, casualties, improvements, and other emoluments of the wards mariages, ideots, and all mannors, lands, tenements, and hereditaments being in the survey and governance of the said court, shall be truly and justly paid, and answered to the said receiver generall of the said court to the use of the kings highnesse without concealing any part thereof. And shall also cause and procure processe to be made against such as shall be indebted to the kings highnesse and their sureties of and for any part thereof, from time to time, as the time and case shall require without any delay.

Also be it enacted by the authority aforesaid, that all manner of proces that shall be made out of the kings exchequer to or against any person or persons for any ferme, rents, issues or profits concerning the premisses or any part thereof, or any other thing limited in this act to be in the survey, order, and governance of the said court, and the ministers thereof, shall be clearly void and of none effect to all intents and purposes.

Also be it enacted by the authority aforesaid, that the said master by the advice of the said attorney, receiver generall, and auditors, or three of them, whereof the said master to be one of them, shall have authority by this act to survey all the kings widowes, and to treat, commune, and conclude as well with all and every of the kings widowes that now be, or hereafter shall be, and that have married themselves without the kings license, or that hereafter shall happen to marry themselves without the kings license, for their reasonable fines to be made to the kings use, and to tax and assesse the same by their discretion according to the statute of *Prærogativa Regis*: the same fines to be paid to the receiver generall of the wards lands, as the same may appear yearly in his account.

Also be it enacted by the authority aforesaid, that the said master by the advice of the said attorney, receiver generall and auditors, or three of them, shall have authority by this act to survey, govern and order all and singular ideots and naturall fools now being in the kings hands, or that hereafter shall come and be in the kings hands. And also to survey and order all the mannors, lands, tenements, and other hereditaments whatsoever, now being in the kings hands, or in the hands of any other person or persons to their uses, or to the use of any of them, that hereafter shall come and be in the kings hands, his heirs and successors in the right of any of them by reason of his graces prerogative royall: and also by the advice of the said attorney, receiver generall, and auditors, or three or two of them, to let and fet the mannors, lands, and tenements to the kings use for the time of the kings interest for such rent and fine, as by their discretion shall be thought convenient; the finding and keeping of the said persons their wives and children, and the reparations of their houses and lands alwayes to be considered in the doing thereof; the same rents and fines reserved



reserved to the kings grace to be paid alwayes to the hands of the receiver generall of the wards lands for the time being, as the same may appeare in his account, and be recorded in the court of wards.

And also be it enacted by the authority aforesaid, that the said master for the time being shall have power and authority to take recognisances of all and every person and persons that shall be called into the court of wards and liveries to answer to any matter alledged against them in the said court, to make their daily appearance in the said court, to answer to such matters as to them then and there from time to time shall be alledged. And that all such recognisances of what summe soever they be, shall be as good and effectuell in the law to all intents and purposes, as recognisances taken in the kings high court of chancery, or elsewhere before any judge of record within this realm. And that the said master for the time being with the advice of the court, or of such member of the same as then shall be present, so that they be two beside the said master, shall have full power and authority to moderate such recognisances as be or shall be there forfeited, and to set fines for the same to the kings use under the summes contained in the said recognisances; the said fines to be levied by like proces of *scire facias*, as by the statute made in the 27 yeare of our soveraigne lord the kings reigne is given to the chancelour of the court of augmentations of the revenues of his graces crown. And that the said master for the time being with the advice aforesaid shall have power and authority to commit to ward any person or persons for his or their disobedience, contempt, or other offence made, or to be made triable within the kings court of the wards and liveries, and upon the said matters ordered or decreed there, to deliver them from prison, and to cancell and make void all recognisances and obligations taken or hereafter to be taken in the same court to the kings use when and as often as the said master, with the advice of the said court or three of them, shall see and perceive the matters and causes, for the which any such recognisances or obligations hath or hereafter shall happen to be taken, to be finished and ended, and the kings grace his heirs and successors, or the party thereupon satisfied, without any other warrant for the same.

And also shall have full power and authority to hear and determine all and all manner of debts, detinues, trespasses, accounts, reckonings, waists, deceits, negligences, defaults, contempts, complaints, riots, quarrels, suits, lites, controversies, forfeitures, offences, and other things whatsoever they shall be, which shall hereafter grow, be moved, stirred, procured, pursued, or arise in, for, or upon any matter, cause, or other thing \* assigned, committed, or appointed to the severall directions, orders, and governances of the same courts, or any of

Called by proces.

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To moderate recognisances.

The authority of the courts of exchequer, wards and duby.  
A clause of the statute of 33 H. 2. cap. 39.

\* Assigned.

of them, or for or upon any manner of thing or things which may or shall touch or in any wise concern the same, wherein the king shall be only party. And also all manner of states for tearme of years between party and party concerning the premises, and to correct and punish by their discretions all and every person and persons which before them shall be convicted of any of the premises according to the nature, quality, or quantity of his or their offence or offences, cause or causes, matter or matters (all and all manner of treasons, murders, felonies, estates, rights, titles, and interests as well of inheritance as freehold, other then joyntures for tearm of life, only excepted and alwayes foreprised.)

Before we descend to the severall parts and branch of these acts, it shall be expedient for advancement of truth to handle and clear two questions. First, when wards became due to the kings of England, by what title, and upon what reason. Secondly, who had the charge of the kings wards; how they were disposed of, and in what court this revenue was answered before the reign of H. 8.

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Polydor lib. 16.  
pag. 288.

Excogitato novo  
vestigialis genere  
<sup>a</sup> Ultro concessio-  
runt.

<sup>b</sup> Quarum rex  
esset dominus.

The first contains three things. Time, title, and cause. And in all these three Polydor, and such as follow him, do erre. For Polydor saith that *Henricus 3. anno domini 1219. qui avitum regnum civili bello, ac dissensionibus vastatum, opibus spoliatum, atque prope confectum paulo ante adeptus erat, cum rei domesticæ inopia pressus, non posset sine auxilio suorum, Asiaticum bellum juvare, vitamque regiam decentem degere, principes soluto prius tributo, pro eo bello gerendo postea excogitato novo vestigialis genere, ut regem suum ea inopia levarent, <sup>a</sup> ultro concesserunt, ut quoties quispiam eorum, qui possessiones haberent <sup>b</sup> quarum rex esset dominus, ante moreretur quam liberi quos fecisset hæredes vigesimum alterum agerent annum, tum eatenus tam ipse hæres quam patrimonium in potestate atque tutela regis foret, et ille patrimonii huiusmodi proventus caperet, quoad hæres ad eam ætatem perveniret: quia apud Anglos more majorum pervetusto conservandarum facultatum causa, filius mas natu grandior fit solus hæres, vel filiæ si mares liberi nulli sint. Eggit rex gratias omnibus generatim pro munere, ac ut ne id humanitatis in oblivionem iret, deinceps istiusmodi nobilium hæredum tutelæ ut rem sibi valde utilem accuratissime suscepit. Sed illud beneficium nequaquam ipse nobilitati postremo bmo fuit, quando cæteri reges qui secuti sunt, non habita ratione, quod à principibus olim in Henricum duntaxat collocatum fuisset, ut qui pauper esset decentius personam regiam per illud sustineret sibi etiam perpetuum voluerunt. Quid, quod ita res curæ omnibus fuit, ut non modo reges, sed reliqui locorum domini in hæreditates nobilium defunctorum eodem modo invaserint, id quod etiam nunc fit, et lege certa observatur. Unum istud institutum est tandem aliquando corrigendum, quippe quod quantum uni vel alteri commodi, tantum aliis incommodi affert: sane ita usu venit, ut populorum quibus hæreditates veniunt tutelæ sæpe à locorum dominis ad tempus sicut dictum est, illorum tutoribus per auctionem vendantur, quo sic facto lucro, ab ea educandorum puerorum cura vacui sint, et qui emunt, emunt autem tam nobiles, quam homines novi, si modo plus dederint, ea præsertim de causa redimant, ut pupillos nobilium suis liberis matrimonio conjungant. Idq; sæpissime faciunt, antequam illi tubescant, quo simul vivendo, cum primum per etatem liceat, urgente vo-  
luptatum*

*luptatum titillatione invicem commisceantur, ut ne postea, cum adoleverint, jam mutui polluti nuptias repudiare queant, qui sic sese ab ineunte ætate libidinibus dedecorantes interdum non homines, sed ob virium infirmitatem plane homunciones gignunt à majoribus degenerantes. Atqui nobilitas cum primis eo damnum facit longe ingratissimum quod homines humili loco nati per ejusmodi connubia sanguinem cum ea sociant, contaminantque in dies singulos ejus vetustum genus, et pupilli ipsi à sinu matrum per emptionem erepti parum interdum honestis in aliena domo instituantur. Oritur vel hinc res alia indigna de qua nunc tacere libet, istorum enim conjugum gratia admodum modica aliquoties existit cum ante ætatem, et aliquando contra voluntatem nobiles fæminæ, virique plebeis copulati perraro inter se ament. Prætereo et illud, quantum patrimonialia nobilium, causa hujusce tutelæ laceretur à novis possessoribus; qui suis avaræ commoditatibus servientes pecus omne non modo tendunt, sed deglubunt egregie. Atque hæc est principum munus, quod regias opes maxime adauxit.*

Herein Polydor hath erred in all three. For first, where he affirmeth for the time, that this *novum vestigialis* genus was *excogitatum*, and granted to king Henry the third anno domini 1219. which was in the third year of his reign, Glanvil who wrote in the reign of H. 2. treateth of wardships due to the king and other lords: to the king in these words. *Notandum tamen quod si quis in capite tenere debet, tunc ejus custodia ad dominum regem plene pertinet, sive alios dominos habere debeat sive non, quia dominus rex nullum potest habere parem, multo minus seniore, &c.* And he treateth *ubi supra* of wardships then due. (which holdeth law till this day) and speaketh nothing of the beginning of them.

King John in the seventeenth year of his reign made a great charter, and granted *concilio baronum, quod custos terræ heredis qui infra ætatem fuer' non capiat de terra heredis nisi rationabiles exitus, et rationabiles consuetudines et rationabilia servitia, et hæc sine destructione et vasto hominum vel rerum. Et si nos commiserimus custod' in alicui talis terræ vicecomiti vel alicui alii, qui de exitib' terræ illius debet respondere, et ille destructionem ac custodiam fecerit vel vastum, nos ab illo capiemus emendam, et terra committatur duobus legalibus et discretis hominibus de feudo illo, qui similiter nobis respondeant, sicut prædictum est. Custos autem quamdiu custodiam terræ habuerit, sustentet domos, parcos, vivaria, stagna, molendina, et cætera ad illam terram pertinentia de exitibus terræ ejusdem. Et reddat heredi, cum ad plenam ætatem pervenerit, terram suam totam instauratam de carucis, et omnibus aliis rebus, ad minus secundum quod illa recepit.*

2. Where Polydor saith, *Utro concesserunt ut quoties, &c.* he affirmeth that it came from the grant of the subject to the king. The truth is, that all tenures by knights service, which since the conquest draweth ward and marriage (for reliefe was due before) were either created and reserved by the king, or before of 18 E. 1. *quia emptores terrarum* by the subjects of the realm. If by the king, it is either of the person of the king, *ut de corona*, which we call *in capite*, or of some honour or mannor. If by a subject, either of his person or of an honor or manor. And all these tenures have been created according to this rule, *cuius est dare, ejus est disponere*. And all the lands in England originally moved from the king, and are holden of him medately or immediately.

3. He utterly mistaketh the end of the creation of these tenures by knights service, which were originally created for the defence

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Lib. 7. cap. 9. 10.  
And Ockham  
who wrote tem-  
pore H. 2. treat-  
eth also of ward-  
ships and liveries.

Matth. Paris  
pag. 246.

1 part of the In-  
stitutes, sect. 103.

Polydor saith,  
that this *novum*  
*vestigialis* genus  
was granted to  
the king.  
1 part of the  
Inst. sect. 1.

Britton fo. 162.  
b. Lib. Rub.

The charter of  
king Kenulphus,  
anno dom. 821.  
The like char-  
ter of king Ethel-  
red to a knight  
called Athelweg,  
anno dom. 993.

The charter of  
king Ethelred.  
1001.

Bracton l.b. 2.  
fo. 36, 37. &c.  
1 part of the In-  
stitutes sect. 103.  
Verb Chivaler.  
Castle.

Comming of  
enemies.

Ditone.

Regist fo. 2.  
Domesday tit.  
Cestrefc.

of the realm by his own subjects, which is more safe then to trust to foreigners. But hereof you may reade at large in Littleton, sect. 95, 96. & 103. and Li. Rub. *Marvult enim princeps domesticos, quam stipendiarios bellicos apponere casibus.*

This tenure which now is called escuage, or *servicium scuti*, was of ancient time named *expeditio hominum cum scutis*, as you may reade in the charter of king Kenulphus, who *anno domini 821 et regni sui 25* granted to the abbot of Abbandon many mannors and lands, and reserved *quod expeditionem duodecim virorum cum tantis scutis exerceant, antiquos pontes, et arces renovent, &c.* Of all other services and charges he and his successors were discharged.

*In nomine excessu tonantis, cujus nutu et miseratione à pio patre prædixit, ego Ethelred rex totius insule cum consensu et licentia optimatum meorum aliorumque meorum fidelium dabo, et libenti animo concedo Clesic. quandam ruris particulam, hoc est, 20 mansos in loco quem rusticolæ vocitant at yceantun in hæreditatem perpetuam, et semper liber permaneat notis et ignotis, magnis et modicis, ad habend' et tradend' qualicunq. voluerit relinquat ob omni tributo et \* servicio regali, nisi constructione pontis, et arcis ædificatione, et hostium expeditione. Actum est autem hoc mea concessionis donum anno dominicæ incarnationis 1001. &c.*

In the book of Domesday you shall finde it thus recorded.

*Sudrie. Episcopus Baioc'*

*Ille qui tenet de Wodardo reddit ei 50 s. et servicium unius militis*, and in divers other places. And in Domesday mention is often made of *drenches* or *drenges* which is as much to say as *tenentes per servicium militare.*

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Many others of this kind might be cited to prove that prudent antiquity ever provided by reservation of tenure (amongst other things) for the defence of the realm against the invasion of enemies.

All our ancient authors treat hereof. See the first part of the Institutes, sect. 103. and see the Grand Custom of Normandy, cap. 33. &c. fo. 49.

You have heard before *de regali servicio*, before the conquest, but that *regale servicium* (which was knight service) drew unto it relief, but neither wardship of the body or of the land, as hath been said. It is true that the Conqueror in respect of that royall service as a badge of the conquest took the wardship of the land and the marriage of the heirs within age of such tenants, but this extended not to the tenures of the subjects by knights service, as it appeareth by Bracton: *Dicitur regale servicium, quia spectat ad dominum regem, et non alium, et secundum quod in conquestu fuit adinventum; et hujusmodi servicia persolvuntur ratione tenementorum, et non personarum, quia ex tenementis proveniunt, ut si dicatur faciendo inde forinsecum servicium, vel regale servicium, sive servicium domini regis, &c.* So as the Conqueror provided for himself, but other lords at the first by speciall reservation since the conquest provided upon gift of lands for themselves: *Regis ad exemplum totus componitur orbis*, wherein that which we had from the Conqueror we freely confesse, and that which the Normans had from us, we have truly related in other places.

The good king H. 1. son of the Conquerour finding that the wardship of the body and lands of his tenants by knight service exacted

Glanvil. l. 7.  
c. 9. 10. *Ockham in diversis locis.*  
Mirror cap. 165.  
Bracton lib. 2.  
fo. 36. a. 85.  
Britton fo. 162.  
28. 95.  
Fleta l. 1. ca. 8.

Bract. l. 2. fo. 36.  
Ubi supra.

The tenure (as  
before it appear-  
eth) was not then  
invented, but  
the fruits of the  
tenure of the  
king, viz. ward-  
ship and marriage,  
which was Brac-  
tons meaning.

exacted by his father was both grievous and unjust, by his great charter *anno primo regni suo*, reciting *Quod regnum suum oppressum erat iniustis exactionibus*, &c. (and particularly *tempore patris sui*) did grant (amongst other things) *Quod si uxor cum liberis remanserit, dotem suam et maritagium habebit dum corpus suum legitime servabit, et eam non dabit nisi secundum velle suum, et terræ et liberorum custos erit sive uxor, sive alius propinquior*, &c. To be short by that golden charter, *omnes malas consuetudines, quibus regnum Angliæ iniuste opprimebatur, inde abhulit, et legem regis Edwardi reddidit*. These were called king Edwards laws, not that king Edward made them, *sed quia ex tribus legibus, sc. Anglorum, Danorum, et Merciorum unam legem communem edidit*. Vide *Ranulphi Cestriensis*. Lib. 1. cap. 50.

And where some have objected that wardship is a badge of servitude, for that in the writ of *nativo habendo*, one of the explees (amongst others) is *capiendo redemptionem ab eo pro filiis et filiabus maritandis et aliis villanis serviciis*. That is, taking ranfome of him for the marriage of his sons and daughters, and other villain services. To this it is answered, that the king for marriage of his wards taketh no ranfomes, but such moderate sums of money, as in respect of the quality and state of the ward, he, or she, all circumstances considered, is able to pay, and in regard thereof, he hath the protection of the court of wards during minority: but if ranfomes should be taken, it should not only be against the right institution of wardships before remembred, but also a badge of servitude: and therefore by the statute of Magna Carta, of H. 3. cap. 4, 5, 6. (seeing the crown had a long possession of the wardship of the body and lands of the kings tenant by knights service) it was provided, first, that the king or his grantee or committee should not take of the lands of the heir \* but reasonable issues, reasonable customes and reasonable services, without destruction, &c. (and all unreasonable and excessive things are against the common law, *excessum omne in jure reprobatum*.) Secondly, shall keep up the houses and other inheritance of the heir, and deliver to the heir all his lands sowed with ploughs and all other things (woods and all) at least as he received them: whereby it appeareth, that the value of the marriage should be so reasonable, as the heir should not at his full age be enforced for payment thereof to sell either lands or goods. Thirdly, that if the heir be married, that he be advanced thereby, and not disparaged.

John earl of Oxford being the kings ward married without the kings licence. for the which, both for the contempt, and for the duty to the king for so marrying, he was fined at three thousand pounds, which was not the value of his lands by one year: and yet he petitioned in parliament to be pardoned of part thereof, which was thought reasonable. And certainly the reasonable rating of wardships of the body and lands is both according to the laws of the realm, and a mean of increase of the kings revenue.

As to the third: there were of ancient and latter times masters or keepers of the kings wards for the kings best advantage, and the profits and revenue thereof were answered in the kings court of exchequer: as taking one example or two in stead of many for both the points.

\* *Rex commisit Ranulpho de Nova villa episcopo Cicestr. et Stephano de Segrave custodiam omnium eschacterum suorum qui accident per totum regnum*

\* Note, reasonable thrice repeated, that it might be observed.

Rot. parl.  
15 H. 6. nu. 19.  
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\* Rot. finiam.  
14 H. 3. m. 9.  
Hereof see M. C.  
Par. anno domini  
1232. 16 H. 3.  
Of Robert de  
Barco, & Stephen  
Segrave.  
See also Int. rot.  
finiam, anno  
3 E. 1. m. 4. rot.  
par. 3 E. 1. m. 33.  
rot. finiam.  
13. E. 1. nu. 24.

*regnum Angliæ, tam in wardis, quam in omnibus aliis eschaetis quæ regi accidere possint, et respondend' inde ad scaccarium.*

<sup>a</sup> Rot. pat.

<sup>25</sup> H. 6. parte 2. m. 24.

<sup>b</sup> See the first part of the Institutes, li. 2. p. r totum.

\* Capit. Itineris in Vet. Mag. Cart. 157, 158. Bract. lib. 3. 116. b. Britton fo. 28. Fleta l. 1. ca. 20.

<sup>a</sup> See the statute of 51 H. 3. *statut' de scaccario*. Sheriffs shall be keepers of the kings wards, and answerable for the issues thereof in the exchequer.

<sup>b</sup> What care there was of ancient time to preserve the free of pious, honourable, and profitable tenures of the king, and for profit especially tenures in *capite* and by knights service, and that the king should be truly answered of wardships; and other fruits and profits due unto him by reason thereof; it notably appeareth by the articles inquirable by the justices in eire, and by our ancient books.

\* *De eschaetoribus et subeschaetoribus in seiscina domini regis facientibus vasum, vel destructionem in parcis, boscis, vivariis, vel warrenis infra custodias sibi commissas per dominum regem, quantum et de quibus, et a quo tempore.* Item de eisdem qui occasione hujusmodi ceperint bona defunctorum, vel hæredum in manu domini regis injuste, donec redimerentur ab eis, et quid, et quantum pro hujusmodi redemptione, et quid ad opus suum inde retinuerint, et a quo tempore. Item de eisdem qui minus sufficienter terras alicujus in favorem ejusdem, vel alterius cujuscunque cui custodia terrarum illarum dari, vendi vel concedi debuerit, in deceptionem domini regis, et ubi, et quando, et quid inde ceperint, et a quo tempore. Item de eisdem qui prece, precio, vel auxilio, vel favore consenserint, vel consuluerint quod custodiæ domini regis venderentur pro minore precio, quam vendi deberent secundum verum valorem, vel maritagia ad dominum regem spectantia. Et si aliquo modo conclaverint custodias domini regis, vel maritagia hæredum, vel tenentium de rege in capite, vel maritagia dominarum, viduarum maritatarum sine licentia regis, et si quid propter hoc ceperint et quantum, et a quo tempore. Item de hiis qui reservaverint ad opus proprium custodiam, vel maritagium per leve precium, sive per conclavementum factum versus dominum regem, et cujuscumque damnum rex inde habuerit, et a quo tempore. Item cujuscumque seiserint terras, et per quantum tempus eas in manu domini regis tenuerint. Item de terris captis in manu domini regis, quæ capi non deberent, et postea restitutas per præceptum domini regis cum perceptis, utrum percepta restituerint ad mandata domini regis, vel non. Et de omnibus prædictis factis et commissis infra viginti et quinque annos proxime prædictos prædicti justiciarii se intromittant. Et omnes illi qui sentiunt se super hiis gravatos, et inde conqueri voluerint, audiantur, et fiat eis super hoc justitia, et ipse justiciarius pro hiis quæ dominum regem contingunt diligenter inquirent, &c.

Vet. Mag. Carta 160, 161. Inter. capit. Eiscaetriæ.

Primo et principaliter inquiretur de feodis militum, et advocationibus ecclesiarum ad dominum regem pertinentibus, viz. quot sunt, et quæ sunt tenementa, et quantitas tenuræ, et per quæ servicia.

Item, si feoda illa integra sint vel demembrata, non habendo respectum ad tempus. Item si demembrata, per quem, quando, cui, qualiter, quomodo, et quantum valent per annum. Item si tradantur alicui ad terminum vitæ, vel annorum, sine licentia regis, tunc cui, quando, qualiter, et quomodo, et quantum valent per annum. Et si tenentur per medium, per quem medium.

Item de tenementis quæ tenentur de rege in capite, vel tenori debent, si aliquis faciat se medium inter dominum regem, et verum tenentem suum, tunc queratur ubi, quando, qualiter, et quomodo, et ad quod damnum regis, vel si modo tenuram mutaverint.

Item de aliis qui tenent de corona per magnam serjantiam, vel parvam, antiquum dominicum domini regis, focagium, feodi firmam, vel per aliquod servicium, si iidem tenentes aliquid alienaverint, vel demembra-

verint, cui, quando, quantum, qualiter et quomodo, siue sint de aliquo honore, siue de corona, et de valore annuo. Et si aliquis, qui de rege tenuerit per antiquum dominicum vel socagium, mutauerit tenuram suam, et ad damnum regis, cui, ubi, quando, qualiter, et quomodo, et ad quod damnum regis, et quantum huiusmodi tenementum valet per annum.

Item si aliquis conceclauerit aliquem redditum, siue aliquod seruicium, seu aliquas consuetudines domino regi debitas, tunc quis, quando, qualiter, et quomodo, et quæ seruicia, et quem redditum, et quas consuetudines, et quæ tenementa tenent de quibus debentur huiusmodi seruicia, et quantum valent per annum, et ad quod damnum regis huiusmodi conceclamenta sunt.

Item, de hæredibus quorum custodia et maritagium pertinent ad dominum regem, et dominus rex ea habuerit, quando deberet habere. Et si aliquis huiusmodi heredum ingressus fuerit sine autoritate curiæ, et absque legitima ætatis suæ probatione si infra ætatem, et si plenæ ætatis, absque faciendo regi homagium, vel aliud seruicium quod ei debet. Et tunc quis sit ille hæres, quo tempore intravit, et post mortem cuius, et per quod seruicium illa hæreditas teneatur et quantum valet per annum.

Item de viduis similiter quarum maritagium pertinet ad regem, si se maritauerint sine licentia regis, cui, quando, cuius consensu, et ad quod damnum regis, et quantum tenementa valent quæ tenent in dotem de primo marito suo.

Item de hæredibus qui deberent esse in custodia regis, et quis custodiam usurpauerit super regem, et à quo tempore, et quantum tenementa quæ tenent valent per annum.

Item si aliquis huiusmodi heredum cuius antecessor de rege tenuit in capite, siue de aliquo herede in custodia regis existente, maritatus fuerit sine licentia regis, tunc cui, quando, et per cuius consensum, et quantum terræ illæ valent per annum, et quantum cepit pro maritagio.

Item si dominicæ terræ domini regis in isto reuocentagio sunt in tali statu sicut esse deberent, vel si trahuntur ad finem, si dimittantur secundum valorem annuum earundem, et si custodes, vel finarii vrayum vel destructionem, venditionem seu exilium fecerint in eisdem, vel in terris existentibus in manu domini regis per custodiam, vel alio modo, quis, ubi, quando, &c.

Yea so precious was immediate tenures of the king, as you read in the parliament roll in 18 E. 1. in these words.

Gilbertus de Umphrevill petit licentiam quod possit seffare Gilbertum filium suum primogenitum, et Margar. uxorem ejus de manerio suo de Overton, tenend' de ipso Gilberto patre durante vita ipsius patris, et post ejus decessum de capitalibus dominis feodi. Respons. Rex non vult aliquem medium. Ideo non concessit.

By the statute of 14 E. 3. if the heir of the kings tenant in chief, &c. be found within age, and the next friends of the heir, towhom the inheritance cannot descend, shall come and offer them to take the said lands, yeelding the value to the king till the age of the heir, as far forth as other will yeeld without fraud; by accord between the chancelor and the treasurer, they shall have commission to keep the said lands by good and sufficient surety till the age of the said heir, and to answer the king the value. In this act this treasurer is intended of the treasurer of the exchequer. See before in the chapter of the court of exchequer.

Amongst the petitions of the commons, they pray that the said statute of 14 E. 3. may be observed, which the king granted.

IV. INST.

Q

It

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Rot. par. 13 E. 1.  
in. 4. no. 52.  
Note the form  
of this tenure.

14 E. 3. ca. 13.  
stat. 1.

Rot. par. 1 R. 2.  
no. 79. Rot. par.  
30 E. 3. no. 118.

\* Ro. par. 22 E.  
4. nu 6. not  
in print.

\* It is provided by act of parliament in *anno* 22 E. 4. that where sundry of the kings tenants holding of him immediately, as of his duchy of Lanc', by sundry recoveries, fines and feoffments in use, defeated the king of wardships of body and lands: it is enacted, that the king and his heirs shall have the wardship and custody of the body and lands of every such person being within age, to whose use the fee simple or fee tail of any hereditaments so holden shall grow as heirs by the death of any of his ancestors, and if they be of full age to have relief notwithstanding any such conveyance.

*Ibidem* nu. 17.

An exact provision is made for writs to be granted out of the chancery for the embesiling of any such heir upon pursuit of the attorney of the duchy.

4 H. 7. ca. 17.  
A general law.  
Note the severall  
pennings of these  
two severall acts.

By the statute of 4 H. 7. it is provided that the lord of *cesti que use*, no will being declared, &c. shall have a writ of right of ward for the body and land, and the heir of *cesti que use* being of full age at the death of his ancestor shall pay relief. And the heir of *cesti que use* shall have like action of waste, as if the ancestor had died seised, &c.

Dier, 1 & 2 El.  
fo. 174. b.

Upon this statute, a case that had in Mich. 1 & 2 Eliz. dependend un-discussed thirty years, as the lord Dier reports, but not in the court of wards, (for that court had not then had so long continuance) but in the chancery and the court of wards it had so long continued, though in 7 H. 8. it had been resolved by all the judges in the exchequer chamber, that *cesti que use* of lands in fee by knights service in *capite*, and of lands holden of another lord in socage dying seised of the use of both, his heir within age, and no will by him declared, that the prerogative shall hold place: which resolution if it had been published in print, the tedious and chargeable suit had not so long continued.

Kewlway 7 H. 8.  
176. between  
Conisby and  
Throckmorton  
for the heir of  
Russell.

Now for traverses, *Monfrans de droit*, &c. to be relieved against offices found for the king, you may read at large in our books, and especially in the Sadlers case in the fourth book of our reports, which being the birthright of the subject for his relief against a false office found, cannot be denied upon just cause shewed, but not to be used for delay. This was the offence of Sir Richard Empson and Edmund Dudley privy counsellors to king H. 7. and masters of his forfeitures (a new and unaccustomed office) who causing secret and false offices (as shall appear hereafter) to be found, the parties grieved were denied to have their traverse, *Monfrans de droit*, &c. which king H. 7. a little before his death being far gone into a consumption, with great remorse of conscience amongst other things repented, and by proclamation under the great seal in print (amongst other things published in these words.

Lib. 4. fo. 55.  
&c. Vid. 2 E. 6.  
cap. 8. Li. 7.  
fo. 45. Li. 8.  
168, 169.  
See the 2. part  
of the Int. cap.  
the statute of  
2 E. 6. cap. 8.  
See 50 E. 3.  
nu. 184.  
See hereafter  
1 H. 8. cap. 12.  
This proclamation  
we have.

And that none of his subjects ne make no doubt nor difficulty in all causes lefull to make traverses, for his highnesse will expressly, and straightly chargeth and commandeth his chancelour and treasurer that they not only admit such traverses but also grant the fermes, where the case shal require, according to the true course of his laws.

See the statute  
of 1 H. 8. ca. 12.  
in ratifying  
hercof.

Hereupon many men were admitted to their traverses, and many on the other side were without remedy: for by the practice of Empson and Dudley, many were not onely denied to traverse, but  
inforced



inforced upon such false offices to sue out their generall liveries, whereby they were concluded, and could not by law be admitted to their traverse.

King H. 8. in the first yeare of his reigne intending to give remedy against secret offices, doth by act of parliament provide, \* That every escheator and commissioner shall sit in convenient and open places, according to the statute heretofore made: and that the said escheators and commissioners shall suffer every person to give evidence openly in their presence, to such inquests as shall be taken before any of them, upon paine of xl. li.

And by the preamble and other parts of this act of 1 H. 8. the sinister and unjust dealing of the said Empson and Dudley, concerning the finding of officers, are pourtrayed out, whereby the kings subjects then of late had beene sore hurt, troubled, and wronged, and some disinherited by nine other wayes. 1. In causing untrue offices to be found. 2. In returning of offices that never were found. 3. In changing of the offices that were truly found. 4. That escheators and commissioners were men of no livelihood, but indigent and unworthy persons, ready to serve turnes, and having nothing to lose, or to make satisfaction to the party grieved. 5. That jurors were returned for the finding of offices of no hability, or behaviour. 6. That the escheator or commissioner, when the jury were agreed of their verdict, would not receive the same, but therein use delays. 7. That the clerk of the petit bag, &c. would refuse to receive, and file such inquisitions as were found and offered to them. 8. The like of the officer in the exchequer, of offices returnable into the exchequer. 9. The clerke of the petit bag would refuse to transcribe the offices, &c. into the exchequer. For all which, and the other two before named, remedy is provided by this act, as by the same appeareth. At the same parliament for the redresse of parties grieved for suing out of liveries, another act is made, intituled, An act concerning untrue inquisitions procured by Empson and Dudley, in these words.

Shewen to your discreet wisdomes, that where divers and many untrue inquisitions by the procurement of Richard Empson knight, and Edmund Dudley, have beene had and taken within this realme, as well before commissioners assigned by letters patents of the late king, king Henry 7. as before his escheators, as well by vertue of writs of the said late king, as by vertue of their office, by the which inquisitions sometime parcell of the said lands contained in the said inquisitions, and sometime the whole lands there founden holden of the said late king in capite, where in troth the said lands contained in the said inquisitions, nor no parcell of them was holden of the said late king in capite, ne of any of his progenitors: to the which inquisitions the parties then grieved by the same, could not, nor might not take their traverse to the same according to the law of the land, but were enforced and constrained to sue their \* livery of the same out of the hands of the said late king,

Q2

whereby

1 H. 8. cap. 8.  
3 H. 8. cap. 2.  
34 E. 3. cap. 13.  
36 H. 7. cap. 13.  
23 H. 6. 17.  
\* By the procurement of Empson and Dudley offices were found in secret places, and men were denied to give in evidence for proof of their rights and tenures.  
\* See before cap. Of the high court of parliament.

1 H. 8. cap. 12,

\* This is intended of a generall livery.

Generall livery concludeth.

<sup>a</sup> Mich. 7 Jacobi resolved by the two chiefe justices, and the chief baron, and the court of wards, in Holmes cases.

7. That the suing of a generall livery concludeth the heire, as here it appeareth by this act of parliament, but otherwise it is of a speciall livery, for that, as to the tenure, is but, *ut dicitur*.

2. That this conclusion or estoppel continueth but during the life of the heire that saeth the generall livery; for jurors are sworn *ad veritatem dicend*, and are not bound by estoppels.

3. That by suing of livery, and the death of the heire, the office is executed, and hath taken his full effect, and therefore the estoppel expieth therewith, and after the office cannot be traversed.

Vide 46 E. 3. fol. 12. 44. Ass. p. 35. *Nota dictum Morvray, ibidem. Si un tient de roy, &c.* 1 H. 4. 6. 33 H. 6. fol. 7. per Laicon. Observe well the remedies provided by this particular act, &c. whereby the common law is affirmed.

See the first part of the Institutes, sect. 441. See before cap. of the high court of parliament.

5 H. 8. cap. 7.

whereby they were, and be <sup>a</sup> concluded to say, that the said lands be holden of the king in chiefe, to their great losse and hindrance, where in truth they were not holden of the said late king, ne of any his progenitors. Wherefore be it enacted, ordained and established \* by the king our soveraigne lord, the lords spirituall and temporall, and by the commons in this present parliament assembled, and by the authority of the same, that every person and persons having possession of the said lands contained in the said inquisitions, or any part thereof, may be admitted to have their traverse to the said untrue inquisitions, notwithstanding any livery sued in the time of the said late king, king H. 7. And that it be further enacted by the same authority, that any livery sued of the same in the time of the said late king, ne any thing contained in the same livery, be any conclusion after the course of the common law, or in any wise hurtfull or prejudiciall to any person or persons, that shall happen to tend their traverse to the said office, but that they and every of them shall be admitted to their traverse to the said inquisitions, and to have like advantage in the law, as though no livery had beene sued of the same in the time of the said late king, and this at the reverence of God, and in the way of charity, &c. Provided alway, that they, or any of them which shall tend their traverse to any of the said inquisitions in any manner and forme as is aforesaid, shall not be restored to any mean issues or profits of lands and tenements comprised in the said inquisitions.

Now touching liveries which in those days were generall, what a world of troubles the subjects suffered for missing of livery in respect of pretended omissions, and the like, what charging the subjects with values not found by any office, nor appearing by any *melius inquirendum* with mean rates where none were, or for longer time, then they were due, and the like, and these not recovered by course of law, but sending for the parties by pursuivants, and by their awfull countenance mixt with menaces and threats, drew them to compositions: which, and other like oppressions and injustice, filled king H. 7. cofers; for by the close roll in anno 3 H. 8. it appeareth, that the king left in his cofers fifty and three hundred thousand pounds, most part in foreine coine, which in those dayes was not of least value. Notwithstanding king H. 8. at his parliament holden in anno 5 of his reigne, cap. 7. moved for a subsidie, and was denied it; whereupon an act was made for taking out of generall pardons, as a meane to bring money to the king. But I perswade my selfe the reader will inquire what became of these two wicked men, Empson and Dudley. The answer is, that first they were severally indicted as followeth.

*Juratores presentant quod Richardus Empson nuper de London miles, nuper consiliarius excellentissimi principis Henrici nuper regis Angliæ septimi,*

mi. 10. die Maii, anno regni dicti nuper regis vicesimo, ac diversis vicibus antea et postea apud London, &c. Deum præ oculis non habens, sed ut filius diabolicus imaginans honorem, dignitatem, et prosperitatem dicti nuper regis, et prosperitatem regni sui Angliæ minime valere, sed ut ipse magis singulares favores dicti nuper regis adhibere \* unde magnanimitate fieri potuisset, et totum regnum Angliæ secundum ejus voluntatem gubernare, falso, deceptivè, et proditorie legem Angliæ subvertens, (inter alia) idem Ricardus dictis die et anno a ul London in parochia et ward prædicta &c. diversas falsas inquisitiones, et officia de intrusionibus et alienationibus, de maneriis, terris, et tenementis, diversis ligeis ipsius nuper regis inventi procuravit et excitavit, quod ipsi maneria, terras et tenementa in inquisitionibus illis specificat de domino rege in capite vel aliter tenerent, cum ita non fuit, ac postea cum dicti ligei dicti nuper regis ad inquisitiones illas sic factæ transversas in curia ipsius nuper regis secundum legem Angliæ tendere et allegare voluissent, iidem ligei ad transversas illas admitti non potuissent, sed se debitis et legitimis transversis ad officia prædicta faciendæ custodiavit et retardavit, quousque ipsi cum dicto Ricardo diversas magnas et importabiles fines et redemptiones, tam pro commodo ipsius nuper regis, quam pro singulari comodo ipsius Ricardi fecer, in magnam depauperationem eorundem ligeorum. Et quod prædictus Ricardus dictæ die et anno in parochia et warda prædicta, ac diversis vicibus antea et postea, diversos ligcos dictæ nuper regis de dicto domino rege diversa maneria, terras, et tenementa per servicium militum tenent, et mox antecessoribus suis ipsis infra ætatem existent, et in custodia dictæ nuper regis ratione tenuræ suæ, cum ad ætates legittimas pervenerant, et debitam liberationem maneriorum, terrarum, et tenementorum suorum secundum formam et legem Angliæ, ac secundum cursum cancellariæ ipsius nuper regis prosequi voluissent, ad hoc recipi non potuissent, sed ad hoc faciendæ totaliter negat et exclusi fuerunt, quousque ipsi cum prædicto Ricardo diversas magnas et importabiles fines et redemptiones, tam pro commodo ipsius regis, quam pro commodo ipsius Ricardi fecer, in magnam depauperationem eorundem ligeorum ejusdem nuper regis. (And the conclusion of the indictment is,) Per quod plures et diversi populi dicti nuper regis hiis gravaminibus et injuriis extorcionibus multipliciter torquebantur, in tantum quod populi dicti nuper regis versus ipsum regem multipliciter murmurabant, et malignabant in magnum periculum ipsius nuper regis regni sui Angliæ, ac subversionem legum et consuetudinum ejusdem regni.

\* Ambitio.

Proditorie legem Angliæ subvertens.

Falsas inquisitiones et officia, &amp;c.

Ad transversas admitti non potuissent.

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Pro singulari comodo ipsius Ricardi.

Ad debitam liberationem admitti non potuissent.

The residue of the indictment concerning other exorbitant oppressions and grievances, are worthy to be read, but cannot be not the matter in hand.

Quorum vestigia qui instituta, eorum exhoratione perhorreant.

True it is, that in this indictment (proditorie) was used but for aggravation, and as a preparative to greater offences, for in the same yeare they were both indicted of high treason both by the common law, and act of parliament, and in the 2. yeare of H. 8. they lost both their heads. And albeit in some respects the speciall livery is for the benefit of the heyre, yet the fees and charges are so great, and the bonds and covenants, &c. so many, so intricate, and dangerous, as it were worthy to be redressed, for the ease and quiet of the fatherlesse, and widow, (being no benefit to the king, but to fill the purses of clerkes and officers) by authority of parliament; and the rather, for that speciall liveries were of ancient time, as short as the charges thereof; whereof you may reade a notable president, when wardships and liveries were in their cradles, which followeth in these words.

Richardus Dei gratia rex Angliæ, dux Normanniæ, Aquitaniæ, comes Andegaviæ, archiepiscopis, episcopis, abbatibus, comitibus, baronibus, iusticiariis,

Wile in the history of Henry 8. dom. cap. 45. a R. 1.

<sup>a</sup> Nota, concessio is a sure word in omnem eventum, and will answer to a livery.

<sup>b</sup> This Geoffrey Fitzpeter was after chiefe justice of England.

<sup>c</sup> This William de Mandevile was earle of Essex.

*justiciariis, vicecomitibus, et omnibus ballivis, et fidelibus suis, ad quos præsens charta pervenerit, salutem. Sciatis nos <sup>a</sup> concessisse, et præsentis charta nostra confirmasse dilecto et fideli nostro <sup>b</sup> Galfrido filio Petri, et Beatricæ de Sayeo uxori ejus, tanquam justo et propinquiore hæredi, totam terram comitis <sup>c</sup> Willielmi de Mandevile, quæ ei jure hæreditario pertinebat, cum omnibus pertinentiis, et libertatibus, et liberis consuetudinibus suis. Quare volumus, et firmiter præcipimus quod prædicti Galfridus et Beatrix uxor sua, et hæredes eorum habeant et teneant de nobis et hæredibus nostris totam prædictam terram cum pertinentiis suis sicut prædictus comes Willielmus de Mandevile eam melius, et liberius, et honorificentius, et integrius, et quietius habuit unquam et possedit, in bosco, et plano, viis, semitis, pratis, pascuis, pasturis, aquis, vivariis, stagnis, piscariis, molendinis, turbariis, in advocacionibus ecclesiarum, in custodiis valedictorum, et donacionibus puellarum, et in omnibus aliis locis et aliis rebus. Hiis testibus Waltero Rothomagensi archiepiscopo, Johanne Eboracensi episcopo, Rogero de Pratellis dapifero nostro, Richardo de Kanvile, Bertrano de Verduno, Radulpho filio Godfredi camerario nostro. Datum per manum magistri R. mali catuli clerici nostri, anno regni nostri secundo, xxiiij. die Januarii apud Messanam.*

Now are we arrived at the said act of parliament in anno 32 H. 8. wherein, and in the statute of 33 H. 8. besides the exposition of the severall texts, we will observe what alterations these two acts have made.

*Ordaineth, maketh, establissheth, and erecteth a court, &c.]* Herein three things are to be observed. 1. That this new court could not be erected without an act of parliament. 2. That when a new court is erected, it is necessary that the jurisdiction and authority of the court be certainly set downe. 3. That the court can have no other jurisdiction, then is expressed in the erection, for this new court could not prescribe.

Pasch. 6 Ja. the bishop of Salisbury case.

Pasch. 6 Ja. the case betweene the king and the bishop of Salisbury, referred to the two chiefe justices and chiefe baron, by the lords of the honourable order of the garter, was this. King E. 4. by his letters patents in French, bearing date 10 Octobris, anno 15. of his reigne, reciting, that where there was no office of the chancellor of the garter, that there should be such an office of the chancellor of the garter, and that none should have it but the bishop of Salisbury for the time being: we will and ordaine, that Richard Beauchampe, now bishop of Salisbury, should have it for his life, and after his decease, that his successors should have it for ever. And amongst divers other points it was resolved unanimously, that this grant was void, for that a new office was erected, and it was not defined what jurisdiction or authority the officer should have, and therefore for the incertainty it was void. Which being reported to the lords, they were well satisfied therewith, and thereupon the office was granted to Sir John Herbert the kings secretary.

*A court of record.]* Where it is to be noted, that albeit the proceeding in this court be in English, yet it is a court of record by expresse words of the act.

*And shall have also a seale, &c.]* This is also necessary to a court.

*That all wards, &c.]* This clause extendeth as well to the countie palatines of Lancaster, Chester, and Duresme, as to any other the

the parts of the realm of England, but in severall manners. For as to the wards within the realm of England (out of the said counties palatines) the writ for the finding of the office, &c. issueth out of the chancery of England, returnable in the chancery of England. And as to the wards in the counties palatines of Lancaster and Duresme, the writ likewise issueth out of the chancery of England, but is returnable into the chancery respectively of these two counties palatine, and the chancelors thereof are to transcript them into the court of wards.

<sup>a</sup> But for wards in the county palatine of Chester, no writ issueth out of the chancery of England, but it ought to be found by force of a writ or commission out of the chancery there in the exchequer, and transcribed by the chamberlain of that county palatine into the court of wards. <sup>b</sup> *Nos dum heredes in custodia nostra existunt, indemnes et sine exheredatione conservare tenemur.*

<sup>c</sup> And by this clause of this act of 32 H. 8. the power that the lord chancellor and treasurer had for letting of wards lands, &c. is taken away.

<sup>d</sup> By the statute of 18 El. it is enacted, that all inquisitions and offices to be found before any escheator or commissioners, by virtue of any writ or commission, or otherwise within the said county palatines of the said duchie of Lancaster, Chester, and Duresme, or any of them, shall be returned by the said escheators, or commissioners within one month next after the taking of any such office or inquisition into such place or places, and to such office and offices, as heretofore they have usually beene accustomed to be certified and returned into, upon paine to forfeit for every default xl. li. to the use of our said sovereign lady, her heirs and successors. And that the clerk of the said duchy of Lanc', the vicechamberlain of the said earldome of Chester, and the chancelour of the said county palatine of the said bishoprick of Duresme, or other the said officers or ministers within the said counties palatines, or their deputy or deputies, and every of them for the time being having authority to receive any such office or inquisition, to whose hands any such office or inquisition shall come to, shall certifie, or cause to be certified under his or their hands in parchment the true transcript of every such office or inquisition taken before any of the said escheators or commissioners unto the master of the said court of wards and liveries, in such like manner, form and sort, as is limited and appointed to the clerks of the petit bag in her highnesse said court of chancery to transcript the same, upon pain to forfeit for every such default 5. li. to the use of our said sovereign lady, her heirs and successors: which transcript so to be certified shall there remaine of record in like manner and form to all intents and purposes, as the transcripts of other offices already certified into the said court by the clerks of the petit bag in her majesties high court of chancery, are used: any custome, statute, act, proviso or provisos heretofore had, made, or used to the contrary in any wise notwithstanding.

The statute of 32 H. 8. for erection of the court of wards extended only to wards: but the statute of 33 H. 8. annexeth to this court liveries also. Now in what cases the heire shall be in ward or sue his livery, either by the common law, or by the statutes, and specially of 32 H. 8. and 34 H. 8. &c. and of all inci-

V. Rot. parl.  
9 R. 2. 13. the resolution of all the judges of Engl. what right the duke of Lancaster had to the wardship of Isabel the heire of Tho. of Lathom whom Sir John Stanley had married, for the manner of Lathom holden of him in chiefe as of his county palatine.  
V. 26 H. 8. g. b.  
<sup>a</sup> 14 Eliz. Dier. 303.  
<sup>b</sup> Mich. 26 E. 1 ceram rego.  
Buck William de Laudores case.  
<sup>c</sup> 8 H. 6. cap. 16.  
18 H. 6. cap. 6.  
<sup>d</sup> 18 Eliz. cap. 13.

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dents to the same, you shall reade plentifull matter both in the first part of the Institutes, cap. Escheage, and cap. Service de Chivalier: and also in the books of my Reports.

*Which the kings highnesse, &c.*] Although successors be not here named, (yet kings highnesse) being spoken in his royall and politick capacity, which never dieth, doth extend to his successors: otherwise this court had been dissolved by the demise of H. 8.

<sup>a</sup> All the justices in Ireland certified, *Quod homagium tantum dat secundum consuetudinem terræ Hiberniæ custod' et maritag', licet servitium militare non debeat.*

<sup>b</sup> *Intituled to have.*] That is by office to be found.

*With their manners and lands, &c.*] This clause extendeth only to the inheritances of the ward, and not to any of his goods or chattels, debts or duties, &c. but hereof more shall be said hereafter in his proper place,

*In the order, survey and governance of the said court.*] <sup>c</sup> The generall words of this act extend not into Ireland, for that is a divided and distinct kingdome, and hath a proper seale. <sup>d</sup> Nor to the Isle of Man, because it is no part of the realm of England, and out of the power of the chancery of England, and not to be bound by our parliament of England, but by speciall name.

*And that the master of the said wards*] By this clause the master only hath power to award proces.

*Such proces and precepts with reasonable pains therein limited, as be now commonly used in the court of the duchy chamber of Lancaster being at Westm.*] <sup>e</sup> Note, the duchy of Lancaster was created a county palatine by act of parliament in anno 50 E. 3. *Adco plene et integre sicut comes Cestrie infra eundem com' Cestrie dignoscitur obtinere.* And hereupon the court of wards is well warranted to be a court of equity, and accordingly from the creation hereof it hath proceeded.

<sup>f</sup> *For or concerning the title of the kings majesty.*] This is evident.

*And that the master of the court of wards for the time being shall make and appoint all and singular particular receivers, feodaries, and surveyors in every shire, and also fees for the execution of the same under the seale of the same office in such wise as the same officers may be alwayes removeable at the discretion of the said court.*]

*Feodarius* or *feudatarius* is derived a *feodo seu feudo*, which in one sense signifieth a \* feignory or tenure: his office consisteth principally in three things. 1. And principally to be skilfull in the knowledge of the kings tenures within his office out of records and authenticall books. 2. At the finding of offices to doe his uttermost indeavour to manifest the truth concerning the kings tenures. 3. After the office found to survey the wards lands, and rate it.

*Or other cause in any wise touching or concerning any thing appointed to the order of the said court, for, and on the behalfe of our soveraigne lord the king.*] By this clause, if the heir within age and in ward have any goods and chattels, debts, duties, or other thing due unto him, an information may be exhibited by his majesties attorney of his wards for his majestie on the behalfe of the heir: for this doth touch or concern the value of the wardship of the body, which is appointed by this act to the order and survey of this court, for the value

<sup>a</sup> Mich. 7 E. 1. in banco.

Rot. 126. Warw. Abbot of Malmesburies case.

<sup>b</sup> See 33 H. 8. cap. 22. A proviso for the duchy of Lancaster.

<sup>c</sup> 14 Eliz. Dier. 303.

<sup>d</sup> Mich. 14. H. 8.

*Tenus per Brudnel, Brook et Fitz.* in Keylways report. And so was it holden Trin.

40 Eliz. by Popham, Anderson, and Peryam,

upon a case referred to them by the lords of the council, between the earle of Derby and the heirs generall.

<sup>e</sup> See more hereof in the chapter of the court of the duchy of Lancaster.

And Pl. com. fo. 214. & 215.

<sup>f</sup> Pl. com. fo. 115. 116. in Townsends case.

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\* See the first part of the Inst.

sect. 1.

See Pl. Com. fo. 295. Carils case.

See Mag. Cart. cap. 5. The stock of goods shall be restored to the heire.

Glanvil, fo. 54. Fleta, li. 1.

cap. 12.

value of the marriage is hereby advanced. But if the heire at the death of his ancestor be of full age, seeing the primer season is certain, no suit can be in this court for any goods, chattels, debts, &c. belonging to the heir of full age: \* for this doth not in any wise concern any thing appointed to the order of this court, viz. neither the wardship of the body, or of the lands of the heire.

• Prærogativa  
regis, cap. 3.

*Also be it enacted that the said attorney, receiver generall, and auditors, &c.]* The judges of this court are the master, the surveyor, the attorney, receiver generall, and the auditors of that court. For the words of the statute of 32 H. 8. are, That the said attorney, receiver generall, and auditors, shall diligently from time to time attend upon the said master in the said court for the hearing and ordering of matters and causes, &c. and the statute of 33 H. 8. hath added the surveyour in the second place in that court: and albeit *honoris causa*, they are to attend on the master, as the chief and principall officer of the said court, for so he is stiled by both the said statutes: yet such attendance is for the hearing and ordering of matters and causes, &c. which maketh them judges. And see the oath of the surveyour which proveth his office to be judiciall: for by the statute of 33 H. 8. his oath is (*inter alia*,) That he shall minister equal justice to rich and poore, &c. and that he take no gift or reward for any matter depending, &c. in that court. And the like oath in effect taketh the attorney, the receiver generall and auditors, by the said act of 32 H. 8. And so it was resolved in auditor Curles case when Robert earle of Salisbury was master of the wards and lord treasurer of England.

Hil. 7. Jac. li.  
11. f. 2. & 3.  
in auditor Curles  
case.

See the statute of Lincolne 29 E. 1. Stanf. *Præ. regis*, ca. *Refeiser*. See a notable case upon that statute within three years after the making thereof. Hil. 32 E. 1. *coram rege*. Northampton Jordan Twinewikes case.

At the parliament holden 18 *Jacobi regis* it was moved on the kings behalfe, and commended by the king to the parliament for a competent yearly rent to be assured to his majesty, his heirs and successors, that the king would assent that all wardships, primer seasons, reliefs for tenures *in capite*, or by knights service should be discharged, &c. Wherein amongst certain old parliament men these thirteen things did fall into consideration for the effecting thereof.

1. That it must be done by act of parliament, and otherwise it cannot be done.

2. That all lands, tenements, rents, or hereditaments, holden of the king, to be holden by fealty only, as of some honour, and such rent, as is now due.

3. That all lands holden of subjects, bodies politick or corporate, by knights service to be holden by fealty, and such rent as is now due; for if lands should be holden of them by knights service, the same might come to the king.

4. All subjects, bodies politick and corporate to be disabled to take any lands, tenements, rents, or hereditaments of the king, his heirs, or successors by any other tenure, then by fealty only, and yearly rent, or without rent of some honour.

5. No subject, bodies politick or corporate to create by any license, or any other way or means, any other tenure then by fealty

fealty and rent, or without rent upon any estate in fee-simple, feytayl, or otherwise.

6. In respect of the said discharge and freedome of the subjects and their posterities, and that they shall be also discharged thereby of fines and licenses of alienations, respect of homage and reliefs: \* a competent rent to be affured to the king, his heirs, and successors of greater yearly value then he or any of his predeceffors had for them all, which rent is to be inseparably annexed to the crown, payable at the receipt only.

7. A convenient rent to be affured to the lords for every knights fee, and so ratably.

8. Commissions for the finding out of the tenures of the king, and the subject to be returned, &c.

9. Ideots and madmen to be in the custody of some of their kindred, &c. and not of the king, his heirs or successors.

10. The court of wards to be dissolved with pensions to the present officers.

11. Provision to be made for regulating of gardien in socage, and that the ancestor may appoint gardiens, &c. and that no gardien shall make a grant to the king.

12. Provision to be made that bishops shall continue lords of parliament, notwithstanding their baronies be holden in socage.

13. That the act shall be favourably interpreted for discharge of all wardships, &c.

Which motion, though it proceeded not to effect, yet we thought good to remember it, together with these considerations; \* hoping that so good a motion tending to the honour and profit of the king and his crown for ever, and the freedom and the quiet of his subjects and their posterities, will some time or other (by the grace of God) by authority of parliament one way or other take effect and be established.

And we will conclude this chapter with holy scripture: *Deus est pater orphanorum, et iudex viduarum.* And again, *Deus custodit advenas, pupillum, et viduam suscipiet.* And lastly, in Deuteronomy 27. 19. *Maledictus est qui pervertet iudicium advenae, pupilli, et viduae.*

\* First search must be made what the king hath been answered for these, &c.

\* *Spes est vigiliantis somnium.* Hope is the dreame of a waking man.

Psal. 46. 9. & 67. 6.

Deut. 27. 19.



## C A P. XXXVI.

## The Court of the Duchy Chamber of Lancaster at Westm'.

**F**ORASMUCH (as it hath been said) the court of wards hath some reference to this court of the duchy, we thought it fit to treat of this court of the duchy next after the said court of wards, for that it may give some light thereunto. Now for that the county of Lancaster is a county palatine, it shall be necessary to shew the beginning and erection thereof.

King Edward the 3. created John his fourth son earl of Richmond, *anno domini* 1355, he 19 *Maii anno domini* 1359 married Blanche youngest daughter of Henry duke of Lancaster (the second duke that England saw.) Duke Henry died of the plague, *anno* 35 E. 3. At the parliament holden *anno* 36 E. 3. the king in full parliament did gird his son John with a sword, and set on his head a cap of furre, and upon the same a circle of gold and pearls, and named him duke of Lancaster, and thereof gave to him, and to his heirs males of his body, and delivered him a charter.

In full parliament, *anno* 50 E. 3. the king erected the county of Lancaster a county palatine, and honoured the duke of Lancaster therewith for term of his life in these words.

*Edwardus Dei gratia, &c. Sciatis quod si nos debita consideratione pensantes gestus magnificos cunctorum qui nobis in guerris nostris laudabiliter et strenue servierunt, ipsos desideremus honoribus attollere, & pro viribus juxta merita præmiare, quanto magis filios nostros, quos tam in sapientia, quam in gestu nobili alios præcellere conspiciamus, et qui nobis locum tenuerunt, et tenere poterunt potiore, nos convenit majoribus honoribus et gratiis prærogare? considerantes itaque probitatem strenuam, et sapientiam præcellentem charissimi filii nostri Johannis regis Castellæ et Legionis, ducis Lancastriæ, qui laboribus et expensis semper se nobis obsequiosum exhibuit pro nobis pluries in necessitatibus intrepide se guerrarum discriminibus exponendo, et volentes eo pretextu, ac desiderantes eundem filium nostrum aliquali commodo et honore ad præsens (licet non ad plenum prout digna merita exposcunt) remunerare; ex certa scientia nostra, et læto corde a de assensu prælatorum et procerum in instanti parlamento nostro apud Westm' convocati existens: b concessimus pro nobis et hæredibus nostris præfato filio nostro quod ipse ad totam vitam suam habeat infra comitatum Lancastriæ cancellariam suam, ac breviam sua sub sigillo suo pro officio cancellarii, deputando, consignando justiciarios suos tam ad placita coronæ, quam ad quæcunque alia placita communem legem tangentia, tenenda, ac cognitiones eorundem, et quascunque executiones per brevia sua et ministros suos faciendas. Et quæcunque alia libertates et jura regalia ad comitatum palatinum pertinentia, adeo libere et integre sicut comes Cestriæ infra eundem comitatum Cestriæ dignoscitur obtinere, &c.*

<sup>a</sup> But it appeareth by the book of 26 E. 3. 59. b. that the said Henry duke of Lancaster had the like grant; for there in a præcipe the

Rot. pat. anno  
29 E. 3.

Rot. par. 36 E.  
3. nu. 36, 37.  
Rot. pat. anno  
36 E. 3.

Rot. pat. anno  
50 E. 3. See the  
2. pt. of the Inst.  
Mag. Cart. c. 31.  
32 H. 6. fo. 13.  
the king may  
make a county  
palatine by his  
letters patents  
without parlia-  
ment.

<sup>a</sup> De assensu præ-  
latorum et pro-  
cerum.

12 E. 4. 16.

<sup>b</sup> 5 things to  
be observed for  
erecting a county  
palatine.

1 Cancellaria.

2 Brevia sub si-  
gillo suo.

3 Justiciarios  
suos tam ad pla-  
cita coronæ  
quam alia pla-  
cita, &c.

4 Quæcunque; alia  
jura regalia ad  
com' palatinum  
pertinentia.

5 Adeo libere et  
integre prout  
comes Cestriæ.  
See 19 H. 6. 12.

21 E. 4. 8.

<sup>c</sup> 26 E. 3. 59. b.

the tenant vouched, and that he might be summoned in the county of Lanc', and the vouchee challenged, because in the county of Lancaster the kings writ did not run, *sed non allocatur*, but a writ sent to the duke or to his lieutenant to summon the vouchee in the same manner as it should be done in Chester. Vid. 39 E. 3. Voucher 198.

Divers have counties palatines that are not earls, as shall appear hereafter.

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It is called *comitatus palatinus*, a county palatine, not *à comite* in respect of the dignity of an earl, but *à comitatu*, and *à palatio regis*, because the owner thereof, be he duke or earl, &c. hath in that county *jura regalia*, as fully as the king \* had in his palace, from whence all justice, honors, dignities, franchises and privileges, as from the fountain, at the first flowed. Neither by this charter was the duke of Lancaster created count palatine, but the county was made a county palatine. The power and authority of those that had counties palatines was king-like, for they might pardon treasons, murders, felonies, and outlawries thereupon. They might also make justices of oire, justices of assise, of gaol delivery, and of \* the peace. And all original, and judicial writs, and all manner of indictments of treason and felony, and the processes thereupon were made in the name of the persons having such county palatine. And in every writ and indictment within any county palatine, it was supposed to be *contra pacem* of him that had the county palatine. But these and some others are taken away from them that have such counties palatines, and annexed to the crown, and all writs to be made in the kings name, but the teste is in the name of him that hath the county palatine: and they shall have forfeitures of lands and goods for high treason, which forfeiture accreweth by the common law. But for treasons or forfeits given after the erection of the county palatine by any act of parliament, they shall not have them.

\* 20 H. 7. 6. 8.

27 H. 8. cap. 24.

Pasch. 12 Eliz.  
Dier, 288, 289.

27 H. 8. cap. 24.

37 H. 8. ca. 19.  
36 H. 6. fo. 33.  
9 H. 7. fo. 12.

Justices of assise, of gaol delivery, and of the peace are and ever since the erection of the county palatine of Lancaster have been made and assigned by commission under the seal of the county palatine of Lancaster.

In the county palatine of Lancaster fines are levied with three proclamations, &c. before the justices of assise there, or one of them, and all recoveries to be had of any lands or tenements in the county palatine are to be had in the court of that county palatine, and cannot be had at Westminster.

a 22 H. 6. 48.

<sup>a</sup> In trespassse in the county palatine of Lancaster, the defendant pleaded a forain release, the court prefixed a day to the parties in bank, the record must be removed by *certiorari* in chancery, and by *mittimus* into the bench, there to be tried.

b 27 E. 3. 84.  
21 H. 7. 33.  
39 H. 6. 21, 22.  
19 H. 6. 12.  
32 H. 6. 25.  
19 E. 3. trial 66.  
45 E. 3. visne 50.  
c 9 E. 3. cap. 4.  
8 Aff. 27. 10 E.  
3. 41. 19 H. 6.  
12. 53. 21 E. 4. 8.

<sup>b</sup> If issue be joyned in the kings bench, or common bench tryable in the county palatine of Lanc', it shall be tryed in the county of Lanc' and remanded hither.

<sup>c</sup> Where a release or other speciall deed is pleaded in bar in any court at Westminster, within a franchise where the kings writ runneth not, it shall be tryed where the writ is brought. See the books quoted in the margin. And in this variety of opinions I hold the law to be, that this statute of 9 E. 3. extends not to

a. & b. 27 E. 3. 84. 46 E. 3. visne 53. *Per tous les justices*. 10 H. 4. 40. 10 H. 6. 15, 16. *Per Martyn*. 8 H. 6. 3. *per Strange*. Lib. Int. Raftall fol.

cases

cases when any other issue is joyned tryable in the county palatine or other franchise: and I ground my opinion upon the resolution of all the judges of England in the exchequer chamber, in anno 32 H. 6. 25. See 39 H. 6. 21, 22. 21 H. 7. 33. 21 E. 4. 33. 34, 35, 36.

Vid. lib. Intr. fo. 81, 82. pl. 8. Henry Parayes case in debt, in camera Guildhall civitatis London.

<sup>a</sup> King H. 4. by his charter by authority of parliament, anno primo of his reign; doth sever the possessions of the duchy, &c. from the crown: and that which John of Gaunt held for life, is established for ever, and <sup>c</sup> specially by the statutes of 1 E. 4. and 1 H. 7. hereafter mentioned: and this separation H. 4. made, for that he knew he had the duchy of Lancaster (*par multis regnis*) by sure and indefeasible title: and he could not be both *rex* and *dux*, but specially that his title to the crown was not so assured, for that after the decease of R. 2. the right of the crown was in the heir of Lionell duke of Clarence, second son of E. 3. John of Gaunt father of H. 4. being the fourth son: and therefore he intended not, that by the law of the crown the duchy should go with the crown, and that he should be seised thereof in right of the crown, as the king afterwards was of the possessions of the duchy of York, earldome of March, and others.

Humphrey de Bohun earl of Hereford, Essex and Northampton being the first and last earl of that name, and seised of large possessions in England and Wales, had issue two daughters: \* Eleanor the eldest married to Thomas duke of Glouc', and Mary married to the Earl of Hertford.

It is enacted that all the mannors and hereditaments which descended to H. 5. after the decease of the said Mary his mother, as son and heir unto her, should be dissevered from the crown of England, and annexed to the duchy of Lancaster, and to be of the same nature, as by the kings letters patents established by parliament there appeareth; where you may read of many franchises and liberties belonging to the duchy.

<sup>a</sup> Here it is to be observed, that albeit these possessions descended to king H. 5. as heir to his mother, yet he was thereof seised *in jure coronæ*, and therefore this act dissevereth them from the crown.

<sup>b</sup> The duchy of Lancaster as separated, &c. is by act of parliament assured to E. 4. and his heirs kings of England. By this act all intails of the duchy, or of any land annexed thereunto are cut off, and by this made fee simple to E. 4. and his heirs kings of England. In an act of parliament without question this limitation of a fee simple is good. See the whole act.

<sup>c</sup> It is enacted that H. 7. should have, hold, and enjoy to him and his \* heirs for evermore the county palatine of Lancaster, and all honors, &c. By which act also all former intails are cut off, and in this state doth the duchy stand at this day. <sup>d</sup> All lands, &c. parcell of this duchy given to the king by the statute of monasteries, chanteries are still within the survey of the duchy. Within the county palatine of Lancaster the duke having *jura regalia*, his jurisdiction and priviledges therein were very great.

<sup>d</sup> Rot. pat. 1 H. 4. intituled Carta regis H. 4. *De separatione ducatus Lancastrie a corona auctoritate parlamenti anno regni sui primo.*  
<sup>e</sup> Rot. par. 1 E. 4. Pl. com. 219. b.

\* Vide Rot. parl. 1 H. 6. Partition recited an. 9 H. 5. between H. 5. and the said Eleanor.

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Rot. par. anno 2 H. 5. nu. 30. 3 H. 5. nu. 15. confirmed, and that no land should passe of duchy, but under the duchy seal.  
2 & 3 Ph. and Mar. cap. 20.  
<sup>a</sup> See the 1. part Inst. sect. 8.  
<sup>b</sup> Rot. par. 1 E. 4. nu. 26. Pl. com. 222. Vid. li. 5. fo. the Princes case.  
<sup>c</sup> Rot. par. 1 H. 7.  
<sup>d</sup> Nota his heirs without saying (kings of England) as E. 4. did. 21 E. 4. 60. Vid. Dier 1 El. 168. b.  
<sup>e</sup> 32 H. 8. cap. 20. 1 E. 6. ca. 14. 1 El. cap. 31.

The

Rot. par. 9 R.  
2. nu. 13.  
28 H. 8. Brook  
Livery 55. Li-  
very within the  
county palatine,  
but not of a te-  
nure without.  
26 H. 8. 9.

\* The duke of Lanc' complaineth by mouth to the king, bi-  
shops, and lords in full parliament; that where after the death of  
Thomas of Lathome who held the mannor of Lathome in the  
county of Lanc' of the said duke in cheuage, whereby the man-  
nor was seised into the hands of the said duke of Lancaster accord-  
ing to his county palatine of Lancaster, yet notwithstanding John  
Stanley knight as in the right of Isabell his wife daughter and heir  
of the said Tho. had entered, and taken the profits of the said  
manner without any livery or other suit made in the chancery of  
the said duke, for which he prayed remedy. After which, upon  
full advice of the justices of both benches, and others of the kings  
learned councill, it was declared in the said parliament, that the  
entry of the said John into the mannor, as aforesaid, was unlaw-  
full, and that the said John ought to make suit by petition, or  
otherwise in the chancery of the said duke for the livery of the said  
manner in such case to be sued for.

Vid. 33 H. 8.  
c. 39. 22 H. 8.  
c. 20. 3 E. 6.  
ca. 1. custos ro-  
tutorum.  
f 2 & 3 Ph. and  
Mar. ca. 20.

Of the franchises and liberties belonging to the county palatine  
of Lanc. you may read rot. par. 2 H. 5. *ubi supra*.

f Lands to be annexed to this duchy under the great seal shall be  
as good, as if it had been annexed by parliament.

21 E. 4. 60. 71.  
Pl. com. 219.

See the statute of 5 El. cap. 23. concerning writs of *significavit*,  
and *excommunicato capiendo*.

Lands within the county palatine should passe by the dukes  
charter without livery of seison or attornment, but of lands parcell  
of a mannor annexed to the duchy without the county palatine,  
there ought to be livery of seison, and attornment of tenants, and  
in the same degree is it in the kings case. The reason hereof is,  
for that the county of Lanc' was a county palatine, and the duke  
then had *jura regalia*.

Vid. 33 H. 8.  
cap. 39. which  
see before in the  
chapter of the  
court of wards.  
See 27 H. 8. ca.  
11. there also is  
a chancelor of  
the county pa-  
latine.

The proceeding in this court of the duchy chamber at Westm'  
is as in a court of chancery for lands, &c. within the survey of  
that court by English bill, &c. and decree; but this chancery  
court is not a mixt court as the chancery of England is, partly of  
the common law, and partly of equity, as hath been said. See  
before in the chapter of the Court of Chancery.

The proceffe is by privy seal, attachment, &c. as in the chan-  
cery.

The officers of this court be the chancelor, the attorny, the re-  
ceiver generall, clerk of the court, the auditors, surveyors, the  
messenger. There is an attorney of the duchy in the chancery, and  
another in the exchequer. There be four learned in the law as-  
sistants, and of councill with the court.

Hil. 1 E. 6. Brook  
Travers. 53.

Where by office a tenure is found of the king *ut de ducatu Lan-  
castrie*, and in truth ‡ it is not so, there needeth no traverse, for the  
king hath the duchy \* as duke and not as king, and a man shall  
not traverse, but where it is found † for the king: *sed aliter uitur*  
*in diebus nostris*, as it appeareth in the case following.

‡ [ 207 ]

\* *In hoc erratum*  
*est*, as it appear-  
eth in Pl. com.  
*ubi supra*.

† It is found for  
the king, for he  
is not duke.  
Hulmes case,  
Mich. 7 Jac. in  
curia ward. Tra-  
versers de office  
estoppel per fuer  
de livery.

*Le roy (in droit de son duchie de Lanc') seignior, Rich. Hulme seise del*  
*manner de Male in le countie de Lanc' tenuis del roy come de son dit duchie*  
*per service de chivalry mesne, et Robert Male (seise des terres in Male*  
*tenuis del mesne come de son dit mannor per service de chivalry) ten'.*  
*Rich. Hulme morist; apres que mort, anno 31 H. 8. fuit trove que il*  
*morist seise del dit mesnallie, et que ceo descend al Edmonde son fitz deins*  
*age, et trove le tenure avantdit, &c. et durant le temps que il fuit in*  
*ard*

gard Robert Male ten' morist : apres que mort anno 35 H. 8. fuit trove per office que Robert Male morist seise del dit tenancy paravaille, et que ceo descend alson fitz et heire deins age, et que le dit tenancie fuit tenus del roy come del dit duchy per service de chivalrie (ou in veritie ceo fuit tenus del Edmonde Hulme a lonques in gard in le roy come del dit mesnaltie,) per que le roy seist le gard del heire le ten', et puis 4 Jac. regis mure apres le mort de Rich. Male que fuit lineal heire del dit Robert Male, per un auter office trove fuit que le d't Rich. morist seise del dit tenancy, et ceo teignoit del roy come de son duchy per service de chivalry son heire deins age, sur ceo Rich. Hulme cousin et heire del dit Rich. Hulme, ad presere un bill destre admit a son trawrs de cest darrein office trove in anno 4 Jac. Le question fuit, le quel loffice trove in 35 H. 8. soit ascun estoppel al dit Hulme a traverser le darrein office, ou si le d't Hulme serva chasc primerment a traverser loffice de 35 H. 8. Et fuit obiect que il doit primerment travers loffice in 35 H. 8. come in le case de 26 Ed. 3. fol. 65. que si 2. synes sont lez de terre in ancien demesne, le seignior de que la terre est tenus, doit aver brieve de discent a reverser le premier fine, et in ceo le 2 fine ne serva barre. Et que le premier office estoppera cy longe come ceo remaine in force. Aque fuit responde et resolve per les 2 chief justices, et chief baron, et le court de gards, que le trover dun office nest pas ascun estoppel, car ceo nest que enquest doffice, et le party greve avera travers a ceo come ad estre confesse, et pur ceo sans question ceo nest pas estoppel; mes quant office est trove fausement que terre est tenus del roy per service de chivalrie in capite, ou in verity la terre est tenus del auter seignior, ou del roy mesme in socage, si le heire sua general livery, est tenus in 46 E. 3. 12. per Mowbray et Persey que il navera fute apres d'averre que la terre nest pas tenus del roy, &c. mes ceo nest forsque estoppel al heire mesme que sua la livery et ne concludera son heire : car issint d't Mowbray mesme, expresment in autiel case in 44 Ass. pl. 35. que estoppel per suer de livery estoppera solement mesme le heire durant son vie : et in 1 H. 4. fo. 6. b. la le case est mysse de expresse confession et suer de livery per lissue in tail sur faux office, et la est tenus que les jurors sur novel diem clauit extremum apres le mort de tiel heire sont alarge selonque leur conscience a trover que la terre nest pas tenus, &c. car ilz sont jure ad veritatem dicendam, et leur trover est appel veredictum, quasi dictum veritatis : quel reason auxi serve quant le heire in fee simple fust livery sur faux office que les jurors apres son mort doivent trover selonque le verity, issint est dit in 33 H. 6. fo. 7. per Laicon que si 2 soers sont trove heires, dont l'un est bastard, si xz joine in sute de livery, cesti que joine ove le bastard in livery ne alledgera bastardy in l'aut', mes nul liere dit que lestoppel induit plus longement que durant son vie. Et quant livery est suer un heire, le force et effect del record de cest livery est execute et determine per son mort et pur ceo le estoppel expier ove le mort le heire ; mes ceo est destre intend dun general livery, car special livery ne concludera omnino, come appear apres. Les parols de general livery, quant le heire est trove de pleine age, sont. Rex escaetori, &c. Scias quod cepimus homagium I. filii et hæredis B. defuncti de omnibus terris et tenementis quæ idem B. pater suus tenuit de nobis in capite die quo obiit, et ei terras et tenementa reddimus. Et ideo tibi præcipimus, &c. eidem I. de omnibus terris et tenementis prædict', &c. plenam seisinam habere fac', &c. Et quant le heire fuit in gard a son plein age, le brieve de livery dirra. Rex, &c. Quia I. filius et hæres B. defuncti, qui de nobis tenuit in capite, ætatem suam coram te sufficient' probavit, &c. cepimus homagium ipsius I. de omnibus terris et tenementis quæ idem B. pater suus tenuit de nobis in capite

26 E. 3. fol. 65.

46 E. 3. 12.

44 Ass. pl. 35.

1 H. 6. b.

33 H. 6. fol. 7.  
per Laicon.

[ 208 ]

die quo obiit, et ei terras et tenementa reddidimus : et ideo tibi præcipimus, ut supra. *Quel breif est le fute del heire et pur ceo coment que toutes les parols del breif sont les parols le roy (come tout les breifs le roy sont) et coment que le breif de livery est generall, de omnibus terris et tenementis de quibus B. pater I. tenuit de nobis in capite die quo obiit, sans direct affirmac' que aucun mannor in particulier est tenu in capite, et nient obstant que ceo nest forsque prosecution dun breif le roy, et nul judgment sur ceo ; encore intant que generall livery est foundue sur loffice, et per loffice fuit trove que divers terres et tenements fuer' tenus del roy in capite, a cest cause le fuer de cest breif concluder' le heire solement que fuist le livery, et apres son mort les jurors in novel breif de diem clausit extremum sont alarge, come est avandit, et si cesti jury trove fausement tenure del roy, auxi le seignior de que la terre est tenu poest travers cest office, ou si terre soit tenu del roy, &c. in socage, le heire poest travers cest darrein office, car per ceo il est greve solement, et ne travers le primer office, et quant le pier fuist livery et mort, le conclusion est execute et pass, come est dit adevant. Et nota la est un speciall livery, mes ceo procede de grace le roy, et nest pas fute le heire, et le roy poest grante ceo ou al plein age devant atate probanda, &c. ou al heire deins a.c. come appiert in 21 E. 3. 40. et ceo est generall, et ne affirm directment aucun tenure come le generall livery fust, mes ove un, ut dicitur, et pur ceo nest aucun estoppel sans question, et al commen ley speciall livery poest over estre grant devant aucun office trove, mes ore per lestatut de 33 H. 8. ca. 22. est purvien, That no person or persons having lands or tenements above the yearly value of 5 l. shall have or sue any livery before inquisition or office found before the escheator or other commissioner, mes per un expresse clause in mesme lacte, livery may be made of the lands and tenements comprised or not comprised in such offices. Issint si office soit trove dascun parcell, &c. ceo suffist, et si le terre trove in loffice nexceede 20 l. donques le heire poest fuer generall livery apres office ent trove, come est avandit ; mes si la terre nexceede 5 l. per annum, donques generall livery poest estre sue sans office ent trove per garrant del master de gards, &c. Vid. Dier 23 El. 377. que le roigne, ex debito justitie, nest hy a cest jour puis le dit act de 33 H. 8. a graunter speciall livery, mes est a son election a graunt' speciall livery, ou a chaser le heir a un generall livery.*

*Fuit auxi resolve in cest case que loffice de 35 H. 8. ne fuit pas traversable, car son travers demesne provera que le roy aver' cause daver gard per cause de gard, et quant le roy vient al possession per faux office ou aut' meane sur pretence dun droit, ou in veritie il nad tiel droit, uncore si appiert que le roy ad aucun auter droit ou interest a aver et tener la terre, la nul traverse sera cest office ou tittle le roy, pur ceo que le judgement in le travers est, Ideo consideratum est quod manus domini regis à possessione amoveantur, &c. Que ne doit estre quant appiert al court que le roy ad droit ou interest daver la terre, et ove ceo accord. 7 H. 4. fol. 33. in le countee de Kents case ; et que apres generall livery sue per le heir de Robert Male le office ne poest estre traverse per son heir : Et issint auxi fuit resolve per assistants del court de gards in Scurfields case in curia wardorum. Tr. 8 Jacobi.*

What leases may be made of lands, &c. within the survey of the duchy of Lancaster ; see the ordinances of the court of duchy concerning leases to be made, &c. anno 20 H. 6.

See also Dier Mich. 6 & 7 Eliz. the resolution of all the judges concerning leases made by the chancellor of the duchy chamber.

And

21 E. 3. 40.  
46 E. 3. 33.  
46 Aff. p.  
47 E. 3. 21.  
29 Aff. p. 8.  
33 H. 6. 50.  
21 H. 6. 23.  
37 H. 8. B. estoppel 218. 7 E.  
6. ibid. 222.  
See 4. part. Inf.  
cap. Pardon.  
Mich. 39 & 40  
El. fol. 397.

[ 209 ]

Which case we have rehearsed in the same language wherein we reported it when it was fresh in memory, and never hitherto was published.

Mich. 6 & 7  
Eliz. Dier 232.  
27 H. 8. ca. 11.

And if the lease either in possession or reversion be made under the duchy seal, *Quod dominus rex de advisamento et assensu concilii ducatus Lancastrie dimisit*, &c. the lease is good, although in truth the chancellor made it, and put to the seale of the duchy. For such leases under the duchy seal, or under the seal of the county palatine of lands within the same, are of as great force as lands of the crown under the great seale.

2 Proviso.  
2 & 3 Ph. an 1  
M. cap. 20.  
37 H. 3. cap. 16.

Albeit by speciall provision and construction, to a grant of lands and tenements parcell of the duchy of Lancaster that lye out of the county palatine, there must be livery of seisin and attornment, as the case requireth, yet the grant under the seal of the duchy is matter of record in respect of the dignity of the person of the king, and needeth no delivery to make it a deed (as deeds between subjects ought to have) and if the same be denied, *non est factum* cannot be pleaded, but *nil tiel record*.

21 E. 4. fo. 60.  
Rot. par. 1 H. 4.  
nu. 81.  
*Vide Cartam H.*  
4. *de separatione*  
*ducat. Lanc. à*  
*corona auctoritate*  
*parli. anno regni*  
*Jui 1.*

And if the king by his letters patents under the seal of the duchy doth grant a reversion expectant upon an estate for life or years of lands parcell of the said duchy lying out of the county palatine, the reversion doth passe maintainant to the patentee by force of the letters patents: but he shall not have an action of waste, or distraine before attornment. \* For this case is like to the case of a fine between subjects, which is matter of record: and so the kings letters patents under the duchy seal are as high a matter of record (if not higher then a fine.) And this tendeth both to the honour of the king and the safety of such as purchase such reversions of the king, that the state of the reversion should passe by those letters patents: otherwise if the patentee dye before attornment, the letters patents should be void, and the validity of the kings grant should depend upon the pleasure of the lessee, and many inconveniencies should thereupon follow. And all this appeareth by that great and grave resolution of the case of the duchy of Lancaster reported by Mr. Plowden, that no statute now in force doth separate the duchy from the person of the king, nor to have the person of the king separate from the duchy, nor to make the king duke of Lancaster having regard to the possessions of the duchy, nor to alter the quality of the person of king H. 7. but only that the king should have to him and to his heirs the said duchy separate from the other possessions; in which case the duchy at the least is joyned to the person of H. 7. and to his heirs, and the person of the king remain as it did before, for nothing is said to the quality of the person of the king, nor to the alteration of his name. And the person of the king shall not be infeebled because the duchy is given to the king and his heirs, but remain alwayes of full age, as well to gifts and grants by him made, as to administration of justice: whereupon it was resolved, that leases made by E. 6. being within age of lands, either within the county of Lancaster or without parcell of the duchy (the royall and politick capacity of the king being not altered) were not voidable by his nonage: a just resolution, and tending to the safety and quiet of purchasers and farmors, and proveth directly that the royall and politick capacity of the king being not altered (as to these possessions) the letters patents of the king of these possessions under the duchy seale are of record: and we finde no opinion in our books, or any thing in any record, that we remember, against this. So as the law concerning this point is, that for grants

Rot. par. 3 H.  
5. nu. 15.  
Rot. par. 1 E.  
4. nu. 26.  
Rot. par. 1 H. 7.  
nu. 2. *seil. 1.*  
2 & 3 Ph. and  
Mar. cap. 20.  
P. 10 H. 4. fo. 7.  
*non omittas, &c.*  
*per prerogati.*  
Rot. par. 2 H. 5.  
nu. 30.  
23 H. 6. nu. 17.  
12 E. 4. nu. 7, 8.  
Dier. Mic. 6 & 7  
Eliz. ubi supra.  
\* Lit. sect. 580.  
1 part of the last  
fo. 320.  
Plowd. Com.  
221. b.  
Vide Rot. par.  
1 H. 4. nu. 81.  
accord.

[ 210 ]

Vide 27 H. 8.  
cap. 11. for the  
several feales.  
23 H. 8. cap. 3.  
Com. of sewers  
under the seal of  
the duchy, and  
they be commis-  
sioners of record.

of reversions by letters patents under the kings seal of the duchy of Lancaster, there must be attornment for lands out of the county palatine to make a privity, as in case of a fine for the action of waste or distresse: but of lands within the county palatine, the reversions passe by letters patents under the seal of the county palatine, both for the estate and for the privity of the action and of the distresse: and yet the seal is as high a matter of record in the one case as in the other. And herewith agreeth the continual practise in the court of the duchy of Lancaster. For if a reversion be granted under the duchy seal in fee or in tayl, &c. of the lands of this duchy expectant upon a lease for years, life, &c. a writ in English is usually granted in the kings name under the duchy seal reciting the grant, and commanding the particular tenant to attorn: or if it be of a mannor in possession, a writ likewise in English is usually granted commanding the tenants generally to attorn.

27 H. 8. cap. 16.

Dier ubi supra.

Fl. com. 222.

The seal of the duchy of Lancaster remains with the chancellor at Westm. And the seal of the county palatine remains always in a chest in the county palatine under the safe custody of the keeper thereof. All grants and leases of lands, tenements, offices, &c. in the county palatine of Lancaster shall passe under that seal and no other: and all grants and leases of lands, tenements, offices, &c. out of the county palatine and within the survey of the duchy, shall passe under the seal of the duchy, and no other: otherwise such grants and leases shall be void by the apparent intention of the act.

See also pl. com. 222. notable matter concerning leases made of lands within the survey of this court, the king being within age, &c. resolved and decreed to be good.

This county palatine was the youngest brother, and yet best beloved of all other, for it had more honors, manners, and lands annexed unto it, then any of the rest, by the house of Lancaster, and by H. 8. and queen Mary, albeit they were descended also of the house of York, viz. from Eliz. the eldest daughter of E. 4.

\* Rialties,  
franchises, lib-  
erties, &c.  
Rot. parl. 2 H. 5.  
nu. 30. not in  
print, and esta-  
blished and con-  
firmed Rot. par-  
liam. anno 3 H.  
5. nu. 15.

\* For the great roialties, franchises, liberties, priviledges, immunities, quietances, and freedomes, which the duke of Lancaster had for him and his men and tenants, see rot. parl. *die Lunce post octab. Sancti Martini an. 2 H. 5.* all which are established, ratified and confirmed by authority of parliament, necessary to be known by such as have any of these possessions.



C A P. XXXVII.

Of the County Palatine of Chester.

SEEING the erection of the county palatine of Lancaster hath reference to the county palatine of Chester, we have thought good to entreat of it in this place, for that one giveth light to the other.

<sup>a</sup> We have spoken of the county of Lancaster raised to a county palatine by act of parliament. We shall now speak of a county palatine created by prescription.

<sup>b</sup> We find that Hugh Lupus sonne of the viscount of Averanches in Normandy by his wife William the Conquerours sister was the first hereditary earle of England created by his uncle the Conquerour earl of Chester, and in the stile of a conquerour, *Totumq; hunc comitatum tenendum sibi et \* heredibus ita libere ad gladium, sicut ipse rex tenebat Angliam ad coronam, dedit.* † To this earldome is annexed the county of Flint in Wales.

This is the most ancient and most honourable county palatine remaining in England at this day, \* with which dignity the kings eldest sonne hath been of long time honoured.

By this general grant this Hugh earl of Chester had *jura regalia* within the county, and consequently had *comitatum palatinum* without any expresse words thereof, and by force thereof he created eight Cheshire barons, which was the first visible mark of a county palatine. That is to say, Robert Fitz-Hugh baron of Malpas, Richard de Vernon baron of Scibbroke, William Walbank baron of Nantwich, William the son of Nigel baron of Halton, Hamond de Masly baron of Dunham, Gislebert de Venables baron of Kinderton, Hugh the sonne of Norman baron of Hawardyn, and N. baron of Stockport. By the said generall grant he had not the patronage and tenure of the bishoprick of Chester, for thus I reade in the Book of Domesday made in the time of this Hugh earl of Chester. *Cestreshire. Tenet episcopus ejusdem civitatis de rege, quod ad suum pertinet episcopatum; totam reliquam terram comitatus tenet Hugo comes de rege.*

<sup>c</sup> Britton saith, *Voilons nous que justices errant soient assignes de les chapters oier et terminer en chescun countye, et en chescun franchise de 7 ans en 7 ans, et autiel poer voilons que nous* <sup>d</sup> chief justices de Ireland et Cestre eyent.

<sup>e</sup> Within this county palatine, and the county of the city of Chester, there is, and anciently hath been a principall officer called the <sup>f</sup> chamberlain of Chester, who hath, and time out of minde hath had the jurisdiction of a chancelour; and that the <sup>g</sup> court of exchequer at Chester is and time out of mind of man hath been the <sup>h</sup> chancery court for the said county palatine, whereof the chamberlain of Chester is judge in equity. He is also judge of matters <sup>i</sup> at the common law within the said county, as in the court

13 E. 3. Vouch.  
13. 49 E. 3. 9.  
19 H. 6. 12.  
36 H. 6. 33, 34.  
12 E. 4. 16.  
<sup>a</sup> A man may have a county palatine by prescription. 2 E. 4. 17, 18. 22.  
12 E. 4. 16.  
21 R. 2. ca. 9. Regist. 17. a.  
<sup>b</sup> This Lupus did bear azur a head of a wolf erased. argent.  
<sup>c</sup> In Fee simple.  
† 21 R. 2. cap. 9.  
\* 21 R. 2. cap. 9.  
17 E. 4. ca. 1.

These barons had within their severall courts consens of omnibus placitis et querelis in curia comitis motis, exceptis placitis ad gladium ejus pertinentibus, which you may see at large, Rot. Inspec. Pat. an. 18 H. 6. parte 2. m. 34.  
<sup>d</sup> Brit. 1. 1. b.  
<sup>e</sup> 27 H. 8. cap. 5.  
<sup>f</sup> Chief Justice of Chester.  
<sup>g</sup> 27 H. 8. c. 5.  
<sup>h</sup> Chamberlain of Chester.  
<sup>i</sup> Court of exchequer.  
<sup>j</sup> Chancery court.  
<sup>k</sup> At the common law.

<sup>k</sup> A mixt court.

<sup>l</sup> Vice chamberlain.

<sup>m</sup> The justice of Chester.

of Chancery at Westm; for this court of chancery is a <sup>k</sup> mixt court.

There is also a <sup>l</sup> vice-chamberlain, which is the deputy of the chamberlain. And there is within the same a justice called <sup>m</sup> the justice of Chester, who hath jurisdiction to hear and determine matters of the crown, and of common pleas. Of fines and recoveries levied and suffered as well within the county palatine of Chester as of the city of Chester. See the statutes of 2 E. 6. ca. 28. & 43 Eliz. cap. 15. But of these and other matters concerning this county palatine we have thought good to set down the resolution of four reverend judges (whom we knew) upon view of records and evidences, and mature deliberation thereupon in writing, in these words.

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Sir James Dier,  
Weston.  
Harpur.  
Carns.  
10 Febr. 11 re-  
ginae Elizab.

The opinion of Sir James Dier knight, chiefe justice of the common pleas at Westminster, Richard Weston and Richard Harpur esquires, two other justices of the same common pleas, and of Thomas Carns esquire one of the justices of the pleas to be holden before the queens majesty, declared and presented to her highnesse the 10 day of February *anno dom.* 1568. by vertue of her majesties letters to us directed the second day of the same month concerning the jurisdiction and liberties of the county palatine of Chester, and the authority of the chamberlain, and his office there: and concerning the controversie between the lord president and counsell in Wales, and the said chamberlains office lately grown upon Thomas Radfords case exhibited unto us: as en-  
sueth.

<sup>a</sup> King H. 7.  
made it a county  
of it selfe. Cam-  
den. 459. a.  
<sup>\*</sup> By prescrip-  
tion.

First, by that which we have seen and considered, the county of Chester (wherein <sup>a</sup> the city of Chester is now, and by a good time past hath been a county of it self) of <sup>\*</sup> very ancient time before the reign of king H. 3. hath been, and yet is a county palatine, with other members thereunto belonging: and so from time to time hath been received and allowed in the law. And therefore the lawes, rightfull usages, and customes of the said county palatine are to be preserved and maintained.

The chamber-  
lain of Chester.

It further evidently appeareth, that by the like time of antiquity and continuance, there hath been and yet is in the said county palatine one principall or head officer called the chamberlain of Chester, who hath, and ever had all jurisdictions belonging to the office of a chancelour within the said county palatine.

The justice of  
Chester.

And that there is also within the said county palatine a justice for matters of the common pleas, and the pleas of the crown, to be heard and determined within the said county palatine, commonly called the justice of Chester.

Error, foreign  
plea and foreign  
voucher.

We also see that all pleas of lands or tenements and all other contracts, causes, and matters rising and growing within the same county palatine are pleadable, and ought to be pleaded, heard, and judicially determined within the said county palatine, and not else where out of the said county palatine. And if any be pleaded, heard, or judged out of the said county palatine, the same is void, and *coram non iudice*, except it bee in case of error, foreign plea, or foreign voucher.

We also see that no inhabitant of the same county palatine by the liberties, lawes, and usages of the said county palatine ought to  
be

be called or compelled by any writ or proces to appear or answer any matter or cause out of the same county palatine for any the causes aforesaid, but only in causes of treason and error. And the queens writ doth not come, nor ought to be allowed or used within the said county palatine, but under the seal of the said county palatine, except writs of proclamation by the statute of E. 6. anno regni sui primo.

Treason and error.

Seal of the county palatine.

It doth further appear unto us by good matter of record to us shewed, that the court of the exchequer at Chester is, and by the time of antiquity and continuance aforesaid hath been used as the chancery court for the same county palatine, and that the chamberlaine of Chester is the chief officer and judge of that court, and that he is, and time out of mind hath been a conservator of the peace by vertue of the same office, and hath like power, authority, preheminance, jurisdiction, execution of law, and all other customs, commodities, and advantages pertaining to the jurisdiction of a chancelour within the said county palatine of Chester, as the chancelor of the duchy of Lancaster hath used, had and ought to have used and executed within the said county palatine of Lancaster: which more evidently appeareth also by the understanding of the first grant made by king E. 3. to John his sonne then duke of Lancaster, whereby he made the same county palatine of Lancaster, referring the said duke to have his chancelor, liberties, and regall jurisdiction to a county palatine belonging, *ad eam libere et integre, sicut comes Cestrice infra eundem comitatum Cestrice dignoscitur obtinere.*

Court of the exchequer is the chancery court.

Chamberlaine judge of that court.

A conservator of the peace.

See the grant before.

Also it appeareth unto us that the vicechamberlain did lawfully and orderly commit to prison Thomas Radford named in the cate presented unto us, for that he refused to put in sureties of the peace within the said exchequer upon affidavit made in that behalf. And that the proceedings of the counsell of the marches touching the enlargement of the said Radford from the said imprisonment, and also their further order and dealing against the said vicechamberlain was, and is without sufficient authority, and contrary to the jurisdiction of the office of the said chamberlain, and the ancient laws and liberties of the same county palatine.

Vice-chamberlaine.

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Counsell of the marches.

And we doe also affirm that the statute of 34 and 35 H. 8. called the ordinances of Wales, whereby the authority of the lord president and counsell within the dominion and principality of Wales and marches of the same is established, and hath the force of a law, for or concerning the determination of causes and matters of the same, comprehendeth not the counties of Chester, and the city of Chester, because the same counties of Chester and the city of Chester be no part nor parcel of the said dominion or principality of Wales, or of the marches of the same.

The president and council of Wales and the marches of the same.

The counties of Chester, and the city of Chester no part of the marches of Wales.

Hil. 11 Jac. in the chancery.

Between Sir John Egerton plaintiff, and William earl of Derby chamberlain of Chester and others defendants, for the trust of an interest of a term in lands in the county of Chester, these points were resolved by the lord chancelour and by the chief justice of England, justice Dodderidge, and justice Winche, whom the lord chancelor called to be his assistants as followeth.

First, that the chamberlain of Chester being sole judge in equity, or his deputy, cannot decree any cause wherein he himself

Vid. in the charter of Durham, anno 10 E. 1. Coram rege.

is party, for he cannot be *judex in propria causa*, but in that case he may complain in the chancery of England.

21 H. 3. bre.  
881.

Vide 21 H. 3. *breve* 881. *in rationabili parte versus comitem Cestrie de hæreditate D. quondam comit' Cestrie. Comes dicit quod voluit respondere de terra in com' Cestrie ubi brevia domini regis non currunt extra libertates suas nisi cur' consider', et consideratum fuit per curiam quod respondeat.*

18 Aff. 382.  
13 E. 3. tit.  
jurisd. 5 E. 3.  
30. 38 H. 6. 6.  
7 H. 6. 37.  
8 E. 4. 8. 11 H.  
4. 27. &c.

2. If the defendant dwell out of the county palatine, if any of the county palatine have cause to complain against them for matter of equity for lands or goods within the county palatine, the plaintiff may complain in the chancery of England, because he hath no means to bring them to answer, and the court of equity can bind but the person, for otherwise the subject should have just cause of suit, and should not have remedy: and when particular courts fail of justice, the generall courts shall give remedy, *ne curiæ regis deficerent in justitia exhibenda.*

\* See this case  
in the chapter  
of the Chancery,  
pa. 87.

3. It was resolved, that the king cannot make any commission to hear and determine any matter of equity, but matters of equity ought to be determined in the court of chancery, whose jurisdiction therein have had continuall allowance, and so was it resolved in \* Perots case.

See in the chapt.  
of the County  
palatine of Dur-  
ham.

4. Upon consideration had of the said certificate of the lord Dier, and the said other judges, it was resolved, that for things transitory though in truth they were emergent within the county palatine, yet by the generall rule of law, the plaintiff may alledge these to be done in any county where he will, and the defendant cannot plead to the jurisdiction of the court, that they were done, &c. within the county palatine: but if the plaintiff suppose the transitory cause of action to be in the county palatine, that may be pleaded to the jurisdiction, otherwise it is of things local.

An office found by commission in the nature of a mandamus issuing out of the chancery at Westminster before the commissioners in com' Cestrie for lands holden *in capite* in the same county, was holden void *per consilium curiæ wardorum*, for it ought to be by writ or commission out of the exchequer in the county palatine, which is the court of chancery there.

If an erroneous judgment be given before the chamberlain in the exchequer in any matter wherein he proceedeth according to the course of the common law, the writ of error shall be directed *Camerario seu ejus locum tenenti*; but if the judgment be given before the justice of Chester, then the writ is directed *Justiciario Cestrie seu ejus locum tenenti*. And note that in a writ of error to the \* county of Chester, day shall be given by so long time, that three counties may be holden before the return of the same writ in the kings bench, which is four months, by which time the justices or lieutenant within the same county may redresse the error, if they will, and this by the usages of the same county; but in a writ of error upon a fine they have no such power: and the plaintiff ought to bring the writ of error to the next county after the *teste*, and there it shall be read, *coram judicatoribus ratione tenurarum suarum ibidem*; and the plaintiff shall assign the error without praying proceſſe against the tenant or defendant, but only to pray *judicatos* to examine the error, and if error be found they may advise thereon, or presently reform

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Regist. fo. 17. a.  
34 H. 6. 42.  
6 H. 4. 9. Lib.  
Intr. Raft. 272.  
Dier 15 El. 320.  
321. Dier 18 El.  
345, 346.

\* Note these  
generall words  
extend as well  
to the chamber-  
lain as to the  
justice by the  
rule of the Re-  
gist. ubi sup.

reform it, and award restitution, or by their discretion they may award proceſſe returnable at the next county againſt the tenant or defendant *ad audiend' errores*, (which is reaſonable and neceſſary to be granted) and ſo return their own judgment given by them or their predeceſſor, and then there is an end of the buſineſſe, and the record ſhall remain there without removing; and by this means they ſhall ſave an hundred pound forfeiture to the king. But if they affirm the judgment which is erroneous, their affirmation and the record ought to be removed into the kings bench, if the party plaintiff be grieved therewith: and if their affirmation be erroneous, although their firſt judgment was given by their predeceſſors, notwithstanding they ſhall forfeit the hundred pounds. And the party grieved by their affirmation or reverſall ought to bring a ſpecial writ of error peremptory, which ſhall not be examined by them, for that all this is to be underſtood where error in law is aſſigned: for upon the writ of error firſt brought, if any error *in fait* be aſſigned, as death of one of the parties, hanging the plea, or the like, which is tryable by the country, they cannot hold plea thereof, but return the record, with the writ into the kings bench. Neither can they hold plea of a releaſe of errors after the judgment or the like, for they are only to examine the errors of the record or proceſſe, and all this doth notably appear in our books. But if no ſuch uſage had been, the record ought to have been removed by the writ of error into the kings bench, as it ought to be in other caſes.

Egerton the queens ſolicitor moved in the chancery to have a *certiorari* to the county palatine of Cheſter for the removing of a record of aſſiſe taken in that county between Cotton and others plaintiffs, and Venables and others defendants, wherein the recognitors of aſſiſe gave a falſe verdict, and to the intent, that a writ of attain might be brought in the kings bench, a *certiorari* was prayed. And it was doubted, whether an attain did lye in this caſe, out of the county palatine. And by the opinion of Wray and Anderſon chief juſtices, and Manwood chief baron, upon conſideration had of the ſtaute of 23 H. 8. cap. 3. whereby it is enacted in theſe words, That all attainments hereafter to be taken ſhall be taken before the king in his bench, or afore the juſtices of the common place, and in no other courts; they reſolved and ſo certified the lord chancellor that for a falſe verdict given in the county palatine of Cheſter, the attain ought to be brought either in the kings bench or common place, and not in the county palatine of Cheſter, and thereupon a *certiorari* was granted for the removing of the record.

Hil. 29 Eliz. *coram rege*. The caſe was that queen Elizabeth by her letters patents granted the cuſtody of the caſtle of Cheſter to John Paſton, and Richard Huddleſtone eſquires, and the ſurvivor of them; John Paſton died, and in a *ſcire fac'* againſt Huddleſton in the exchequer before the chamberlain, (Glaſier then being deputy chamberlain) to repeal the ſaid grant, &c. judgment was given againſt Huddleſton that the patent ſhould be annulled and cancelled, and hereupon Huddleſton brought his writ of error. And it was objected that before any writ of error ought to have been granted, Huddleſton ought to have ſued to the queen by petition to have a writ of error according to the book in 23 E. 3. fo. 24.

R 4

Hil. 29 Eliz.

Vid. 3 El. Dier  
202. b. Bendloes  
3 Eliz.

Hil. 29 El. Co-  
ram rege, Hud-  
dleſtons caſe, in  
brevi de errore.

23 E. 3. fo. 24.  
But F. N. B. fo.

But it was answered, that here in this case no inheritance was recovered by the judgment, and if Huddleston that claimed the office \* but for term of his life should be driven to his petition, wherein great delay might be used, his life might end before he could obtain his writ of error, therefore the writ of error in this case was to be granted without any petition: and of that opinion was the whole court of the kings bench, and so the writ of error did stand.

Pasch. 9 E. 2.  
Coram rege  
Rot. 32.

*Judices et sectatores com' Cestrie non consueverunt apponere sigilla sua alicui recorde in presentia iusticiariorum.*

34 H. 8. ca. 13.

Before the statute of 34 H. 8. neither the county palatine of Chester sent knights to the parliament, nor citizens out of the city of Chester.

27 H. 8. ca. 5.

Before the statute of 27 H. 8. the lord chancellor of England appointed no justices of peace, justices of quorum or goal delivery within the county of Chester.

22 E. 4. Jurisd.  
61. Lib. Int.  
Rast. fo. Si te-  
neatur imme-  
diate or mediate.

The manor of C. in the county of York was holden of the prince, as of the county of Chester, and that all pleas real and personall rising within the county, or within any parcell of land holden of the county ought to be impleaded within the said county palatine: for the king by his letters patents may ordain a court at York, or in any other county which shall have jurisdiction through the whole realm, and so it was resolved.

Lit. Pat. 6. Apr.  
21 H. 7.

The city of Chester was made a county of itself by king H. 7. by letters patents, dat. 6 Aprilis 21 of his reign.

5 El. cap. 23.  
18 El. cap. 8.

See the statute of 5 El. cap. 23. concerning writs of *significavit* and *excom' capien't'*. See the statute of 18 El. cap. 8. making of more justices then one.

8 H. 6. cap. 10.  
Vide cap. 13.

By the statute of 8 H. 6. cap. 10. it is provided, That upon every indictment or appeal by which any person dwelling in any other county then there where such indictment or appeal is, or shall be taken of treason, felony, and trespassse, &c. before any exigent awarded, &c. that after the first writ of *capias*, another writ of *capias* shall be awarded directed to the sherif of the county whereof he is or was supposed to be conversant in the indictment, &c. otherwise the outlawry to be void.

19 H. 6. 1, 2.

In an appeal in the kings bench in the county of Dorset where the appellee was demurrant at Chester, proceffe continued untill he was outlawed without any *capias* into Chester, and it was objected that the *capias* could not issue into Cheshire, for it is a franchise into which the kings writ runneth not. Holden at the common law for certain things a writ shall issue to the franchise of Chester as for treason, and the statute is made by authority of parliament, and is generall as well within franchise as without, and therefore the act being generall shall be taken generally to extend into Chester, *quod conceditur*, but this is a leading case.

Vid. lib. Int. Coke, fo. 230, 231, 232, & 296, 297. See an act of parliament. Rot. par. 9 H. 4. nu. 45. touching adjournment in pleas.

## C A P. XXXVIII.

## Of the County Palatine of Durham

**T**HIS is also a county palatine by prescription parcell of the bishoprick of Durham, which was first raised, as it is said, soon after the time of William the Conqueror.

Yet I find that this county palatine hath been questioned (but with evil successe.) For at the parliament holden anno 11 H. 6. Thomas bishop of Durham prayed a commission under the great seal to certain there named, who by vertue thereof sat and inquired at Hartlepole being within his county palatine of the rights of the county palatine with all the dependents. Whereupon Sir William Eure knight the kings attorny made divers objections, that the bishop ought to have no county palatine, neither liberties royall. On the contrary part the bishop produceth his proofs, and the matter on both parts seriously debated. In the end judgment was given in parliament for the bishop, and that the said inquisitions returned in the chancery or elsewhere should be void. See the record being very long, and yet worthy the reading.

When the bishop himself, that ought to doe justice and right to others, will doe injury and wrong within his county palatine, and that he cannot be a judge in his own cause: see a notable record intituled thus. *Recordum coram domino rege porrectum per manus Willielmi de Beresford et Rogeri de Heighan justiciar' domini regis ad querelas infra libertatem episcopatus Dunelm' audiend' et terminand' assignat' in hæc verba.*

*Placita apud Dunelm' coram Willielmo de Beresford et Rogero de Heighan justiciariis domini regis ad veteres querelas Ricardi prioris Dunelm' et aliorum hominum episcopatus ejusdem domini regis prius porrectas et non determinatas audiend' et terminand' assignat'.*

*Ricardus de Hoton prior Dunelm' queritur de \* Antonio episcopo Dunelm', &c.* The record is long, but therein you shall observe severall plaints of the prior against the bishop, whereupon issues are joyned, and verdicts given against the bishop, and judgments given worthy the reading. By which record it appeareth that the bishop had within the county of Duresme *regalitatem suam.*

I find also another record in the same kings time, viz.

*Placita coram domino rege apud Westm' de termino Sancti Michaelis anno regis E. filii regis Henrici 33. finiente, 34 ro. 32.*

*Dominus rex mandavit breve suum episcopo Dunelm' in hæc verba. Edwardus dei gratia rex Angliæ, dominus Hiberniæ, et dux Aquitanie venerabili in Christo patri A. eadem gratia episcopo Dunelm' salutem. Cum Odeliva filia Ricardi de Hurcheworth, Matild' de Suyneburne, et Ricardus Bouche, et Agnes uxor ejus arraniaverunt quandam assisam mortis antea factis infra libertatem vestram episcopatus prædicti \* coram Lamberto de Tykingham, Guychardo de Charroun, et Petro de Thoresby*

10 E. 3. 41.  
12 E. 3. Vouchee 115. 17 E.  
3. 36. 5 R. 2.  
Trial 54. 13 H.  
4. Vouchee  
39. 11 H. 4.  
40. 18 H. 6.  
33. 34. 19 H. 6.  
12. 52. 21 E. 4.  
8. 1 Mar. stat.  
2. ca. 2.  
Rot. par. 11 H.  
6. nu. 23.  
See Rot. parl.  
Pasch. 21 E. 1.  
rot. 5. a notable  
record for the  
liberties of the  
bishop of Du-  
resme.

Pasch. 30 E. 1.

Northumb.  
Dunelm.

\* This was An-  
thony Beak, of  
that state and  
greatness as ne-  
ver any bishop  
was, Woolsey  
except.

Mich. 34 E. 1.  
Coram rege  
Rot. 32.

\* Justices of the  
bishop.  
Per breve ves-  
trum.

pleaded. At which day the tenant was effoined, and a day given over. At that day a writ came to remove the record in the common bank, and a day given to the parties in the common bank, and this proceeding of the bishop was according to the usage there. And after by the advice of the whole court a *venire fac* issued out of the common bank to try the issue joyned at Durham.

32 E. 3. Vouch.  
97. 14 H. 6.  
fo. 3.

If a man in the county palatine of Durham vouch a foreigner to warranty, the demandant may counterplead that the vouchee hath assets within the county palatine for the delay.

13 E. 3. Voucher  
165. 45 E. 3. 17.  
Vid. 19 E. 3.  
triall 66. 19 E.  
3. jurisd. 29.  
33 E. 3. ib. 57.  
45 E. 3.  
Vilue 50.

In a writ of trespassse *des biens emportes deins un certaine ville*, the defendant said, that the place where the plaintife supposed the taking away, is within the franchise of the B. of Durham, where the kings writ runneth not, but is a franchise royall, *judgement de breife*. Whereunto the plaintife said, that the defendant came in by distresse, and so the court seised of the plea. Finchden giving the rule of the court said, the court is not in this case seised of the plea, but that should be where consuance or franchise is challenged, which lieth not in this case, but the bishop hath franchise royall into which the kings writ runneth not, and therefore for not denying of the exception the writ abated. Note the towne wherein the transitory trespassse was alledged by the plaintife was within the county palatine.

19 H. 6. 52.

If the tenant vouch two, one within the county palatine of Durham, and the other at the common law, summons shall be awarded to the lord of the county palatine, commanding him to summon the vouchee to be at a certain day before the justices here to try the warranty: in this case if the tenant recover in value, the justices shall write to the lord of the county palatine to render in value, *quod fuit concessum*.

Dier 12 El. 288.  
which was the  
case of James  
Pilkington  
bishop of Dur-  
ham.

See Dier 12 El. where he that hath *jura regalia* shall have forfeiture of high treason, whereof *vide* before in the chap. of the County Palatine of Lanc.

\* 13 H. 4.  
Vouch. 39.  
36 H. 6. ib. 49.  
\* Prærogativa  
reg. cap. 1.

\* If the one be vouched, and the tenant prayeth that he may be summoned in the county of York, and the county palatine of Durham, the voucher shall stand, for if he be summoned in the county of York, it sufficeth.

\* *Dominus rex habebit custodiam omnium terrarum eorum qui de ipso tenent in capite per servicium militare, de quibus ipsi tenentes fuer' seisciti in dominico suo ut de feodo die quo obierunt de quocunque tenuerunt per hujusmodi servicium, &c. exceptis feodis episcopi Dunelm' inter Tine et Tese.*

16 E. 3. tit.  
Livery 29.  
Glanv. li. 7. c.  
20. Bract l. 2.  
fo. 85. 9 H. 3.  
prær. 25. 21 H.  
3. ib. 26.  
\* Prær. regis  
ca. 3.

1. This exception extendeth not to the body. 2. If the bishop did after this statute purchase any feignory between Tine and Tese it extendeth not to that. 3. That before this statute, the king ought to have had the wardship of the lands, as appeareth in our books, contrary to Poles opinion in this case.

\* The third chapter of the said statute of *prærogativa regis* doth give the king primer seison, &c. without any saving of the bishop of Duresme.

Trin. 38. El. in  
curia wardorum.

Sir Thomas Gray knight was seised in fee of the manner of Chillingham in the county of Northumberland holden of the queen by knights service *in capite*, and of the mannor of Rosse in the county



county palatine of Durham holden of the bishop of Durham by knights service *in capite*, and died seised of both, his sonne and heir of full age. And although on the behalfe of the bishop some presidents were shewed in like case, yet the two chief justices Popham and Anderfon *prima facie* did hold, that the primer seison of and for the mannor of Rosse belonged to the king.

The town of Creke in the county of York holden of the bishop of Durham, &c. shall be impleaded within the county palatine of Durham, and in no other place: and so is the manner of Howden in the county of York. 22 E. 4. jurisd. pl. 61.

The king shall have the temporalities of the bishop of Durham, and for a church that becommeth void the king shall have a *quare impedit*. 5 R. 2. triall 94.

See the statute of 5 El. ca. 23. concerning the writs of *significavit* and *excom' capiendos*. 5 El. ca. 23.

It was holden by all the justices, that if a man be surety for another to keep the peace, and after he breaketh the peace, and the surety hath lands in the county \* palatine of Durham, the king shall command the bishop of Durham or his chancellor to do execution. And so it is in the other counties palatines. In the same manner it is of a statute staple, &c. Recognizances, &c. 21 E. 3. 49.  
1 E. 4. 10.  
Regist. 153.  
F. N. B. 132.  
\*[ 220 ]

Vide 5 E. 3. fol. 58. 17 E. 3. fol. 56. rot. par. 7 E. 6. rot. pat. 7 E. 6. part. 8. 1 Mar. cap. 3.

## C A P. XXXIX.

### Of the Royall Franchise of Ely.

**I**N divers statutes it is named the county palatine of Ely. King H. 1. in the 10 year of his reign, of the rich monastery of 33 H. 8. cap. 10.  
5 El. cap. 23.

Ely made a cathedrall church, and of the abby made a bishoprick, and for his diocesse assigned unto him the county of Cambridge, which before was within the diocese of Linc': in recompence whereof Robert Bluet bishop of Lincoln, then chancellor of England had to him and his successors three mannors, parcell of the possessions of the abby, viz. Spaldwiche, Bicklefworth, and Bugden. And for the chapter of this new bishop, he instituted that there should be a prior and convent. But in respect of the revenues, for that their principall mannors were granted away, the number of monkes being 70 were brought down to 40. And king H. 1. granted to this new bishop and his successors *jura regalia* within the Isle of Ely. But the said prior and convent were in the reign of H. 8. suppressed, and in stead thereof a dean and prebendaries were raised to be the chapter of the bishop, and a grammar school for a master and 24 scholars.

This royall jurisdiction the bishop hath by prescription groundel upon the said grant as well in pleas of the crown, as in common pleas before his justices.

The

Trin. 3 E. 1.  
Rot. 62. Coram  
Rogerio de Scry-  
ton et sociis suis  
justiciariis de  
banc. Trin.  
16 E. 1 in com-  
muni banco  
Rot. 89. Cant.  
3 H. 6. triall 2.

The liberty of the bishop of Ely hath been anciently allowed by the court of common pleas for lands in Wisbich, within the isle whereof a *præcipe quod reddat* was brought.

Again, *Allocatur libertas episcopo Eliensi pro terris infra insulam de Ely prout alias, scilicet in rotulo Martini de Littlebury et sociis suis annis 55 & 56 H. 3. anno 14 regis nunc coram Thoma de Wayland et sociis suis. Item Mich. 16 regis nunc. rot. 27.*

In trespass the defendant pleaded an arbitrament made at A. in the Isle of Ely, and thereupon issue was joyned, the plaintiff shewed that Ely is a franchise royall, and they of the isle shall not be impannelled out, and prayed a *venire fac'* to the sherif of Cambridge.

Lib. Int. Raff.  
fo.

Issue being joyned and the visne to come out of Ely, the entry is, *Super quo prædict' (querens) dicit quod E. prædict' est infra insulam Eliens', quodque episcopus Eliens' talem habet libertatem in insula prædicta, quod nullus justiciar' nec aliquis minister domini regis insulam illam ingredi debet ad aliquod officium ibi exercend', nec liberi tenentes nec residentes in eadem insula illam ingredi debent ad aliquam juratam extra insulam illam faciend', et petit breve domini regis de venire fac' hic 12. de vicineto de Solham, quæ est propinquior villa in prædict' com' Cantab' extra insulam prædict' adiacen' prædict' villæ de Ely ad triandum exitum præd'. Et quia videtur justiciariis hic quod petitio illa est rationi consonans, ideo præcept' est vic' Cant' quod venire fac' hic tali die 12. de vicineto illo, per quos, &c.*

46 E. 3. 8.

[ 221 ]

5 E. 2. conusans  
68. 21 E. 4. 35.

Sentence was given in the ecclesiasticall court in Cambridge, and the defendant was summoned at Hadington in the isle and franchise of Ely, as he might be, for where the action is intire, and not severall, whereof part is within the franchise and part without, the franchise shall not be allowed. As if one take a man in a place at the common law, and carry him into a franchise and there imprison him, this court shall hold plea, *quia magis dignum trahit ad se minus dignum, et sic de similibus.*

24 E. 3. conu-  
sans 74. 20 E. 3.  
ibid. 85. 49 E.  
3. 24. See 23 E.  
3. 22. accord.

In an action of account against one as baylif of lands in H. and A. and H. is within the franchise of the Isle of Ely, and because the plaintiff might have charged the defendant as bailif of A. and it is no reason that by joyning of them in one writ to disherit the bishop of his franchise, the writ abated.

## C A P. XL.

## Of the County Palatine of Pembroke.

**T**HIS was an ancient county palatine within Wales, and the earle was *comes palatinus*, and had *jura regalia*, and all things belonging to a county palatine, but the jurisdiction hereof was taken away by the statute of 27 H. 8. cap. 26. the county palatine then being in the kings hands.

And for further proof that it was a county palatine, see the charter of E. 3. to Lawrence de Hastings in these words.

*Rex omnibus ad quos, &c. salutem. Sciatis quod circumspeditionis et elegantie præfagium quod ex aptis consanguinei nostri charissimi Laurentii de Hastings juventutis auspiciis concepimus, merito nos inducunt, ut ipsum in his que honoris sui debitam conservationem respiciunt, prout favoribus prosequamur. Cum itaque hæreditas bonæ memoriæ Audomari de Valentia comitis Pembrochiæ (ut dicitur) jampridem sine hærede de corpore suo procreato decedentis ad sorores suas fuerit devoluta, inter ipsas et earum hæredes proportionabiliter dividenda: quia constat nobis quod præfatus Laurentius qui dictus Audomar' in partem hæreditatis succedit est ex ipsius Audomari sorore seniori descendens, et sic peritorum assertione, quos super hoc consulimus, sibi debeatur prærogativa nominis; et honoris justum et debitum reputamus ut idem Laurentius ex seniori sorore causam habens, assumat et habeat nomen comitis Pembrochiæ, quod dictus Audomarus habuit dum vivebat: quod quidem (quantum in nobis est) sibi confirmamus, ratificamus, et etiam approbamus; volentes, et concedentes ut dictus Laurentius prærogativam et honorem comitis palatini in terris quas tenet de hæreditate dicti Audomari, adeo pleno, et eodem modo habeat et teneat, sicut idem Audomarus illas habuit et tenuit tempore quo deceffit. In cujus, &c. Teste rege apud Montem Martini die Octob. anno regni 13.*

Rot. parliamenti  
Hil. 18 E. 1.  
fo. 6. Totus com'  
Pembroke fuit  
com' palatinus,  
et habuit cancell.  
et sigillum, &c.  
27 H. 8. cap. 26.  
Carta regis E. 3.  
an. 13 regni  
sui. 13 Octob.  
Ro. pat. 13 E.  
3. m. 12.

Note here, that the eldest sister ought to have the honor, upon consultation with learned men.

Prærogativa et honor comitis palatini.  
Sicut Audomarus illas habuit.

## C A P. XLI.

## Of the Franchise of Hexam and Hexamshire.

THIS was sometime parcell of the possessions of the archbishop of York, and claimed by him to be a county palatine.

At the parliament holden in 2 H. 5. it is resolved that Hexamshire was a franchise where the kings writ went not.

And in the statute of 33 H. 8. it is named a county palatine.

But at the parliament holden in anno 14 Eliz. it was seriously examined, and in the end four conclusions were enacted by authority of parliament. 1. That whiles it was in the hands of the archbishop it was termed and named a county palatine, where in right or proof there was none such. 2. That it is within, and parcell of the county of Northumberland. 3. That all pleas of the crown, and suits between party and party shall receive like trial; &c. as the rest of the subjects of Northumberland ought to have. 4. That the sheriff and other officers of the county of Northumberland may execute his or their office, &c. within Hexam and Hexamshire. So as whatsoever it was before 14 Eliz. it is now no county palatine; nor franchise royall.

## C A P. XLII.

## Of the Courts of the Cinque Ports.

AT the first the privileged ports were but three. For at the making of the book of Domesday, which was in the 14 year of the Conqueror, there are but three named in that book, viz. Dover, Sandwich, and Rumney, and that these three in the time of Edward the Confessor were exonerated of such charges and burthens, as others did bear; after two ports were added to them by the Conqueror, viz. Hastings and Hithe.

Bracton who wrote in the reign of H. 3. nameth Hastings, Romney, Heya, \* Dover, and Sandwich to be the five ports. Of this number of five were these ports called the Cinque Ports, as it appeareth by a writ which Bracton rehearsed in the same place, viz.

Domesday.  
Chent.  
Lib. Int. Raft.  
10.

Bract. li. 3.  
f. 118.  
\* Memorandum  
quod Pharus  
de Bolonia venit  
ad conquestum tempore Willielmi regis bastardi, et in illo conquestu perquisivit wardam de Doveria in feodo, et habuit, et tenuit toto tempore predicti regis Willielmi usque ad tempus regis Henrici, avi regis Henrici filii regis Johannis, et dictus rex Hen. avus dedit dicto Pharus 60. libras terræ in eichambio pro Doveria, viz. manerium de Wendovre pro xl. libr. terræ, Kingshull pro x. libr. terræ, et 7 hidas in Eton pro 10 li. terræ. In lib. de Abbatia Miss. fo. 114.

*Rex Vic' Norff. et Suff. salutem. Sciatis quod summoniri fecimus ad talem diem quāda Shepwey omnia placita de Quinque Portibus sicut tenebāt d. bent,*

*debent, et solent coram justiciariis apud Shipwey. Et ideo tibi precipimus quod hoc sciri facias hominibus de Fernemewe, et balivis de Domeswiz, ita quod si aliquis conqueri voluerit de aliquo qui sit de libertate vel infra libertatem Quinque Portuum, tunc sit apud Shepwey coram prefatis justiciariis nostris querelam suam propositurus, et justitiam inde recepturus. Teste, &c.*

After two more, viz. Winchelsey and Rye were added: for I find a record anno 1 regis Johannis, quod Winchelsey et Rye debent esse in auxilium villæ de Hastings ad faciend' regis servicium 20 navium, &c.

In Dorf. cart. anno 1 Re. Jo. pa. 10. 2. m. 12.

And these have the same franchises and liberties that the former had; and every one of these send two burgeses by the name of barons of the Cinque Ports to the parliament, as by the records of the return of them remaining in chancery at every parliament doth appear. And albeit two be added, yet they hold their former name of the Cinque Ports. These ports or havens doe lye towards France, and therefore prudent antiquity provided, that they should be vigilantly and securely kept, for performance whereof these ports have a speciall governor or keeper, called by his office lord warden or keeper of the Cinque Ports, and is also admirall, and hath the jurisdiction of the admiralty amongst them, and is exempt from the admiralty of England. This warden in former times was ever a man of great fidelity, wisdom, courage, and experience, for that he had the charge of the principall gates of the realm. He is also constable of the castle of Dover, his jurisdiction as constable is limited by the statute of *Artic. super Cartas*, anno 28 E. 1. which you may read, and the exposition thereof in the second part of the Institutes.

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50 E. 3. 5.

Artic. super Cart. cap. 2. 2. part of the Institutes. 2 E. 4. 17. 17 E. 4. 16, 17. 36 H. 6. 34. Fortesc. lib. Int. Rast. fo.

The franchise of the Cinque Ports hath been time out of mind partly by ancient parliaments, partly by ancient charters, &c. and confirmed by expresse name by the statute of Magna Carta, ca. 9. and were made five by William the Conqueror.

For the better understanding of our books; it is to be known that there is a great diversity between the principality of Wales, the counties palatines, &c. and the Cinque Ports. For Wales was originally no part of England, but county palatines were parcell of the realm of England and divided in jurisdiction, and the Cinque Ports are parcell of the county of Kent, and yet *ubi breve domini regis non currit*, but have not *jura regalia*, and therefore regularly no writ of error did lie of a judgement in Wales, otherwise it is in the counties palatines. A judgement here of lands in Wales or in the county palatine is void, but a judgement given here of lands in the Cinque Ports is good if the priviledge be not pleaded, for they be part of the county, and the franchise may be demanded in another action.

9 H. 7. 12. 36 H. 6. 33, 34

And it is to be observed that within the Cinque Ports there be divers courts, one before the constable of the castle of Dover, (whereof somewhat hath been said before) there be other courts within the ports themselves, before the maiors and the jurors, and another which is called *curia Quinque Portuum apud Shepwey*, whereof we shall speak hereafter.

If any of the kings courts doe write to have a record in the Cinque ports, or for doing of any thing within the same, the writ shall be directed *Constabulario castri de Dover, et gardiano Quinque Portuum*, for

33 E. 3. jurisd. 60.

he is the immediate officer to the kings courts for execution of the kings writs within the Cinque Ports. For example :

30 H. 6. 6 & 7.

If a man plead a record within the Cinque Ports, and the other plead *nil tiel record*, there shall goe a writ to the constable of Dover to certifie the record, for the course is for the kings courts to write to the constable, and he shall send to the barons, that is to the maior and jurats, to certifie him of the record which is before them, and he shal certifie the kings court, and so the constable is the immediate officer to the kings court.

Regist. fo.  
F. N. B. 30. b.  
240. a.

Note, though books say that the writs shall be directed to the constable of Dover, yet the writ is to be directed *Constabulario castri de Dover, et gardiano Cinque Portuum*.

Regist. fo.  
F. N. B. 30. b.  
132. 21 E. 3. 49.  
See 1 E. 4. 10.

A man hath a judgment in any of the kings courts, and the defendant hath no land or goods but in the Cinque Ports, the plaintiff shall have a writ to the constable of Dover to make execution. And so it is if a man will have surety of the peace against any person within the Cinque Ports, then he shall have a writ out of the chancery directed to the constable of Dover, for the doing thereof.

Regist. 153.

\* Rot. parl.  
anno 18 E. 1.  
fo. 6. nu. 115.  
Inter Abbatem de Feversham et Baron' de port de Feversham.

\* *Et quia in quadam carta d' mini regis nunc continetur, quod omnes querele versus ipsos barones Cinque Portuum apud Shepwey terminari debent coram custode Cinque Portuum, præcept' est Stephano de Penecestr' nunc custodi quod partibus prædictis coram eo certum diem assignet et fac' justicie complementum.*

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230 H. 6. 6 & 7.  
Dier 23 El. 376.  
Brook Cinque Ports 24.

\* If an erroneous judgment be given in the Cinque Ports before any of the maiors or jurats, it shall be redressed before the constable of Dover at the court at Shepwey, which court was raised of ancient time by letters patents of E. 1.

Temps H. 8. diversity des courts.

b HH. 18 E. 1.  
f. 6. Rot. par.  
nu. 115. Dorf.  
claus. anno 30 E.  
1. m. 13.

b The court of the Cinque Ports holden at Shepwey adjudged the abbot of Feversham (which abby was within the Cinque Ports) for his offence to be imprisoned, for the which the archbishop of Canterbury caused the kings ministers of Dover to be cited into the ecclesiasticali court, &c. The record saith, *Quia secundum consuetudinem regni approbatum, et ratione juris regii, ministri regis pro aliquibus que fecerunt ratione officii sui, trahi non debeant. Rex prohibuit archiepiscopo Cant' ne molestari faciat ministros suos Dover', de eo quod abbatem de Feversham pro delicto suo incarcerationem per considerationem curie Cinque Portuum de Shepwey, &c.* The whole record is worthy to be read over; this shall suffice for the end that I aim at.

c *Curia Cinque Portuum de Shepwey.* Nota, this for the stile of the court.

See Bract. lib. 3. Ubi supra.

d 50 E. 3. 5.  
33 E. 3. tit. Jurisd. 60.

1 E. 3. fo. 2.

49 E. 3. 24.

11 R. 2. bre.  
636. 46 E. 3. 8.

33 H. 6. 4.  
8 H. 4. 7.

\* 39 E. 3. 17.  
30 Aff. pt. 1.

8 E. 3. 27.  
c 49 E. 3. 24.

Vide Fleta lib. 2. cap. 48. the Hustings *apud* Shepweye.

d The jurisdiction of the Cinque Ports is generall, and extends as well to personall actions, as to actions reall and mixt, or which touch the freehold, but so it is not in ancient demesne, for regularly that jurisdiction extends not to personall actions.

If a *precipe* be brought of land, part within the Cinque Ports, and part without, the whole writ shall abate: *et sic de similibus*. \* And there is a diversity between a franchise to demand consfans, and a franchise, *ubi breve domini regis non currit*: for in the first case the tenant or defendant shall not plead it, but the lord of the franchise must demand consfans, but in the other case the defendant may plead it to the writ.

e The manner of P. within the Cinque Ports was holden of the king as of the honour of Egle, and escheated to the king for want of heir,

heir, the king granteth the mannor of P. to another. And it is adjudged that the seison of the king in this case doth not make it of another nature than it was afore: for the priviledge runneth with the land.

## C A P. XLIII.

[ 225 ]

## The Court of the Escheator, and of Commissioners for finding of Offices, &amp;c.

THE gift of the office of escheator belongeth to the office of the lord treasurer, who granteth the same by his deed. He is to continue in his office but one year, or once in three years. 14 E. 3. cap. 3.  
1 H. 8. cap. 2.  
3 H. 8. cap. 2.

For the derivation of his name, his antiquity, and some part of this office, see the first part of the Institutes, sect. 4. where the ancient authors, and many authorities be quoted: he ought to be seised of 40. marks land, except escheators in cities and counties palatine.

All writs originall of *diem clausit extremum*, *manlamus*, *devenerunt*, *melius inquirend'*, *quæ plura*, &c. are directed to him to finde an office for the king after the death of his tenant, which held by knights service in *capite*, or otherwise by knights service.

This officer in case of escheats for treason, felony, or in case of wardship, or primer seison, may find an office *virtute officii*. But in case of wardship, or primer seison, if he finde an office *virtute officii*, if the land, &c. be of the yearly value of 5. li. (or above) he shall lose every time he shall sit 5. pounds. 3 H. 8. cap. 2.

Offices found before him *virtute officii*, he may returne either into the court of chancery, or into the exchequer, saving at this day for wardships, or primer seison, which he must return into the chancery: for by the statute of 32 H. 8. cap. 46. the court of exchequer is barred to deale with the same. And offices found before him *virtute brevis*, are to be returned by him into the chancery. Lib. 1. fo. 42. b.  
Alton woods.  
4 4 24.  
Stanf. p. cr. 70 b.

If he sit by force of a writ, he ought to take the inquest within a moneth next after the delivery of the writ, and he ought to returne the same within a moneth after he taketh it either by writ, or *virtute officii*. 3 H. 8. cap. 2.  
3 H. 6. 16.  
18 H. 6. 7.

See *capit' escheatriæ*, whereof the escheator may inquire: and the statute *de escheatoribus*, anno 29 E. 1. Vide *Dier.* 248. 249. Mag. Carr.  
1 part. fo. 160,  
161.  
Kewin. 6 H. S.  
17.  
1 A. 8. cap. 8.  
3 H. 8. cap. 2.  
34 E. 3.  
cap. 13. 36 E.  
3. cap. 13. other-  
wise void.  
8 H. 6. cap. 16.  
18 H. 6. cap. 7.

<sup>a</sup> He is accountable *pro catallis felonum, fugitivorum, et hujusmodi*.  
<sup>b</sup> All offices found before him, or commissioners ought to be found by the oathes of twelve men, every juror to have lands, &c. to the yearly value of 40 s. in the same county, and indented, and one part by them sealed, and by him the other part, which is to remain with the foreman of the jury, and to be taken in good townes, and open places. For secret offices are abhorred in law, full of vexation and charge, and never have good successe.

Neither he nor the commissioners can take any enquest of inquiry.

quiry of any other persons, but such as be impanelled and returned by the sherife.

1 H. 8. cap. 8.  
3 H. 8. cap. 2.

If he or the commissioners shall deny any person to give evidence openly in his prefrence to such enquests as shall be taken before him for the finding of an office, he shall forfeit 40 li. If he, or the commissioners, or any of them shall refuse to take a verdict of the enquest offering to present the same, he shall lose 100 li. to the party grieved.

24 E. 3. 55.

An office found before commissioners is as forcible in law as if it had been found before the escheator.

See the 2. part  
of the Institutes,  
W. 2. cap. 26.  
23 H. 6. cap. 17.  
1 H. 8. cap. 8.  
\*[ 226 ]

The escheator ought to take no fee by the statute of W. 1. but of the king onely, but if he find an office by force of any writ, and according to the same for the king, hee shall have a fee of 40 s. by the statute of 23 H. 6. but if it be found \* before him by writ, or *ex officio*, that the lands are holden of a subject, or if he find an office for the king *virtute officii*, there is no fee due to him. But the commissioners ought to take no fee at all, though an office be found for the king, because they are not within the statute.

a 33 H. 8.  
cap. 22.

The escheator finding an office for the king by force of any writ, not exceeding the value of 5 li. shall not take above 15 s. and the commissioners can take nothing: b but the master of the wards may allow commissioners, counsellours, and feodaries their costs.

b 32 H. 8.  
cap. 46.  
c 5 E. 3. cap. 9.  
12 E. 4. cap. 9.  
F. N. B. 100. c.  
9 H. 6. fo. 60.

The escheator may make deputies, but such able men, for whom he will answer, and that have sufficient lands in the same county, &c. and the escheator shall certifie the name or names of his deputy or deputies, under his letters patents into the exchequer within twenty dayes after deputation made. And no deputy shall take upon him to occupy that office, except the escheator hath lands to the value of 20. li. d And if any sub-escheator be made, not having sufficient, he may be removed by the kings writ directed to the escheator *de subeschaetore amovendo*.

e 21 E. 4. 23.  
F. N. B. 100. c.  
1 H. 8. cap. 8.  
3 H. 8. cap. 2.  
9 H. 6. fo. 60.  
f Regist. fo.  
301. b.

If the escheator, subescheator, or commissioner, returne a false office, an action upon the case doth lye against them by the party grieved, although they be offices of record, besides the penalty of 100 l. by the statutes of 1 H. 8. and 3 H. 8. f The oath of the escheator expressing his duty, appeareth in the Register, fo. 301. b.

g 10 H. 7. 7. b.

If I be possessed of the goods of a man outlawed in trespassse, and I deliver them to the escheator, I am discharged, *quod Brian affirmavit*: for he said that the escheator is the kings minister, and chargeable for the goods.



## C A P. XLIV.

## Courts in the Universities of Cambridge and Oxford.

IT is true that each of these universities hath divers courts, jurisdictions, and powers, by the charters of the kings of this realme, divers of which were not grantable by charter, but by authority of parliament, which being espyed, queene Elizabeth, (who could (we speake it of knowledge) not onely speak the languages of French, Italian, and Spanish, but was learned in the Latine and Greek learned tongues, and excelled all others of her sex in knowledge both divine and humane,) for the great love and favour that her majestie bare to her highnesse universities, and for the great zeal and care that the lords and commons in parliament had for the maintenance of good and godly literature, and the vertuous education of youth within either of the said universities; and to the intent that the ancient privileges, liberties and franchises of either of the said universities, granted, ratified and confirmed by the queenes highnesse, and her most noble progenitors, might be had in great estimation, and be of greater force and strength, for the better increase of learning, and the further suppressing of vice: it was enacted by authority of parliament holden in the 13. yeare of her most prosperous reigne: 1. That each of the universities should be incorporated by a certaine name (albeit they were ancient corporations before.) 2. That all letters patents of the queens highnesse, or by any of her progenitors or predecessors, made to either of the said corporated bodies severally, or to any of their predecessors of either of the said universities, by whatsoever name or names, the chancelor, masters, and scholars of either of the said universities, in any of the said letters patents had beene named, should be good and effectuell, and available in law, to all intents, constructions and purposes, &c. as amply, fully, and largely, • as if the said letters patents were recited *verbatim* in that act of parliament, any thing to the contrary notwithstanding. 3. That the chancelor, masters and scholars of either of the said universities, and their successors for ever, should severally have, hold, possesse, and enjoy, and use to them and their successors for ever, all manner of mannors, &c. and hereditaments, and all manner of liberties, franchises, immunities, quietances, and privileges, view of frankpledge, law dayes, and other things whatsoever they be, which either of the said corporated bodies had held, occupied or enjoyed, or of right ought to have had, used, occupied, and enjoyed, according to the true intent and meaning of the said letters patents whatsoever, any statute, law, usage, custome, or other thing or things, made or done to the contrary notwithstanding. 4. That all letters patents of the queenes highnesse, or any of her progenitors or predecessors, and all manner of liberties, franchises,

Liberrall arts and  
sciences are lu-  
mina republicæ.

• Note these ge-  
nerall brief and  
effectuall words.

\* Nota hoc.

Note these general binding and effectual words. *Actus benedictus*.

\* *Haud facile emergunt quorum virtutibus obstat res vexata domini.*

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Nota (*pro dolor*) the ancient charters, records, &c. of the university of Cambridge burnt by rebels.

immunities, quietances, and privileges, leets, law dayes, \* and all other things whatsoever therein expressed, given or granted to either of the said universities, by what name soever, be, and by vertue of this act should be established and confirmed, any statute, law, usage, custom, construction, or other thing to the contrary notwithstanding.

By this blessed act of parliament, all the courts, franchises, liberties, privileges, immunities, &c. mentioned in any letters patents, &c. to either of the said universities (which were too long here to be recited) \* that they might prosper in their study with quietness, are established, made good and effectual in law, against any *quo warrant*, *scire facias*, or other suits, or any quarrell, concealment or other opposition whatsoever. See the letters patents of king H. 8. bearing date *primo Aprilis anno* 14. of his reigne, made to the university of Oxford: and other letters patents bearing date *26 Aprilis, anno* 3 *regni* Eliz. made to the university of Cambridge, both which are by expresse name established and confirmed by the said act of 13 Eliz. In which act there is a saving to all, other then to the queenes majesty, her heires and successors. *Et sic omnia in tuto.*

Touching the jurisdiction and consens of divers things belonging to the university of Cambridge, see the parliament roll of 5 R. 2. nu. 45, &c. till nu. 66.

The maior, bailifes, and comminalty of Cambridge were accused, for that they in the late tumults and uprores confedered with divers other misdoers, brake up the treasury of the university of Cambridge, and thereout took and burned sundry the charters, &c. of the said university, and also compelled the chancelor and scholars of the said university, under their common seals to release to the said maior and burgeses, all manner of liberties, and also all actions reall and personall, and further to be bound to them in great summes of money: whereupon it was agreed in forme following: that one writ should be directed to the maior, bailifes, and comminalty of Cambridge, that then were to appeare in the parliament, and to answer (the forme thereof doth there appeare.) And that another writ in forme aforesaid should be directed to the maior and bailifes that were at the time of the offence, (the forme whereof doth there appeare also.) The maior and bailifes that then were appeared in proper person, and pleaded not guilty, ne witting thereto; the comminalty by their attorneyes appeared at the day. The maior and bailifes, that before were at the time of the offence, appeared also in proper person, and the said maior answered, That he was not privy to any such act, but only by compulsion of others, if any thing were therein done; the which the kings learned counsell then did disprove, as by the record appeareth. The burgeses of Cambridge delivered into the parliament the said two deeds sealed by the chancelor and scholars, the one deed contained a release of all liberties and privileges with a bond of 3000. li. to release all suits against the said burgeses. The other was a release of all actions reall and personall, as there doth appeare. Upon the reading of which two deeds, they both were commanded to be cancelled for the causes aforesaid. After this the chancelor and scholars aforesaid by way of petition, and in form of sundry articles exhibited, shewed the beginning and whole discourse of the said maior and bailifes effectually

effectually and largely. Upon reading of which bill, it was demanded of the said burgesſes what they could ſay, wherefore their liberties late by the king confirmed ſhould not be ſeiſed into the kings hands as forfeited.

They require 3. things, viz. 1. A copy of the bill, 2. Councell, and 3. Reſpight to answer. To the copy of the bill was answered, that ſithence they heard the ſame, it ſhould ſuffice, for by law they ought to have no copy. To councell, it was ſaid, that wherein councell was to be had, they ſhould have, wherefore they then were appointed to answer to no crime or offence, but only touching their liberties. After many dilatory ſhifts and ſubterfuges, the ſaid burgesſes touching their liberties only, having no colour of defence, ſubmitted themſelves to the kings mercy and grace, ſaving their answers to all other matters. The king thereupon by common conſent of the parliament, and by authority of the ſame, ſeiſed the ſame liberties into his hands as forfeited. And after the king granted to the chancellor and ſcholars aforeſaid, within the ſaid town of Cambridge and \* ſuburbs of the ſame the aſſiſe, conſuſance, and correction, of bread, ale, weights, meaſures, regrators, and foreſtallers, with the fines, and amerçiaments of the ſame, yeelding therefore yearly at the exchequer 10 l. And certain liberties the king after granted to the ſaid maior and baillies, and increaſed their former fee farm.

This univerſity of Cambridge hath power to print within the ſame *omnes et omnimodos libros*, which the univerſity of Oxford hath not. See a notable record in parliament, 13 H. 4. concerning the univerſity of Oxford, by the which it was decreed and adjudged by authority of parliament, that the popes bul ſhould not impeach, or alter the right and cuſtome of any thing concerning that univerſity, and therefore was diſallowed, too long to be here inſerted.

Nota, by act of parliament.  
Vid. Rot. par. 1.  
8 R. 2. m. 11.  
Nota, ſuburbs proveth a city.  
Nota, the priority of the grant to the univerſity.

Rot. par. 13 H.  
4. m. 15, 16, 17.

C A P. XLV.

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The Courts of the Stanneries in Cornwall and Devon.

**T**HE ſtile of the court of ſtannery is, and alwayes hath been, *Magna curia domini regis ducatus ſui Cornubiæ apud Crokerenton in com' Devon' coram A. B. cuſtode ſtannariæ dicti domini regis in dicto com' Devon.*

The ſtile of the court.

The officers of this court be the ſteward, underwarden, &c.

The officers.

It is called *ſtannaria*, à *ſtanno*, becauſe the lord warden hath ju- riſdiction of all the tynne in Cornwall and Devon. Tynne is a Saxon word, and derived à *tinnitu*, and the tynners are called *ſtannatores*.

The ju- riſdiction of this court is guided by ſpecial lawes, by cuſ- tomes, and by preſcription time out of mind, which ſo far as we find it to be allowed by the reſolution of the judges, or by act of parliament, we will recite.

The ju- riſdiction.  
See the ſtyle of the ju- riſdiction.

*In cancellaria apud Westm. coram Nicho. Bacon milite custod' magni sigilli Angliæ pro stannatoribus, die Veneris, viz. 14 die Novembris anno regni Elizabethæ reginæ quarto. Inter Martinum Trewynarde quer' in cur' stannar' com' Cornub', et Johannem Killegrew et Georgium Trewynard defend.*

Mich. 4 Eliz. in  
cancellar.  
Trewynards  
case.

Where the 14 day of October last past, the matter in question touching the allowing or disallowing of writs of error, as well between the parties aforesaid, as also for and concerning all other writs of error touching all causes determinable in the stannary court in Cornwall, was by the order of the lord keeper of the great seal of England committed to the hearing and examination of Sir William Cordel knight master of the rolls, and Sir James Dier knight chief justice of the common pleas, and justice Weston; to the intent upon the due consideration of the cause they should make report unto the said lord keeper of their opinions and proceedings therein, as in their judgements should seem most agreeable to justice and equity: who having accordingly travelled diligently for the understanding of the truth of the premises upon the deliberate hearing and examining of the cause in the presence of the counsell learned of both sides, and upon the perusing and consideration of the ancient prescriptions, customes, liberties, and charters exhibited by the said parties concerning the premises, have this day made their report unto the said lord keeper as followeth. That is to say: that for as much as the said plaintife could not, nor did not shew forth any record or president, whereby any judgements or executions heretofore passed in any of the said stannary courts have been reversed by writ of error in any of the queens majesties courts of her bench or common pleas: and for that it appeareth unto them that divers and sundry inconveniencies were likely to ensue by allowing of such writs of error, and upon other causes and considerations them especially moving: they in their opinions think it not meet nor convenient that any writs of error should passe or be suffered in such case to reverse any of the said judgements or executions. Upon which report made, it is this day ordered by the said lord keeper of the great seale, that the order heretofore taken the 15 of June last past made against the lord warden of the stanneries aforesaid, his officers and others mentioned in the same, concerning the not allowing or not executing of any writ or writs of error: and all and singular the contempts contained in the same order supposed by them to be committed, concerning the not allowing or not executing of any writ or writs of error as is aforesaid, shall be clearly frustrated and void, and they and every of them clearly released and discharged, any thing in the same order to the contrary notwithstanding. And that the said defendants and every of them shall be at their liberty to take their advantage against the said plaintife for their executions had or to be had in any of the said stannary courts according to the custome of the same courts without let or impeachment of any writ or writs of error, or of false judgement sued or to be sued in any of the said courts of the kings bench or common pleas. And that from henceforth, no writ or writs of error or false judgement be hereafter sued in any of the said courts of the kings bench or common pleas to reverse any judgement or judgements in any of the said courts of stanneries heretofore given, or hereafter to be given, untill upon further consideration

No writ of error  
lyeth upon any  
judgement in the  
stannery courts.  
Vide simile.  
Dier 23 Eliz.  
fo. 376.  
But judgements  
shall be reversed  
by appeal as in  
the next page  
appeareth.

of the ancient grants and liberties of the said courts of stanneries, or upon some other sufficient cause or matter, it shall be otherwise ordered and determined by this court of the chancery.

*In camera stellata apud Westm' coram concilio ibidem die Mercurii, viz. 29 die Novemb. anno regni dnæ. Eliz. Dei gratia reginæ Angliæ, Franciæ, et Hiberniæ, fidei defensor', &c. septimo 1564.*

Mich. 7 Eliz.  
Reginæ in Ca-  
mera Stellata  
29 Nov.

Where a matter in variance hath been heretofore moved, and depending in this honourable court, between Martin Trewynard plaintife, and John Raskarrook, William Gilbert, John Killegrew the yonger, James Drewe, and other defendants by two severall bills exhibited into this court, whereof the last bill containeth no other matters of effect being not mentioned in the first bill, other then the taking of certaine cattell of the said complainant and others. And where also it appeareth this present day, that the taking of the said cattell was by certaine of the said defendants lawfully authorized for that purpose by the steward of the stannery court of Penwith and caried into the county of Cornwall for an execution upon a condemnation by judgement had in the said court against the said plaintife. Touching which condemnation the said complainant hath complained as well in the court of chancery by bill, and in the kings bench by writ of error, as also in this court, as appeareth in the first of the said two bills here depending, meaning by some of these wayes to call in question the validity of the said judgement, and was out of the said severall courts by order discharged and dismissed, referring the proceeding upon the said judgement to the order of the said stannery court, according to divers ordinances by divers ancient charters, customes, and liberties belonging to the stannery ratified by act of parliament. And where it doth also appear that the taking of the said cattell, whereupon the said last bill in this court is exhibited was only for the execution of the said recovery. And where also it doth further appeare, that by the lawes and ordinances of the said stannery (if any such cause of complaint be ministred) the same is to be redressed by appellation in severall degrees, viz. first to the steward of the stannery court where the matter lyeth, then to the underwarden of the stanneries, and from him to the lord warden of the same stanneries: and for default of justice at his hands, to the princes privy councill, and not examinable either here in this court or in any other court. It is therefore this present day ordered, that the said severall bills of complaints, and the said defendants named in the same, with all the causes therein mentioned, be forthwith dismissed out of this court to be determined according to the said lawes and ordinances in the said stannery, and not elsewhere.

Erroneous judgments in the stannery are to be reversed by appellation, and to whom this appellation shall be made.

The resolution of all the judges (by force of his majesties letters) concerning the stanneries in Devonshire and Cornwall upon the hearing of the councill learned of both parties at severall dayes, and what could be alledged and shewed on either party, and upon view and hearing of the former proceedings in the courts of the stanneries both before and since a certaine act of parliament made concerning the stanneries in \* 50 E. 3.

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Term. Mich.  
4 Jac. regis.

First, we are of opinion, that as well blowers as all other labourers and workers (without fraud or covine) in or about the stanneries

\* See this act of parliament hereafter in this chapter.

ries in Cornwall and Devon, are to have the privilege of the stanneries during the time that they do work there.

Secondly, that all matters and things concerning the stanneries, or depending upon the same, are to be heard and determined in those courts according to the custome of the same time out of mind of man used.

Thirdly, that all transitory actions between tynner and tynner or worker and worker (though the cause be collaterall, and not pertaining to the stannery) may be heard and determined within the courts of the stanneries according to the custome of the said courts, albeit the cause of action did rise in any place out of the stanneries, if the defendant be found within the stannery; or may be sued at the common law at the election of the plaintife. But if the one party only be a tinner or worker, and the cause of action being transitory and collaterall to the stannery do rise out of the said stanneries, then the defendant may by the custome and usage of those courts plead to the jurisdiction of the court, that the cause of action did rise out of the stanneries, and the jurisdiction of those courts, which by the custome of the court he ought to plead in proper person upon oath. And if such plea to the jurisdiction be not allowed, then a prohibition in that case is to be granted. And if in that case the defendant do come to plead to the jurisdiction of the court upon his oath, he ought not to be arrested *undo, redeundo, vel morando*, at the suit of any subject in any corporation, or other place where the said courts of the stannery shall be then holden.

Fourthly, if the defendant may pleade to the jurisdiction of the court in the case before mentioned, and will not, but plead and admit the jurisdiction of the court, and judgment is given, and the body of the defendant taken in execution, the party cannot by law have any action of false imprisonment, but the execution is good by the custome of that court. But if in that case it doth appear by the plaintifes own shewing, that the contract or cause of action was made or did rise out of the stanneries, and the jurisdiction of those courts, or if it appear by the condition of the bond whereupon the action is grounded, that the condition was to be performed in any place out of the jurisdiction of those courts, then all the proceedings in such cases upon such matter apparent, are *coram non judice*.

Fifthly, we are of opinion, that no man ought to demurre in that court for want of form, but only for substance of matter. As if an action be brought there for words which will bear no action, or an action of debt upon a contract against executors or administrators, or such like: in such cases a demurrer may be upon the matter. And that the proceedings there must be according to the custome of those courts used time out of minde of man: for that no writ of error doth lye upon any judgement given there, but the remedy given to the party grieved is by appeal, as hath been time out of minde of man accustomed.

Sixthly, that the courts of the stannery have not any jurisdiction for any cause of action that is locall, rising out of the stanneries.

Seventhly, that the privilege of the workers in the stanneries do not extend to any cause of action that is locall rising out of the stanneries (for matters of life, member, and plea of land are by expresse

expresse words excepted in their charters) and no man can be exempt from justice.

Vide lib. Intr. Coke fo. 467. tit. Prohibition, and fo. 23. 273. b. in error. Vide Fleta lib. 6. cap. 7. § *Servitia v. ro.*

Such charters, records, and acts of parliament as we have observed concerning the stannery, we will according as we have done throughout this treatise recite in *serie temporis*.

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*Johannes dei gratia rex Angliæ, &c. Sciatis quod intuitu Dei, et pro salute animæ nostræ d. dimis et concessimus, ac presenti carta nostra confirmavimus Deo, et ecclesiæ beati Petri Exon', et venerabili patri • Simoni Exon' episcopo et successoribus suis Exon' episcopis decimam de antiqua firma stanni in com' Devon' et Cornub. habendum sibi et successoribus suis cum omnibus libertatibus et liberis consuetudinibus ad eam pertinentibus per manus illius vel illorum qui stannariam habuerint in custodia, &c.*

*Rex Roberto de Courtney salutem. Mandamus vobis quod sine dilacione et difficultate aliqua habere faciatis • Isabellæ reginæ matri nostræ stannariam com' Devon' cum cunctis et omnibus pertinent'. Teste com' marschalco, &c.*

<sup>a</sup> *Rex concessit Johanni filio Rici stannariam in Cornubia, reddendo mille marcas. Simile anno 5 H. 3. rot finium.*

<sup>b</sup> *Rex, &c. Sciatis quod commissimus Ric'o dilecto fratri nostro stannariam nostram Cornubiæ cum omnibus pertin', &c.*

<sup>c</sup> There be two severall charters of liberties and priviledges both bearing date 10 Aprilis anno 33 E. 1. the one made *ad emendationem stannariorum nostrarum in com' Devon*, and the other *ad emendationem stannariorum nostrarum in com' Cornubiæ*, <sup>d</sup> which you may read at large in Pl. Com. <sup>e</sup> These charters were allowed in anno 35 E. 1.

<sup>f</sup> The charter of 33 E. 1. was confirmed to the tynners of Devon', *de verbo in verbum*, and the like in 1 E. 3. and 17 E. 3.

<sup>g</sup> Vide rot. *Albania*, anno 12 E. 3. part. 1. nu. 17. An ordinance of the king by advice of his counsell concerning tynne.

A lease made to *Tideman de Linbergh de cunagio stannariæ et de emptione totius stanni in com' Devon' et Cornub' pro fine mille marcarum et 3500. marcarum redditus*. These were things done *de facto*, but let us turn our selves to that, which hath the force of a law, viz. <sup>h</sup> an excellent declaration, limitation and exposition of the said charters of 33 E. 1. that was made in the parliament holden in anno 50 E. 3. by authority of the same, but never printed, (which we have set down in *hæc verba*, to the end that no syllable of the same should be omitted) it is enacted as followeth.

*A tres excellent et tresfoudout seignour le roy, supplie sa poure commune del county de Devonshire que luy pleasse per l'avy des prelatz, countes, barons, et autres sages in cest present parlement ordeiner remede de ceo que les escheynors, et les ministres del escheynery del dit county ont long temps a la dit commune s'bien as seigneurs come as autres fait, et font de jour in autre diverses extortions, oppressions et grievances per colour de les franchises a eux grantes per les chartres nostre seigneur le roy, et de ses progenitors encontre la ley et le purport des ditz chartres, et per leur malveis interpretation dicelles: et que les ditz chartres et les franchises comprises en ycelles puissent leuz et declarer d' article en article si q; la commune du dit county puissent estre apris droitement d' ycelles, et que cest declaration soit mys en record. Et si nul article y soit en les ditz chartres que touche customes ou usages, que plesse a nostre dit seigneur le roy d' ordeiner et mander en breif temps suffisants justices*

In Registro

Epi cop. Exon.

• This was Simon de Anula, first dean of York, and consecrated bishop.

8 Johan.

10 E. 2. Inquis.

2. nu. 29.

Rot. pat. 1 H. 3.

m. 4.

• She was the daughter of Aymer earl of Angouleme.

• Rot. fin. 4 H. 3.

b Rot. pat. 10 H.

3. m. 9.

c Rot. pat. 32 E.

1. The liberties

and priviledges

of the tynners.

d Pl. Com. 327.

328.

e 35 E. 1. in the

treasury.

f Rot. pat. 4 E. 2.

g 12 E. 3. part.

1. nu. 17.

Rot. pat. 21 E. 3.

Vide Rot. pat.

26 Apr. anno

7 E. 6. Gilbert

Brockhouse.

h Rot. par. 50 E.

3. holden the

Monday after

the feast of S.

Gregory.

tices seignours et autres apries de la ley a celles parties denquier des dites customes et usages, et quilz eyent poyur d'oyer et terminer tous les conspiracies, confederations, alliaunces, champerties, extortions, oppreßions, grievances, fauxines et maintenances qu'eux les ditz esteynors et leur ministres ont fait a la dite commune, ou a nul de eux qui plendre se vorra, et ce auxi bien al suit le roy, come de la party entendants que le roy nostre seignior ent gagner a molt, et d'autre parte se remede ne leur y soit ore fait ilz ferront en breife temps pur la greinder party disherites, et destruitz a toutz jours, que Dieu ne voilla. Le teneur d'ascuns des articles de les dites chartres que leur besoignent de declaration sensuent cy apres premerement, cest assavoir.

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*Sciatis nos ad emendationem stannar' nostr' in com' Devon' ad tranquillitatem et utilitatem stannatorum nostrorum prædictorum earundem concessisse pro nobis et hæredibus nostris, quod omnes stannatores præd' operantes in stannariis illis quæ sunt dominica nostra, dum operantur in eisdem stannariis liberi sint et quieti de placitis nativorum, et de omnibus placitis et querelis curiam nostram et hæredum nostrorum qualitercunque tangentibus, ita quod non respondeant coram aliquibus iusticiariis vel ministris nostris seu hæredum nostrorum de aliquo placito seu querela infra prædict' stannarias emergentibus, nisi coram custode nostro stannariarum nostrarum prædictarum qui pro tempore fuerit, (exceptis placitis terræ, vitæ, et membrorum) nec non recedant ab operationibus suis per summonitionem alicujus ministrorum nostrorum seu hæredum nostrorum, nisi per summonitionem dicti custodis nostri. Et quod quieti sint de omnibus tallagiis, theloniis, stallagiis, auxiliis et aliis custumis quibuscunque in villis, portubus, feriis et mercatis infra com' prædictum de bonis suis propriis, &c.*

Sur quoy plesse declarer si autres personnes que les estainors overants in les estayneries averont et emoyent la franchise grante per la dite chartre du roy desicome la dite chartre voet, quod omnes stannatores prædicti operantes in stannariis illis sint liberi, &c. Et auters personnes que les overours, cessascavoir leurs maistres que les lovent et leurs servants et autres claymont mesme la franchise. Et auxint plesse declarer si les ditz overors y averont les franchises en autre temps que quant ilz overont in mesme l'esteynery, desicome la chartre voet dum operantur in eisdem stannariis liberi sint, &c.

Endroit de les dites paroles. Operantes in stannariis illis, et dum operantur in eisdem stannariis, soient clerelement entendus, de operariis laborantibus duntaxat in stannariis illis sine fraude et dolo, et non de aliis, nec alibi laborantibus.

Item soit declare si mesmes les overours averont mesme les franchises tant come ils averont aillors que in les desmesnes que feurent au roy laiell nostre seignior le roy que ore est. La quel roy ayell leur grantast la dite chartre autemps del dit grant des franchises desicome la chartre voet, quod omnes stannatores prædicti operantes in stannariis illis quæ sunt dominica nostra, dum operantur in eisdem stannariis sint liberi, &c. Et ilz clamont d'avoir tout soit il cinsi quilz overont aillours qu'en les dites desmesnes le roy layel.

Endroit de cest article pur ce que il y a une autre article en mesme le chartre, que leur donne conge et licence de fover, in terris, moris, et vastis ipsius domini regis et aliorum quorumcunque in com' prædicto, et aquas, et cursus aquarum ad operationes stannariarum prædictarum divertere ubi et quotiens opus fuerit, et emere buscum ad funtaturam stanni, sicut antiquitus fieri consuevit, sine impedimento domini regis, hæredum suorum, episcoporum, abbatum, comitum, baronum, seu aliorum quorumcunque, &c. Il semble un besoignable chose en ce case que leur custumes et usages soient diligemment

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diligemment enquiz, et que le gardein de lesteynerie soit charge que il ne soffre nul overour del dit esteynerie fover en pree, ne autre boys, neve abate autry boys ou autry meafons, ne bestover caue ou cours de caue per malice. Et si per case le dit gardein se y vorra excuser que les dits esteynors ny voillent obeire a ses maundements, ne cesser leur malice pur luy que tant tost il se face monstrier al grand conseil le roy, et due et hastive remedy ent serra ordeignes.

Item soit declares in speciall comen les justices qu'ore serront assignes d'aller celles marchers pur ent faire la dite enquerre prend ont lissue du pais si ascun y chiete entre parties, et coment ceste article precedont touchant les custumes et usages estoit uses devant la fesaunce de la dit chartre l'aiel, et per queux genis tielle issue serra tries, cestassavoir le quel per foreins seulement, ou per estaynors seulement, ou per ambideux, &c.

Endroit de cest article, en soit la rys pris du grant conseil et y soient les records en cyre si nulles y soient, et autres evidences et remembrances deins le tresor le roy et aillours, et auxint les remembrances des seigniors queux y ont estre pur le temps serches et dument examines, et auxint soient les liures et evidences quelles les dits estaynors ent ont envers eux venes et regarades, issint que le y purra le mieltz venir al droit verity.

Item soit declare si le gardein del estaynery puisse tenir plee entre esteynor et forein de querele sordant aillours que in les lieux ou ilz sont overants desicome la chartre voet, quod custos noster prædictus vel ejus locum tenens teneat omnia placita inter stannatores prædictos emergent et etiam inter ipsos et alios forinsecos de omnibus transgressionibus, querelis, et contractibus factis in locis in quibus operantur infra stannarias prædictas similiter emergent, &c. Quar' il tient plee de tieux quereles sordants chascune parte deins la dit counte.

Endroit de cest article. Se ont extende la jurisdiction clevement selon les paroles del dit Chartre, cestassavoir, in locis ubi iidem operarii operantur, et nemi aillours, ne en autre manner.

Item plesse declarer de ceo que la dite chartre voet eins. Et si qui stannatorum prædictorum in aliquo deliquerint per quod incarcerari debeant per custodem prædictum arrestentur, et in prisona nostra de Leidsford et non alibi detineantur, quousque secundum legem et consuetudinem regni nostri deliberentur. Et en cest case que esteynor soit prise pur selony et liverex au gardein, il est suffert sovent aller a large de quoy grand perill avient moult de fois et aussi de ceo que la deliverance del dit gaole nest passe fait une soitx en dis ans. Et que pis est per colour de mesme ceste article le dit gardein prent hors d'autre prison les emprisonnes pur ariverages sur accompts, et les mette a Lydesford ou ilz sont in tant foveres quilz ny sont force de jamays fair gree a leur seigniors.

Endroit de ceste article en soit enquiz diligemment devant les justices que ore y serront proschement assignes denquerre per quelle authority ilz y fait einsy de puis que en mesme la chartre sont exceptes per speciall toutz pleses de terre et de vie, et de membre, et celle enqueste retourne soit declare en especiall fil busoigne.

And according to this act a commission issued out in these words.

Edwardus Dei gratia Anglie et Francie rex et dominus Hibernie dilectis et fidelibus suis \* Guidoni de Brian et Johanni de Montague, Roberto de Belknap, Hugoni de Segrave, Henrico Perchaie, et Waltero de Clopton, salutem. Cum dominus Edwardus quondam rex Anglie avus noster per cartam suam quam confirmavimus ad emendationem stannariarum suarum in com' Devon' ad tranquillitatem, et utilitatem stannatorum suorum

Rot. pat. 50 E. 3.

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\* These two former were barons and lords of parliament, and sat in the last parliament of 50 E. 3.

Pleas of land,  
life and member  
are excepted.

suorum earundem concesserit pro se et hæredibus suis, quod omnes stannatores prædicti operantes in stannariis illis quæ fuerunt dominica sua, dum operentur in eisdem stannariis essent liberi et quieti de omnibus placitis natorum, et de omnibus placitis et querelis curiam suam et hæredum suorum qualitercunque tangentibus: ita quod non responderent coram aliquibus iusticiariis vel ministris ipsius avi nostri vel hæredum suorum de aliquo placito vel querela infra prædictas stannarias emergent nisi coram custode stannarium prædictarum qui pro tempore fuerit: (exceptis placitis terræ, vitæ, et membrorum,) nec recederent ab operationibus suis per summonitionem aliquorum ministrorum dicti avi nostri seu hæredum suorum nisi per summonitionem communem dicti custodis, et quod quieti essent de omnibus tallagiis, theloniis, auxiliis, stallagiis, et aliis customis quibuscunque in villis, portibus, feriis et mercatis infra com' prædictum de bonis suis propriis. Concesserit etiam eisdem stannatoribus quod fodere possunt stannum et turbas ad stannum fundendum ubique in terris, moris et vasis suis et aliorum quorumcunque in com' prædicto, et aquas, et cursus aquarum ad operationem stannariorum prædictarum divertere, ubi et quoties opus fuerit, et em're bursam ad fundituram stanni sicut antiquitus fieri consuevit, sine impedimento ipsius avi nostri vel hæredum suorum, episcoporum, abbatum, priorum, comitum, baronum, seu aliorum quorumcunque. Et quod custos prædictus vel ejus locum tenens teneat omnia placita inter stannatores prædictos emergentia, et etiam inter ipsos et alios forinsecos de omnibus transgressionibus, querelis et contrarietibus factis in locis in quibus operentur infra stannarias prædictas similiter emergent, et quod idem custos haberet plenam potestatem ad stannatores prædictos et alios forinsecos in hujusmodi placitis iusticiandi et partibus iusticiam faciend' pro et iustum, et prius in stannariis illis fuisset usitatum. Et si qui stannatorum prædictorum in aliquo delinquant per quod incarcerari deberent, per custodem prædictum arrestarentur, et in prisona de Lydesford, et non alibi custodirentur, et deliverentur, quousque secundum legem et consuetudinem regni Angliæ deliberarentur. Et si aliqui stannatorum prædictorum super aliquo facto infra com' prædictum non tangente stannarias prædictas se posuerint in inquisitionem patriæ, una medietas juratorum inquisitionis hujusmodi esset de stannatoribus prædictis, et alia medietas de forinsecis. Et de facto totaliter tangente stannarias prædictas fierent inquisitiones sicut fieri consueverint, sicut per inspectionem rotulorum cancellariæ nostræ nobis constat. Ac etiam ex clamorosa insinuatione tam magnatum quam communitat' com' prædicti in presenti parlamento nostro graviter conquerentium ad nostrum pervenerit auditum, quod stannatores prædicti ac officarii, ballivi et ministri dicti stannariæ cartam prædictam pro libito suæ voluntatis interpretantes, et debitum intellectum ejusdem cartæ pervertentes, et etiam excedentes, ac quidam alii in magno numero afferentes se fore stannatores cum non fuerint, habitis inter eos conspirationibus, confederationibus, et alligantiis, quamplurima extorsiones, oppressiones, falsitates, deceptiones, cambipartias ambidextras, manutentionias, transgressiones, damna, gravamina et excessus diversis subditis nostris dicti com' colore cartæ supradictæ per plures vices fecerunt, et indies facere non desistant in nostri contemptum et ipsorum conquerentium grave præjudicium, dicti com' verisimilem destructionem et eversionem manifestam. Nos affectantes singulos subditos nostros sub quieto et debito regimine gubernare, et nolentes tanta maleficia, si per prædicti stannatores, officarios, ballivos vel ministros, aut alios quoscunque perpetrata existunt, aliquialiter transire impunita; assignavimus vos, quinque, quatuor, tres et duos vestrum, (quorum vos præfat' Robert' unum esse volumus) iusticiarios

arios nostros ad inquirendum per sacramentum proborum et legalium hominum de com' prædicta tam infra libertates quam extra, per quos rei veritas melius sciri poterit, et aliis viis et modis quibus melius fore videritis de quibuscunque conspirationibus, confederationibus, alligantiis, extortionibus, oppressionibus, falsitatibus, deceptionibus, cambipartiis, ambidextris, manutentiis, transgressionibus, damnis, gravaminibus et excessibus per quoscunque stannatores vel alios in com' prædicta factis, et per quos, vel per quem, quibus personis, ubi et quibus temporibus, qualiter et quomodo, et de aliis articulis et circumstantiis præmissa qualitercunque tangentibus plerius veritatem; et ad præmissa omnia et singula tam ad sectam nostram quam dictorum conquerentium et eorum singulorum et aliorum quorumcunque pro nobis, aut pro seipsis prosequi volentium, audiendi et terminandi secundum legem et consuetudinem regni nostri Angliæ: salvis semper dictis stannatoribus libertatibus et privilegiis eis per cartam prædictam concessis. Et ideo vobis mandamus quod ad certos diem et loca quos vos, quinque, quatuor, tres vel duo vestrum (quorum vos præfat' Robert' unum esse volumus) ad hoc provideritis diligenter super præmissa faciatis inquisitiones; et conspirationes, confederationes, alligantias, extortiones, oppressiones, falsitates, deceptiones, cambipartias, ambidextras, manutentias, transgressiones, damna, gravamina, et excessus prædicta audiat et terminetis in forma prædicta, facturi inde quod ad justitiam pertinet, secundum legem et consuetudinem regni nostri Angliæ. Salvis nobis merciameritis at aliis ad nos inde spectantibus. Mandavimus enim vic' com' prædicta quod ad certos diem et loca quos vos, quinque, quatuor, tres vel duo vestrum (quorum vos præfat' Robert' unum esse volumus) ei scire fac' venire fac' coram vobis quinque, quatuor, tres vel duobus vestrum tot et tales probes et legales homines de baliva sua tam infra libertates quam extra, per quos rei veritas melius sciri poterit et inquire. In cujus rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Westm' sexto die Julii, anno regni nostri Angliæ 50. Regni vero nostri Franciæ 37. Per consilium in parlamento.

But what was done upon this commission we have not yet found.

The said charter of 33 E. 1. to the tynners of Cornwall was confirmed.

Rot. pat. 8 R. 2.

And the charter of 33 E. 1. to the tynners of Devon was also confirmed.

Rot. pat. anno

1 E. 4

Rot. pat. 3 H. 7.

The like confirmation to the tynners of Devon.

See the statute of 11 H. 7. cap. 4. concerning cunage and weights.

It was resolved by the whole court that *stannum*, tyn, otherwise whitelead, nor black lead, nor any other base metall did belong to the king by his prerogative, as gold and silver doe, albeit there may be tried out of the base metall gold or silver, but that is as the seed or strength of the base metall, which being extracted becomes defective.

Mich. 4 Jac. In Camera Scitilata.

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There be five kinds of base metals, viz. *æs*, five cuprum (because it was found out, as some hold, in Cypro) copper, *stannum* tynne, *ferrum* iron, *plumbum* lead, and *crichalcum* latyn. Polybius 209 years before Christ wrote that this island was abundantly stored with tynne. *Britanni qui juxta \* Belerium promontorium incolunt mercatorum usu, qui eo stanni gratia navigant, humaniores reliquis erga hospites habentur, hii ex terra suxosa cujus venas sectati effodiunt stannum igne eductum in quandam insulam ferunt Britannicam juxta, quam Vectem*

Polybius lib. 3.  
Plinius lib. ca 8,  
9. Diodorus Siculus lib. 5. ca. 8. fo. 142. Not sub Augusto.

\* Aut Vectem, i. the cape of Cornwall.

vocant :

*vocat : ex hiis insulis mercatores emptum flannum in Galliam portant inde diebus fere triginta cum equis ad fontem Eridani fluminis perducunt.*

See M. Camden, pa. 134. in Cornwall.

And for as much as tynne is a staple commodity, let us in the next place treat of the court of the mayor of the staple.

## C A P. XLVI.

### The Court of the Mayor of the Staple.

<sup>a</sup> 27 E. 3. cap. 22.  
See the first part  
of the Institutes.  
Sect. 3. verb. in  
la ley. m.

27 E. 3. cap. 19.

**T**HIS court is guided by the law merchant, which is the law of the staple, and is holden at the wool-staple at Westm. And there are also two constables, <sup>a</sup> and a certain number of correctors to do that which pertaineth to their office, as in other staples is accustomed.

This court (though it was far more ancient) is strenghtened and warranted by act of parliament which can best expresse the jurisdiction thereof, and followeth in these words.

27 E. 3. stat. 2.  
c. 21.

The jurisdiction.

The law merchant.

*Item*, because the staples cannot long continue, nor the ordinances thereof made and to be made be kept, if good executors and justices be not stablished to make thereof good and ready execution: we have ordained and established, that in every towne where the staple is ordained, a mayor, good, lawful, and sufficient shall be made and established, having knowledge of the law merchant, to governe the staple, and to doe right to every man after the law aforesaid, without favour, sparing, or griefe doing to any. And in every place where the staple is, shall be two covenable constables now at his beginning put by us, to do that pertaineth to their office, as in other staples is accustomed; and when they shall be dead or changed, then other shall be chosen by the comminalty of the merchants of the said places. And that no maior hold the office over the year, unlesse he be newly chosen by the comminalty of the merchants, as well of strangers, as of denizens. And that the said mayor and constables have power to keep the peace, and to arrest offenders in the staples for debt, trespassse, or other contract, and them to put in prison, and punish after the law of the staple. And a prison shall be ordained for the safe keeping of them that so shall be imprisoned. And the mayors, sheriffs, and bailiffs of the townes, where the staple is, or joyning to the staple, shall be attending to the mayor and ministers of the staple to do execution of their commandments upon pain of grievous forfeiture: and one lord or other of the most sufficient in the country where the staple is, shall be assigned to be aide to the mayor and ministers of the staple to justifie the rebels, which by the said mayor and ministers cannot

cannot be justified, and to maintain and counsell them when need shall be to the good governance of the staple, and to redresse at every mans complaint that that shall be done amisse by the said mayor or ministers, or other, and to do right to the complainants in this behalfe. And that the same mayor and constables do not, nor ordaine any thing contrary to this ordinance, nor make interpretation nor exception to them otherwise then the words do purport, but if there be any thing that is doubted, it shall be shewed to our counsell, and there declared by good advice.

<sup>a</sup> See the statute of 36 E. 3. cap. 7. That merchant strangers may either sue before the mayor of the staple according to the law merchant, or at the common law.

<sup>b</sup> The bounds of the staple at Westm. begin at Temple Bar, and extend to Tuthill. In other cities and towns, within the wals: where no wals be, the bounds of the staple shall extend through all the city or town.

<sup>c</sup> See 27 E. 3. how triall shall be had *per medietatem lingue: et vide* 11 E. 1. *Cart' Mercator'*.

<sup>d</sup> See the statute of 27 E. 3. that the mayor of the staple may take recognisances of debt under the seal of the office, but not with the seal of the party, and how execution shall be done thereupon.

<sup>e</sup> The mayor of the staple at Westm. and the recorder of the city of London, in the absence of the two chief justices, out of term have power to take recognisances of debts according to the form of the statute of 23 H. 8. And this is in nature of a statute staple, but it hath besides the seal of those that take it, the seal of the party.

<sup>f</sup> The mayor and the constables shall be sworn in the chancery to do lawfully that which pertain unto them.

<sup>g</sup> There are five staple merchandises of England, viz. wooll, woolfels, leather, lead, and tynne.

This word staple, anciently written <sup>h</sup> estaple, commeth of the French word *estape*, which signifieth a mart or market. So as the court of the staple is, as much to say, as the court in the staple market, and is incident to that market. <sup>i</sup> and it was oftentimes kept at Callice, and sometimes in Bridges in Flanders, and at Antwerpe, Middleburgh, &c. (and therefore it was necessary that this court should be governed by law merchant) and at severall times in many places within England, and now (as hath been said) is kept at Westm.

We use for this word staple, *stapula*, as *major stapula*, *statutum stapule*, &c. And we may truly say that we have but *umbralem stapulam*, which in times past was so renowned and beneficiall, <sup>k</sup> as it enriched every place where it was holden, and it was commonly said, that riches followed the staple.

See the statute of 2 E. 3. cap. 9. and a writ thereupon. 7 E. 3. in *seaccario*. <sup>l</sup> *Et original de seaccario anno* 12 E. 3. Rot. 2. *ibid.* 13 E. 3. Rot. 12. and Rot. Pat. 15 E. 3. 2 part. See the statute of the staple *anno* 27 E. 3. through all the chapters, 36 E. 3. cap. 7. 28 E. 3. cap. 13, 14. 43 E. 3. ca. 1. 12 R. 2. cap. 16.

IV. INST.

T

C A P.

<sup>a</sup> 36 E. 3. cap. 7. Rot. par. 6 H. 6. nu. 29.

<sup>b</sup> 28 E. 3. ca. 15. The bounds of the staple.

<sup>c</sup> 27 E. 3. ca. 8. 28 E. 3. ca. 13. Rot. Cart.

31 E. 1. nu. 44.

<sup>d</sup> 27 E. 3. cap. 9.

F. N. B. 131. d.

Pl. com. 62. b.

15 H. 7. 16.

Plata, lib. 2.

ca. 57. See 5 H.

4. ca. 12.

<sup>e</sup> 23 E. 8. cap. 6.

<sup>f</sup> 27 E. 3. cap. 23.

<sup>g</sup> 8 H. 6. cap. 17.

<sup>h</sup> 27 E. 3.

cap. 8. Dier 4.

Mar. 144.

<sup>i</sup> *Vid. Cart.*

*Mercator, ubi*

*sup. Merchant'*

as well strangers

as subjects and

merchand 205.

<sup>k</sup> Able to furnish

the king with

money.

Rot. Parl. 7 E.

4. nu. 9.

12 E. 4. nu. 59.

Rot. parl 5 R. 2.

nu. 4.

<sup>l</sup> *Original. de*

*Seac.*

7 E. 3. rot. 9.

## C A P. XLVII.

Of the Legall Courts and their Jurisdctions  
within the Principality of Wales.

See W. 1. cap. 17.  
the second part  
of the Institutes,  
pa. 195.

Stat. Walliæ

anno 12 E. 1.

in Vet. Mag.

Cart. part 2.

fo. 3.

<sup>b</sup> 27 H. 8. ca. 26.

34 H. 8. cap. 26.

<sup>c</sup> Lamb. verb.

Wallus.

15 E. 3. record.

38. & tit. Error.

2 H. 5. cap. 6.

19 H. 6. fo. 12.

<sup>d</sup> Realme from

the French word

*roizume*, and both

*à regno*.

<sup>e</sup> Domesday in

com. Cestr. Ep.

Cestr.

<sup>f</sup> Domesday in

com. Hereford.

Rex in Aren-

field. Rex Griff-

fin et Ble vasta-

verunt hanc ter-

ram T. E.

Quandoque rex

Griffin nomina-

tur rex Maria-

doc.

<sup>g</sup> Rot. pat. anno

7 H. 7.

<sup>h</sup> Cadwallader

king of the Bri-

tains Mat. Par-

ker archiep.

M. S.

<sup>i</sup> This blessed

queen raigned

the years of Au-

gustus, and lived

the age of David,

a king elder

then any king or

queen since the

conquest, and

yet had *vegetum corpus et vividum ingenium*.

<sup>k</sup> Lib. 7. fo. 21. b. in Calvins case. Tr. 5 E. 3. 40. alien.

Bracton (who wrote *tempore* H. 3.) lib. 5. fo. 395. b. Fleta lib. 1. cap. 16. 10 H. 4. fo. 6. acc. Pl.

cam. 129 a. b. Dier 3 Maria 113.

**T**HIS principality consisteth of 12 counties, whereof 6. viz. Anglisea, Carnarvan, Merioneth, Flint, Carmorthen, and Cardigan were erected by the act intituled *statutum Walliæ* anno 12 E. 1. <sup>b</sup> and the rest of the statute of 27 H. 8.

*Wallia*, Wales, is called by the Saxons *Byrtvealas*, unde *Wal-lenses*, <sup>c</sup> *Walli*, i. *exteri seu peregrini*: and the Britons call Englishmen to this day *Saifons*; these are of the posterity of the ancient Britons, inhabiting on the west part of Great Britany. This was sometime <sup>d</sup> a realm or kingdome and governed *per suos regulos*, <sup>e</sup> *rex E. dedit regi Griffino totum terram quæ jacebat trans aquâ que vocatur*

<sup>f</sup> *Sed postquam ipse Griffin forisfecit ei, abstulit ab eo hanc terram, et reddidit episcopo Cestrivæ et omnibus suis hominibus, qui ante ipsam tenebant.*

<sup>g</sup> By force of a commission directed to divers discreet and learned men as well English as Welsh, viz. Griffith ap Lluellin, Gitten Owen, John King and others, it was found that Owen ap Meredith ap Theodore which married Katherine daughter of France and dowager of king H. 5. was lineally descended from <sup>h</sup> Cadwallader king of the Britains, and gave the armes of the princes of Wales.

And here we are justly occasioned to discover the error of those that have given to our late soveraigne lady queen Elizabeth, of ever glorious and blessed memory, the surname of Tydur, and consequently to her grandsfather, father, brother, and sister: which whether it were out of ignorance or malice some do question, because if she had any surname at all it was Theodore and not Tydur, which is a nick or by-name. But we rather take it to grow out of ignorance, for that in truth she had no surname at all; for this Owen her ancestor had no surname: and therefore was called (Owen ap Meredith, that is the sonne of Meredith, ap Theodore, the sonne of Theodore) ap Grono, &c. All which were Christian names: so as they should rather have called her Elizabeth Owen, his own name, or Elizabeth Meredith, his fathers name, then Theodore his grandsfathers Christian name; but Almighty God would not suffer her to have a surname, because by his grace and goodness she should deserve for her imperial vertues to be called <sup>i</sup> Elizabeth the Great.

<sup>k</sup> But *jure feodali* the kingdome of Wales was holden of the crown of England, and thereby as Bracton saith, was *sub potestate regis*. And so it continued untill the 11 year of the reign of king E. 1. when he subdued the prince of Wales rising against him,

and executed him for treason, whereof Fleta who lived in those dayes speaketh thus. *Et unico malefactori plura poterunt infligi tormenta, sicut contigit de Davide principe Walliæ cum per Edwardum quinque judiciis mortalibus torquebatur, suis namq; meritis exigentibus, detractus, suspensus, dismembratus fuit et combustus, cuius caput principali civitati, quatuorq; quarteria ad quatuor partes regni in odiu[m] tradit' deferrebantur suspendend'.*

<sup>m</sup> The next year viz. in the 12 year of king E. 1. by authority of parliament it is declared thus, speaking in the person of the king (as ancient statutes were wont to do) *Divina providentia, quæ in sua dispositione non fallitur, inter alia suæ dispensationis munera, quibus nos et regnum nostrum Angliæ decorari dignata est, terram Walliæ cum incolis suis prius nobis \* jure feodali subiectam jam sui gratia in proprietatis nostræ dominium, obflaculis quibuscunque cessantibus, totaliter et cum integritate convertit et coronæ regni prædicti, tanquam partem corporis ejusdem annexuit et univit.* Yet this wise and warlike nation was long after this not satisfied nor contented, and especially, for that they truly and constantly took part with their rightfull soveraigne and liegè lord king Richard the second; in revenge whereof they had many severe and invecitive lawes made against them in the reigns of H. 4. H. 5. &c. All which as unjust are repealed and abrogated. And to say the truth, this nation was never in quiet, untill king H. 7. their own country man obtained the crown. <sup>b</sup> And yet not so really reduced in his time, as in the reign of his sonne king H. 8. in whose time by certaine just laws made at the humble suit of the subjects of Wales, the principality and dominion of Wales was incorporated and united to the realm of England: and enacted that every one born in Wales should enjoy the liberties, rights, and laws of this realm, as any subjects naturally born within this realm should have and inherit, and that they should have knights of shires and burgesses of parliament, &c. By the which the jurisdiction of the legall courts are thereby so perfectly and plainly established and declared, and their proceedings to be according to the lawes and customes of England, as we have thought good to refer the judicious reader to those acts of parliament without recitall of them, where he shall find the excellent venerable variety of seats and courts of justice, with their proper jurisdictions according to the laws of England, the golden metwand, whereby all mens causes are justly and evenly measured. Only we will adde certaine things which have not been published before.

By the said statute of 34 H. 8. it is enacted that there shall be holden and kept sessions twice every year in every of the said twelve shires, that is to say, Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, Cardigan, Montgomery, Denby, Flint, Carnarvan, Merioneth, and Angiesie, which sessions shall be called the kings great sessions of Wales.

<sup>4</sup> A fine was levied of lands in the county of Carmarthen, and the writ of covenant was *coram justiciariis nostris magnæ assise in com' Carmarthen*, and because all the judiciall presidents were in that forme ever since the making of the statute, it was adjudged to be good, for *communis error facit jus.*

Also in the said act of 34 H. 8. it was enacted, that the kings most royall majesty should from time to time change, &c. all man-

<sup>m</sup> Statutum Walliæ anno 12 E. 1. Vid. 10 H. 4. fo. 6.

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\* Note, divers monarchs hold their kingdomes of others jure feodali. As the duke of Lombardy, Cicill, Naples, and Bohemia of the Empire. Granada, Leons of Aragon. Navarre, Portugal, of Castile. And so others. Dors. clauf. 15 E. 2. m. 13. *De Willelmo ad parl. apud Eborum venire fac' viz. 24 de discretioribus, legationibus et validioribus hominibus de partibus Soubwalliæ, et 24 de partibus Norwalliæ Rot. clauf. 20 E. 2. m. 3. accord. 26 Jac. ca. 28. <sup>b</sup> 27 H. 8. ca. 26. 34 H. 8. ca. 26. 37 H. 8. ca. 26. 18 Eliz. cap. 7.*

<sup>c</sup> The twelve counties of Wales.

<sup>d</sup> Trin. 34 Eliz. in the case of Morgan of the report of the chiefe justice Popham.

So it was resolv-  
ed by divers just-  
ices in Hil.  
5 Jac. regis.

21 Jac. regis  
c. 10.

Hil. 5 Jac.

Rot. claus. anno  
20 E. 2. m. 3.

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12 were English.  
and 12 Welsh.  
Rot. Claus.  
15 E. 2. in dorf.  
m. 13. Wallenses  
vocat. ad parla-  
mentum.

7 H. 4. cap. 15.  
11 H. 4. cap. 1.  
1 H. 5. cap. 1.  
8 H. 6. cap. 7.  
10 H. 6. cap. 2.  
23 H. 6. cap. 15.  
6 H. 6. cap. 4.  
27 H. 8. cap. 26.  
34 H. 8. cap. 26.  
55 H. 8. cap. 11.

Marchia  
Wallie.

Wallia con-  
suetudo.

ner of things before in that act rehearsed, as to his most excellent wisdom and discretion should be thought convenient, and also to make laws and ordinances for the common-wealth of his said dominion of Wales at his majesties pleasure, &c. And albeit the common opinion was that the same power in so high a degree of trust, as the alteration of laws, &c. was personall to H. 8. and referred to his wisdom, discretion, and pleasure, and therefore extended not to his successors, yet for that the subjects of the country and dominion of Wales had been constantly loyall and obedient, and had lived in all dutifull subjection to the crown of England, to prevent all questions and danger the said branch of the said statute of 34 H. 8. is repealed and made void.

It was resolved by all the justices upon a reference made to them by the lords of the privy counsell upon consideration had upon the statutes of 34 H. 8. cap. 26. and 18 Eliz. cap. 8. that the justices in Wales are to be constituted and made by letters patents, as they had been ever since the making of the statutes, and not by commission. And upon report of their opinion to the lord chancelour baron Snigge was constituted and made by patent accordingly.

*Rex dilecto et fideli suo Rico' Damory justiciar' suo Northwallie salutem. Mandamus vobis quod habito advisamento cum illis hominibus de partibus predictis, cum quibus melius fore videritis faciend' diversimode sine dilatione venire faciatis ad presens parlamentum apud Westm. convocatum 24 homines de partibus illis tam Anglicos quam Wallenses ad consentiendum hiis quæ ibid. pro communi commodo et pace et tranquillitate regni nostri et partium præd. favente domino contigerit ordinari, et habeatis ibi nomina præd. 24 hominum, et hoc br'e. Teste rege apud Kenilworth 11 Januarii anno 20 E. 2. rot. claus. m. 3.*

By this and others of like nature it appeareth that Welshmen were in the reigne of E. 2. E. 3. &c. called to our parliaments.

But now seeing there be sheriffs throughout all Wales, the writs are directed to the sheriffs to cause to be elected knights, citizens, and burgeses, and retornable into the chancery, where before they were returned into the parliament.

We have seen a charter of the earle of Arundell proving, that by the ancient custome of Wales, females could not inherit.

*Omibus Christi fidelibus præsens scriptum inspecturis Johannes comes Arundel et dominus de Mauntravers, salutem in domino. Sciatis nos præd. comitem ad prosecutionem et specialem supplicationem communitatis tenen' nostrorum tam duarum partium quam tertiæ partis domini nostri de Oswaledestrie in marchia Wallie concessisse pro nobis et hæredibus nostris et per præsentis confirmasse tenen' nostris præd. hered' et assign. suis, quod eorum filie pro defectu exit' masculini, ac eorum proximi consanguinei, tam masculini quam femelle de cætero hereditare valeant imperpetuum terras, tenementa et reddit' antecessorum et consanguineorum suorum ubique infra dominium nostrum præd' eisd' modo et forma quibus utitur in communi lege Angliæ, Wallia consuetudine prius ibid. de contrario usitat' in aliquo non obstante: salvois semper nobis et hered' nostris heriotis, releviis, seil' cur' et al' consuetudinib' quibuscunq; de dictis terris et tenementis ante hanc nostram concessionem nobis quomodolibet pertinent'. In cujus rei testimonium huic præsentis scripti nostro concessionis sigillum nostrum fecim' apponi: hiis testibus, Willie'mo Ryman, Thoma Barett, Willielmo Sidney armigeris, Hugone Burgh, sen' domini nostri præd', Rich. Irland, Hoel ap Ogr' Gouch, et aliis. Dat' in hospitio nostro Lon-*



*don vicefimo quinto die menfis Aprilis an. regni regis Henrici fexti poft conqueftum oclavo.*

At this day women are inheritable in Wales, according to the common law in England.

• *Ordinatio de confuetudinibus Northwallie et Weftwallie.*

Thefe Britons were ever lovers of the laws of England, for at the parliament holden <sup>a</sup> in 4 H. 4. they petitioned the king, that in all cafes of the crowne throughout every liberty in Wales, the laws of England might be only ufed. Whereunto the king yeilded, and that his counsell fhould take order therein. <sup>b</sup> *Quia epifcopi Wallenfes ex antiqua confuetudine testamentum aliquod condere non potuerunt, rex licentiam dedit epifcopo Bangor, quod poffit condere testamentum fuum non obftante quod epifcopi Wallenfes ex antiqua confuetudine testamentum aliquod condere non poffunt.* See the chapter of the Confiflory Courts of Arch-bifhops and Bifhops, fol.

<sup>c</sup> Where execution fhall be made of lands in the marches by the fheriffe of the county next adjoining, *ficut folebat antiquitus.* See the record at large.

<sup>d</sup> *Affach* is a Britifh word and fignifieth a cuftome in Wales, which was to excufe one of the death of a man by the oath of 300 men. But this ftrange kind of excufe or acquitall is abrogated by ftatute.

<sup>e</sup> There was alfo a certain triall in Wales called a *raythe*, but that is alfo abrogated.

• 9 E. 2. m. 3.  
<sup>a</sup> Rot. par. 4 H. 4. nu. 100.  
<sup>b</sup> Rot. par. 13 E. 1. m. 21.  
 Vid. Hil. 20 E. 1. coram reg.  
 Ro. 37. 22.  
 Wallia Pofch.  
 10 E. 2. coram reg. rot. 37.  
 18 E. 2. rot. 73.  
 Trin. 5 E. 3. rot. 40. Coram reg.  
<sup>c</sup> Hil. 18 E. 2. rot. 73. cor. reg. Glouc.  
 18 E. 2. off. 382.  
 Rot. par. 18 E. 1. rot. 3. 13 E. 3. jurisdiction. 33.  
 28 E. 2. ca. 2.  
 5 E. 3. fo. 30.  
 45 E. 3. bre. 583.  
 21 H. 3. bre. 881. fimile.  
<sup>d</sup> 1 H. 5. cap. 6.  
<sup>e</sup> 6 H. 6. nu. 33.

C A P. XLVIII.

[ 242 ]

The Court of the Prefident and Councell in the Dominion and Principality of Wales, and the Marches of the fame.

**L** EAVING now the legall courts in the dominion of Wales, to proceed by the right rule, *fecundum legem et confuetudinem Anglia*, let us fpeak fomewhat of the court of equity before the prefident and counsell there.

This court is ftrengthened and warranted by the ftatute of 34 H. 8. ca. 26. with a reference to prefcription before it, in thefe words.

Rot. par. 16 R. 2 nu. 41. there was a prefident of Wales.  
 34 H. 8. cap. 26.

*Item*, that there fhall be, and remain a prefident and counsell in the faid dominion and principality of Wales, and the marches of the fame, with all officers, clerks, and incidents to the fame in manner and form as heretofore hath been ufed and accuftomed: which prefident and counsell fhall have power and authority to hear and determine by their wifdomes and difcretions fuch caufes and matters as be, or hereafter fhall be affigned to them by the kings majefty, as heretofore hath been accuftomed and ufed.

## The Court of the President of Wales. Cap. 48.

They sit by force of the kings commission and instructions, and proceed as in a court of equity by their wisdoms and discretions. Herefordshire, Worcestershire, Shropshire, and Gloucestershire are included within this commission, pretending that these four shires are within the marches of Wales.

That these four shires are no part of the marches of Wales, but ancient shires of the realm of England, appeareth by six manner of proofs.

First, by expresse books, viz. 18 E. 2. Aff. 82. 1 E. 3. 14. in Dower. 7 E. 3. 9 E. 3. in Dower. 6 H. 4. fo. 9. in Scire fac. F. N. B. 168.

Secondly, by acts of parliament, viz. Prærog. regis. 17 E. 2. cap. 1. 28 E. 3. cap. 2. 2 H. 4. cap. 12. and 16, 17. 23 H. 6. cap. 5. 27 H. 6. cap. 4. 31 H. 6. cap. 4. 32 H. 8. cap. 13. 13 El. cap. 13.

Thirdly, by records of parliament. 3 R. 2. nu. 29. and 30.

Fourthly, by reason. 1. These four shires were ancient English shires, and governed by the laws of England, and not by the discretion of the president and councill: and this were to bring their inheritances, goods, &c. *ad aliud examen*. 2. At one and the same time there were in former times earles of the marches of Wales, and severall earls of these four counties, and therefore they could not be one and the same.

Fifthly, by the resolution aforesaid of those four judges concerning Cheshire and Flyntshire (which were included also within the commission) that they were not within the marches of Wales, and therefore out of the jurisdiction of the president and councill, and so remain untill this day: for a commission without an act of parliament cannot raise a court of equity, as often hath been said before.

Lastly, by the commandment of the king, all the justices of England, and barons of the exchequer were assembled concerning the jurisdiction of the president and councill of Wales, and the marches of the same, who upon hearing of councill learned on divers days, and upon mature deliberation resolved *una voce*, that the said four counties were not within the jurisdiction of the president and councill. 2. That forasmuch as the president and councill have a limited authority if they proceed in any matter that is out of their jurisdiction either in respect of the place or of the authority limited to them, a prohibition may be granted, as to the marshalsea and the like. Which resolution being made known to his majesty, his majesty was graciously pleased, that the lord presidents commission should be reformed: whereupon the lord Zouch gave over his place. And yet the commission was not after reformed in all points, as it ought to have been.

Rodry Maure, or Rodry the Great, king of Wales, son of Mersyn Fryth had issue three sons. Mervyn, Anarawd, and Cadelh. In the year wherein he died, viz. *anno dom.* 877. (king Alfred, alias Alured, then reigning in England,) this great Rodry divided his kingdome of Wales into three principalities. The first he called *Gwyneth*, the English North Wales, the Latinist *Venedotia*. The second principality was called *Powis land*, in Latin *Powisia*, of some West Wales, bordering upon England. The third he called *Deheubarth*, the English South Wales, in Latin *Demetia*. The first

See before in the chapter of the County Palatine of Chester, pa. 212.

Mich. 2. Jac. regis the case of Edward lord Zouch president of Wales.

## [ 243 ]

Regist. 4 & 8. F. N. B. 39 b. 45 f. 46 a. 171. 159. 185, 186, 187. 19 H. 6. 54.

This is added for the better understanding of records and histories concerning Wales.

first principality, some say, he gave to Mervin, after others, to Anarawd. The second to Anarawd, some say, to Cadellh. The third to Cadellh, some say, to Mervyn. The first was the best, because it was the quietest. The second was often invaded and troubled by the English. Into the third often incursions were made by the English, the Norman, and the Fleming. The division of this kingdom (howsoever it was) wrought in procelle of time such a division between these princes, as it was never quiet untill it came under one monarch and king again: for the royall dignity of a monarch or king, from whence all other subordinate dignities, *tantum lumen de lumine*, are derived without any diminution, will suffer no division. *Regia dignitas est indivisibilis; et quaelibet alia derivativa dignitas est similiter indivisibilis.*

The most woful event that fell out in this realm, when Gorbodug divided this kingdom between his two sons, Ferrex and Porrex, and what heavy event came to passe, untill it was reduced again under one monarch, let our histories tell you: and letting passe others, I cannot over-passe the miserable estate within this kingdom under the heptarchy, untill all was reunited under one soveraign. And this is the reason, that in England, Scotland, and Ireland, the royall dignity is descendible to the eldest daughter or sister, &c.

But let us look a little into forain parts. Oedipus king of the Thebanes had issue two sons, Polynices, and Eteocles: he ordained, that after his decease, his two sons should *alternatim* by course, &c. reign in his kingdom. But what was the event? *Frater de regni hereditate dissidentes singulari certamine congressi mutuis vulneribus ceciderunt.* But to return again to our Wales.

Sta. in Theb.

It is divided from England by a ditch after the name of that king that made it, called King Offa his ditch.

Camden in the county of Radnor.

King E. 3. at the parliament holden anno 17 of his reign, by charter established by authority of parliament, created Edward (called the Black Prince) prince of Wales in these words, *De concilio prælatorum, comitum, baronum et communium in generali parlamento nostro apud Westm' die Lunæ in quindena Paschæ proxime præterito convocato ipsum Edw. principem Walliæ fecimus et creavimus, et dictum principatum sibi dedimus et concessimus, et per cartam nostram confirmavimus, ac ipsum de dicto principatu, ut ibidem præficiendo præfideat, et præfido dictas partes dirigat et defendat, per <sup>a</sup> sortum in capite, et annulum in digito aureum, ac <sup>b</sup> virgam argenteam investivimus juxta morem: habendum et tenendum de nobis sibi et hæredibus suis regibus Angliæ imperpetuum, &c.* Out of this charter we observe, that in this creation there is a great mystery, for lesse then an estate of inheritance so great a prince could not have, and an absolute estate of inheritance in so great a principality as Wales, the kings meaning was (this principality being so dear unto him) he should not have: therefore a qualified see therein he had in this form, *sibi et hæredibus suis regibus Angliæ*, that by his decease, or attaining to the crown this dignity might be extinguished in the crowne, to the end that the king for the time being should ever have the honour and power to create his heir apparent prince of Wales, as he himself had been by his progenitor. But otherwise it is in case of the duchy of Cornwall, as in the Princes case, *ubi sup.* appeareth.

Carta creationis principis Walliæ auctoritate parliamenti, anno 17 E. 3.

<sup>a</sup> A chapelet of gold made in form of a garland.

<sup>b</sup> This virge, rod, or scepter in latter creations for more honor is changed from silver to a verge or scepter of gold.

Sibi et hæredibus regibus Angliæ.

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See the Princes case. Lib. 5.

*Vide cap. 11 m. E. 3. dat. apud Pontem fracti. 18 Martii. 7 E. 3. and Hil. 33 E. 3. irrotulatus in scaccario ex parte rememorator Theobaldus.*  
 Rot. 15. the Black Prince created earl being three years old.  
 \* Hil. an. 20 E. 1. Coram rege 104. 14. Wallia.  
 † Commissio- narii.

And in the same manner is the dignity of the noble and primary county palatine of Chester at the same time granted to the prince, *sibi et hæredibus suis regibus Angliæ.*

\* *Ob quamplurimos excessus more hostili vexillo displicato per Gilbertum de Clave comitem Glouc' et Hertf. et homines suos de Morgannon illatos contra Humfridum de Bohun comitem Heref' et Essex et homines suos de Brekenock dominus rex assignavit † episcopum Eliens' et alios commissarios ad inquirendum, &c. Mandavit etiam dominus rex per literas suas dilectis et fidei libis suis Johanni Hastings, Johanni fil' Reginaldi, Edmundo de Mortuo mari, Rogero de Mortuo mari, Theobaldo de Verdon, Johanni Tregese et Galfrido de Cannil, quod intersint apud Brekenock, &c. Et postea venerunt apud Laundon. Voluit idem dominus rex pro statu et jure suo per ipsos justiciarios quod inde rei veritas inquireretur per sacram' tam magnatam, quam aliorum proborum, et legalium hominum de partibus Walliæ et com' Glouc' et Heref' per quos, &c. cujuscunque conditionis fuissent, ita quod nulli parceretur in hac parte, eo quod res ista dominum regem et coronam et dignitatem suam tangit, &c. Dicitur est ex parte domini regis Johanni de Hastings et omnibus aliis magnatibus supra nominatis quod pro statu et jure regni, et pro conservatione dignitatis coronæ et pacis suæ apponant manum ad librum, ad faciend' id quod eis ex parte domini regis injungeretur; qui omnes unanimiter respondent, quod inauditum est quod ipsi vel eorum antecessores hæcenus in hujusmodi casu ad præstandum aliquod sacramentum coacti fuer', &c. Ac pluries eisdem magnatibus ex parte ipsius regis conjunctim et separatim, libroque eis porrecto, injunctum est quod faciant sacram'; responderunt demum omnes singulatim quod nihil inde facerent sine consideratione parium suorum. Demum comes Glouc' fecit finem cum domino rege pro decem millibus marcarum, et comes Essex pro mille marcis, et uterque eorum committitur mareschal- lo. (Recordum per longum est, et continet tres rotulos.) Et ob affinitatem, et consanguinitatem cum rege perdonantur plurima, tamen forisfecerunt libertates suas durante vita ipsorum. Et post decessum eorum, hæc redēs sui rehabsant.*

But now to take our leave of this principality of Wales, this is that the Romans called by the name of <sup>a</sup> *Britannia secunda*, and sometimes <sup>b</sup> *Valentia*, and by the Britaines themselves called <sup>c</sup> *Cambria*. And we will conclude this treatise of Wales, &c. with that which that <sup>d</sup> excellent historian speaking of the wars between the Roman and the ancient Britain, saith, *Nec aliud adversus e' validissimas gentes pro nobis ultilus, quam quod in commune non consulunt, rarus ad propulsandum commune periculum conventus: ita dum singuli pugnant, universi vincuntur.*

<sup>f</sup> See 2 part. pat. 9 E. 2. m. 3. *Ordinat' de consuetud' North-walliæ et West-walliæ.*

<sup>g</sup> Vid. Lib. Int. Co. fo. 549, 550. Three notable matters concerning Wales. 1. Of the government of Wales before 27 H. 8. 2. Of lordship, marchers, and their authorities and liberties. 3. The act of 1 & 2 Ph. and Mar. concerning the same.

Irrotulatur istud recordum inter placito de banco term' Pasc. an. 14 E. 1.  
<sup>a</sup> Ortelius in Carta antiqua Britannia.  
<sup>b</sup> Humph. Lloyd apud Ortelium in the same geography.  
<sup>c</sup> Idem in Fragma Britan' Historiæ.  
<sup>d</sup> Tacitus. Vide supra p. 9.  
<sup>e</sup> Nota validissimas gentes.  
<sup>f</sup> Rot. pat. 9 E. 2. m. 3.  
<sup>g</sup> Lib. Int. Co. fo. 549, 550.

## C A P. XLIX.

## The President and Councill in the North.

**T**HIS councill is neither warranted by act of parliament, nor by prescription, but raised by king H. 8. by his commission upon these occasions, and in the manner hereafter expressed. After the suppression of monasteries of the yearly value of two hundred pound or under, which was by act of parliament 4 Febr. anno 27 H. 8. in the beginning of 28 H. 8. there was a great insurrection of the lord Hussey and 20800 persons in Lincolnshire pretending it to be for the cause of religion: against whom Charles Brandon duke of Suff. went and appeased them. As soon as they were appeased, a great rebellion for the same pretence of 40000 of that county, of whom sir Robert Aske was leader: against whom the duke of Norf. and others went, and dispersed them. Soon after a great commotion for the same pretence was raised in Lancashire of men in that county, and in Cumberland, Westmerland, and Northumberland: against whom the earl of Derby was employed, and quieted them. After this Musgrave Tilly and others to a great multitude did rise, and assaulted Carlisle castle, whom the duke of Norf. overthrew. Soon after sir Francis Bigot with a great number of people rose at Settrington, Pickering, Leigh, and Scarborough in Yorkshire, whom the duke of Norf. pacified. And after this the lord Darcy, Aske, Constable, Bulmer, and others began a new rebellion about Hull in Yorkshire, whom the duke of Norf. appeased. And all these rebellions fell out between the beginning of 28 H. 8. and 30 H. 8.

The king intending the suppression of the great monasteries, which in effect he brought to passe in anno 31 H. 8. for preventing of future dangers and keeping those northern counties in quiet, in anno 31 of his reign raised a president and councill there, and gave them besides two severall powers and authorities under one great seal, the one of oier and terminer, *De quibuscunque congregationibus et conventiculis illicitis coadunationibus, confederationibus, Lollaridiis, misprisionibus, falsis allegantiis, transgressionibus, riotis, routis, retentienibus, contemptibus, falsitatibus, manutentionibus, oppressionibus, violentiis, extortionibus, et aliis malefactis, offensis, et injuriis quibuscunque, per quas pax et tranquillitas subditorum nostrorum in com' Eborum, Northumberland, Westmerland, Durham, et com' civitatis Eborum, Kingston super Hull, et New-castle super Tinam gravetur, &c. secundum legem et consuetudinem regni nostri Angliæ, a vel aliter secundum sanas discretiones vestras audient et terminand'.* The other authority was *b Nec non quasunque actiones reales, seu de libero tenemento, et personales causasque debitorum et demandorum quorumcunque in com' prædictis, quando ambæ partes vel al-*

Anno 31 H. 8. 6.  
parte Roberto  
Landavens' epis-  
copo præfidenti  
concilii, &c. et  
aliis fact.

<sup>a</sup> First, it was  
resolved by all  
the judges of the  
court of com-  
mon pleas. Trin.  
6 Jac. that this

clause is against law, as the like had been formerly often resolved. See before cap. of the Court of Requests. <sup>b</sup> 2. It was then also clearly resolved, that this latter clause was against law, not only for the cause aforesaid, but also for that action real and personall were not to be heard and determined by commission, but according to the laws of the realm. Vid. 2 Eliz. Dier 175.

*tera pars sic paupertate gravata fuer', quod commodè jus suum secundum legem regni nostri aliter prosequi non possit, similiter secundum leges et consuetudines regni nostri Angliæ, vel aliter secundum sanas discretionès vestras audiend' et terminand'.*

But these authorities were granted, to the end that commissioners by mediation might quiet controversies when one of the parties or both were poor, who are ever most clamorous. And all the authority they had was expressed in the patents or commission under the great seal, without any reference to instructions or any instructions at all. But afterwards, for that the said commission was against law, and to the end, that their authority should not be known, they procured the first institution to be *ex diametro* altered, viz. that their commission should not give them any expresse authority at all, but wholly did refer their authority to certain instructions which they kept themselves in private, and were not enrolled in any court, whereunto the subject might have resort. *Sed misera servitus est, ubi jus est vagum, aut incognitum.* And thereupon king James being informed hereof by the judges of the common pleas (who had granted prohibitions to the president and counsell) gave order that their instructions should be enrolled, to the end that the subject might take advice of learned counsell what course he might take to enjoy the benefit of the laws of the realm, his best birthright.

And it appeareth in the subsidy in *anno* 32 H. 8. cap. 50. that H. 8. raised not only this president and counsell, but a president and counsell also having like authority in the western parts, pretending it to be for their ease to receive justice at their own doors, but they of Cornwall, Devon' &c. desirous to live under the immediate government of the king, and the common law, opposed it, *et sic commissio illa cito evanuit*, which commission under the great seal we have seen. See in the statute of 13 El. where the president and counsell of York is mentioned, and no man doubteth, but that there is a president and counsell *de facto*, but what jurisdiction they have is the question.

Thus much (having taken upon us to write) we have clearly and plainly delivered our opinion, and he that searcheth the secret of hearts, knoweth that we have published nothing herein or in any other of our works, *reluctante conscientia*.

And in respect of some continuance it hath had, and many decrees made, it were worthy of the wisdom of a parliament for some establishment to be had therein.

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This is left out of the print in latter time, but it is in the parliament rol, &c.

13 El. cap. 13. See in the chapter of the court of request, answer made to this objection in like case.

## C A P. L.

## The Courts and their Jurisdictions within the City of London; and first of

*The Court of the Hustings.*

**F**OR the antiquity and name of this noble city, you may read in Lambard, *inter leges Edovardi regis*, fo. 136. b. *Sed utere tuo iudicio, nihil enim impedit.* \* But Ammianus Marcellinus an approved author above 1200 years since, calleth it *vetustum oppidum*. And Cornelius Tacitus, (who married the daughter of Lucius Agricola the Roman, and was here with him by the space of seven years) affirmeth *Quod Londinum tempore Neronis* (which is above 1500 years past) *fuit copia negotiatorum et commeatus maxime celebre*. To be short, it is *camera regis, reipublicæ cor, et totius regni epitome*.

And in searching among such records as we had observed, of or concerning this noble city, we have observed a charter in the Saxon tongue made by William the Conqueror in these words; *pilliam Cýng ʒneret pilliam Býrceop ʒ Godfneʒer portʒeneʒan ʒ ealle þa Buphapen þe on Lundē beon, &c. i.* William the king greeteth William the bishop and Godfrey the portreve, and all the burgessees that in London be, &c.

This is the highest court and of the greatest celebrity within London. It is holden before the maior and sheriffs, of all pleas, real, mixt, and personall. *Nota*, the rule of the Register is, *Quodlibet breve, quod tangit liberum tenementum in London, dirigitur majori five custodi et vicecomitibus; et alia brevicia tantum vicecomitibus*.

This word hustings is derived of two Saxon words, viz. *hus* which signifieth a house, or bench, and *things*, that is, causes, or pleas, as much to say, as the bench, or court of pleas, for *bancus* or bench is taken for a court, as the kings bench, the common bench, &c.

Fleta lib. 2. in his chapter *De differentiis curiarum*. *Habet rex curiam suam, &c. Et in civitatibus et burgis et in hustingis London, Lincoln, Winton et Eborum et alibi in libertatibus, &c. Et cap. 48. Habet rex curiam suam in civitatibus, burgis et locis exemptis, sicut in hustingis London, Winton, Lincoln, Eborum, et apud Shepey, ubi barones et cives recordum habent, &c.* So as neither the name nor the court is appropriated to London.

<sup>b</sup> For writs of error to be brought of any judgment in the hustings; see the Register and F. N. B.

<sup>c</sup> Concerning forain vouchers, and forain pleas, see F. N. B. fo. 6. E. *et stat. de Glouc.* cap. 12.

Of lands holden, no writ doth lye but in London according to the custome. Dier 15 El. 317. Judgment of the outlawries in the hustings is not given by the maior, who is coroner or his deputy, but by the recorder by the custome of this city.

Lib. 8. fo. 130. in the case of the city of London. \* For the antiquity. For the antiquity and name.

Regist. 2. b. F. N. B. 6. f.

Fleta, lib. 2. ca. 2. & 28.

<sup>a</sup> F. N. B. 61. q. juris utrum. 62. b. partition. & 199. ex gravi querela. b.

<sup>b</sup> Regist. 130, 131. F. N. B. 23 c.

<sup>c</sup> F. N. B. 6. e. Glouc. cap. 12. 2 part Institutes. 33 E. 3. juris. 60. 36 H. 6. 33.

2, 3. *The two Courts of the Sheriffs.*

Regist. ubi sup.  
F. N. B. 23. a.

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Stephanides cap.  
de dispositione  
urbis.

Nota.

In Lib. abbat de  
Ramsey.  
\* Tempore H. 1.

*In curia civitatis prædictæ coram vicecom' sine brevi nostro secundum consuetudinem ejusdem civitatis.* If an erroneous judgment be given before the sheriffs the party grieved shall sue a writ of error, and remove this before the maior and sheriffs in the huffings.

For the antiquity of the sheriffs and their courts, Fitz-Stephen, who wrote of the government of London in the reign of king Stephen, of this city saith;

*Hæc civitas urbe Roma, secundum chronicorum fidem, satis antiquior est, &c. Unde et adhuc antiquis eisdem utuntur legibus communibus institutis; hæc similiter illi regionibus est distincta, habet annuos pro consiliis vicecomites, habet senatoriam dignitatem, et magistratus minores, &c. ad genera causarum, deliberative, demonstrative, judicialis loca sua fora singula, habet sua diebus statutis comitia, &c.*

In the booke of the abby of Ramsey to a conveyance or concord \* without date made in the court of the huffings of London of a certain house in Walbroc within the city, between *Wilmothus de Walbroc*, and *Renaldum abbatem de Ramsey*, the witnesses were (amongst others) *Willielmus de Einsford vicecomes de London*, et *Johannes subvicecomes ejus*, et *Gervasius clericus ejus*. More might be said hereof, but it is clear, that so long as this city hath been a county of it self, so long there have been sheriffs, for it cannot be a county without sheriffs. There are within the wals of this city 97 parishes, and out of the wals 16 parishes, standing partly within the liberties of the city, and part without in Midd. and Surry.

4. *The Court of Equity before the Lord Mayor, commonly called, The Court of Conscience.*

1 H. 6. 14.  
Lib. 8. fo. 126.  
Lib. Int. Raft.  
Custome 21 and  
Ville 1.

The custome of London is, and hath been time out of mind, that when a man is impleaded before the sheriffs, the mayor upon the suggestion of the defendant may send for the parties and for the record, and examine the parties upon their pleas, and if it be found upon his examination that the plaintiff is satisfied, that he may award that the plaintiff shall be barred: and this was holden by the court to be a good custome, but by no custome he can examine after judgment. Note, a court of equity may be had by prescription, but cannot be raised by grant, as hath been said in the chapter of the Chancery, and of the County Palatine of Chester.

5. *The Court of the Mayor and Aldermen.*

See 43 El. c. 12.  
In fine.  
Lib. 4. fol. 64,  
65. Fulwoods  
case. The print  
is 28 E. 3. cap.  
10. but it should  
be 27 E. 3. cap. 10.

This is a court of record, and consisteth of the lord mayor, the recorder and 23 aldermen, whereof the two sheriffs being aldermen are part.

It is ordained and established that the mayor, sheriffs and aldermen, which have the governance of the city, shall redresse and cor-

And so resolved by parliament, in 1 H. 4. cap. 15. Altered in the penalty. 17 R. 2. Rot. par. nu. 26. explained by parliament not to extend to error in judgment.

rect



rect the errors, defaults and misprisions which be used in the city of London, for default of good governance of the mayor, sheriffs and aldermen, &c. This is declaratory of their former power of governance, and for this cause principally amongst others, this court was instituted.

In this court are many courts, as namely,

### 6. The Court of Orphans.

The mayor and aldermen by custome have the custody of orphans within the city. And if they commit the custody of the orphans to another man, he shall have a raviſſment of ward, if the orphan be taken away.

It is enacted, that the mayor and chamberlain of London for the time being, shall have the keeping of all the lands and goods of such orphans as happen within the city, saving to the king and other lords their rights of such as hold of them out of the same liberty.

A recognizance may be acknowledged in this court before the mayor and aldermen to the chamberlain for orphans.

The chamberlain is a sole corporation to him and his successors for orphans: and a recognizance or bond made to him and his successors concerning orphans shall by custome goe to his successor.

The government of orphans belong to the mayor and aldermen, and they have jurisdiction of them, and therefore if any orphan sue in the ecclesiasticall court, or elsewhere for a legacy, or duty due to them by the custome, a prohibition doth lye. See the first part of the Institutes, sect. 267. how the goods of a freeman of London shall be divided.

For the liberties of London, see 50 E. 3. fo. 143.

An act was made in 7 H. 4. cap. 9. much prejudiciall to the liberties of this city, which is in print, and it was repealed in 9 H. 4. nu. 30. which is not printed.

It would aske a treatise by it self to handle at large the other authorities and powers of the mayor and aldermen in the court of aldermen, and of the other courts within this city, which we will run over as briefly as we can. And the rather, for that in my books of reports I have published many cases concerning the courts, customes, liberties, franchises, and priviledges of this city, and also in the first part of the Institutes, and in this and other parts thereof.

vide Lib. 11. fol. 54. & 194. James Bagges his case. See the first part of the Institutes fol. 176. b. sect. 267. See the second part of the Institutes, Mag. Cart. cap. 9.

F. N. B. 142. 2.  
32 E. 3. gard. 31.  
8 R. 2. ibid. 166.  
Li. 4. 64, 65  
Rot. par. 1 R. 2.  
nu. 130.

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Lib. 4. fol. 64.  
65, Fulwoods  
case.  
Lib. 4. ubi sup.

7 H. 4. cap. 9.  
Rot. par. 9 H. 4.  
nu. 30.

Lib. 2. fol. 57.  
Lib. 4. fo. 18.  
54. 64. 65. &  
113. Lib. 5. fo.  
63. 64. 73. 83.  
107. Lib. 8.  
fol. 122. 125.  
126. 127. 129.

Lib. 5. fo. 62.  
63. the cham-  
berlains case.  
Lib. 8. fo. 123.  
125. Le case del  
city de Londres.

### 7. The Court of Common Council.

This court hath some resemblance of the high court of parliament, for it consisteth of two houses, viz. the one of the mayor and aldermen, and the other of such as be of the common assembly resembling the whole comminalty of London. In this court they may make constitutions and lawes for advancement of trade and traffick: for the better execution of the lawes and statutes of the

the realme, or *pro bono publico*, and for the good government of the city. So as these constitutions and laws be not contrary to the lawes and statutes of the realm. And this being made by the mayor, aldermen, and communalty, do bind within this city and the liberties therof. They of the common assembly do give their assent by holding up their hands.

### 8. *The Court of the Ward-mote.*

Wardmote is derived from ward and mote, that is, the ward court. In London the parishes are as towns, and the wards are as hundreds, and therefore *viens diens gard* was a good challenge at the common law.

In this city there are 26 wards divided for the government of them amongst the 24 aldermen of the city. This wardmote inquest, consisting of 12 or more of every ward shall enquire of such persons as have not paved or amended their parts and portions of the streets and lanes within the said city, &c.

### 9. *The Court of Hall-mote.*

This is derived of hall and mote, as much to say as the hall court, i. *Conventus civium in aulam publicam*, every company of London having an hall wherein they keep their courts, and this court anciently called hall-mote or folke-mote.

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### 10. *The Court of the Chamberlaine for Apprentices.*

Lib. 8. fo. 129: This court concerning the making free of apprentices. One the case of the city of London. may be free of London three manner of wayes, viz. by service, as here in case of apprentices: 2. By birthright, the sonne of a freeman: and 3. By redemption, by order of the court of aldermen.

Now to treat of the great and notable franchises, liberties, and customes of the city of London, would require a whole volume of it self. But there is a most beneficiall statute made for the strengthening and preservation of the same, which I know no other corporation hath. <sup>a</sup> It is enacted that the citizens of London shall enjoy all their whole liberties whatsoever with this clause, *Licet usi non fuerunt vel abusi fuerunt*, and notwithstanding any \* statute to the contrary, &c. *Lege statutum*, for by this act the city may claim liberties by prescription, charter, or parliament, notwithstanding any statute made before 7 R. 2. And this is the statute mentioned in our books.

<sup>a</sup> Rot. par. 7 R.  
2. nu. 37.  
Vid. inf. 252.  
253.  
\* Nota hoc.  
8 H. 7. 4. b.  
Dier 22 Eliz.  
373. 7 H. 6. 1.  
21 H. 7. 16. 17.  
Pl. com. 36. b.  
38. 47. 59.  
Lib. 8. fo. 129.

### 11. *The Court of the Conservation of the Water and River of Thames &c.*

4 H. 7. cap. 15. The maier of London for the time being hath the conservation and rule of the water and river of the Thames, and the issues, breaches, and lands overflown, &c. from the bridges of Stanes  
\*  
unto

unto the water of Yendall and Medwey, and authority as touching punishment for using unlawfull nets, and other unlawfull engines in fishing, and to all correction and punishment there concerning unlawfull nets and engines there. In all commissions touching the water of Ley, the mayor of London shall be one. See hereafter cap. Commission of Sewers the statute of 3 Jac. cap. 14. that sewers that fall into the Thames shall be subject to the commission of sewers.

Rot. parl. 2 H.  
5. nu. 15.

Rot. parl. 2 H. 5.  
nu. 16.  
3 Jac. cap. 14.

### 12. *The Court of the Coroner in London.*

The mayor is coroner within the city of London, and the court of the coroner is holden before him or his deputy. *Vide postea* in the chapter of the Coroner.

### 13. *The Court of the Escheator in London.*

The lord mayor is also escheator within the city, and this court is holden before him or his deputy. See before in the chapter of Escheator.

### 14. *The Court of Policies and of Assurances in London.*

This court sitteth by force of the commission under the great seal warranted by act of parliament an. 43 Eliz. cap. 12. there being an officer or clerk to register assurances, the jurisdiction of which court you may reade in that act of parliament made to encourage merchants to trade and traffick, the benefit whereof appeareth there, and is too long to be recited, and the rather for that we can adde nothing to that act of parliament.

43 Eliz. cap. 12.

### 15. *The Court of the Tower of London.*

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This court is holden within the virge of London before the steward there by prescription of debt, trespassse, and other actions of any summe greater or lesser, whereof you may reade in 4 E. 4. fo. 36. a. b.

4 E. 4. 36. a. b.

Note, where it is said, that the Tower of London is within the city of London, it is thus to be understood, that the ancient wall of London (the mention whereof yet appeareth) extendeth through the Tower, and all that which is invironed with the said wall, viz. on the west part thereof, is within the city of London, that is to say, in the parish of All-Saints-Barking within the ward of the Tower of London. And the residue of the Tower of London, on the east part of that ancient wall is within the county of Middlesex. And this upon view and examination was found out, Mic. 13 Jac. regis, in the case of Sir Thomas Overbury, who was poysoned in a chamber in the Tower on the west part of that old wall. And therefore Weston the principall murderer was tried before commissioners of oier and terminer in London, and so was Sir Gervase Elvice lieutenant of the Tower, as accessary.

16. *Of the Jurisdiction and Authority of the President, Censors, and Comminalty of the Colledge of Physicians scituate in Knight-Riderstreet in the Ward of Castle Barnard within the City of London and 7 Miles Compass:*

Lib. 8. fo. 107.  
&c. Dr. Bonhams case.  
See the statutes of 3 H. 8. c. 6.  
& 11. 14 H. 8. cap. 5. 1 Mar. cap. 9. 32 H. 8. ca. 40. 42.  
34 H. 8. cap. 8.  
\* Rot. pat. 32 H. 6. m. 17. by what warrant physick is to be given to the king.

Of this colledge, and of their jurisdiction and authority, sufficient hath been said in the 8 Book of Reports in Doctor Bonhams case, whereunto we refer the studious reader. Hereunto we will adde for the safety of physicians, especially of the kings physitians a record worthy of observation.

\* *Rex adversa valetudine laborans de assensu concilii sui assignavit Johannem Arundel, Johannem Saceby, et W. Hatcliffe medicos: Robertum Warren et Johannem Marshall chirurgos ad libere ministrandum et exequendum in et circa personam suam; imprimis, viz. quod licite valeant moderare sibi dietam suam et quod possint ministrare potiones, syrupos, confectiones, laxativas medicinas, clysteria, suppositoria, caput purgea, gargarismata lealnen, epithimota, fomentationes, embrocationes, capitis rasuram, unctiones, emplastra, cerera ventos. cum scarificatione vel sine, emorodorum provocaciones, &c. Dantes singulis in mandatis quod in executione premissorum sint intendentes, &c.*

Upon this, four things are to be observed. First, that no physick ought to be given to the king without good warrant. 2. That this warrant ought to be made by the advice of his counsell. 3. They ought to minister no other physick then that which is set down in writing. 4. That they may use the aide of those chirurgions named in the warrant, but of no apothecary; but to prepare and do all things themselves, &c. And the reason of all this is the precious regard had of the health and safety of the king, which is the head of the common-wealth. \* The science of physick containeth the knowledge of chirurgery.

\* 32 H. 8. cap. 40.

3 E. 3. coron. 163.

If one that is of the myserie of a physician take a man in cure and giveth him such physick as within three days he dye thereof, without any felonious intent, and against his will, it is no homicide.

Britton cap. 5.  
De homicides.

But Britton saith, that if one that is not of the myserie of a physitian or chirurgion, take upon him the cure of a man and he dieth of the potion or medicine, this is, (saith he) covert felony.

Mirror cap. 4. §  
De homicide.  
Verb. [dau' part]

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Physitians and chirurgions soient sages en leur faculties, eyent sanes les consciences, cy que rien ne ent failli a faire cure, silz ne scavoient a bone cheste mitter, ou silz a bone cheste scavoient et sentre mettent nequidant follement ou negligentment, issint que ilz mittont froide per chaude ou le revers, ou trope peu de cure, ou nemi mitter un due diligence, et nosmement in arsons et abscissions que sont defend' a faire forsq; al peril des mesters si leur patients moreront ou perdent memorie, in tiels cases sont ils homicides ou mayhemers.

And thus much concerning physitians.

For courts holden in other cities, towns corporate, and burghs, our purpose is not, to treat of them, because they are private and sufficiently known; but let us say somewhat of the liberties, franchises, and immunities of this noble city.

Parl. 17 R. 2.  
nu. 26.

It is enacted, that the statute of 28 E. 3. cap. 10. shall not extend

tend to any erroneous judgement given or to be given in the city of London.

See after cap. 54. the ancient office of garbling of spices, &c.

There is a writ in the Register necessary to be put in execution for the wholesomenesse of aire in London, and in all other cities, &c. *De vicis et venellis mundandis.*

Regist. 267. b.

Lourglary, or lourglary is an offence when any cast any corrupt thing appoysoning the water in or about London, compounded of these two words *lour* corruption, and *laron* a thief or felon, as \* burglary: and if any dye by reason of any such offence within a year after, it is felony, and extendeth to all other cities, burghs, &c.

\* See the third part. of the Institut. cap. Burglary or Burglary.

It was petitioned to the king, that no man in cities, towns, or elsewhere, do carry maces of silver, but only the kings serjeants at armes, but that they carry maces of copper and of no other metall. Whereunto the king answered, [The same shall be so, except the serjeants of the city of London, who may carry their maces of silver within the liberties of London before the mayor in the presence of the king.]

*Omnes homines Lond n sint quieti et liberi, et omnes res eorum per totam Angliam, et per portus maris de theolonio et passagio, et ab omnibus aliis consuetudinibus.*

V. Cartam H. 1. De liber. London.

In the charter of H. 3. bearing teste 18 Febr. anno regni sui 11. the king granted to the city of London *vicecomitatum London et Midd. &c.* And in that charter this speciall franchise and priviledge is granted to the sherifes of London and Middlesex for the time being in these words. *Ita scilicet quod si illi qui pro tempore fuerint vicecomites constituti aliquod delictum fecerint, unde misericordiam pecunie debeant incurrere, non judicentur ad plus nisi ad misericordiam viginti libr' et hoc sine damno aliorum civium si vicecomit' non sufficiant' ad misericordiarum suarum solutionem. Si vero aliquod delictum fecerint, per quod periculum vite vel membrorum incurrere debeant, judicentur sicut judicari debent per legem civitatis: de hiis autem quæ ad prædictum vicecomitatum pertinent respondeant vicecomites ad seaccarium nostrum coram iudiciariis nostris. Salvis eisdem vicecomitibus libertatibus quas alii cives London habent.*

11 H. 3. 18 Febr. speciall and rare libertie granted to the city of London.

In the charter of the same king bearing date 16 Martii anno regni sui undecimo supradicto, the king granted to the city of London *Quod nullus civis civitat' prædictæ faciat duellum, et quod de placitis ad coronam pertinent' se possint distracionare secundum antiquam consuetudinem civitatis, et quod infra muros civitatis, neque in portesokne nemo capiat hospitium per vim vel per liberationem mareschal', &c. et si quæ in aliqua terrarum nostrarum citra mare, vel ultra, sive in portibus maris citra mare, vel ultra theolonium vel aliquam aliam consuetudinem ab hominibus London cepit postquam ipse a recto defecerit, vic' London rarium inde apud London capiant.*

Anno 11 H. 3. 16 Martii duellum.

Hospitium. Per liberationem mareschalibus

In another charter of the same king bearing date 18 Augusti anno 11 supradictæ the king did disafforest and diswarren the forest and warren of Stanes in the county of Middlesex.

Anno 11 H. 3. 18 Augusti.

And by another charter of the same king bearing date 26 Martii anno regni sui 52, the king granted to the citizens of London in these words, *Concessimus eisdem civibus quod de placitis ad coronam pertinent', et hiis maxime, quæ infra civitatem prædictam et ejus suburbium fieri contingent, se possint distracionare secundum antiquam consuetudinem civitatis*

Anno 52 H. 3. 26 Martii. De placitis ad coronam.

Super tumulos.

*civitatis prædictæ, eo tamen excepto, quod super tumulos mortuorum de eo quod dictum essent mortui si viverent non liceat præcise jurare, sc. loco mortuorum qui ante obitum suum electi fuerint ad eos distracionandos qui de rebus ad coronam spectantibus appellati fuerint, vel reſtati alii liberi et legales eligantur qui idem sine dilatione faciant quod per defunctos memoratos, si venirent fieri oporteret, et quod tam forinſeci quam alii attornatos facere possint in hustingo London tam agendo quam defendendo in curia nostra.*

Attornati in hustingo.

The citizens or burgesſes of London were before and after the conquest governed by portgraves or portgreves untill the reign of R. 1. by whose charter they were governed by two bailiffs: and yet king Richard in the first year of his reign appointed them a mayor, who continued therein untill the eighth year of king John, and then king John appointed a mayor. And forasmuch as sometimes the mayor appointed by the king was no citizen of London, king John in the tenth year of his reign granted to the citizens liberty and authority to chooſe *de se ipsis* a mayor, &c. And so it continueth unto this day.

An. 10 Johannis.  
Mayor de se ipsis

Aldermen.

Rot. parl. 17 R.  
2. nu. 25. enacted.

The aldermen of London were changed by election every year untill 28 E. 3. Then it was ordered they should not be removed without some speciall cause. But rot. parl. 17 R. 2. nu. 25. it is enacted that the aldermen of London shall not from henceforth be yearly chosen, but remain till they be put out for reasonable cause, notwithstanding the ordinances of E. 2. and E. 3. and so it still continueth.

Warre.  
Liberties not to be taken into the kings hands.

Rot. pat. anno 1 E. 3. the king granted that the citizens of London should not be constrained to go out of the city of London to any war: and the liberties of this city shall not for any cause be taken into the kings hands. Rot. parl. 1 E. 3. *Auctoritate parliamenti.*

See hereafter cap. of Forests, pag. Cart' H. 1. for their recreation by hunting, &c.

Mag. Cart. cap.  
9. Rot. pat.  
11 H. 3.  
Rot. parl. 5 R. 2.  
nu. 19.  
50 E. 3. nu. 14.  
\* Rot. par. 7 R.  
2. nu. 37.  
Vid. sup. pag.  
250.  
\* Nota hoc.

Albeit by the statute of Magna Carta and other acts of parliament, the liberties, privileges, and franchises of the city of London be confirmed: yet the most beneficiall of them all is that of \* 7 R. 2. before mentioned: whereby it is enacted, that the citizens of London shall enjoy the same, with this clause, *Licet usi non fuerint vel abusi fuerint*,<sup>a</sup> and notwithstanding any statute to the contrary.

These notable, rare, and speciall liberties and privileges we have attempted to remember: but whether herein we have done that good to the city that we intended, we know not, for we have omitted many more of no small number of great rarity and consequence too long here to be recited.

See before pag. 125. *Breve de lisis et barris pro duello fac.* Vid. rot. cart. 18 Februarii 11 H. 3. against the exaction of the lieutenant of the Tower of Kidelles, &c. 2 part of the Institutes Mag. Cart. cap. 23.

## The Court of the Justices assigned for the Government of the Jews.

### *Justiciarii ad Custodiam Judeorum assignati.*

**O**MNES Judei ubicunq; in regno sunt, sub tutela et defensione regis ligca debent esse, nec quilibet eorum alicui diviti se potest subdere sine regis licentia: Judei enim et omnia sua regis sunt. Quod si quispiam detinuerit eos, vel pecuniam eorum, perquirat rex, si vult, tantum suum proprium.

Inter leges Edwardi, Lomb. cap. 29. fo. 133. b.

These justices did hold a court concerning the custody and government of the Jewes, as (amongst many other records) it appeareth rot. pat. an. 41 H. 3. m. 4. nu. 6. And that then Philip Basset, Philip Luvell, Henry de Bathon, and Simon Passel, &c. were then justices *ad custodiam Judeorum assignati*. But when the Jewes were utterly (as hath been said) banished, this court ceased, which was in 18 E. 1. anno domini 1293. See the second part of the Institutes, stat. *de Judaismo*, rot. claus. 18 E. 1. memb. 6. See Tho. Walf. in *hypodigmate Neustrie* 18 E. 1.

Rot. pat. 41 H. 3. m. 4. nu. 6.

## The Courts of Stainclife and Frendles Wapentakes.

**B**ECAUSE I find mention made in acts of parliament of the courts of Stainclife and Frendles Wapentakes, &c. I thought good to refer you to those acts.

3 H. 5. cap. 2.  
9 H. 6. cap. 19.

## C A P. LI.

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### Of the City of Westminster.

**I**T hath his name of the monastery, which minster signifieth, and it is called Westminster in respect of the Eastminster not far from the Tower of London.

This Westminster Sebert the first king of the East Saxons that was christened, founded; and he founded also the university of Cambridge, as works and witnesses of his Christianity.

Sebert began his reign anno Domini 603.

But leaving these, and others of like nature, to others not lying properly in my way; let us turn our eye to such particular jurisdiction as within this city is exercised. For the better understanding whereof it is to be known, that within this city there are twelve se-

U 2

verall

This act was at the first but a probationer, but is continued to this day.

See before in the chapter of the High Court of Parliament.

Rot. parl. anno 50 E. 3. nu. 8.

Tempore E. 1. Vid. 2 R. 3. f. 10. a.

verall wards, out of which there are elected one burgesse and one assistant in every severall ward; and out of these twelve, two are elected yearly in the Thursday in the Easter week for chief burgesse to continue for one whole year following. To these burgesse authority is given by act of parliament in the 27 year of the reign of queen Eliz. (not printed) to hear, examine, determine, and punish according to the laws of the realm and lawfull customes of the city of London, matters of incontineney, common scolds, inmates, and common annoyances, and likewise to commit such persons as shall offend against the peace, and thereof to give knowledge within 24 hours to some justice of peace within the county of Midd.

One thing concerning this ancient monastery is observable, that after the high court of parliament was divided into two severall houses (whereof we have said somewhat in the chapter of the High Court of parliament) the accustomed place of that thrice worthy assembly of the knights, citizens, and burgesse of parliament (when the parliament was holden in Westminster) was in the chapter house of the abbot of Westminster, there to debate and consult *De arduis et urgentibus negotiis regni, et statum regni et ecclesie Anglicane concernentibus*, &c. And this continued untill the statute of 1 E. 6. c. 14. which gave to the king collidges, free chappels, chaunteries, and whereby the king enjoyed the ancient and beautifull free chappell of S. Stephens, founded by king Stephen, which had lands and revenues of the old yearly value, of 1085 l. 10 s. 5 d.) Since which time the chappell thereof hath served for the house of commons when parliaments have been holden at Westminster.

Radulphus de Ingham chief justice of England, (a very poor man being fined before him at 13 s. 4 d.) in another tearm, moved with pity caused the record to be rased and made 6 s. 8 d: for which he (for his fine) made the clock (to be heard into Westminster Hall) and the clockhouse in Westminster, which cost him 800, marks, and continueth unto this day, which sum was entred into the roll. And almost in the like case in the reign of queen Elizabeth, Sir Robert Catlyn chief justice of England would have had justice Southcote (one of his companions justice of the kings bench) to have altered a record, which the justice denved to doe, and said openly in court, that he meant not to build a clockhouse.

This monastery in anno 30 H. 8. was surrendred to the king, who erected thereof a dean and chapter. Anno 33 H. 8. it was raised to a bishoprick, and Thomas Thurlby made thereof the first and last bishop, &c. Queen Eliz. made it a colledge consisting of a dean, twelve prebends, a schoolmaster, an usher, 40. scholars, and 12 almshouses, and so it was named the collegiate church of Westminster.

37 H. 8. cap. 18.

In anno 37 H. 8. the kings mannor of Westminster was made an honor.



## C A P. LII.

## Of the City of Norwich, &amp;c.

**W**ITHIN this city there was in the reign of king Edward the Confessor 1300. citizens, and then this city paid to the king 20 l. and to the earl 10 l. And besides these 20 s. and four prebendaries and six sextaries of hony, a bear, and six dogs to bait him. Now it yeeldeth 70 l. to the king, and a 100 s. to the queen, and a palfrey, and twenty pound of white rent to the earl, &c.

In the book of Domesday made by William the Conqueror.

The foundation of the incorporation of this city is very ancient, for in ancient manuscripts it appeareth that *in tempore Steph. regis de nova fundata et ut villa populata communitas facta*.

This city is highly commended for many things, for it is truly said of it, *Quod suis opibus, frequentia, ædificiorum elegantia, templorum pulchritudine et numero, (paræcias enim plus minus 30. complectitur) civium sedulitate, in principem fide, in \* exteris humanitate, inter celeberrimas Britannicæ urbes merito connumeranda, &c. Mœnibus validis (in quibus crebræ dispositæ turres, et undecim portæ) undique obseptæ, nisi ad ortum qua flumen (cum sinuoso flexu 4. pontibus servium septentrionalem urbis partem interluerit) profundo alveo et precipitiis ripis defendit.* \* It is preferred before all the cities in England except London. It hath above 30 parishes, and it is as large within the wals as London. It had within it and the liberties six religious houses and one hospitall.

Camden in Britannia.

\* Urbanitas ab urbe.

\* Alex. Nevill.

For the better establishing of the ecclesiasticall jurisdiction belonging to the bishop of Norwich (of which jurisdiction in generall we are to treat hereafter) it shall not be impertinent to set down the true state of this bishoprick.

In anno 27 H. 8. and before William Rugge doctor of divinity of the university of Cambridge was abbot of the <sup>a</sup> monastery of S. Bennets de Hulmo in the county of Norf. and the bishoprick of Norwich becomming void by the death of Richard Nick commonly called the blind bishop, the king nominated the said abbot to be bishop of Norwich. And afterwards the 4. of Febr. anno 27 H. 8.

<sup>a</sup> This monastery was founded by king Kanute and increased by Edw. the Confessor, and the monastery made of that strength as it seemed to be potius castrum quam claustrum. It was of the order of S. Benedict of black monks.

<sup>b</sup> Statut. de 27 H. 8. concerning the bishoprick of Norwich.

<sup>c</sup> The like is not in England.

<sup>b</sup> It was (*amongst other things*) enacted by authority of parliament, that such person as should be elected and consecrated bishop of the said sea should have and enjoy to him and his successors bishops of the said bishoprick of Norwich united and knit to the said bishoprick the monastery of S. Bennets, and all and singular mannors, lands, tenements, &c. belonging to the said monastery, &c. And that the person which should be named bishop of Norwich and his successors bishops of the same bishoprick from thenceforth <sup>c</sup> should be abbots of the monastery of S. Bennets, and have the dignities of the said ab-

bacy

bacy united, incorporated, and knit to the sea of the said bishop, &c.

See before in the chart. of the royall Franchise of Ely, that king H. 1. of the monastery of Ely made a bishop, but king H. 1. had therein one end, and king H. 8. another.

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But peruse the statute, and you shall find that doctor Rugge had *beneficium viscatum*, for the bishoprick lost much more by that act then it gained. And afterwards this doctor was elected and consecrated bishop of Norwich: and being patron, in the right of his bishoprick, of the hospitall of S. Giles in Norwich, he as patron, and Nich. Shaxton master of the said hospitall by their deed acknowledged and inrolled bearing date 6 *Martii, anno 1 E. 6.* did give and grant to king E. 6. his heirs and successors the said hospitall and the possessions and hereditaments belonging to the same, and all other their possessions and hereditaments in the said county of Norf. certain concealors (*templorum helluones*) by pretext and colour of the said generall words passed the possessions and hereditaments of the said monastery of S. Bennets de Hulmo in a book of concealments under certain obscure words (which appear in the act of parliament hereafter mentioned) by letters patents of concealment bearing date the 2 day of August, *anno 27 Eliz.* and William Redmain doctor of divinity, and bishop of Norwich caused one Hamond a friend of his to take an estate to him and his heirs of and from the said concealors of all or the greatest part of the said monastery: which 1 (being then her majesties attorny generall) understanding, and utterly misliking the proceeding herein, conferred with the said bishop about the same, and in the end he was brought to agree, that an act of parliament should passe for the establishment of the said bishoprick and of the possessions thereof, which act (wherewith I was well acquainted) passed at the parliament holden in *anno 39 El.* and is in print, which you may read at large, wherein you shall observe the fraud and falshood of the concealors.

39 El. cap. 22.

Lib. 3. fo. 73.  
the case of the  
dean and chap-  
ter of Norwich.

What attempts these concealors (gracelesse and wicked men) made to the subversion of the deanery and chapter of the cathedrall church of Norwich, you may read in the third book of my Reports, fo. 73. *Sed (favente Deo et auspice Christo) isti helluones non prævaluerunt.* Which I have the rather remembered both for the establishment of the said bishoprick, as for the repose and quiet of very many fermors, officers, and other persons claiming interests in the said possessions in my native country.

21 Jac. cap. 2.

And if any question shall hereafter be made either concerning any of the possessions of this bishoprick, or any other, or of any dean and chapter, or of the colledges in either of the universities, &c. by any concealor or other; their possessions are established by the act of parliament of 21 Jac. cap. 2. intituled, An act for the generall quiet of the subject against all pretence of concealment whatsoever.

For the courts of justice within this city (which is our principall aime) we have treated of the like before in the city of London. To this we will add an act of parliament concerning the jurisdiction of this city (whereof we have not found the like that we remember in any other) which in effect is as followeth.

Par. 2 R. 2.  
nu. 39. not in  
print.

It is enacted for the citizens of Norwich, that if their customs and usages heretofore used or hereafter to be used, be difficult

difficult or defective in part or in all, or that the same need any due amendment for any matter arising, whereof remedy was not aforetime had, that then the \* bailiffs and 24. citizens of the same city, so therefore yearly to be chosen, or the greater part of them, shall from henceforth have power to ordain and provide from time to time such remedies which are most agreeable to faith and reason, and for the most profit, the good and peaceable government of the same town, and of strangers thereto repairing, as to them shall seem best, so as such ordinances be profitable for the king and his people.

\* It hath now a mayor and 24. aldermen. Vide Rot. Cart. anno 4 H. 4.

It is a county of itself, and hath two sheriffs and large liberties without the wals. See the statute of 33 H. 6. cap. 7. how many attornies should be in this city. See before in the chapter of the high court of parliament concerning new draperies, &c. and worsteds, &c. made in this city. See rot. parl. 18 E. 1. fo. 5. concerning the ancient liberties of this city.

33 H. 6. cap. 7.

\* *Burgi et civitates fundat' et edificat' sunt ad tuitionem gentium, et populorum regni, et ideo observari debent cum omni libertate, integritate et ratione.*

\* Int. leges Wil. Conq. Lam. 125. Int. Leges Erhelstani et Canuti fo. 62. & 106. Oppida instaurantur, &c.

\* 14 H. 4. It is enacted, that the merchants and artificers of worsteds in Norf. may sell their single worsteds to any place or persons being of the kings amity notwithstanding any inhibition or liberty to the contrary.

\* Par. 14. H. 4. nu. 47. not in print.

He that desires the tearms, true makings, and quantities of worsteds: let him read the statute of 11 H. 4. rot. parl. nu. 48.

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Trin. 13 E. 1. in banco, rot. 76. *Inspeimus cart. H. 3. Civibus Norwic. de libertatibus concess'*.

Rot. par. 11 H. 4. nu. 48. Trin. 13 E. 1. in banco rot. 76.

The beautifull cathedrall or mother church of Norwich was begun to be built by Herbert bishop of Norwich, anno 9 Willielmi Ruf.

The bishops of this see had the first fruits of ecclesiasticall livings within their diocesse before the statute of 26 H. 8. ca. 3. which no bishop, or archbishop of this realm had.

19 E. 3. jurisd. 22. 26 H. 8. cap. 3.

It hath also a famous river abounding with fish, especially the pearch.

The strong and noble castle of Norwich called Blanchflower invironed about with the city, but no part thereof but of the county of Norf. was not (as some suppose) built by Bigot earl of Norf. which some upon view thereof have conjectured, for that the arms of earl Bigot are graven on the wals thereof. For we find a charter of king Stephen in these words. *Stephanus rex Anglorum archiepiscopis, episcopis, abbat', justic', comitibus, baronibus, vicecomitibus, ministris, et omnibus fidelibus suis Angliæ, salutem. Sciatis me dedisse in feodo et hereditate \* Willielmo comiti Warren' filio meo castellum Norwici cum toto burgo, &c.*

\* This William married Isabel daughter and heir of William earl Warren, and in her right was earl Warren. Vid. Mat. Par. pag. 92.

And Rafe de Waet earl of Norwich defended this castle of Norwich against William the Conqueror, who was driven out of England, and travelled with his wife to Jerusalem.

But true it is that earl Bigot being after owner thereof, did both

repair and enlarge the same, and set his arms upon the wals thereof. And so much for the antiquity (a great ornament of this city) of this castle, which now for want of reparation is ready to fall.

To conclude, this famous and free city is justly to be commended for profession of true religion, their loialty to their prince in all times of tumult, the good government of themselves, and the exercise of works of charity.

This is the chief city of my native country.

*Nescio qua natale solum dulcedine cunctos  
Ducit, et immemores non finit esse sui.*

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C A P LIII.

## The Court of the Tourne.

2. Part of the  
Inst. Mag. Cart.  
ca. 35.  
12 H. 7. 18. Fi-  
neux. Rot. pat.  
2 R. 2. nu. 5.

**W**E have spoken of this court (being a court of record) in the Second part of the Institutes, Mag. Cart. cap. 35. whereunto we will adde a charter of William the Conqueror, which we find inrolled 2 R. 2. nu. 5. *pro decano et capitulo ecclesie beate Mariæ de Lincoln'.*

\* This Remigius was the first bishop of Lincoln; the sea being removed from Dorchester to Lincoln.

*Willielmus gratia Dei rex Anglorum, comitibus, vicecomitibus, et omnibus francigenis et qui in episcopatu \* Remigii episcopi terras habent, salutem. Sciatis vos omnes, et ceteri mei fideles qui in Anglia manent, quod episcopales leges quæ non bene, nec secundum sanctorum canonum præcepta usque ad mea tempora in regno Anglorum fuerunt, communi concilio, et concilio archiepiscoporum meorum et cæterorum episcoporum et abbatum et omnium principum regni mei emendandas judicavi. Propterea mando, et regia autoritate præcipio, ut nullus episcopus vel archidiaconus de legibus episcopalibus amplius in \* hundredto placita teneant, nec causam quæ ad regimen animarum pertinet ad iudicium sæcularium hominum adducant, sed quicumque secundum episcopales leges de quacunque causa vel culpa interpellatus fuerit, ad locum quem ad hoc episcopus elegerit, et nominaverit, veniat, ibique de causa sua respondeat, et non secundum \* hundredtum, sed secundum canones et episcopales leges rectum deo et episcopo suo faciat. Si vero aliquis per superbiam elatus ad iustitiam episcopalem venire non voluerit, vocetur semel, et secundo. et tertio; quod si nec sic ad emendationem venerit, excommunicetur: et, si opus fuerit, ad hoc vindicand', fortitudo, et iustitia regis vel vicecomitis adhibeatur: ille autem qui vocatus ad iustitiam episcopi venire noluit, pro unaquaque vocatione legem episcopalem emendabit: hoc etiam defendo, et mea autoritate interdico, ne ullus vicecom' aut præpositus, aut minister regis, nec aliquis laicus homo de legibus quæ ad episcopum pertinent se intromittat: nec aliquis laicus homo alium hominem sine iustitia episcopi ad iudicium adducat; iudicium vero in nullo loco portetur nisi in episcopali sede, aut in illo loco quem ad hoc episcopus constituerit.*

\* i. In turno.

\* This is not intended of the hundred court but that in those times the sheriff did hold his tourn per hundredo. See Mag. Cart cap. 35. and the exposition thereupon.

For the confirmation of this charter, see in the register of the bishop of London. *Willielmus Dei gratia rex Anglorum R. Baimardo, et S. de Magna Villa, P. de Vabines, cæterisque meis fidelibus de Essex et de Hertfordshire, et de Middlesex, salutem. Sciatis vos omnes,*

*Et c.*

*Ec.* Tenor istius cartæ est in Anglico de verbo in verbum in eadem carta. *Consimilis carta ut ante ex libro cartarum archiepiscopi Cantuar'.* Against this charter it is objected. First, the time of the enrolling thereof, viz. in 2 R. 2. being never heard of before. Secondly, out of the red book, *inter leges H. 1. cap. 8. de generalibus placitis comitatum*, i. as well of the tourn, as of the county court.

<sup>a</sup> *Sicut antiqua fuerit institutione firmatum, salutari regis imperio, vera nuper est* <sup>b</sup> *recordatione firmatum, generalia comitatum placita certis locis et vicibus et definito tempore per singulas Angliæ provincias convenire debere, nec ullis ultra saigationibus agitari, nisi propria regis necessitas, vel commune regni commodum sæpius adjiciant. Interfuit autem episcopi, comites, vicedomini, vicarii, centenarii, aldermanni, præfeli, præpositi, barones, vavasores, tungreivi et cæteri terrarum domini diligenter intendentes ne malorum impunitas, aut gravionum pravitas, vel judicum subversio solita miseros laceratione confiniant. Agantur itaque primo debita veræ* <sup>a</sup> *Christianitatis jura; secundo* <sup>b</sup> *regis placita; postremo* <sup>c</sup> *causæ singulorum dignis satisfactionibus expleantur.* Whereupon they conclude, that ecclesiasticall causes were handled in the tourn in the reign of H. 1. long after the said supposed charter. And certain it is that the bishops consistories were erected, and causes ecclesiasticall removed from the tourn to the consistory after the making of the said red book: *ideo penes lectorem fit judicium.*

In the same chapter of the said Red Book it is further said, *Et quoscunque* <sup>d</sup> *shiresgemote discordantes inveniet, vel amore congreget, vel sequestret judicio: debet enim shiresgemot* <sup>e</sup> *bis, hundreda et wapentachia* <sup>f</sup> *duodecies in anno congregari.*

The tourn is a court of record holden before the sherif: the ancient institution thereof was before Magna Carta <sup>g</sup> to hear and determine all felonies (death of man excepted) and common nufances. <sup>h</sup> See the statute of Magna Carta, cap. 17. and the exposition upon the same in the second part of the Institutes.

The stile of this court is *curia visus franc. domini regis apud B. coram vicecomite in turno suo, Ec.* and not *turnum vicecom' tent'*, *Ec.* for *turnum est nisi perambulatio.* The articles inquirable in the tourn are known and need not be here rehearsed.

<sup>a</sup> Lib. rubeus in custodia remem. regis composuit tempore H. 1. cap. 8. Read the whole chapter. Vide ib. cap. 12. <sup>b</sup> Int. leges Edw. Lamb. 135. Vid. stat. de Marlbr. cap. 10.

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<sup>a</sup> Ecclesiasticall causes. <sup>b</sup> Pleas of the crown in the tourn. <sup>c</sup> Private causes in the county court.

<sup>d</sup> Turnum as it is here taken.

<sup>e</sup> And so is the turn holden to this day. Mag. Cart. 35.

<sup>f</sup> And so is the county court holden at this day. Mag. Cart. 35. 2 E. 6. 25. § 22 E. 4. 22.

<sup>h</sup> 2. Part of the Inst. Mag. Cart. cap. 17.

## C A P. LIV.

## The Court of the Leet or View of Frankpledge.

See Mich. 7 E. 1.  
rot. 9 North-  
ampt. abb. & de  
Burgo. See the  
2. part of the  
Inst. Mag. Cart.  
cap. 35.  
Int' leges Edw.  
cap. 35.

**T**HIS is a court of record, and at the first derived and taken out of the tourn, and is holden before the steward, and he is judge thereof. Of the antiquity and jurisdiction of this court, you shall read in the second part of the Institutes, Magna Carta cap. 35. And what the ancient jurisdiction of the leet was, you shall also read in the second part of the Institutes, Mag. Carta cap. 17.

Lep, leth, or leet is a Saxon word, and commeth of the verb *gelaþian* or *geleþian* (*g* being added *euphoniae gratia*) i. *convenire*, to assemble together, *unde conventus*.

If a common nuisance, &c. done within the jurisdiction of the leet be not presented in the leet, the sheriff in his tourn cannot enquire of it, for that which is within the precinct of the leet is exempt from the tourn, otherwise there might be a double charge; but in that case a writ may be directed to the sheriff to enquire thereof, &c. against the opinion of Fineux in 12 H. 7. if his opinion be not misreported. And by the book of 29 E. 3. this writ is not taken away by the statute of 28 E. 3. cap. 9. made the year before, which was then fresh in the judges memory.

See the second part of the Institutes, in the exposition upon the statute of 31 El. cap. 7. concerning cottages and inmates, speciall matter concerning the jurisdiction of the leet. See for the jurisdiction of the leet the statute of 2 E. 6. cap. 10. concerning making of malt.

The commons petitioned that excessive fines set on the kings subjects by such as have leets may be redressed, whereunto the king answered, The king would the same.

See a notable case concerning the jurisdiction of the leet and court baron, Mich. 18 E. 1 in banco rot. 156. Norf. *Et ibi tenetur quod clericus ad letam venire non habet necesse, nisi ejus presentia ex certis causis et considerationibus sit necessaria.*

This court of the leet may enquire of corrupt victuall as a common nuisance, whereof some have doubted, both for that it is omitted in the statute of the leet, and of the weak authority of the book of 9 H. 6. where Martyn saith, that it is ordained that none should sell corrupt victuall. And Cottifmore held opinion that it is *actio popularis*, whereupon it is collected, that the consuance thereof belongs to the leet. <sup>a</sup> And Martyn and Neal 11 H. 4. agreeing with him said truly, for by the <sup>b</sup> statute of 51 H. 3. *Stat. pillor' et tumbrel', et assis' panis et cervis*, and by the statute made in the reign of E. 1. intituled, *Stat. de piscoribus et brassiatoribus et aliis vitellariis*, it is ordained that none shall sell corrupt victualls. And by the <sup>c</sup> statute of 14 E. 3. it appeareth that this act was ordained in the time of his grandfather, which was E. 1.

Britton

29 E. 3. 21.  
Wilby. 12 H. 7.  
18.

Rot. par. 17 E. 3.  
nu. 38.

Mich. 18 E. 1.  
in banco rot.  
156. Norf.

Stat. de visu  
Franc. 18 E. 2.  
9 H. 6. 53. b.

<sup>a</sup> Vid. 11 E. 4.  
6. b. p. r Neal  
and B. an.  
1 R. 3. 1. a.  
7 H. 4. 14. 15.  
Brook tit.

Leet. r.  
<sup>b</sup> In the stat. at  
large p. 17.  
Mag Carta parte  
2. 2. 24.  
<sup>c</sup> 14 E. 3.  
cap. 12.

<sup>d</sup> Britton who wrote after the statute of 51 H. 3. and following the same saith thus; *Puis soit inquis de ceux queux achatent per un manner de mesure et vendent per meinder mesure faulx, et ceux sont punies come vendors d's vmes. et auxi ceux que seront atteints de faulx aunes, et faulx poyz, et auxi les \* macegrievies, et les gents que de usage vendent a tres assants mauvasse viands corruptus et suacrus, et autrement perilous a la sauinty de home. Et les forstalliers, &c. Et fo. 33. he doth conclude the like passage with these words, Enconter le forme de nous statutes.*

<sup>d</sup> Britton, f. 77. a.

\* *Macellarius*, a butcher or victualler.

*Est etiam atrox injuria quæ perpetuam inducit infamiam cum pœna pillorali et turibrelli, quæ quandoque fit per pistores, brasiatores, et alios qui falsis ponderibus utuntur et mensuris, quæ etiam fit per cibaria corrupta, et semicella vendentes, &c.* But none of these statutes gave the conulance to survey and correct victuallers for corrupt victuall to our court of the leet, therefore further authority therein is desired. Wherein we will produce that which is *omni exceptione majus*, and that is by a resolution in parliament.

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Fleta, lib. 2. ca. 1. §. Et etiam. Et cap. 11. §. Item si dominus.

By the statute of 12 E. 4. cap. 8. it is rehearsed, That mayors, bailiffs, and other like governors of every city, borough, and town of substance within this realm of England for the most part have courts of leets and views of frankpledge holden yearly within the same, and surveying of all victuallers there, and correction and punishment of the offenders, and breakers of the assise of the same, to be presented and amerced if default be found in the said courts, &c. And where divers persons intending their singular avail and profit, and to oppress the said victuallers, and to enter and break the liberty of divers places in this realm having franchises (*that is, leets aforementioned*) and surveying of all victuallers, and correction of the same, had purchased letters patents of king E. 4. to be surveyors and correctors of all such victuallers within divers cities, boroughs and other places, of ale, <sup>a</sup> beere, wine, and other victuals, &c. in <sup>b</sup> wrongfull derogation of the liberties and franchises of the said cities, boroughs, and other places, &c. *as by the said act is rehearsed.* It is established and ordained, that all letters patents granted by that king, or after to be obtained of any office of searching or surveying of wine, ale, beer, or other victual, shall be utterly void and of none effect. And that no person other then such governors before rehearsed, &c. (*that is, in respect of their before rehearsed leets*) shall use or exercise any such office, &c. And besides the declaration of the same to be void and against law, a penalty of 40 l. is inflicted upon such as shall exercise any such office so obtained or after to be obtained. An excellent act of parliament both for the declaration of the law in the case aforesaid, as also that the king by his letters patents cannot make any new office for the surveying, correction, &c. of any thing which belong to the jurisdiction and conulance of any former court which by consequent hath a large extent, and therefore we have cited the same the more at large.

12 E. 4. ca. 8.

Nota.

<sup>a</sup> These words follow after in the act, and nota by this it appeareth, that beer is not of such late time as some suppose. See also Rot. par. anno 4 H. 4. nu. 53. Beer and ale mentioned to be then in Calice. Beer is a Saxon word *bier*, and beer is within the word *cervisa* in the ancient statutes. For it is but as the putting of a new button to an old coat, viz. that these letters

hops to malt and water, to make it continue the longer. <sup>b</sup> Hereby it appeareth that those letters patents were against law, and that this is a statute declaratory with addition of a penalty.

Some doe hold that it is within the statute of 18 E. 2. some say as an incident to the assise of bread and ale, and others hold that by that

that act power is given to the lord of the leet to enquire of that assise of bread and ale, that is to say, of the statute intituled, The Assise of Bread and Ale, which is the said act of 51 H. 3. in which act sellers of corrupt victuals are to be punished. And herewith (say they) agreeth the book in 1 R. 3. fo. 1. that of corrupt victuall the leet had jurisdiction by the statute, howsoever that is conceived, it is the leet that hath consufance thereof.

Pafch. 18 E. 2.  
Coram rege  
Rot. 76. Southt.

And albeit malt, *braſium*, be no victuall of it ſelf, as it is adjudged in anno 18 E. 2. *Quod venditio braſii non eſt venditio victualium, nec debet puniri ſicut venditio panis, vini et cerviſiæ, et hujusmodi contra formam ſtatut*. Yet becauſe it is the principall ingredient of beer, and ſerveth to victuall the kings houſhold, &c. (as it is ſaid in the ſtatute of 17 R. 2.) and tendeth, if it be corrupt and not wholeſome, to the great hinderance of health and increaſe of diſeaſes, we will examine how the law ſtandeth therein at this day.

17 R. 2. cap. 4.

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Mealt or Malt is a Saxon word. In Latin we call it *braſium* derived of *braſſo*, i. *ebullio, ferveo*. In the ancient ſtatutes *braſiator* is taken for a brewer. In Fleta, *ubi ſupra*, *braſatrix*: in Britton, *ubi ſupra*, *braceresſes*, for brewers. In Latin we uſe the word *pandaxator* or *potifex*: and *braſiator* at this day is uſed for a maltmaker or maſter.

2 E. 6. cap. 10.

Malt is made of barley, and cannot be well and perfectly made, unleſſe it hath the time of 12 dayes in the making thereof, and both in the making thereof in the ſat, floor, ſteeping, and ſufficient drying of the ſaid malt 3 weeks at the leaſt, except it be in the moneths of June, July, and Auguſt, and in thoſe moneths by the ſpace of 17 dayes at the leaſt.

\* Gurguliones.

17 R. 2. cap. 4.

The maltmaker ought not ſlackly and deceitfully dry the malt, to the intent to have an inordinate increaſe thereof by ſwelling of the ſame, which being not ſufficiently dried, within a ſhort time will be muſty and full of \* wivels.

No perſon ought to put to ſale any malt which ſhall not be well and ſufficiently troden, rubbed, and well fanned, whereby there may be conveniently fanned out of one quarter thereof half a peck of duſt, or more.

2 E. 6. cap. 10.

No perſon ſhall mingle any malt not being well and ſufficiently made, or being made of mow-burnt or ſpiced barley, with other good malt, and after put the ſame to ſale. All theſe be *mala in ſe*, and puniſhable by the common law.

2 E. 6. cap. 10.

And this ſtatute of 2 E. 6. hath added a penalty, if the ſuit be brought upon this ſtatute. And if the brewer put to ſale any beer, which he hath brewed with unlawfull (as all is unlawfull that have not the qualities foreſaid) and unwholeſome malt, he may be preſented for the ſame in the leet, &c. as ſelling of corrupt and unwholeſome victuall. And by this ſtatute power is given that the juſtices of peace in every of their ſeſſions, and alſo the ſteward in every leet ſhall hear and determine, as well by preſentment of 12 men, as by accusation or information of two honeſt witneſſes of, for, and upon all and every the offences and forfeitures in that act, &c. So as the juſtices of peace or ſtewards in leets, may either proceed at the common law or upon this ſtatute. It is further provided by this act, that the bailiffs and conſtables of every borough, and market town or other town where malt ſhall be made or put to ſell, ſhall from time to time ſearch and ſurvey the ſame; and if the ſame  
be



be found to be evill made or mingled with evill malt, they by the advice of one justice of peace shall cause the same to be sold at such reasonable price, and under the common price in the market, as to his discretion shall seem expedient. This act extends not to the making of any malt for a mans own provision for his own house or family. And the offences against this act are to be presented within a year.

This act of 2 E. 6. cap. 10. is continued, and yet standeth in force. 27 Eliz. cap. 4. 1 Jac. cap. 25, &c. 4 Car. cap. 4.

That which hath been said (*de malis in se*) of malt, may also be applied to hops another ingredient in beer, and punishable by the common law. But against divers and many falsehoods practised in packing of foreign hops, for that the subjects of the realm have been by reason thereof of late years abused and deceived unto the value of 20 thousand pounds yearly at the least (for that in sacks of foreign hops there is not found one third part to be good and clean hops, the rest being dross and soile,) a good law is made anno 1 Jac. and every person offending therein shall forfeit the same hops so brought into the realm. And it is further enacted by the same act, that if any brewer of beer or ale shall imploy and spend any hops unclean, corrupt, or mixt with any powder, dust, dross, sand, or any other soile whatsoever, he shall forfeit the value of those hops so imployed, to be recovered, &c. in any of the kings courts of record.

1 Jac. cap. 18.

The reason wherefore these courts of the tourn and leet are courts of record, and not the courts of the county, of the hundred, and of the court baron (whereof we shall next in order treat) is, for that the tourn and the leet are instituted for the common-weal, as for conservation of the kings peace, and punishment of common nufances, &c. And for conservation of the peace, the sheriffe in the tourn, and the steward in the leet may take recognisances for keeping of the peace. But the said inferior courts of the county, hundred, and the court baron have jurisdiction of private causes under the value of 40s. between party and party.

F. N. B. 32.

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- - - *Fuit hæc sapientia quondam  
Publica privatis secernere, sacra profanis.*

And forasmuch as unclean, corrupted, and mingled spices and drugs be so unwholesome and hurtfull, as they tend to the jeopardy of mans body, we will hereunto adde the exposition of the statute of 1 Jac. cap. 19. the penalty of spices not garbled.

Whereas heretofore great deceits and abuses have been committed in uttering, selling, and putting to sale. sundry sorts of uncleane, corrupt and mingled spices, &c. garbleable: to the jeopardy of his majesties person, &c.

*Garbleable.*] To garble, signifieth in our legall understanding, to sever and divide the good and sufficient from the bad and insufficient; and extendeth not only to spices and drugs mentioned in our statute, but to other wares and merchandizes. As for example. By the statute of 1 R. 3. it is provided that no bowstaves shall be sold ungarbled, &c. that is, untill the good and sufficient be severed and divided from the bad and insufficient: and this garbling  
of

1 R. 3. cap. 11.

12 E. 4. cap. 2. the statute appointeth who shall garble them.

of bows hath reference to the statute of 12 E. 4. cap. 2. where garbling of bows is well expounded, that is, that the bowstaves be searched and surveyed, &c. and that such as be not good and sufficient be marked, &c. Some think that it is derived from the French verb *garber*, to make fine, neat, clean, &c. Others fetch it from *cribler* and that of *cribrare* to sift or sever the good from the bad, *unde cribrum, sic dictum, quia crebris pertusum est foraminibus ad res purgandas à pulvere et immundis (unde cribrarius, the garbler)* which well agreeth with our act.

A five and to sift do come from the Saxons, viz. *ryf, ryft*. This act consisteth of a preamble and a body. In the preamble it is rehearsed, That unclean, corrupt, and mingled spices, drugs, wares, and merchandizes garbleable do tend to the jeopardy of his majesties person, and of his subjects using the same in their meats, drinks, and other needfull occasions, &c.

The selling of such unclean, corrupt, and mingled spices and drugs used in meats, and drinks, is *malum in se*, and (as hath been said) in divers like cases punishable by the common law. But this act tendeth to the prevention of such deceits and abuses, by garbling and purifying of the same before they be sold, and by punishing if they be sold before they be garbled and purified.

All that is garbleable must be garbled and cleansed and sealed by the garbler before sale, upon pain of forfeiture of the same or value thereof, for which an action popular is given.

There be 32 kinds of spices and drugs by special name mentioned in this act, viz.

1 Pepper, 2 cloves, 3 mace, 4 nutmegs, 5 cinnamon, 6 ginger, 7 long-pepper, 8 worme-seeds, 9 comyn-seeds, 10 any-seeds, 11 colliander-seeds, 12 bynny-pepper, 13 almonds, 14 dates, 15 gals, 16 spiknard, 17 galingall, 18 turmeric, 19 fetwell, 20 cassia-fistula, 21 ginny-pepper, 22 seme, 23 barbaries, 24 rice, 25 erins, 26 slavef-acre, 27 calamus, 28 fennyrick, 29 cassia, 30 lignum, 31 graines, 32 caraway-seeds.

And in generall words, 1. Gums of all forts and kinds garbleable. 2. All other spices, drugs, wares, and merchandizes garbleable.

\* Nota, garbles signifie the dust or soile or uncleanesse that is severed.

Be it furthermore enacted, that if any of the said spices, drugs, wares, or other merchandizes be mixed with \* garbles, matter or thing whatsoever after the same be garbled, &c. That then the said spices, drugs, &c. or the value thereof shall be wholly forfeited.

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It shall and may be lawfull for the garbler of spices, &c. within the city of London and the liberties of the same, &c.

There hath been of ancient time an officer in London and the liberties of the same, called the garbler of spices, &c. who may make his deputies. And this act giveth him authority at all and every time and times \* in the day time to enter into any shops, warehouses, or seller, to view and search such drugs, spices, &c. and to garble and make clean the same.

\* This had been implied if it had not been expressed.

There is a proviso, that if any merchant or other person (other then merchants alien, or made or to be made denizen) shall bring any spice, drugs, or other merchandizes garbleable into this  
\*  
realme,

realme, and shall not offer the same to sale or sell the same within this realme, &c. and shall transport the same *bona fide* within eight moneths (accounting 28 dayes to the moneth) after his first landing, &c. shall not incurre any of the penalties of this act.

And this proviso was added in respect of a generall law made in 16 R. 2. that no manner of spicery, after that it be brought into the realm, shall be carried out of the same by alien or denisen, upon pain of forfeiture of the same. And this proviso extendeth only to the natural born subjects, and not to merchants alien, or made or to be made denizens.

And by the act of 16 R. 2. cap. 1. it is enacted, that aliens shall sell wines by whole vessels, and spicery by whole vessels and balls, and in no other manner.

The court of the leet may inquire of these offences following by authority of parliament.

*De visu franc.* Articles of the leet, to which we will adde

Concerning tracing and killing of hares.

Of hostlers making horsebread under the assise.

Of breeders of horses under stature.

Of artillery, butts, and bows.

Concerning shooting in crossebows and handguns.

Concerning victuallers, artificers, workmen, and labourers.

Against great prices and excesse of wines.

For amendment of high wayes, 2 & 3 Ph. and Mar. cap. 3.

5 Eliz. 13. 18 Eliz. 9.

Concerning musters.

For the preservation of the spawn and fry of fish.

Against taking of pheasants and partridges.

Against the erection of cottages and inmates. Hereof see before in this chapter.

By these and divers other acts of parliament the jurisdiction of this court of the leet hath been much increased, to the end that the subject might have remedy and justice at his own dores: and therefore it is requisite that the steward of this court be learned in the law, for *ignorantia judicis est calamitas innocentis*. See rot. parl. 51 E. 3. nu. 47. concerning taverners.

The style of this court of the leet is, *curia visus franc' pleg' tent' apud B. coram A. B. seneschallo, &c.*

*Francus plegius Saxonice fneborogh fneboroe, Anglice, freepledge.*

The constables or petty constables are chosen by the common law at the leet or torn, and are by the common law conservators of the peace, and may take surety of the peace by obligation, and are as ancient as torns or leets be, and began not about the beginning of E. 3. as some have supposed, vide the chapter of the hundred court for the cheif constable, and 9 E. 4. 36. 5 H. 7. 6. 11 H. 4. 12. 38 E. 3. 3.

But, to say once for all: repetition without addition is but losse of time, and altogether unprofitable.

16 R. 2. cap. 1.

18 E. 2. *De visu franc.*

14 H. 8. cap. 11.

32 H. 8. cap. 14.

32 H. 8. cap. 13.

33 H. 8. ca. 8, 9.

33 H. 8. cap. 6.

2 E. 6. cap. 15.

7 E. 7. cap. 5.

4 & 5 P. and M. c. 3.

1 Eliz. 17.

1 Jac. 25.

22 Eliz. cap. 10.

31 Eliz. cap. 7.

3 H. 4. 9. 102.

4. 17. 47 E.

bar. 202. 32 E.

3. ib. 259.

46 E. 3. ib. 214.

Vid. Rot. parl.

6 E. 3. post. nu.

6. Fitz. just. of

peace 172.

3 E. 3. cor. 288.

12 H. 7. 18.

Fineas.

## C A P. LV.

## The Court of the County.

See the second  
part of the Infl.  
Mag. Cart.  
ca. 35.

**T**HE style of this court is : *Buck. curia prima comitatus E. C. militis vicecomitis com' prædict' tenet' apud B. &c.* And the next court *curia secunda E. C. vicecom' com' prædict' &c.* And so forth.

See the statute of W. 2. cap. 36. against procurement of suits in this court.

Lib. 6. fo. 12.  
Jentlemans case.  
Stat. de Merton  
cap. 3. 44 E. 3.  
10. 2 part of the  
Infl. Mag. Cart.  
ca. 35.  
F. N. B. 119.  
g. h. 1b. 85. g.  
&c. & 138. b.  
&c.

This court is no court of record, and the suitors are the judges thereof. But in a *redisseison* the sheriffe is judge by the statute of Merton cap. 3. and a writ of error lyeth of his judgement.

Of the antiquity and jurisdiction of this court, you shall reade in the statute of Magna Carta, cap. 35. It holdeth no plea of any debt or damages to the value of 40 s. or above, nor of any trespassse done *vi et armis*, because a fine is due thereby to the king. But of debt, detinue, trespassse, and other actions personall above 40 s. the sheriffe may hold plea by force of a writ of *justicies* to him directed, for that is in nature of a commission to him, and is *vi-countel*, and not retornable. And he may before any county court award a summons to his bailie retornable within 2 or 3 dayes at his discretion, to summon the defendant by his goods, &c. to answer; and if the bailie retorne *nihil*, and the plaintiff removeth the same by a *pone* into the common place, that court shall not grant a *capias*, for the nature of the writ doth not warrant a *capias*, and the sheriffe could not grant the same, neither doth the writ of *justicies* alter the nature of the court of the county, for therein the sheriffe is not judge, but the suitors; and upon a judgement given therein a writ of false judgement doth lye, and not a writ of error. And in divers reall actions a writ of *justicies* doth lye as it appeareth in our books, as in *breve d'admesurement* of dower or pasture, in customs and services, *mesne, quod permittat, rationabilibus divisis, scilicet ad molend', de nuisans, de curia claudenda, annuity, &c.*

4 Eliz. Dier 222.  
15 Eliz. 317. a.

In the county court upon the exigent after 5 exact, the coroners give judgement, *Ideo utlagetur per judicium coronatorum*. But by this judgement no goods are forfeited before the outlary appear of record; and that is the reason, that no man can claim the goods of outlaws by prescription. Neither shall such an outlawry disable the party: but if upon a *certiorari* to the coroners they certifie the outlawry, this shall serve the king for the forfeiture of his goods, but shall not disable the party till the exigent be returned.

## C A P. LVI.

## The Court of the Hundred.

**T**HIS is no court of record, and the suitors be thereof judges. 2 Part of the  
Inst Mag. Cart.  
ca. 15. 12 H.  
7. 18.  
Of the antiquity and jurisdiction hereof vide Magna Carta, *ubi sup.* And as the leet was derived out of the tourn for the ease of the people, so this court of the hundred for the same cause was derived out of the court of the county, and is a court baron in his nature.

By the statute of 14 E. 3. hundreds (except such as then were of estate in fee) are rejoyned (as to the bailywick of the same) to the counties, and all grants made of the bailywick of hundreds since that statute are void, and the making of the bailiffs thereof belong to the sheriffe, for the better execution of justice and of his office. And so it was resolved by the lord treasurer Lea and all the barons of the exchequer, and so decreed in the exchequer chamber, between Fortescue of Buckinghamshire plaintife, and the sheriffe of the same defendant, term. 2 *Caroli regis*, the plaintife having of late divers hundreds granted to him for life in the county of Buck. reserving a rent, which the sheriffe disallowed and put in bailiffs of his own. And a commandment was given by the court to the attorney generall to avoid the like in other counties, for that they were against law, and belonged to the office of the sheriffe, and were occasions of delays and hindrances of justice. See the statute of W. 2. cap. 36. against procurement of suits in this court.

The style of this court is, *Curia E. C. militis hundredi sui de B. in com. Buck. tent', &c. Coram A. B. seneschallo ibidem.*

If there be a bailiffe of a liberty appointed by the lord of the liberty, or the sheriffs bailiffe of any hundred, wapentake, or tything, which have not lands or tenements sufficient in that county, there lyeth a writ *de balivo amovendo*, grounded upon the statute of 4 E. 3. cap. 9. There are constables of the hundred commonly called, chief constables, so named, because constables of towns are called petit constables. These constables of hundreds were created by the statute of 13 E. 1. and their authority limited to five things. 1. To make the view of armour. 2. To present before justices assigned such defaults as they do see in the country about armour. 3. To present defaults of suits of tourns. 4. Of highways. 5. To present all such as lodge strangers in uplandish towns, for whom they will not answer. Divers and many acts of parliament have given the chief constable and petty constable more authority and power then originally they had, which hath been well collected by others. For no officer that is constituted by act of parliament hath more authority then the act that creates him, or some subsequent act of parliament doth give him, for he cannot

IV. INST.

X

prescribe

9 E. 2. Linc'.  
stat. Unicum.  
4 E. 3. cap. 9.  
5 E. 3. cap. 4.  
Register 178.  
F. N. B. 164. b.

Stat. de 13 E. 1.  
De Winch. ca. 6.

Lambard, &c.  
See cap. Last for  
the petty Con-  
stable.

prescribe as the officer by the common law may. Nota 10 E. 4. fo. 17. the petit constable was an officer by the common law *per curiam*, Vid. 4 E. 3. cap. 3. 25 E. 3. ca. 2. See in the chapter of Hue and Cry in the third part of the Institutes hue and cry alwayes by the common law made by the constables of towns, &c.

Fleta lib. 1. cap. 2. § *De vic' et constabulariis*, &c.

[ 268 ]

## C A P. LVII.

## The Court Baron.

See the second  
part of the Inst.  
Mag. Cart. ca.  
25.

**T**HIS is a court incident to every mannor, and is not of record, and the suitors be thereof judges, although the plea be holden by force of a writ of right.

There is also a customary mannor whereof you may read in the first part of the Institutes sect. 73. verb. Court, &c.

And this was first instituted for the ease of the tenants, and for the ending of debts and damages under 40 s. at home, as it were at their own doores.

1 Part of the  
Inst. sect. 73.

See there for the antiquity and institution of this court, and the articles inquirable therein are usuall and well known.

The stile of the court is: *Curia baronis E. C. militis manerii sui prædicti* (having the mannors name written in the margent) *tent' tali die*, &c. *Coram A. B. seneschallo ibidem*.

In the reigne of E. 1. we have seen court rols having the mannors name in the margent. *Aula ibidem tent' tali die*, &c. the court of the mannor being so called, because it was holden in the hall of the mannor: as the court of the marshalsea is called *curia aulæ hospitii domini regis*, because of ancient time it was holden in the kings hall.

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## C A P. LVIII.

## The Court of ancient Demesne.

See the second  
part of the Inst.  
W. 2. c. 31.  
f. 456.

See 21 E. 3. 32.

Herein Fitz. in  
his N. B. fo. 16.  
ascribing it to

**T**HOSE mannors are called the ancient demesnes of the crowne which were in the hands of St. Edward the Confessor or William the Conquerour, and so expressed in the Book of Domesday made or begun in the 14 year of William the Conqueror; for so we finde it in *libro rubro scaccarii in custodia rememb' regis* fo. 47, *quod liber vocatus Domesday compositus fuit anno 14 Willielmi regis conquestoris*. And Radulphus Niger monk of Cogishall in Essex in *vita Willielmi conquestoris* hath these words, *Annis 1081, 1082, 1083, 1084, 1085, 1086, rex Willielmus describi fecit omnes barones et feudatos*

*feudatos milites, et quot carucatas terræ quifque habebat et redditus poffeffionem.* And anno Domini 1081, was the 14 year of William the Conqueror; and this great and excellent furvey laſted 6 years. And in *Lucubratiſ Okham* it is worthily called *Liber Judicatorius*, becauſe it is the only triall of ancient demefne; againſt which, for the uncontrollable truth and verity thereof, there can be taken no averment. And therefore in that reſpect like the doome and judgement at doomeſ-day.

*In Chent' archiepi. Cant' : Sandvoice in anno quo facta eſt hæc deſcriptio.* In doomeſ-day it ſelfe *lege librum*, for hereby it appeareth that it was made in the time of the Conquerour.

All thoſe that hold of theſe mannors in focage are tenants in ancient demefne: and they plowed the kings demefnes of his mannors, ſowed and harrowed the ſame, mowed and made his medows, and other ſuch ſervices of huſbandry for the ſuſtenance of the king and his honourable houſhold, maintenance of his ſtable and other like neceſſaries pertaining to the kings huſbandry. And to the end theſe tenants might the better apply themſelves to their labours for the profit of the king, they had ſix privileges. Firſt, that they ſhould not be impleaded for any their lands, &c. out of the ſaid mannor, but have juſtice adminiſtered to them at their own dore by the little writ of right cloſe directed to the bailiffs of the kings mannors, or to the lord of the mannor, if it be in the hands of a ſubject; and if they were impleaded out of the mannor, they may abate the writ. 2. They cannot be impannelled to appear at Weſtm. or elſewhere in any other court upon any inqueſt or triall of any cauſe, 3. They are free and quiet from all mannor of tols in fairs and markets for all things concerning huſbandry and ſuſtenance. 4. And of taxes and tallages by parliaments, unleſſe they be ſpecially named. 5. And of contribution to the expences of the knights of the parliament, &c. 6. If they be ſeverally diſtrained for other ſervices, they all for ſaving of charges may joyn in a writ of *monſtraverunt*, albeit they be ſeverall tenants.

Theſe privileges remain ſtill, although the mannor be come to the hands of ſubjects, and although their ſervice of the plough is for the moſt part altered and turned into money: *Avera in Domeſday Grentbrigſh Rexfordham, ſed tamen ſemper inveniat averam vel 8 d. in ſervicio regis*, that is, a dayes work of a ploughman, or 8 d.

This court is in nature of a court baron, wherein the ſuiters are judges, and is no court of record, for *brevia clauſa recordum non habent*.

*Nota*, the demandant in a writ of right cloſe cannot remove the plea out of the court of the lord for any cauſe, the tenant may remove the ſame for 7. cauſes, viz. 1. For that he holdeth it *ad communem legem*. As if a fine and recovery be levied or ſuffered thereof in the court of common pleas, this maketh the land frank fee ſo long as they ſtand in force. 2. If the land be not holden of the mannor being ancient demefne. 3. If the land be holden by knights ſervice, for as hath been ſaid, the ſervice of the plow and huſbandry is the cauſe of the privileged. 4. \* If there be no ſuitors, or but one ſuitor, for that the ſuitors are judges, and therefore the demandant muſt ſue at the common law, for that there is a failer of juſtice within the mannor. 5. If the tenant accept a releaſe of his lord of his ſeigniori, or the ſeigniori be otherwiſe extinguished

Edw. the Confeſſor, was deceived. Vid. the Preface to the third book of my Reports.

See the ſecond part of the Inſt. Artic. ſup. Cart. cap. 2.

The privilege of tenants in ancient demefne.

[ 270 ]

\* Regiſt. fo. 17 E. 3. 44. F. N. B. 13. c. 41 E. 3. 22. 49 E. 3. 7. 50 E. 3. 14.

† Domesday  
*sepe berciare*, or  
*berseare* of the  
 French word  
 [*berse*.]

<sup>a</sup> Vid. li. 5. fo.  
 105. Allens case.

44 E. 3. 38.

46 E. 3. 1.

49 E. 3. 7. 44 E.

3. 22. 21 E. 3.

10. 32. 40 E. 3.

4. 28 E. 3. 95.

34 E. 1. Anc'

demesne 98.

21 E. 4. Anc'

demesne 6.

22 Aff. 45.

F. N. B. 136. k.

30 E. 3. 12.

<sup>b</sup> 2 E. 2. Execut.

118. 15 E. 3.

ib. 62. 8 E. 2. ib.

136. 7 H. 4. 19.

Lib. 5. fo. 105.

19 H. 6. 64.

<sup>c</sup> 4 E. 2. Redif-

feisin 9.

<sup>d</sup> 7 H. 6. 35.

8 H. 6. 34.

32 H. 6. 35.

F. N. B. 189. g.

Lib. 5. fo. 105.

Allens case.

22 El. Dier 373.

7 H. 7. 11.

<sup>e</sup> 2 E. 4. 26.

8 E. 4. 6.

7 H. 4. 44.

8 H. 4. 24.

47 E. 3. 31.

<sup>f</sup> Tr. 16 E. 3.

Coram rege rot.

132. Eborum.

Tr. 13 E. 3.

Coram rege rot.

108 Glouc'

(finis) Tr. 3 H.

5. coram rege

rot. 9. Effex.

(finis) 21 E. 3.

20. 56. 21 Aff.

4. 26 E. 3. 63.

<sup>g</sup> Vid. Dier 22 El.

373.

<sup>h</sup> 3 E. 3. 9.

F. N. B. 19. d.

<sup>i</sup> Dier 22 El.

373. 27 Aff. 5.

44 E. 3. 38.

<sup>j</sup> 21 E. 3. 32.

tinguished by reason of the seison of the king or otherwise.  
 6. Of if the lord disseise his tenant and maketh a seoffment in fee. 7. If the lord grant the services of his tenant, and the tenant attorn.

† *Arabant et herciabant ad curiam domini*, i. they did plough, and harrow at the mannor of the lord.

<sup>a</sup> And this priviledge doth not extend to meer personall actions, as debt upon a lease, trespassse, *quare clausum fregit*, and the like, in which by common intendment the title of the freehold shall not come in debate. But otherwise it is of all reall actions, and also in actions of account, replevin, *ejectiue firmæ*, writ of mesne and the like, where by common intendment the realty shall come in question.

<sup>b</sup> Lands in ancient demesne are extendable upon a statute merchant, staple, elegit, and regularly all generall statutes extend to ancient demesne.

<sup>c</sup> But a redisseisin although they concern the realty, doth not lie in ancient demesne, because the proceeding in a redisseisin is appointed by the statutes to be made by the sherif, *assumptis secum coronatoribus comitatus*, &c. and in ancient demesne there are no coroners, <sup>d</sup> but otherwise it is in an action of wast.

And as the tenants in ancient demesne are carefull to preserve their priviledges, so the lord is as carefull to preserve his seigniory, and the tenure of this tenancy in ancient demesne. <sup>e</sup> And therefore if the tenant levy a fine, or suffer a recovery in the court of common pleas, &c. whereby for the time the land is become frankfee, the lord by a writ of deceit may not only restore himselfe to his true seigniory, but utterly avoid the fine, and restore his tenant against the recovery and his own fine to the land again in his former estate: and the reason thereof is, for that the recovery or fine was not suffered or levied before a competent judge in the right court, which ought to have been in the court of ancient demesne, <sup>f</sup> and therefore after the reverfall in the writ of disceit, it is now, *tanquam coram non iudice*, and the parties to the fine or recovery shall be fined and imprisoned *pro deceptione curiæ*.

<sup>g</sup> But if in a writ of right close in ancient demesne, the demandant maketh his protestation to sue in the nature of assise of mord', the tenant plead in abatement of the writ, and the writ by judgement is abated, the demandant brings a writ of false judgement wherein the writ is affirmed to be good, the court of common pleas shall proceed as the inferior court should have done, and although that judgment be given to recover the land in the common place, yet the land is not frankfee, but remains ancient demesne, because the beginning and foundation thereof was in ancient demesne.

<sup>h</sup> They may levy a fine in ancient demesne which by a custome it is said to be a bar of the estate taile; but certainly that will not hold.

<sup>i</sup> If the tenant remove the plea for the cause mentioned in the *recordare*, he may come into the kings court, and assign other cause, and twenty, if he hath, to maintain the jurisdiction of the kings court.



## C A P. LIX.

## The Court of the Coroner.

**T**HIS coroner *coronator* is so called, because he deals principally with pleas of the crown or matters concerning the crown: he is eligible by the freeholders of the county, and so continues to this day, as of ancient time the \* sheriff and <sup>a</sup> conservators of the peace were, because the people had a great interest and safety in the due execution of their offices, and so long as they were eligible, they continued, notwithstanding the demise of the king, as the coroner doth to this day. And of ancient time this office was of great estimation, for none could have it under the degree of a knight. <sup>b</sup> And it appeareth by the writ *de coronatore eligendo*, that he must have two properties, viz. sufficient knowledge, ability and diligence in execution of his office implied in these words, *et talem eligi facias, qui melius sciatis, et possit officio illi intendere*. <sup>c</sup> And the sheriff after he be elected, shall give unto him his oath duly to execute his office: and the court which he holdeth is a court of record. And commonly there are four in every county of England; but in the twelve shires in Wales, and in Cheshire there are but two.

Now concerning his jurisdiction, what it was before the statute of Magna Carta, and what he hath at this day, and of his antiquity, you may read in the second part of the Institutes, Mag. Cart. cap. 17. and the exposition upon the same. Merton cap. 3. Rediffesin, and W. 1. cap. 10. & 26. & Artic. super Cart. cap. 3. and the exposition of the same.

He is to take nothing for doing his office upon grievous forfeiture, but by 3 H. 7. he is to have upon an indictment found of murder 13 s. 4 d. of the goods of the murderer, and if he hath nothing of the amercement of the township for the escape, &c. See also the ancient authors, *Mirror des Justices*, cap. 1. §. *del officio del coroner*. Bracton lib. 3. fo. 121, 122, 123. Britton cap. 1. Fleta, lib. 1. ca. 18. *Statutum de anno 4 E. 1. de officio coronatoris*, and *Stanf. Pl. Coronæ* fol. 48, 49, 50.

And as the sheriff in his tourn may enquire of all felonies by the common law, saving of death of man, so the coroner can enquire of no felony but of the death of man, and that *super visum corporis*: he shall also enquire of the \* escape of the murderer, of treasure trove, deodands, and wrecks of the sea. But hereof you shall read more in the authorities before cited, and in the third part of the Institutes, in the title of Appeals.

He ought to deliver the inquisition of death taken by him at the next gaol-delivery, or certifie the same into the kings bench. \* Upon an inquisition found before him of murder or manslaughter he ought to put in writing the effect of the evidence given to the jury before him being materiall, and hath power to binde over

Regist. 172.  
F. N. B. 164.

\* Artic. sup.  
Cart. cap. 8.  
& 13. 12 R. 2.  
cap. 2. 14 E. 3.  
cap. 7.  
<sup>a</sup> Ro. pat. 5 E. 1.  
Lambard justice  
of peace. 16. b.  
<sup>b</sup> Regist. 177.  
F. N. B. 164.  
Stanf. 48. c.  
W. 1. cap. 10.  
<sup>c</sup> 14 E. 3. ca. 8.  
He must have  
sufficient land  
in the county  
whereof he may  
answer all people.  
F. N. B. 164.  
34 H. 8. 35 H.  
8. cap. 13.

3 H. 7. cap. 1.

Ver. Mag. Cart.  
4 E. 1. part. 1.  
119. Stanf. 49.  
c. f.  
35 H. 6. 23.

\* 3 H. 7. ca. 1.  
4 E. 1. ubi sup.

3 H. 7. ca. 1.

\* 1 & 2 Ph. and  
M. cap. 15.

witnesses to the next gaol-delivery in that county. See before in the chapter of the Courts in London.

To conclude, besides his judiciall place, he hath also authority ministeriall as a sherif, &c. viz. when there is just exception taken to the sherif, judiciall proceffe shall be awarded to the coroners for the execution of the kings writs, in which cases he is *locum tenens vicecomitis*, and in some speciall case the kings originall writ shall be immediately directed unto him.

Pl. Com.

Pasch. 9 E. 3.  
Coram rege rot.  
So. Ebor. Westm.

*In defectu vic' pro brevibus regis exequendis, videtur curiæ hic, quod aliis quam coronatoribus non est demandand'. Vide Vet. Mag. Cart. parte 2. fo. 19, 20. 21. Stat. Exoniæ. Fleta lib. 1. cap. 18.*

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C A P. LX.

Braçt. l. 5. f.  
334. a.

## The Court of *Pepoudres*, vulgarly Pipowders, *Curia Pedis pulverisati.*

THIS court is incident to every fair and market, as a court baron to a manor, and is derived of two Latin words, as is apparent, and so called, because that for contracts and injuries done concerning the fair or market, there shall be as speedy justice done for advancement of trade, and traffick, as the dust can fall from the foot, the proceeding there being *de hora in horam*. And therefore Braçton saith, *Item propterea qui celerem debent habere justitiam, sicut sunt mercatores quibus exhibetur justitia pepoudrous, &c.*

Braçt. l. 5. f.  
334. a.

6 H. 4. 3. 6 E.  
4. 3. b. 7 E. 4.  
23. Li. 6 fo. 12.  
a. & 20.

\* See before  
cap. Justices in  
Err. finitæ  
pag. 185.  
a Mich 42 & 43  
El. Coram rege,  
Lib. 10. fo. 61.  
En le case del  
Marshall Jones  
case.

This is a court of record to be holden before the steward of the court, and the jurisdiction thereof consisteth in four conclusions. 1. The contract or cause of action must be in the same time of the same fair or market, \* and not before or in a former. 2. It must be for some matter concerning the same fair or market, done, complained on, heard and determined. 3. It must be within the precinct of that fair or market. 4. The plaintiff must take an oath according to the statute of 17 E. 4. cap. 2. but that concludeth not the defendant. \* And all this was resolved, and adjudged in a writ of error brought by Hall against Jones, and the case was this: Jones being register of the bishop of Glouc', brought an action upon the case in a court of pipowders belonging to the market in Gloucester against Hall for these words; Master Jones and his clerks have by colour of his office extorted and gotten 300 l. *per annum*, by unlawfull means for many years together above their ordinary fees, for proving of testaments and granting administrations. And not guilty being pleaded, &c. it was tried and adjudged for the plaintiff: and divers errors were assigned, but the judgment was reversed for these errors following. 1. That this court of pipowders, being incident to the market, hath no jurisdiction but of such things as concern the market; and these slanderous words did in no sort concern the market: but if one slander the wares of any in the market; whereby he cannot make sale of them, an action doth lie in that court. 2. It appeared in the record that

that the words were spoken the day before the market; <sup>b</sup> and no action lyeth in that court but for an injury within the jurisdiction of the court done, complained on, heard and determined on the same market day, the proceeding being *de hora in horam*, and within the precinct of the market. And herewith agreeth 3 Mar. Dier 132. And it was resolved that this court was incident as well to a market as to a fair.

\* And there may be a court of pipowders by custome without fair or market, and a market without an owner. Another error was assigned, for that it is provided by the <sup>d</sup> statutes of 17 E. 4. and 1 R. 3. that no plea shall be holden in the court of pipowders, except the plaintiff or his atturay will make oath, that the contract or other deed contained in the declaration was done or committed within the time of the fair: but this error was disallowed by the court, for although this ought to be done, if the defendant will stand upon it, notwithstanding it shall not be made part of the record.

Vide Lib. Intrat. Raft. fo. 464. Pipowder 1, 2. fo. 18. Execution 3. fol. 158. Gaoler 1.

<sup>b</sup> 7 H. 6. 18, 19. Kelw. 23 H. 7. 99 Doct. and St. fo. 11. 3 Mar. Dier 132. int' Hall and Pinder. 45 E. 3. 1. 1 H. 4. 6. 13 H. 7. 19. b. 12 H. 7. 16, 17. <sup>c</sup> 13 E. 4. 8. b. 8 H. 7. 4. 5. 12 E. 4. 9. 19 H. 8. Br. incidents 34. 12 H. 6. 3. b. <sup>d</sup> 17 E. 4. c. 2. 1 R. 3. cap. 6.

## C A P. LXI.

[ 273 ]

## The Court of the Clerk of the Market.

**H**E is to this day called *clericus mercati hospitii regis*, for of ancient time there was a continual market kept at the court gate, where the king was better <sup>a</sup> served with viands for his household then by purveyors, the subject better used, and the king at far lesse charge in respect of the multitude of purveyors, &c. And the officer of the market of the kings household retaineth his name still, although the good end thereof according to the first institution ceaseth.

The <sup>b</sup> clerk of the market shall hold no plea but such as were holden in the reign of E. 1. And at this day there is no great need of him, for the justices of assise, the justices of oier and terminer, justices of peace, and the sherifs in their tourns, and the lords in their leets, may and do inquire of false weights and measures.

\* He doth keep a court and inquireth of weights and measures whether they be according to the kings standard or no, and for that purpose he maketh processe to sherifs and bailiffs to return pannels before him, &c. <sup>d</sup> And he is to deliver the estreats of those things which touch his office into the exchequer.

\* Of drink (that is to say) of wine, ale, and beer, and of corn and grain there ought to be but one measure: *una mensura vini, cervisie et bladi, et virgæ*, and of all other merchandize *per totum regnum*. *De ponderibus vero sicut de mensuris*.

Britton fo. 75. b. Fleta l. 2. c. 20. Rot. par. 50 E. 3. nu. 87. & 152. 13 R. 2. cap. 4. 32 H. 8. cap. 20. 17 H. 8. ca. 24. Lib. Int. Co. 445.

<sup>a</sup> See the 2 part of the Institutes, 28 E. 1. Artic. sup. Cart. ca. 2. and the exposition thereupon. <sup>b</sup> Rot. parl.

8 H. 4. nu. 82. <sup>c</sup> 16 R. 2. ca. 3. <sup>d</sup> Stat. de modo mittendi extract. in Scaccarium. Anno 16 E. 1. & 15 E. 2.

<sup>e</sup> Mag. Cart. c. 25. 27 E. 3. ca. 10. 25 E. 3. cap. 9. 24 E. 3. ca. 12. 13 R. 1. cap. 9. 15 R. 2. 4. 1 H. 5. cap. 10.

16 R. 2. cap. 3. 9 H. 5. cap. 8. 11 H. 7. cap. 4. 12 H. 7. cap. 5.

Weights.  
Trutina cam-  
pana. Ordinatio  
mensurar'  
31 E. 3.

But notwithstanding these statutes there be within this realm two kind of weights, the one called troy weight, which is commanded by the statute, and this derived from the grain or corn of barley from the midst of the ear and dry. 24 of these corns or grains make a penny weight, and 20 of these penny weights make an ounce, and 12 ounces make a pound troy. A grain contains 20 minutes, a minute contains 24 droits, a droit contains 24 blanks. 12 grains of fine gold make a caret, 24 carets of fine gold make an ounce, and 12 ounces make a pound of fine gold. By this troy weight are weighed according to law pearls, precious stones, gold and silver, bread, wheat, and such like.

There is another kinde of weight called *aver de pois*. A pound of this consisteth of 16 ounces, every ounce having 20 penny weight, every penny weight 21 grains, and  $\frac{2}{5}$  of a grain. It is called *aver de pois*, because thereby they have full measure. Hereby are weighed all physicall drugs, wax, pitch, tarre, iron, Steele, lead, hemp, flaxe, flesh, butter, cheefe, and divers other commodities, but specially every commodity subject to wast. There was another weight called the auncell or ansell weight, which was when the scales were fixed to a beam or staffe, and he that weighed by it, used his forefinger or hand in the midst, wherein was great deceit, and therefore is put out by the statute of 25 E. 3. cap. 9. 34 E. 3. cap. 5. 8 H. 6. cap. 5. It is derived *ab ansa*, which is the handle of the ballance, and this weight was guided by the hand.

Of measures.

Measures of troy be of three kinds, viz. of things that be dry, of liquor and of longitude, latitude and profundity.

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Ordinatio men-  
sur'. 31 E. 1.  
ubi sup.

Of dry things, 4 grains make a penny weight, 20 penny weight make an ounce, 12 ounces a pound or pinte (for a pound weight is a pinte in measure) two pounds or pintes make a quart, two quarts make a pottle, two pottles make a gallon, two gallons make a peck, four pecks make a bushell, four bushells make a combe, two combes make a quarter, six quarters make a wey, and ten quarters make a last.

Of liquor 12 ounces make a pound, 8 pound make a gallon of wine, 8 gallons of wine make a bushell of London, which is the 8 part of a quarter.

Of wine see the statutes of 1 R. 3. cap. 13. 28 H. 8. cap. 14.

See assisa panis  
et cervisie.  
51 H. 3.

Of ale and beer	<table border="0"> <tr> <td>the ferkine</td> <td>8</td> <td rowspan="4">} Gallons.</td> </tr> <tr> <td>the kilderkin</td> <td>16</td> </tr> <tr> <td>the barrell</td> <td>32</td> </tr> <tr> <td>the hogthead</td> <td>63</td> </tr> </table>	the ferkine	8	} Gallons.	the kilderkin	16	the barrell	32	the hogthead	63	<i>Et sic de cæteris.</i>
the ferkine	8	} Gallons.									
the kilderkin	16										
the barrell	32										
the hogthead	63										

Vet. Mag. Cart.  
fo. 31, 32.  
2 part.

See the statute *compositio de ponderibus*.

*Statut' de piscoribus*, Vet. Mag. Cart. 2 parte 23, 24.

*Statut' panis et cervisie*.

Ibidem 44. b.  
Compositio ul-  
narum et perti-  
carum Vet. Mag.  
Cart. 2 parte 45,  
46. Anno 31.  
E. 1. Statut' de  
tenis mensur'.

Of longitude, latitude, and profundity, 3 grains of barley in length make an inch, 12 inches make a foot, 3 foot make a yard, a yard and a quarter make an ell, 5 yards and a half make a perche, 40 perches in length make a furlong, 8 furlongs make a mile.

I may speake of the sellers by the weight of *aver de poys*, as Tacitus spake of the augures in Rome. *Hoc genus hominum semper vitabitur, et semper in civitate retinebitur.*

But

But now let us see what fees the clerk of the market ought to take. By the statute of W. 1. cap. 26. it is enacted that no sheriff or other minister of the king shall take any reward for doing his office, &c. And the kings clerk of the market is the kings minister, and therefore he is within the purview of this statute.

W. 1. an. 3 E. 1.  
ca. 26.

I find that in 8 R. 2. in open parliament a groat was allowed to him for marking and sealing of every bushell, 2 d. of every half bushell, 1 d. of every peck, and so according to that rate.

Rot. par. 8 R. 2.  
nu. 11.

By the statute of 7 H. 7. the chief officer of every city and borough shall take for sealing of every bushell a penny, of every other measure a half penny, of every hundred weight 1 d. and of every half hundred ob. and of every weight under a farthing, and not above.

7 H. 7. ca. 3.  
11 H. 4. ca. 4.

The clerk of the market in the reign of queen Eliz. claimed by custome for the examination and view of every bushell sealed before by the clerk of the market, whether it were lawfull or unlawfull 2 d. and in like manner of every lesser measure of wood 1 d. and in like manner of inholders measures 4 d. and of the measures of victuallers 2 d. and divers other fees for examination and viewing of weights and measures whether they were lawfull or unlawfull, as is aforesaid. And it was resolved by all the judges of England, that no fee was due to the clerk of the market for view and examination only of weights and measures for three causes. 1. The said parliament roll of 8 R. 2. alloweth a fee for sealing, and so doth 7 H. 7. and 11 H. 7. but no allowance for view or examination. 2. The weights and measures are either true, according as before they were sealed, or false: if true, it should be against reason to charge the innocent, for that were *disperdere justum cum impio*; if false, then by the statute of 13 R. 2. they ought to be burnt, and the end of the view and examination is to find out falsehood, to the end they might be punished, and fined to the king, as appeareth by the statute of 13 R. 2. but no fee is to be taken therefore. 3. Whereas the clerk of the market affirmed that these fees had been of long time taken, the judges said, that *malus usus abolendus est*, and the taking of fees for view and examination only was extortion, and that they could not prescribe against the said statute of W. 1. See in the 2. part of the Institutes, the exposition of the said statute of W. 1.

13 R. 2. cap. 4.  
38 Aff. p. 11.

By the said statute of 13 R. 2. he ought to take no common fine, for before that statute he did use to take a reward (which the act termeth a fine) for not inquiry of defaults, whereby the king was prevented of his fine, the delinquent not punished, and the people wronged by extortion, and permission of false measures: and therefore the act provided that no common fine shall be taken, as is aforesaid (but that every person which is found in default touching the same office be punished according to his desert. And the clerk of the market cannot set any price of any thing saleable in the market, for that belongs not to weights and measures: and by the common law *arbitrio domini res aestimari debet*, which cannot be altered but by parliament; and again, *nemo cogitur rem suam vendere etiam justo precio*; and things saleable in the market of one kinde are not of one goodnesse: but he ought to assise weights and measures.

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12 E. 4. fo. 8. b.  
23 E. 3. cap. 6.  
13 R. 2. cap. 8.  
3 H. 8. cap. 8.

6 R. 2. cap. 13.  
Rot. par. 37 E. 3.  
nu. 39.

\* Which are before in this chapter.

It is enacted that good examination and correction be had in towns infranchised touching weights and measures, so as the \* statutes thereof made be duly observed.

## C A P. LXII.

## The Court of the Commissioners of Sewers.

<sup>a</sup> Vid. Pasch. 22 E. 1. in banco rot. 52. Kanc' Ric' de Cras corn' de sewers. Vi. Regist. 287. <sup>a</sup> Certiorar. <sup>b</sup> Rot. parl. anno 35 E. 1. at Carlisle. <sup>c</sup> 23 H. 8. cap. 5. <sup>d</sup> Lib. 5. f. 99. 100. Rookes case. Lib. 10. fo. 137. *Le case de Molyn de Cbester*, and fo. 139. Keighleys case. Ib. 141. *Le case de Isle de Ely*. Vid. Regist. 252. b. De antiqua trencha obstructuenda et nova facienda vel habenda ad quod damnum. Ibid. 254. b. De aquæ ductu, et 255. a. F. N. B. 225. e. Tr. 31 E. 3. fol. 44. b. in libro meo M. S. 19 E. 3. barre 279. <sup>e</sup> 23 H. 8. cap. 5. 10. To whom and by whom this commission shall be granted. <sup>f</sup> 23 H. 8. cap. 5. <sup>g</sup> 13 Eliz. cap. 9. <sup>h</sup> 23 H. 8. cap. 5. Lib. Intr Coke 292. 293. <sup>i</sup> How many commissioners must sit. <sup>k</sup> 1 Mar. cap. 11. To what nufances the commission of sewers extend not.

**Q**UANDO <sup>a</sup> *aqua profluit*, that is, when water doth issue, vulgarly, sue: hereupon cometh the word *fuera*, for a sewer, passage, channell, or gutter of water.

<sup>b</sup> At the complaint of Henry de Lacye earle of Lincolne, a commission of sewers was granted to Roger de Brabafon mayor, and the sheriffs of London.

<sup>c</sup> Their authority is by commission under the great seal *in hæc verba*, at this day grounded and warranted by the act of parliament of 23 H. 8.

<sup>d</sup> Of their jurisdiction you may read in my Reports, and see the statutes of 6 H. 6. cap. 5. 8 H. 6. cap. 8. 23 H. 6. cap. 9. 12 E. 4. ca. 6. 4 H. 7. ca. 1. 6 H. 8. cap. 10. 23 H. 8. cap. 5. & 10. 3 E. 6. cap. 8. 1 Mar. cap. 11. 13 Eliz. cap. 9.

Certain necessary observations upon some of these statutes, and principally wherein the statute of 23 H. 8. cap. 5. hath been explained, declared, or altered by any of the said subsequent statutes.

<sup>e</sup> 1 This commission shall be granted to such substantiall and indifferent persons as shall be named by the lord chancellor, the lord treasurer, and the two chiefe justices, or any three of them, whereof the lord chancelour to be one.

<sup>f</sup> 2 Every commissioner before he take upon him the execution thereof shal take the corporall oath mentioned in that act before the lord chancelour, or such as the lord chancelour shall direct by writ of *ded' potestatem*, or before the justices of peace in their quarter sessions, and <sup>g</sup> ought to have lands or tenements of the clear yearly value of 40 marks of some estate of freehold (except as in the statute is excepted) upon pain of forfeiture of 40 li. and no farmer of lands within the precinct of the commission, unless he hath lands of some estate of freehold of the yearly value of 40 li. and yet he not to meddle with the lands he hath in farm.

<sup>h</sup> 3 The avowry or justification for a distresse taken by force of this commission shall be generall, that the said distresse, &c. was taken, &c. by force of the commission of sewers for a lot or tax assessed by the said commission, or for such other act or cause, &c.

<sup>i</sup> 4 There must be six commissioners, &c. at the least, which shall sit by force of the said commission.

<sup>k</sup> 5 That the said act of 23 H. 8. doth not extend to, nor give authority to the commissioners of sewers to reform the great hurt

and nuisance by reason of the sand rising out of the sea, and driven to land by storms and winds. A special provision is there made for the county of Glamorgan.

It is adjudged by act of parliament *anno 3 Jacobi regis* cap. 14. That wals, ditches, banks, gutters, sewers, gates, causeys, bridges, and watercourses in or about the city of London, \* where no passage for boats is used, nor the water therein doth usually ebbe or flow: which wals, ditches, banks, gutters, sewers, and other the premises, do fall into the river of Thames, are not under the survey, correction and amendment of the commissions of sewers, nor of the statutes made for sewers in *anno 23 H. 8.* or of any other statute of sewers, as it is rehearsed by full consent of parliament: and therefore provision is made that those wals, ditches, banks, gutters, sewers, and other the premises, shall be subject to the commission of sewers.

6 That a commission of sewers shall continue ten years, unless it be repealed or determined by reason of any new commission, or by superseas.

7 That laws, ordinances and constitutions made or to be made by force of any such commission, and written in parchment indented under the seals of the said commissioners or six of them, whereof one part shall remain with the clerk, &c. and the other part in such place as six of the said commissioners shall appoint, shall without any certificate, and without the royall assent stand and continue in full force notwithstanding any determination of any such commission by superseas, untill the same be altered by the commissioners of sewers after to be assigned, &c.

8 And if any such commission be determined by expiration of ten years next ensuing the teste thereof; then such laws, &c. so indented and sealed, &c. shall continue for one whole year. And that the justices of peace or six of them, whereof one to be of the quorum, shall have authority during that year to execute the said laws, &c.

9 That by the granting of a new commission within that year, the power of the justices of peace to cease.

10 The said commissioners shall not be compelled to make any certificate or return the said commissions, or of any of their ordinances, laws, or doings, by authority of the said commissions.

11 See also an alteration by the statute of 13 Eliz. concerning fees.

12 Lastly, this is certain, that neither the commissioners of sewers, nor any other, have such an absolute authority, but that their proceedings are bound by law.

Vide the ancient commission of sewers by the common law in the Register, and F. N. B.

A generall commission of sewers enacted by authority of parliament, not printed.

A generall commission of sewers enacted by parliament, and in print. But the commission by the statute of 23 H. 8. standeth now in force. And yet by diligent perusal of the former, and by advised comparing of them with the latter, it will manifest wherein the former defects were, and how continually by the latter they were supplied and amended, and give a great light for the true understanding of that which now standeth.

3 Jac. cap. 14.

\* Nota, an excellent exposition of the statute of 23 H. 8. by this parliament of 3 Jac.

13 Eliz. cap. 9. How long the commission shall endure.

13 Eliz. cap. 9. The laws written in parchment & indented, &c. Without certificate or royall assent.

Determination by expiration.

Justices of peace.

Nota, no certificate or return of the commissions or of any the ordinances, laws, or doings.

Regist. 126, 127. F. N. B. 113, 114.

Rot. parl. 2 H. 6. nu. 57. 6 H. 6. cap. 5.

Stat. 25 E. 3. ca. 4. 45 E. 3. cap. 2.

Hil. 13 E. 3.  
 Coram rege rot.  
 35 Norf.  
 Pasc. 44 E. 3.  
 Coram rege rot.  
 2 Mid.  
 2 19 E. 3. tit.  
 bar. 279.  
 2 E. 3. fo. 26.  
 c The court of  
 sewers of Rum-  
 ney Marsh.

See Hil. 13 E. 3. *coram rege, Leges et consuetudines approbate pro reparatione murorum maritimorum et mundatione fossatarum et fuerarum in paludibus quæ hic exprimentur per commissionem regis ad hoc faciendum in Mersland*

<sup>a</sup> A particular commission granted to S. Joh. de Sutton, and Sir Rob. de Scrope.

<sup>b</sup> A commission concerning the river of Lee.

<sup>c</sup> Rumney Marsh in the county of Kent containing 24000 acres, is at this day, and long time hath been governed by certain ancient and equall lawes of sewers made by a venerable justice Henry de Bathe, in the reign of H. 3. from which laws not only other parts in Kent, but all England receive light and direction: for example: the said generall act of 23 H. 8. ca. 5. in the clause which giveth power to the commissioners to make statutes, ordinances, and provisions, &c. necessary and behovefull after the laws and customes of Rumney Marsh in the county of Kent, or otherwise by any wayes or means, &c,

Both the towne and marsh of Rumney took their name of one Robert Rumney. This Robert (as it appeareth by the book of Domeſday) held this town of Odo biſhop of Baieux, wherein he had 13 burgesſes, who for their service at the sea were discharged of all actions and customes of charge, except felony, breach of the peace and forestalling.

See before in the chapters of the Courts of London, &c. the jurisdiction that the lord mayor hath in the river of Thames.

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## C A P. LXIII.

### The Court of the Commissioners upon the Statutes of Bankrupts.

\* The derivation and signification of bankrupt.  
 Cicero pro Flaminio: *In qua civitate nummus moveri nullus potest sine quinque prætoribus, 3 prætoribus et quinque mensariis.*

25 E. 3. stat. 3.  
 cap. 23.  
 Parl. 50 E. 3.  
 nu. 160. against Lombards.

\* 51 E. 3. nu. 51.  
 Vid. 50 E. 3.  
 ca. 6. & 2 R. 2.  
 cap. 3. stat. 2.  
 against frauds generally 34 H.  
 3. cap. 4.

WE have fetched as well the name as the wickedness of bankrupts from foreign nations: for *banque* in the French is *mensa*, and a banquer or exchanger is \* *mensarius* and *route* is a signe or mark, as we say, a cart rout is the signe or mark where the cart hath gone: metaphorically it is taken for him that hath wasted his estate, and removed his banque, so as there is left but a mention thereof. Some say it should be derived from *banque* and *rumpue*, as he that hath broken his banque or state.

In former times as the name of a bankrupt, so was the offence it self (as hath been said) a stranger to an Englishman, who of all other nations was freest of bankruptcy. And the first statute that we find against this crime, was indeed made against strangers, viz. against Lombards, who after they had made obligations to their creditors, suddenly escaped out of the realm without any agreement made with their creditors. \* It was therefore enacted, that if any merchant of the company knowledge himself bound in that manner, that then the company shall answer the debt: so that another merchant which is not of the company shall not be thereby grieved nor impeached: neither do we find either any complaint in parliament, or act of parliament made against any English bankrupt untill the 34 year of H. 8. when the English merchant had

rioted



rioted in three kinds of costlinesses, viz. costly building, costly diet, and costly apparell, accompanied with neglect of his trade and servants, and thereby consumed his wealth.

He is called in Latin \* *decolor*, à *decoquendo*, for consuming of his estate in riotous and delicate living. The said act of 34 H. 8. is altered by the statutes of 13 Eliz. cap. 7. 1 Jacobi, cap. 15. & 21 Jacobi, cap. 19.

And it is to be observed, that all the aforefaid statutes and laws made against bankrupts, and for relief of creditors, shall be in all things largely and beneficially construed, &c. for the aid, help and relief of the creditors.

A bankrupt is described by the statute of 13 Eliz. cap. 7. and 1 Jac. cap. 15. but more effectually by the statute of 21 Jac. cap. 19. So as by all these three he is perfectly described. And the commission doth extend to all and every of the said descriptions and articles thereof.

\* The authority of the commissioners is by commission under the great seal; their jurisdiction and power is by force of the said acts of parliament which ought to be pursued, <sup>b</sup> or else they are subject to the action of the party grieved, for he hath no other remedy. <sup>c</sup> The lord chancelour or lord keeper upon complaint made unto him in writing hath authority to grant the said commission.

The law hath provided that these commissioners ought to have \* three qualities, viz. wisdom, honesty, and discretion; which if it be observed, it is the best means for the due execution of the said statute, and the life of these laws doth consist in the due execution thereof: and for such commissioners if any action shall be brought against them, &c. for doing of any thing by force of the said statutes, they may plead generally, and not to be driven to any special pleading.

They have power to examine the offender upon oath, and after he be declared a bankrupt, to examine his wife upon oath, and to examine witnesses also upon oath. See the statute. And they have power to break any the houses, chambers, warehouses, &c. trunks and chests of such offenders. See the other parts of this act of 21 Jacobi, which are plainly and effectually expressed, and need not here to be recited.

For the exposition of the said statute of 13 Eliz. \* see in my Reports lib. 2. fo. 25, 26. Cullamers case. Lib. 8. fo. 98, in Baspoles case, & ibid. fo. 121. *inter Cutt et Delabar.*

## C A P. LXIV.

### Commissioners for Examination of Witnesses.

**F**ORASMUCH as the court of star-chamber, the chancery in cases of equity, the exchequer chamber in cases of equity. the court of wards, and the duchy of Lancaster do proceed upon witnesses examined before commissioners, or in court before the examiners, it shall be necessary (as a matter of great importance to say somewhat of the power, authority, and duty of the said commissioners and examiners, and incidently of witnesses.

Cicero in Catilinam: *Exercitum collectum ex rusticis, mendiculis, et decoctoribus.*

The description of a bankrupt.

<sup>a</sup> The authority of the commissioners and their jurisdiction.

<sup>b</sup> Lib. 8. f. 21. Int' Cutt and Delabar.

<sup>c</sup> 13 Eliz. cap. 7. who may grant the commission.

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\* Three qualities of every of these commissioners.

Generall pleading. 1 Jac. cap. 15. 21 Jac. cap. 19.

\* Lib. 2. fo. 25, 26. Cullamers case. Lib. 8. fo. 98. Baspoles case. 1b. fol. 121. Int' Cutt and Delabar.

See li. 9. fo. 70.  
71. Peacocks  
case, for this and  
some of the cases  
following.

Lib. 9. ubi sup.

Lib. 9. ubi sup.

Lib. 9. ubi supra.

Aug. Serm. 28.  
*de verbis Apostoli.*  
*Jurare est jus ve-*  
*ritatis Deo red-*  
*dere.*  
Azo. *Jururan-*  
*dum est affir-*  
*matio vel nega-*  
*tio, religione*  
*adhibita.* See the  
third part of the  
Institutes cap.  
Perjury.

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\* 8 H. 6. 13.  
2 E. 2. triall 46,  
&c.  
Dier 2 Eliz. 185.  
13 Eliz. 306.  
Of witnesses.  
Additions to the  
1 part of the  
Institutes. sect.  
1. fo. 6.  
And to the third  
part of the In-  
stitutes, cap.  
Perjury.  
\* 12 Aff. 12.  
23 Aff. n.  
11 Aff. p. 19.  
a Deut. 6. 13.  
b 16 Januarii  
14 Eliz.  
c Prov. 19.  
d Bract. lib. 5.  
fo. 400. b.  
2 H. 7. Kelw.  
96. a. b.  
e Bract. lib. 5.  
359.

The commissioners, albeit named by the parties reciprocally, ought to stand indifferent, and do their uttermost endeavour to find out by due examination the whole truth, and to suppress no part thereof; for their authority is to that end meerly and wholly from the king by force of his commission.

Neither commissioner nor examiner are strictly bound to the letter of the interrogatory, but ought to explain every other matter or thing which riseth necessarily thereupon, for manifestation of the whole truth concerning the matter in question.

Neither commissioner nor examiner ought to discover to either of the parties or to any other, any of the depositions or any part of them, which they have taken before publication be granted.

Neither commissioner nor examiner after the examination begun, ought to confer with either party touching the examination, or take new instructions concerning the same.

For as much as the witness by his oath, which is so sacred, as he calleth Almighty God (who is truth it self and cannot be deceived, and hath knowledge of the secrets of the heart) to witness that which he shall depose; it is the duty both of the commissioner and the examiner gravely, temperately, and leisurely to take the deposition of the witness, without any menace, disturbance, or interruption of them in hinderance of the truth, which are grievously to be punished. And after the depositions taken, the commissioners and examiners ought to read the same distinctly to the witnesses, and suffer them to explain themselves for the manifestation of the whole truth. And it is safe for the commissioner and examiner that the witnesses subscribe their names or marks to the paper-booke, but they must be certified in parchment.

And albeit the commissioners be not equall in state or degree, yet are they all of equall power and authority: for, as it hath been said of old, that there might be priority, but no superiority amongst commissioners.

Interrogatories ought to be single and plaine, pertinent to the matter in question, and in no sort captious, leading, or directory.

In some cases the courts of the common law do judge upon witnesses, but they must ever give their testimony *viva-voce*. \* As in dower if the issue be whether the husband be alive or no, &c.

Witness is derived of the Saxon verb *weten*, i. *scire*, *quia de quibus sciunt testari debent*, et \* *omne sacramentum debet esse certæ scientiæ*. In Latin *testis à testando*: et *testari est testimonium perhibere*: unde *regula juris*, *plus valet unus oculatus testis, quam auriti decem*: *testis de visu præponderat aliis*.

a An oath ought to be accompanied with the fear of God, and service of God for advancement of truth, *Dominum Deum tuum timebis, et illi soli servies, et per nomen illius jurabis*.

Bracton saith that an alien born cannot be a witness: which is to be understood of an alien infidel: b for the bishop of Ross being a Scot born, was admitted to be a witness, and sworn anno 14 Eliz. in the case of the duke of Norfolk by the opinion of the justices assistants. c *Testis falsus non erit impunitus*.

Noſte dieque suum gestat sub pectore testem: his conscience alwayes gnawing and vexing him. d *Vox simplex nec probationem facit, nec præſumptionem inducit*.

e *Testium numerus si non adjicitur, duo sufficiunt*.

*Jurato creditur in judicio.*

<sup>f</sup> *Testibus deponentibus in pari numero dignioribus est credendum.*

<sup>g</sup> *Testimoignes ne poent testefie le negative, mes l'affirmative.*

<sup>h</sup> *Allegans contraria non est audiendus, verum vero consentiens est falsum nec vero nec falso.*

*Furamentum est indivisibile, et non est admittendum in parte verum, et in parte falsum.*

<sup>i</sup> *Allegans suam turpitudinem non est audiendus.*

*Judex non potest esse testis in propria causa.*

*Jusjurandum inter alios fact' nec nocere, nec prodesse debet.*

*Facultas probationum non est angustanda.*

*De crimine in lupanari commisso, lupanares testes esse possunt.*

*Qui prodit in scenam mercedis ergo, infamis est.*

Witnesses ought to come to be deposed untaught, and without instruction, and should wish the victory to the party that right hath, and that justice should be administred: and should say from his heart, *Non sum doctus, nec instructus, nec curo de victoria, modo ministretur justitia.* See Britton 134, 135.

<sup>f</sup> Vid. 2 E. 3. triall 45.  
<sup>g</sup> F. N. B. 106. 107.  
<sup>h</sup> 16 E. 4. 10. 2.  
<sup>i</sup> Trin. 13 E. 1. in com. banco. Rich. de Rayn- hams case.

Histriones Mercenarii.

C A P. LXV.

[ 280 ]

*Curia Cursus Aquæ apud Gravesend.*

**O**F this court, and others like, which are in private, we intend not to treat, for that the labour herein were infinite, and serveth nothing for the publick, whereat our principall aim hath been.

C A P. LXVI.

The Kings Swanheard.

**W**HAT authority the kings swanheard hath, being of ancient time by his office *magister deductus cygnorum*, you may reade rot. patentium anno 11 H. 4. part. 1. m. 14. rot. pat. 30 E. 3. part 1. m. 20. and lib. 7. fo. 15, &c. *Le case de Swannes*, but court he hath not: no fowle can be a \* swan.

So likewise there is an ancient officer of the kings alneger of the kings gift being before any statute: as taking one example for many. <sup>a</sup> In 14 E. 1. Sir Thomas Darlington was by the kings letters patents alneger of broad cloth, and had a fee of the king for the exercise of his office; for the fee that he had of the subject was (as it ought to be) by act of parliament. 27 E. 3. st. 1. cap. 4. <sup>b</sup> Alneger of *aulne* in French, and that of *ulna*, *ulnator*. See before concerning the alnaging of new draperies, cap. of the High Court of Parliament, pag. 31.

Rot. pat. 16. R. 2. part. 1. m. 39.  
<sup>a</sup> Tr. 33 E. 1. Essex coram rege rot. 124-7 H. 6. acc. The kings alneger.  
<sup>b</sup> Rot. pat. 4 E. 1. Tho. Darlington militi. This appeareth also by the statutes themselves. 25 E. 3. cap. 1. stat. 4. 27 E. 3. stat. 1. cap. 4. 3 R. 2. cap.

17 R. 2. cap. 2. & 5. 1 H. 4. cap. 13. 11 H. 4. 6. 13 H. 4. 4. 11 H. 6. 1. 32 H. 6. 5. 4 E. 4. 1. 3 E. 4. 1 R. 3. Rot. claus. 17 R. 2. m. 14. <sup>b</sup> The derivation of alneger.

## C A P. LXVII.

23 H. 8. cap. 16.  
31 H. 6. cap. 3.  
8 E. 4. cap. 2.  
22 E. 4. cap. 8.

## The Wardens Courts in the East, West, and Middle Marches adjoining to Scotland.

4 H. 5. cap. 7.  
23 H. 8. cap. 16.

THEY proceeded according to the law called the March law, or Borders law, but their jurisdiction was increased by act of parliament. The limits of their jurisdiction was within the Marches, which were confined to the counties of Northumberland, Cumberland, Westmerland, and the towne of Newcastle upon Tyne in the county of York.

For the word [Marches,] see before cap. President and Councell of Wales.

4 Jac. cap. 1.

But since king James was monarch of both kingdomes, the batable grounds on both sides are become quiet, and so peaceable, as all the said courts in the east, west, and middle marches are vanished, and hostile laws on both sides by authority of parliament in either of the kingdoms repealed. See the said statute of 4 *Jacobi*. See the first part of the Institutes, sect. 3.

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## C A P. LXVIII.

## Of Callais or Callis Caletum.

Rot. par. 50 E. 3.  
nu. 211, 212.

6 H. 6. nu. 41.

See the statute of

27 H. 8. con-

cerning good

lawes and orders

for Callis and

the marches

thereof and

1 H. 7. cap. 3.

<sup>b</sup> 21 H. 7. 33.

11 H. 8. Kelw.

202. b.

Par. 3 R. 2.

nu. 48.

<sup>c</sup> Pat. 15 E. 3.

2 part.

Parl. 9 R. 2.

nu. 4.

<sup>d</sup> 42 E. 3. cap.

10. lib. 7. in

Calvyns case.

<sup>e</sup> Rot. parl. 9 R.

2. nu. 4. 9 H. 5.

stat. 2. ca. 5.

<sup>f</sup> 1 R. 2. nu. 37.

<sup>g</sup> Parl. 50 E. 3.

nu. 209.

THIS strong port town, the famous and flourishing mart, staple, and vent of English commodities was holden and kept by the space of 211 years by eleven severall kings, viz. E. 3. R. 2. H. 4. H. 5. H. 6. E. 4. E. 5. R. 3. H. 7. H. 8. E. 6. and holden and lost by king Philip and Mary the first queen regnant of this realm, the lord Wentworth then deputy there.

It was governed by Englishmen and by English laws, some particular customes excepted. <sup>b</sup> And of a judgement given there a writ of error did lye retournable into the kings bench. <sup>c</sup> Before the staple at Callais, it was kept at Bruges in Flanders.

<sup>d</sup> The children born there were inheritable in England and so declared by authority of parliament.

<sup>e</sup> And there the king had his mint in such manner as in the tower of London. Certaine it is that riches followed the staple wheresoever it was kept. <sup>f</sup> And it could not be appointed in any place but by act of parliament.

<sup>g</sup> The staple being at Callais, upon all rodes forth of the town by the captain, the mayor of the staple furnished him forth of merchants and their servants to the number of 100 bill-men and 200 archers without any wages. And yet it appeareth in the parliament roll of 2 R. 2. nu. 15. that Callais cost the king yearly twenty thousand pounds.

See the parliament roll of 50 E. 3. nu. 211, 212. for the mayors courts, &c. and liberties, and franchises, &c. there. Many acts of parliament have been made concerning this town, and the staple

ple therein, which need not here to be recited: only we thought it not good totally to pretermitt it, because the kings right remains to it, and it may hereafter be restored (which is so much desired) to the right owner.

## C A P. LXIX.

[ 283 ]

Of the Isle of Man, *Insula Euboniæ*, modo *Mannæ*, and of the Law and Jurisdiction of the same.

THIS isle hath been an ancient kingdome, as it appeareth in lib. 7. in Calvins case, which need not here to be recited.

And yet we find it not granted or conveyed by the name of a kingdome, *sed per nomen insulæ, &c. cum patronatu episcopatus*. He hath the patronage of the bishoprick of Sodor, which is a visible mark of a kingdome; albeit of ancient time the archbishop of Canterbury was patron of the bishoprick of \* Rochester, and the earl of Glouc' of the bishoprick of Landaf. *Vide Lib. M. S. in Recept. Scaccarii fo. 166. et Lib. Parliam. in Turri London temp. E. 1. fo. 19. 21.*

*William le Scrope emit de domino Willielmo de Monte acuto insulam Euboniæ, (i. Mannæ :) est nempe jus ipsius insulæ ut quisquis illius sit dominus rex vocetur, cui etiam fas est corona aurea coronari.*

The lord Scrope forfeited the same to H. 4. for high treason. King H. 4. granted the same to Henry earl of Northumberland in these words. *Rex, &c. De gratia nostra speciali dedimus et concessimus Henrico comiti Northumbriæ insulam, castrum, \* pelam, et dominium de Man, ac omnia insulas et dominia eidem insulæ pertinen' que fuer' Willielmi le Scrope chevalier defuncti, quem in vita sua conquestati fuimus, et ipsum se conquestatum decrevimus, et que ratione conquestus illius tanquam conquestata cepimus in manum nostram. Que quidem conquestum et decretum in præsentî parlamento nostro de assensu dominorum temporalium in eodem parlamento existentium quoad personam præfati Willielmi, ac omnia, terras, tenementa, bona, et catalla sua tam infra regnum nostrum quam extra ad supplicationem communitatis regni nostri affirmata existunt, &c. Habenda et tenenda eidem comiti et heredibus suis, &c. per servic' portandi diebus coronationis nostræ et heredum nostrorum ad sinistrum humerum nostrum et sinistros humeros heredum nostrorum per seipsum aut sufficientem et honorificum deputatum suum illum gladium nudum quo cincti eramus quando in parte de Holdernes applicuimus, vocatum Lancaster Sword, durante processione et toto tempore solemnizationis coronationis supradictæ.*

In this little kingdome there are 2 castles, 17 parishes, 4 market towns, and many villages, and in that isle there is a bishoprick, as hereafter shall be shewed.

Anno 5 H. 4. the said Henry earl of Northumberland was attainted of treason, and by act of parliament 1 Martii, 7 H. 4. it is enacted that the king should have the forfeiture of all his lands and tenements. And afterwards in H. 4. the king granted the Isle of Man *una cum patronatu episcopatus* to Sir John Stanlye for life: and after

IV. INST.

Y

III

Walf. pa. 387.  
lib. 7. fo. 21.  
in Calvins case.

\* Rot. Cart.  
16 Johan. m. 6.

Anno Dom.  
1393. Walf. an.  
17 R. 2.  
Corona aurea. 1

Of the quality  
of him. See  
Walf. Ubi supra.  
Rot. pat. 1 H. 4.  
Rot. 2. Bundello  
2. parte 5.  
m. 36.

\* A pele or pile,  
a fortress in a  
small isle be-  
longing to the  
Isle of Man.  
Nota, the title  
of the king by  
conquest is af-  
firmed by par-  
liament.

Rot. pat. 7 H. 4.  
parte 2. m. 18.  
Cum patronatu  
episcopatus.

in the same year he granted the same isle *una cum patronatu episcopatus*, to the said Sir John Stanly and to his heirs; *Tenend de rege heredibus et successoribus suis per homagium ligum: reddendo nobis duos falcones semel tantum, viz. immediate post homagium hujusmodi fact: et reddendo heredibus nostris regibus Angliæ duos falcones diebus coronationis eorundem heredum nostrorum pro omnibus aliis serviciis, consuetudinibus et demandis, adeo libere, plene, et integre, sicut Willielmus Scrope chevalier vel aliquis alius, &c.*

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This Sir John Stanley had issue Sir John Stanley knight, who had issue Sir Henry Stanley lord chamberlain to king H. 6. who created him lord Stanley, who had issue George, who had issue Thomas, whom king H. 7. created earl of Derby to him and the heirs males of his body, who had issue Thomas, who had issue Edward, who had issue Henry, who had issue Ferdinando and William. Ferdinando had issue Anne, Frances, and Elizabeth, and died without issue male: and between these daughters being heirs generall, and William earl of Derby being heir male, question was moved concerning the title of the Isle of Man: which by queen Elizabeth was referred to the lord keeper Egerton, and to divers lords of the counsell, and to Popham chief justice of England, Anderson chief justice of the common pleas, and Peryam chief baron, who Trin. 40 Eliz. upon hearing of the counsell of both sides, and mature deliberation, resolved these five points. 1. That the Isle of Man was an ancient kingdome of it selfe, and no part of the kingdome of England. 2. They affirmed a case reported by Keilw. anno 14 H. 8. to be law, viz. Mich. 14 H. 8. an office was found that Thomas earl of Derby at the time of his death was seised of the Isle of Man in fee; whereupon the countesse his wife, by her counsell, moved to have her dower in the chancery: but it was resolved by Brudnell, Brook, and Fitzh. justices, and all the kings counsell that the office was meerly void, because the Isle of Man was no part of the realm of England, nor was governed by the law of this land, but was like to Tourny in Normandy, or Gascoign in France, when they were in the king of Englands hands, which were meerly out of the power of the chancery, which was the place to endow the widow of the king, &c. 2. It was resolved by them that the statute of W. 2. *De donis conditionalibus*, nor of 27 H. 8. of Uses, nor the statutes of 32 or 34 H. 8. of Wils, nor any other generall act of parliament did extend to the Isle of Man for the cause aforesaid, but by speciall name an act of parliament may extend to it. 3. It was resolved that seeing no office could be found to entitle the king to the forfeiture of treason, that the king might grant by a commission under the great seal to seise the same into the kings hands, &c. which being done and returned of record is sufficient to bring it into the kings seisin and possession, and into charge, &c. 4. That the king might grant the same under the great seal, because he cannot grant it in any other manner. And herewith agreeth divers grants under the great seal of this Isle, <sup>b</sup> viz. 4 Junii, 18 E. 1. *rex E. 1. concessit Waltero de Huntercombe, &c. Rex E. 2. concessit Petro de Gaveston, &c. 1 Maii, 5 E. 2. Gilberto Magaskill*, and in the same year granted *Henrico de Bello monte insulam prædictam cum omni dominio et iustitia regali pro termino vite, &c.* 5. It was resolved that a fee simple in this isle passing by the letters patents to Sir John Stanley and his heirs, is descendible to his heirs according to

Vide 33 H. 8. c. 6. a proviso for the subjects of the Isle of Man.

14 El. cap. 5.

<sup>a</sup> In Turri Lond' 3 Junii. 6 H. 4. such a commission under the great seal was granted to Sir John Stanley and William Stanley, &c. to seise, &c. in this very case. <sup>b</sup> In tur' Rot. pat. 18 E. 1. and anno 5 E. 2.

to the course of the common law, for the grant it self by letters patents is warranted by the common law in this case: and therefore if there be no other impediment, the ile in this case shall descend to the heirs generall, and not to the heir male; as the grand feignories and connots in Wales were impleadable at the common law, but the lands holden of them by the customes of Wales, &c. Which resolutions we have thought good to report, because they are the best directions that we have found, both in these, and for the like cases.

By these letters patents it appeareth, that Simon Montacute had intruded into and occupied the said ile in *noſtri exheredationem*, for which he was attached to answer the same in the kings bench at the suit of the king, but what proceeded thereupon we yet find not.

But now let us come to their laws, and jurisdiction of this ile, the like whereof ye find not in any place. Their judges they call \* *deemſters*, which they chooſe out of themselves. All controversies they determine without proces, pleading, writing, or any charge or expence at all. If any case be ambiguous and of greater weight, it is referred to 12, which they call *claves inſulæ*, the keyes of the island. They have coroners (*quos annuos vocant*) who supply the office of a sherif.

But albeit this be so, yet when this ile was in the kings hands, if any injustice or injuries were done to any of his subjects there, the king might grant a commission for redresse thereof: the like whereof we finde rot. pat. anno 20 E. 1. in these words; *Rex dilectis et fidelibus ſuis Nichelao de Segrave ſeniori, Oſberto de Spaldington, et Johanni de Sutherwell, ſalutem. Sciatis quod assignavimus vos juſticiarios noſtros ad querelas omnium et ſingulorum de Inſula de Man ſe conqueri volentium de quibuſcunque tranſgreſſionibus, et injuriis eis per quoscunque tam balivos et miniſtros noſtros quam alios in prædicta inſula illatis audiend' et terminand', et ad plenam et celerem juſtitiam partibus inde faciend' ſecundum legem et conſuetudinem partium illarum. Et ideo vobis mandamus quod ad certos dies et loca quos, &c. in inſula prædicta querelas, &c. audiatis et terminetis in forma prædicta, facturi, &c. ſalvis, &c. Mandavimus enim cuſtodi noſtro inſulæ prædictæ; quod ad certos, &c. in inſula prædicta venire fac' coram vobis tet et tales, &c. In cujus, &c. Teſte rege apud Berewick, 15 die Julii.*

So as albeit the kings writ runneth not into the Isle of Man, yet the kings commiſſion extendeth thither for redresse of injustice and wrong: but the commiſſioners muſt proceed according to law and justice of the ile. They have peculiar laws or customes: for example: if a man ſteal a horſe, or an oxe, it is no felony, for the offender cannot \* hide them, but if he ſteal a capon, or a pigge he ſhall be hanged, &c. Upon the ſale of a horſe or any contract for any other thing, they make the ſtipulation perfect per *traditionem ſtipulæ*. Nota, the true derivation of ſtipulation. And as they have peculiar laws, ſo have they a proper language.

This ile hath a biſhop inſtituted by Gregory the fourth biſhop of Rome, and he is under the archbiſhop of York, but hath neither place nor voice in the parliament of England. *In hac inſula juſdex eccleſiaſticus citat, definit, et infra octo dies ſervet, aut carceri intruduntur.*

The inhabitants of this ile are religious, induſtrious, and true people without begging or ſtealing.

Rot. pat. 2 Apr. 6 E. 2.

\* A dema 2 Sax-on wor<sup>t</sup> for a judge. *Giraldus: ſunt duo juſdices in inſula Mannia (ſcilicet Etwania nuncupat.) qui de litibus ibidem emergentibus cognoscunt.*

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In the margent, thus; *De querelis bimirum Inſulæ de Man audiend' et terminand'.*

Nota, ſecundum legem et conſuetudinem Inſulæ de Man.

\* They have no woods. 12 H. 8. fo. 5. 4.

Ep<sup>us</sup> Suberensis.

## C A P. LXX.

Of the Isles of Jersey *alias* Gearsey, *olim* Cæsarea, and Garnsey, *olim* Saruia, and of the Law, and Jurisdiction of the same.

Jersey hath 12  
parishes.  
Garnsey 10.

**B**OTH these isles did of ancient time belong to the duchy of Normandy: but when king H. 1. had overthrown his elder brother Robert duke of Normandy, he did unite to the kingdome of England perpetually the duchy of Normandy together with these isles: and albeit king John lost the possession of Normandy, and king H. 3. took money for it, yet the inhabitants of these isles with great constancy remained, and so to this day do remain true and faithfull to the crown of England: and the possessions of these islands being parcell of the duchy of Normandy, are a good feisin for the king of England of the whole duchy.

Concerning the judicature and customes of these isles whereat we principally aim, it appeareth by the kings records in the Tower, *Quod rex Johannes constituit 12 coronatores juratos ad placita et jura ad coronam spectantia custodienda, et concessit pro securitate insularum, quod balivus de cætero per visum coronatorum poterat placitare sine brevi de nova disseisina fac' infra annum, de morte antecessorum infra annum, de dote similiter infra annum.* And for the most part they proceed according to the customes of Normandy.

Pasch. 17 E. 2.  
coram rege rot.  
67 Jersey.  
2 E. 3. fo. 5. b.  
The abbot of  
the Mount of  
S. Mich. case.

*Drugo Barentyne dicit quod 40. an' est tempus extra memoriam secundum consuetudinem partium illarum.*

King E. 3. assigned Hen. de Guldeford and others, justices errants in the isles of Garnsey and C. by his commission to inquire if he had right in the mannor of C. &c. and there it appeareth that they demanded adviſement of the men of the isles learned in their customes, who informed them of the customes of the isles, which the justices followed, and there it appeared that if the information was againſt the laws of the isles, they may be holpen by the laws of the same. See the book.

Rot. claus. 9 E. 3.  
& 25 E. 3.  
Mich. 41 E. 3.  
coram rege rot.  
109 Jersey in  
placito transgr.  
a Secundum  
conf. Insulæ  
præd.  
b Mich 6 H. 8.  
172. b. Keiw.  
to the baylis and  
jurates of Jersey.  
Lib. 7. fo. 20.  
21. in Calvins  
case.

*Quod in custumis et aliis rebus tanquam indigenæ et non alienigenæ tractetur, &c. Quod juratores in insula, &c. non protrahunt judicia sua ultra unius anni spacium.*

An action of trespassse was brought by A. in the kings bench for a trespassse done by B. in the isle of Jersey: whereupon in the record this entry was made. *Et quia negotium prædictum in curia hic terminari non potest, eo quod juratores insulæ præd' coram justiciariis hic venire non possunt, nec de jure debent, nec aliqua negotia de insula prædicta emergentia non debent terminari nisi secundum consuetudinem insulæ prædictæ, ideo totum recordum negotii mittatur in cancellariam domini regis, ut inde fiat commissio domini regis, cui vel quibus domino regi placuerit ad negotium prædictum in insula prædicta audiend' et terminand' secundum consuetudinem insulæ prædictæ.*

By this it appeareth, that albeit the kings writ runneth not into these isles, yet his commission under the great seal doth, but the commissioners must judge according to the laws and custome of these isles.

c Regist. fo. 22.  
d These little  
isles of Serk and  
Aureney doe lye  
between and near  
the other, and  
were parcell also  
of the duchy of  
Normandy.

*De attorney generali in insulis de Gernsey, Jersey, a Serk et Aureney fac' virtute brevis domini regis. Rex omnibus balivis et fidelibus suis in insulis de Gernsey, Jersey, Serk et Aureney ad quos, &c. Sciatis, &c.*



*Ec. in quibuscunque curiis nostris insularum earundem, Ec. post adventum ipsius A. in insul' predicti si contingat \* ipsum A. interim venire ad partes illas. Teste, Ec.* They are not bound by our acts of parliament, unless they be specially named.

Vid 33 H 8.  
c. 6.

The king hath granted to the men of the isles of Gernesey, Serk and Aureny, that they during the space of 8 years shall be free of all manner of tols, exactions and customes within the realm as his liege men and denizens.

Rot. par. 14 R.  
2. nu. 30.

*Insulani petunt, quia sunt in mari constituti, quod non ulterius extra insulas predictas prosequerentur ad eorum periculum, et non facile possunt sequi curias regis in Anglia.*

For the isles of Jerley and Garnsey, see Mich. 5 E. 3. *coram rege* rot. 46. Pasch. 17 E. 2. *coram rege* rot. 67.

Within Garnsey there are ten parishes, one market town being the port or haven called S. Peters port by the castle of Cornet. Jersef hath S. Albans and Hillary two little islands adjacent, it hath twelve parishes, and four castles.

## C A P. LXXI.

### *De Insula Vectis* or *Vecta*, of the Isle of Wight.

OF this we shall not need to say any thing, because it is and ever hath been part of Hamshire, and ever governed by the laws of England, as the other shires have been: but seeing we have named it, we will relate some things which we have observed.

First, there hath been an ancient baron, *de insula*, of the Isle, or Lisse, and of latter times there was a viscount of the same, which is to be understood of the Isle of Wight: for in the parliament rols of E. 2. I find him called *de insula Vecta*.

Secondly, Henry de Beauchamp earl of Warwick for the singular favour which king Henry the Sixt bare to him, crowned him king of Wight: but we could never find any letters patents of this creation, because (as some do hold) the king could not by law create him a king within his own kingdome, because there cannot be two kings of the same place in one kingdome: and after the same king named him *primus comes totius Angliæ*. But of this it is truly said: *cum illo nomen hic et insolitus titulus omnino evanuit.*

Camden.

See the statute of 4 H. 7. cap. 16. against taking of farms within this isle, and the power of judicature given thereby to the captain of this isle, or his lieutenant in a certain case.

## C A P. LXXII.

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Of the Island called Lindesfarne or Leidisfarne, scituate by the River Lied having on the South Eastward the Island of Farn, and is called the Holy Island.

IT hath one castle, one church, and one parish, and a safe haven defended by a block-house.

It is called the holy island, for that it being a solitary place holy men in times past retired themselves thither for their better.

and more devout service of God. It was of ancient time a bishops seat, which was after translated to Duresme, and is governed by the law of England.

Farne Isle.

For that this Isle of Farne hath neither church nor towne, but only a castle, I passe it (and other like isles) over.

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## C A P. LXXIII.

### Of the Forests, and the Jurisdiction of the Courts of the Forest.

Domesday in co'  
Glouc' et alibi.

2 Mar. Dier 169.

1 part of the Inst.

sect. 378. f. 233.

a. Ockam cap.

Quod regis fo-

resta. Bracton.

fo. 231. & 316.

Britton fo. 34.

Fleta l. 2. c. 34.

35.

\* 1. pt. of the

Inst. sect. 1. to.

5. b. In the

Saxons time fo-

rests were called

*walds unde*

*waldegrave,*

1. *præpositus fo-*

*restæ.*

Virgill.

*Sylva*, as in

Domesday *saltus*

*à saltando, quia*

*ibi feræ saltant.*

\* Like to an

evill conscience

in the false and

furious officer of

the forest if any

such be.

Cart de foresta

cap. 16.

The court of

attachments.

7 E. 3. cap. 8.

7 R. 2. cap. 4.

Cart. de forest.

cap. 6.

The court of the

lawing of dogs.

FOR the word *forest*, see Domesday in Glouc' et alibi.

For the derivation and description thereof, and some other things concerning the same; see the first part of the Institutes.

In Latin it is called *saltus*, or *sylva*. And so in Domesday, *sylva est in defens'*, *scilicet, in foresta regis*.

A forest doth consist of 8 things, viz. of soil, covert, laws, courts, judges, officers, game, and certain bounds.

\* *Foresta est nomen collectivum*, and by the grant thereof the soil, game, and a free chase doth passe.

And seeing we are to treat of matters of game and hunting; let us (to the end we may proceed the more cheerfully) recreate our selves with the excellent description of Didoes doe of the forest wounded with a deadly arrow sticken in her, and not impertinent to our purpose.

*Uritur infelix Dido, totaque vagatur*

*Urbe furens, qualis coniecta cerva sagitta,*

*Quam præcul incautam nemora inter Cressa fixit*

*Pastor agens telis, liquitque volatile ferrum*

*Inscius: illa fuga sylvas saltusque peragrat*

*Disiectæ, \* hæret lateri lethalis arundo.*

And in another place using again the word [*sylva*] and describing a forest, saith;

*Ibat in antiquam sylvam stabula alta ferarum.*

King John the 15 of June in the 18 year of his reign at Kungsmead, alias Kyme meade between Stanes and Windfor, granted the like charter as *carta de foresta* is.

And now let us set down the courts of the forest.

Within every forest there are these courts.

1. The court of the attachments or the woodmote court, this is to be kept before the werderors every forty days throughout the year, and thereupon is called the forty day court. At this court the foresters bring in the attachments *de viridi et exactione*, and the presentment thereof, and the verdere s doe receive the same, and inroll them, but this court can only inquire, and not convict; but it is to be observed, that no man ought to be attached by his body for vert or venison, unlesse he be taken with the manner within the forest, otherwise the attachment must be by his goods.

2. The court of regard or survey of dogs is holden every third year for expeditation or lawing of dogs by that court.

3. The

3. The court of \* swanimote is to be holden before the verderors as judges by the steward of the swanimote thrice in the year, and the foresters ought to present their attachments at the next swanimote court, and the freeholders within the forest are to appear at the swanimote to make enquests and juries. \* And this court may inquire *de supercratione forestariorum et aliorum ministrorum forestæ, et de eorum oppressionibus populo vestro illatis.* And this court may not only inquire, but convict also, but not give judgment.

*ria ministrorum forestæ*, so called because it is but a preparative for the justice seat. 34 E. 1. 34 E. 1. cap. 4.

For the jurisdiction of this court I find a notable case in 45 E. 3. in a writ of *in spasse* of false imprisonment brought against J. de W. The defendant said that he is forester in fee of the forest, and that at a certain swanimote it was presented by the \* foresters, verderors, regards, and agisters that the plaintiff had chased and taken deer within the forest, whereupon the defendant being forester in fee came to the plaintiff and prayed him to finde pledges to answer the same before the justice in eire in this country (that is, at the justice seat) and that to doe the plaintiff refused, by force whereof he retained him, untill he had performed the statute in that case provided, and justified the imprisonment. The plaintiff replied *de son tort demesne sans tiel cause*, and the issue was received by the court. And it was said that before the justice in eire he should have no averment against the presentment of the foresters.

Out of this case we doe observe 6. conclusions. 1. That the law of the forest is allowed, and bounded by the common laws of this realm, and therefore it is necessary, that the judges should know, and be learned in the same. 2. That though the verderors \* be judges of the swanimote, and the steward but a minister, yet the presentment in that court is as well by them as verderors as by foresters, or keepers, regards, and agisters, by the law of the forest. 3. <sup>b</sup> That a forester or keeper may arrest any man that kills or chafeth any deer within the forest when he is taken with the manner within the forest, or if the offender be indicted. But then it is demanded, <sup>c</sup> what if a man be so imprisoned, and after offer sufficient pledges, and they are not taken, what remedy for the party, seeing there are very seldome justice seats for forests holden? The answer is, that in the term time he may have *ex merito justitiæ* a *habeas corpus* out of the kings bench, or if he have privilege, out of the court of common pleas, or of the exchequer, or out of the chancery without any privilege either in the term time, or out of the term in time of vacation, and upon the return of the writ, he may be bailed to appear at the next eir to be holden for the forest, &c. And may also be bailed by force of a \* writ *de homine replegiando* directed *custodi forestæ*, <sup>d</sup> if he be arrested by the officers of the forest for hunting, &c. whereof he stands indicted or pretended taken with the manner he finding 12 pledges: but if he be adjudged by the justices in eire, and imprisoned he cannot be bailed by that writ *de homine replegiando* directed *custodi forestæ*, &c. and <sup>e</sup> if he be unjustly proceeded withall there he hath remedy by law, as hereafter, when we treat of the justice seat, shall be declared. And it

Y 4

Cart. de forest. cap. 8. Of Swanimote.

1 E. 3. ca. 8. 50 E. 3. ubi' 422.

\* Swanimote is derived of *swain*, that is, forester, minister, or more, or gemote, which is *curia*, i. e. <sup>a</sup> Ord. m. j. forestæ,

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45 E. 3. 10. 7.

\* We will hereafter shew from whence these several names be derived, and the duty of their several places.

See Domesday Warw. Si vero per mare contra hostes ibat rex, vel quatuor battinici, vel quatuor libras denariorum ei mitterebant.

<sup>a</sup> Ordinatio forestæ. 34 E. 1.

<sup>b</sup> Regit. 8. b.

F. N. B. 67. c.

<sup>c</sup> See the 2. part of the Inst.

Magna Carta, cap. 29.

\* Rot. par. anno E. 3. nu.

Int. petitiones.

<sup>d</sup> See the 2. pt. of the Inst. W. 1.

cap. 15. Bracton

lib. 3. fo. 154.

Fleta, lib. 2. c. 2.

<sup>e</sup> F. N. B. 67. a.

Register.

1 E. 3. c. 8.

is to be observed, that there is a diversity between the writ *de homine replegiando* directed to the sheriff, for he is restrained by the statute of W. 1. cap. 15. to replevy any man imprisoned for the forest, being taken with the manner or indicted, but this statute extends not to the writ *de homine replegiando* directed *custodi foreste, &c.*

Regist. 80. b.  
43 E. 3. 30. a.  
& b.

The fourth conclusion is, that the offender may be retained by him untill he hath found pledges to appear before the justice in eire, because (as hath been said) the court of the swanimote hath no power of judicature, but if he offer sufficient sureties, he ought not to be imprisoned.

Consuetud' et  
assisa de foresta.  
Ver. Mag. Cart.  
parte 2. fo. 29.

5. That this justice in eire at his sessions may by the law of the forest proceed upon the presentments or verdicts in the court of the swanimote, though they be taken in another court, as the justices in eire might have done in like cases as before in the chapter of justices in eire appeareth.

\* Nota, the entry  
is *Præsentatum,*  
*et convicium per*  
*viridar'.*  
† 50 E. 3. aff.  
442. Ordinat'  
forest. 34 E. 1.  
Presentment by  
36.

6. Lastly, Note the issue joyned upon the plea of the forester, viz. *de injuria sua propria absque tali causa*, and allowed by the court, and the consequent thereupon. And thus much for the case the reporter saith, that it was said that the party should \* not traverse the presentment of the foresters, verderers, regards, and agisters: † and herewith agreeth 50 E. 3. and note the presentment was in that case by 36. And herein this diversity is to be observed, that if at the swanimote the presentment of the foresters be found true by the jury concerning vert or venison, the offender standeth thereof convicted in law, and cannot traverse the same: but an indictment or presentment before the chief justice of the forest at a court of the justice seat by a jury, and not found in the swanimote, may be traversed. 8 E. 3. Itinere Pickering 147. a. because it is not presented but by one jury.

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21 E. 3. 48.

The justice seat.

4. This case also giveth just occasion to speak of the court of the justice seat holden before the chief justice of the forest, aptly called in the said book justice in eire, for so he is, and hath authority and jurisdiction to hear and determine concerning vert and venison &c. by force of letters patents under the great seal, whereof there be two, one for the forest on this side of Trent, the other beyond. By which letters patents the king doth grant unto him *officium gardiani capitalis justiciarii ac justiciarii sui itinerantis omnium et singularum forestarum, parcorum, chacearum et warrennarum suarum cum suis pertin' quibuscunque* \* *ultra Trentam existen'*, &c. *dantes et concedentes eidem A. B. plenam auctoritatem et potestatem tenore prædictarum litterarum patentium omnia et omnimoda placita, querelas, et causas forestarum, parcorum, chacearum et warrennarum prædict' tam de vividi gram', quam de venatione, ac de aliis causis quibuscunque infra easdem forestas,* † *parcor, chascas et warrenmas, evenien' sive emergent' audiend' et determinand': habend', occupand', gaudend' et exercend' offic' præd' cum pertin' per se vel per sufficien'* ‡ *deputatum suum sive deputatos suos suffice' durante vita ipsius A. B. &c.*

\* The like office  
*extra Trentam*  
*mutatis mutandis.*  
Note, anciently  
this great officer  
was created by  
writ, as other  
justices in eire  
were, but now  
by the statute of  
27 H. 8. ca. 24.  
he is to be creat-  
ed by Let. pat.  
See before cap.  
Justices in Eire.  
‡ This is to be  
understood of  
parks, chases and  
warrens within  
the forests, as  
hereafter shall  
appear.

† That is by the  
statute of 32 H.  
8. cap. 35.

And this court of the justice seat cannot be kept oftener than every third year, and other justices in eire kept their courts every seventh year. And (as before other justices in eire) it must be summoned forty days at the least before the sitting thereof: and one writ of summons is to be directed to the sheriff of the county, which writ you shall find hereafter in this chapter.

There

There is another writ of summons directed *custodi forestæ domini regis vel ejus locum tenenti in eadem*, and this writ consisteth upon two parts. First, to summon all the officers of the forest, and that they bring with them all records, &c. Secondly, all persons, which claim any liberties or franchises, within the forest, &c. and to shew how they claim the same. <sup>c</sup> And this court or justice seat hath jurisdiction to inquire, hear, and determine two things. 1. All trespasses within the forest, according to the laws of the forests. 2. All the claims of franchises, privileges, and liberties within the forest, as to have parks, warrens, vivaries, to be quit of asserts, and purprestures, to cut down his own woods without view of the forester, &c. Likewise claims of leets, hundreds, felons goods, waifs, strays, fugitives, and to kill hares and other beasts of chase within the forest, or to have a wood *infra metas forestæ et extra regardum forestæ*, that is, to be out of jurisdiction of the forest, and other franchises, privileges, liberties, immunities, freedoms, &c. within the forest, whereof you shall read excellent matter in the eire of Pickering in 8 E. 3. rot. 31, where Guilberd of Acton claimed his woods *extra regardum forestæ*, &c.

This chief justice may by the statute of 32 H. 8. make his deputy (yet all the writs of commons ancient and late, are *coram* (the justice *itinerant*) *aut ejus deputato*.)

Before any justice seat be holden, the \* regards of the forest must make their regard by force of the kings writ, and the regard is *obambulare*, to goe through and view the whole forest and every bayliwike of the same, *ad videndum, inquirendum, imbreviandum et certificandum* all the trespasses in the forest: his office extendeth through the whole forest, and every part thereof, to inquire of all offences concerning vert and venison, and of all concealments of any offences or defaults of the foresters, and all other officers of the kings forest. He is a ministeriall officer, and is constituted either by letters patents of the king, or by the chief justice at the justice seat, or to be chosen by writ to the sheriff. The duty of this officer appeareth by the writ hereafter mentioned.

Before a justice seat there ought to be preparations for the same, to the end, \* that good service may be done there, *et quod itinera non sint umbratilia*, as taking one or two examples instead of many.

*Rex vic' Not. salutem. Præcipimus tibi quod venire fac' certis die et loco quos ad h'c duxerimus providend' omnes forestarios et regardatores de Sherwood<sup>a</sup> ad regard' faciend' in forest' prædict' ante advent' justiciariorum nostrorum de forest',<sup>2</sup> et loco regardatorum nostrorum qui mortui sunt et infirmi alios eligi fac' ita<sup>3</sup> quod<sup>4</sup> 12 sint in quolibet regard', et nomina illorum imbreventur.<sup>5</sup> Et forestar' debent jurare quod 12 milites ducent per totam balivam suam, ad videndum omnes transgressiones quæ exprimentur in<sup>6</sup> scriptis capitulorum quæ tibi mittimus, et hoc non omittent pro aliqua re: debent etiam milites jurare quod facient regard', sicut debet fieri et solet.<sup>7</sup> Et quod ibunt sicut forestar' eos ducent ad prædicta videnda.<sup>8</sup> Et si forestar' noluerint eos ducere, vel aliquid forisfaci' concealare voluerint, ipsi milites non omittent pro illis quin forisfaci' illud videant et imbrevari faciant: et hoc pro nulla re dimittant. Et<sup>9</sup> quod regard' fiat circa fest' beati Petri ad Vincula prox' futur'. Teste, &c.*

<sup>c</sup> Cart. de forest. cap. 16.  
<sup>2</sup> 11 H. 7. 30.

32 H. 8. ca. 35.  
\* A regarder is derived of the French word *regardeire*, that is, to view or see, because he cannot present any thing but upon his own sight and view. To speak once for all, the names of all the officers from the highest to the lowest, put them in mind of their duty: *Conveniunt rebus nomina sæpe suis: Nomina sunt notaverum.*

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Breve de regardo cum artic'.  
<sup>a</sup> Forest' de Sherwood. i. Limpida Sylva.  
<sup>b</sup> Cart. de forest. cap. 7.

<sup>c</sup> 12 capit. patent. inferius.  
In this writ 9. things are to be observed.

The 12. chapters above-mentioned are these which the regards duty is to prepare.

Nota, all these 11. are to be upon his view, *super visum*, and in this respect may be resembled to a coroner, *super visum al.*

- 1 *Videnda sunt omnia assarta, &c.* Assarts.
- 2 *Videndæ sunt omnes purprestur' in boscis, &c.* Purprestures in woods.
- 3 *Videndæ sunt omnes purprestur' in terris arabil', &c.* In arable.
- 4 *Vidend' sunt omnia vasta boscorum, &c.* Wast of woods.
- 5 *Vidend' sunt omnes bosci domini regis, &c.* The kings woods.
- 6 *Vidend' sunt omnes haie domini regis, &c.* The hedges of the king.
- 7 *Item omnes purprestur' et omnia assarta, et omnia vasta, &c.* Generall words.
- 8 *Vidend' sunt omnes aeræ austurcorum, esprevorum, falconum, &c.* Ayeries of hawks.
- 9 *Vidend' sunt omnes forgæ et mineræ, &c.* All forges and mines.
- 10 *Vidend' sunt portus maris, &c.* The havens of the sea.
- 11 *Vidend' est mel, si quid, &c.* Honey.

12 *Item milites debent attente inquirere in itinere suo quis habuerit arcus et sagitt' vel balistas leporarius, burchetas vel aliquid ingenium ad malefaciend' domino regi de feris suis. Balista, or arcubalista, signifieth a crossbow.*

*Leporaria*, a harepipe. *Burcheta* of the French word *berche*, a kind of gunne.

*Ordinatio forestæ.*

34 E. 1.

*Imprimis ordinavimus pro nobis et hæredibus nostris quod de transgres' in forestis nostris de viridi et de venatione de cætero fact', forestar' infra quorum baliwas hujusmodi transgres' fieri contigerint, præsentant eisdem ad prox' suanimotum coram forestar', viridar', regardator', agistator', et aliis earundem forestarum ministris. Et super præsentationibus hujusmodi ibidem coram forestar' viridar' et omnibus aliis ministris supradictis per sacram' tam militum quam aliorum proborum et legalium hominum de partibus vicinioribus, ubi transgressiones sic præsentatæ fact' fuer' non suspectorum, per quos rei veritas plenius inquiretur. Et sic inquisita veritate præsentationes illæ per communem concordiam et assensum ministrorum prædictorum roborantur et sigillis suis sigillantur. Et si alio modo fuit indiciament' pro null' penitus habeatur.*

This ordinance being made by the king only without authority of parliament, albeit it was in affirmance of the law, did not binde, and therefore was not executed: and that it was but an ordinance, or declaration made by king E. 1. it appeareth expressly by the statute of 1 E. 3. and by that act of 1 E. 3. the said declaration is rehearsed as a law, the observation whereof is also an excellent preparation for a justice seat.

*Viridarius* is a judiciall officer of the forest, and chosen in full county by force of the kings writ. His office is to observe and keep the assises or laws of the forest, and to view, receive, and inroll the attachments and presentments of all manner of trespasses of the forest of vert and venison, and to do equall right and justice as well to poor as to rich. All this and much more you may read in the oath which he taketh before the sheriffe. There be most commonly four verderors in every of the kings forests.

*Agistator,*

1 E. 3. ca. 8.  
Stat. 1. F. N. B.  
164.

*Viridarius à viridi*, vert, or green-hue, for that his office principally concerneth to look to the vert, or grene, and to see it be maintained.

*Agistator*, so called, because he taketh beasts to agistment, that is, to depasture within the forest, or to feed upon the pawnage, and cometh of the French word, *gyser*, to lye, because the beasts that feed there are there levant and couchant, lying and rising. And his office consisteth in *agistando*, *recipiendo*, *imbreviando*, et *certificando*.

*Agistatores.*  
Cont. & Ass.  
forest. ubi sup.

And this officer is constituted by the kings letters patents: and of these in such forests where there is any pawnage, there be four in number.

*Gruarii*, (of whom you shall reade in forest records is derived from the French word *gruyer*, which signifieth generally the principall officers of the forest. *Et ipsi gruarii vocantur ad similitudinem eorum qui aucupio regis in grues clivi præerant.*

*Gruarii.*

See the Cust. de Norm.

*Forestarius.*

*Forestarius* is taken for a woodward not only of the king within his forest, but *ex vi termini* of any subject of his woods whereforever they lye: which appeareth by a writ in Bracton in these words. *Rex vic' salut. Scias quod propter destructionem quæ facta est in bosco et terra quam A. de N. tenet in detem in tali villa de B. de N. Provisum est in curia nostra coram justiciariis nostris, quod idem apponat forestarium suum ad prædictum boscum custodiend', ita quod prædict' A. non habeat in eodem bosco nisi rationabile esoverium suum ad andudum et claudendum tantum super eadem terram quam ipse tenet in eodem, &c.* But in legall understanding he is taken for a sworn officer ministeriall of the kings forest, and his duty appeareth by his oath, which consisteth on five parts. 1. That he shall be loyall and true to the master of the forest. 2. That he shall truly walk and keep the office of the forestership, and true watch make both early and late both of vert and venison. 3. Truly attache, and true presentment make of all manner of trespasses done within this forest to his knowledge, and specially within the keeping of his bailiwick. 4. The kings counsell, his fellows, and his own, he shall truly keep. 5. No concealment make for no favour, meed or dread, but well and truly to behave himself therein.

Bracton, lib. 4.  
fo. 316. a. & b.  
& 231. a.

<sup>a</sup> Officers of the forest shall not be sworn on enquests out of the forest.

<sup>a</sup> *Ordinat. forest.*  
34 E. 1 cap. 3.  
Regist. 183.

<sup>b</sup> *Messorius* is a mower or harvester derived à *metendo*. *Fleta* lib. 2. cap. 75. *messor. 30 ass.*

F. N. B.  
<sup>b</sup> *Audita et consuet. forest. 6 E.*  
1. c. 16.  
Virgill.

*Thysyllis et rapido fessis messoribus æstu*  
*Alia serpyllumque herbas contundit olentes.*

*Surcharge of the forest.* *Superoneratio forestæ*, is when a commoner in the forest putteth on more beasts then he ought, and so surchargeth the forest. It is taken from the writ *De secunda superoneratione pasturæ* in the same sense when the commoner surchargeth. Where it is said (*tempore coronationis regis Henrici avi*, that is, of H. 2.) It is to be known that he was crowned twice, viz. the 20 of December in the first year; he caused his sonne Henry to be crowned king the 15 of June in the 16 year of his reign; Henry his son died the 11 of June in the 28 year of his reign; after whose death king Henry Fitz Empresse was crowned again.

Regist. and  
F. N. B. 126. a.  
c. & c. surcharge.  
Mag. Cart.  
cap. 5.

*Desertum, id quod ab hominibus desertum, et feris relinquitur.*

Domesday.  
Sudsex Cicestr.  
et tæpe.

*Masura terræ, sunt in eisdem mesuris 60 domus plus quam ante fuerunt.* *Mas de l'ra*, that is an exchange of land where there is a house.

*Fugacia*

Carta Majildis  
Imperatricis Mi-  
loni de Glocest.

Int. leges Canuti  
cap. 77. Lamb.

Johannes Ros-  
fus, et alii post  
eum.

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Deorfeld. Falda  
ferina.  
Domesday.  
Chent. Certh.  
Ib. parcus sylv-  
tic' bestiarum.  
Devonscoire.  
Winehelere.  
Hertfordscire.  
Belinton.  
Assis. forest.  
6 E. 1. cap. 1.

Ibid. 8 E. 3.  
Itinere Picker.  
Guilbert of  
Actons case.

Ib. Artic. 11.  
Camia continet  
spacium octo  
palmarum in  
longitudine.  
Dors. claus. an.  
16 R. 2. m. 30.

\* Bract. lib. 3.  
fo. 32.

*Fugacia* signifieth a chase, and is all one with *chasea*. See the charter of Mawde the empress, stiling her self *Anglorum domina*, made to Miles of Gloucester, creating him thereby earl of Hereford, wherein towards the end follow these words. *Præcipio quod hæc omnia supradicta teneat de me libere et quiete in bosco et plano, in forestis et fugaciis, in pratis et pasturis, &c.* *Præterea autem concedo ut in propriis ipsius prædiis quisque tam in agris, quam in sylvis excitet agitetq; feras; meas autem ne venetur, iis præsertim in locis quos privilegio circumscripsi meo cum pœna præcipio.*

That H. 1. made at Woodstock a park, which was, saith he, the first park in England. But it is out of doubt that there were parks in the dayes of the Saxons, which were called *deerfald* of two Saxon word of *deor* for deer, and *fald* for a place inclosed with pale, hedge, or wall. And in the book of Domesday often mention is made by expresse name *de parcis*. *Parcus bestiarum*. *Parcus sylvaticus bestiarum*.

*Haia* taken for *parcus* of the French word *heye* for an inclosure *Rot. Inquisit.* 36 E. 3. in *scacc' de forest'*.

*Haia de Kingeslie* in Hamshire.

*Hulmus*, i. *insula* an *ille*. *Bercaria*, vid. 1 part. Instit. sect. 1. *Mastivus nutulatus* is a mastiffe expeditated or lawed, and not ruffled: for no dog by the law of the forest ought to be muffled. *Mutylatus* commeth of the verbe *demutulo*, i. *demembro*. *Bissa*, i. *cerva*, of the French word *bicke* for a hinde. *Mureleges*, à *legendo mures*, of getting of mice, a wilde cat. *Tessonnes* of the French word *tesfon*, for a gray, brock, or badger. *Besonus* of *bison* a French word for a wilde ox.

*Ham*, Saxonice *domus*, home, sometime *villa*, as *Mileham olim Mildham*, because the aire was milde and temperate.

*Hue* and *cry*, *hutesum et clamor*, the one being an exposition of the other, each of them signifying crying and shewing; *verba dolentis*. And *hue* is derived of the French word *huier* and *crier*. But hue and cry by the forest law is not to be made for trespassse in vert, but in venison only. This hue and cry cannot be pursued but only within the bounds of the forest; and the offence must be committed within the forest, and not within the purlieu. And this hue and cry may be made by any of the kings ministers of the forest, for any of them may arrest the malefactor, and none can make hue and cry but he that may arrest in that case, and cannot. And so are the generall words, *si quis viderit*, &c. to be understood.

*Si quis viderit*, &c. If any township or village follow not the hue and cry, they shall be amerced at the justice seat.

Taken with the *mayneer*, à *manu* is in 4 kinds, viz. dog-draw, that is, drawing after a deer which he hath hurt. Stable stand, viz. at his standing with any knife, gunne, or bow, or clofe with greyhounds in his leash ready to shoot or course. \* Back-bear, that is, carrying away the deer which he killed. Bloody hand, that is, when he hath shot or coursed, and is imbrued with blood.

But what if injustice be done at the justice seat? For example, as if a claim be made of any liberty at a justice seat, and is there allowed, what remedy hath the party grieved in this case? which I do the rather propound, because I find not this doubt resolved in any of the readings upon this statute of *Carta de Foresta*, or in any that have written of the forest laws. And I find this question resolved



solved by a notable book case in 21 E. 3. agreeable with the Register and other books; where the case was this. *A.* and *B.* before the justices of the forest of Pickering claymed to have within the wood of *E.* within the same forest a woodward proper, and also to have the windfalls in the same wood, which claime was allowed by the said justices, where in truth the said claime was false, to the disherison of the commoners there: for that the commoners within the said town of *E.* had the choice of the said woodward, and all the windfalls for their reasonable estovers as belonging to their freehold. Therupon on the behalf of the commoners the record before the justices of the forest was removed by *certiorari*, (which in the forest law is called a *venire facias* record) into the kings bench (which court is above all eires) and two of the commissioners, viz. Robert de Scarburgh and Robert Wich sued out a *seire fac'* upon the said record against the said *A.* and *B.* &c. And they declared upon the said writ that all the commoners had the liberties aforesaid: exception was taken to the writ, that the grievance is as well supposed to others, as to those two which were plaintifs in the *seire fac.* Whereunto it was answered, that although the grievance was to others, yet those two that would complain might maintaine this suit. And if the others be of record with *A.* and *B.* yet these two may sue, and these two might have joyned in assise. And there it is holden, that if a profit be granted to a comminalty out of the forest, the claime ought to be made by them all, but otherwise it is within the forest, where every one shall have his action by himself for that which belongs to him; and in the end the writ was adjudged to be good. But in this case somewhat is implied, for by the law of the forest when a claim is made of any liberty within the forest, although no issue be joyned thereupon, yet the entry is, *Et quia videtur justiciariis quod expediens et necessse ad inquirendum super præmissis rei veritatem antequam ad allocationem clamei prædicti procedatur, inquiratur inde veritas per ministros ejusdem forestæ*: and sometime *tam per ministros forestæ quam per alios liberos et legales homines*, at the discretion of the justices for the advancement of truth: and accordingly the foresters, verderors, regarders, and agisters doe enquire thereof. \* Also if a claim be made before the justices of the forest, whereupon there groweth difficulty, or if a demurrer in law be thereupon joyned, the justices may adjourn the same into the kings bench to be there adjudged, and then the entry is, *Ideo quoad clamorem prædicti pro eo quod justiciarii prædicti nondum absolvantur de iudicio inde reddendo, datus est dies eidem H. coram domino rege (in tali retori) ubicumq; Sc. de audiendo inde iudicium, Sc. Et dictum eidem H. quod interim sequatur bre. de venire fac' inde recordum, Sc. Postea dominus rex mandavit præfat' justic' hic. suum in hæc verba.* \* *Edu. Dei gratia rex Angliæ, Sc. Dilecto et fideli suo Rico. de Willowbye salutem. Cum vos et socii vestri justiciarii nostri ad placita forestæ, Sc. tenend assignat' quoddam clamorem de diversis libertatibus per dilectum et fidelem nostrum H. de Percy coram vobis et sociis vestris prædictis in eadem forest' facti propter quasdam difficultates in eodem clameo content' coram nobis adjournaveritis, ut accepimus, vobis mandamus quod si ita est, tunc omnia clamea prædicta nec non recorda et process. inde coram vobis habita coram nobis ubicumque fuerimus in Anglia sub sigillo vestro sine dilatione ruitatis juxta adjournamentum*

21 E. 3. 48. a.  
In seire fac.  
Vid. 25 E. 3.  
fo. 43. Nichol.  
Gowers case.  
Vid. Regist. 263.  
b. Breve de in-  
quiriendo de li-  
bertatibus allo-  
catis.

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\* 8 E. 3. 16. n.  
Pickers. Henry  
de Percys case  
which depended  
in adviement  
for difficulty  
four years before  
R. de Willowby,  
and other  
justices of the  
forest.  
Venire fac.  
Record.  
Certiorari.  
\* A certiorari  
before judge-  
ment out of the  
chancery return-  
ed into the kings  
bench & redced  
to R. de Wil-  
lowbie (being the  
ancient primary  
judge) only, be-  
cause he only  
hath the keeping  
of the records.

namentum prædictum hoc bre. nobis remittentes. Teste, &c. anno 12 E. 3.

*Virtute cujus brevis clameum prædict', nec non recordum et process' prædict' mittuntur coram rege ad diem prædict' una cum brevi prædicto.*

Postea dominus rex mandavit præfato R. de W. quoddam aliud bre. claus. in hæc verba. Edw. &c. dilectio et fideli R. de W. salutem. Cum vos et socii vestri iusticiarii nostri ad placita forest' in forest' H. com' Lanc' de Pick' in com' Eborum tenend' assign' quædam clam' de diversis libertatibus per dilectum et fidelem nostrum H. de Percy coram vobis et sociis vestris prædict' in eadem forest' habend' fact' propter quædam difficultat' in eisdem clameis interveniend' coram nobis adjornaveritis, et quædam alia clamea sua similiter ibidem de quibusdam aliis libertatibus fact' allocaveritis, prout accepimus; nos volentes tam super dictas libertates sic adjornat' quam super al' allocat' certis de causis certiorari, vobis mandamus quod si ita est, tunc omnia clamea præd' nec non record' et process. inde coram vobis, et sociis vestris prædict' habit' coram nobis ubicunque fuerimus in Anglia sub sigillo vestro sine dilatione mittatis, et hoc breve, ut hiis inspectis ulterius fieri faciemus, quod de jure fore viderimus faciend'. T. E. duce Cornub. com' Cestræ filio nostro charissimo custod' Angl' apud Berkhamsted primo die Februarii anno regni nostri 13. *Virtute cujus brevis clam' præd' tam adjornat' quam allocat' mittuntur coram rege una cum bri. prædict', &c.*

By all which cases the former question is resolved, which case and consequents thereupon is worthy of serious consideration.

25 E. 3. 43.

Nicholas Gower was indicted for that he killed the kings game in the kings forest, when he was the kings steward of the same, and also had taken ranfome for indictments, which indictments were removed coram rege, and the steward was put to answer thereunto.

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27 E. 1. coram rege rot. 13. Wigorn'.

Note the writ of the justice of the forest re-torn' into the kings bench. Breve iusticiarii forestæ. Versus Godfridum Episc. Wigorn'.

Ad finem faciend' pro transgress. venationis in foresta de Windesfor.

Hugo le Despencer iustic' forest' citra Trentam mandavit quoddam breve suum vic' Wigorn' retorn' coram domino rege in crastino Sancti Johannis Baptiste prox' præterito, &c. in hæc verba. Hugo le Despencer iustic' forest' citra Trentam vic' Wigorn' salutem. Mandamus vobis quod disring' Godfridum episcopum Wigorn' per omnes terras et catalla sua in balliva vestra, ita quod nec ipse, nec aliquis per eum ad ea manum apponat, donec aliud a domino rege seu à nobis inde habueritis in mandatis. Et quod de exitibus coram domino rege respondeatis et quod habeatis corpus ejus coram domino rege in festo Sancti Johannis Baptiste ubicunque tunc fuerit in Anglia, ad finem faciend' pro transgressione venationis per ipsum facta in foresta de Windesfor sicut per legalem inquisitionem secundum assisam forestæ coram nobis apud Windesfor captam plenius nobis constat. Et unde eidem episcopo per literas nostras ex parte domini regis aliàs mandavimus, quod pro fine suo inde faciend' veniret coram nobis apud London, ita quod esset ibi in crastino Sancte Trinitatis prox' præterito, vel sufficientem attorney suum ibidem mitteret suam plenam potestatem in hac parte habentem: qui ad diem illum coram nobis non venit, nec attorney in hac parte misit sicut ei ex parte domini regis mandatum fuit; et habeatis ibi hoc breve. Dat' apud Lutheburge die foris in octab' Ascensionis Domini anno regni regis Edwardi vicesimo sexto. Ad quem diem vic' nihil inde fecit, sed mandavit quod præceperat ballivis libertatis ejusdem episcopi de Oswoldesthorpe qui nihil inde fecerunt. Per quod præceptum fuit eidem vic' quod non omitteret propter prædictam libertatem, quin disring' prædictum episcopum per omnes et eas &c. Et quod de exitibus, &c. Et quod haberet

haberet corpus ejus coram rege in octabis Sancti Michaelis, ubicunque, &c. ad finem faciend', &c. cum domino rege pro transgress' prædict', &c. Et similiter quia procedi non potuit ad finem capiend' de præd' episcopo, &c. sine record' prædicti Hugonis justic' &c. de transgress' præd. &c. Mandatum fuit eidem Hugoni justic' &c. quod recordum inde coram eo habitum regi mitteret ad præfatum terminum cum omnibus recordum illud tangentibus. Et vic' nullum breve retornavit coram rege ad præfat' terminum Sancti Michaelis: nec prædictus Hugo justic', &c. aliquod recordum misit, &c. propter quod, sicut prius præcept' fuit vic' quod non omitteret propter prædictam libertatem, quin distring' prædictum episcopum p' omnes terras, &c. Et quod de exitibus, &c. Et quod haberet corpus ejus coram rege in octabis Sancti Hilarii ubicunque, &c. ad finem faciend' in forma prædict', &c. Et vic' retorn' breve, sed prædictus Hugo justic' nullum recordum misit. Et super hoc venit quidam Aluredus de Northgrave pro prædicto episcopo, et dicit quod præfatus Hugo justic', &c. distingit præd' episcopum per diversa brevicia sua in com' Wigorn' et Glouc' ad finem faciend' coram ipso de eadem transgr. et nihilominus paratus est satisfacere domino regi pro prædicto episcopo de prædict' transgress'. secundum recordum prædicti Hugonis, et secundum quod cur' regis consideraverit, &c. Et quia dictus Hugo justic' nullum recordum misit per quod procedi potest ad finem capiend' de prædicto episcopo, &c. Ideo quoad prædictum episcopum cessat distr' usque a die Pasche in unum mensem ubicunque, &c. Et dictum est prædicto Aluredo quod tunc sit ibi ad finem faciend' pro prædicto episcopo, vel quod habeat warrantum de prædicto Hugone justic' quod finem fecit vel finem facere debeat coram prædicto Hugone justic', &c. de transgressione prædict', &c. Et nihilominus mandatum est præfato Hugoni justic', &c. quod venire fac' recordum prædictum, ut prædictum est, coram rege præfatum terminum, &c.

Procedi non potuit ad finem, cap. sine recordo, &c. A certiorari to the justice of the forest for the record.

Episcopus paratus est satisfacere.

Observe well the parts of this record, and a ready way to help the king to his fines after the eire of the forest is ended.

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On the other side it is demanded what if a man make a just and lawfull claim to certain liberties at the justice seat, and cannot obtain the same to be allowed by the justices of the forest, what remedy for him that maketh such claim? \* Whereunto the answer is, that he shall have a writ *De libertatibus allocandis*, directed to the justices of the forest, which writ doth appear in the Register.

\* And any person that is to make any claim may the first day of the eire either make it in person or by attorney, F. N. B. 26. g. And he that appears upon a presentment or indictment taken before the justices in eire, and travserth the indictment, may after appear by attorney. See before cap. Justices in Eire the writ in the Regist. 19. a. W. 2. cap. 10.

\* And the entry is *A. B. p'or lo: suo T. B. vel L. N. de omnibus placitis seu querelis motis seu movendis et ad omnes libertates calumniand', prosequend', et defendend' durante itinere isto*: whereby it appeareth in what generality an attorney may be made.

\* And this agreeth with the Register, fo. 19. b. by 5 kind of writs which are worthy of observation, viz. *1. Breve de clamore admittend' in itinere per attornatum primo die itineris, &c. 2. De libertatibus exigendis in itinere: 3. De attornat' in omnibus placitis et querelis in itinere, et ad libertates calumniandas. 4. Aliter in omnibus placitis et querelis in itinere juxta formam stat' de Merton cap. 10. Glouc' cap. 8. et W. 2. cap. 10. 5. Aliter de attornatis. &c.*

\* Regist. 162. and F. N. B. 229. b. & 230. a. & Int' communia de Scaccar. de anno 14 E. 1. de libertatibus allocandis et vide L. Ockham f. 47. 48.

\* 8 E. 3. Itinere Hick. 148. a. b 8 E. 3. Itinere Pick. the case of the prioress of Rocca Reg. 19. b.

\* Regist. 19. b.

And these writs are to be granted *ex merito justitiæ*, without any

any denyall as well to the justices in eire of the forest, as other justices in eire for the admitting of attornies. Vid. 2. part of the Institutes W. 2. cap. 10.

And upon search made I find the like writ beginning, *Omnibus balivis et fidelibus suis, &c.* in the eire of Pickering, 19 b. for the prior of St. Johns of Jerusalem to make an attorny before the justices of the forest.

But what if the justice in eire give an erroneous judgment, &c. what remedy hath the party grieved? He may have a writ of error out of the chancery returnable into the kings bench, and there justice shall be done.

<sup>d</sup> If a man make his claim by grant or prescription, and he or his counsell mistaketh his right title in some materiall point, so as the claim is found against him, it is good for him that his true title be found by the same verdict specially, for then may the party by petition make a fine and pray licence to make a new claim, and thereunto he ought to be admitted.

And concerning claims it is specially to be observed, that by the forest law a grant made of a privilege within the forest to all the inhabitants being freeholders within the forest or such other communalities not incorporated, is good.

<sup>e</sup> If a man make a false claim by claiming more then he ought, he shall be fined for his false claim, but that which he ought to have shall not be seised: as the prior of York claimed by charter to have tithe of all venison, *tam in carne quam in corio*, where he ought not to have it *in corio*, for which he was fined and enjoyed it *in carne*.

In the eire of Pickering holden before Richard de Willowby, Robert de Hungerford and John de Hambury justices in eire for the forest of Pickering, anno 8 E. 3. a claim was made by Thomas de Pickering and Margaret his wife, viz. *Habere in dominico bosco suo de Lofton woodwardum ad custodiendum boscum suum, et quod nullus in eo amputet aut prostrare faciat arborem aliquam sine voluntate sua, et quod ipsi in bosco suo possunt prostrare et dare pro voluntate sua arbores virides et siccas, et dare et vendere arbores suas pro voluntate sua sine visu forestariorum, &c.* and prescribed in the same in the right of the said Margaret, where this prescription was inquired of and allowed to be good in law, but it was found, as to the taking of the trees without the view of the forester, to be untrue.

\* The like prescription made by Sellinger to take and cut down timber trees within his own woods within the forest of Hays in the county of † Hereford without the view of the forester, and upon argument and long advisement it was adjudged, that the prescription was good notwithstanding the ordinance of 34 E. 1. and the statute of 1 E. 3. cap. 2. And the reason was, because that statute was but in affirmance of the common law of the forest, and against such a statute a man may prescribe. And that 34 E. 1. was but an ordinance and no statute, see F. N. B. 167. a. Register, which judgment was agreeable to Pickerings case above said, and is of great consequence: for the statute of Carta de Foresta, and most of the statutes concerning forests are likewise *declarativa antiqui juris*; and therefore, as against the common law, so against them a man may prescribe upon a just and reasonable cause; but if they were *introductiva*

2 E. 3. fo. 29.  
Lib. 9. fo. 28. b.  
Labbot de Strata  
Marcellas case.

4 E. 3. Itin'  
Pick. fo. 165.  
the case of Wil-  
liam of Persey  
and Petronilla de  
Kinthorp.  
8 E. 3. Itin'  
Pick. fo. 22.  
Itin' Lanc' fo. 4.

8 E. 3. Itin'  
Pick. fo. 15.  
Lanc. f. 64.

Pickerings case.

\* In cur' Scac-  
car' coram Edw.  
Sanders capital'  
bar. et aliis ba-  
ronibus tempore  
R. Eliz. of the  
report of Pop-  
ham chief jus-  
tice.

† [ 298 ]  
Constit. & Ass.  
Forest' ubi sup.  
A man may  
claim to have  
dogs in expedi-  
tate and hounds  
within the forest.

*introducitur novi juris*, then no prescription can be made against them, unlesse he hath another statute to preserve the liberties.

And if a man hath a wood in a forest, and hath no such prescription, the law doth appoint him a means to sell both wood and timber, so it be no prejudice to the game, but sufficient is left besides, and that is, by a writ of *ad quod dampnum*, upon return whereof the king doth licence him, &c.

By the kings commandment under his signature and signet, all the judges were assembled about certain questions concerning his forests of Leicester in the county of Leicester, and of Bowland in the county of Warwick, to be moved to them by the attorney of the duchy. And the first question which was moved, was, whether the said forests were forests in name only, or in law: which being *questio facti*, the judges could give no answer: but by way of direction they resolved, that if they were forests in law, it must appear of record, for there be certain incidents inseparable to every forest, viz. courts of record, and officers of record, courts of record, as courts of attachments, swanimote, and justice seats. Officers of record, as foresters, verderers, regarders, agisters, &c. who are made (as it appeareth before) by matter of record, &c. but appellation or naming of them forests in offices, pleadings, grants, or other conveyances, are no proofs, that they be forests in law.

2. It was resolved by them, that if they be but free chases and no forests in law, that then the owners of woods within such chases may cut down timber or wood growing therein without view of any officer, or licence of any; but if they cut down so much as they leave not sufficient covert, and bruise wood for the game, they shall be punished at the kings suit. And so it is if a common person hath liberty of chase in other mens woods, the owners of the wood cannot cut down all the woods, but leave sufficient for covert, and bruise, as hath been accustomed, no more then the owners of woods in which others have common of estovers, can destroy the whole woods, but leave sufficient for the estovers.

3. And being demanded whether in the kings free chases a man might have common and feeding for sheep, and warren by prescription or grant? It was resolved clearly they might, but they must not surcharge to the prejudice of the kings game, but the owner of the soil within such a free chase cannot erect a warren without a charter from the king. And it seemeth to me that by prescription a man may have common for his sheep within the kings forest: for, first, I find no authority in our books (that I remember) against it; and that generally a man may common in a forest, it appeareth by *carta de foresta*, cap. 1. 33 E. 1. stat. 5. 34 E. 1. cap. 6. And if for common in generall, especially for common appendant so much favoured in law, and particularly for sheep, as well as for horses and mares. 12 H. 3. common 25. F. N. B. 230. a. And to conclude this point the prioress of Wicham prescribed to have common in the forest of Pickering, *pro omnibus aviculis suis, except caprellis*, before the justices in cire in 8 E. 3. rot. 31. which being found to be true was allowed to her, &c. and such a prescription may have a lawfull beginning by the kings grant.

IV. INST.

Z

4. That

Regist. 257. a.  
F. N. B. 226. f.  
2 E. 2. trm. 9.  
Ad quod dampnum.

Pasch. 5 Jac.  
Reg

Vid. Reg. 258. a.  
Bowland is called libera chase de Bowland.

Temps E. 1.  
trespass 249.  
the case is to be understood of a forest whereforester (there named) be, for every forest is a tree chase, but not a covert/so.  
43 E. 3. 8.

Vid. Dier 6 E. 6.  
fo. 70.

4. That he that hath a warren within a free chase may build upon his own inheritance within his warren a convenient lodge for preservation of his game. And Popham chief justice before all the rest of the judges cited the said case of Selenger adjudged in the exchequer.

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Some question being moved between the earl of Nott. justice in eire in all the kings forests, and the earl of Dorset treasurer of England, concerning the disposing of the kings woods in his forests; for resolving whereof by the kings commandment all the judges of England were assembled, who upon conference and mature deliberation resolved these seven points following.

1. That the justices in eire, and the kings officers within his forest have charge of venison, and of vert or green hue for the maintenance or preservation of the kings game, and therein of all manner of trees for covert, bruise and pawnage. But when need is to sell seasonable woods within his forest, or timber for his majesties use, the same must be sold or taken by force of the great seal, or eschequer seal by the view of the forester to the intent that the woods or the timber shall not be taken in places inconvenient for the game. But the justice in eire, or any of the kings officers within the forest cannot sell or dispose of any wood within the forest without commission: and so the exchequer and the foresters have *divisum imperium*, the one for the profit of the king, and the other for his pleasure.

2. That regularly neither the court of the exchequer, nor any of the kings officers can dispose of the kings timber or woods, but it ought to be done by commission, &c. as is aforesaid, for the kings best profit.

3. That every man in his own woods within the forest may take housebote and heybote by the view of the foresters. The kings fermers that have clauses in their leases to take timber, &c. by view, &c. may take the same accordingly: and so may freeholders by prescription, and copyholders, which by custome have used to take housebote, &c. take the same by view of the foresters, &c. or otherwise according to the custome.

4. It was resolved, that no officer of the forest could claim windfalls or dotard trees for their fees by prescription, because they were once parcell of the kings inheritance, but they ought to be sold by commission, as before it appeareth for the kings best benefit.

5. That he that hath the herbage, or pawnage of a parke by the grant or demise of the king or any other, cannot take any herbage or pawnage but of surplusage over and above the competent and sufficient pasture, and feeding of the game: and if the owner of the game suffer the game so to increase, as there is no surplusage, then he that hath the herbage and pawnage cannot put any beasts in the park.

6. That the owner of the park may divide any competent parcell of the park with rail, pale or hedge for the seed of the game in winter, and he that hath the herbage cannot put any beasts therein.

*In бага de forestis in custodia rem. regis. 12 E. 2. Com' to sell the underwood in the park of Clarendon. 17 E. 2. Com' to sell windfalls in the park of Northampton. 28 Com' to sell wood in Clarendon. Nota, minuti blaterones quercuum curli et curbi in foresta de Grovele vendi virtute brevis domini regis. Simile ibidem 10, 11, 13, et 14 E. 4. Simile 17 H. 6. virtute literarum pat. H. 6.*

1 R. 3. stat. 2. c. 2. Constit. & Ass. Forest. ubi sup.

Vid. Itin' Pick. 8 E. 3. rot. 30. the case of William de Persey and Petronilla his wife.

Lastly, if the pasture and pawnage of the park be but sufficient to feed the game in winter and summer, the owner thereof may drive out the beasts of him that hath the herbage and pawnage. And thereupon by like assent of all the judges the court of the exchequer took this order following with some reasonable additions.

*Rot. par. 12 E. 1.  
10. 16. the king  
may grant alle-  
vers in his forest  
without view of  
the forester.*

Whereas heretofore some question hath been moved between the lord treasurer of England, and the warden and chief justice, and justice itinerant of all the kings majesties forests, chases, parks and warrens on this side the water of Trent, what appertaineth to each of their offices and places concerning the dealing with and disposing of woods, trees, and coppices within his highnesse parks, forests and chases, which being by his majesty referred to the consideration and determination of his judges, and barons, they have resolved touching the same by one uniform assent, as hereafter followeth, viz. that as the lord treasurer of England for the time being, and court of exchequer have the only ordinary power under the king to deal therein so far forth as the same concerns the inheritance and profit of the crown, as in the sale of woods, trees, coppices and such like: so in like manner it concerns the warden and chief justice and justice itinerant of all the kings majesties forests, chases, parks, and warrens, and their ministers to deale therein so far as it may concern the preservation and maintenance of the game, in respect of the shades, coverts, pawnage, and such like for the deer. And therefore it is resolved by all their opinions, that the lord treasurer of England and court of exchequer may not sell any woods or coppices within any the kings parks, forests, or chases, (except windfals, rootfals, and meer dead and fear trees) without the privy and allowance of the said warden, and chief justice, and justice itinerant, within whose jurisdiction it is: nor may cut down the dead and fear trees, nor carry them or windfals or rootfals away, but at fit times, and by the view of such as have charge of the game, whereby it may be seen unto, that the same may be done at fit and convenient times: and that no trees, other then those that be dead and fear, and meerly windfals and rootfals, may be thrown down or taken away without the privy and allowance of the warden, and chief justice, and justice itinerant of his majesties parks, forests, or chases.

*The order of  
the exchequer  
upon the resolu-  
tion of the  
judges.*

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And as for the warden, and chief justice, and justice itinerant, and the keepers and other ministers of parks, forests, and chases appertaining to the king, they may not cut down any trees for new paling or railing, or for repair of lodges, without the warrant and allowance of the lord treasurer of England for the time being: but timber needfull for mending of small defects in old pales or rails that are broken, so as the same do not exceed two or three timber trees in any one forest, park, or chase, in any one year, they may be permitted to take of trees in places fit, without making waste thereof, or any spoile or prejudice to the kings inheritance, making the kings surveyor of the woods speedily acquainted, who is to see that the same hath been accordingly well employed: and needfull browse also in places fit, and times seasonable the keepers may take for the deer, not cutting down the limes or great boughs of the trees. And therefore it is ordered by this court, that from henceforth where it shall be thought requisite to sell any of the kings woods or coppices within any his parks, forests, or chases, that a

writ or commission in nature of an *ad quod damnum* shall be directed unto the warden and chief justice, and justice itinerant within the forests, within whose government the same is to be done, to enquire and certify what number of trees and what coppices may be sold, and in what places, with least prejudice to the kings game; and that upon the return thereof the sale shall be made of such trees and coppices, as upon such certificat shall be thought fit to be sold. And in like manner it is ordered, that for the new paling, and new railing, and new building of lodges in any place within or about any his majesties parks, forests, or chases, and the great repairs of old pales, rails, or lodges in or about the same; that it is to be done upon certificate from the warden and chief justice, and justice itinerant, and the surveyor of his majesties woods within whose jurisdiction it is, by warrant from the lord treasurer of England for the time being.

42 E. 3. cap. 1.

<sup>a</sup> Confirm. Cart.

25 E. 1.

<sup>b</sup> Cart. de foresta.

cap. 1. & 2.

<sup>c</sup> This is an act of restitution, for if the king might have made a forest in other mens woods, then could not the owner have felled down his own woods without view or license, et sic *ad damnum illius*, &c.

<sup>d</sup> Nota, all manner of commons are saved.

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Pl. com' Seignior Berkleys case, fo. 236.

It is very observable, that if any act of parliament hath been made against any of the articles of the statute of *carta de foresta*, by the act of parliament of 42 E. 3. the same is made void, and by the statutes of <sup>a</sup> *confirmationes cart'* all judgements given against any of the points of *carta de foresta*, shall be holden for void. And where H. 2. Fitz Empresse claimed that he might make forests not only within his own woods and grounds, but in the woods and grounds of his subjects, and thereupon made divers such forests within his own and other mens woods and grounds: whereupon some readers and others that have followed them are of opinion that H. 2. might *de jure* do that which he did. But this act of *carta de foresta*, which is but a declaratory law restoring the subject to his former right, is directly against that conceipt in these words. <sup>b</sup> *In primis omnes forestas, quas Henricus avus noster afforestavit, videantur per bonos et legales homines; et si* <sup>c</sup> *boscum aliquem alium quam suum dominicum afforestaverit ad damnum illius cuius boscus ille fuerit, statim deafforestetur; et si boscum suum proprium afforestaverit, remaneat foresta, salva* <sup>d</sup> *communia de herbagio et aliis in eadem foresta illis qui prius eam habere consueverunt.* To the same effect is the third chapter. Neither could H. 2. or any other king have made or raised a free chase, park, or warren for himself in any of the grounds of the subjects; for it is truly said in Pl. Com'. that the common law hath so admeasured the kings prerogatives, that they should not take away, nor prejudice the inheritance of any. But we agree, that all the lands of the subject are originally derived from the crown. And therefore when the ancient kings had the most part in their own hands, or at least great desarts, waste and woody grounds for want of habitation, they might make what forests it pleased them therein, which may be a reason and cause of a lawfull beginning, and therefore a forest may be by prescription good in law over other mens grounds. But the king in his own grounds may make a forest at this day, which is also proved by these two chapters, for such forests are thereby saved and enacted to stand.

33 H. 8. cap. 5.

King H. 8. intending to make a forest about his house at Hampton Court assigned and limited a certain territory of grounds for nourishing and generation of beasts of venery, and fowls of warren, extending over the lands and grounds of divers and many freeholders, and coppisholders, within the manors, townships, and villages of Eastmulfey, Westmulfey, Walton, Esmer, Weybridge, and part of Cobham: and finding that he could not erect either forest or chase over other mens grounds without their consents, did



agree with the freeholders and customary tenants, as by his indenture bearing date the first day of October in the 29 year of his reign, between him on the one part, and Sir Richard Page knight, Thomas Henage esquire, and other the freeholders and customary tenants in the towns and villages aforesaid of the other part, wherein the king doth name it (*ad faciendum populum* for the easier passage) Hampton Court chase. But afterwards (in close words in severall places) that it should have all such and like liberties, jurisdictions, and preheminences, laws, statutes, officers, &c. \* as any chase or forest within this realm had, &c. And all offences done within the same, should be punished as if the same had been done within any chase or forest within this realm. And the king did thereby covenant and grant, that the freeholders and copyholders aforesaid might sell and take their woods, groves, and coppices, at their will and pleasure without any view, &c. and to make their hedges and fences about their corn, &c. to keep out the deer, &c. And (for recompence to both freeholders and copyholders, &c.) that the third part of the free rent of every freehold should be deducted, and the moiety of the fine of the heir of every coppiholder should be also deducted, &c. which indenture and all the covenants therein being recited, it is enacted by authority of parliament accordingly. By which act and divers generall clauses referring to forests, the king intended to have it a forest. But hereby it plainly appeareth both by the kings said indenture, and by the judgement of the whole parliament, that the king could neither erect any chase or forest over any mans grounds without their consent and agreement. And yet king H. 8. did stand as much upon his prerogative as any king of England ever did.

\* Nota.

But to join this new with some that is ancient. In rot. par. anno 18 E. 1. there is a notable record in these words :

*Rogerus episcopus Coventr' et Lichf. queritur contra Rogerum Extraneum et socios suos justic' domini regis de foresta in com' Staff. Eo quod seif. in manus domini regis bosces ipsius episcopi de maneriis suis de Cannock et Ruggeleghe, &c. Rogerus et alii justiciari' ven' et dicunt, quod in itinere suo presentatum fuit per viridar', forestar' et alios fideles domini regis, quod predicti bosci super dominum regem et ejus progenitor' per ipsum episcopum et predecessores suos purprestabantur. Et eo quod licet eis justiciariis in itineribus suis purpresturas factas infra metas forestæ domini regis in manus domini regis seifire, ideo seifire fecerunt, &c. Et episcopus bene concedit quod sunt infra metas forestæ : sed dicit quod rex Ric' per cartam suam dat' 4 die Decembris anno regni sui primo dedit Hugoni tunc episcopo Coventr' et Lich. predecessori suo et successoribus suis dicta duo maneria cum ecclesiis, hundred', et omnibus aliis libertatibus. Et per aliam cartam dat' 30 Nov. anno regni sui primo concessit dicto Hugoni quod omnia maneria sua, terræ et omnes homines sui et feod' ecclesiæ de Covent' et Lichf. de Cestr' et Salop, et de Gnowshall et omnium ecclesiarum suarum, libera essent et queta de foresta, et de placitis forestæ, de vastis et assentis et regardis forestæ, cum multis aliis libertatibus in eisdem cartis recitatis, &c. Virtute quarum cartarum, ipse et omnes predecessores sui a tempore consecrationis earundem cartarum solebant fugare in dictis boscis, et voluntatem suam inde facere, &c. Et petit quod dominus rex, &c. Et predicti justic' dicunt quod dominus H. rex pater domini regis nunc fuit in seifina dictorum maneriorum et boscorum. Et scrutatis rotulis, et brevibus scaccarii invenitur primum breve regis H. anno regni sui 14 vic' Staff.*

Petitio episcopi Covent. et Lichf. contra justiciarios forestæ.

Purprestur'.

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Gnowshall.

Nota, in boscis deaffortitatis per cartam licet fugare, et voluntatem inde facere; à fortiori, in boscis deathoresit' virtute actus parl. de carta de foresta.

38 H. 6. fo. 10.  
ac.

Adjourned into  
parliament.

Deafforestation  
per. Chart. nota.

\* Nota, infra  
metas forestæ, et  
tamen extra fo-  
restam.  
Foresta de Can-  
nock.

See hereafter  
pag. 307.

1 E. 3. ca. 1.  
stat. 2. Rot. parl.  
1 R. 2. nu. 61.  
5 R. 2. 84.

*direct', et quod sciat, quod reddidit A. tunc episcopo Covent' et Lichf. dicta maneria, &c. Item 2 alia brevia baronibus de scaccario direct' quod computent vic' Staff. 30 s. 6 d. pro med' pro anno 14. Item comp. &c. 61 s. pro anno 10. pro dictis maneriis, &c. Et præd' justic' dicunt, quod patet per easdem cartas quod carta per quam episc. clam' esse quietus de foresta, &c. data fuit et facta ante cartam per quam dictus rex R. dedit episcopo manerium et boscos prædictos, per quod dicunt quod prædictus episcopus non potest clamare dictos boscos esse quietos, &c. per formam dictæ cartæ factæ ante donationem dictorum boscorum: ob quod datus est dies dicto episcopo, &c. in unum mensem ad parliament. &c. Postea ad parliamentum nunc, &c. venit predict' episc. in propria persona sua, et reddidit regi dictos boscos ut jus ipsius regis. Et idem dominus rex ex gratia sua concessit et dedit eosdem boscos prædicto episcopo per easdem metas, bundas et divisiones per quas ipse et prædecessores sui à tempore consecutionis cartæ prædictæ Richardi regis boscos illos tenuer', &c. Et quod habeant et teneant liberos ab omnimodis placitis forestæ, &c. \* Et quod nec justiciar' forestæ seu forestar' viridar' et regardatores, seu alii ministri quicunq. se intromittant infra metas supradictas licet sint infra metas forestæ antiquas de Camnok. Et pro hac, &c. idem episcopus cognovit se teneri domino regi in mille libris sterling.*

Observe well this record, and the parts of the same. And it is to be known, that where divers perambulations were made in the reign of H. 3. E. 1. and E. 2. that all these perambulations and others that should be made (albeit there be no charters thereof now extant) are established and made good, both by the statute of 1 E. 3. cap. 1. stat. 2. in print; and by an act of parliament in 1 R. 2. nu. 61. in the roll of parliament and not in print; and by another act of parliament 5 R. 2. nu. 84. not in print. For albeit it be to be presumed that charters have been made according to the perambulations; yet forasmuch as time wears out many things, if charters should now be required, many places should become forest againe, which now are in peace and deafforested.

The form of the perambulation of a forest is, *Perambulatio facta in com' Eborum de foresta de G. die anno regis, &c. apud E. coram AB. CD. justiciariis d. mini regis ad dictam perambulationem faciend' assignatis per sacramentum FG. MP. NS. &c. Qui dicunt super sacramentum suum, &c. And so set down the metes and bounds of the forest, shewing what is within the forest, and what to be extra forestam secundum tenorem Magnæ Cartæ de foresta, eo quod afforestationem fuerit post coronationem domini Henrici regis 2, &c. In cujus rei testimonium, &c.*

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Nota, the charters be generall and short to this effect. *Rex omnibus ad quos presentes literæ pervenerint, salutem. Sciat is quod volumus et concedimus pro nobis et hæredibus nostris, quod perambulationes factæ coram AB. CD. ad hoc assignat' per præceptum nostrum de forestis nostris in com. Eborum de cætero teneantur et observentur per metas et bundas contentas in eisdem perambulationibus, quarum tenor de verbo in verbum sequitur in hunc modum.* And rehearse the whole perambulation.

Rot. parl. 22 E.  
3. nu. 26.

A long complaint in parliament against foresters, for afforesting of mens purlieus, for undue triall, and for their extortions, too long here to be rehearsed, but worthy to be read, with a prayer that the great charter may be kept, and that all men may enjoy their purlieus according to the perambulations made in the reign of king E. 1. whereunto the king answered, [The king would the great charter

charter to be kept: and that such as will complaine in the right of their purlieu, may have writs out of the chancery.] See rot. parl. 50 E. 3. nu. 80. and 1 R. 2. nu. 60.

Purlieu what it is, and whercof derived.

Purlieu containeth such grounds which H. 2. R. 1. or king John added to their ancient forests over other mens grounds, and which were disafforested by force of the statute of *carta de foresta*, cap. 1. and cap. 3. and the perambulations and grants thereupon. And is derived from a French adjective and a French noun, viz. *pur* which signifieth clear, entire, and exempt, and *lieu*, that is, a place entire, clear, or exempt from the forest. And both of these derived from the Latin adjective and noun, viz. *purus locus*; and in this sense the civilians called that *purum locum qui sepulchrorum religioni non est obstrictus*. And the perambulation whereby the purlieu is disafforested is called in French *pourallee*, i. *perambulatio*, so as the purlieu and *pourallee* are two distinct things, and \* purlieu is the right name of the place deafforested.

33 E. 1. stat. 5.

By this it appeareth that chases that never were any forests cannot have any purlieu, and consequently the case in 16 Eliz. Dier 326, 327. is mistaken, for the chase of Whaddon never was any forest. Whereby it may be observed, how necessary the true derivation of words is, according to the example of Littleton, as in divers parts of the first part of the Institutes appears.

By this deafforestation the owners of the grounds within the purlieu may at their will and pleasure fell, cut down, eradicate, and stub up all the timber, woods, and underwoods, convert their pastures, meadows and other grounds to arable, inclose them in with any kind of inclosure, build and erect new edifices upon the same or any part thereof, and to dispose and use the same after the disafforestation, as they never had been afforested.

And where some have conceived, that *quoad* to the owners of the soyle the purlieu is disafforested, but not as to others, but as to them it should remaine a forest, by reason of these words in the first chapter, *ad damnum illius cujus boscus ille fuerit*, those words were added to shew the unlawfulness of the afforestation, because it was *ad damnum*, &c. as hath been proved before. And then these men must make a diversity between a deafforestation by force of the first chapter of afforestations in the reign of H. 2. and deafforestations made by force of the third chapter of afforestations, in the reigns of R. 1. and king John, for there the clause of *ad damnum* is omitted, and therefore those afforestations are utterly made void against all men.

The statute of *carta de foresta* hath been above 30 times, and lastly in 4 H. 5. confirmed and enacted and commanded to be put in execution, and we finde no authority in law that we remember against our opinion herein: therefore we proceed and do hold, that in any purlieu a man may as lawfully hunt to all intents and purposes within the purlieu within his own grounds, as any other owner may do in his grounds that never were afforested at all.

Some have endeavoured to limit the purlieu man to hunt by custome or prescription, but all the said statutes were made within time of memory against which they cannot prescribe. Some endeavour to maintain it to be by forest law, but it is questioned whether there be any such forest law, in that point, for *quod non legitur non creditur*: but to conclude this point, no forest law can stand against laws enacted by authority of parliament. Others think,

See the first part of the Institutes sect. 170.

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that the said statute of 33 E. 1. stat. 5. or some other statute in the reign of E. 1. E. 2. or E. 3. doe in some sort restrain their hunting, which is utterly denied, that they are restrained by any such in any of the said kings times; but if any such statutes were, they are, being contrary to the statute of *carta de foresta*, repealed by the statute of 42 E. 3. cap. 1. And all the statutes or assises, either that of Woodstock in the reign of H. 2. or any other in his time, or in the reigns of R. 1. or king John are all abrogated by the statute of *carta de foresta* made in 9 H. 3. cap. 1. and 3. as to the deafforestations, &c. And the statute or assise of Woodstock doth extend to deafforestations before, and not after, the words thereof being, *Nullus faciat aliquam insiallationem inter foresta' et boscos, &c. p. ipsum vel progenitores suos deafforestatos*. And for the same reason the purlieu man may keep his dogs within the purlieu unexpeditated, and seeing the wilde beasts doe belong to the purlieu man *ratione soli*, so long as they remain in his grounds, he may kill them, for the property *ratione soli* is in him; so as hereby concerning purlieus, and by the resolution of the judges concerning chases, it appeareth, that the makers of the statute of 22 E. 4. mistook the law in both of them, viz. concerning chases and purlieus, but the statute being in the affirmative worketh no prejudice to any. And if he chase them with greyhounds, and the beasts of the forest do flee towards the forest for their safety, if the owner pursue them to the bounds of the forest, and then call back his dogs, and do his endeavour to call them again from the pursuit, although the dogs follow the chase in the forest, and kill the kings deer there, this is no offence, so as the owner enter not into the forest, nor meddle with the deer so killed. But if the dogs fasten upon the deer, before he recover the forest, and the deer drag the dogs into the forest, there the purlieu man may follow his dogs and take the deer.

In some letters patents of the perambulations or purallies of forests made by king E. 3. to any county where lands are disafforested, which we have seen, there is reserved to the king forty days for his wild beasts within the purlieus to return again, and for his raungers within that time to rechase them into the forest, which is taken to be a convenient time for that purpose. And albeit these purlieus be absolutely disafforested, and have no liberty of forest there, yet for conveniency it hath been permitted that the rangers of the forest should as often as the wild beasts of the forest range into the purlieu, with his hound rechase the same: and these rangers have used to present unlawfull hunting and hunters of the kings deer within the purlieu, as in the night, or at unseasonable deer, or killing of the kings deer in purlieus by no purlieu men, but unlawfull hunters or the like: such as should not take advantage of their own wrong both to the king and the purlieu men, and that they are known to be deer belonging to the kings forest, because there are no other within the purlieu; wherein the best rule we can (for avoiding of tediousnesse) give the reader, is to follow the judicial records and presidents of the eires holden before grave and learned justices in eire, as those of Pickering, Lancaster, and the like, concerning presentment of matters done within the purlieus of the rangers whereunto we do rather incline, when we consider the oath which the rangers have anciently taken and continually in these words. You shall truly execute the office of a ranger in the purlieu

Rot. par. 51 E. 3.  
nu. 39.

22 E. 4. cap. 7.

43 E. 3. 8. the  
earl of Arundels  
case.

33 E. 3. f. 10.  
b. simile. 12 H.  
2. fo. 10. a.

40 E. 3. Rot.  
pat. 1 pars pro  
deafforest' fo-  
restae de Kem-  
siam.

Vide Rot. parl.  
12 E. 3. nu. 26,  
27. a complaint  
of the purlieu  
men, and the  
kings answer.

The oath of the  
ranger.

purlieu of P. upon the border of the kings forest of P. You shal rechaſe with your hound and drive the wild beaſts of the foreſt, as often as they ſhall range out of the ſame foreſt into the purlieus: you ſhall truly preſent all unlawfull hunting and hunters of wild beaſts of venery and chaſe \* as well within the purlieus, as the foreſt, and thoſe and all other offences you ſhall preſent at the kings next court of attachments, or ſwanimote which ſhall firſt happen: So help you God. And it is to be noted, that in ſuch foreſts, as have no purlieus, there is no ranger.

It was petitioned in parliament, that no man be impeached for hunting within the purlieu or without the bound of the foreſt, and that there be levied no aſſart rents.

This petition conſiſting on two parts. 1. Concerning hunting in the purlieu, or out of the bounds of the foreſt, the ſecond concerning aſſart rents.

To the firſt: the king answereth, That the charter of the foreſt ſhall be kept, which is a yeelding to the petition for that part, for by that charter the bounds of the foreſts are eſta bliſhed, and no purlieus excepted.

As to the ſecond: he answered, That the demand was unreaſonable.

The commons made petition that men might enjoy their purlieus freely, and that perambulations might be made as was in the time of king H. 2.

Whereunto the king answered, The king thinketh the perambulations are duly made, and who will may complain, and ſhall be heard.

The abbot of Whitby had a foreſt called Whitby foreſt (by the grant of H. 2. and king John with all officers incident thereunto) adjoining to the foreſt of the earl of Lancaſter called Pickering foreſt, and the game of the foreſt of Pickering ranged into the foreſt of Whitby, *Idem abbas habens exploratores ſuos ſtatim ponere fecit retia, et alia ingenia ſua juxta Hakeneſſe et alibi diſtan' à foreſta iſta per tractum unius arcus et aliquando plus, et poſtea cum canibus excitare fecit feras, ita quod p' excitationem illam plures ferarum illarum in redeundo et fugiendo verſus foreſtam de Pickering decidunt in retibus et ingeniis prædictis et capiuntur, et annuatim capere facit in deſtructionem ferarum foreſtæ prædictæ de Pickering ad damnum domini, et neſcitur quo warranto; per quod præceptum fuit vicetomiti, quod venire faciat prædictum abbatem.* Whereupon the abbot came and pleaded his title to the foreſt, *ut ſupra.* Et quod omnes abbates loci prædicti virtute conceſſi, &c. prædictos cervos et cervas in locis prædictis ubi retia et ingenia prædicta poſita fuerunt, et quæ fuerunt infra limites foreſtæ ſuæ de Whitby, et quoad quod idem habens exploratores ſuper feras domini, &c. retia et ingenia poni fecit prope foreſtam de Pickering, &c. per quod in redeundo plures feræ capti fuerunt, quod omnino eſt contra aſſis' foreſtæ, idem abbas dicit, quod ad hoc reſpondere non debet, &c. Et quia manifeſte liquet curiæ, &c. quod feræ de foreſta ad foreſtam aliter conferri non poſſunt, niſi ipſius in cujus foreſta inveniuntur, eo quod ſigno aliquo non conſiſtunt ſignatæ nec diſviſas aliquas cognoſcant. Ideo conſideratum eſt, quod idem abbas eat ſine die.

By which record and many others it doth appear, that when the kings game of the foreſt doe range out of the foreſt (and purlieu, if

\* This proveth that the purlieus are no part of the foreſt; but diſtinct things. Rot. par. 51 E. 3. nu. 39. 50 E. 3. nu. 80. 1 R. 2. nu. 60.

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2 R. 2. nu. 48.

In itin' Pick. 8 E. 3. rot. 42.

Nota, for harts, hyndes.

The kings deer are not branded or ſigned with any mark, that they may be known whoſe they are out of the foreſt. 7 H. 6. fo. 36.

any

any be) they belong not to the king, but are at their naturall liberty, *et occupantii conceduntur*.

And this is the reason that some have said, that where the king was seised of the forest of M. in fee, and that a custome was pleaded time out of mind, that if any beast of the forest should range into the free chase of the abbot *de Dien* adjoining to the said forest, that the foresters of the said forest, &c. might enter into the said chase, and with little dogs rechase the kings beasts of his forest into the forest again, that this custome is against law, for that (besides the reason yielded in the abbot of Whitbies case) immediately when they are out of the bounds of the forest, the property is out of the king, for the being within the forest maketh the property in that case. But the book of 7 H. 6. is left at large whether the prescription be good or no, and yet aid was thereupon granted: and Dier 16 Eliz. 326, 327. agreeth therewith. But in the abbot of Whitbies case there is no prescription for the king but against him.

Lib. 5. fo. 104.  
b. Roltons case.

16 Eliz. Dier  
326, 327.

Vide itin' Pick.  
3 E. 3. The  
prior of Ellor-  
tons case.  
Rot. 35. Et ibid.  
the prior of  
Maltons case.  
Rot.

It is to be observed, that by the law of the forest when any claim is made by any ancient charter of any franchise, liberty, or immunity, or discharge within the forest by ancient and obscure tearms and words, the entry is (for example) *Et quia non liquet curiæ manifeste cuiusmodi libertates prædictæ vocabulorum idem prior habere intendit, dictum est priori quod prædictæ vocabula declaret, &c.* And after he that maketh the claim, declareth, that is, explaineth the same, and pleadeth further, *Quod ipse et prædecessores sui semper à confectione cartæ prædictæ sine interruptione usi sunt et gavisi sunt libertatibus prædictis* (according to his declaration) *et hoc paratus est verificare per ministros istius forestæ, &c.* Ideo inquiratur rei veritas per eosdem, &c. Or the entry is after the declaration made, *Et quia videtur iusticiariis quod expediens est et necesse, quod curia certioretur super possessionem ipsius prioris in hac parte, inquiratur inde veritas per ministros ejusdem forestæ*, and thereupon the foresters, verderers, and regarders are sworn, and so much as they find have been continually used, is allowed, and so much as hath not been used is disallowed; so as use and continuall possessions are the best expositors of ancient and obscure words.

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Regula.  
Hil. 6 E. 3. rot.  
179. Coram rege  
diuturnitas et  
longæva possessio  
virtute generali-  
um verborum in  
antiquis cartis  
sufficiunt.

For example: *Quietum esse de misericordia forestæ*, is to be quit of all amerciaments in the which he in any sort might fall within the forest. And here *misericordia* is taken as well for a fine, as for an amerciament.

*Quietum esse de vasto*, if he did wast in his woods within the forest he should not be amerced, nor for any other wast.

*Quietum esse de rewardo*, that is, to be quit of amerciament wheresoever in any marish within the forest, if the usage hath been accordingly.

*Quiet' de omnibus geldis*, i. *quiet' esse de omni futura forestar', et de omni præstatione, ad collectionem garbarum, agnorum et lance ad opus forestar' ejusdem forestæ.*

*De woodgeldis*, i. *quiet' esse de omni collectione in foresta præd' ad opus quorumcumque ministrorum forest' præd' ratione boscorum.*

*De homgeldis*, *quietum esse de omni collect' in foresta de bestiis cornutis asses'.*

*De fotegeldis*, i. *quiet' esse de finibus et amerciamentis pro canibus infra forestam in expeditatis*, if the usage hath been accordingly, other-  
wise

8 E. 3. itin'  
Pick. Lambtons  
case putura.  
Geldum in Do-  
mesday sæpe pro  
Scot Anglice.  
23 H. 3. gard.  
148.

wise not: for ancient charters by the law of the forest must be adjudged according to the continued usage, and not *ex vi termini*.

*De bucfall*, i. ubi homines convenire tenentur, ibidem convenire ad stabilem faciend' circa feras, et ad easdem congregand', quietum esse de hoc servicio, quando dominus chascaverit.

*De truftris*, anciently written *traiflis*, and is derived of *traif*, i. trust, and signifieth, ubi alii homines manentes in eadem foresta tempore quo dominus chaceaverit in easdem venire debent, et confisi sunt, Anglice are trusted, ad tenend' leporarios certis locis assignatis pro feris ibidem expellend' et capiend', quietum esse de hoc servicio.

*De fledwite*, of *fled*, a Saxon word, a fugitive, one that fleeth, an outlaw, and *wite* a Saxon word also, a freedome.

*De careio*, cum aliquæ carræ, seu carecæ cartatæ transeuntes per forestam, et similiter \**summagia*, seu somagia equorum consuet' sunt solvere secundum magis vel minus ministris ibidem pro chemino ibidem habend'. Quietum esse de hujusmodi solutionibus. *Summagium* or *sommagium* cometh of the French word *sommier* or *summer*, which signifieth a horse carrying any load. *Chimagium*, a toll for way-faring men through a forest, derived from the French word *chemin* for a way.

*De scoto*, seu *shoto*, quando homines faciunt collectum inter se ad aliquod obtinendum seu evitandum. Quietum esse de tali collect'. *De talagio*, idem ut de *scoto*.

*Extra regardum forestæ*. If any man within a forest doe hold his woods or lands by grant or prescription to be *extra regardum forestæ*, the woods or lands are deafforested.

*Exilium*, i. cum homines ullegantur in itinere istius forestæ pro transgressione viridis seu venationis.

*De escapio*, secundum assisam forestæ si averia alicujus in landis vetitis, vel tempore vetito in eadem inveniantur, prima vice pro quolibet pede averiorum prædict' ipsi quorum fuerint amercientur ad unum denarium; et si secundo ibidem inveniantur, similiter pro quolibet pede unum denarium; et si tertio ibidem inveniantur, averia illa remaneant domino forisfacta, de quibus amerciamenis et forisfacturis per hujusmodi vocabulum, de escapio, extiter' quieti.

*De pannagio*, that is, to be quit to pay any thing for pawnage.

*Assertum*, assert, is so called of the effect (as some hold) and is derived (say they) of *ad* and *fero*, *affero*, because of wood grounds, marshes, or wast grounds they are converted to be sown with corn, and therefore in the Register, and F. N. B. it is written *assertare*, with an E, and so it is in Carta de Foresta cap. 4. *Braetôn* hereof saith, *Illud quod fuit aliquando boscus, et locus vastæ solitudinis et communia et jam inde efficitur assertum, vel redactum est in culturam*. And herewith agreeth *Fleta*, *Illud olim fuit foresta et boscus, &c. et jam efficitur assertum, et reductum est in culturam, et idem dici poterit de mariscis et aliis vastitatibus in culturam redactis*.

Others fetch it otherwise, but we hold, that it is derived of the French word *essarter*, to grub up, or cleer a ground of wood, &c. and this appeareth by *Domesday*. *Herefordsh.* *Merchelay in eodem manerio sunt 58 acra terre pro veët' de sylva*, written over the same *essars, de essart' sylvæ exeunt 17 s. et 4 d.* E being turned into A.

*Radulphus episcopus Karleol petit versus priorem ecclesiæ Karleol decimas duarum placearum terre de nova assartarum in foresta de Ingletwood, quarum una vocat' Lynthecwast et alia Knthecwast. quæ sunt infra limites parochiæ suæ de Aspataick. Et super hoc similiter venit M. Hen. de Burton*

\* Carta de foresta, cap. 14.

8 E. 3. itin' Pick. fo. 143.

F. N. B. 230.

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Regist. 157.  
Fleta, li. 2. c. 35.  
F. N. B. 226. L  
Cart de forest,  
cap. 4.  
Braet. li. 4. fo.  
226. Fleta li. 4.  
ca. 22. Lib. 2.  
cap. 25. Vide  
Lucubr. Ockam  
20. b.  
Rot. par. 51 E.  
3. nu. 39.

Rot. plac. parl.  
de ann. 13 E. 1.  
rot. 8. Inter  
episcopum Kar-  
leol' et priorem  
eiusdem de deci-  
mis assartarum.

Burton persona ecclesiæ de Thorisby, et eandem decimas clamat ut pertinet ad ecclesiam suam. Et prior venit et dicit quod Henr. rex vetus concessit dicto Deo et ecclesiæ suæ beatæ Mariæ Karieol' omnes decimas de omnibus terris quas in culturam redigerent infra forestam, et inde eos fecit avit per quoddam cornu eburneum quod dedit ecclesiæ suæ prædictæ, &c. Et Willielmus Inge qui sequitur pro rege dicit quod decimæ prædictæ pertinet ad regem et non ad alium, quia sunt infra bundas forestæ de Inglewood. Et quod rex in foresta sua prædictæ potest villas ædificare, ecclesias construere, terras assartare, et ecclesias illas cum decimis terrarum illarum pro voluntate sua cuicunque voluerit conferre, &c. Et quia dominus rex super præmissis vult certiorari, ut unicuique tribuatur quod suum est, assignetur, &c. et certificent regem ad proximi' parliamentum, &c.

\* Glanvil. li. 9.  
cap. 11, 12.  
Fleta, lib. 2. cap.  
35. 18 E. 2.  
de visu franc'  
pleg. Dier 7 El.  
240.

b Cart. de forest.  
cap. 12.

c 8 E. 3. Itin'  
Pick. fo. 17.

d Cart. de forest.  
cap. 7. Fleta. li.

2. cap. 35. cap.  
Itin' W. 1. cap.

4. de pastur'  
pauperum.

e Potura.  
Vid. 45 E. 3. 15.

f F. N. B. 209.  
b. De potura

pauperum, a  
drinking or sus-

tenance for the  
poor. 12 H. 4. 24.

Hil. 5 E. 3.  
Coram rege ro.

30. Eborum.  
8 E. 3. Itin'

Pick. fo. 150. b.  
Putura

f 8 E. 3. Itin'  
Pick. prior de

Ellortons case.  
Quiet de geldis is to be quit de putura.

¶ 25 E. 3. cap. 7. stat. cap. Itineris fillenale, of the Saxon word

fillen, or fullen, and ale, i. an ale feast, whereat they were filled with ale. Brañton, lib. 3. fo. 117.

In reciting of Capitula lūneris, calleth it filckale, i. fildale, an extortion colore computationis. Vide

Fleta, lib. 1. ca. 20. Carta de foresta, cap. 7.

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8 E. 3. Itin'

Pick. Sir John  
de Melfacs case.

Fleta, li. 1. c. 47.

Trin. 2 E. 3.  
coram rege rot.

12.

\* *Purpresture*. For this and the derivation, see in the second part of the Institutes, Statutum de Bigamis, cap. 4. and the exposition upon the same, and Carta de Foresta, cap. 4.

b *Coopertura* is a thicket or covert of wood.

c *Macremium* is derived of the old Normandy word *marisme* for timber.

d *Scotales, scotalæ*, derived of two English words *scot* and *ale*, as much to say as a tribute or contribution of drinking for the ministers of the forest when they came to the house of any, whereunto others are contributory within the perambulation of the forest, which then was called *potura*, a drinking. And after they claimed the same for all victuals for themselves their servants, horses, and dogs, which was called *putura*; and this doth notably appear by a record in 5 E. 3. in these words.

f *Putura in chace de Bowland*, i. *consuetudo clamata per forestarios, et aliquando per balivos hundredorum, recipere victualia, tam pro seipsis, hominibus, equis et canibus de tenentibus et inhabitantibus infra perambulationem forestæ seu hundredi quando eo pervenerint, nihil inde solvend*. Where the statute of Carta de Foresta speaketh. *Nullus forestarius seu balivus de cætero faciat scotalas, &c.* ¶ by the statute of 25 E. 3. it is enacted, that no forester or keeper of forest or chase, nor any other minister shall make or gather sustenance, nor other gathering of victuals, nor other thing by colour of their office against any mans will within their bailiwick or without, but that which is due of old right, that is, those fees, which time out of mind they ought to have within that forest, and as shall appear to be due by the oath of 12 regarders.

*Chablicia*, or *cablicia*, browse wood, derived of the French word *chablis*, as *boys chablis*, either rent down from trees by the wind, or branches of trees cut for the browse of deer.

*Parkebote*, to be quit of enclosing of a park or any part thereof, derived of two English words, *parke*, and *bote*.

*Brigbote*, or *bruckbote*, to be quit of making of bridges.

*Pannagium*, or *panagium*, is derived from the French word *panage*, i. *pastura pecorum in nemoribus de glandibus et aliis fructibus arborum*.

*Expalliare canes*, i. *expeditare canes*. *Expeditatio* is derived of *ex*

et



*et pede*, because the dog is lamed in the foot, *inexpeditatus* is unlamed.

*Canis* in this act is taken for *massivus* by these words, *talis expeditio facta p' assiam communiter usitatam*, which hath reference to the assise of the forest, *tempore H. 2. art. 6.* which speaketh only *de expeditatione massivorum, et assis' et consuetud' forestæ*, 6 E. 1. cap. 9. speaketh only *de massivo*.

Carta de foresta cap. 6.

*Ortelles*, this word is taken from the French word *orteilles*, in English, claws.

*Pellota*, of the French word *pelote*, and they from *pila*: in this act it is taken for the ball of the foot, *sine pelota*, without the ball of the foot. And therefore by the expresse words of this act the ball of the foot of the mastiffe is not to be cut off, but the three claws of the forefoot to the skin. This extendeth only to mastiffs, and to no other dogs, for *ubi non est lex, ibi non est transgressio*; and necessary it is, that such as dwell in forests where there are coverts, that they should keep other dogs unexpeditated, and the mastiff expeditated for the defence of their house, or for giving of warning of thieves and robbers, &c. *Molossus* (the old British word) is a mase-theef, because he doth mase or amase a thief, &c.

Carta de foresta ubi supra.

*Managium et mesagium*, is commonly in ancient records taken for *mesuagium*.

M. S. Priorat. Covent' fo. 14. b.

The words of this act are *De expeditatione canum existentium in foresta*, and therefore in purlieus or places deafforested, a man may keep a mastiff without being expeditated. And that I may say it once for all, my intention is chiefly to explain the obscure words of this statute of Carta de Foresta, and other acts, and leave the reader to the text itself being plain: for, *satius est petere fontes, quam sectari rivulos*.

Who may keep greyhounds or other dogs to hunt, or ingens, &c. either in a forest, or out of the forest, appeareth by certain statutes.

13 R. 2. cap. 13.  
19 H. 7. cap. 11.  
1 Jac. cap. 27.  
3 Jac. cap. 13.  
Assise forest'.

But if greyhounds be founds running *ad nocumentum*, the forester ought to retain them, and present them in the presence of the verderers, and send them to the king, or to the chief justice of the forest.

We find not that any chapter or article of Carta de Foresta, doth extend to chases or parks, but only the 11 chapter. *Quicumque archiepiscopus, episcopus, comes vel baro ad mandatum nostrum transferit per forestam nostram, &c.* which chapter doth not only extend to the forests of the king, but to his chases and parks also, for so was the law before the making of this act, which is but in affirmance of the common law of the forest before this act.

1. In respect of the persons, for every lord of parliament, be he spirituall or temporall, had this priviledge besides those that be named in this chapter, as such abbots and priors, as were lords of parliament, and so of dukes, marquesses, and viscounts, which were erected and created, afterwards being lords of parliament have the same priviledge also.

2. By reason of the kind of commandment *ad mandatum nostrum*, saith the statute, which words have reference to the writ of parliament directed to every lord of parliament. *Idco vobis mandamus, &c.* and is a legall commandment by writ directed severally to each and every lord of parliament to appear at the kings court of parliament,

8 E. 3. Itin' Pick. fo. 134.  
A forester or any other officer of the forest cannot give a nobleman a course in the forest but it is presentable.

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ment, &c. to treat *de arduis et argentibus negotiis regni, statum et defensionem regni et ecclesiæ Anglicanæ concernentibus*, and to recreate themselves *veniundo*, and after *redeundo*, they may passing by any of the kings forests, chases, or parks, hunt and kill one or two of the kings deer. The lords of parliament may doe it at other times *ex gratia*, but by law *eundo et redeundo* to and from the parliament.

3. Here is implied that the lord of parliament may in the absence of the forester or keeper after the blowing of the horn, kill one or two of the kings deer *propriis suis canibus, aut arcu suo proprio*.

4. Here is a secret conclusion of law, that albeit spirituall persons are prohibited by the cannon law to hunt, yet by the common law of the land they may for their recreation, to make them fitter for the performance of their duty and office, use the recreation of hunting, as here it directly appeareth: and in *assisa forestæ* 6 E. 6. it appeareth that the abbot of Peterborow had a right of hunting in the forest of Rockingham. And this appeareth in other statutes, viz. 13 R. 2. 19 H. 7. 1 Jac. And at this day, and time out of mind, the king hath had after the decease of every archbishop and bishop (*inter alia*) *mutam suam canum*, &c. his kennell of hounds, or a composition for the same, which and other things are in the exchequer called *multa*.

5. The last conclusion is, that all cannons against the laws or customes of the realm are void and of none effect.

Linwood de Venatore Clerico, &c.  
Cart. de Foresta cap. 11.  
Assisa forestæ.  
6 E. 1.  
13 R. 2. cap. 13.  
19 H. 7. cap. 11.  
1 Jac. ca. 27.  
*Muta canum* is derived from the French word *mult* de *cheines*.  
See 25. H. 8. cap. 19. &c.

### Of the Drifts of the Forests, *Agitatio Animalium in Foresta*.

The drifts of the forests are said to be when all the cattle as well of commoners as of strangers are driven by the officers of the forest to some certain pound or place inclosed, and the end hereof is threefold, viz. First, to see whether those that ought to common doe common with such kind of cattle as by prescription or grant they ought. Secondly, if they common with such cattle as they ought, whether they doe surcharge or no. Thirdly if the cattle of any stranger be there, which ought not to common at all.

32 H. 8. cap. 13.

By the statute of 32 H. 8. it is enacted, That all forests, chases, commons, moors, heaths, and waste grounds within the realm of England and Wales, and the marches of the same, and every of them shall be driven at the feast of St. Michael the Archangell next comming or within 15. days then next after, and so yearly to be driven by the lords, owners, and possessors of the said forests or chases, or by the officers of the same, and by the constables, headboroughs, bailiffs, burholders, and tithing men, within whose offices, precincts, and limits the commons, moors, marishes, heaths, and wast grounds being out of the forests and chases be or lie upon pain of xl. s. to be forfeited to our said sovereign lord the king by every of the said officers, bailiffs, constables, headboroughs, burholders and tithing men, as often, and at every time as the said drift shall

shall be omitted, or left undone, or not effectually done within 15. days after the said feast of St. Michael the Archangel, as is aforesaid. And it shall be also lawful to the lords, owners and possessioners of the said forests and chases by their officers of the same, and by the constables, bailiffs, headboroughs, bursholders and tithing-men, and every of them within the limits of their offices to make like drift of the said forests, chases, commons, moors, marishes, heaths, and wast grounds at any other season and time of the yeare whensoever, and as often as they shall think meet and convenient.

Out of this act of parliament, as to the drift of the forest or chase, these five conclusions are to be observed. 1. By what persons this drift is to be made, and therein if the forest be in the kings hands it must be made by all the kings officers of attendance in the forest, and by four men and the reve of every town within the forest, who to that purpose are included under the name of officers. And if they be in a subjects hands, then either by the owners or possessors of the said forests, or chases, or by such officers, as is before said. 2. At what certain time such drift in forests or chases is to be made? It appeareth by this act that it ought to be effectually done yearly within 15. days after the feast of St. Michael the Archangel. 3. The said drift may be made at other season or time of the year whensoever, and as often as they shall think meet and convenient. 4. That stoned horses under 15 handfull high are prohibited to common in any forest. See the statute. 5. For commons, &c. out of any forest or chase. In these words are included purlieus and other grounds wherein men have common, and these are to be driven by the owners and possessioners of the same, and by the constables, headboroughs, bailiffs, bursholders, and tithingmen, within whose offices, precincts, and limits the said commons, &c. being out of any forest, or chase doe lie at such times as are aforesaid.

The statute speaketh *de acriis accipitrum, espervorum, falconum, aquilarum, et hieonum*, which is but in affirmance of the common law, for it extendeth to ayeries of other hawks then be specially named, as to ayeries *merleonorum in boscis suis de Levesham*.

A forester by patent for his life is made justice in eire of the same forest *hac vice*, the forestership is become void, for these offices be incompatible, because the forester is under the correction of the justice in eire, and he cannot judge himself: the same law is of a warden of a forest and of a justice in eir of the same forest: though the offices of the steward and justice of the forest be both judiciall, yet whether he be steward of the swanimote, or of the eire he is under the correction of the justice in eire, and therefore incompatible.

We have been requested to set down what persons and what officers either that then were, or which have been since the last eire, and how many sorts of officers, and what number doe belong to a forest, which we cannot better resolve and satisfie, then by the records of the eires of forests, and specially by the writ of summons of those eires, which we have thought good to set down *verbatim*, not only

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Ayeries of  
lawkes 8 E. 3.  
Itin. Pick. Sir  
John de Melface  
case.  
29 H. 8. tit.  
officers, br. 47.

only for answer to the said questions, but for divers other observations as we find it in the said cire of Pickering with the exact and particular return of the same.

**Vic' Eborum.**  
The persons that ought to appear before the justices in cire of the forest, &c.

**Forestr Hen. com. Lanc'.**

\* Under these words are included the constable of the castle, the warden, the ranger, the agisters, the steward, the bowbearer.

\* Four great learned men justices in cire of the forest.

\* See Cart de forest. cap. 2.

**Forestar' Viridar'.**

To what end the officers are summoned.

† [ 311 ]  
**Regardatores.**

*Edwardus Dei gratia rex Angliæ, dominus Hiberniæ et dux Aquitaniæ vic' Eborum salutem. Summon' per bonos summonitores archiepiscopos, episcopos, abbates, priores, comites, barones, milites, et omnes libere tenentes, qui terras seu tenementa habent infra metas forestæ dilecti consanguinei et fidelis nostri Henrici com' Lanc' de Pick' in com' prædict', et de qualibet vil' ejusdem com' infra metas ejusdem forest' existen' quatuor homines et præpositum et forestar' villarum, et \* omnes alios, qui coram justiciari' ad placita forestæ venire solent et debent, quod sint apud Pickering die Lunæ prox' post fest' Sancti Michaelis prox' futur' coram dilectis et fidelibus nostris \* Ricardo de Willoughby, Jo. de Shardeborow, Roberto de Hungerford, et Johanne de Hambury, tribus vel duobus eorum quos ad requisitionem dicti consanguinei nostri constituimus justic' ad itinerandum hac vice ad placita forestæ ipsius comitis in com' prædict' à tempore quo Edmundus nuper com' Lanc' pater præd' Henrici, cujus hæres ipse est, placita forestæ in eadem foresta virtute \* concessions sibi per dominum E. nuper regem Angliæ avum nostrum inde fact' ultimum tenuit, auditur' et factur' præceptum nostrum de hiis quæ ad placita præd' pertinet. Fac' etiam venire coram justic' prædictis omnes forestar', viridar' et omnes illos qui fuer' forestar' et viridar' forest' prædict' in com' prædict' post ultima placita prædict' cum † omnibus attachiament' suis tam de viridi quam venatione quæ post ult' placita forestæ sunt emersa et nondum terminat' (viz.) tam de illis attachiamentis quæ manent infra metas forestæ, quam de illis quæ manent extra forest' : fac' etiam venire coram ejisdem justiciariis tribus vel duobus eorum regardatores ipsius comitis in balliva tua, ita quod habeant ibi omnia regarda sua sigillis suis signat' et omnes agistatores præfat' com' in eadem balliva sua cum omnibus attachiament'. Et habeas ibi sum' et hoc breve. T. me ipso apud Westm' 17 die Augusti, anno regni nostri 8.*

**Nota,** the punctuall and direct answer to all the points of the writ.

*Ad quod breve Petrus de Saltmerst' vic' Eborum retornavit quod fecit plenum retornum istius brevis Hugoni de Nevil ballivo libertatis H. comit' Lanc' honor' de Pickering, cui executio istius brevis restat faciend' ; qui sibi respond' quod summon' fecit archiepiscopos, episcopos, abbates, priores, comites, barones, milites, et omnes libere tenen' qui terras et tenementa habent infra met' forest', et de qualibet vil' ejusdem com' infra metas ejusdem forest' existen' quatuor homines et præposit' et forestar' villar' et omnes alios qui coram justiciari' ad placita venire solent et debent, quod sint apud Pickering ad diem in brevi prædict' content' coram præfat' justiciari' tribus vel duobus eorum, auditur' et factur' præcept' domini regis de hiis quæ ad prædict' placita pertinent. Et quod venire fecit forestar', viridar' et omnes illos qui fuer' forestar', et viridar' forest' præd' in balliva sua post ult' placita præd' cum omnibus attachiamentis præd' tam de viridi quam de venatione quæ post ult' placita forestæ sunt emersa et nondum terminat'. Et etiam quod venire fac' coram ejisdem justic' tribus vel duobus eorum regardatores ipsius comitis in balliva sua, ita quod haberent ibi omnia regarda sua sigillis suis signat' et omnes agistatores præfat' comitis in eadem balliva sua cum omnibus agistamentis prout patet in schedula retorn' suo prædicto attachiata.*

**Forestar**

<b>Forestar' de feodo in le westward istius forestæ de Pickering, viz.</b>	<i>Willielmus de Percehay miles.</i>	<i>* Nemo, a woman that is a lecher in the court cannot execute the law, her self, but she may make a deputy during the time, and her deputy shall be sworn.</i>
	<i>* Petronilla de Kynthorpe, et po. lo. sua fil. mundum de Hustinges ad omnia faceret que forestar' incumbunt durante itinere isto, et fecit sacramentum.</i>	
<b>Forestar' custod' forestæ in le eastward, viz.</b>	<i>Rogerus de Leicester.</i>	
	<i>Hugo de Yeland, Willielmus le Parker.</i>	

&c. By Carta de foresta cap. 7 Tot. forestarii ponantur ad forestas custodiend' quot ad illas custodiend' rationabiliter viderint sufficere.

<b>Viridar' forestæ de Pickering, viz.</b>	<i>Robertus Thurnefe.</i>	<i>* Viridarii 4.</i>
	<i>Rogerus Browne.</i>	
	<i>Robertus Playce.</i>	
	<i>Jo. de Kilwardbye.</i>	
<b>Regardatores forestæ de Pickering.</b>	<i>Willielmus de Everly.</i>	<i>Regardator' 13.</i> <i>By the Statute de Carta de foresta cap. 7. there are to be 12 at the least, and, as here it appeareth, there may be more.</i>
	<i>Rogerus le Longe.</i>	
	<i>Johannes Boye.</i>	
	<i>Johannes filius Alani.</i>	
	<i>Galfridus de Kynthorp.</i>	
	<i>Thomas Thurnefe.</i>	
	<i>Hugo de Nevill.</i>	
	<i>Rogerus de Alveston.</i>	<i>[ 312 ]</i> <i>Agistatores 4.</i>
	<i>Johannes filius Galfridi.</i>	
	<i>Rogerus de Stapleton.</i>	
	<i>Rogerus Struteocke.</i>	
	<i>Radulphus de Colloughton.</i>	
	<i>Johannes de la Chemnie.</i>	
<b>Agistatores in le westward istius forestæ</b>	<i>Johannes Dringe.</i>	
	<i>Richardus Ruffill.</i>	
<b>Agistatores in le eastward istius forestæ</b>	<i>Willielmus de Roston.</i>	
	<i>Willielmus Ruffell.</i>	

Nomina forestar' nunc istius forestæ, et eorum qui fuerunt forestar' istius forestæ, et eorum qui fuerunt viridar' istius forestæ.

Nomina forestar' et viridar' qui fuerunt.

<i>Alanus de Newton</i>		<i>Capital' forestar' Willielmi de Percehay unius forestar' de feodo forestæ de Pick. in le westward ibidem.</i>
<i>Johannes de Wardeuden.</i>		
<i>Henry de Ripley</i>		<i>Capital' forestar' Petronillæ de Kynthorp alterius forestar' de feodo forestæ de Pickering.</i>
<i>Thomas de Dalby</i>		
<i>David de Neuton</i>		<i>Capit' forestar' Hugon' de Yeland for' custodis forestæ in le eastward.</i>
<i>Thomas de Rippely</i>		

Nomina subforestariorum forestæ prædictæ.

<i>Johannes de Harley.</i>	<i>Johannes Munnewe.</i>	<i>Forestar' Radulphi de Hastings custod' forestæ prædictæ nunc.</i>	<i>Subforestarii. 8.</i>
<i>Ricardus de Aleintoftes.</i>	<i>Johannes Scot.</i>		
<i>Willielmus Gower.</i>	<i>Willielmus Courtman.</i>		
<i>Ricardus de Helmesley.</i>			

Nomina subforestar' qui fuer' in foresta ista post ultimum iter, &c.

<i>Galfridus de Hawly.</i>	<i>Johannes Rouceby.</i>	<i>Adamus fil' Willielmi.</i>
<i>Robertus de Wigan.</i>	<i>Rogerus fil' Nich.</i>	<i>Johannes de Nevil.</i>
<i>Petrus Lilly.</i>	<i>Alanus fil' Radi.</i>	<i>Thomas de Newton.</i>

Bernardus de Bergh, qui obiit, fuit viridar' in foresta ista, et Alexander Bergh filius ejus et hæres venit et reddidit rotulos suos tam

*de viridi quam de venatione tangen' forestam istam de tempore prædicto.*

The law of the forest is, that if a verderor die, his heir is to bring in the rols of his auncestors time, which if he doe, then the entry is *ut supra*.

*Adam de Brvis qui obiit fuit viridar' in foresta prædicta, et nullus est qui venit ad rotul' reddend', ideo vic' seifri fac' omnia terras et tenementa quæ fuer' præd. Adæ quousque, &c. Postea venit Willielmus B. filius ejus et hæres, et fecit finem pro rotulis prædictis, et admittitur per 40 s. prout patet in rotul' de extractis.*

If the verderor alien his lands or die seifed, and no man bringeth in the rols, then shall the land by the law of the forest be seifed by the sherif, which the verderor had, untill the rols be brought in, and if the rols be lost, then till he make his fine and have his *oufter le main*, and the entry is, as is next above.

*Ricardus de Shelton, qui obiit, fuit constabular' castri præd. et custos ipsius forestæ, et nullus est qui venit ad rotul' et munimenta ist' forestæ tangen' reddend', ideo veniant ejus terr' et tenementa tenentes ad respondend', &c.*

[ 313 ]

If the warden of the forest dye, and his heyre, or tertenant bring not in the rols, &c. his heyre or tertenant shall answer for the same.

26 Ass. p. 60.

And here it is to be observed, that where the forest of Pickering was appendant or belonging to the castle of Pickering, that he that is the constable of the castle is ever by the law of the forest chiefe warden of that forest. And so it is of the forest of Windsor belonging to Windsor castle, of the forest of Rockingham belonging to the castle of Rockingham, and all other forests belonging to castles. And accordingly here you may observe, that the office of constableness and wardenship are in this record conjoynd one with the other.

Trin. 14 E. 1.  
in banco rot. 7.  
Staff.

*Philippus de Monte Gomeri qui sequitur pro domino rege, petit vers' Radulphum Quintyn ballivam custodiæ liberæ hayæ regis de Alrewas quæ pertinet ad serjantiam regis senescalli forestæ regis de Canoco, et quæ ab eadem serjantia alienata est sine assensu prædecessorum regis regum Angliæ. Et Radulphus venit, et per licentiam reddit domino regi inde seisinam suam, &c.*

Custos forestarum.

Hil. 13. E. 3.  
Coram rege rot.  
103. Eborum.  
5 E. 3. Itin.  
Pick. acc.  
\* Roe-bucks,  
capreoli.

The duty of a woodward doth appeare by his name, and by his oath. *Nomina sunt notæ rerum.*

Hil. 13 E. 3. it is thus resolved: *Quilibet woodwardus secundum assisam forestæ debet portare hatchettum, et non arcum et sagittas pro sinistra suspicione venationis deponend' ad presentand' tam de viridi quam de venatione. Et videtur justic' hic et concilio regis quod \* capreoli Anglice roes, sunt bestię de warrenna et non de foresta, eo quod fugant alias feras*

*Bedellus* is an officer of the forest, that doth warne all the courts of the forest, and doth execute the proces of the forest, and make all proclamations as well within the courts, as without; and is derived of the Saxon word *bydder*, to call or warne, or of the French word in Normandy *bedeau*, a bailiffe or apparator.

A master of the game of the forest.

*Mensis vctitus*, fence month, or defence month, so called, because it is the fawning month, when the does have fawnes, for the preservation whereof they ought to be fenced, and defended from hurt and

16 E. 4. fo. 1. a.  
Cart. de foresta  
cap. 8.

and disquiet. It containeth a moneth containing 31 dayes, and beginneth in the fifteenth day before midsummer (that is, the nativity of St. John Baptiste) in the beginning of which a swainnote is to be holden, and endeth fifteene dayes alter. See the statute of *carta de foresta* cap. 8. whereby it is enacted, *quod tertium feonimotum teneatur in initio 15 dierum ante festum Sancti Johannis Baptiste, quando agylatores nostri conveniunt pro \* feonotone seu feonatione listiarum nestrarum.*

This word *feonotie*, or *feonatio*, is derived of the French word *faonier*, that is to fawne, or for does to bring forth, &c.

\* See rot. parl. 18 E. 1. fo. 3. nu. 37. the punishment of a forester for doing trespass in the forest.

<sup>b</sup> If the king or other lord doth pardon a trespass in a forest, and the offender at a justice seat by his learned counsell plead the same; in the proceeding thereupon we doe observe two things. First, that by the law of the forest, before any allowance thereof, the justices charge the ministers of the forest to enquire whether the delinquent hath done any trespass in vert or venison after the date of the pardon. Secondly, when the pardon is allowed, then the entry is, *quod invenit manucaptos quod amodo non forisfac*, i. *non delinqueret aut peccaret*. <sup>c</sup> But if an offender be convicted for trespass in the forest in hunting, &c. and adjudged to be fined or imprisoned, which fine, though it be paid, yet shall he finde sureties for his good abearing, &c. in these words <sup>d</sup> *quod amodo se bene geret, et in foresta predicta non forisfac*. i. *non delinqueret seu peccaret. Unde forisfactura pro delicto.*

\* By the absence or *non venue* of the justices in eyre at the day of the adjournment, the justice seat is discontinued, and how and by what means it may be recontinued, and resummoned, it appeareth in 8 E. 3. *itinere Pickering*.

No jury shall be compelled by any officer of the forest, or any other person whatsoever, to give their verdict in any other place, then where their charge is given, against their good will, nor by malice, menace, or other dures, shall be constrained to give their verdict of a trespass in the forest, otherwise then their conscience will clearly informe them. This law extendeth to forests only.

Albeit there be some beasts that be no beasts of forest, as the buck, &c. and some beasts and fowles that be no beasts and fowles of warren, yet if any man hunt or hawke at them within the forest, it is against the assise of the forest, and punishable by the lawes of the forest, for all manner of hunting or hawking there without warrant is unlawfull, because it disquieteth the beasts of the forest.

We reade that king H. 1. by his charter granted, *quod cives Londonie habeant fugationes suas ad fugandum sicut melius, et plenius habuerunt \* antecessores eorum, scilicet Siltre, et Middlesex et Suer.*

The king being seised of a forest, did grant the forest to another in fee, the grantee shall have no forest, because he hath no power to make justices and officers of forest to hold courts, &c. but yet though it cannot take effect *ex vi termini*, as a forest, yet together with the game the same shall passe as a free chase for the savages and conies: for as hath been said every forest is a free chase, *et quidam amplius.*

\* The printed book *ex gratia* me, which ought to be amended 1, 2, 4 made *feonotone* or *feonatione*, which signifies the fawning.

<sup>a</sup> Rot. parl. 18 E.

<sup>1</sup> fo. 3. nu. 37.

<sup>b</sup> 8 E. 3. Itin.

Pick. Sir Kaphe

Hastings case.

\* This is the

word of *Carta de*

*de foresta* cap.

10.

<sup>c</sup> Ibidem Rob.

Saltmarsh case.

<sup>d</sup> *Carta de forest.*

cap. 10.

<sup>e</sup> 8 E. 3. Itin.

Pick. of Wil-

liam de Persay

and William de

Kinthorp fo.

165.

[ 314 ]

7 R. 2. cap. 3.

*Carta regis H. 1. civibus London.*

\* Nota, the citizens of London

had this privilege

before this.

clearer.

<sup>a</sup> 8 E. 3. 2. 2. in

Trans.

Regist. 8. b.

See the first part  
of the Institutes,  
sect. 1. verb.  
T'res ou ten'ts.

*Chasea est ad communem legem*, and is not to be guided by the forest laws, and so are parks.

But if the king doth grant a forest to a subject, and granteth further that upon request made in the chancery, he and his heires shall have justices of the forest, then the subject hath a forest in law, as the duke of Lancaster had the forests of Pickering and Lancaster, and the abbot of Whitby had the forest of Whitby in the county of York, which being not understood, hath been the cause that readers and others have erred. Vide 12 H. 7. Kelw. 13. and 14. &c. 4 E. 3. 55. Malins case. 2 H. 6. 15. Forest of Exmore. 27 H. 8. cap. 7. 1 E. 3. cap. 2. 22 E. 4. cap. 7. 32 H. 8. cap. 13.

Mich. 18 E. 1.  
in banco rot.  
155. Eborum.

*Ricardus de Cornubia et 9. alii attach. fuerunt ad respondend' Johanni de Sallaye quare ipsum ceperunt, et in prisona detinuerunt per decem septimanas apud castrum de Knareburgh, &c. Ricardus et alii dicunt quod castrum et honor de Knareburgh cum foresta de Bestayne fuit aliquando in seisin domini H. regis, patris domini regis nunc, et eo tempore fuit talis consuetudo in foresta prædicta, quod si quis indiciatus fuerit per forestarios coram seneschallo ejusdem honoris de transgressionem de venatione facta in eadem foresta, idem seneschallus tales transgressores ubicunque fuerint inventi infra eandem libertatem prædicti honoris, licite potest arrestare et imprisonare, et eos in prisona detinere quousque satisfecerint de transgressionem, &c. Qui rex Hen. dedit prædict' honorem cum foresta, &c. Ricardo fratri suo com' Cornub' patri Edmundi com' Cornub' qui toto tempore suo usus est tali libertate arrestandi, &c. Johannes de contra dicit, nullam talem fuisse consuetudinem arrestandi malefactores, nisi quando capti fuerunt cum manuopere, et hoc ab antiquiore tempore, quia idem comes non habet ibidem forestam, sed chaceam tantum. Et quod tempore Willielmi de Stotevill domini dictæ chaceæ qui dedit regi J. dictam chaceam, et tempore dicti regis J. et tempore regis H. patris, dum dicta chaceæ fuit in manu sua, nunquam arrestaverunt aliquos de transgressionem in chaceæ illa, nisi illos qui capti fuerunt cum manuopere, et hoc offert verificare per patriam, &c. Ricardus dicit quod non possunt prædictam verificationem sine prædicto com' verificare. Ideo præc' est vic' quod sum' prædict' com', &c. Consimile placitum et consimilis responsio in eodem rotulo. Item al' in rot. 163.*

By the grant of  
a forest a chase  
passeth.

Nota, capti cum  
manuopere.

[315]

Rot. parl. 14 R.  
2. nu. 13.

King R. 2. granted to Thomas duke of Gloucester in special taile, the castle of Saint Brionel, and the forest of Deane, (whereby nothing passed, as hath been said, but a frank chase) now by authority of parliament it is enacted, that the said duke should hold the said forest as a forest, and to constitute such justices and officers, &c. as belong to a forest.

But what was the title of the courts of eyre of forests in the hands of subjects? we answer, taking one example of the forest of Pickering in the hands of Henry earle of Lancaster; *placita forestæ Henrici comitis Lanc' de Pickering tent' apud Pickering coram Ricardo de Willowby, Jo. de Shardelowe, Roberts de Hungerford, et Johanne de Hanbury, justiciariis ad itinerand' hac vice, ad placita forestæ prædictæ in com' Eborum assignat' die Lunæ prox' post festum Sancti Michaelis, anno regni regis E. 3. post conquestum 8.*

If any felony be committed within the forest, it shall be enquired of before the judges of the common law, and doth not belong to the conuance of the chiefe justice of the forest.

Mich. 9 E. 1. coram rege rot. 6. Huntingdon. *Transgressio in foresta regis pro venatione regis non est hic terminanda.*

Nota,

12 E. 3. coron.  
119. feloniam.

Transgressio.



Nota, before Scroope and other justices in eire, according to the course of the common law, a man claimed to be quit of pawnage in the kings forest, and also he claimed in the same forest pawnage of his tenant *pur agistes*; and for that this belonged to the justices of the forest, they would not meddle with it. And the reason of that is, the words of the statute of *carta de foresta*, cap. 16. *Præsententur capitalibus justiciariis nostris de foresta, cum in partes illas venerint, et coram eis terminentur.* So as the termination and ending thereof belongeth to the chiefe justices of the forest, by the expresse words of the statute. And where the statute saith, *coram capitalibus justiciariis nostris*, &c. it is to be knowne, that there is but one chiefe justice of the forests on this side Trent, and he is named *justiciarius itinerans forestarum*, &c. *citra Trentam*. And there is another *capitalis justiciarius*, and he is *justiciarius itinerans omnium forestarum*, &c. *ultra Trentam*; who commonly is a man of greater dignity then knowledge in the laws of the forest. And therefore when justice seats are to be holden, there be associated to him such as the king shall appoint, who together with him shall determine *omnia placita*, &c. *forestæ*, with a patent of *si non omnes*, and a writ *de admittendo*, &c. And the chiefe justice of the forest, and these associates, are *capitales justicarii forestæ*, and named *capitales* in respect of the verderors and others, that to some purposes (as hath been said) have inferior judiciall places.

And seeing, as it hath before appeared, the forest laws differ in many cases from the common laws of England, it is good reason they should be determined before men learned in the laws of the forest, as in other cases. As if a trespassse be done either in vert or venison in any forest in the hands of a subject, in the life of the ancestor, lord of the forest, it shall be punished in the life of the heire. But so it is not in the chafes or parkes of a subject, for by the common law *actio personalis moritur cum persona*.

If a man committed a trespassse in a forest, and dye, by the forest law the trespassse is dispunishable, agreeable to the rule of the common law.

But by the statute of 19 H. 7. he that shall stalk with any bush or beast in any park, chase, or forest, without licence, &c. shall forfeit for every time he so stalketh x. li. to any person that will sue for the same by action of debt, wherein no wager of law, protection, or essoine shall be allowed, and two justices of peace may examine the same, &c. See the statute of 1 H. 7. cap. 7. See the third part of the Institutes, cap. Felony.

\* If a forestership or a bailiwick of a forest be granted in fee, if it be found out at an eire for the forest, that the grantee hath misdome in his bailiwicke, the bailiwick is forfeited. Nota, the justices in eire have power to enquire thereof. In these offices of foresterships or bailiwicks in fee within a forest, albeit they have an absolute fee simple therein, yet are they of such trust that they cannot be granted over without the kings license, and before such license be granted, there goeth out a writ of *ad quod damnum* to the king, if such license shall be, &c.

There be many beasts of the forest by the laws of the forests of England. The hart in summer, the hinde in winter, and all that proceed as of them: the buck in summer, the doe in winter, and the proceed of them: the hare male and female, and their proceed:

A a 3

V. Cartam de foresta cap. 16. Temps E. 3. Kelw. 150. b. V. 21 H. 7. 22. & 30.

For these associations and other writs, see a notable president 8 E. 3. Itin. Pickering in the case of William of Persay, &c. fol. 165.

8 E. 3. Itin. Pick. Hugh Latimers case.

19 H. 7. cap. 11. In this act see the great penalty for keeping of nets called deer-hayes and buck-stals by any that hath not any forest, park, or chase.

\* 26 Ass. p. 60.

[ 316 ]  
Register fo. 257.  
F. N. B. 226.

For the beasts of chase and warren, and fowls of warren being not proper to this treatise.

the

See the first part  
of the Inst. sect.  
378. Rot. parl.  
18 E. 1. nu. 20.

the wild boar male and female, and their proceed: and the wolf male and female and their proceed: the fox male and female, and their proceed: the martin male and female: *capreolus* the roe, as it appeareth before, is no beast of the forest, but it is a beast of chase.

\* *Lutra animal  
amphibium.*

But I find that in 18 E. 1. John de Claret was amerced in 100 li. *pro uno cervo et duobus \* lutris captis in foresta de Pck*, and he petitioned to the king in parliament to be discharged thereof and was denied. Yet I take an otter is no beast of the forest: but all hunting in the forest, as hath bin said, is unlawfull.

The proceads of the hart and hinde. The male the first year a calf, the second a broket, the third a spayad, the fourth a staggard, the fifth a stag, the sixth a hart, and so after. The female, the first year a calf, the second year, a brockets sister, the third year a hinde.

The proceads of the buck and doe. The first year a fawn, the second year a pricket, the third a forell, the forth a fore, the fifth a buck of the first head, the sixth a great buck.

The proceads of the hare, the first year a leveret, the second a hare, the third a great hare. Of a wilde boar: a pig, a hogge, a hog-shear, a boar, and after a sanglier.

The seasons by the law of the forest for the beasts of the forest are these. Of the hart and the buck, beginneth at the feast of S. John Baptist, and endeth at Holy Rood day. Of the hinde and doe, beginneth at Holy Rood and continueth till Candlemasse. Of the fox at Christmasse, and continueth till the 25 of March. Of the hare, at Michaelmas, and lasteth till Midsummer. Of the bore, from Christmasse till Candlemasse.

Cart. de foresta,  
ca. 8. 10. 16. &c.  
And so it is taken  
1 Reg. ca. 4. ver.  
21. *Venatio cer-  
vorum*, the ve-  
nison of harts.  
\* *Ordinatio fo-  
restæ* ca. 1. 5.

In the statute of Carta de Foresta in divers places *venatio* signifieth venison in French *venaison*, and so in effect in Duch and other languages. It is called venison or *venison*, of the mean whereby the beasts are taken, *quoniam ex venatione capiuntur*, and being hunted are most wholesome. \* They are called beast of venary (not yenary as some term it) because they are gotten by hunting. No beast of the forest that is *folivagum et nocivum* is venison, as the fox, the wolf, the martin, because they be no meat, but *caro eorum est nociva: a fortiori*, the bear is no venison not only because he is *animal folivagum et nocivum*, but because he is no beast of the forest, and whatsoever is venison must be a beast of the forest, *sed non è converso*. On the other side, *animalia gregalia non sunt nociva*, as the \* wilde boar: for naturally the first three years he is *animal gregale*, and after trussing to his own strength, and for the pleasure of man becometh *folivagum*. He is then called sanglier, because he is *singularis*, but he is venison and to be eaten. The hare is venison also, which the poet preferreth before all others,

*Aristotle.*

*Aristotle.*

\* Sanglier, quia  
*singularis*.

*Martial.*

Deer à de; Græce  
i. fera bellua  
κατ' ἐξουαν, and  
their flesh is  
called caro fe-  
ræ.

*Inter quadrupedes gloria prima lepus.*

So as the red-deer, the fallow-deer, the wilde boar, and the hare, are venison. Whereupon these two conclusions in the law of the forest do follow. First whatsoever beast of the forest is for the food of man is venison, and therewith agreeth Virgil, describing a feast,

*Implentur*

*Implentur veteris bacchi pinguisq; ferina.*

They had their belly full of old wine and fat venison. So venison was the principall dish of the feast.

2. Whatsoever beast of the forest is not for food of man is no venison. Therefore *capreslus* being no beast of the forest, as hath been said, is not by the law of the forest venison, for though it be food and taken by hunting, it is no venison. Nature hath endued the beasts of the forest which are venison with two qualities, swiftnesse, and feare, and their feare increaseth their swiftnesse.

*Pedibus timor addidit alas*: but yet the deer are the most fearefull.

*Dente tuetur aper, defendunt cornua taurum,  
Imbellis damæ quid nisi præda sumus?*

[ 317 ]  
Martial.

Having spoken somewhat *de venatione*, it followeth that we should say somewhat *de viridi*, because the statute saith, *Tam de viridi quam de venatione*, and other statutes speak of vert and venison.

• *Viridis*, green hue, à *viriditate*, the French calleth it verd, and we vert, whatsoever beareth green leaf, but specially of great and thick coverts. And vert is of divers kinds, some that beareth fruit that may serve as well for food of a men as of beasts, as pear trees, chefnut trees, apple trees, service trees, nut trees, crab trees, &c. and for the shelter and defence of the game: some called *haut-boys*, serving for food and browfe of and for the game, and for the defence of them, as oaks, beeches, &c. Some *haut-boys*, for browfe and shelter and defence only, as ashes, poples, &c. Of *sub-boys* some for browfe and food of the game, and for shelter and defence, as maples, &c. some for browfe, and defence, as birch, fallow, willow, &c. some for shelter and defence only, as akler, elder, &c. Of bushes and other vegetables, some for food and shelter, as the hawthorn, blackthorn, &c. some for hiding and shelter, as brakes, gorsle, heath, &c. To sum up all, *Plantarum tria sunt genera: arbores, arborescentes, et herbæ. Arbores*, as *haut-boys*, et *sub-boys. Arborescentes*, as bushes, brakes, &c. *Herbæ* as herbs and weeds, which albeit they be green, yet our legall *viridis* extendeth not to them.

A *viridi* commeth, as hath been said, *viridarii*, because their office is to see to the preservation of vert, which in troth is the preservation of venison. The poet speaking to the trees, saith,

*Quercus es in sylvis pulcherrima, pinus in hortis,  
Populus in fluviis, abies in montibus altis.*

See for the punishment of trespassse done *de viridi*, either in the kings woods, or in the woods of the subject, *Confect' et assis' foresti'*, *ubi supra*.

The philosophicall poet in describing the most delightfull pleasures of woods, &c. and green hue, saith,

*Devenere locos lætos, et amœna vireta  
Fortunatorum memorum, sedesque beatas.*

Virgil.

And because it should be hard and difficult that any man should hunt and kill the kings deer in h's forest and passe away without discovery, unlesse there were procurers, plotters, assistants, and receivers: by the law of the forest, whosoever receiveth within the forest,

Of principall and accessory.  
8 E. 2. Itin.  
Pick. 12. 3. & 5.

12 E. 4. 9. 15 E.  
4. 15. b. 14 H.  
6. 26. 27.  
37 Aff. 8.  
38 Aff. 6.  
38 E. 3. 18.  
13 H. 7. 12. 13.  
Nota, that in  
the highest and  
lowest offences,  
viz. high trea-  
son and trespass  
there are no ac-  
cessaries, but in  
felony which is  
between both,  
there be acce-  
saries both be-  
fore and after.  
See the 3. part  
of the Instit.  
cap. Principall  
and Accessary.

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forest any such malefactor either in hunting or killing, knowing him to be such a malefactor, or any flesh of the kings venison knowing it to be the kings: in this case he is a principall trespasser, wherein the law of the forest differeth from the common law, for by the common law he that receiveth a trespassse and agreeth to a trespassse after it be done, is no trespassser, unlesse the trespassse was done to his use, or for his benefit, and then his agreement subsequent amounteth to a commandment, for in that case, *Omnis rati habitio retrahitur et mandato æquiparatur*, but by the law of the forest, such a receiver is a principall trespassser, though the trespassse was not done to his use, as well as the procurers and plotters; but by the common law in case of felony such a receiver is but an accessory. But in the case abovesaid, if the receipt be out of the forest, he cannot be punished by the law of the forest, because it is out of the jurisdiction of the forest, which jurisdiction is local. And seeing the jurisdiction of the forest is local, the law of the forest hath provided, that the forest should be inclosed by metes and bounds, which indeed are the inclosure of the forest: for as parks are inclosed with wall, pale, or hedges, so forest and chases are inclosed by metes and bounds, and as a parke cannot be a parke without such an inclosure in deed, as is aforesaid, so it can be neither forest nor chase without an inclosure in law, that is, by metes, and bounds. *Metæ sunt clausuræ forestarum et chacearum: et Foresta est locus in quo feræ includuntur, venandi ergò, solis metis.* And where by the statute of 6 E. 1. cap. 18. it is provided, *quod omnes metæ forestæ sint integræ domino regi*, that is so to be understood, *quoad jurisdictionem et imperium, et non quoad dominium*: for if rivers or high-ways be bounds, as most commonly they be, yet the king hath no more interest in the soil, way, river, or fishing, then of right he ought, but only for his jurisdiction of his forest which extendeth over the whole way, river, &c. And where mills and other houses, trees, &c. of other men, and such like, be metes and bounds of the forests, yet thereby the king hath no interest in such mills, houses, or trees, &c. And therefore old woodmen have divided metes, *quoad jurisdictionem et imperium*, into metes inclusive, as ways, rivers, &c. and into metes exclusive, as churches, church-yards, chappels, mills, houses, trees, &c. which bound the forest, but are excluded from any jurisdiction: and that the said law of 6 E. 1. is intended only of metes inclusive, if any man kill or hunt any of the kings deer in any part of the river, high-way, &c. being an inclusive boundary of the forest, he is as great an offender, as if he had killed or hunted within the main continent of the forest, albeit the state and interest of the soil of the high-way or river be in other men; but neither of these kinds of metes and bounds are removeable, because they are the inclosure of the kings forest, and if either of them be removed, it is punishable by the laws of the forest. This word *meta* is only used in this statute: in ancient perambulations and records you shall read *secundum metas, maras, bundas, et \* marchias forestæ*. *Mara* is fetched from the Saxon word *mere*, and that of *μειον* Grece, which signifieth to divide or bound. *Bunda* a bound, is derived from the Saxon word *bunna*, signifying a higher thing, as hills, houses, trees, &c. *Marchia* is derived from the Saxon word *march*, now a mark. *Sed meta accipitur pro quocunque termino, limite, seu fine.*

\* 8 E. 3. Itin.  
Pick. fo. 6.  
Mara.  
Bunda.  
Marchia.  
Meta.

*His ego nec metas rerum, nec tempora pono.*

*Virgil.*

And it is to be observed, that a man may have a free chase as belonging to his manner in his own woods, at well as a warren or park in his own grounds; for the chase, warren and park are collaterall inheritances, and not issuing out of the soil, as the common doth, and therefore if a man hath a chase in other mens grounds, and after purchase the grounds, the chase remaineth.

Regist. Judic.  
35, 36.  
Dier 16 El. 326.  
327.

After Easter following the parliament holden in February, anno 9 H. 3. according to the statute of Carta de Foresta, Hugh de Nevill, and Brian de Lisle were appointed commissioners to take inquisitions of the ancient metes and bounds of such forests, as either H. 2. or any king after had enlarged. And in the reign of H. 3. divers perambulations, and deafforestations were made, and many other in the reigns of H. 3. E. 1. E. 2. and E. 3. &c. All which were returned into the chancery, and remain of record in the Tower.

Perambulations  
of forests ac-  
cording to the  
ancient metes  
and bounds.  
Vid. sup. pa.  
302.

The commons of Herefordshire pray remedy against the evil customes of the forest of Ewyastone; namely, for taking their cattell comming thereunto as forfeit. Whereunto the royall answer of the king in parliament was in these words, The old good laws and customes of the forest to be observed, and the contrary forbidden by a writ under the privy seal. *Regalis sanè et digna Plantagineforum genere sententia*, wherewith we will conclude, that new opinions of new authors, or single opinions of readers not grounded upon the authorities of our books or judiciall prefidents, are not to be allowed, but the laws both good and old, and specially the statute of Carta de Foresta, and other statutes, and the resolution of the judges thereupon are to be duly observed. See also the old and just articles of the charge in Fleta lib. 2. cap. 35. and reject all new inventions without warrant of law.

Rot. par. anno  
9 H. 4. nu. 40.

The good old  
laws of the forest  
to be observed.

\* Two of the principall and ancient articles, the one concerning venison, and the other concerning vert, be, Firist, that the chief forester at the justice seat ought to answer for all manner of venison delivered by warrant, or otherwise, in this manner: the twelve jurors ought to present before the justices in eire the number of deer that have been killed since the last eire, and then the chief forester is to answer by what warrant the same were killed, and such warrants as are lawfull ought to be allowed, and such as be unlawfull are to be disallowed. Secondly, the twelve jurors shall present what okes, trees, and other woods have been felled and delivered out of the forest by the officers of the same, and they to answer and shew by what warrants the same were done; whereupon it will appear whether the warrants be sufficient or no, the truth whereof shall be inquired by the foresters, verderers, and regarders. But these or any other minister of the forest are not to be returned of any jury out of the forest.

Nota, the charge  
and articles in-  
quirable by the  
good old law of  
the forest, which  
is worthy to be  
advisedly read  
and followed.  
Vid. Lib. 2.  
fo. 80. Lib.  
137, 138. Lib. 9.  
49, 50.

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8 E. 3. Itin'  
Pick. fo. 112,  
113.

Vide Register.  
F. N. B. 167. a.  
34 E. 1.

The laws of the forests of England are certain and established by authority of parliament, and not, as in other countries, changeable and floting in uncertainty, *ad principis placitum*.

For the antiquity of such forests within England as we have treated of, the best and surest argument thereof, is, that the forests in England (being in number 69.) except the new forest in Hampshire erected by William the Conqueror, as a conqueror, and Hampton Court forest by H. 8. by authority of parliament, are so

The commendation  
of the fore-  
rest laws of Eng-  
land.  
The antiquity  
of forests.  
The number of  
the forests is 69.  
with the forest  
of Hampton  
Court.

ancient as no record or history doth make any mention of any of their erections or beginnings.

\* Holt Saxonice,  
sylva Latine.  
Levit. 17. 13.  
4 Reg. cap. 2.  
Psal. 50. 10.  
Psal. 80. 14.  
104. 29. 4 Efdr.  
5. 15. Jer. 5. 6.  
Ezech. 31. 6.

Our ancestors the Saxons called a forest \* *buckholt*, i. *sylva ferina* or *cervina*; we dare not fetch our kind of forest, as some do, from the holy history of scripture, for therein we find no such forests as we have. And it is worthy of observation that in the Customary of Normandy cap. 10. fo. 17. b. *Le seneschal au prince vifiteit les forests et hayes du prince et renouoit les forfeits, &c.* So as we fetch not our chief justice of the forest from Normandy, where the kings steward was the chief judge of the forest.

And as forests are of great antiquity, so the care and charge of them was in England always committed to great and honourable personages, and the like was also in forain nations.

Virgil.

*Si canimus sylvas, sylvæ sunt consule dignæ.*

Suetonius in  
Cæsare.  
Vid. Fleta, lib.  
2. cap. 35.  
De veteribus  
capit' forestæ.  
Voluptates com-  
mendat rarior  
usus.

For of ancient time the consuls of Rome had the government of the forests, &c. But take Suetonius as he is, *Ab optimatibus datam scribit operam ut provinciæ futuris consulibus minimi negotii, i. sylvæ colligi decernerentur*; for to say the truth, recreations should not be used as professions, and trades, but to be used as medicines, to make men more able and fit for higher and greater affairs, and therefore they are called recreations, because they newly create spirits, *tamquam instaurationes spirituum*; but yet these pleasures are accounted *inter res minimi negotii*. *Nonnulli principes immoderato venatus studio ita correpti, et corrupti sunt, ut ei omnia posthabeant magno dedecore, et ingenti aliorum damno.*

*Hæc bis bina, canes et aves, servi atque caballi,  
Dicantur dominos sæpe vorare suos.*

Johannes Sarum  
lib. 1. de nugis  
curialium, c. 4.  
Vid. 31 H. 8.  
c. 12. *Quod cito  
evanuit*, repealed  
1 E. 6. cap. 12.  
1 Mar. cap. 1.

And to say the truth, the hunter sitteth on a beast, he is compassed about with beasts, and hunteth and chafeth beasts, and therefore not to be used daily as a trade. And it was justly provided by the tenth chapter of this charter of the forest, *Quod nullus de cætero amittat vitam pro venatione nostra, &c.* Hereof John Salisbury speaking of hunting and hunters saith, *In tantum hujus vanitatis instinctu erupere, ut hostes naturæ fierent conditionis suæ immemores, divini judicii contemptores, dum in vindictam ferarum imaginem dei exquisitis judiciis subjugarent, nec veriti sunt hominem pro bestiola perdere quem unigenitus Dei redemit sanguine suo.*

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Duo clarissima  
mundi lumina,  
auctoritas et  
ratio.

Thus have we wandred in the wilderness of the laws of the forest: wherein we have dissented from others, we have produced our authorities, and shewed our reasons, the two maine lights and guides, which herein we have followed. We have faithfully published divers resolutions of the judges concerning forests and forest lawes, wherewith we were well acquainted, which are the safest grounds to build upon. Many things which are evident by the text of Carta de Foresta, and other statutes concerning forests, we have not so much as touched, but left the same to the judicious reader, whom we advise to beware to give credit to our new authors, either vouching of acts of parliament, booke cases or judgements in eire, &c. for we have found many of them mistaken, vouched without warrant, or not understood, which the judicious reader will soone finde; nor to Carta de Foresta of king Canutus granted (as it is published in print) at a parliament holden at Winchester, *anno domini* 1016. We confesse that in that yeare, which was the first yeare

yeare of his reigne, he held a parliament at Winchester, and made divers lawes as well for the honour and worship of Almighty God, as for the good government of his people, which he published in the Saxon tongue, (neither doe we reade that he ever published any law for England in the Danish tongue, as they affirme he did this). In all these laws he never maketh mention of this Carta de Foresta, or of any of these supposed laws of the forest therein contained, which he had just occasion to doe; for amongst his other lawes at the same parliament, he maketh this law the 77. chapter in the Saxon tongue, which is thus translated into Latine: *Præterea autem concedo ut in propriis ipsius prædiis quisque tam in agris quam in sylvis excitet agitetque, feras autem meas ne venetur cum pærna præcipio.* Now in the supposed Carta de Foresta of king Canutus, in the 30. chapter, it is thus contained: *Volo ut omnis liber homo pro libito suo habeat venerem seu viridem in planis suis, sine chosca tamen: et devitent omnes meam ubicunque eam habere voluerit.* Which we hold greatly to differ from the true law before rehearsed in two respects. First, that the true law extendeth to woods as well as to plains, and this to plaines only. Secondly, by that they might hunt, &c. by this they cannot; therefore we leave that Carta de Foresta of king Canutus as justly suspected, till we receive better prooffe of them: whatsoever it be, it is of little use, for so many of the chapters therein as be contrary to, or differing either from our Magna Carta de Foresta, or any other act of parliament, are certainly of no force.

Thus have we as briefly as we could, treated of the courts of the forest, and incidently of such forest lawes as now stand in force; wherein (as the studious reader may well perceive) we have respected matter more than method. See Carta de Foresta anno 9 H. 3. & Cart. 17. regis Johannis. Matth. Par. pag. 264.

C A P. LXXIV.

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Of Ecclesiasticall Courts, anciently called Halmots, (i. Holy Courts) Circgemots, or Chircgemots.

WHERE some may doubt, how we that professe the common law should write of ecclesiasticall courts, which proceed not by the rules of the common lawes. To this we answer by good authority in our bookes, that the kings lawes of this realme do bound the jurisdiction of ecclesiasticall courts, and that the king is well apprised of all<sup>a</sup> his judges which he hath within his realme, as well spirituall as temporall, as archbishops, bishops, and their officers, deanes, and other ministers, which have<sup>b</sup> spirituall jurisdiction. And that the popes collector or minister (so say our ancient books) had no jurisdiction within the realme.

And it is declared by the king, the lords spirituall and temporall, and

<sup>a</sup> 2 H. 4. 9.  
Rot. claus. 4 H.  
4. m. 11. optime.  
Rot. claus. 11 E.  
2. d. 6.  
<sup>b</sup> Nota, the kings  
judges.  
<sup>c</sup> Spirituall jurisdiction.

<sup>c</sup> 25 H. 8. cap. 21.

\* If so, then much more at this day. See before pag. 43.

<sup>d</sup> The spirituall jurisdiction.

The temporall jurisdiction.

Of what things they have jurisdiction.

*Articuli cleri per totum*, lib. 5. fo. 1. Cawdries case.

See before cap. of the Chancery, the articles against cardinall Wolsey art. 1. 13. 14. 17. 18. 19. 22. 24. 25. 29. 30. Bract. lib. 5. cap. 2. &c. Britton fo. 10. b. Rot. parl. 15 E. 3. nu. 22. <sup>e</sup> See *Dier. Mich.* 6 & 7 Eliz.

<sup>8</sup> Eliz. cap. 1.

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Parker in *I bro de Antiquitate Britanniae Ecclesiae*, sub titulo *Matthaeus*. Imprinted 1572. 13 Eliz.

and the commons in ful parliament, <sup>c</sup> That the spirituality (now being usually called the English church) alwayes hath been reputed, and also found of that sort, that both for \* knowledge, integrity and sufficiency of number it hath been always thought, and is also at this houre sufficient and meet of it selfe, without the intermedding of any exterior person or persons, to declare and determine of such doubts, and to administer all such offices and duties as to their rooms <sup>d</sup> spiritual doth appertain: for the due administration whereof, and to keep them from corruption and sinister affection, the kings most noble progenitors, and the antecessors of the nobles of this realme have sufficiently endowed the said church both with honour and possessions. And the lawes temporall for triall of property of lands and goods, and for the conservation of the people of this realme in unity and peace, without rapine or spoile, was and yet is administered, adjudged, and executed by sundry judges and ministers of the other part of the said body politique, called the temporality: and both their authorities and jurisdictions do conjoyne together in the due administration of justice, the one to help the other.

Of what things the clergy hath spirituall jurisdiction, is evident in our books, and particularly in Cawdries case, whereof there is no question. And certain it is, that this kingdome hath been best governed, and peace and quiet preserved, when both parties, that is, when the justices of the temporall courts, and the ecclesiasticall judges have kept themselves within their proper jurisdiction, without inroaching or usurping one upon another; and where such inroachments or usurpations have been made, they have been the feeds of great trouble and inconvenience; for preventing and avoiding whereof, we have composed this treatise of the ecclesiasticall courts of the realm.

The adversary hath made divers objections against our archbishops and bishops made about the beginning of the reign of queene Elizabeth, and by consequent against the bishops ever since. <sup>e</sup> First, that they were never consecrated according to the law, because they had not three bishops at the least at their consecration, nay never a bishop at all, as was pretended; because they being bishops in the reigne of E. 6. were deprived in the reigne of queen Mary, and were not (as was pretended) restored before their presence at the consecration. These pretences being (in troth) but meer cavills, tending to the scandall of the clergy (being one of the greatest states of the realm, as it is said in the statute of 8 Eliz. cap. 1.) are fully answered by the said statute, and provision made by authority of that parliament for the establishing of the archbishops and bishops both in *presenti* and in *futuro*, in their bishopricks. Of this statute archbishop Parker in his book *De Antiquitate Britannicae Ecclesiae* speaking of himself faith, *anno Domini 1559. Cantuar' episcopus electus est à decano et capitulo ecclesiae metropoliticae Cantuar' : posseaq; eodem anno 17 Decembris adhibitis quatuor episcopis, &c. lege quadam de hac re lata, requisitus consecratus est.* Another objection was made against our archbishops and bishops, for that the commission (being never inrolled whereby the bishops made in queen Maries time were deprived before the fourth year of the reign of queen Elizabeth: or the record of the approbation of them cannot be found: and therefore it was pretended that the archbishops and



and bishops made by queen Elizabeth, living the former should be no lawfull bishops. But by the statute of 39 Eliz. cap. 8. the archbishops and bishops are adjudged lawfull, as by the said act appeareth. And by these two statutes, these and all other objections against our bishops are answered, which we have thought good to remember, seeing we are to treat of their jurisdiction, *ut obstruatur os iniqua loquentium.*

39 Eliz. cap. 8.

*Of the Court of Convocation.*

It is called the convocation of the clergy. In England there being two provinces, the one of Canterbury, and the other of York, the bishops and suffragans belonging to York, are the bishops of Duresme, Carlisle, Chester, and the Isle of Man, and all the rest of the bishops are within the province of Canterbury.

In *domo convocationis* the whole clergy of either province are either present in person, or by representation: \* but these provinces and they only sit in the parliament time, and this consisteth of two parts, viz. the upper house, where the archbishops and bishops sit, and the lower house where the rest do sit.

cap. 8. Quosque churchgemot discordantes inveniet, vel amore congreget, vel  
\* 21 E. 4. 45. 46.

The name.  
F. N. B. 269. B.  
Regist. fol.  
See the first part  
of the Institutes  
sect. 133.  
23 H. 8. cap. 1.  
32 H. 8. cap. 23.  
& 33 H. 8. ca.  
31. Anciently  
called church-  
gemote. Inr.  
leges Hen. 1.  
sequestrat judicio.

Anno Domini 686 Augustine assembled in councell the Britain bishops, and held a great synod.

cap. 13. Bract. lib. 3. fo. 123, 124. 6 H. 3. Hol. 203. Rot. parl. 18 E. 3. nu. 1. Rot. parl. 2 H. 4. nu. 29. F. N. B. 269. 8 H. 6. cap. 1.

Beda.  
The antiquity.  
Newburgh lib. 2.  
Rot. parl. 2 H. 4.

The clergie was never assembled or called together at a convocation but by the kings \* writ, *adjutoria regis*, as Beda saith *ubi supra*. Vid. parl. 18 E. 3. nu. 1. *Int' leges Inæ anno Domini 727*, a convocation of the clergy called *magna servorum Dei frequentia*.

By what authority assembled.  
\* 13 E. 3. Rot.  
parl. 16. 24.  
Dors. claus. 17 E.  
2. m. 30. 31. 25 H. 8. cap. 19.

Their jurisdiction was to deal with heresies, schismes, and other meer spirituall and ecclesiasticall causes, and therein they did proceed *juxta legem divinam et canones sanctæ ecclesiæ*. \* And as they could never assemble together of themselves, but were always called together \* by the kings writ, so were they oftentimes commanded by the kings writ to deal with nothing that concerned the kings lawes of the land, his crown and dignity, his person, or his state, or the state of his councell or kingdom: as to illustrate this matter to remember one or two examples.

What their jurisdiction was.

Regist. fol. F. N. B. 269. \* *De procurat. Cler.* See in the chapter of the High Court of Parliament, Regist. 261. and F. N. B. 229. a. and Parl. 6 E. 3. nu. 6. 8 H. 6. cap. 1. \* 2 Chron. 29. 15. Eschias. Num. ca. 10. v. 1, 2. vid. sup. pa. 43.

Merton cap. 9.  
21 E. 4. 45. 1.  
per Vavasor. and  
b. per Starkey,  
Brown and Vavasor.  
20 H. 6. 13.  
34 H. 6. 39.  
28 H. 6. 11.

*Mandatum est omnib' episcopis qui conventuri sunt apud Gloucesteriam die Sabbathi in crastino Sanctæ Katherine firmiter inhibendo quod sicut baronias suas (quas de rege tenent) diligunt, nullo modo presumant consilium tenere de aliquibus quæ ad coronam regis pertinent, vel quæ personam regis*

Rot. pat. 18 H.  
3. 2 part. m. 17.  
De prohibitionibus  
facti. Episcopis.

*regis vel statum suum, vel statum concilii sui contingunt. Scituri pro certo quod si fecerint, rex inde se capiet ad baronias suas. Teste rege, &c.*

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Stat. de Carlisle  
35 E. 1.  
Rot. pat. 15 E. 2.  
1 part. m. 8. pro  
rege de inhibi-  
tione facienda.

See the statute of Carlisle anno 35 E. 1.

*Rex, &c. Venerabilibus in Christo patribus eadem gratia W. archiepiscopo Cantuariensi, totius Angliæ primati, ac cæteris episcopis et prælatis Cant' provincie ad concilium provinciale apud London in proximo conventuris. Mandamus vobis in fide et dilectione quibus nobis tenemini firmiter inhibentes ne in dicto concilio quicquid in nostri, aut status coronæ nostræ vel regni nostri præjudicium statuatis, faciatis, seu quoquo modo libet ordinetis. Teste rege, &c.*

*De isto negotio scribitur præfatis prælatis per literas de credentia, ut in rotulo clausarum sub eodem datu continetur.*

6 E. 3. dorf.  
claus. part 2. m.  
15. &c.

*Prohibitio fact' archiepiscopo Cant' et clero conventur' post festum Sancti Barth. quod nihil attemptent in præjudicium coronæ.*

Vide cap. of the High Court of Parliament, pag. 4. & 5. a. for *procuatores cleri*, & 21 R. 2. cap. 2.

51 E. 3. nu. 42.  
46 E. 3. prem. 8.  
21 E. 4. 45. ubi  
sup. Rot. parl.  
1 R. 2. nu. 114.  
\* 25 H. 8. cap.  
19. 19 E. 3.  
Quare non ad-  
mittit acc' 10 H.  
7. 6. per Brian.  
& 2 Ph. & Mar.  
cap. 8. the pre-  
rogatives, and  
lawes of the crown saved. *Versus finem.*

And further the king did often appoint commissioners by writ to sit with them at the convocation, and to have consens of such things as they meant to establish, that nothing should be done in prejudice, *ut supra*. \* And therefore the statute of 25 H. 8. ca. 19. (whereby it is provided, that no canons, constitution, or ordinance should be made or put in execution within this realm by authority of the convocation of the clergy, which were contrariant or repugnant to the kings prerogative royall, or the customes, laws, and statutes of this realm) is but declaratory of the old common law.

What their ju-  
risdiction now is.

But by the said act of 25 H. 8. their jurisdiction and power is much limited and straitened concerning their making of new canons: for they must have both license to make them, and after they be made, the kings royall assent to allow them, before they be put in execution. But in the end of that act there is an expresse proviso, that such canons as were made before that act, which be not contrariant nor repugnant to the kings prerogative, the laws, statutes or customes of the realm, should be still used and executed as they were before the making of that act. But before that act a disme granted by the clergy at the convocation, did not binde the clergy before the kings royall assent.

2 R. 3. 4. 21 E.  
4. 42. 47.  
20 H. 6. 13.

26 H. 8. cap. 1.

King H. 8. was acknowledged supream head in divers convocations.

24 H. 8. ca. 12.  
1 Eliz. cap. 1.

And if any cause shall depend in contention in any ecclesiasticall court which may or shall touch the king, his heirs, or successors, the party grieved shall or may appeale to the upper house of convocation within 15 dayes after sentence given.

As there be two houses of convocation, so are there two prolocutors, one of the bishops of the higher house, chosen by that house, another of the lower house, and presented to the bishops for their prolocutor.

It is called convocation *à convocando*, because they are called together by the kings writ.

8 H. 6. cap. 1.

The clerks of the convocation called by the kings writ, and their

their servants and familiars shall have such priviledge in coming, tarrying, and going, as the great men, and comminallty of this realm, called to the kings parliament.

*Of Subscription.*

Subscription required by the clergy is twofold: one by force both of an act of parliament confirming and establishing the 39 articles of religion agreed upon at a convocation of the church of England, and ratified by queen Elizabeth under the great seal of England. Another by canons made at a convocation of the church of England, and ratified by king James, as is aforesaid.

By the act of 13 Eliz. cap. 12. referring to canons made by the clergy of England at a convocation holden at London in *anno Domini* 1562. containing 39 articles of religion, and ratified as is aforesaid.

The other is by canons of the church of England made and ratified by king James, as is aforesaid.

The subscription hereby required is to three articles.

The first is, that the kings majesty under God is the only supreme governor of the realm, and of all other his highnesse dominions and countries, &c.

2. That the Book of Common Prayer, and of ordering of bishops, priests, and deacons, containeth nothing in it contrary to the word of God, &c.

3. That he allowed of the said 39. articles of religion, and acknowledged them to be agreeable to the word of God.

And in this section, *ubi supra*, 1 Jac. the form of the subscription is set down, which was not expressed in the act of 13 Eliz.

By the statute of 13 Eliz. the delinquent is disabled and deprived *ipso facto*, but the delinquent against the canon of king James is to be proceeded withall by the censures of the church. This statute of 13 is well expounded in Dier 23 El. 377. & lib. 6. fo. 69. in Grenes case.

And I heard Wray chief justice in the kings bench, \* Pasch. 23 El. report, that where one Smith subscribed to the said 39 articles of religion, with this addition (so far forth as the same were agreeable to the word of God) that it was resolved by him, and all the judges of England, that this subscription was not according to the statute of 13 Eliz. because the statute required an absolute subscription, and this subscription made it conditional; and that this act was made for avoiding a diversity of opinions, &c. And by this addition the party might by his own private opinion take some of them to be against the word of God; and by this means diversity of opinions should not be avoided, which was the scope of the statute, and the very act it self made touching subscription hereby of none effect.

He must also bring a testimoniall from men known to the bishop, to be of sound religion, a testimoniall both of his honest life, and profession of the doctrine expressed in the said articles; and he ought to be able to answer, and render to the ordinary an account of his faith in Latin, &c.

Besides this subscription, when any clerk is admitted and instituted

13 Eliz. ca. 12.  
At a convocation holden at London anno Dom. 1562. and 5<sup>to</sup> Eliz.

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At a convocation begun at London, anno dom. 1603. 1 Jac. regis § 36.

This book is ratified and confirmed by act of parliament, viz. 2 E. 6. cap. 1. 5 E. 6. c. 1. 1 El. cap. 2. 8 El. cap. 1. 23 El. ca. 1.

Dier 23 El. 377.  
Lib. 6. fo. 69.  
Grenes case.  
\* Smiths case.

tuted to any benefice, he is sworn to canonically obedience to his diocesan.

*Of the High Commission in Causes Ecclesiasticall.*

Pasch. 9 Jac. the resolution of the court of common pleas upon mature deliberation, set down in writing by the commandment of king James.

Two questions have been made concerning the jurisdiction of these commissioners.

First, what causes doe belong to the high commissioners by force of the act of 1 El. cap. 1. and of the letters patents thereupon grounded.

Secondly, in what cases the high commissioners by the said act of 1 Eliz. cap. 1. and of the letters patents to them granted, may impose fine and imprisonment, and in what not.

It is said, by force of the statute of 1 El. For that before this act it is agreed, that all ordinaries and ecclesiasticall judges whatsoever, ought in all ecclesiasticall causes to have proceeded according to the censures of the church, and could not in any case have punished any delinquent by fine or imprisonment, unless they had authority so to doe by act of parliament. And the papall authority (as hath been confessed) did never fine or imprison in any case, but ever proceeded only by ecclesiasticall censures. Seeing then the state of the question concerning fine and imprisonment dependeth wholly upon the statute of 1 Eliz. and is of greatest consequence, and openeth the way to the other question, for it is confessed that by letters patents only (without an act of parliament) such power to fine and imprison in ecclesiasticall causes cannot be granted; the point of fine and imprisonment shall be first handled. And for that every act of parliament doth consist of the letter, and of the meaning of the makers of the act: the act of 1 Eliz. doth neither by meaning nor letter give any power to the high commissioners to fine and imprison any, but in certain particular causes, as shall manifestly out of the act it self appear hereafter. And seeing every act of parliament upon consideration had of all the parts thereof together, is the best expositor of it self, the parts of this act of 1 Eliz. doe necessarily fall into consideration.

The title of the act.

First, the title of the act is, *An act restoring to the crown the ancient jurisdiction, &c.* By this the nature of the act doth appear to be an act of restitution.

And this is also manifest by the preamble of the act, where it is said:

The preamble of the act.

Whereas divers good laws were made in the time of the late king Henry the eighth, for the extinguishment of all foraine power, and for the restoring unto the crown of this realm the ancient rights and jurisdictions of the same.

1 Ratio.

From whence this reason is drawn, that seeing the expresse letter and meaning is to restore to the crown the ancient jurisdiction ecclesiasticall, and no commissioner by force of that ancient ecclesiasticall jurisdiction could impose fine and imprisonment, that these commissioners having their force from this act of restitution, cannot punish

punish any party by fine or imprisonment, otherwise then shall be hereafter expressed.

The first clause of the body of the act (to let in the restitution of the ancient right and jurisdiction ecclesiasticall within the realm) doth abolish all forain jurisdiction out of the realm.

Then followeth the principall clause of restitution and uniting of the ancient jurisdiction ecclesiasticall, being the main purpose of the act, in these words.

Be it enacted, that such jurisdiction, &c. spirituall or ecclesiasticall, as by any spirituall or ecclesiasticall power or authority hath heretofore been, or lawfully may be exercised or used for the visitation of the ecclesiasticall state and persons, and for reformation, order, and correction of the same, and of all manner of errors, heresies, schismes, abuses, offences, contempts, and enormities, shall for ever by authority of this parliament be united and annexed to the imperiall crown of this realm.

And upon this clause being the finall intention of this act expressed in the title and preamble, doe the subsequent clauses depend; therefore this clause is especially to be considered, and therein these things are to be observed.

First, that by this clause queen Elizabeth was not declared supream head, &c. but by a former clause in this act, viz. that the statute of 1 & 2 Ph. and Mar. cap. 8. (whereby amongst others, the act of 26 H. 8. cap. 1. and 35 H. 8. cap. 3. were repealed) was by this act made utterly void, and consequently the act of repeal being repealed, the acts of 26 H. 8. cap. 1. and 35 H. 8. cap. 3. were amongst others implicate revived, by which acts of 26 H. 8. and 35 H. 8. it is declared and enacted, that the king, his heirs and successors should be taken and accepted the only supream head in earth of the church of England, and should have and enjoy annexed to the imperiall crown of this realm, as well the title and stile thereof, as all honours, dignities, prebeminences, jurisdictions, &c. to the said dignity of supream head belonging, &c. By which stile, title, and dignity of supream head of the church of England, king H. 8. his heirs and successors had and have all ecclesiasticall jurisdiction whatsoever. So as the first clause reviving the act of 26 H. 8. &c. thereby queen Elizabeth, her heirs and successors were supream head of the church of England. And there this act extending to raise a commission for the necessity of the time, intended only to restore and annex to the crown such jurisdiction in some particular points as by the intent of the statute, the commissioners should execute, and not to declare by this clause that her majesty should be supream head of the church, for that was provided for before.

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Secondly, that no jurisdiction is by this act restored and united to the crown, but such as before the act had been, or lawfully might be exercised or used for the reformation, &c. correction, &c. Whereupon it is concluded, that seeing that no man could be fined or imprisoned by force of any jurisdiction ecclesiasticall, which had been used, or lawfully might be used before this act, that therefore by this act no power of fining and imprisoning in ecclesiasticall causes is given by this act.

2 Ratio.

The third observation is, that this clause divideth itself into two branches: the first concerning the visitation of the ecclesiasticall state and persons. This branch was enacted out of necessity, for that all the bishops, and most of the clergy of England, being then popish, it was necessary to raise a commission to deprive them, that would not deprive themselves, and in case of restitution of religion to have a more summary proceeding then by the ordinary and prolix course of law is required. This branch concerns only ecclesiasticall persons: so as, as necessity did cause this commission, so it should be exercised but upon necessity, for it was never intended that it should be a continuall standing commission, for that should prejudice all the bishops of England in their ecclesiasticall jurisdiction, and be grievous to the subject to be drawn up from all the remote parts of the realm, where before their own diocesan they might receive justice at their own doors.

The first commission upon these statutes, whereby about 20 bishops were deprived, and many others of the popish clergy, is said to be lost, and inrolled it is not, as it ought to have been. And it is affirmed by some that have seen it, that it passed not above twenty sheets of paper copy wise; but now the high commission contains above three hundred sheets of paper. And it is likewise affirmed, that never any high commission was inrolled (as they all ought to have been) untill my lord chancelor Egertons time, so as no man before that time could know what their jurisdiction was till that time.

The second branch is, And for reformation, order, and correction of the same (*that is, of ecclesiasticall persons*) and of all manner of errors, heresies, schismes, abuses, offences, contempts, and enormities. So as these two branches extend not to the universality of the supremacy, but only to those points whereunto the commission to be raised by this act should extend, for which purpose nothing is restored or united by this act, but only the visitation of the ecclesiasticall state and persons, and the reformation of the same, and of all errors, heresies, schismes, abuses, offences, contempts, and enormities which be criminall.

The jurisdiction being restored to queen Eliz. her heirs and successors, next and immediately doth the act, &c. give her power to assign and authorize commissioners to execute this jurisdiction restored and united to her, for which purpose it is further enacted.

The clause of assignation of the jurisdiction restored by this act.

That your highnesse, your heirs and successors shall have power and authority by vertue of this act by letters patents, &c. to assigne, name, and authorize, &c. such persons being naturall born subjects, &c. as your majesty, your heirs and successors shall think meet to exercise, use, occupy, and execute under your highnesse, your heirs and successors, all manner of jurisdiction, &c. in any wise touching or concerning any spirituall or ecclesiasticall jurisdiction, &c. and to visit, reforme, &c. all errors, heresies, schismes, abuses, offences, contempts, and enormities, which by any manner spirituall or ecclesiasticall power, authority, or jurisdiction, can or may lawfully be reformed, corrected, restrained, or amended.

Out

Out of this clause of assignation it is to be observed, that the substance of the commission of assignation or deputation is described and portrayed out both for manner and matter by this clause.

1. That it ought to be under the great seal.

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2. The commissioners to be assigned ought to be naturall born subjects of queen Eliz. her heirs or successors.

3. Their authority, viz. to exercise, use, occupy, and execute under your highnesse, your heirs and successors, all manner of jurisdiction, &c. and to visit and reform all such errors, heresies, schismes, abuses, offences, &c. which by any manner of ecclesiasticall or spirituall power can, or lawfully may be reformed, corrected, &c.

4. The locall limits and bounds of their commission, viz. within the realm of England, &c.

So as by this clause there is no question, but the commissioners for such causes as are committed to them by force of this act, may, if the commissioners be competent, proceed to deprivation of the popish clergy, which was the main object of the act, or to punish them by ecclesiasticall censures, and by no word, or meaning hitherto can punish by fine or imprisonment, for that no ecclesiasticall power could reform and correct (as the statute speaketh) in that manner. And without question, if the commissioners be competent, that is, if they be spirituall men, they may proceed to sentence of excommunication, which may right well be certified as well as excommunication before commissioners delegates; both of these authorities being under the great seal, and each of them having authority by force of severall acts of parliament. And excommunication certified by commissioners delegates hath been allowed, as it appeareth in 23 Eliz. Dier 371. And in many cases acts of parliament have adjudged men excommunicate *ipso facto*. But if they be meer lay men, the fault is not in the statute or in the law, but in the nomination: and upon certificate made of the excommunication according to law, a *significavit* or *cap. excom.* shall be awarded out of the chancery, for the taking and imprisoning of the bodies of such excommunicate persons.

3 Ratio.

The high commissioners may excommunicate if they be competent.

Dier 23 El. 371.

Now after the letters patents of the commission are described, and limited, followeth a clause of direction for the commissioners to keep themselves within their commission in these words.

And that such persons so to be named, &c. after the said letters patents to them delivered shall have power and authority by vertue of this act and the said letters patents under your highnesse, your heirs and successors to exercise, use, and execute all the premises according to the tenor and effect of the said letters patents, any matter or cause to the contrary in any wise notwithstanding.

The clause of execution.

This is a clause of reference merely to the former parts of the act, and yet by colour of this clause the high commissioners doe pretend to fine and imprison.

That this clause referreth wholly to the former parts of the act, it is apparent by the very words thereof, for first, the words be to exercise, use, and execute all the premises, which word (premises) referreth to all the former branches of the act, viz. 1. To the ancient jurisdiction ecclesiasticall restored by this act, by which an-

cient jurisdiction no person could be corrected by fine or imprisonment. 2. To such jurisdiction spirituall or ecclesiasticall, as by any spirituall or ecclesiasticall power hath heretofore been, or lawfully might be exercised, or used; for these be the expresse words of the main clause of restoring and uniting of the ancient jurisdiction to the crown. But it is agreed, that before this act no man could be punished by fine or imprisonment by any ecclesiasticall power, unless it were by force of some act of parliament; therefore by these words in this clause (to execute the premisses) the commissioners cannot fine or imprison. This word (premisses) hath relation to these words in the clause of assignation next going before this clause, viz. to visit, reform, redresse, order, correct, and amend all such errors, heresies, schismes, &c. which by any manner, power, authority, or jurisdiction ecclesiasticall or spirituall can, or may lawfully be reformed, &c. corrected, &c. but no correction before this act could be by fine or imprisonment, but in certain speciall cases.

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\* Premises.

\* Said.

Then this clause followeth, (according to the tenor and effect of the said letters patents) which words also do wholly refer to the former parts of the act. For if these words (to execute all the \* premises) be words of reference, then the addition of these (according to the tenor and effect of the \* said letters patents, any matter or cause to the contrary in any wise notwithstanding) must of necessity be referred also to the former parts of the act, by none of which power is given to fine or imprisonment.]

Also this word (execute) cannot but be referred to the former authority. And it is not said according to the tenor and effect of any letters patents, and yet if the words had been so, the same being coupled to the word (premisses) had not restrained them, for they could in that case but only have executed the premisses, but the words be according to the tenor and effect of the letters patents before limited by the said act, that is, first that the letters patents be under the great seal. 2. That they be made to naturall born subjects. 3. Their authority is declared with a limitation. 4. The locall limits and bounds of the commission is set down: and this is the true and genuine sense of these words, viz. to execute the premisses according to the tenor and effect of the said letters patents. And therefore we marvell how in a case of so great consequence, and so visible to every eye that looks into the act of 1 Eliz. the very words thereof are (for the advantage of the high commissioners) in the very binding clause altered, and changed. For there it is alleaged, that the statute of 1 Eliz. saith, that the high commissioners shall execute the premisses by virtue of this act according to their commission indefinitely without reference or restraint, whereas the words of the act be, according to the said letters patents, the effect whereof was limited and expressed before. And by the authority that is claimed by the commissioners, who seeth not, but that confiscation of lands, forfeiture of goods and chattels, &c. as well may be imposed, as fine and imprisonment? But were it not a violent interpretation directly against the letter and meaning of the act, and full of great inconvenience to make of these latter words this construction, viz. that the high commissioners should correct and punish all the errors, heresies, schismes, offences, abuses, contempts, and enormities, &c. under such pains, forfeiture, and penalty, as queen Elizabeth, her heirs, and successors, by any letters patents should impose or appoint; and that consequently

Nota.



quently by force of the generality of this construction, she did impose and appoint fine and imprisonment. Which construction should be first directly against the words and meaning of the act for the causes aforesaid. Secondly, that by the same reason by the generality of such a construction queen Elizabeth might have imposed forfeiture of lands, confiscation of goods, nay corporall punishment, losse of member, and of life also, for incontinency, solicitation of chastity, working on a holiday, or any inferiour offence punishable by the ecclesiasticall law, and yet the sentence of the commissioners in such cases should be both fatal and final, and uncontrollable by any ordinary means, either by appeal, error, *moderata misericordia*, or otherwise. Thirdly, that this violent construction, under mysticall and cloudy words, should extend to fine and imprisonment, &c. all persons, as well laymen of what estate, degree, or sex soever, in cases ecclesiasticall (where they were not to be fined and imprisoned before) as to ecclesiasticall persons, who were the proper objects of this act. And then by the construction that hath been made of the other side in cases where an executor detaineth a legacy, or a parishioner payeth not his tythes, or the like concerning *meum* and *tuum*, the queen, &c. might have inflicted (as hath been said) what punishment she would, and the high commissioners fine and imprisonment (as it standeth at this day) without limitation of time, be it never so great, or time of imprisonment, be it never so long, and without controlment by any ordinary remedy, be the sentence never so unjust or erroneous; then which nothing could be more absurd and inconvenient. *Talis interpretatio in ambiguis semper fienda est, ut evitetur inconveniens et absurdum.* But this construction should not be in *ambiguis*, but directly against the words and meaning of this act. And seeing it hath been granted that the papall authority or any other having ecclesiasticall jurisdiction could not fine and imprison before this act of 1 Eliz. and that it is expressly said in the preamble of this act, that where in the reign of king Hen. 8. divers good laws were made as well for the extinguishment of forein authority, as for restoring to the crown the ancient jurisdictions, &c. by reason whereof the subjects were kept in order, and disburdened of great and intolerable charges and exactions (which good laws being repealed by queen Mary the said act doth revive and restore) it followeth à *concessis*, and by the letter of this act, that it was never the meaning of the makers thereof to extend the said clause to fine and imprison the subject for ecclesiasticall causes, and to make him subject to greater confiscations, forfeitures, and punishments, where his body before this act was not subject to imprisonment but upon the kings writ *de excom' capiendo*, nor his body, lands, and goods, to fines, or other penalties, or punishments, by them to be imposed, &c. for this were not by this act of restitution to ease them of former intolerable charges (as the statute speaketh) but by this act to make them subject to greater and more heavy pains, punishments, and charges then ever they were before. And the statute of 27 H. 8. cap. 15. saith, that the canons, &c. were overmuch onerous to his highnesse subjects, but they were never so onerous as this act should be. But *uno absurdo dato infinita sequuntur.* We must therefore retire ourselves to the text of the act of 1 Eliz. the only ground of this question, and thereupon the conclusion is, that no letters patents can by vertue of

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1 H. 7. cap. 4.

X this act of 1 Eliz. give any power to the commissioners to imprison, except it be in certain particular cases, which now fall into consideration. For example. The statute of 1 H. 7. cap. 4. doth give power to bishops, &c. to commit priests convicted of any incontinency to prison, and that no bishop, &c. shall be chargeable therefore in an action of false imprisonment. Now seeing that such jurisdiction ecclesiasticall (that is, to hear, determine, and punish, &c.) as by any spirituall or ecclesiasticall power or authority before the said act of 1 Eliz. had been, or might lawfully have been exercised or used for the visitation of the ecclesiasticall state and persons, and for reformation and correction of the same, and of all manner of errors, heresies, schisms, &c. and that every bishop, &c. might punish such offenders by imprisonment according to the said act, that such power (and the like in any other case by act of parliament if any be) is united to the crown and may be committed over to the high commissioners as before the said act by any spirituall or ecclesiasticall power had been or lawfully might be used, which be the words of the act itself.

Vid. stat. of

2 H. 4. ca. 13.  
& 1 Eliz. ca. 1.  
and observe them  
well.

But these generall words, viz. which have been or lawfully might be used, &c. do not extend to any authority or power given by any act of parliament to any ecclesiasticall judge: which act stood repealed and adnulled by a former act of parliament, and had no essence at the time of the making of this act of 1 Eliz. and that for two reasons: first, for that this act of 1 Eliz. doth repeal and revive divers acts of parliament, and therefore shall not be construed to repeal or revive any other by the said generall words. Secondly, for that generall words shall not extend to authorities repealed or adnulled by act of parliament. And so it was adjudged in the lord Darcies case in the kings bench Pasch. 38 Eliz. where the case was, that the lord of the mannor of Thorp Kirby was amongst other franchises and immunities discharged by the letters patents of king E. 4. of purveyance; which charter for the point of discharge of purveyance was adnulled by the statute of 27 H. 8. cap.

Pasch. 38 Eliz.  
Coram rege the  
lord Darcies case.

And after the mannor comming to the hands of king E. 6. he by his letters patents granted the said mannor to the lord Darcie and his heirs: and further granted *Tot, talia, eadem, hujusmodi et consimilia jura, jurisdictiones, franchiseas, privilegia, &c. quot, quanta, qualia, et quæ, &c. prout aliquis dominus manerii habuit, tenuit, seu gavisus fuit virtute alicujus cartæ, doni, seu concessionis aut aliquarum literarum patentium per præfatum regem, aut per aliquem progenitorum suorum quorumcumq; facti concessi seu confirmati, aliquo statuto non obstante.* And it was adjudged as it had been before in the lord Pagets case, Mich. 21 & 22 Eliz. in *Scaccario*: that albeit such a generall grant had been enacted and confirmed by act of parliament, yet had not those generall words extended to revive any authority, franchise, privilege, &c. once granted, and which was after, and before the grant repealed or resumed by act of parliament, unless there had been speciall words to revive the same, but should extend to other authorities, franchises, and privileges which stood not then repealed.

Mich. 21 & 22  
El. in *Scaccario*,  
the lord Pagets  
case.

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1 H. 7. 12, 13.

And there is a far stronger case reported in 1 H. 7. fo. 12. & 13. By authority of parliament all preeminences, prerogatives, franchises, and liberties were given to king H. 7. in taile generally without limitation or saving. And the question was whether the franchises

franchises and liberties of lords and other inferior subjects were given: and it was resolved by all the judges that they were not, for that the act was to be intended to do no inferiour subject wrong, but the generall words were to be intended of such as might be intailed without prejudice of the subject: which is a stronger case then this, for besides the prejudice of the inferiour ordinary for his jurisdiction, and for the Subject for taking away his appeal, and drawing him from remote parts to his intolerable charge, where he might receive justice at home, the clause preceding of uniting, and latter particular words do limit and expound the generality of the former words.

Now that divers and many other acts of parliament, which are generall in words, have upon consideration of the mischief, and all the parts of the act (for the avoiding of the inconvenience and absurdity that might follow) received a particular interpretation, it appeareth in our books in cases of far lesse inconvenience and absurdity.

Pl. com. in Stowels case, fo. 369. the preamble is to be considered, for it is the key to open the meaning of the makers of the act, and mischiefs which they intend to remedy. The judges of the law have ever in such sort pursued the intents of the meaning of the makers of acts of parliament, as they have expounded acts generall in words to be particular, where the intent hath been particular (which are the words of the book) and therefore upon that rule it is there adjudged, that where the statute of 7 E. 6. is generall; if any receiver or minister accountant, &c. receive of any person any summe of money for payment of any fees, &c. shall forfeit 6s. 8d. for every penny; that this do not extend according to the generality of the words to the receiver of common persons, because these words subsequent be added, (otherwise then he lawfully may by former laws and statutes.) Now the judges restrained the generality to a particular, to the kings receiver only: for that no law or statute was formerly made concerning common persons receivers, &c. But in the case in question, as well the precedent clause of restitution, as the subsequent clause expressing offences in particular, and the words in the same generall sentence viz. under your highnesse, &c. and principally the cause of the making of this act do qualifie the generality of the words. And yet notwithstanding it was resolved by all the court in the said case of Stradling, fo. 203. a. that the receiver of common persons were within the words of the said statute. But there it is said, that if a man consider in what point the mischief was before the statute, and what thing the parliament meant to redresse by this, he shall perceive that the intent of the makers of the act was to punish only the ministers of the king. And a little after the judges say that the stile of that act is An act for the true answer of the kings revenues. And by this also the intent of the makers of the act is to be collected, and these be the words of the book, which is a far stronger case then the case in question.

4 E. 4. fo. 4 & 12. Every statute ought to be expounded according to the intent of them that made it, where the words thereof are doubtfull and uncertain, and according to the rehearfall of the statute; and there a generall statute is construed particularly upon consideration had of the cause of making of the act, and of the

Pl. Com. fo. 369.  
Stowels case.

4 E. 4. 4. & 12.

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rehearsall of all the parts of the act. To conclude this point with a generall rule allowed by all laws in construction of statutes. *Quamvis lex generaliter loquitur, restringenda tamen est, ut cessante ratione et ipsa cesset: cum enim ratio sit anima vigorq; ipsius legis non videtur legislator id sensisse, quod ratione careat, etiamsi verborum generalitas prima facie aliter suadeat.* Seeing then so many inconveniences against reason, and the meaning of the makers of the act should follow, it is evident that the generality of the said words in the clause of assignation shall (as they ought) be limited by the clause of restitution, as hath bin said. And it agreeth not well with the stile of the high commission to deal in pety and inferiour causes. And for the recitall of a branch of this act in the statute of 8 Eliz. cap. 1. It refereth to the act of *primo* it self, and is only in the preamble, and therefore doth neither increase nor diminish the same. But albeit they have consufance and jurisdiction of enormous and heinous causes, according to the originall institution, yet cannot they punish the offender in the same by fine or imprisonment, unlesse the same were punishable by fine or imprisonment before the making of the said act of 1 Eliz. by some act of parliament unrepealed at the making of this act.

2 E. 3. cap. 2.

But it is said (enormous) is uncertain; surely in an act whereof many of the makers are lay and unlearned men, it hath been expounded by law to be equipollent to heinous, horrible and exorbitant. And this appeareth by the statute of 2 E. 3. cap. 2. Commission of oier and terminer, &c. shall not go out, but where the trespass is horrible. Now if such commission be granted for a small cause, a revocation thereof, which is a flat prohibition, doth lye, as it appeareth in the Register 125, and the words thereof be, *Quia non enormis læso.* Which word (*enormis*) in that writ doth expresse this word [horrible] in the said act, and there is as great uncertainty in that case upon this word [*enormis*] to prohibit the commissioners of oier and terminer, as in the case now in question concerning the ecclesiasticall commission, and especially in this act of *primo* it ought to be taken to be horrible, exorbitant, *et extra omnem normam*; for that the high commissioners do claim to send for all degrees of men and women, and out of all the parts of England or Wales, be the place never so remote, &c. But the commission of oier and terminer cannot be taken but in the proper county where the fact was done. And yet it is evident by all which hath been said, that his majesty hath, and queen Elizabeth before him had as great and ample supremacy and jurisdiction ecclesiasticall as ever king of England had before them, and that had justly and rightly pertained to them by divers other acts, and by the ancient laws of England, if the said clause of annexation in the said statute of 1 Eliz. had never been inserted.

This act of 1 Eliz. provideth against them that should by printing, writing, or words, maintain or defend the jurisdiction spirituall of any forein prince, prelat, &c. within this realm; that every such person being lawfully convicted by the course of the common law, shall for the first offence forfeit and lose all his and their goods and chattels. And if any person so convicted shall not be worth of his proper goods and chattels to the value of 20li. then such person so convicted shall suffer imprisonment one whole year, &c. Now albeit upon the maintenance or defence of the popes supremacy

macy depend so many mischiefs as the principall scope of this and other acts was utterly to abolish and extinguish the same, and that it is high treason in the second degree: yet see how temperately this act doth punish that most dangerous and damnable error. And albeit the proceedings at the common law are reverfible by writ of error: yet the statute addeth two cautions, that no persons should be impeached for any of the offences by preaching, teaching, or words, unless they be lawfully indicted within the space of one half year. And if any person be imprisoned, and be not indicted within half a year, then the person so imprisoned shall be set at liberty. Now if the party offending in so high and supreme an offence, as the maintaining of the popes supremacy, shall be punished for the first offence so temperately, and with such caution and limitation, it was never the meaning of the statute to charge the subject with fine or imprisonment by the discretion of the commissioners without limitation either of time of imprisonment, or quantity of fine, for lesser crimes and offences, whereunto he was not subject before the making of this act.

But if the meaning of the makers of the act had been to have inflicted newly upon the subject not only fine and imprisonment, but by the same reason confiscation of goods, forfeiture of lands, nay any corporall punishment, &c. they would not under such cloudy and dark words have inflicted those greater punishments for lesser offences without some limitation, as they did for the greatest offences of all, and not to have left lesser offences to the absolute, and uncontrollable power of the high commissioners by any ordinary mean.

If the high commissioners might have fined and imprisoned men for offences against the ecclesiasticall laws, to what end were the statutes of 23 Eliz. 28 Eliz. &c. made against men for abstaining and not coming to divine service, &c. and why did those acts inflict a penalty of 20 l. the month, and imprisonment, &c. with a discharge of the penalty, &c. upon submission, if the high commissioners might have fined and imprisoned them absolutely without certainty of any sum, or limitation of any time of imprisonment, and without any ability or power by submission or conformity to ease themselves? and yet absence from divine service is a meer ecclesiasticall cause; and the like may be said of divers other acts of parliament of like nature.

Thus hath this statute been plainly expounded by the parts of the same, according to the naturall and genuine sense, and the originall institution and jurisdiction of the high commission by force of the said act truly expressed.

And concerning the form of commissions and practice by the high commissioners in the reign of the late queen Eliz. by fining and imprisoning for adultery, fornication, simony, usury, defamation, &c. it may be that such fines have been imposed, but, as we be informed, not one of them levied in all the reign of queen Eliz. by any judiciall processe out of the exchequer in the time of Sir Edward Sanders, who was chief baron at the time of the making of the said act, Sir Robert Bell, Sir John Jefferies, Sir Roger Manwood, or Sir William Peryam chief barons of the exchequer: so as in all the late queens time (as we be informed) no fine was levied, or any subject in his body, lands or goods charged there-  
with,

with, which would not have been by so many worthy men assisted with divers other grave and learned barons pretermitted to be either levied or written for by the court, if by law the same ought to have been levied. And the subjects (for the greatest part) being wrongfully fined, imprisoned, and injured by colour of the high commission, asked no advice to take any ordinary remedy, for that the high commissioners (knowing the weaknesse of their authority) kept the commission secret, and contrary to law and justice suffered not the same to be inrolled in the chancery, so as the subject lived under an unknown commission and authority (*et misera est servitus ubi jus est vagum aut incognitum*) untill of late the lord chancellor (as hath been said) according to law caused the same to be inrolled; and very few upon serious consideration took an exact survey of all the parts of the act of 1 Eliz. And this is the cause why their presidents (if they affirm truly) may be many, especially against the weaker sort: and the judgments and presidents in the kings courts concerning these matters, few, as they give out, charging the judges of the realm with innovation. And yet some being intolerably grieved, sometime to their utter undoing, by the high commissioners, upon complaint made to the highest courts of ordinary justice in this realm, the judges upon consideration had of the statute of 1 Eliz. which is the foundation whereupon the high commission is grounded, have, as often as complaint hath been made, relieved them according to law and justice.

In Atmeres case the whole court of exchequer in the late queens reign, judicially resolved, being the kings proper court, that the high commissioners could not punish any man for working on a holy day, albeit it be a matter of ecclesiasticall consufance, but ought by the true meaning of the statute of 1 Eliz. to be punished by the diocesan, which is to be seen of record.

Also in the reign of queen Eliz. William Taylor clerk, parson of Springfield in Essex did implead William Maffy gent. before the high commissioners for giving unreverent speeches to the minister, &c. for carrying his corn on holy days, \* for not suffering the parson and parishioners to come thorough his yard in rogation week in the perambulation, and not giving them a repast as usually he had done, that he whistled and knocked on the parsons barn door, and said he did it to make him musique for his daughters marriage, and many other articles of like nature; and it was ruled upon open motion, and often debating by the whole court of common pleas, that the high commissioners could not deal with such inferiour offences, but are to be left to the proper diocesan, who is to reform the same with lesse charge and travell in the proper diocese. And thereupon a prohibition was granted by the court of common pleas, whereby it appeareth, that they cannot hold plea of all ecclesiasticall causes.

The like prohibition was granted out of the common pleas in the said late queens reign, between Robert Pool clerk parson of Winchelsey, and Thomas Gray, to the high commissioners, for that they held plea for assaulting and laying violent hands on the said Robert Pool being a parson, upon open motion and argument by the whole court.

*Hil. 3 Jac. regis, in communi banco*, between Lyn and Wats for promise of a yearly sum in marriage.

Trin.

Taylors case.  
Mich. 44 & 45  
El. rot. 1255.  
Simile 43 & 44  
El. rot. 503.

\*[ 333 ]

Graves case,  
Vid. infra pa.  
334. 1 rin. 44 El.  
rot. 1233. in  
com. banco.  
Simile 40 Eliz.  
rot. 422 in com.  
b. nco.  
The like in the  
kings bench.  
Pach. 39 Eliz. rot. 100. & Pach. 41 Eliz. ibidem rot. 255.

\* Trin. 3 Jac. in *communi banco*, between Jeneway parson of T. in Essex, and Porter for defamation, and laying violent hands on a clerk.

\* Tr. 3. Jac. in com' banco Porters case.

\* And concerning fine and imprisonment, anno 9 reginæ Eliz. which was about eight years after the statute of 1 Eliz. Sir James Dier and divers other of the judges were then living, that were present at the making of the said statute, Thomas Lee an attorney of the common pleas, being convented before the high commissioners for hearing of a masse, was by them in their proceedings committed to prison, which matter being returned by *habeas corpus*, he was upon great consideration had, by the lord Dier and the whole court of common pleas discharged of his imprisonment, for that the high commission had no power to imprison him in that case.

\* Mich. 9 & 10 El. rot. 1556. Lees case.

The like resolution was in 18 Eliz. by the lord Dier, and the whole court of common pleas, in the case of one Hinde, who being convented before the high commissioners for usury, to answer, &c. was thereupon imprisoned by them, and by *habeas corpus* delivered, for that the imprisonment in that case was unlawfull.

18 El. Dier fo. Hindes case.

By warrant from the high commissioners in the reign of queen Eliz. directed to Richard Butler constable of Aldrington in the county of Northampton, for attaching and arresting of the body of John Simpson of Aldrington aforesaid, and bringing his body before the high commissioners in case of adultery with the wife of Edward Fuste, the constable being assisted with one William Johnson servant of the said Edward Fuste, the said constable with Johnson came to a widows house in Aldrington where the said Simpson was, and the doors being open would have at eight of the clock at night arrested Simpson by the said warrant, which the said constable read unto him, notwithstanding the said Simpson resisted them, and in his own defence (and shewed how) slew the said Johnson that came in aid of the said constable. Now the question before the justices of assise of that county, (Simpson being in the gaol therein) what his offence was? wherein the doubt rested in this, whether the constable might lawfully attach and arrest the body of the said Simpson, (which in law is an imprisonment) for if he had lawfull authority to arrest him, then the offence was wilfull murder in killing one that came in aid of a minister of justice in execution of his office: but if the constable had no lawfull authority to arrest his body by force of the high commissioners warrant, then was it but *se defendendo*, a small offence, which doubt wholly consisted upon construction of the statute of 1 Eliz. for by the letters patents expresse authority is given to the high commissioners to send for the body of any offender, &c. by pursivant, or by warrant. The matter being weighty, and the said Simpson being by the coroners inquest indicted of wilfull murder, supposing the said warrant to be lawfull, the justices of assise thought not good to proceed against him at those assises, but deferred it till the next assises: at what time after this long time of deliberation, and upon conference, it was resolved, that the statute of 1 Eliz. gave no power to the high commissioners to make any warrant to arrest the body of Simpson in that case, but ought to have proceeded by citation: and therefore that Simpson killing the said Johnson had committed no murder: and so the jury upon his arraignment found him not guilty of murder according to the direction of the court, as it appeareth by the record itself. And it was resolved in *Graves case* aforesaid,

Simpsons case before the judges of assise in Northamptonshire, 42 Eliz.

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Supra pag. 333. Graves case.

aforesaid, that for the battery of a minister they could not fine and imprison.

William Thicknes case, in communi banco.

William Thicknes having the priviledge of the court of common pleas, had a *habeas corpus* to the sherif of London for his body, with the cause, he being under their custody, who returned that the high commissioners had committed him to their custody by force of his majesties commission for causes ecclesiasticall, and of the statute in that case provided, for that he was convicted before them of adultery, and other contempts and enormities appertaining to ecclesiasticall consueance. And the case being debated in open court, he was discharged of his imprisonment, for that by the statute of 1 El. they could not imprison him.

25 H. 8. cap. 19.

By the statute of 25 H. 8. cap. 19. it is enacted, that for lack of justice at or within any of the courts of the archbishops of this realm, or in any of the kings dominions, it shall be lawfull to the parties grieved to appeal to the kings court of chancery, and that upon every such appeal commissions shall be directed under the great seal to such persons as shall be named by the kings highnesse, &c. which commissioners so by the kings highnesse, &c. to be named or appointed, shall have full power and authority to hear and finally determine such appeal, and that such judgment and sentence as the said commissioners shall make and decree in and upon such appeal, shall be good, effectual, and definitive. Which words, albeit they be more generall, and with lesse reference to the precedent matter, then the act of 1 El. yet have such commissioners no colour to fine or imprison any: but where the words be [and such judgment and sentence as the said commissioners shall make and decree] these generall words have these words implicate annexed to them [according to the ecclesiasticall laws] shall be good, effectually, &c. So in the statute of 1 Eliz. such words are implicate to be added to the said clause, viz. that the high commissioners shall execute the premises according to the said letters patents by the rule of the ecclesiasticall law or authority of parliament. And since the high commission was inrolled and made publique, many prohibitions have been granted according to law and justice upon complaint made by the parties grieved.

And in the reign of the said late queen Eliz. it was resolved, that the high commission should be limited to certain particular enormous and exorbitant causes, which if it were pursued would breed great quiet and repose within the realm.

In the reign of the said late queen a prohibition was granted by Sir James Dier chief justice, and the whole court of common pleas, 10 Febr. anno 21 Eliz. to the high commissioners for that they did hold plea *de jure advocacionis*.

<sup>a</sup> And in my lord Anderfons time in the reign of queen Elizabeth the court of common pleas granted divers prohibitions, as it appeareth before, and two of speciall note <sup>b</sup> between Baker and Broughton, and another between Blackheath and the bishop of Gloucester. And in my lord Gaudies time who succeeded the lord Anderson and enjoyed his place but a short time, yet in that time the court of common pleas granted prohibitions also to the high commissioners.

Many other prohibitions have been granted to the high commissioners out of the court of common pleas of after times.

In the kings bench there are also many prohibitions granted to the

See Hil. 17 El. rot. 1402. Inter Henr. Evans clericum querent et Thomam Jesteres clericum defendant.

<sup>a</sup> Hil. 3 Jac. b Mch. 41 & 42 El. rot. 2919. and an attachment thereupon, Mich. 41 & 43 El. rot. 3332.



the high commissioners in the times of the lord Wray, lord Popham, lord Fleming, &c. which are to the same effect as those which have been cited be.

And we will conclude with the confession of the lord archbishop Bancroft himself in his 22 article, his own words being: Of latter dayes, whereas certain lewd persons, (two for example sake) one for notorious adultery and other intolerable contempts, and another for abusing of a bishop of this kindome, by threatning speeches and sundry rayling tearmes, no way to be endured, were thereupon fined and imprisoned by the high commissioners till they should enter into bonds to perform further orders of the said court, the one was delivered by *habeas corpus* out of the kings bench, and the other by a like writ out of the common pleas, and sundry other prohibitions have been likewise awarded to his majesties said commissioners upon these suggestions, that they had no authority to fine or imprison any man, &c.

By this article it appeareth, that before the time of the chief justice of the court of common pleas that now is, and before divers of the judges that now be, were called to be judges by the judgment and resolution both of the court of kings bench and common pleas by *habeas corpus*, the parties that were fined and imprisoned by the high commissioners in case of adultery and scandall of a bishop, &c. were by the law discharged, for that the fining and imprisonment of them was unlawfull.

And these were the resolutions of the whole court of common pleas Pasch. 9 *Jacobi regis*, upon often conference and mature deliberation, and accordingly they proceeded.

### The Prerogative Court of the Archbishop of Canterbury.

#### *Curia Prerogativa Archiepiscopi Cantuariensis.*

This is the court wherein all testaments be proved, and all administrations granted, where the party dying within his province hath *bona notabilia*, in some other diocese then where he dieth, which regularly is to be to the value of 5 l. but in the diocese of London it is 10 l. by composition.

The bishops, lords, and commons assented in full parliament, that the king, his heirs and successors might lawfully make their testaments, and that execution shall be done of the same, whereof some doubt was made before. See rot. par. 1 H. 5. nu. 13. the testament of king H. 4. and his executors refused, the archbishop of Canterbury was to grant administration with the testament annexed to the same. See 1 H. 6. nu. 18. the last will and executors of H. 5. 10 H. 6. nu. 27.

When the king is made an executor of the last will and testament of any other, the king doth appoint certain persons to take the execution of the will upon them (against whom such as have cause of suit may bring their action) and appointeth others to take the account. See rot. par. 15 H. 6. Katherine queen dowager of England, mother of H. 6. made her last will and testament, and thereof constituted king H. 6. her sole executor. And thereupon the king appointed Robert Rolleston, clerk, keeper of the great wardrobe,

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See the articles and answers in the 2 part of the Institutes, in the exposition of *Articuli Cleri*, &c.

Rot. par. 16 R. 2. nu. 10. not in print.

Rot. par. 15 H. 6. nu. 32. Obijt 2 Junii 1436. apud Ber-muntsey.

wardrobe, John Merston and Richard Alreed esquires, to execute the said will by the oversight of the cardinall, the duke of Glouc', and the bishop of Linc', or two of them to whom they should account.

The probate of every bishops testament or granting of administration of his goods, although he hath not goods but within his own jurisdiction, doth belong to the archbishop.

The like court the archbishop of York hath.

From this court the appeal is to the king in chancery. Now touching the jurisdiction of this court, and the consistories of bishops, &c. Such points as have been judicially resolved, are necessary to be remembered, both for the safety of the judge, and the benefit of the party interested.

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If a man die intestate having *bona notabilia* in divers diocesses, the judge of this court hath used to asseſse a convenient sum to be employed in *pious uses*, but with these limitations following: 1. It must be after administration granted, and the inventory made and returned, to the end the estate of the intestate may be known. 2. The administrator before any asseſſment must be called to it, to the intent the judge may be informed of the true state of the intestate, and of his children and kindred, for whose succour and relief there is great piety. The 3. the asseſſment must be in particular, how much, to whom, and to what use. 4. There must a publique act be made of it before any payment be made. 5. Payment must be made according to the act. Lastly, the judge ought not directly or indirectly to take any thing thereof to his own use, nor for the asseſſment thereof or entering the publique act, and if he doth, it is extortion.

Mich. 20 Jac. in  
camera stellata.

And *termino Mich. 20 Jacobi regis*, Sir John Bennet judge of this court, for not observing of these rules was sentenced in the star-chamber for extortion, and fined at twenty thousand pounds, imprisoned, and disabled ever after to bear an office, as by the sentence appeareth. And the like orders and rules must be observed in all respects (saving the two former) in commutation of penance, which two former doe not concern this matter. And these rules as well concerning asseſſments in *pious uses*, upon granting of administrations, as for commutation of penance, may serve for the direction of all the ordinaries and judges in ecclesiasticall courts in England.

21 H. 8. cap. 5.  
Mich. 6 Jac.  
reg. rot. 1301.  
in comuni  
banco.

There was an act made *anno 21 H. 8.* concerning fees for probate of last wills and testaments, and granting of administrations. In the case of James Rowse commissary of the archdeacon of Huntingdon, in an information against him by Edmonde Neale, for extortion upon the said statute of 21 H. 8. whereunto he pleaded not guilty, and was found guilty, the point in question upon the information was, if the probate be not written upon the testament it self, but upon the transcript ingrossed, whether the taking of a fee by the defendant for the ingrossing were within the said statute? And it was upon debate in open court resolved by the chief justice, and the rest of the justices, Walmisly, Warburton, Foster and Daniel, that such a fee taken for the ingrossing was within the statute, for that the act is in the negative. And if the executor request any to ingross the testament, he must agree with him,

See the 3 part  
of the Instit.  
cap. Extortion.

See the act.

him, that he so request (or \* bring one ready ingrossed with him as he did in the case in question, which is a safe and ready way) but the ordinary or commissary ought not to exact a fee for it of the party as a fee due to him, for divers causes. First, for that the words are expresse for the probate, &c. or for registering, sealing, writing, praising, making of inventories, &c. which word (writing) extends to this case. Secondly, the words be, or any thing concerning the same probate, and when the seal and probate is put to the transcript, this concerns the probate, for the probate is not put to any other writing. Thirdly, if such a construction should be made, that this case is out of the statute, this beneficial law should be illusory and vain, for if the ordinary or his commissary might take what he would for the ingrossing by his clerks as a fee due to him, the act should be of none effect; and the manner of the precise penning of the act, and the certainty of the fees, and not above, should be all in vain. And the ordinary, if he will, may annex the probate to the testament it self, as seeing he can have no other fee then is in the statute, it may be hereafter he will doe: but for the misreciting of the act of 21 H. 8. in the information, *Curia advisare vult*: and this resolution extending to all courts of ecclesiasticall jurisdiction that have probate of testaments, we thought it necessary to make a memoriall of it.

\* Note this.

See the words of the act at large.

*The Court of the Arches of the Archbishop of Canterbury.*

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This court is called *curia de arcubus*, and hath been anciently holden in Bow church of London. For I read of it in a record of a prohibition *termino Hil. coram rege anno 7 E. 1. rot. 8. in curia Christianitatis coram decano de arcubus London.* Of Bow church in London, where the court hath continually been kept, which and 12 other parishes in London, whereof Bow is the chief, are within the peculiar jurisdiction in spirituall causes of the archbishop of Canterbury, and exempt from the bishop of London.

Hil. 7 E. 1 coram rege. rot. 8. Pasch. 12 E. 1. in banco Essex. Gulicimus de Mortuo mari clericus, &c. See Dier 7 Eliz. 241.

The judge of this court is called the dean of the arches, unto whose officialty in spirituall causes to the archbishop of Canterbury is annexed the peculiar jurisdiction of these 13 parishes. He hath ordinary jurisdiction in spirituall causes of the first instance, and by appeal through the whole province of Canterbury, as it appeareth by the statute of 24 H. 8. cap. 12. His power to call any person for any cause out of any part of his province in the diocess of any other, unless it be upon appeal, is restrained by the statute of 21 H. 8. cap. 9. This court in the statute of 25 H. 8. cap. 19. is called the court of the arches, or audience of the archbishop of Canterbury: and from this court of the arches the appeal is to the king in chancery by the said act of 25 H. 8.

24 H. 8. cap. 12. 1 Eliz. cap. 1.

21 H. 8. cap. 9. 25 H. 8. cap. 19.

*The Court of Audience. Curia Audientie Cantuariensis.*

This court is kept by the archbishop in his palace, and medleth not with any matter between party and party of contentious jurisdiction, but dealeth with matters *pro forma*, as confirmations of bishops elections, consecrations, and the like, and with matters of voluntary jurisdiction, as the granting of the guardianship of the spiritualties

spiritualties *sede vacante* of bishops, admission and institution to benefices, dispensing with banes of matrimony, and such like.

*The Court of the Faculties.*

Vi. 28 H. 8.  
ca. 16. 21 H. 8.  
cap. 13. 5 Eliz.  
cap. 16.

This is also a court, although it holdeth no plea of controverſie (like the court of audience next before.) It belongeth to the archbishop, and his officer is called *magister ad facultates*. And his power is to grant dispensations, as to marry, to eat flesh on dayes prohibited, (and so may every diocesan) the sonne to succeed his father in his benefice, one to have two or more benefices incompatible, &c. It is called faculties in the statute of 28 H. 8. which in one sense signifieth a dispensation. So as *facultates* (in this sense) *dispensationes et indulta* are *synonyma*.

\* Commonly called the master of the faculties.

\* Trin. 44 Eliz. in com. banco.

rot. 1525. lib. 4. f. 117. Lib. pl.

Co. pa. 512, 513. b 2 E. 6. cap. 19.

5 E. 6. cap. 3. See the third part of the Instit.

cap. Dier pag. 208. 5 Eliz.

ca. 5. 35 Eliz. cap. 7. 27 Eliz.

cap. 11. Lib. pl. Ch. 371. 27 Eliz.

ca. 11. 3 Caroli ca. 4. Vid. 35 Eliz. ca. 7.

This authority was raised and given to the archbishop of Canterbury by the statute of 25 H. 8. cap. 21. whereby authority is given to the said archbishop and his successors to grant dispensations, faculties, &c. by himself or his sufficient and substantiall \* commissary or deputy for any such matter, whereof heretofore such dispensations, faculties, &c. then had been accustomed to be had at the see of Rome, or by authority thereof. \* This branch of this act you shall find pleaded lib. plac. Co. pag. 512, 513.

<sup>b</sup> Concerning the power of the archbishop to grant dispensations to any to eat flesh on Fridayes, Saturdayes, embring dayes, vigils, and Lent, the same is limited by the statute of 5 Eliz. cap. 5. And the penalty of 5 Eliz. in that case is diminished and made lesse by 35 Eliz. cap. 7. Note the statute of 5 Eliz. concerning eating of flesh on Wednesdayes is repealed by 27 Eliz. ca. 11. which act of 27 Eliz. is affirmed by the act of 35 Eliz. and by 21 Jac. cap. 28. and expressly by the statute of 3 Caroli cap. 4.

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*Curia Peculiarium.* The Court of Peculiars.

The archbishop of Canterbury hath a peculiar jurisdiction in divers parishes within the city of London and other diocesses, &c.

*The Consistory Courts of the Archbishops and Bishops.*

See Lit. sect. 133. 136. 648.

24 H. 4. cap. 12.

The consistory court of every archbishop and bishop of every dioces in ecclesiasticall causes is holden before his chancelour in his cathedrall church, or before his commissary in places of the dioces far remote and distant from the bishops consistory, so as the chancelor cannot call them to the consistory without great travel and vexation: and he is called *commissarius foraneus*. From these the appeal is to the archbishop of either province respectively: when consistories of archbishops and bishops began within this realm, see before in the chapter of the tourn of the sheriffe.

Rot. claus. 30 H. 3. m. 4. mandatum est Thom. de Stanford, &c. Ro. pat. 15 E. 1. m. 21. Rex licent. dedit episcop. Bangor, &c.

It appeareth by many records in the reigns of H. 3. and E. 1. (as taking some one or two examples for many) that by the law and custome of England no bishop could make his will of his goods or chattels comming of his bishoprick, &c. without the kings license. The bishops that they might freely make their wils, yeilded to give to the king after their deceases respectively for ever six things.

1. Their

1. \* Their best horse or palfrey with bridle and saddle. 2. A cloak with a cape. 3. One cup with a cover. 4. One bason and ewer. 5. One ring of gold. 6. His kennell of hounds. For these a writ issueth out of the exchequer after the decease of every bishop: For example. *Rex. &c. Vic' Eborum. Præcipimus tibi, quod non omit' propter aliquam libertatem, quin etiam ingred' et d'sting' omnes executores testamenti et ultimæ voluntatis reverendissimi in Christo patris Matthæi nuper archiepiscopi Eborum defuncti, ac administratores et occupatores bonorum et catallorum quæ fuer' dicti nuper archiepiscopi, nec non hæred' et tenent' terrarum et tenementorum quæ nuper sua fuer' per omnes terras et catalla sua in balliva tua. Ita quod nec ipsi nec aliquis per ipsos ad ea man' appon' donec al' inde tibi præciperimus. Et quod de exitibus earundem terrarum nobis respond', et quod habeas corpora eorum coram baronibus de seaccario nostro apud Westm' à die Paschæ in tres septimanas ad respond' nobis de uno optimo equo sive palfrido cum cello et freno. Una chlamyde sive cloca cum capella. Uno cippo cum coopertorio. Una pelve cum lavatorio sive aquar'; et uno annulo aureo, nec non \* muta canum quæ nuper fuer' ejusdem nuper archiepiscopi tempore mortis suæ: et quæ ad nos ratione prærogativæ nostræ spectant et pertinent, et de precio sive valore inde, unde nobis nondum est respons'. Et habeas ibi tunc nomina executorum et aliorum prædict' et hoc breve.*

The most ancient of this kind that we find and remember (but certainly there were such writs before) is *inter memorand' de seaccario, anno 2 E. 2.* the bishop of Bathe and Wels case. *Tr. 36 E. 3. ibid. Int. com'ia.* the bishop of Chesters case, *Hil. 5 E. 4. ibid.* adjudge upon demurrer, that the duty being to the king after the decease of every bishop, it extendeth to an archbishop, the archbishop of Yorks cases for every archbishop is a bishop. It is sometimes called *multura* or *multura de episcopis*, sometime *monutier, &c.* The king by verdict of twelve recovered ten thousand marks against the bishop of Norwich for that he prosecuted against the abbot of S. Edmonds Bury to appear before him against the kings prohibition, for which it was adjudged that his temporalties should be seised, and his body taken.

\* Upon consideration had of the statutes of 3 R. 2. 7 H. 4. 1 H. 5. & rot. parl. 6 H. 4. nu. 48. & 4 H. 6. nu. 29. If an alien or stranger horn be presented to a benefice, the bishop ought not to admit him, but may lawfully refuse him: which we have added, for that the abridgements or late impressions may deceive you.

\* It is said that this was given by the bishops being secular persons ecclesiasticall for all the secular clergy.

\* *Muite des cheins, of muith cometh muta, signifying a kennell.*  
Int com' de Hil. 2 E. 2. in seaccario. proces vers. Episc. de Bath et Wels.

Mic. 19 E. 3. coram rege. rot. 157. Norff.  
Tr. 21 E. 3. rot. 170. coram rege  
21 E. 3. fo. 60.

\* 3 R. 2. cap. 3.  
7 H. 4. cap. 12.  
1 H. 5. cap. 7.  
Rot. parl. 6 H. 4. nu. 48.  
4 H. 6. nu. 29.

### The Court of the Arch-Deacon, or his Commissary.

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This court is to be holden where and in what places the arch-deacon either by prescription or composition hath jurisdiction in spirituall causes within his archdeaconry. And from him the appeal is to the diocefan. He is called *oculus episcopi*.

In some acts of parliament and many records and histories you shall read of the bishops pall, *pallium episcopale*. It is a hood of white wooll, to be worn as doctors hoods be upon the shoulders, with four crosses woven into it, &c. the form and colours whereof you may see in the book *De Antiquitate Britannicæ Ecclesiæ*, page 1.

IV. INST.

C c

for

24 H. 8. cap. 12.

20 H. 8. c. 20, &c. Vid. Castaneus 4 part. Catalogi gloriæ mundi fo. 103. a. 26 Consideratio, ubi legas, si placet, multa de pallio.

for a pall is the arms belonging to the see of Canterbury, and therefore expressed there, and commonly in other places.

Vocabular' juris.

*Palla est vestis qua altare cooperitur, viz. ut lineus pannus consecratus qui super altare ponitur, super quem extenditur corporale.*

Parl. 51 E. 3.  
m. 83.

The clergy petitioned in parliament, that of every consultation conditionall, the ordinary may of himself take upon him the true understanding thereof, and therein proceed accordingly.

Whereunto the kings answer was, That the king cannot depart with his right, but to yeild to his subjects according to law. *Nata hoc, et stude bene.*

### *The Court of Delegates and consequently of Appeals.*

25 H. 8. ca. 19.

It is so vulgarly called, because these delegates do sit by force of the kings commission under the great seal upon an appeal to the king in the court of chancery in three causes. First, when a sentence is given in any ecclesiasticall cause by the archbishop or his official. Secondly, when any sentence is given in any ecclesiasticall cause in places exempt. Thirdly, when a sentence is given in the admirall court in suits civill and marine by the order of the civill law. And these commissioners are called delegates, because they are delegated by the kings commission for these purposes.

Now because we have generally spoken of appeals in ecclesiasticall causes, which are grounded upon acts of parliament, it shall be pertinent to our purpose to set down the resolution of the judges, and of the learned in the ecclesiasticall law, which doth summe up in what causes, from what courts, and in what time appeals are to be made, and other necessary incidents concerning the same, as the lord Dier under his own hand hath reported, but are left out of the print, and yet worthy to be known and published, which you shall hear in his own words and language.

### *Of Appeals.*

Appeals. Anno  
24 H. 8. ca. 12.

First, in cases testamentary, matrimony, and tithes, from the archdeacon or his official, if the matter be there commenced, to the bishop of the dioces, and from the bishop diocesan or his commissary in such case, or if the matter be there commenced, within fifteen dayes after sentence given, to the archbishop of the province, and no further.

*Item*, from the archdeacon or commissary of the archbishop, if the matter be there commenced within fifteen dayes, &c. to the audience or arches of the said archbishop: and from thence within other fifteen days, &c. to the archbishop himself, and no further. And if the cause be commenced before the archbishop, then to be there definitively determined without further appeal.

*Item*, where the matter toucheth the king, the appeal within fifteen days to be made to the higher convocation house of that province, and no further, but finally to be there determined.

A generall prohibition, that no appeales shall be pursued out of the realme to Rome, or elsewhere.

*Item*, a generall clause that all manner of appeales, what matter soever

See infra, this is altered by the Statute of 25 H. 8. in the next page.

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25 H. 8. cap. 19.

soever they concern, shall be made in such manner, forme and condition within the realm, as it is above ordered by 24 H. 8. in the three causes aforesaid; and one further degree in appeales for all manner of causes is given, viz. from the archbishops court to the king in his chancery, where a commission shall be awarded for the determination of the said appeale, and from thence no further.

Vide supr. pag. præcedent.

*Item*, that persons exempt shall likewise pursue their appeale in the chancery, *ut supra*, and not to the archbishop.

Note, in case where a sentence is given by commissioners delegates by the prince, as by the late visitors, anno 1 Eliz. the party grieved appealing, such appeale is out of the orders prescribed by the said statutes, and the prince in that case may grant a new commission to others to determine that appeale. *Et ceo suit fait per l'opinion del plusieurs des justices en le case de Goodman deprive del deanery de Wells.*

*Nota*, Stephen Gardener evesque de Winton suit deprive al Lambeth per commission del roy E. 6. fait a 10 persons proceeding sur ceo ex officio mero mixto vel promoto omni appellatione remota summarie de plano, absque omni forma et figura judicii, sola facti veritate inspecta.

*Et vide Mich. 3 & 4 Eliz. Coveney president del Novel College in Oxon' deprive per le evesque de Winton, visitor del dit colledge, et exempt de tout jurisdiction ordinary, fait appeale al roy in son chancery, et commission illong; grant a A. Broome et Weston justices, que sur conference oze autres justices et civilians, resolve que le appeale ne gist, ne aucun autre remede pur le appellant pur ceo que cesti case suit hors del dit statute de 24 & 25 H. 8. car cest deprivation est mere temporall, et come p. ley pros'. Ex quo sequitur, que une assise gist, &c.*

This case is in print, Dier fo. 209. a.

*Nota*, in appellis per doctorem Lewes judic admiral' et al' &c. Forasmuch as an appeale is a naturall defence, it cannot be taken away by any prince or power, and in every case generally when sentence is given, and appeale made to the superior, the judge that did give the sentence is bound to obey the appeale, and proceed no further untill the superiour hath examined and determined the cause of appeale. Neverthelesse where this clause (*appellatione remota*) is in the commission, the judge that gave sentence is not bound to obey the appeale, but may execute his sentence, and proceed further, untill the appeale be received by the superior, and an inhibition be sent unto him: for that clause (*appellatione remota*) hath three notable effects. The first is, that the jurisdiction of the judge that gave sentence, is not by the appeale suspended or stopped, for he may proceed the same notwithstanding. The second, that for proceeding to execution or further proces he is not punishable. The third, that those things that are done by the said judge after such appeale cannot be said void, for they cannot be reversed *per viam nullitatis*.

But if the appeale be just and lawfull, the superior judge ought of right and equity to receive and admit the same, as he ought to do justice to the subjects. And so if the cause of the appeale be just and lawfull, he ought to reverse and revoke all meane acts done after the said appeale in prejudice of the appellant. Thus far the report of the lord Dier truly translated.

\* At the parliament holden at Clarendon called *assisa de Clarendon* anno 10 H. 2. cap. 8. the formes of appeales in causes ecclesiasticall, are set down within the realm, and none to be made out of

\* Parliam. at Clarendon 10 H. 2. cap. 8. Mat. Par. pa. 97

\* Rot. claus. in dorf. anno 8 H. 3. part. 1. m. 29. Rex Dublin archiepisc. &c. Rot. parl. 18 E. 1. rot. 1. William de Valentia. & rot. 3. nu. 39. Wil. de Martingham acc. See Hoven den fol. 284.

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\* Hayward doctor of the civill and canon law in the life of William 2. 8 Eliz. cap. 5.

the realm.. *Ne quis appellat ad dominum papam, \* rex aegrè tulit appell' ad papam in causa bastardie, ut contra dignitatem regis de consilio igitur* (the record speaking in the person of the king) *magnatum et fidelium nobis assissent' vobis mandamus, firmiter injungentes quatenus non obstante appellatione præmissa non differatis pro eo sententiam, &c.* So as the first article of the statute of 25 H. 8. concerning the prohibition † of appeales to Rome is declaratory of the ancient law of the realme.

\* And it is to be observed, that the first attempt of any appeale to the see of Rome out of England was by Anselme bishop of Canterbury, in the reigne of William Rufus, and yet it took no effect.

See 8 Eliz. cap. 5. an appeale in civill and marine causes before the lord admirall, &c. a sentence before commissioners delegates is final.

See before page 125. upon a sentence given by the constable and marshall proceeding by the civill law in *causa armorum*, there lyeth an appeal to the king, but none of the said statutes extend to this kind of appeale.

See rot. cl. anno 30 H. 3. part 2. m. 11. *de appellatione pro rege fac' in electione abbatisse de Shafesbury.*

### . The Court of the Commissioners of Review.

#### Ad Revidendum.

24 H. 8. ubi  
supr. 25 H. 8.  
ubi supr.

Albeit the said acts of 24 H. 8. and 25 H. 8. do upon certaine appeales make the sentence definitive as to any appeale, for the words be [shall be definitive] and that no further appeale should be had: yet the king after such a definitive sentence, as supreme head, may grant a commission of review, *ad revidendum, &c.* for two causes. 1. For that it is not restrained by the statute. 2. For that after a definitive sentence the pope as supreme head by the canon law used to grant a commission *ad revidend'*: and such authority as the pope had, claiming as supreme head, doth of right belong to the crowne, and is annexed thereunto by the statutes of 26 H. 8. cap. 1. and 1 Eliz. cap. 1. And so it was resolved in the kings bench Trin. 39 Eliz. where the case was, that sentence being given in an ecclesiasticall cause in the country, the party grieved appealed according to the said act of 25 H. 8. to the archbishop, before whom the first sentence was affirmed: Whereupon according to the statute of 25 H. 8. he appealed to the delegates: before whom both the former sentences were repealed and made void by definitive sentence, and thereupon the queen as supreme head granted a commission of review, *ad revidend'* the sentence of the delegates. And upon this matter a prohibition was prayed in the kings bench, pretending that the commission of review was against law, for that the sentence before the delegates was definitive by the statute of 25 H. 8. But upon mature deliberation and debate the prohibition was denied, for that the commission for the causes aforesaid, was resolved to be lawfully granted. In this case I being then the queens attorney was of counsell to maintain the queens power. And presidents were cited in this court in Michelots case, anno 29 Eliz. and in Goodmaus case, and Huets case, in 29 Eliz. also. See

Trin. 39 Eliz.  
in the kings  
bench. Holling-  
worths case. Lib.  
Inte. Rast. fol.  
16. Appaale to  
Rome. lb. Rome  
389.



See the statute of 8 Eliz. cap. 5. and observe like words in that statute, *ut supra*.

Upon a sentence given by the high commissioners, a commission of review may be granted to and for the party grieved, as by an expresse clause within that commission appeareth. And if no such clause had been therein, yet a commission of review might have been granted. *Quia sicut fontes communicant aquas fluminibus cumulative, non privative; sic rex subditis suis jurisdictionem communicat in causis ecclesiasticis vigere statuti in hujusmodi casu editi et provisi cumulative, non privative*, by construction upon that act.

The high commission.

*Le Court des Conservators des Priviledges de St. Johns de Jerusalem, &c.*

There were two courts holden *coram conservatoribus privilegiorum*, the one *hospitaliorum*, and another *templariorum*. Of whose jurisdiction, and of their restraint to grant any general citations *priusquam exprimatür super qua re fieri debeat citatio, et si viderint hujusmodi conservatores quod petatur citatio de aliqua re cujus cognitio spectat ad forum regium, hujusmodi conservatores nec citationes faciant nec cognoscant*, as by the statute of W. 2. appeareth.

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W. 2. cap. 43.

See the second part of the Institutes, the exposition upon that statute.

The templers were dissolved in 4 E. 2. and the hospitlers in 32 H. 8. so as these courts are determined.

Now for a conclusion concerning England, I have reserved to say somewhat for the honour, and supreme estate of both the relatives of our sovereign lord the king, and of this his kingdom, which I conceive to be necessary to that which in this part of the Institutes we have taken in hand, for that it graceth and strengtheneth all the rest.

By the whole parliament of 24 H. 8. wherein, besides the archbishops and bishops of the realm, there were 29 abbots and priors lords of parliament: it was resolved, and so declared by an act, That by divers and sundry old antique histories, and chronicles, it is manifestly declared and expressed, that this realm of England is an empire, and so hath been accepted in the world, &c.

24 H. 8. cap. 12.

But against the truth hereof, opposition hath been made. First, that this is the only parliament that hath affirmed it. Secondly, that this declaration is unjust and untrue, and that history or chronicle doth not affirm the same.

Vid. stat. de 28. cap. 2. in Hibernia.

As to the first I answer: that one act of parliament is *instar omnium*, being a proof of the unanswerable and highest nature, but this is not the only; for so much in effect (as to this point) is affirmed by all the lords spirituall and temporall, and the commons by authority of parliament long before the reign of H. 8. that the crown of England hath been so free at all times, that it hath been in no earthly subjection, but immediately subject to God in all things touching the regalty of the same crown, and to no other.

Stat. de 16 R. 2. cap. 5. an. domini 1392.

Publique notaries made by the emperor claimed *de jure* to exercise their offices here in England, but because it was against

Rot. 61m f. 1 E. 2. 12

the dignity of a supream king, they were prohibited by the kings writ.

Bracton who wrote in the reign of H. 3. Lib. 1. ca. 8. nu. 5. anno dom. 1270. Int. leges Edovardi cap. 17. an. dom. 1050.

And long before, these by the ancient law of the crown of England, were due to the king. *Omnis quidem sub rege, et ipse sub nullo, sed tantum sub Deo. (Et ibidem paulo post eodem numero) Ipse autem rex non debet esse sub homine, sed sub Deo, &c.*

And therewith agreeth the law before the conquest. *Rex autem, quia vicarius summi regis est, ad hoc est constitutus, ut regnum terrenum, et populum domini, et super omnia sanctam veneretur ecclesiam ejus et regat, et ab injuriis defendat, et maleficos ab ea evellat, et destruat et penitus disperdat.*

Anno dom. 169.

And long before that anno 169. à passione Christi dominus Eleutherius papa Lucio regi Brytanniæ scripsit. *ad petitionem regis et procerum regni Brytanniæ. Petistis à nobis leges Romanas et Cæsaris vobis transmitti, quibus in regno Brytanniæ uti voluistis: leges Romanas et Cæsaris semper reprobare possumus, legem Dei nequaquam. Suscepistis enim nuper miseratione divina in regno Brytanniæ legem et fidei Christi, habetis penes vos in regno utranque paginam, ex illis Dei gratia per consilium regni vestri sume legem, et per illam Dei patientia vestrum reges Brytanniæ regnum, vicarius vero Dei estis in regno, &c.* and higher I cannot goe.

22 E. 4. nu. 19.

And by the way it is to be observed in the severall grants by abbots and priors made to king E. 4. they severally stile him by these very words, *supremus dominus noster E. 4. rex.*

25 H. 8. cap. 21.

And by three other acts of parliament, viz. by the statute of 25 H. 8. cap. 21. wherein by authority of parliament it is enacted and declared (directing their declaration to the king) That this your graces realm recognizing no superior under God but only your grace, hath been and is free from subjection to any mans laws, but only to such as have been devised, made and ordained within this realm for the wealth of the same, or to such other, as by sufferance of your grace and your progenitors, the people of this your realm have taken at their free liberty by their own consent to be used amongst them, and have bound themselves by long use and custome to the observance of the same, not as to the observance of the laws of any forain prince, potentate, or prelate, but as to the customed and ancient laws of this realm originally established as laws of the same, by the said sufferance, consents and custome, and none otherwise.

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25 H. 8. cap. 21.

1 El. cap. 1.

1 Jac. cap. 1.

\* Pl. com. 398.

b. Doct. & Stud.

fo. 164. cap. 55.

And by the statutes of 25 H. 8. cap. 21. 1 El. cap. 1. and 1 Jac. cap. 1. the crown of this kingdome is affirmed to be an imperiall crown.

As to the second: I might answer \* that *le court de parlement est de tres-grand honor et justice, de que nul home doit imaginer chose dishonorable.* And with the Doctor and Student upon the statute of 45 E. 3. cap. that it cannot be thought that a statute that is made by the authority of the whole realm as well of the king, and of the lords spirituall and temporall, as of all the commons, will recite a thing against the truth.

The like charter to the house of Donnington by king Edgar.

But to be short, king Edgar stiled and subscribed himself in his charter, *Basileus, imperator et dominus*, which you may read in the preface to the fourth part of my Reports. Vide rot. pat. 1 E. 4. parte 6. m. 23.

Edward commonly called St. Edward son of king Edgar in a charter

charter which he made to the abby of Ramsey (which I have) stiled himself, *Ego Edwardus totius Albionis Dei moderante gubernatione basileus*.

Another charter of king Edwine to the abby of Crowland intituled, *Carta regis Edwini filii regis Edmundi fratris regis Edgari de terris in Jekclea*. Wherin he is stiled *Edwinus Anglorum rex et totius Brytannicæ telluris gubernator et rector*, and many others.

To conclude this point with a late and learned writer, whom I will cite for that he agreeth with the former authorities, he saith, that the regall estate and dignity of a king is of two manners. The one is imperiall or supream, such a one is our soveraign lady Elizabeth by the grace of God queen of England, France and Ireland, which soveraign queen holdeth her empire and kingdomes with her people and subjects immediately of the Lord of heaven and earth, without any other mean seigniory or attendancie of corporall or bodily service or allegiance to any other worldly prince or potentate, maugre the head of either her forain enemies or intestine and homeborn traiterous vassals, and also from her sentence (she and we all her faithfull and loyall subjects acknowledging to her estate no superiour) lyeth no appeal.

There is also a king, and he a homager or feudatory to the estate and majesty of another king as to his superior lord, &c. As that of Navar and Portugall to the king of Castell: the kingdomes of Granado and Leons to Aragon: the kingdomes of Lombardy, Sicill, Naples and Bohemia to the sacred empire: the old kingdom of Burgundy, and now the late erected title of the king of Arles, to the king of the French men, and so forth of the rest.

The king which is supream and imperiall is equivalent within his land to the power and authority that Cesar can challenge within his own dominions, and such a king challengeth of right to set upon his head a \* crown imperiall with a diademe elevated on high, to signifie the perfection and greatnesse of their estate; but to the other kings homagers a crown not elevated is due. And that we may (as duty is) both with reverence and dutifull fear discern and judge the office and function of our soveraign to be most holy and sacred: let us see with what honours a soveraign king (such a one as is her majesty) is illustrated and made redoubted to his subjects, first, what great majesty, honor, power, and glory is intended by setting a crown upon her head, for in the reverend and majesticall action of coronation, she is first anointed, then blessed, after that consecrated; to signifie unto her and unto us that she is of God, that her power is from Christ, and that she is to rule over Christian people: the crown set on her head is called triumphant, and it is of gold to signifie her excellent majesty; it is called triumphant by reason that the like crown in fashion and form was given the emperours and captains of the Romans in their triumphs over kings and nations. This crown triumphant is most due to her excellent majesty even by the strict course of laws of arms, since that her ancestors have triumphed over many kings and mighty people, as H. 1. over five kings of Ireland, E. 1. triumphed over the Scottissh and Welsh nations. E. 3. and H. 5. both of them over France. In the triumphant crown of our soveraign lady there be placed (not only for the ornament of her regall diademe, but also to signifie

I. F. of the Inner Temple, in his book intituled, The glory of generosity, p. 140, 141.

Nota.

\* A crown imperiall.

With what majesty crowned.

A crown triumphant.

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the princely virtues of a king) twelve gems or stones of precious esteem.

And for this kingdome of England, the other part of the relative, hear what an ancient poet hath said.

Bartholomæus.

*Anglia gens fortis, et fertilis angulus orbis :*

*Insula prædives quæ toto vix eget orbe,*

*Et cujus totus indiget orbis ope.*

*Anglia plena jocis, gens libera et apta jocari,*

*Libera gens, cui libera mens, et libera lingua;*

*Sed lingua melior liberiorque manus.*

*The Answer to certain Objections against the Kings Stile of  
Defender of the Faith.*

This bull you may see in Speeds Chronicle, p. 759. nu. 41. anno domini 1521. 13 H. 8. See Laert. Cherub. Bullar. tom. 1. pag. 619.

And where some doe object that the king our sovereign lord ought not *de jure* to enjoy the title and stile of defender of the faith, *defensor fidei* : for (say they) pope *Leo decimus, anno pontificatus sui*, by his bull granted the same to king H. 8. *et posteris suis*. Well, *veritas à quocunque dicitur, à Deo est*. But they say that by the bull of pope Paul the third, against king H. 8. upon his suppression of the lesser houses of religion in anno 27 H. 8. he did not only depose him of this title, but of his crown also, and gave his kingdome to him that could get it : which, say we, was done *de facto, sed non de jure* ; and we confesse also that by colour of that bull, pope July the third in his bull to king Philip and queen Mary his direction was *Charissimis in Christo filiis nostris Philippo regi et Mariæ reginæ illustribus*, wherein he omitted the title of defender of the faith : but besides the popes bull, which (as it seemeth) is countermandable at his pleasure, the king hath a surer right thereunto to this stile, for by the full consent of all the lords spirituall and temporall and the commons assembled in parliament, and by authority of the same, in anno 35 H. 8. it is enacted, that all his majesties subjects should from thenceforth accept and take his majesties stile as it is declared and set forth in manner and form following, that is to say, in the Latin tongue by these words ; *Henricus octavus Dei gratia Angliæ, Franciæ, et Hiberniæ rex fidei defensor et in terra ecclesiæ Anglicanæ et Hiberniæ supremum caput*, and in the English tongue by these words : Henry the eight by the grace of God king of England, France, and Ireland, defender of the faith, and of the church of England, and also of Ireland, in earth supream head : and that the said stile should be from thenceforth by authority aforesaid united and annexed for ever to the imperiall crown of his highnesse realm of England. Hereunto it is objected, that this act of parliament is repealed by the act of 1 Mar. but that is mistaken, for as the treasons made and enacted by subsequent clauses of the said act of 35 H. 8. are repealed by the act of 1 Mar. but the stile and title of the crown without question remaineth of force unrepealed ; and accordingly queen Mary in all her severall sessions of parliament before her marriage and after her marriage, she and king Philip used the stile and title of defender of the faith in all their parliaments, letters patents, &c. according to the said act of 35 H. 8. and by the way she used the title also of *supremum caput* in the second session of her parliament in the first year of her reign. And by the resolution of

the judges in *anno* 1 Mar. it appeareth that the statutes of 26 H. 8. cap. 1. and 35 H. 8. cap. 3. concerning the stile of the king remains in force, forthereupon d.d the question depend: so as albeit pope Joly in his bull vouchsafed not to give king Ph. and queen Mary their stile of defender of the faith, yet both she before, and both of them after their marriage, according to their right took it upon them notwithstanding the thundring bull of pope Paul the third. Lastly, all the kings and queens regnant of England have at their coronation time out of minde been sworn to defend the faith, and therefore were of common right defenders of the faith: by reason of which oath they may take upon them the stile, and are more firmly bound to perform and do it, then by the popes bull.

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Having spoken of England, and of the pety islands and dominions of the same, and intending to speak of that noble island and kingdome of Ireland, I could not passe over that ancient and renowned kingdom of Scotland wholly in silence, but as it were to salute it by the way, and yet to adde somewhat, which none that have written of that kingdom have (to my remembrance) touched.

## C A P. LXXV.

## OF SCOTLAND.

CONCERNING this kingdome there are many things worthy of observation.

1. That these two mighty, famous, and ancient kingdoms, viz. England and Scotland (I use the words of the act of parliament) were anciently but one.

1 Jac. regis ca. 1.

2. That one religion and service of God is holden and celebrated by both.

Vide 4 Jac. ca. 10. &amp; 7 Jac. cap. 1.

3. That as there is one language in both, so there was one kind of government and one law in ancient time that ruled both with many unanimous agreements between them, which evidently appeareth by many proofs. First, that the laws of Scotland are divided as the laws of England be into the common laws, acts of parliament, and customes. Their common laws are principally contained in two books. The first called *Regiam maiestatem*, because it beginneth (as Justinians Institutes do) with these words [*regiam maiestatem*.]

11 Jac. regis ca. 1. &amp; 2. in Ireland.

The second book is called *Quoniam attachiamenta*, because it beginneth with those two words.

The first book doth in substance agree with our \* Glanvil, and

\* First printed by the perswa-

sion and procurement of Sir William Stanford a grave and learned judge of the common pleas *anno* dom. 1354. 1 & 2 Ph. and Mar. Of whom hear what Hovenden saith *an. dom.* 1180. (et *regni* H. 2. 26.) *Henricus rex Angliæ pater constituit Ranulphum de Glanvilla summum iustitiarium totius Angliæ, cujus sapientia conditæ sunt leges subscriptæ quas Anglicanas vocamus. This Hovenden lived in the reigne of H. 2. and died in the time of king John. See Pl. Com. 368. b. per Catlyn in Epist. to the eight book of reports.*

most

most commonly *de verbo in verbum*, and many times our Glanvil is cited therein by speciall name.

Secondly, the crown of Scotland is descendible to the daughter or heir female where there is no issue male. If there be many daughters or heirs female, it descends to the eldest. Likewise they have the like descents of lands to subjects as England hath, as none can inherit in the right line ascendant. The eldest daughter hath *initiam partem*. All the daughters of subjects do inherit.

Parliament.

Thirdly, they have the high court of parliament, as we in England have, and called by the same name, consisting of the same members, viz. lords spirituall, lords temporall, and the commons. It is summoned and called at the kings pleasure for a certain time. When they meet, the king or his chancellor sheweth the causes of calling them together. But there of later times the lords spirituall do choose eight temporall lords, and the lords temporall choose eight spirituall lords. These sixteen make choice of eight chosen for the counties, and eight of cities and burghs, in all, thirty two. But whatsoever is agreed upon by them, the king doth allow or disallow by moving of his scepter, &c.

Fourthly, they have the same degrees of nobility, as dukes, marquesses, earls, viscounts, barons, &c.

Fifthly, they have the same great officers, as chancelour, that keepeth the great seal, lord treasurer, lord privy seal, secretary, &c.

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Sixthly, and the same ministers of justice, as sheriffs, coroners, &c.

Seventhly, the same laws for the most part *quanto modo* appropriated to England, viz. tenant by the curtesie, because they had the same law that England had.

Eighthly, the like writs, *brevia*, as *de recto*, assise of *novel dissein*, *mordanc*, *de gard*, *de ideot inquirend*, *de divisis fac*, *replegiar*, *attachm*, &c.

Ninthly, they agree with *Magna Carta* concerning wardships, &c.

Tenthly, with *Carta de foresta* cap. 11. for it is lawfull for bishops, earls, and barons coming or returning through the kings forests at the kings command to kill one or two beasts in the sight of the forester, or otherwise in his absence to blow his horn, that he appear not to take it thievishly.

11. The lord of whom the land is holden by knights service *per antiquius feoffamentum* shall have the wardship of the body.

12. The sheriffs should cause the acts of parliament to be proclaimed, &c. All which, and many more are the ancient laws of both kingdoms, as it appeareth in the said books of *regiam majestatem*, and *quoniam attachamenta*, &c.

13. The sheriffs there have an inheritance in their office, as sometime in England they had, and yet in Cumberland they have.

14. The same vocables of art are used in the laws of both kingdoms, as *ordelum*, i. the court of water and iron, *filus mulieratus*, *marketum*, *serplait* or *serpler*, *judicamenta*, &c. *machameum* or *mahemium*, *murdrum* or *murcharum*, *chancemeley*, *mote*, *misericordia*, *mesfuagium*, *flightwight*, *medletum*, *remanere*, *manerium*, *recognitio per assam*, *pipoudres*, *pannagium*, *ora*, *nonclayne*, *soc* or *sok*, *serjanteria*, *grand serjanty*, *pety serjeanty*, *sedlator* a suiter, sheriffs of inheritance there,

there, the sheriffs court or county court, *toll*, *tunbrellum* or *tumbrellum*, *thainus*, foccage, burgage, *servicium militare*, relief or relieve, *them* and *teme*, theitbote, in *libera eleemosyna*, *terræ dominicales*, *liberum tenementum*, *vidiare duellum*, *warrenna* or *varenna*, *valvasores* or *vavafores*, waif, stray, castleward, *vereditum*, *viridarii*, infangthief, outfangthief, outlawry, outlawed, justice in cire, wreck of the sea, voucher, *vicenatum*, *hamsockne*, *hida terræ*, *bovata terræ*, *heriot* or *herezeld*, *hutefum* or *hucfum*, regrateurs, forestallers, a guilde, falsifying of dooms or recovery, *quarentena*, *fel-nia*, *feodum*, homage, fealty, *estoverium*, *essnium*, *entia pars*, disparagement, disseifons, disclaimer, *seaccarium*, *collifrigium*, *champertie*, *maeremium*, *averia*, *catalla*, bote, bloodwite, grand assise, assise of novel dissein', barrators, affidavit, adjournment, responsals, attornies, and many others.

There was an heptarchy in Scotland, but now a monarchy. There are there two archbishops, the one of St. Andrew, the other of Glasco: St. Andrew hath eight bishops under him, and Glasco three.

There are there thirty counties or shierifdoms.

The ancient motto of the king of England is, God and my right (*intelligitur*) shall me defend. Of the king of Scotland, In my defence God me defend.

There are also two famous universities, one in St. Andrews, the other in Glasco.

The length of Scotland from Twede to the uttermost coast is 480 miles: it is longer then England, but narrower, and endeth like a wedge.

Of ancient time all the bishops of Scotland were sacred, and confirmed by the archbishop of York.

But by reason of their acts of parliament, which in many points have altered, diminished, and abrogated many of the old, and made new laws and other proceedings: the distinct kingdoms as they now stand have many different laws.

*Item*, It is ordained by the king by consent and deliverance of the three estates, that all and singular the kings lieges of the realme live and be governed under the kings laws and statutes of the realm allanerly: and under na particular laws, nor speciall privilege, nor be na laws of uther countries nor realms.

*Item*, It is statute and ordained, that all our soveraigne lordis lieges beand under his obeisance, and in speciall the isles be ruled by our soveraigne lordis awn laws and the common laws of the realm, and be nane uther laws.

King James at his parliament holden *anno 1* of his reigne, endeavoured to have made an union of both kingdomes, and to have erected a new kingdome of Great Britain. And thereupon authority was given to certain commissioners of the higher and lower house of parliament, to treat with certain commissioners of Scotland for and concerning an union of both kingdomes. Amongst these commissioners there grew a question, whether there could be made an union of the kingdomes by raising a new kingdome of Great Britaine before there was an union of the lawes. Which question by the kings commandment was referred to all the judges of England in Trinity terme, *anno 2* Jac. who unanimously resolved

Par. 3 Jac. 1. ca. 48. 11 Martii anno dom. 1425.

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Parl. Jacobi 4. ca. 79. 11 Martii anno dom. 1503.  
1 Jac. cap. 2.

Vid. *supra* p. 36.

\* Ex instructo Lib. Hosp. Sancti Leonardi in com. Eborum. Egbert rex in parlamento apud Wintoniam mutavit nomen regni de consensu populi sui, et iussit illud de cætero vocari Angliam. Iste rex Egbertus obiit anno dom. 673. See a proclamation 15 Septemb. 1603. 2 Ja.

\* H. 7.

solved (I being then attorney generall, and present) that *Anglia* had laws, and *Scotia* had lawes, but this new erected kingdome of *Britannia* should have no law. And therefore where all the judiciall proceedings in England are *secundum legem et consuetudinem Angliæ*, it could not be altered *secundum legem et consuetudinem Britannia*, untill there was an union of the lawes of both kingdomes, which could not be done but by \* authority of parliament in either kingdome.

Anno 3 Ja. ca. 3. An act made for things to be done by force of the said act of 1 Ja. cap. 2. in any other session of parliament.

Anno 4 Ja. cap. 1. A repeale of hostile lawes and of hostility between England and Scotland, &c. And it is enacted, that no Englishman shall be sent out of England into Scotland for any offence done in Scotland, untill such time as both realmes should be made one in lawes and government. So as the resolution of the judges was approved by parliament. See a proclamation 20 Octob. 2 Ja. concerning the kings stile of king of Great Britaine, wherein all judiciall and legall proceedings, &c. are excepted.

I never read of any union of divided kingdomes, and therefore I conceive it to be without precedent. And in this union many things would fall into consideration, and those of great weight, other then the union of lawes, though that be a maine one: as for example, the severall crownes are descendible to severall heyres of \* blood. And question may be made who should be heyre of this new kingdome.

But the learned poet hath found out an union without danger, directing his verses to king James.

*Cum triplici fulvum conjunge Leone Leonem,  
Ut varias atavus junxerat ante rosas.  
Majus opus, varios sine cæde unire leones,  
Sanguine quam varias consciaffe rosas.*

Whosoever is desirous to know such miscellanea as we have observed concerning Scotland, let him reade these records and authorities following.

The records of parliament from the beginning thereof, for the receivers and tryers of petitions in the lords house. Rot. liberat. anno 3 Ed. 1. m. 2. per Johannem Lovetot, rot. paten' anno 20 Ed. 1. Gilberto comiti Glovornia et Hereford. Scotia rot. parliament. 21 Ed. 1. inter placita rot. 1. and 2. Hovenden 1194. pag. 7. carta regis R. 1. Mat. Westm. anno dom. 1260, pag. 302. H. 3. rot. Scotia 21 E. 1. carta f. 1. et Præ Alexandri regis Scotia, rot. Vasconia 25 E. 1. m. 2. 3. in dorf. Trin. 25 E. 1. coram rege rot. 6. Norff. Rafe de Tonyes case. Anno 29 E. 1. *Præ quas rex per se et quas comites et barones Angliæ per se miserunt domino papæ anno 29 E. 1. autoritate parliamenti, quæ irrotulata sunt etiam in scaccario.* Vid. Walsingham 48. and 49.

Rot. pat. 24 E. 1. episcopis Scotia. Mich. 33 E. 1. coram rege rot. 127. Scotia rot. parl. 35 E. 1. in brevi de parlamento, & auter 1 E. 2. 1 E. 3. fo. 17. Grayes case. 6 E. 3. 18. The abbot of Crowlands case. 9 E. 3. 6. John Darcyes case. rot. pat. 10 E. 3. 2 ps. comes Arundel. rot. parl. 14 E. 3. nu. 15. stat. 4. rot. clauf. 22 E. 3. & 23 E. 3. breve de parlamento magnifico principi, &c.

22 Aff.

Rot. parl. apud Linc. 29 E. 1. Annodom. 1300 Literæ omnium nobilium Angliæ, &c. Papæ.

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22 Aff. p. 85. 39 E. 3. fo. 35. rot. parliament. 42 E. 3. nu. 7. 42 E. 3. fo. 25. 8 R. 2. tit. cont. clayme pl. ultimo. 13 H. 4. fo. 5. rot. pat. 2 H. 5. part. 3. m. 1. 8 H. 5. fo. 5. 32 H. 6. 25. 20 E. 4. 6. b. Litt. sect. 100. & 165. 1 part of the Institutes. Stat. de 2 & 3 E. 6. cap. 36. Fortescue cap. 13. Pl. com. 126. Dier manuscript 3 Eliz. 22. b. & 13 Eliz. fo. 68. m. 5. Dier 12 Eliz. fo. 287. in print. Lib. 7. fo. 22, 23, &c. Calvyns case. lib. 9. fo. 114. Seignior Zanchers case. See before in the chapter of the High Court of Parliament.

Polidor. Virgil. Hollingsh. 1 part. fol. 116, 117. 2 part. Historie. 286. Stowe 303. Matth. Westm. 428, 425, 443, 444, 445. Walsingham 17, 28, 32, 129, &c.

Thus have you all which we have observed in our reading concerning this matter, and which the benevolent reader may peruse at his pleasure; to whose censure we wholly refer the same. *Multa, nemo omnia novit.*

You have observed, that those of Scotland do agree with us in language, and as hath been said, differ in lawes. On the other side, the subjects of Ireland differ from us in language, and agree with us in lawes, and therefore of them we shall speak somewhat the more at large.

Amongst variety of authors from whence this noble nation of the Scots originally came, we follow venerable Bede in his history of England, lib. 1. cap. 1. and also from whence the \* Picts originally came. And there you shall reade, that the Picts arriving in Britania planted themselves in the north parts thereof, for the Britains had taken up the south part before. And whereas the Picts having no wives did require the Scots to marry their daughters, the Scots agreed to grant them their boone, under condition, that as often as the matter was in doubt, they should choose their king rather of the next of the house of the woman than of the man.

Bede in history of England lib. 1. cap. 1.  
\* Redshanks.

And that Palladius in the eight yeare of Honorius the emperour, *anno domini* 411. was sent by Celestinus bishop of Rome to the Scots that had received the faith of Christ, to be their first bishop.

Cap. 13.

\* That the Scots do nothing differre from the Britains in their conversation.

\* Et. lib. 2. cap. 4.

Both these famous kingdomes have found by wofull experience, that unwise and uncertaine making of leagues, greatly indamageth the commonwealth, and the fatall danger of such leagues to the princes themselves.

Beda in his history of England, lib. 1. cap. 11. Vid. sup. p. 157.

## C A P. LXXVI.

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### Of the Kingdome of Ireland.

WE shall not need to undertake another work to write of the courts of justice there, for that they have the same which we have in England, and the same law, saving, where some that have written of them have in some maine points mistaken the matter;

1 Jacobi cap. 1. & 11 Jac. &c. cap. 1. & 6. in Ireland Vid. the 1 part of the institutes, sect. 212.

matter; we will convince the same by direct matter of record, and we intend to adde some things which are necessary to be known, which no man that hath written of that country hath vouched, or if they have remembered the same, it is with so light a touch, as much is omitted out of the record, or case resolved itselfe, worthy to be known, which we intend to supply for the honour of the king, and benefit of his subjects there. And the rather, for that I have been informed by many of them that have had judiciall places there, and partly of mine owne knowledge, that there is no nation in the Christian world that are greater lovers of justice (whereof we shall principally treat) then they are, which vertue must of necessity be accompanied with many others; and besides they are descended of the ancient Brittaines, and therefore the more indeared unto us.

Parliaments in  
Ireland of an-  
cient time.

\* Pag. 12.

First, concerning the parliaments of Ireland, being the highest court there, where some have supposed that the same beganne in 17 E. 3. we shall make it appeare by matter of record, that not only king John, as all men agree, but H. 2. also, the father of king John, as \* before it hath appeared, and in the next page shall be touched, did ordaine and command at the instance of the Irish, that such lawes as he had in England should be of force and observed in Ireland: hereby Ireland being of it selfe a distinct dominion, and no part of the kingdome of England (as it directly appeareth by many authorities in Calvins case) was to have parliaments holden there as England; and thereupon in the reigne of king John himselfe a parliament was holden there, as by this record ensuing appeareth.

Rot. ann. 18 H.  
3. m. 17. nu. 21.  
See the first part  
of the Institutes,  
sect. 212.

<sup>a</sup> Nota, Rex de  
communi omni-  
um consensu  
(ac communi  
consilio teneri  
statuit) is by act  
of parliament.

<sup>b</sup> Nota [om-  
nium] that all  
received the  
lawes, &c.  
Many things in  
these letters pa-  
tents are worthy  
of observation.

*Rex comitibus, baronibus, militibus, et liberis hominibus, et omnibus aliis de terra Hiberniæ, salutem. Quia manifestè esse dignoscitur contra coronam, et diem tatem nostram et consuetudines, et leges regni nostri Angliæ, quas bonæ memoriæ dominus Johannes rex, pater noster, de<sup>a</sup> communi<sup>b</sup> omnium de Hibernia consensu teneri statuit in terra illa, quod placita non teneantur in curia christianitatis de advocacionibus ecclesiasticis et capellarum, vel de laico feodo, vel de catallis quæ non sunt de testamento vel matrimonio. Vobis mandamus, prohibentes quatenus hujusmodi placita in curia christianitatis nullatenus sequi præsumatis in manifestum dignitatis et coronæ nostræ præjudicium, scilicet pro certo, quod si feceritis, dedimus in mandato justiciario nostro Hiberniæ, statuta curiæ nostræ in Anglia contra transgressionem hujus mandati nostri cum justitia procedat, et quod nostrum est exequatur. In cujus, &c. Teste rege apud Winchcomb 28 die Octobris anno regni nostri decimo octavo. Et mandatum est justiciario Hiberniæ per literas clausas, quod prædictas literas patentes publicè legi et teneri faciat. But as true it is that the father of king John, viz. H. 2. when he had conquered Ireland, sent that treatise, intituled, *Modus tenendi parliamentum*, in a faire parchment roll, for their better holding of parliaments there, which you may reade more at large before, cap. The high Court of Parliament, p. 12.*

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*Rex Henricus 3. anno regni sui 12. mandavit justiciario suo Hiberniæ, ut convocatis archiepiscopis, episcopis, baronibus et militibus ibidem coram eis legi faciat cartam regis Johannis, quam legi fecit, et jurari à magnatibus Hiberniæ de legibus et consuetudinibus Angliæ observandis, et quod leges illas teneant et observent.*

Rot. pat. 30 H. 3.

*Quia pro communi utilitate terræ Hiberniæ, et pro unitate terrarum, provifum*

*provisam est, quod omnes leges et consuetudines quæ in regno Angliæ tenentur in Hibernia teneantur, et eadem terra eisdem legibus subjaceat, ac per casum regatur, sicut Johannes rex cum illic esset \* statuit, et firmiter mandavit. Ideo volumus quod omnia brevia de communi jure quæ currunt in Angliâ similiter currant in Hibernia sub novo sigillo regis. Teste, &c. Apud Woodstock.*

\* Nota.

Mayor Dublin, qui querebatur vers. thesaurarium seaccarii Dublin, et vers. barones seaccarii de gravaminibus per ipsos illatis, remittitur parlamento, et inde huc: cui per curiam dictum est, quod gravamina sua proponat, qui dicit quod non adhuc est consultus, super quo dies datus est. Ad quem diem nullas proposuit querelas, ideo committitur turri London, et finem fecit domino regi.

Coram rege  
Mich. 33 E. 2.  
Rot. 124. Hi-  
bernia.

Sometimes the king of England called his nobles of Ireland to come to his parliament of England, &c. And by speciall words the parliament of England may binde the subjects of Ireland, as taking one example for many.

10 Octobris rex affectans pacificum statum terræ Hiberniæ, mandavit Ricardo de Burgo com' Ulton' et aliis nobilibus terræ prædictæ, quod sint ad parlamentum suum quod summoneri fecit apud Westm' in octabis Sancti Hilarii prox' ad tractand' ibid' cum proceribus, &c. regni sui super statu terræ prædictæ.

Rot. parl. 8 E. 2.  
m. 31.

An excellent president to be followed, whensoever any act of parliament shall be made in England, concerning the state of Ireland, &c.

Anno 35 E. 3. De concilio summonit' pro ter' habentibus in Hibernia.

Rot. parl. 35 E.  
3. ierol. sic.

Maria comitissa Norff.  
Aelianora comitissa Ormond.  
Jana la Despenser,  
Philippa com. de la Marche,  
Johanna Fitzwater,  
Agnes comitissa Penbroke,  
Margareta de Roos,  
Matildis comitissa Oxoniæ,  
Catherina comitissa Athol.

} admittendum fide dignos ad colloquium.

<sup>2</sup> De parlamentiis singulis annis in Hibernia tenendis, et de legibus et consuetudinibus ibidem emendandis.

Hereby it appeareth that there were parliaments holden in Ireland before this time, and order taken at this parliament that they should be holden every yeare, and the like acts were made in England in 4 E. 3. & 36 E. 3. for parliaments to be holden in England.

<sup>3</sup> In octabis Sancti Martini apud Nottingham rex de consensu communis consilii sui fecit certas ordinationes pro reformatione status sui Hiberniæ, et ministrorum regis ibidem.

<sup>4</sup> Volumus et præcipimus quod nostra et terræ nostræ negotia, præsertim majora et ardua, per peritos consiliarios, ac prælates, et magnates, et quosdam de discretioribus hominibus in parlamentiis tractentur, discutiantur et terminentur.

This ordinance doth regulate the parliaments in Ireland according to the institution and end of the parliaments in England, as in the writ of parliament, which is to confer and treat de arduis et urgentib' negotiis nos (i. regem) et statum et defensionem regni et ecclesiæ Anglicanæ

<sup>2</sup> Rot. parl. anno  
20 E. 2.

Rot. claus. 10 E.  
2. m. 38. & rot.

claus. 12 E. 2.  
m. 3. Annale

Hiberniæ anno  
dom. 1309. 2 E.

2. parliam. tent.  
apud Kilkennie

per com. Ulton.  
et Johannem

Wagan. Justic.  
Hiberniæ et

Magnates, &c.  
<sup>b</sup> Rot. parl. 17 E.

2. 1. part. pat.  
anno prædict.

m. 3.  
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<sup>c</sup> Int. Ordina-  
tiones pro statu

Hiberniæ anno  
17 E. 3. in tuzi,

&c.

Vid. Lib. Album  
in scaccario.  
Diverse acts  
here made con-  
cerning Ireland,  
and transmitted  
thither to be in-  
rolled in the  
chancery there.

\* 25 H. 8. cap. 12.  
F. N. B. 178. a.  
12 R. 3. 12.  
Anno 10 H. 7.  
Poynings law.  
\* Nota.

*Anglicane concernentibus*; the effect whereof is contained in the ordinance of 17 E. 3. but that ordinance doth not erect any parliament there, as some have (without any colour) supposed.

See 20 H. 6. fol. 8. which began Mic. 18 H. 6. rot. 46. coram rege, & 2 R. 3. fo. 12. See before in the Chapter of the High Court of Parliament.

And seeing good and profitable acts of parliament made in the realm of England since the reign of king John extended not into Ireland, unless it were specially named or by generall words included, \* as within any of the kings dominions, a right profitable act was made at a parliament holden in Ireland in anno 10 H. 7. before Sir Edward Poynings then deputy or prorex in Ireland, and thereupon called Poynings law.

Whereby it is enacted, That \* all statutes late made within the realm of England concerning or belonging to the common or public weale of the same, from henceforth be deemed good and effectually in the law, and over that be accepted, used, and executed within this land of Ireland, in all points at all times requisite according to the tenor and effect of the same. And over that by the authority aforesaid, that they and every of them be authorized, proved, and confirmed, in this same realm of Ireland. And if any statute or statutes have been made within the said land heretofore to the contrary, that they and every of them by the authority aforesaid be adnulled, revoked, and made void, and of none effect in the law.

And Hil. 10 Jacobi regis, it was resolved by the two chief justices and chief baron, that this word [late] in the beginning of this act had the sense of [before] so that this act extended to Magna Carta, and to all acts of parliament made in England before this act of 10 H. 7. but it is to be observed that such acts of parliament as have been made in England since 10 H. 7. wherein Ireland is not particularly named or generally included, extend not thereunto, for that albeit it be governed by the same law, yet it is a distinct realm or kingdom, and (as hath been said) hath parliaments there.

Books concern-  
ing Ireland.

Vide Bracton lib. 5. fo. 395. b. temps E. 1. Voucher 239. 14 H. 3. stat de Homage. 13 E. 2. Bastardy 25. 7 E. 3. 9. 8 aff. 17. Britton fo. 1. a. 45 E. 3. 19. Tr. 29 E. 1. coram rege 10 E. 3. 41, 42. 11 H. 4. 7. 8 R. 2. Proces 224. 3 H. 7. 10. 7 E. 4. 27. pl. com. 368. 13 Eliz. Dier 303. 20 Eliz. Dier 360. lib. 7. Calvins case. 1 part of the Institutes sect. 95.

Parliaments in  
Ireland holden  
at this day.

*How and in what manner a Parliament is to be holden in Ireland, and how Bills ought to passe in the same.*

Hil. 10 Jacobi  
regis.

The lords of the counsell directed their letters to the two chief justices and chief baron in these words.

After our hearty commendations to your lordships. Where- as his majesty for divers weighty considerations hath resolved to hold a parliament in the realm of Ireland, and that by an act made in the tenth year of H. 7. called Poynings Act, it is provided that all such bills as shall be offered to the parliament there shall be first transmitted hither under the great seal of that

that kingdom: and having received allowance and approbation here, shall be put under the great seal of this kingdom, and so returned thither to be preferred to the parliament: forasmuch as there are accordingly transmitteth hither from thence divers bills as well publick as private, some of which bills were first agreed on here, some others were framed and conceived there, and comming now hither may happily receive amendment or alteration: we have thought meet for avoidance of any question or inconvenience that may arise of the manner and form of proceeding in amending or altering of these bills, hereby to pray and require you, calling to you his majesties attorney and solicitor to look into Poynings act, and to consider of some such course as shall be fit to be held concerning the same, &c.

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Dated ultimo Januarii 1612.

Whereupon in this tearm the said chief justices and chief baron, and the attorney and solicitor were assembled two severall dayes at Serjeants Inne, and had consideration not only of the said act of 10 H. 7. cap. 4. but of the act of 3 & 4 Ph. and Mar. cap. 4. intituled, An act declaring how Poynings act shall be expounded and taken.

3 & 4 Ph. and  
Mar. cap. 4.

For by the said act of 10 H. 7. it is provided that no parliament be hereafter holden in the said land of Ireland, but at such season as the kings lieutenant and counsell there first do certifie the king under the great seal of that land, the causes and considerations, and all such acts as them seemeth should passe in the same parliament, and such causes, considerations, and acts affirmed by the king and his counsell to be good and expedient for that land, and his license thereupon, as well in affirmation of the said causes and acts, as to summon the said parliament under his great seal of England had and obtained. That done, a parliament to be had and holden after the forme and effect afore rehearsed. And if any parliament be holden in that land contrary to the form and provision afore said, it be deemed void, and of none effect in law.

*Sur quel act divers doubts et ambiguities fuer' conceive et ascuns de eux fuer' de greinder difficulty que auters.*

1. Et primerment un doubt fuit conceive le quel le dit act de 10 H. 7. extend al successors le roy H. 7. intant que l' act parle seulement del roy generalment et ne' de ses successors. 2 si le roigne Marie fuit deins cest parol roy. Et coment que ceux ne fuer' matters aucun ambiguity, car cest parol roy que import son politique capacity ne unques mort, et esteant parle indefinite extend in ley a toutes ses successors, uncore ceo est issint expound per le dit act de 3 & 4 Ph. & Mar. Et que le dit act de 10 H. 7. extendra to the king and queens majesty, her heirs and successors.

2. Ou le act de Poynings dit (the kings lieutenant and counsell there) scruple fuit conceive, si le roy appoint un per nomme de le deputie, ou

*lord justice, ou fil constitute 2 lords justices, chief governours or governour, et le counsell, &c.* Et quant a ceux est explaine per le aël de 3 & 4 Ph. & Mar. que le dit aël de Poynings extend a tout ceux.

3. *Le greinder et pluis difficult doubt fuit sur ceux parols in laël de Poynings.* And such causes, considerations, and acts affirmed by the king and his counsell to be good and expedient for that land, &c. *Le quel le roy poet fair ascun change ou alteration des causes, considerations ou aëls que serr' transmitt' icy del lieutenant et counsell d'Ireland, car ceo n'est pas affirmation mes correction et alteration de eux.* Et pur ceo fuit necessary desre explaine, que laël de 3 & 4 Ph. & Mar. fait in ceux parols. Either for the passing of the said acts, &c. in such forme and tenor as they should be sent into England, or else for the change and alteration of them, or any part of the same.

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4. *Auter question fuit sur les parols del primer aël. sc.* That done a parliament to be had and holden, &c. *si a mesme le parlement auters aëls que fuer' affirme ou alter icy peent estre enaëts per authority del parliament la.* Le quel est explaine per le dit darrein aël in ceux parols, for passing and agreeing upon such acts, and no others, as shall be so returned under the great seal of England.

5. *Grand doubt fuit conceïve sur les ditz parols (that done a parliament to be holden) le quel le lieutenant et counsell d'Ireland apres le parlement commence la, et pendente parliamento poient sur debate et conference la, transmitt' ascun auters considerations, causes, tenors, provisions, et ordinances come sembles a eux bone desre enaët' a mesme le parlement deins le realme d'Ireland, le quel est explaine per le dit aël de 3 & 4 Ph. & Mar. in expresse parols, que ils poient, &c.*

*Nota lesteur lordr del proceeding et sommons del parliament in Ireland.* Primerment le lieutenant et counsell la doivent certefier de south le grand seale d'Ireland le causes et considerations de toutz tielz aëls come semble a eux bone a passer en parliament, issint que le original covient a commencer la. 2. Ils covient desre affirme ou alter et change et retourne de south le grand seale Dangleterre. 3. Licence de south le grand seale a summoner et tener un parliament. 4. A transmitt' billes pendente parliamento come appiert devant. Et fuit auxi resolve una voce. 1. Que les causes, considerations, et billes transmitt' icy desouth le grand seale d'Ireland doivent desre custodie et preserve icy in le chancery d'Angleterre, et ne remaunde. 2. Silz soient affirme, ilz doivent desre transcript desouth le grand seale et retourne in Ireland, et tout ceo que passe le grand seale doiet desre inrolle icy in le chancerye. 3. Si les aëls transmitt' icy soient in ascun part alter ou change icy, laëls issint alter et change doivent come en un continent desre retourne desouth le grand seale Dangleterre a ceux in Ireland, tout quel doit desre inrolle icy in le chancerye Dangleterre. Mes le transcript desouth le seale d'Ireland que le remaine in le chancerye icy, ne serra amend, mes l'amendment serra desouth le grand seale Dangleterre come est avandit. 4. Les amendments ou alterations icy serr' come est avandit retourne in Ireland sans ascun signification ou certificat d'allowance de ceux per ceux de Ireland, car sicome les aëls movent originalment de Ireland, issints les amendments ou alterations movent icy in Angleterre. 5. Tous les bils que sont transmitt' icy de Ireland sont oee le petition del deputye et counsell le roy tous ensemble desouth un grand seale d'Ireland. 6. Tous les bills que sont affirme ou alter icy soient retourne ensemble desouth un grand seale d'Angleterre.

And thus much concerning the parliaments of Ireland.

*The Case of the Earl of Shrewsbury upon the Statute of 28 H. 8.  
of Absentees.*

Per force de certain letters patents de 28 Martii 1612. del seignours del privy counsell direct al Sir Humphrye Winche, Sir James Len, Sir Anthony Sontleger, et James Fullerton, ilz certifient aux seignours le claim de Guilbert countee de Salop aux dignities del countee de Waterford et barony de Dangarvan in Ireland come ensuist. Le roy H. 6. per ses letters patents anno 24 de son reign granta a son treschier cosyn John countee de Shrewsbury in consideration de ses appoynd et foyall services in le city et county de Waterford in Ireland, pro eo quoque quod per eundem consanguineum nostrum prædicta terra nostra Hibernia in partibus illis contra hujusmodi inimicorum et rebellium nostrorum insultus potentius defenderetur, ipsum in comitem Waterford una cum stilo et titulo ac nomine et honore eidem debitis ordinamus, præficiamus et creamus habendum, al dit countee, et a les heires males de son corps. Et oultre per mesme les letters patents granta les castles, seignories, honors, terres et barony de Dangarvan al dit John countee et a les heires males de son corps, les premisses desyre tenus del roy et ses heires per homage et fealty, et le service desyre seneschal a son moiesty in le realm d'Ireland. Puis al parliamēt (communement appelle des absentees) tenuis al Dublyn in Ireland, 1 Maii an. 28 H. 8. fuit enact (per reason del long absence del George countee de Salop hors de mesme le realm) que le roy, ses heirs et assignes avera et enjoyera in droit de son corone d'Angleterre tous honors, manors, castles, seignories, franchises, hundreds, liberties, county palatines, jurisdictions, annuities, fees des chivaler, terres, tenements, &c. et tous et singular possessions, hereditaments, et tous auters profits, cibien spirituall come temporall, quecunque queux le dit George countee de Shrewsbury, et Waterford, ou aucun autre person ou persons a son use avoient, &c. Le roy H. 8. per ses letters patents, anno 29 de son reign recitant le dit statute de absentees, Nos remisiss considerantes et nolentes statum, honorem, et dignitatem prædicti comitis diminuire, sed amplius augere, ex certa scientia, et mero motu, &c. granta al dit countee et ses heirs l'abby de Rufford ove les terras a ceo perteynant in le county de Nottingham, et le seigniory de Rotherham in le county de York, les abbeyes de Chesterfeld Shirebroke et Glesfopdale in le county de Derby ove divers auters terres et tenements de grand value desyre tenus in capite, et les questions fuer.

28 Martii  
anno Domini  
1612.

1. Le quel per le longe absence del countee de Salop hors de Ireland per que les roys et subjets wanted leur defence et assistance la, encounter le expresse consideration del creation, le title del honor est perdue ou forfeit, le dit countee esteant pier del ambideux realms, et residing icy.

2. Le quel per le dit statute des absentees, anno 28 H. 8. le title del dignity del countee de Waterford soit prise del dit countee de Shrewsbury cibien come les manors, terres, tenements et auters hereditaments in mesme la & specifice,

Et puis per auters letters des seignours del counsell, 27 Septemb. 1612. les deux chief justices et chief baron fuere requiere a consider del dit case (que fuit enclose deins leur letters) et a certifie leur opinions de ceo.

Quel case fuit argue per counsell erudite del dit county devant les dit chief justices & chief baron, sur que ilz preseront advisement (apres que ilz ont divers soitz lye le preamble et tout le dit act de 28 H. 8.) jefque a

*term de St. Mich. anno decimo Jacobi regis, et donques fuit unement resolve per eux come ensuist.*

*Quant al primer fuit resolve, que intant que nappiert que ascun defence fuit requisite, et que le consideration executory nest trouve per office desire infreint, ne judgement done in scire fac', a cest cause que le dit countee de Salop, ceo nient obstant, remain countee de Waterford.*

*Quant al 2 fuit resolve, que le dit aël de 28 H. 8. des absentees nad tolle seulement les possessions, que fuer' done a luy al temps de son creation, mes auxi le dignity mesme, car coment que un poet aver dignity sauns ascuns possessions, uncore ceo serroit pleine de inconvenience, et a cest cause le dit aël de 28 H. 8. (come tous auters aëls doivent estre) serra expound dousier tout inconvenience, et pur ceo per les generall parols del aël, (Sc. des honors et hereditaments) le dignity mesme ove les terres dones pur maintenance de ceo sont done al roy, et le dignity extinet in le corone.*

Rot. parl. tent.  
apud Westm'  
16 Jan. anno  
regis E. 4. 17.  
Degradatio Geo.  
ducis Bedford.

*Et est digne de observation le cause de degradation de George Nevill duke de Bedford, que fuit fait per force dun aël de parliameni, 16 Januarii, anno 17 E. 4. quel aël reciting the erection and making the said George duke, expresse le cause de son degradation in ceux parols.*

And for so much as it is openly known, that the said George hath not, nor by inheritance may have any livelihood to support the said name, estate, and dignity, or any name of estate, as oftentimes it is seen, that when any lord is called to high estate, and have not livelihood convenient to support the same dignity, it induceth great poverty and indigence, and causeth oftentimes great extortion, imbracery, and maintenance to be had, to the great trouble of all such countries where such estate shall happen to be inhabited. Wherefore the king by the advice of his lords spirituall and temporall, and the commons in this present parliament assembled, and by the authority of the same, ordaineth, establisheth and enacteth, that from henceforth the same erection and making of the same duke, and all the names of dignity to the said George or to John Nevil his father be from henceforth void and of none effect, &c.

*In quel aël 3 choses fuer' observe, 1. Que comment le dit duke navoiet ascun possessions a supporter son dignity, uncore son dignity ne poet estre tolle de luy sans aël de parliement. 2. Les inconveniences appiert ou grand estate ou dignity nest pas accompany ove livelihood. 3. Ceo est bone cause a toller le dignity per parliement, et pur ceo le dit aël de 28 H. 8. serra expound selonque le generalty del letter a toller tiel inconvenience, et coment que le dit countee de Salop soit non slement de grand honor et vertue, mes auxi des grand possessions in Engleterre, uncore ne fuit lention del aël a continuer luy countee in Ireland quant ses possfions in Ireland fuer' tolle de luy, mes que le roy a son pleASURE puit conferre cibien le dignity, come les possessions a ascun auter pur le defence de mesme le realm. Et les dits letters patents de anno 29 H. 8. nad parols a restorer le dignity que laël de parliement ad tolle, auxi ne fuit lentent del roy diminuer itatum, honorem et dignitatem ipsius comitis, sed augere, ceux sont desire entendes des possessions pur maintenance de son dignity, car tant vient per cest parol [augere] car il increase per mesme les letters patents exceeding grand bounty le revenues del dit countee de Salop in Angli-erre, quel le roy pense fuit un increase de son state, honor et dignity, issint son dignity in Angli-erre fuit increase ove large possessions in Angli-erre in lieu de tout ceo que fuit tolle de luy per laël de 28 H. 8. Et ou fuit object que les generall parols [des honors et hereditaments] sont explain et qualifi-*



qualife per les dits parols relative fubfequent (queux le dit George countee de Salop ou afeun auter a fons oepr,) et pur ceo ne ferra entende dufeun honor ou hereditament mes dont auters poient eftoier feifse al ufe, et ceo nul poet del dit dignity, et pur ceo le dit act extendra a ceo. Mes ceo eft deftre prife reddendo fingula fingulis, et les parols queux ledit George countee avoit font fufficient a paffer le dignity, et ove ceo accord le opinion de tous les justices Dengleterre in Nevils cafe, fur autiels parols in le statute 26 H. 8. in le 7 part de mes reports, fo. 33 et 34.

There is an act made in 3 H. 2. worthy here of remembrance, which never was yet printed. It is enacted, that all manner of persons whatsoever, who have any lands or tenements, offices or other living ecclesiasticall or temporall within Ireland, shall reside or dwell upon the same. And that all such as have there any castles or other forts, shall fortifie the same and furnish it with men able for defence, and thereupon also dwell. And if they at any time depart, then during their absence to appoint some able to supply his room, otherwise the governor to dispose the half of their living to such defence. See the act at large, necessary to be put in execution in these dayes.

*Dominus rex vult et præcipit quod de cætero fingulis annis semel in anno compotus Hiberniæ, &c. per thesaur' Hiberniæ reddatur ad scaccarium Angliæ, et ibidem audiat per thesaur' et barones suos.* A necessary law, and much for the benefit of the king to be observed.

A long record touching the custody of the body and lands of heirs within age, wherein these words are contained. *Et cum una et eadem lex esse debeat tam in regno Angliæ quam Hiberniæ.* Like writs of error of judgements given in the kings bench in Ireland, Mich. 32 E. 1. coram rege. Theobald Verdons case, *Breve de errore super bre. de errore rot.* 76. Pasch. 30 E. 1. coram rege rot. 50. in breve de errore &c. William de la Rivers case, et Tr. 33 E. 1. rot. 56. <sup>a</sup> *Concordatum est per omnes de concilio regis, episcopis et aliis in Hibernia unanimiter quod consuetudo usitata in Hibernia de bonis testatorum talis est, quod ubi, &c.*

<sup>b</sup> *Prisage vinorum in Hibernia*, and the manner of the taking of the same.

At a synod holden in Ireland by St. Patrick their apostle, it was unanimously agreed that Irish priests should have wives.

<sup>c</sup> *Tres petitiones porrectæ regi contra Eliam de Ashburnham militem iusticiar' domini regis in Hibernia de diversis malefactis, &c. per ipsum perpetratis, qui dicit quod non debet tractari, nisi in Hibernia, et ibidem terminari: et quod oportet ipsum dominum regem informari per indictmentum 12 jur' vel per appellum formatum et attachiament' ad sectam partis secundum legem et consuetudinem regni regis Angliæ hactenus usitat'.* Curia vult inde advsari, et interim manucapitur. Postea dominus rex mandavit breve quod caperent manucap' ad respondendum in Hibernia.

<sup>d</sup> *Admittitur episcopus Exon' pro fine 200 marc' pro contemptu in non admittendo presentatum regis ad ecclesiam de Southwell, pro quo contemptu omnia temporalia seifita fuerunt in manus regis, et tunc temporis ante finem fact' vacavit archidiaconat' Cornubiæ ratione quod incumbens electus fuit in <sup>e</sup> archiepiscopum Dublin in Hibernia (temporalibus episcopi Exon' ad tunc in manibus regis existens) per quod dominus rex recuperavit vers. episcopum dict' archidiaconat'.*

Rot. par. 3 R. 2. nu. 42.

Rot. par. 2 r E. 1. Rot. 3. Hibernia.

Trin. 13 E. 1. coram rege rot. 38. in breve de errore Hibernia. Apud Westm'. 22 E. 1. rot. 5. in breve de errore int' William de Vesey & P. filium Thomæ, & rot. pari. 23 E. 1. 5 E. 2. error 89. 15 E. 3. ibid. 72. 34 Aff. p. 7. reg. F.N.B. fo. 24. c. 11 H. 8. Kelw. 202. 15 E. 3. Record 38.

<sup>a</sup> Pasch. 28 E. 1. coram rege rot. 98. Hibernia. <sup>b</sup> Tr. 33 E. 1. coram rege rot. 124. Hibernia. <sup>c</sup> Tr. 18 E. 3. coram rege rot. 148. Hibernia. Sir Elias Ashburnhams case. <sup>d</sup> Pasch. 24 E. 3. rot. 25. coram rege. Cornubia. <sup>e</sup> Braet. li. 5. f. 195. 7 E. 3. 9. 12 E. 3. 41, 42.

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<sup>a</sup> This is apparent by many authorities.

Trin. 32 E. 1.

coram rege,

rot. 75. John

de Bonhams

case. 17 E. 3.

15. 40. 21 E. 3.

40. 41 E. 3. 5.

46 E. 3. 32.

6 Eliz. Dier

228. b. pl. 48.

resolue.

<sup>b</sup> Rot. par. 18 H.

6. part 2. m. 24.

A bishop made a

cardinal.

<sup>c</sup> 45 E. 3. fol. 9.

<sup>d</sup> Rot. par. anno

52 H. 3. m. 26.

Aurum regine.

The like grant was made of the land of Ireland by H. 2. to his son John.

<sup>e</sup> 33 H. 8. cap. 1.

And so it ap-

peareth by this

act that the

king and his

predecessors had

before this act

kingly juris-

diction and roy-

al authority.

<sup>f</sup> See before

pag. 13, 14. the

grant of king

John to the

pope declared to

be void by the

parliament in

40 E. 3.

These thus (\*)

marked cannot

be granted by

letters patents.

In this record two conclusions are to be observed. 1. Though Ireland (as hath been said) be a distinct kingdome of it self, yet it is governed by one and the same law that England is. 2. That when the archdeacon was by the king preferred to a bishoprick, he had the presentation to the archdeaconry in respect of the temporalities of the bishop of Exeter patron of the archdeaconry, and not by any \* prerogative. And so it is, if an incumbent in Ireland be made a bishop in England.

If a bishop in England be made a <sup>b</sup> cardinal, the bishoprick becomes void, and the king shall name the successor, because the bishopricke is of his patronage.

<sup>c</sup> See 45 E. 3. 9. upon the repeale of a ratification of the incumbent, a *procedendo* out of the chancery here to the justices in Ireland to proceed in the *quare impedit* brought by the king.

I finde an ancient record touching Ireland necessary to be explained in these words.

<sup>d</sup> *Rex thesaurario Hiberniæ, salutem. Cum Edwardus primogenitus noster terram Hiberniæ habeat et teneat de dono nostro cum omnibus pertinentiis suis adeo liberè et quietè sicut eam in manu nostra teneremus, per quod charissima filia nostra Alianora consors dicti filii nostri aurum suum iam de finibus quam sponte oblatis in terra Hiberniæ habere debet, sicut charissima consors nostra Alianora regina Angliæ aurum suum habet de eisdem in regno nostro Angliæ: Vobis mandamus, &c. quatenus prefatæ consorti filii nostri prædicti aurum prædictum de finibus et sponte oblatis, et etiam de quibuscunque aliis finibus prædictis habere facias in forma prædicta. Et hoc, &c. In cuius, &c. Teste rege 29 die Februarii, anno 52 H. 3.*

By this record first it appeareth, that, as the law was taken at that day, by gift of king H. 3. his eldest sonne prince Edward was lord of the dominion and lordship of Ireland. Secondly, that albeit the wife of prince Edward was not queen in name, but had the effect of it, therefore she should have a duty called *aurum reginæ*, as well as the queene of England, being but lady in Ireland. <sup>e</sup> For albeit the kings of Ireland were (until the statute of 33 H. 8.) stiled by the name of lord of Ireland, yet was he *supremus*, and *absolutè dominus*, and had royall dominion and authority, and that his consort was in *rei veritate regina*, or else she could not have had *aurum reginæ*.

<sup>f</sup> Albeit this royall dominion and land of Ireland was of ancient time permitted to be granted *de facto* to the kings sonnes before mentioned, yet by the law the king by his letters patents could not grant to royall a member of his imperial stile to any, no more then he could doe of the kingdome of England. And that doth well appeare by this, that when king R. 2. by his letters patents created Robert de Vere earle of Lincoln, and marquesse of Dublin to be duke of Ireland, he granted to him for life \* *totam terram et dominium Hiberniæ, et insulas eidem terræ adjacentes, ac omnia castra, comitatus, burgos, villas, \* portus maris, &c. una cum homagiis, \* obedientiis, vassalis, serviciis, et recognitionibus prælatorum, comitum, baronum, &c. \* advocacionibus et patronatibus ecclesiarum metropolitanarum et cathedralium abbatiarum, &c. \* constituere cancellar, thesaurar, justiciar, &c. cum regalibus, regalitatibus, libertatibus, &c. et omnibus aliis \* quæ ad regaliam nostram pertinent, \* cum mero et mixto imperio, adeo plenè, integre, et perfecte, sicut nos ea tenuimus et habuimus, tenuerunt et habuerunt progenitorum*

*progenitorum nostrorum aliqui ullis unquam temporibus retroactis. Tenendum per \* homagium ligium tantum.*

\* The said letters patents were authorized by parliament, *assensu prelatorum, ducum, et aliorum procerum, et communitatis nostræ Angliæ in parlamento*, &c. albeit it was *contra legem et consuetudinem parliamenti*, as before it appeareth, pa. 13, 14. to assent to any thing to the disherison of the king and his crown. *Sed novus iste insolitus et umbratilis honor cito evanuit.*

Rot. par. 13 R. 2. nu. 21. the king by authority of parliament gave the title of duke of Aquitaine to his uncle John of Gaunt, duke of Lancaster, and it was by consent of parliament, and could not be granted by letters patents, because it was one of the titles and stiles of his royall crowne. And this also did first begin and end in him.

But now it is necessary to be knowne what this duty of *aurum reginæ* is. Wherein three things are to be considered. First, what authority and warrant in law there is for this duty. Secondly, what it is. Thirdly, what is due thereby. First, in Lib. Rub. in scaccario fo. 46. *de auro reginæ*, where it is said, that it is to be taken *de hiis qui sponte se obligant regi*, &c. This present record of 52 H. 3. Vet. Mag. Carta 2. part. fo. 65. vid. 10 H. 3. stat. de Roteland to the same effect.

A record in the exchequer *termino Hil. anno 4 E. 1.* Another there, Hil. 12 E. 3. rot. 3. *ex parte rem. regis*, and divers other records in the reignes of R. 2. H. 4. &c. untill the reign of H. 7.

In acts of parliament, viz. 15 E. 3. cap. 6. 31 E. 3. cap. 13.

2. In divers of these records it appeareth that the queen should have *de sponte oblatis \* pro centum marcis argenti unam marcam auri solvend' per ipsum qui sponte se obligat*. And Pasch. 4. Jacobi regis the king did require the two chiefe justices and chiefe baron to certifie him what belonged to the queene for this duty at this day. And after many conferences, and hearing of counsell learned on both sides and view of records, at last it was resolved by them all, and so did Popham chiefe justice report to the king, that the duty belonged to the queene with these four limitations. 1. It must be *sponte*, from the subject, and at his pleasure whether he will give it or no, and no right in the crowne. And therefore fines for offences, for alienations, or the like, are no part of this duty. 2. It must be freely, without any consideration of any grant, sale, or lease of any thing wherein the king hath any revenue, estate, or interest. And therefore sales, leases, grants of lands, tenements, wardships, or the like, are out of the same, for there is *quid pro quo*. 3. It must be *sponte super aliqua consideratione*, &c. For example if the subject *sponte* offer to the king for a licence in mortmaine, or to create a tenure of himselfe, or to have a faire, market, or to make a parke, or the like, where the king diminisheth no part of his revenue, state, or interest, there *aurum reginæ* is due to the queene. 4. Of subsidies, fifteens, or any other gratuity of the meere grace or benevolence of the subject, there is nothing due to the queene, and so it was resolved, Hil. 4 E. 1. &c. *ubi supra*. And so much upon this occasion *de auro reginæ*.

\* A Tainist was successor apparent under the chiefe lord or capitaine of every severall country, and was eligible by the country.

D d 4

*Erethon.*

\* Per hom. ligium for tenant for life could not do other homage.

5 Rot. par. 9 R. 2. m. 2. & rot. par. 9 R. 2. nu. 9. & 10 m. 3.

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*Aurum reginæ.*

Hil. 4. E. 1. in scac. ex parte rem. reg. Hil. 12 E. 3. ibid. rot. 3.

Rot. claus. 12 E. 3. part. 1. m. 21.

Rot. parl. 7 R. 2. nu. 61.

Certaine Irish words necessary to be explained.  
\* Thane apud Britannos pro viro nobili, au regis mini

<sup>b</sup> Brehons.  
Bellagines.

<sup>c</sup> Parliament 40  
E. 3. at Kil-  
kenny.

<sup>d</sup> Cuttings.

<sup>e</sup> Cosheries.

Termondland.

Erick.

Galloglasses.

Kernes.

<sup>b</sup> *Brehon*. The Irish called their judges *brehons*, and thereupon the Irish law is called the brehon law.

<sup>c</sup> At a parliament holden in Ireland by Howel duke of Clarence, lieutenant there, anno 40 E. 3. at Kilkenny, and therefore called the statute of Kilkenny, the brehon law is no law, but a lewd custome crept in of latter times, and never was the law of the ancient Brittaines from whom they are descended.

<sup>d</sup> *Cuttings*. Under that name they comprehend tallages and impositions.

<sup>e</sup> *Cosheries* are prehendinations, when the chief lord and his retinue, &c. came to his tenants house, and fed upon their provisions till all were spent.

*Termondlands* are the glebe of the church.

*Erick* signifieth a fine for an offence.

*Galloglasses, equites triarii qui securibus utuntur acutissimis.*

*Kernes sunt pedites qui jaculis utuntur.*

The *prorex* there in former times hath beene called *custos*, warden, lieutenant, chiefe justice, deputy of Ireland.

These expositions we have added for the better instruction of him who will reade the Irish lawes.

*Rex, &c. Johanni marescallo dedimus et concessimus pro homagio et servicio suo marescalliam nostram totius Hiberniæ cum omnibus pertinentiis, &c. Habendum sibi et hæredibus suis de nobis et hæredibus nostris.*

See the Register, that if an archbishopprick or bishopprick in Ireland be void, that the chapter shall sue to the king in England to goe to election, and after election made they ought upon certificate thereof made to the king to obtaine his royall assent to this election, and thereupon a writ shall be directed out of the chancery here, to the chiefe justice of Ireland, or his lieutenant rehearsing all this matter, and commanding him to take fealty of the bishop, and to restore him to his temporalities. But now the course is in Ireland to make such writs there in the name of the king. But the king names the archbishops and bishops there, as he doth in England; and then the chapter choose him whom the king names to them, and thereupon the writs are made of course.

And the reason of this change is worthy to be knowne: for the charter of king John for election of bishops, &c. extended only to the bishops, &c. of England. <sup>a</sup> But after that the whole dominion of Ireland (as well concerning the church as the commonwealth) was established to be governed by one law with the kingdome of England, as is abovesaid, then the course of the Register was changed, and the same course taken there, as it is in England.

And whereas heretofore some, not without scandall, have divided this kingdome into the English pale, and the wilde Irish, <sup>b</sup> let obliuion bury it, or silence cover it, for now all are reduced to obedience and civill behaviour. So as a man may justly say of them as of the old Brittaines, *Sunt in bello fortes, et in pace fideles*. And for that some have given out that the crowne of England had this country of Ireland of the donation of the pope, we will ingeniously manifest the truth therein by the records and writings themselves at large.

*Altitonantis Dei largisua clementia, qui est rex regum, et dominus dominantium, ego Edgarus Anglorum basileus, omniumque rerum insularum oceani quæ Britanniam circumjacent, cunctarumque nationum quæ*  
*infra*

The charter of king Edgar made ann. Dom. 964. and in the 6. of his reigne.

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Rot. par. 9 Jo-  
hannis regis Jo-  
hanni mares-  
callo, of whom  
the lord Morly  
is descended.  
Regist. 294.

F. N. B. 169.  
170.

<sup>a</sup> Carta Johan-  
nis regis 15 Jan.  
apud novum  
London ann. 18.  
Bishops before  
were donative  
by the king.  
10 E. 3. 1. b.  
per Perring.  
17 E. 3. 40. per  
Stone &c.  
<sup>b</sup> Auferat obli-  
uio, si potest, si  
non, utrumque  
silentium tegat.

*infra eam includuntur imperator et dominus, gratias ago ipsi Deo omnipotenti regi meo, qui meum imperium sic ampliavit et exaltavit super regnum patrum meorum. Qui licet monarchiam totius Angliæ adepti sunt à tempore Athelfranci, qui primus regum Anglorum omnes nationes quæ Britanniam incolunt sibi armis subegit, nullus tamen eorum ultra fines imperium suum diatate aggressus est. Mihi tamen concessit propitia divinitas cum Anglorum imperio omnia regna insularum oceani cum suis ferocissimis regibus usque Norvegiam maximamque partem Hiberniæ, cum sua nobilissima civitate de Dublinâ Anglorum regno subjugare, quos etiam omnes meis imperiis colla subdere, Dei favente gratia, coegi. Quapropter et ego Christi gloriam et laudem in regno meo exaltare, et ejus servitium amplificare devotus disposui. Et per meos fideles fautores, Dunstanum, viz. archiepiscopum Ayelyolanum ac Osvaldum archiepiscopos, quos mihi patres spirituales et consiliatores elegi, magna ex parte disposui, &c. Facta sunt hæc anno domini 964. indictione 8 regni vero Edgari Anglorum regis 6. in regia urbe quæ ab incolis Ocleayceastræ nominatur in natale Domini festivitate sanctorum innocentium feria 4. &c. † Ego Edgar basileus Anglorum, et imperator regum gentium, cum consensu et principum et archiepiscoporum meorum hanc meam munificentiam signo meo corroboravi. † Ego Alfrye regina consensi et signo crucis confirmavi. Ego Dunstan archiepiscopus Dorobor' ecclesiæ Christi consensi et subscripsi. † Ego Oficel archiepiscopus Eboracensis ecclesiæ consensi et subscripsi. Ego Alferic dux. Ego Buthnod dux. Ego Aridgari dux. †*

King Athelfranc reduced England to a monarchy.

King Edgar conquered the greatest part of Ireland, with the most noble city of Dublin. Note the piety of this king. Int. leges Edw. regis & confessoris fo. 137. b. Lamb.

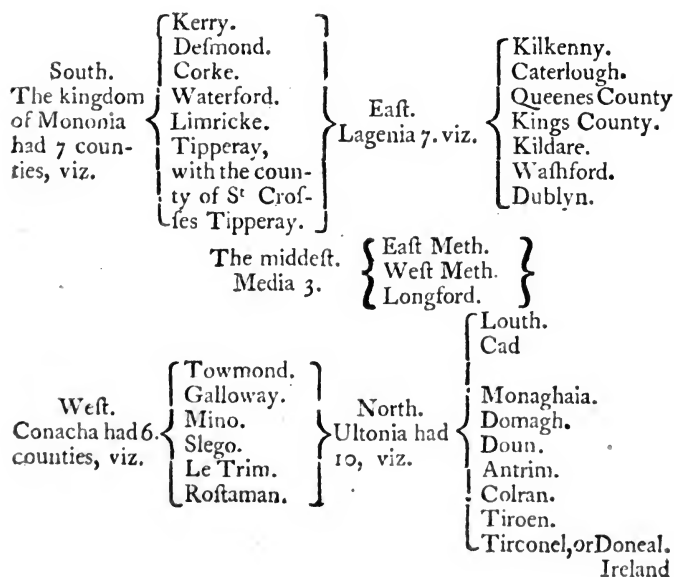
Arthurus qui quondam fuit inclytissimus rex Britannorum, &c. subjugavit sibi strenue (inter alia) Hiberniam, &c.

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And what ecclesiasticall jurisdiction the archbishop of Canterbury had in Ireland of ancient time before it was subject to the crown of England, you may read in Cambdens Britannia, pag. 735. & 765. as namely in the consecration and confirmation of their bishops, by reason of his primacy in Ireland.

A justice in Ireland constituted by letters patents under the great seale of England, cannot be removed from his office but by the king only.

Mich. 5 E. 3. coram rege rot. 43 Hibernia.



Ireland hath 33 counties, besides cities, that are counties of themselves.

King H. 2. at a parliament holden at Oxford, *anno regni sui* 23. created his sonne John king of Ireland. But the succeeding kings wrote themselves *domini Hiberniæ*, untill the 33 year of H. 8. in which yeare he took upon him the name of king of Ireland.

Rot. parl. 3 R. 2.  
nu. 43. in Eng-  
land.  
Mines of gold  
and silver.  
Braet. li. 2.  
fo. 222.  
Fleta lib. 4. fo.  
319. Pl. Com.  
in the case of  
mines.  
Coynage at Dub-  
lin.  
\* Rot. pat.  
5 H. 6. 1. part.

It was enacted by authority of parliament, that every man during six years might dig in his own proper soyle in Ireland gold or silver, &c. yeelding to the king the ninth part thereof, and that they make plate or coyne thereof at the kings coynage in Dublin, paying the fees: and that none carry thereout any of the said gold, silver, or bullion, but into England, without the kings licence, on paine to lose the same.

\* A grant of all mines of gold and silver within England, &c. to the duke of Bedford, regent of France, &c. rendring to the church the tenth part: to the king the fifteenth part; to the owner of the soyle the twentieth part.

To conclude with somewhat which tends to the honour of that noble nation. Certain it is, that whiles the liberall sciences in Europe lay in a manner buried in darknesse, then did their lustre shine forth most clearly here in Ireland; thither did our English Saxons repayre, as to a fayre or market of good letters: whence of the holy men of those times we often reade in ancient writers, *Amandatus est ad disciplinam in Hiberniam*: he was sent into Ireland to study there.

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Camden in Hi-  
berniam.

He that is desirous to read more records concerning this kingdome of Ireland, he may read these coram rege in the kings bench. Trin. 13 E. 1. rot. 36. 38. Hibernia. Mich. 17 E. 1. rot. 31. 38. Hibernia. Hil. 19 E. 1. rot. 68. Hibernia. Pasch. 19 E. 1. rot. 69. Hibernia. Trin. 20 E. 1. rot. 40. Pasch. 34 E. 1. rot. 104. Mich. 5 E. 3. rot. 40. & 46. Mich. 6 E. 3. rot. 55. Hibernia.

## Of the Precedency of the Great Officers, Nobility, and others of this Realme.

For of the precedency of the king himself and of other kings, and supreme princes, I take not upon me to write, but referre you to learned Camden, *Lib. Annal. anno Domini* 1600. 42 Eliz. pag.

Precedere est  
præcedendo ince-  
dere. Qui præ-  
cellit, præce-  
dere debet.  
Most ancient is  
most honour-  
able.  
Aristot. 1 Me-  
taph. cap. 3.  
31 H. 8. cap. 10.  
in the preamble.  
et to R. Earl of

At the common law, the king by his prerogative royall might give such honour reputation, and placing to his counsellors and other his subjects, as should be seeming to his wisdom, which prerogative was so declared by act of parliament.

\* By this prerogative, *Henrico Beauchamp concessit rex Henricus sextus, ut primus et præcipuus esset Angliæ comes, et hoc titulo uteretur; Henricus præcomes totius Angliæ et comes Warwici, Vestæ insule regulum dixit; posteaque ducem Warwici creavit, et concessit, ut haberet*

\* Rot. pat. 23 H. 6. Vid. Rot. pat. 28 H. 6. 2 parte m. 23. Precedency grant-  
ed to R. Earl of Warwick.

*sedem*

*sedem in parliamentis, et alibi proximam duci Norf. et ante ducem Buckinghamie.*

The same king created Edmond of Hadham to be earl of Richmond, and granted him precedency before all other earls. He also created Jasper of Hatfield earl of Pembroke, and gave him precedency before all other earls next to his brother the said Edmond earl of Richmond. But hereof these examples shall suffice.

King H. 8. though standing as much upon his prerogative as any of his progenitors, yet finding how vexatious it was to himself, and how distastfull to his ancient nobility to have new raised degrees to have precedency of them, and finding that this kind of controversy for precedency was of that nature, that it had many partakers, spent long time, and hindred the arduous, urgent, and weighty affairs of the parliament, was content to bind and limit his prerogative by act of parliament concerning the precedency of his great officers, and of his nobility. And first for the lords spirituall (who sit in parliament on the kings right hand) amongst themselves.

31 H. 8. cap. 10.

1. The archbishop of Canterbury. 2. The archbishop of York on the same form. 3. The bishop of London. 4. The bishop of Duresme. 5. The bishop of Winchester, and then all the other bishops of both provinces shall sit and be placed after their ancienties, as before this act was accustomed. But having regard to the lords and noble peers of the realm, both the archbishops have place above all the great officers and nobility in parliament, council and commissions, saving in the star-chamber, the lord chancellor or lord keeper hath the precedency of them. But the other bishops have place above all the barons of the realm, because they hold their bishopricks of the king *per baroniam*, but they give place to viscounts, earls, marquestes and dukes.

Concerning the great officers of the realm. 1. The lord chancellor or lord keeper of the great seal. 2. The lord treasurer. 3. The lord president of the kings council. 4. The lord privy seal, being of the degree of barons of parliament, or above, shall sit and be placed in parliament on the higher part of the form above all dukes, except only such as shall happen to be the kings son, the kings brother, the \* kings nephew, or the kings brothers or sister sons. See an act made in 29 H. 8. cap. 18. making it treason for marrying, &c. with any of the blood royall within certain degrees; but it is repealed. 5. The great chamberlain of England. 6. The constable. 7. The marshall. 8. The lord admirall. 9. The lord steward of the kings house. 10. The kings chamberlain shall sit and be placed after the lord privy seal in manner and form following, viz. every of them shall sit and be placed above all other personages being of the same state and degree: as if he be a baron, above all barons: if a viscount, above all viscounts: if an earl above all earls, &c. 11. The kings principall secretary being a baron of the parliament shall sit above all barons not having any of the offices afore said. But if he be a viscount, an earl, or any other higher degree, he shall not take the place of any viscount, earl, or higher degree, as it was resolved in the case of Robert Cecil. earl of Salisbury. And if the secretary be a bishop, he shall take the place of all other bishops not having any of the offices afore said, but not above the archbishops.

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Note, the Lord Steward of England is not here mentioned, because it was intended that when the use of him should be necessary, he should not endure longer then *bac vice*. \* i. the kings granchilde. Note the degrees within that act.

The general  
clause,

All other dukes not before mentioned, marquisses, earls, viscounts and barons, not having any of the offices aforesaid, shall all sit and be placed after their ancientie, as hath been accustomed.

*All other dukes, &c.* If the king should create a duke to the estate of archduke, yet by force of these words he shall not take place of any duke that was his ancient, *et sic de similibus*; otherwise this statute might be made of no force; and an archduke is some other duke.

If any person being lord chancellor, lord keeper, lord treasurer, lord president, lord privy seal, or chief secretary, shall be under the degree of a baron of parliament, they shall in parliaments sit in the uppermost part of the facks in the midst of the parliament chamber, &c. But in the starchamber, and all other assemblies and conferences of counsell, they shall sit and be placed as is above rehearsed; and in \* no other place. Lastly, the lord chancellor, lord keeper, lord treasurer, lord president, lord privy seal, being lords of parliament: the great chamberlain, the constable, the marshall, the lord admiral, the lord steward, the kings chamberlain, and the kings chief secretary shall sit and be placed in such order and fashion as is above rehearsed, and not in any other place, by authority of this parliament. Vid. statut. de 10 R. 2. cap. 1.

\* The words negative were added to avoid all scruple that the order for precedency set down in this parliament should not be altered by any *non obstante*.

<sup>a</sup> Rot. parl. anno 3 H. 6. in principio, et nu. 10.

<sup>b</sup> Ro. par. 27 H. 6. nu. 18. Vide rot. parl. 11 H. 6. m. 9. nu. 32, 33, 34, 35. between the earl of Arundell and Mowbrey earl of Norf. Rot. par. 3 H. 6. in principio cited in the earl Marshals case,

<sup>c</sup> Hol. Chron. pa. 620. 10. Hall 143. &c. anno 20 H. 6.

<sup>d</sup> Rot. par. 6 H. 6. nu. 22, 23, 24.

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<sup>a</sup> 7 H. 6. fo. 15. Vid. rot. parl.

15 E. 3. nu. 7.

<sup>b</sup> This is put for an example, for it extendeth to all trials by peeres, not only in case of treason, but in case of felony, imprisonment of treason and felony, and so ever since this statute hath it been put in use.

\* He that is desirous to understand the true rules of precedency of the nobles of this realm in the high court of parliament, &c. let him reade the great case between John earl Marshall and Richard earl of Warwick, in parliament, and the affirmations, answers, and replications on both parts exceeding long, but full of notable rules, reasons, and presidents concerning precedency, both in respect of the blood-royall, and otherwise: together with the lines and pedegrees, seats, and places of many noblemen very delightfull to be read.

<sup>b</sup> Another between William earl of Arundel, and Thomas earl of Devon: wherein you shall reade notable matter concerning the castle and honour of Arundel, precedently adjudged by the lords in parliament in the reigne of H. 4. between the earl of Arundel and the earl of Kent.

<sup>c</sup> If a bishop of this realm be made a cardinall, he shall not take any place of precedency in parliament as cardinall, but take his place in right of his bishoprick, which he holdeth of the king *per baroniam*, in respect whereof he sitteth in parliament.

<sup>d</sup> If a duke or earl, &c. be made protector of the realm in parliament, he shall have no other place but as a duke or earl, &c. Hereby you may perceive how necessary it was to set down by authority of parliament in certainty the place and precedency that great officers should have in parliament, who sit not there in right of their offices, but of their nobility: and the names of dignities of the nobility are parcell of their names, and so ought to be named in the kings writs: but the offices of chancellor, treasurer, and other offices are not parcell of their names, and therefore in the kings writs need not to be so named.

It is also enacted by authority of the said act of 31 H. 8. that in all trials of <sup>b</sup> treasons by the peers of this realm, the said great officers of this land shall sit and be placed according to their offices, above all other the peers, as is aforesaid.

We have perused the list of the names of the lords of parliament sitting



fitting in parliament both of ancient and later time, wherein we can gather no certainty for precedency.

Thus far for avoiding of contention about precedency in parliaments, star-chamber, and all other assemblies and conferences of counsell, and upon trials by the peers of the realm was necessary.

Now he that desireth to know the places and precedency of the nobility and subjects of the realm, as well men as women, and of their children: we for avoiding of tediousnesse will refer them to a record of great authority in the reign of H. 7. (for we will not vouch <sup>c</sup> Barth. Cassaneus or any other foreign author) <sup>d</sup> intituled *Series ordinum omnium procerum, magnatum, et nobilium, et aliorum quorumcunque infra hoc regnum tam virorum quam feminarum, posita et distincta per nobilissimum Jaspardum ducem Bedford et alios nobiles appointmente domini regis Henrici septimi*: (but this record dealeth not with the places of any of the great officers) <sup>e</sup> whereunto we will refer you: wherein you shall see what places both the sons, \* wives, and daughters, of lords of parliament, as dukes, marquesses, earls, viscounts, and barons shall have, and of banerets, knights, esquires, and gentlemen, and of their wives and children shall have.

<sup>f</sup> If any question be moved in parliament for privilege or precedency of any lord of parliament, it is to be decided by the lords of parliament in the house of the lords, as all privileges, and other matter concerning the lords house of parliament are, as privileges and other matters concerning the house of commons are by the house of commons to be decided.

The determination of the places and precedencies of others doth belong to the court of the constable and marshall, unless any question riseth upon the said act of parliament of 31 H. 8. for that being part of the law of the realme (as all other statutes be) is to be decided by judges of the common law.

<sup>g</sup> *Nobilis est qui generis sui imagines proferre potest.* <sup>h</sup> *Flavia gens obscura quidem et sine imaginibus.*

*Tota licet veteres exornent<sup>1</sup> undique ceres  
Atria, nobilitas sola est atque unica virtus.*

*Major est nobilitas quam virtus: virtus enim sine nobilitate esse potest, nobilitas autem sine virtute esse non potest.*

<sup>k</sup> *Arma seu insignia gentilitia ex antiquo habuerunt loco imaginum.* So as now the best discussing of antiquity of gentry is *per insignia*.

— *Armâque fixit*

*Troia.* —

*Virgill.*

And by the lawes of England as all the degrees of nobility and honour were derived from the king as the fountaine of honour: \* so all the lands in England † were originally derived from the crowne of England, and are holden of the same mediately or immediately. See before in the chapter of the High Court of parliament.

As names make knowne singular persons, so armes distinguish several families.

It is worthy of remembrance, and fit for example, that when Thomas Lord Cromwel by a flattering herald was offered in the time of king H. 8. to fetch his pedigree from the ancient lord Cromwel, that he might beare his coat, he answered that he would

<sup>c</sup> Bart. Cassaneus in catalogo gloriæ mundi.

<sup>d</sup> Series ordinum tempore H. 7.

<sup>e</sup> Vid. Camden Eliz. p. 475.

\* Which we have added the rather, for that the contention about precedency between persons of that sex is ever fiery, furious, and sometimes fatal.

Vid. the parliament. rolls ubi supra.

<sup>f</sup> Vid. rot. parl. 31 H. 6. nu. 27.

See 3 H. 6. nu. 10. betweene Mowbray earl of Norf. and Beauchamp earle of Warwick.

<sup>g</sup> Cicero.

Plin. lib. 39.

apud majores,

&c. optime.

<sup>h</sup> Tranquillus in Vesp.

<sup>i</sup> Juvenal. i. Cereæ imagines.

<sup>k</sup> Cotte de armes, a coat armour, that is, a long coat over armour with his armes embroiled upon it.

\* See the 1 part of the Institutes, sect. 1. &c. and in that first part in divers places many things concerning nobility and their creations, and of the gaining and losing thereof, &c. viz. sect. 9. fo. 17. a. b. sect. 1. fo. 9. b. sect. 95. fo. 69. a. b. sect. 112. f. 83. b. sect. 241 fo. 165. a. sect. 14. 15. fo. 20. a. sect. 137. fo. 97. a. sect. 201. f. 134. a. sect. 643. fo. 344. a. &c.

weare + [ 364 ]

weare a coat of his own, lest another mans coat might be taken from him: unto whom the king as advanced by him gave this coat, quarterly indented *per fesse*, or and azure, four lions counterchanged: where the old lord Cromwels coat was argent, a chiefe gules, a bend azure. The said act of 31 H. 8. extendeth-not to archbishops and bishops, therefore it is necessary to speak somewhat of them also. In ancient time they had great precedency, even before the brother of the king, as it appeareth by the parliament roll of 18 E. 1. and many others, which continued untill it was altered by ordinance in parliament in the reign of king H. 6. as it appeareth by a roll of parliament of that kings reign, entred in the back of the parliament roll. The precedency in parliament, and other places of councell at this day (whereunto we ayme) is, the two archbishops have the precedency of all the lords temporall; and every other bishop in respect of his barony have place of all the barons of the realm, and under the estate of the viscount and other superior dignities. The bishops between themselves have this precedency. First, the bishop of London, and after him the bishop of Duresme, and then the bishop of Winchester, and after him every bishop as he is in seigniority. But to this day, in all acts, ordinances, and judgments, &c. of parliament it is said, the lords spirituall and temporall.

Rot. pat. 9 Jacobi 8. part. 1. nu. 45. Baronets and others.

The first creation of baronets was in anno 9 Jacobi regis: what place and precedency these baronets and divers others shall hold, you may reade rot. pat. 10 Jacobi regis part 10. m. 8. and rot. pat. anno 14 Jacobi regis part 2. m. 24.

To conclude this chapter with the code of Theodosius, &c. *Ut dignitatum ordo servetur, si quis indebitum sibi locum usurpaverit, nulla se ignoratione defendat, sitque plane sacrilegii reus.*

## THE EPILOGUE.

**T**HUS have we by the great goodnesse of the Almighty brought this painfull Work, consisting of such, and so many varieties and difficulties, concerning the jurisdiction of such, and so many distinct courts (above the number of 100) to a conclusion: and in some few cases, where we have differed from others in opinion, we have shewed the cause and beginning of these errors (as we take them:) for it is a sure rule, *Quod errores ad sua principia referre, est refellere*, to bring errors to their first, is to see their last. Wherein we have strengthened our opinion with our two great guides, authority and reason, and not trusted abridgements, polyanthes, or taken any thing upon trust, but have searched the fountaines themselves, alway holding this rule, *Quod satius est petere fontes, quam sectari rivulos*: and our desired end is, that all these high and honourable tribunals, and other subordinate courts and venerable seats of justice may prosper and flourish in distribution of justice, which assuredly they shall doe, if they derive all their power and strength from their proper roots.

Whilest we were in hand with these foure parts of the Institutes, ✕ we often having occasion to go into the city, and from thence into the country, did in some sort envy the state of the honest plowman, and other mechanics; for the one when he was at his work would merrily sing, and the plowman whistle some self-pleasing tune, and yet their work both proceeded and succeeded: but he that takes upon him to write, doth captivate all the faculties and powers both of his minde and body, and must be only intente to that which he collecteth, without any expression of joy or cheerfulness, whilest he is in his work.

Throughout all this treatise we have dealt cleerly and plainly concerning some pretended courts, which either are no courts warrantable by law, as we conceive them, or which without warrant have inroached more jurisdiction then they ought. *Qui non liberè veritatem pronuntiat, proditor veritatis est.* Wherein if any of our honourable friends shall take offence, our apology shall be, *Amicus Plato, amicus Socrates, sed magis amica Veritas.* Having ever in memory that saying of the kingly prophet, *Keepce innocency and take heed to the thing that is right, and that will bring a man peace at the last.*

Psal. 37. 38.

And you honourable and reverend judges and justices, that do or shall sit in the high tribunals and courts or seats of justice, as aforesaid, fear not to do right to all, and to deliver your opinions justly according to the laws: for feare is nothing but a betraying of the succours that reason should afford. And if you shall since rely execute justice, be assured of three things: first, though some may ma-

Lib. Sap. cap. 17.  
12. Nihil est timor nisi proditio cogitationis auxiliorum.

## The Epilogue.

ligne you, yet God will give you his blessing. Secondly, that though thereby you may offend great men and favourites, yet you shall have the favourable kindnesse of the Almighty, and be his favourites. And lastly, that in so doing, against all scandalous complaints and pragmaticall devices against you, God will defend you as with a shield: \* *For thou Lord wilt give a blessing unto the righteous, and with thy favourable kindnesse wilt thou defend him, as with a shield.*

\* Psal. 5. 13.

Aristotle.

And for that we have broken the ice, and out of our owne industry and observation framed this high and honourable building of the jurisdiction of courts, without the help or furtherance of any that hath written of this argument before, I shall heartily desire the wise hearted and expert builders (justice being *architectonica virtus*) to amend both the method or uniformity, and the structure it selfe, wherein they shall finde either want of windowes, or sufficient lights, or other deficiency in the architecture whatsoever. And we will conclude with the aphorisme of that great lawyer and sage of the law (which we have heard him often say) *Blessed be the amending hand.*

Edm. Plowden.

*Deo gloria et gratia.*

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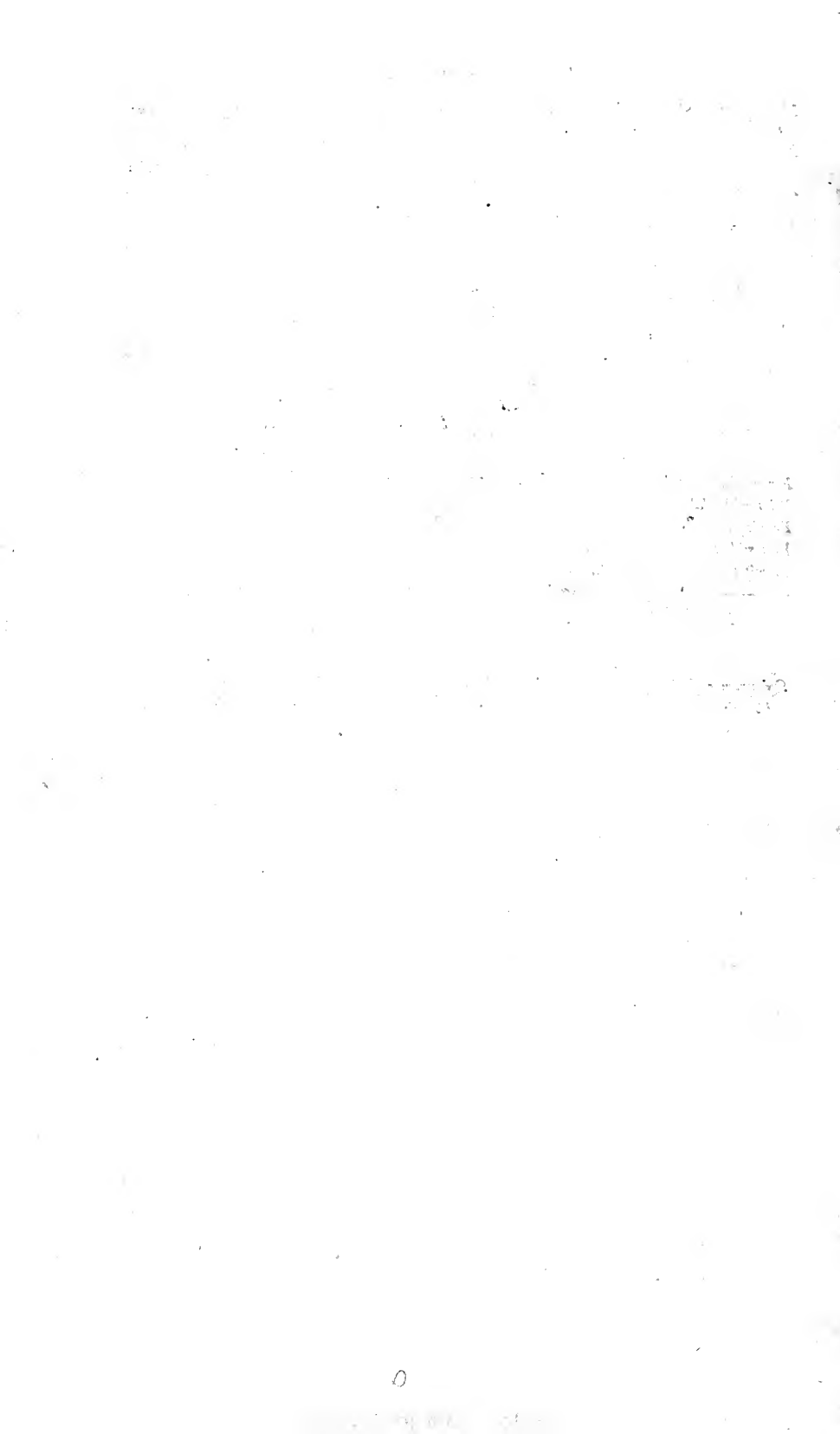
## S.

<i>Salus ubi multi consilarii.</i>	1
<i>Sapiens omnia agit cum consilio.</i>	4
<i>Silent leges inter arma.</i>	76
<i>Spes est vigilantis somnium.</i>	203
<i>Satius est petere fontes quam sectari rivulos.</i>	380
	& Epilogue.

## V.

<i>Ut pœna ad paucos metus ad omnes perveniat.</i>	63
<i>Veritas a quocunque dicitur a Deo est.</i>	153, 344
<i>Vicini viciniora facta præsumuntur scire.</i>	173
<i>Ubi non est lex ibi non est transgressio.</i>	308
<i>Ut obstruatur os iniqua loquentium.</i>	322
<i>Uno absurdo dato infinita sequuntur.</i>	329

# FINIS.













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